

Chapter 1

Ethics in Social Work: Tracking Harms

Introduction

1. Difficult ethical cases

2. The method of tracking harms: working through a case

a. How the method works

b. Learning a skill

c. A synopsis of the guide to ethical decision-making

2. The method of tracking harms: working through a case

a. How the method works

Suppose one person intentionally does something to someone else that is itself harmful to that person's interests and will predictably cause much additional harm (is intrinsically and extrinsically harmful), the harm is of great magnitude, the person causing the harm knows that what he or she is doing is harmful and does it because it is harmful, and he or she sets a precedent so that others will cause similar harms in similar situations. This sort of situation has as many footholds for immorality as one can find.

We can imagine an ethically less harmful situation by supposing, for instance, that one causes just a little bit of harm or that one causes great harm intending to do a great deal of good. In short, an ethically wrong situation may be ethically wrong for a variety of different reasons, and changing the situation, even ever so slightly, may make it ethically better.

Similarly, a variety of different features are necessary for the very best of ethical cases, and changing any one of them, even ever so slightly, may make the case ethically worse. The very best of ethical cases, where no ethical problems seem to have a footing, occurs when a person intends what is good for someone, knowing that it is good and doing it because it is good, and then works to ensure that what is intended comes to pass, it does come to pass, it is good, it has no harmful effects, and it has many good effects.

These descriptions of the worst sort of ethical case and the best sort provide us with clear examples we can hold up as standards of comparison for judging what kinds of problems we can have in deciding what we ought to do when we are involved in a particular difficult case. As we shall see, the ways in which we can go ethically wrong are many.

The cases that cause difficulties always involve harms to various individuals, to organizations, or to society as a whole. It may help to think of a harm as a setback to an interest. We all presumptively have an interest in living, and so, presumptively, the baby's interest was set back in The death of a baby. Similarly, Deborah faces a choice between risking the setback of the interests of the other children in not being killed or hurt -- should Hal have killed the baby intentionally -- and setting back the interests of the family in staying together in the face of a terrible accident. She faces a choice, that is, between two different ways of causing harm.

We can weigh harms, or setbacks, one against another. In explaining why Deborah did not inform the authorities right away about how the baby died, we attributed to her reasoning that led to the conclusion, 'I will cause harm if I inform and may cause harm if I do not.' If we must weigh a real setback to someone's interests to a possible setback to their interests, then, at least if the interests are roughly of equal weight, we opt for not causing a real setback. Our justification for doing that is straightforward. We ought not knowingly cause harm when we can avoid it.

But, unfortunately, the interests Deborah is concerned about are not of equal weight. The children will be harmed if they are removed until Protective Services investigates the case, but they will be harmed significantly more if they stay and end up dead or severely beaten. It is the different weights of these interests that presumably cause Deborah to hesitate in choosing between a real harm and the risk of harm. She would choose not to cause real harm except that the risk to the children if she does not inform is of very great harm.

In beginning to understand a case that appears difficult, we will thus begin by focussing on the harms, or setbacks to interests, of those involved, and our aim will be to try to understand what they are, how they affect everyone involved, and how they weigh one against another. We must thus answer a variety of questions just to begin to understand a case:

- 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 -- particularly insofar as they cause harms?
- Why are they doing what they are doing?

In *The death of a baby*, the participants include at least the parents and Deborah, and among those affected are the baby and the other children though, obviously, in different ways. For instance, the baby is dead, and the children are at possible risk. The physician will certainly be affected by whatever it is that Deborah decides to do, and he or she may become a participant, willing or otherwise. If Deborah's decision, whatever it is, becomes a precedent for future cases, then others facing similar situations will be affected as well. That is, we must keep in mind that whatever Deborah ought to do is what anyone else, similarly situated, ought to do.

If we turn to what the participants are doing, we need to examine the case in detail, sorting out both what was done and what was not done. Your immediate response to a case may not be the right one, and you will need to sort out your reaction from what is true. You will need to distinguish what someone says is true from what is known independently to be true. For instance, in *The death of a baby*, Sue, the mother, says that Hal fell asleep on the child, and though Deborah has no reason not to believe her, still, she must remember that she has no independent way of knowing whether that is true. From what Deborah knows, it is possible that Hal purposefully smothered the child and Sue is trying to cover for him. Deborah would be inferring from what she knows that Hal did not fall asleep on the child on purpose, and her inference may be mistaken.

We must also remember that it is easy to overlook features of a case we later realize are relevant. So understanding what the participants are doing in a case is, as with every step in the method, a continuing process, requiring that we revisit the case regularly.

When we work through a case to determine what was done and not done, we will have questions. For some the case will provide answers. For others it will not. For instance, we do not know why the father did not awaken when he fell asleep on the baby. The case does not tell us, and when we do not have adequate information, and cannot expect to ob-

tain it before we must make a decision, we must realize that any decision we make is chancy -- open to criticism when the missing facts come to light, if they ever do.

We may also wonder why Deborah did not tell the authorities right away what she knew about the cause of the baby's death. In considering possible answers, we cannot avoid making some presumptions about Deborah. She could be so concerned about her own interests that she thinks it better to pretend not to know anything. Or she could be evil, holding off so that she can figure out the best way to cause the greatest harm to the parents.

So what ought we to presume about Deborah -- this in partial answer to the query of why the participants are doing what they are doing? We should begin by presuming that she wanted to do what was best. Our presumption may be wrong, but without any evidence to the contrary, it is best to begin by presuming reasonable and well-intended people. We then ask, 'What would have to be the case for such a person to do that?' -- where 'that' is what needs to be justified.

We thus presume that Deborah did what appeared reasonable and right to her at the time. If it turns out that we cannot explain her actions except by assuming that she was unreasonable, or unethical, or ignorant of some crucial feature of the situation, that will be the time to make those inferences. By presuming whatever we need to explain how someone who is well-intended and reasonable could have done what was done, we are more likely to uncover what it was about the situation that went wrong. We shall then be in a better position to know what someone who is well-intended and reasonable ought to do so that, if we were similarly situated, we would know how we ought to act.

What we are trying to do in making such presumptions about the participants is to build for the participants the arguments they would have to give to justify their actions or omissions. If they did something, they should be able to provide reasons for what they did, but because it is rare that such reasons are fully articulated, we have to articulate them.

Consider one of the unclarities in *The death of a baby*. The case does not tell us that Deborah did not inform the authorities right away, but her puzzle about what to do in the short time she has before the physician signs the death certificate would not make sense if she had informed them. So we presume she did not and ask why not.

We gave, as a justification, her lack of knowledge about what Hal had done and her knowing that if she informed, Hal and the family would suffer even more. So we attributed to her roughly the following reasoning:

I ought to minimize the amount of harm that I cause.

If I inform the authorities about how the baby died, I will cause harm to the family.

If I fail to inform the authorities, I risk allowing the children to be in a situation where they may be harmed.

Thus, I will cause harm if I inform and may cause harm if I do not.

So, therefore, I will not inform -- at least for awhile.

Anytime we attribute reasons to a participant, we need to do our best to choose true premises -- such that a reasonable and well-intended person in that situation would act on them. So not just any speculation will do. We need to look closely at the situation and determine, if we can, what is most likely, given what we know happened.

But what seem the most likely reasons to attribute to someone may not be true, and so, even after we determine how we think someone in a particular situation must have reasoned -- because otherwise we cannot explain why he or she did what was done -- we may question whether the premises of the argument we have attributed to that person are true. Deborah seems in a quandary about what to do at least in part, it appears, because she has

not weighed in the law requiring her to tell the authorities. She is so focused on not causing harm to the family that she has ignored the legal obligation she has to report and the consequent harm to herself that may result from her not telling the authorities.

But, more importantly, she seems not to have asked herself why there is such a law. Oftentimes, when we are at a loss to know what to do in a specific case, we can find some rule that tells us how people who have similar problems have responded. The point of the rule is that it has been found that responding in the way the rule requires in general leads to less harm than responding in some other way. The admonition that we ought to tell the truth tells us that, as a rule, telling the truth is less harmful than not telling the truth. Codes of ethics generally contain such rules -- the accumulated wisdom of a profession. In the same way, the law that social workers ought to inform the authorities when in the sort of situation Deborah finds herself in does not just make it legally obligatory for her to tell. It also tells her that, as a rule, telling the authorities leads to less harm than not.

It is often not easy to figure out what reasons people have for doing what they did. On the one hand, though we should strive to attribute to a person only what is true, we should always realize that we can make a mistake, that the person may have reasons that did not occur to us. On the other hand, it sometimes is difficult to see how participants could have done what they did without acting on what we can see are false assumptions. In struggling to construct a good argument for the participants, we may find that we force out assumptions people are making that we ought to question.

Why *In dancing a legal dance*, for instance, would Martha go to the houses of friends and stay 'for days at a time'? No reason is given in the case, but put yourself in her shoes. You are being sexually abused in your own home, and neither your mother nor the outside authorities, represented by Mary, can protect you. It is reasonable to get away from the place where harm is occurring. So Martha's going to friends 'for days at a time' may be the best evidence available that she is reasonable and knows what she is doing. She is doing what no one else is capable of doing, namely, getting herself out of harm's way. Mary is taking that behavior as evidence of Martha's defiance or disintegration, and she may be making a mistake.

What we are trying to do is to get inside a case by figuring out why the participants are acting the way they are acting. Consider, in this regard, the following case:

1.3 Adoptive children

The State has a registry for natural parents and adoptive children. A natural mother, for instance, may consent to have information about her given to the child she gave up for adoption if the child seeks it, or she may file a denial at the registry, refusing the child any information. But most people do not know about the registry since it is poorly advertised and underutilized by social work agencies.

Dena supervises adoptions for the county, and she often has adoptees come to her asking for information about their natural parents. She has a great deal of that information, but adoptees are only entitled to non-identifying information. The law of the state she is in requires that, and when the natural parents gave the child up for adoption, the state agency promised them secrecy.

One woman came to see her. She had been to the registry without success and had tracked down the name of her natural mother, but it was a common name and she could not find her. So Dena gave her the father's name -- a piece of identifying information. Dena is concerned about the interests of the natural parents, and so she does not give information to everyone who seeks it. She gives it only to those

she judges will be sensitive to the needs of their natural parents. She gives it to those who do not act only for selfish reasons, but work to change the law, and to those who work actively in support groups that exist for adoptive children, showing in that way they care about others.

A young brother and sister showed up one day, without making an appointment, and asked her for help. She was concerned that they had not called her ahead-of-time. 'That shows a lack of concern for me. I can't just see anyone who walks in the door!' And they said they would do whatever they had to do to find out who their natural parents were. She did not give them the information even though she knew.

Dena is concerned about what she does. She is breaking the law, and she knows it. 'Do I really have the right,' she asks, 'to go above the law and say this person deserves it and this one does not?' Doing that puts her job at risk. At one time the Court would contact the natural parents when they were sought by an adopted child and ask the parents if they wanted to use the registry. But a judge ruled that the State 'has no right to interrupt their lives in that way.' So she sometimes gives extra information.

She does it because she thinks the law as it now stands is unfair. Some are able to find out about their natural parents and others are not, based purely on accidents like whether the natural parents have heard of the registry.

This case raises the issue of whether we are obligated to obey the law and whether a social worker, in particular, can disobey the law for a supposedly higher good. It also raises the question how to break the law if we decide to break it. Who gets the illegal information, and who does not? It is unclear why Dena does not give information to the brother and sister who come to her, and as we try to determine what argument she could have for not doing that, we find ourselves forced to question what she says are her reasons for giving information. It seems too high a standard to require that the brother and sister be politically active or work for support groups. So, to justify her action, we are forced to wonder if she is not somehow prejudiced against them for not having called to set up an appointment or is inappropriately using that failure as evidence that they are not concerned with the interests of others.

In querying what Dena is doing, we are proceeding with the first step in working through a case:

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

This is a complex step. As we have pointed out, 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?

(1) summarizes these questions while adding another:

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

(1) tells us to begin by asking, 'Who are the participants?' If we are to understand the case from the perspective of the participants, we must get so far inside a case that we can understand it from their points of view. We must determine as best we can what has been done -- what the facts are -- and put ourselves in Martha's shoes, or Mary's, or Dena's and try to see what they would say, as rational and well-intended people, to justify their actions. Of course, a case may be so problematic that we cannot be sure why a participant has done what he or she has done. In such a situation, we may have to propose several possibilities and work out the implications of all of them. We may also discover later that some feature of the case we thought unimportant or had not noticed turns out to be crucial. Discovering the facts is, as we have said, a continuing process.

In determining what reasons a participant had for doing what he or she did, we need to make explicit, and keep clearly in mind, what the participant ought to be trying to do and what means are the most appropriate for that. It helps in achieving that end to determine, if we can, what the participants thought their goals were and how they were going to achieve them. The second step in working through a case, in other words, is the following:

- (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.

Is the end in mind reasonable and ethical, and are the means to that end reasonable and ethical as well? Determining what ought to be our goals, and how to achieve them, is a complex undertaking and fraught with the possibility of mistakes, ethical and otherwise. We need to do the following in determining what the goals in a case ought to be:

- Distinguish short-term goals from long-term goals.
- Assess whether the various goals are compatible with one another.
- Determine whether the goals in mind actually resolve the initial problem or introduce new ones.

We need to do all this keeping in mind how best to achieve the goals we ought to have.

What are Mary's goals, for instance? One goal is to stop the abuse by Martha's father. It is to keep Martha from harm, that is, and that is one of Martha's goals as well. It is that common goal that ought to give us an understanding of what Martha is doing and what Mary ought to do. If you are Martha, you want to get out of harm's way, and you believe that the system that is supposed to protect you has let you down. After all, the judge has told you that you were not sexually abused even though you know you were. What can you do? You can stop the abuse by staying with friends. What better way for you to get out of harm's way -- given that you no longer trust Mary or, presumably, any authority that purports to be of help? You are thus accomplishing what ought to be one of Mary's goals, and if Mary is clear that her goal is to protect you and if she understands how you are protecting yourself, she has a better chance of understanding what you are doing and of determining whether your means are best or whether some alternative is better.

Confusion about one's goals and about how best to accomplish them is all too common. Consider, in this regard, the following case:

1.4 Doing what the judge orders

Jane got AIDS through a transfusion and is suspected of incestuous involvement with her 15-year-old son, Al, who is in foster care. She informed a social worker that she has AIDS, and when the social worker said, 'There are people who ought to know about that,' Jane told her, 'If you tell anyone, I'll sue. I would rather my children find me dead than find out that I have AIDS.' But the social worker told the caseworker for Al because Al may be a carrier. He has a girlfriend and claims to be sexually active, and his foster family may be at risk.

The caseworker, John, went to his supervisor and presented her with a hypothetical case. 'If I knew that the natural mother of a young boy in my care has AIDS and might be involved incestuously with the boy, but I am not supposed to know that she has AIDS, what should I do?' They both went to the judge who had put the child in foster care and posed the same hypothetical. Al was up for review at the time, and he had been acting out. So the judge ordered a complete physical, asking that every test possible be done to see why he is acting out, including a test for HIV. Such a test is not a normal part of a physical, and the child is not to know.

John argued that 'that will cover us for having a complete physical because it's a court order,' and he remarked, 'I've gone through all my channels so that if it came back on me, I could say, "Hey, the judge told me to do it!".'

John succeeded in having Al tested to determine if he was HIV-positive. The case suggests that he thought that if Al did not test positive for HIV, he would not have to do anything and could sidestep the ethical dilemma he faced of choosing between putting his client at risk and breaking the confidence he had. But things will not work out that way. As we shall see, he did not achieve the goal he seems to have had in mind, and, in addition, the means he used in trying to achieve that goal caused unnecessary harm.

For if the test is positive, Al may be putting his girlfriend and foster family at risk. John will have the same ethical problem he thought he had when he began. He must risk harm to innocents or break the confidence he was given. And he will not know that Al was infected by his mother because he claims to be sexually active with a girlfriend and she may be a carrier. So John gains nothing ethically or practically if the test is positive.

And if Al tests negative? John will not know Al is HIV-negative. The test may produce a false negative. AIDS can be difficult to detect, and Al may have it without any virus being in any particular sample of blood. Or, because it takes up to six months after infection for any virus to appear in the blood, not finding it may mean only that Al may have become infected within the last six months. And having Al tested does nothing to keep Al from continuing to be at risk. If he is in a relationship with his mother, he may become infected at any time. So, if the test is negative, John cannot be sure Al is not HIV-positive, and he still has a client who may become HIV-positive at any time.

He thus gained nothing ethically by trying to get Al tested. Whatever the result, he faces the same sort of ethical problem he had. What ought to be John's long-term goal of protecting Al and those who come into contact with him is not helped by John's having Al tested. Indeed, the means to that end introduces a new harm -- testing Al without his consent .

The crucial problem is that Al may be at risk, and he may be at risk because he may be in an incestuous relationship with his mother. To solve that problem, John or the mother's social worker must come to grips with the suspected relationship. It seems they think enough of the evidence they have to pursue the matter to court, but if they do have

evidence of such a relationship, why do they not report the mother as a suspected child abuser? That may bring out that she has AIDS, but even if it does not, the suspected abuse may be stopped. It will then be appropriate to get AI tested to determine if his girlfriend and foster family need protecting.

This analysis of John's goals in *Doing what the judge orders* illustrates what often happens when we begin to untangle a case. In trying to understand why someone has done what he or she has done, in laying out the harms to all affected, determining their kinds and assessing their magnitudes, and in determining what ought to be the goals in the case and how those ought best be achieved, we can come to clarity about what went wrong. John gained nothing practically or ethically by so arranging things as to have AI tested. Because he caused AI to be deceived for no good reason, the harm he caused need not have occurred. So he was wrong to do what he did.

John is right back where he started, ethically and practically, but we now know that the real concern is with AI's purported relationship with his mother. We have clarity about what John ought not to have done. Now, were we in his shoes, we would need to determine how best to proceed given what he has done. Similarly, in *Dancing a legal dance*, if Mary wants to protect Martha from her father, we can see that she should try to obtain clinical evidence of any sexual abuse. That is what she should have done initially. Then the case would not turn on Martha's willingness to testify. But though we have clarity about what Mary ought to have done, the very way her problem is posed shows how complicated it is. She must await new abuse by the father if she is to make use of the law to prevent more abuse. If we ask what Mary ought to do now, given what has happened, we can see how constrained her choices are.

Having come to understand a case as it is understood by its participants and having clarified what our goals ought to be -- having followed steps (1) and (2) of the method of tracking harms, that is -- we have arrived at the stage where we need to explore what is now possible: how are we to get ourselves out of the ethical mess we find ourselves in?

The cases we are considering would not be difficult if this next step were easy and the solution presented itself as obvious once we went through the first two steps. If it does, then that is the end of the matter, and we have a case that appeared difficult but turned out to be easy. But in a difficult case -- difficult because we have a dilemma and must choose between harms or because the case is factually or conceptually problematic -- we shall need to brainstorm possible solutions, laying out as many as we can conceive and assessing each of them, in turn, for the harms they will cause. It is thus a crucial step in our method to

(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?

We should always presume that a difficult case has a solution. We will then presume that a failure to find a solution means that we have not thought enough about the case or thought about it in the right way. But finding a solution can be difficult. What, after all, is Mary to do in *Dancing a legal dance*? Finding a solution requires creative imagination -- an ability to get outside the box presented by a dilemma, for instance, and see if there is not some way to rework the problem so that the dilemma does not occur.

The latter is what John tried to do regarding *Doing what the judge orders*. He thought he faced the ethical dilemma of choosing between putting his client at risk or breaking the confidence he had, and so he attempted to sidestep the dilemma by convincing the court to order a complete physical for AI. That way John would find out whether AI was

HIV-positive without appearing to break the confidence he had from the mother's social worker. But, as we saw, he failed to sidestep the problem.

What helps our creative imagination are the first two steps in the method. If we concentrate upon what our goal ought to be and understand the case fully from the perspective of those in it, we are as well positioned as we can be to determine how best to achieve the goal given the situation. Having clarity about the goal gives us a target, something we are aiming for when we consider how to get from where we are in a case to where we ought to be. It is laying out as many possible ways as we can of getting from here to there that requires creative imagination, and there is no simple formula for imaginative solutions to problems.

There are some simple guidelines:

- Do not assume that the first possible solution you come up with is the right one.

Often it is. Your intuitive reaction to a case may be more on the mark than the solution you arrive at after getting into the case and then trying to figure out how to get out. The more experience we have in handling such cases, the more likely it is our gut reaction is the correct reaction. But even so, we need to know that it is, and that requires thinking through the case and coming up with as many possibilities as you can.

- Put as much thought into it as you can and do not constrain your thought by any difficulties you may see. Let the criticisms come later.

Talking through a case with colleagues helps. That both increases the brain power brought to bear on a case and helps to ensure that any of one's own biases about how to proceed are brought to light.

But the best advice about how to proceed is to follow the first two steps of the method:

- Get as clear as you can on the case itself because understanding it not only tells you what has been done but suggests what can be done.
- Then make sure you understand what the goals ought to be so you can keep those in mind as you turn the case over and over hunting for ways to get out of the ethical mess you have to the goals you need to achieve.

Unfortunately, the solution you find may not be right. You may have overlooked something important in the case and solved a different problem from the one you fail to realize you have. Not finding a solution to a difficult case may mean that you need to work on it more, in different ways, perhaps, but it also may mean that the case reflects ethical tensions within the profession itself between competing values. In such a situation, no clear solution may exist.

For instance, the two values of obtaining trust in the relationship between a social worker and a client and of ensuring that harm does not befall one's client are both important, and when the two conflict, no easy solution may present itself. This is the standard problem when a social worker discovers that the client may cause harm and has to make a complicated set of judgments. 'Is the client just mouthing off, or is this serious?' 'If it's serious, how serious is it: what's the risk?' 'Can I best work this out by keeping within the relationship and not going to the authorities?' And so on, and so on. No obvious answer about

what to do may emerge from this series, and that may reflect deep tensions within the profession itself about the status of these values and how they are to be ranked one against another.

Once we have identified various courses of action, however -- what we could do to get from where we are to where we ought to be -- we will need to be sure that we lay out all the harms attached to each of the various courses of action:

- To whom would they occur?
- What kinds are they?
- How weighty are they?

Though we have not made the point explicit, we should also mark out what good comes from the various courses of action. Few things come without some silver lining, however small, and a proper assessment of the various courses of action -- a ranking of them in terms of which is ethically preferable -- requires that we take into account what good comes from doing each as well as what harms come.

Consider *Dancing the legal dance* again. Mary has to choose between sticking with the case or dropping it and going on to a new one. When we map out what is likely to happen if she chooses to stick with the case -- if the agency lets her do that -- we will have to take into consideration how that may affect other potential clients whom she will not be able to see. There will be any good she might accomplish sticking with the case, and, as best we can, we will have to weigh those goods against the harms of those not being helped compared to the harms that would occur to those she is currently trying to help were she to drop the case.

To call a harm weighty is to speak metaphorically. Harms are neither heavy nor light, but they can be compared with one another --- the harm of Martha's being deceived compared with the loss of the relationship of trust between Mary and Martha, the harm to Martha of being sexually and physically abused compared with the harm of Martha's running away from home and staying with her friends, and so on. Sometimes we can readily judge which harm is heavier, as it were, and must be avoided: a choice between your money or your life is easy unless you had been planning on committing suicide and want to take advantage of this offer. But sometimes we cannot readily make a judgment. As we said, there is often no easy way to choose between two values when the values are in tension and both of great importance to the profession.

Yet issues that appear so complex that we hardly know what to do can become so clear as we work through the three steps we suggest that we do not self-consciously need to do anything further. But even in these clear cases, we are making a judgment at the end, and that is the fourth step:

- (4) Back off from the case and judge what is best to do: what will minimize harms?

When we try to understand why the participants are doing what they are doing -- why Martha is staying away for days at a time, for instance -- we are putting ourselves in her shoes, but step (4) requires us to step out of the shoes of the participants and, as an observer of the case, but now understanding the point of view of those who are participants, judge what is ethically right and what is not. We must be sure that we judge as observers. This is especially difficult when we are ourselves participants in the case, for we must back off and try to make an unbiased judgment, one that does not unduly reflect our own self-interest and own point of view.

Such judgments often come without any difficulty when we explore a case in detail. An analysis of the various harms and their weights in a case may make it easy to determine what ought to be done. At the least no one ought to cause harm to others for no benefit at all -- as John does to Al. Once we back off from what John is doing, we are able to judge that he is making an ethical mistake, causing harm for no benefit because he apparently has not thought through what his goals are and how best to achieve them.

But suppose a test for HIV would give us useful information. Would it then be appropriate for John to be concerned about Al's giving informed consent for such a test? Ought he act for Al without Al's consent because Al is a minor, or ought he seek Al's consent since Al is 15 years old? What is at issue is the proper weighing of the values of self-determination and harm when the subject is 15 years old, and reasonable people may disagree. Some may argue that those who are 15 years old must be presumed to be reasonable enough to make decisions about their own health unless there is good evidence that they are not. Some may argue that the potential harm to others is so significant that were Al to decide he did not want to be tested, the Court would be justified in ordering a test and so denying his self-determination. If so, the argument continues, why give him a choice to begin with? It is not obvious which view is correct, and so if testing were a real issue in Doing what the judge orders, working through the case would not give us a clear answer. It would only give us a clear problem. But that is a huge gain. We now know what to focus on, and we can begin to work through the reasons for and against obtaining informed consent from a 15-year-old so we will be able to make a judgment.

When we have a clear ethical judgment, and determine exactly what we ought to do, we still have to do it and do it properly. There is thus have a final step in the method of tracking harms:

- (5) Determine how to do what ought to be done in a way that will itself produce more good than harm.

This is not by any means always easy to do. It may seem that deciding what to do is the hard part and that once that is done, it is just a matter of doing it. But we can fail to do something well, causing more harm than good, even when we know what it is we are supposed to do and try to do it. For instance, if Deborah were to decide that the right thing to do was to inform the authorities about Hal and the death of his baby, she may have a difficult time doing this after spending so much time with him and his family as they worried over the baby and then grieved his death. It might be all too easy for her to become angry with Hal, and so make herself feel better about informing on him, even if she were not quite completely sure he was responsible. But informing the authorities while angry at Hal might give just the wrong sort of impression to them regarding her own doubts in the issue. It is, in short, not ethically neutral how we do what we ought to do. A child's yelling, 'Thank you for the stupid gift!' will not do even though thanks is called for.

We are concerned in this book primarily with steps (1) through (4), with determining what it is we ought to do. Step (5), determining how we ought to do what we ought to do, is a topic in itself, and our putting it to one side is not meant to indicate that it is any less important. Indeed, we will address the issues raised by (5) when it is necessary and opportune.

b. Learning a skill

It is not easy being ethical, and even with the best of intentions, we can still do wrong. It is an underlying assumption we make that determining the right thing to do in any ethically difficult case is a matter of skill that needs to be honed by continuous work. We have laid out five steps which, if followed, will help in coming to a proper ethical decision and in doing what is right:

- (1) Try to understand why the participants are doing what they are doing by constructing arguments that would justify their acts or omissions.
- (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.
- (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?
- (4) Back off from the case and judge what is best to do: what will minimize harms?
- (5) Determine how to do what ought to be done in a way that will itself produce more good than harm.

Each step involves learning a skill, with steps (1) through (4) being crucial to determining what we ought to do and step (5) being crucial to doing in the right way what we have decided we ought to do.

Each of these steps can be complicated because of features we bring, and those we are working with bring, to any ethical problem. It will make our problems that much more difficult, for instance, if those we are helping see us as representatives of an oppressive social system or if they have been ill-treated in the past by other social work practitioners or if we do not listen well to others or do not respond with empathy to a client's plight. To the extent we do not come to understand ourselves, or how we may be perceived by those we are trying to help, we will have a harder time understanding how to act so as to help them.

At the same time, certain character traits we should encourage may alert us to ethical problems or to difficulties our clients are having. When we bring empathy and self-understanding to our relations with others, we are far better positioned to understand what their problems are and so far better positioned to help them.

We will also need to understand how working with a client can change our relationships. Deborah may become more empathetic to Hal from being with him for those days he suffered as his son died, and so less likely to think him guilty of his son's death. Working with someone can change how you each see each other, that is, but change as well the moral problems that you face. What might have been a clear decision, when Deborah first saw the harm Hal might have done, becomes harder as she realizes how much he is suffering. Just so, Hal may become more dependent upon Deborah as she helps him through the problems he has and so be the more surprised if she informs the authorities. So understanding our ethical situation is an evolving problem, one that may well change as we come to grips with it and one that requires us constantly to remind ourselves to back off from the problem to try to get a more objective view.

But besides cultivating those character traits of empathy and self-understanding, for example, that will help us understand our clients' problems, and realizing how our work with clients can change our relationships with them, it will also help for us to cultivate the habits

of thought and ways of looking at problems that our method articulates. So we want to develop habits, ways of thinking about ethical problems and responding to them, that may assist us in recognizing the ethical issues involved and resolving them properly. The more habitual our behavior, the less time we have to spend thinking about what we ought to do. We thus need to get into the habit of trying to understand what the various parties to an ethical problem are doing by constructing arguments that would justify their acts, determining what goals ought to be achieved, looking at the various harms that have occurred and may occur from the perspectives of the various participants, and then backing off and asking what we ought to do.

It would be nice if practice made perfect, but even long practice cannot guarantee that mistakes will not be made, either in analyzing a case to determine what ought to be done or in responding in the morally best way after deciding what ought to be done. What practice will do is produce habits of thought that can serve us well when we face problems. Oftentimes we do not have time to work through a problem in any great detail, but must make a quick decision, and if we have had experience in working through difficult cases, we will have learned what to hunt for and how to respond and so can trust our quick judgment. That we have an intuitive response to a moral difficulty does not make our response correct. The only test for its being the right response is that it causes the least harm. But if our intuitive judgment is backed by practice in difficult cases, it is certainly more likely to be right than a guess, and it is better to rely on our experience, when a judgment must be made quickly, than simply to throw up our hands. When we have time, it is helpful to test one's intuitive judgment with one's colleagues when doing so will not risk a client's confidentiality. The more minds that are brought to bear upon a case, the more likely it is that all its problems will be seen. But, again, even agreement by one's colleagues is no guarantee that our response is correct. Again, the only test is that it causes the least harm.

In short, there are no shortcuts in making ethical decisions. We provide a guide -- the method of tracking harms -- but the guide may make things look simpler than they are -- as though we only had to follow it and a decision would emerge. But, as we have seen, matters are not so easy. We shall make use of the guide in what follows just as we have made use of it so far -- not as a recipe to be followed step-by-step for ethical success, but as a reminder of the sorts of considerations we must come to grips with when facing ethical difficulties.

It is worth reminding ourselves that analyzing an ethical problem is a continuing process. We may not realize until we are deep within a case that something we thought irrelevant is really quite relevant. Or we may discover only after analyzing a case that no real ethical problem exists. Once we clarify what we thought was an ethical problem, the disagreement may not turn out to be ethical. So we are not providing a checklist of things to do. We are rather providing factors that are relevant to coming to grips with a case, and these you must keep in mind all the time.

c. A synopsis of the guide to ethical decision-making

It will be helpful to have a guide readily available for the method of tracking harms. This can hardly stand alone without the explanations we have provided in Section 1 of this part, but with that background in mind, a quick summary is useful.

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

- (a) Who are the participants in the case, and who else is affected?
 - (b) What is it the participants have or have not done or are or are not doing?
 - (i) Be objective and distinguish
 - (1) your immediate and perhaps biased response from what is true.
 - (2) what is said from what is known.
 - (3) what is known directly from what is inferred.
 - (ii) Discovering the facts is a continuing process: facts thought to be irrelevant may be seen later to be relevant.
 - (c) Why are they doing what they are doing? What premises, that is, need we attribute to the participants of the case to make their acts (or omissions) reasonable and, if possible, ethical to them?
- (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.
- (a) What are the goals of the person(s) facing the problem(s)?
 - (b) What are their means?
 - (c) What ought to be their goals?
 - (i) Distinguish the short-term goals from the long-term goals.
 - (ii) Assess whether the various goals are compatible with one another.
 - (iii) Determine if achieving these goals will actually help resolve the initial problems.
 - (iv) Determine whether achieving these goals create new problems.
- (b) What is the best way to achieve the goals that ought to be achieved?
- (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?
- (a) A helpful way of entry into a complex ethical problem is to track the harms that have occurred and are likely to occur without intervention. It is useful to ask,
 - (i) Who is affected -- not just who is involved?
 - (ii) What interests, of which people, have been harmed so far -- both short-term and long-term?
 - (b) Not all harms are ethical harms, and so we must ask which harms are ethical. We may proceed by identifying particular important interests people have, including, but not limited to the following:
 - (i) A person has an interest in deciding for himself or herself what to do or omit from doing regarding those matters that affect him or her. Such decisions are (best) made voluntarily when fully informed and competent.
 - (ii) A person has an interest in not being harmed by others.
 - (iii) Each of us has an interest in others helping us, either by mitigating harmful conditions or by providing benefits.

- (iv) Each of us has an interest in being treated in the same way others similarly situated to us are treated and being treated differently from those differently situated.
- (c) The most difficult ethical problems are of the following sorts:
 - (i) It may be an ethical dilemma -- where we have incompatible choices so that no matter what we do, we will cause harm.
 - (ii) It may be factually problematic -- where we are ignorant of certain relevant facts.
 - (iii) It may be conceptually problematic -- where we are unsure what we ought to mean by something -- such as 'acting responsibly.'
- (4) Back off from the case and judge what is best to do: what will minimize harms?
 - (a) Be sure a real ethical problem exists. Disagreements often occur which, for all their emotion, are not really ethical problems because no ethical conflict exists.
 - (b) If the problem is that an ethical harm has been done -- for no good ethical reason (that is, nothing ethical justifies what is causing the problem), no ethical problem exists: causing harm is just wrong.
 - (c) If an ethical dilemma exists or if the case is problematic, much depends upon the details of the case. In any event, we ought to lay out the alternatives by determining as best we can the long-term effects of possible solutions to the problem.
 - (d) In deciding what to do, always act to minimize harm -- for everyone involved.
 - (e) One short way to test a solution is to ask, 'Would I agree to be treated in the way I am treating those involved?' The proper answer presupposes that one is objective and unbiased.
- (5) Determine how to do what you have determined ought to be done and do it in a way that will itself produce more good than harm.