

Chapter 2

Reasons for Acting

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1. Introduction

In the first step of the method of tracking harms, we are 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 seen, this step involves trying both to understand what a participant was thinking that could explain the action or omission and also to see how the participant could think that the action or omission was justified. We can understand why someone does something without thinking the action justified. One child may hit another who took a toy, and we can try to understand why the one child took the toy and why the other child hit the first one. But understanding why they acted as they did does not mean we think either child justified. If we are to determine whether a person is ethically justified in some action or omission, we need to assess the premises we can plausibly attribute to the person to determine if they are good reasons -- if, that is, they are ethically right.

So (1) -- the first step in our method of tracking harms -- requires that we be clear what kinds of reasons can be given for acts and omissions. Among all the possible reasons someone may have for doing or not doing something, we want to focus on the kind of reason that provides good ethical grounds. We shall find that we can have all sorts of good

reasons for acting which are not in themselves ethical, though they may be consistent with what is ethical. As we shall see, it is easy to confuse non-ethical reasons with ethical ones.

It is also easy to think ethical reasons are so distinct from non-ethical ones that one can never have a non-ethical reason for doing something ethical. That would be a mistake. We often have a number of different reasons for doing something. We may eat breakfast because it is good for us, because we like having breakfast, because we can see all the family, and so on. We will then have more than one reason for eating breakfast, and if any one of two or more of these reasons suffices to explain what we are doing, what we are doing is overdetermined. When our doing something is overdetermined, at least two reasons are sufficient to explain our doing it and we would do it even if one of those reasons disappeared. If our eating breakfast is overdetermined, we would still eat breakfast even if everyone else in the family is sleeping late, for example.

Just so, doing what is ethically right may be overdetermined. You may do something ethically right which also serves your self-interest, provides you with pleasure, is prudent, satisfies the Code of Ethics, is standardly what anyone in your situation ought to do, and so on. Though it would be wrong to do what is not ethically right just because you want to, for instance, it is not wrong to do what is ethically right if you do it for the right reason and it also happens to satisfy your self-interest, gives you pleasure, and so on. Indeed, we should all hope for a world in which doing what is right is also prudent, satisfies our self-interest, and gives us pleasure. We do not have such a world, and so, oftentimes, doing what is ethically right conflicts with other interests we have. But when it does not conflict, that does not make it wrong. It makes it overdetermined, reasonable to do, that is, on at least two different grounds.

So when we distinguish between various kinds of reasons for acting and argue that certain kinds of reasons are not ethical reasons for acting, we leave open the possibility that when we act ethically, we may also act for other reasons. It may be thought, for instance, that one must always give up one's self-interest in acting ethically, but that is not true. What is ethical may be just what is in one's self-interest.

The goal of sorting out reasons for acting is to put us in a position to distinguish the sorts of reasons individuals have in particular cases. But applying the distinctions to particular cases is complicated by at least two factors.

First, it is difficult to be sure we know people's reasons for acting. We must make judgments of what they are thinking and believing based on how they act, and these judgments are prone to error. The possibility of an act's being overdetermined means that people may do something ethically right only because it is in their self-interest, for instance. Since a single act may be explained by a variety of different reasons, that is, judging which reason or reasons count for the persons acting is a delicate matter in which it is easy to err.

Second, it is even harder to be sure we have got things right when we are ourselves parties to a case. It might seem easier. 'After all,' we may think, 'who is better positioned to know our own reasons for acting than us?' But what is needed to be sure what we are doing is ethical is objectivity. We need to back off from the case and, as an observer, come to understand the reasons each person involved in the case has for doing what he or she is doing. But if I am involved in a case, that means that I must (a) back off and try to see my behavior as others are seeing it and then (b) try to understand what my reasons are for doing what I am doing. Both of these enterprises is difficult.

(a) Consider, for instance, how difficult it can be to get someone to see that he or she is being abusive or passive-aggressive. Even well-intended men, who say they would not harm anyone for the world, have trouble seeing their anger or sharp words as abusive. And we can all surely think of examples where someone thought we were angry or sad, say,

when we had not realized we were until asked about it. Seeing our behavior as others see it is little easier, if at all, than seeing how we look, front or back or side, to others. When we are a participant in a case, that does not give us a special inside track to understanding the case. It seems as likely to cause us more difficulty in understanding at least our own behavior.

In addition, since we are involved in the case, and so presumably have an interest in the outcome, we may find it difficult as well to be objective about what others are doing. After all, the more disreputable the behavior of others, the better one's own behavior may look, and when the outcome of the case can cause real harm to one's reputation, or when one has not acted well, it seems only human nature to try to put a better face on what one has done. We can do that by downplaying the harm one has done or by magnifying the harm others have caused.

(b) Even if we come to see our behavior as others see it -- and that assumes it unambiguous enough that others see it in a single way -- we have the additional problem of trying to understand our reasons for behaving as we do. Sometimes we do not do well in understanding the reasons for our own behavior. We might think we are acting unselfishly when we are being selfish; we might think we are acting selfishly when we are being unselfish. These are not universal truths, but we find them true often enough in the case of others, at least, that each of us must admit that they may well be true in many cases for us too. The consequence is that we can never be sure we have come to understand correctly the reasons for our actions.

In addition, just as with understanding our behavior and that of others, we may find it difficult to be objective about the reasons others have for their behavior. After all, the more disreputable their reasons seem, the better one's own reasons may look, and when one does not have good reasons or when the case may cause one real harm, it seems again only human nature to try to put a better face on the reasons for one's doing what one has done. There may thus be a natural tendency to see the reasons others have as less than pure as well as a tendency to see one's own reasons in a better light.

But as difficult as it can be in a particular case to sort out our own and others' reasons for acting, we can do no sorting until we have a check list of the kinds of reasons we generally provide for our acts and omissions. We shall thus work our way through some of the kinds of reasons people have for acting, coming, at the end, to ethical theories and the reasons they provide. We are not concerned to provide an exhaustive list of all the kinds of reasons people can have for acting, but the subset of those reasons that we are likely to mistake for ethical reasons or that we will be tempted to use in difficult ethical cases. One aim is to make it clearer what count as ethical reasons and what do not.

a. Self-interest and self-sacrifice

Making an ethical judgment requires being like a judge. In deciding a case, a judge must come to see the situation from the point of view of the plaintiff, to see why the plaintiff has taken the case to court. Then the judge must do the same for the defendant, understanding why anyone should be willing to defend against such a charge. After seeing the case from the points of view of the defendant and the plaintiff, the judge must back off to make an objective judgment, determining not what is in the interests of either the plaintiff or the defendant, but what is right.

When we make an ethical judgment, we must extricate ourselves from the emotions of a particular situation to look at the matter objectively. But when we are involved in a

situation, it is extraordinarily difficult to back off and, just as important, to know that we have backed off and are making objective judgments. It is like trying to be a judge between a defendant and a plaintiff when one is the defendant or the plaintiff. Among other problems, our self-interest can get in the way.

It is particularly likely to get in the way when we are unsure what to do, as we ought to be when facing a hard case. If we are at a loss to know what to do ethically, but know we may cause great harm if we just act, without clarity about our aims, we may think it best to further the interests we know. When we are confused, our immediate self-interest may seem the only clear guide for action.

Some take the opposite view. Confused about what morality requires, and knowing that morality and self-interest are not identical, they adopt the principle that in such a situation we ought to act so as not to further our self-interest. They think we can fish some morality out of the confusion by self-sacrifice.

We may luck into what morality requires when we sacrifice our immediate interests or act on them. Acting out of our immediate self-interest may be just what is required in a particular case to achieve morality, for instance, but this would be luck, and we would do what is ethical for the wrong reason. Doing what is ethical because it is to our immediate self-interest is not to make an ethical decision, but one based on our immediate self-interest.

That is not to deny, as we have seen, that we can do what is ethical while acting in our immediate self-interest. In *Dancing a legal dance*, Mary had to consider that the law requires her to inform if Martha told her of child abuse, that we generally have an obligation to obey the law, and that a failure to inform might thus lead to her having legal problems. So besides having an obligation to obey the law, she had a concern about her own interests that might lead her to inform. She also had reason to believe that less harm would come to Martha if she informed, and appealing to causing less rather than more harm is an ethical reason for acting. So the judgment that she should inform could be backed by an ethical reason and yet also coincide with her self-interest.

Of course, it could also not coincide with her self-interest. Indeed, generally, acting in our immediate self-interest not only may be unethical, it is likely to be unreasonable. At the least we need to distinguish between acting in our immediate versus our long-term self-interest. Being inoculated would harm my immediate self-interest because the needle's going in is painful. Being inoculated may even harm some less immediate interests because sometimes an inoculation produces a painful persistent swelling. But my long-term interests are generally well served by being inoculated. Being inoculated generally means I am protected against having a particular disease and so will not have the pain and suffering and expense it causes. Those gains far outweigh the harms of the inoculation, and it would thus not be reasonable not to have an inoculation just because of the immediate and even less immediate harms it may cause.

b. Acting out of prudence

To be prudent is to act cautiously and in a way that does not harm one's long-term interests. It is imprudent to drink and drive, for instance. In *The death of a baby*, Deborah's not telling the authorities right away what she knew about Hal's suffocating the baby creates a problem for her that she has to consider if she is to act prudently. For her later to tell what she knows is for her to admit that she kept the information to herself, thus misleading the authorities. A concern for her own well-being should not be a decisive factor

in her determining what she ought to do, but the case illustrates how we can complicate our own position, and compromise our own long-term self-interest, by not acting when it may be thought most appropriate to act.

Of course, we may not know what we think we need to know to act in a timely way and may not even know what is in our interests. In Dancing a legal dance, Mary may not know whether it is more prudent to drop the case or not. If she drops it, she may get the reputation of not being able to complete difficult cases and so may not be hired again for such cases. Or she may get the reputation of someone who knows when to cut her losses and move on. The situation is complex enough that she does not know whether going on or staying is in her long-term interests and cannot know how others will see what she does.

She can gain some objectivity about her position by asking what professional interests of hers may be affected. Consider her interests in being Martha's social worker and about whether she ought to tell about the abuse. We tend ultimately to trust those who are honest and open with us. The core of the relationship of being a social worker to someone is trust. The social worker must be trusted by the client, and the client must be trusted to be telling the truth to the worker. Losing that trust damages the relationship. Mary's long-term interests in remaining Martha's worker, and so helping her eventually, argue for her being honest and clear. 'If you tell me about abuse, I will have to report it.' So focussing on her long-term professional interest of maintaining trust so that she can maintain the relationship allows her to back off and ask herself with more objectivity what she ought to do.

To act prudently, we must examine what interests we have in a situation and distinguish carefully between our immediate interests and our long-term interests. To act prudently is to give full weight and value to long-term interests, however powerful and compelling our immediate interests may be. We may be tempted to lie for immediate advantage, but, among other things, our concern about our reputation for honesty ought to weigh heavily against any such temptation.

Acting with prudence has value. For instance, we judge people in part by whether their conduct harms their self-interest. If it does, then, we think, we cannot be sure that they will not harm our interests. If they are not careful about their own interests, why would they be careful about ours? Acting in a prudent way also gives us a broader perspective on what ought to be done. Determining our long-term interests requires us to back off from the immediate situation and so creates some distance for us from the immediate situation. That distance provides some objectivity.

Yet what is prudent is not necessarily ethical, and vice versa. Acting in our long-term self-interest may be ethical, but not because it is in our long-term self-interest. Deciding not to help others because it is in our long-term self-interest is not to make an ethical decision, but a decision based on our self-interest. And acting ethically may harm our own long-term self-interest. There is no guaranteed match between what is ethical and what is prudent.

c. Doing what is legally permitted or required

In Dancing a legal dance, Mary was legally required to report the information about child abuse given her by Martha. So if, to keep Martha's trust, she had kept the information confidential, she would have broken the law. Mary had a conflict between keeping silent and doing what the law requires. Appealing to the law seems to lift the burden of decision-making from a social worker's shoulders and provide a way out of a complex problem.

In Doing what the judge orders, John thinks his interests are doubly protected by his

going through channels. He thinks he is protected because no one can fault him for having made a professionally questionable decision on his own. In addition, the 'right choice' becomes what the law requires, whatever John's self-interest may be and whatever others may think.

Appealing to the law can resolve an ethical problem, but though we may end up doing what is ethically right and protecting the self-interest of those involved, in this case appealing to the law does neither. John's supervisor and the judge knew exactly whom he was talking about, and so, though he never mentioned Jane's name, he identified her as having AIDS. He thus can be faulted for breaching confidentiality. The judge can be faulted for having AI tested without his permission, and John and his supervisor can be faulted both for following the judge's unethical decision and for so manipulating things as to make it appear to observers that the judge is at fault, not they. The case nicely illustrates how appealing to the law can provide a way of resolving our doubts about what to do, but not guarantee an ethical resolution -- even though self-interest, and even prudence, may encourage that resolution.

What is ethical and what is legal may diverge. We may be ethically obligated to do something the law does not require. Someone who owes a debt, is not able to pay it for awhile and also able to convince the person to whom the debt is owed not to sue will not be legally obligated after a certain period of time. The legal obligation will lapse, but the ethical obligation to pay the debt remains. We may also be legally obligated to do something that ethically makes no difference.

But though what is ethical and what is legal may diverge, we are not suggesting that social workers, or any professionals, not do what the law requires. We are suggesting that the law is not the final word on what a social worker ought to do to be ethical. Legislators do not determine what is ethical, and we cannot justify doing what is ethical by saying, 'The law says I have to do that.' We need to add, 'And the law is ethically right in this case.' Some laws may not be ethically right. Martin Luther King certainly thought so when he protested state and federal laws supporting segregation. Thus, though we must take what the law says about a situation into account in deciding what to do, what the laws says is not determinative of what we ought to do.

d. Doing what is standardly done

A person trained as a professional is trained into a set of practices which constitute the standards of the profession and are normative for someone in the profession. A social worker's failure to honor confidentiality, for instance, subjects the social worker, at a minimum, to criticism -- both from the client and from the social worker's colleagues and others.

We get a sense of the normative power of these standard practices by noting what should be a lawyer's first question to a physician accused of malpractice. 'Did you do what any physician would do under the circumstances?' If the answer is affirmative, the lawyer has the first line of defense in hand. 'You are indicting the entire medical profession, not just my client, for any physician would have done what my client did. It's standard medical practice!'

To become a professional we must learn the standard practices, and because standard practices serve as norms for professionals, a professional must follow the standard practices to practice well, it may be thought. They are sanctioned, and so legitimized, by countless professionals having done them. Yet, for all that, they may be mistaken. It may

be standard practice for someone to counsel all the members of a family, as Mary does in *Dancing a legal dance*, but it puts Mary in a position where she is tempted, and even told by a colleague, to encourage the father to confess. Though confession may be good for the soul, it is not obviously her job as social worker to urge a client to confess. Standard practice does not guarantee an ethical practice.

A professional is always faced with a dilemma, obligated to follow standard practice because those are the norms of the profession and yet obligated to question those norms and to act otherwise if they are wrong. It takes courage to step outside the normal practice of the profession to do something contrary to that practice. We open ourselves to the charge that, as an opposing lawyer might put it, 'It is not the profession itself we indict today, but only this person, who, instead of following standard practice for such a case, insisted on following whims, untried and untested by the countless good professionals who would have saved my client harm by doing what the profession requires.'

An appeal to the standard practice of a profession has weight in deciding what we ought to do because that practice supposedly represents accumulated professional wisdom - the way in which many different persons responded to the same sort of problem, presumably with some success. If they all responded in the same way, despite their personal differences and the presumed differences in the situations they faced, that is some guidance to how anyone ought to respond. But appealing to the standard practice of social workers has its problems.

First, the situation we find ourselves in may be so unique that there is no accumulated wisdom and so no standard practice. How many times have social workers found themselves in a situation like that confronting John in *Doing what the judge orders*?

Second, even if there is a standard practice, we may not be able to find out what it is. Social work often takes place in private. The social worker's interactions with a client are generally unobservable by others, taking place in an office or during a home visit. The requirements of confidentiality may mean that cases never get discussed. We may not be able to discover any similar case.

Third, even if we do, we cannot be sure we have discovered the standard practice. Professionals are in a variety of communities. The professional community of a social worker stretches beyond the confines of the agency employing the social worker, the community within which the social worker actually lives, and the local or state professional organizations to which the social worker belongs. We cannot be sure these communities have the same standard practice for particular problems. What is acceptable in one community may be unacceptable in another. So even if we discover what others have done, we may not know whether it represents the standard way of handling such a situation, or whether it is the way those in a particular community handle such problems. Those who acted that way may have been as lost as we may find ourselves.

Fourth, even if there is a standard practice, and we can find out what it is, we may not know what it means in a particular case. The standard practice may be open to a variety of interpretations, or it may be clear, but we may be unclear how it applies in the case in question. In *Doing what the judge orders*, standard practice may require us to tell Al that he is to be tested for HIV, but we may be unclear whether that means we must ask him directly, 'Is it permissible to test you for HIV?', or whether it is acceptable to ask, 'Is it O.K. if we test you for everything you might have?' The standard practice may be consistent with both alternatives, but the latter would deny Al information he would need to give informed consent. In short, the standard practice may be itself conceptually problematic, consistent with different ways of understanding what is required or permitted, with different implications for what a practitioner ought to do.

So it is oftentimes not possible to appeal to a single accepted understanding of what is the standard practice for a particular kind of problem. But even in the best of cases, where there is an accepted understanding, doing what is standardly done is no guarantee we are acting ethically. That a group of practitioners in a profession have come to act in a certain way in certain situations may provide the individuals in the group with legal protection, since they can cite the 'standards of the profession' as a justification for their actions, but it surely does not ensure that their actions are ethical. Otherwise, we should have to admit that because slave owners were a group, what they commonly did regarding their slaves was ethical. Or, more pointedly, even if social work practitioners commonly talked about their cases in public, that would not make it ethical.

This point about common practice not being ethical merely because it is the common practice can be difficult to accept for someone trained into a set of professional standards, particularly when those are embodied in a code of ethics that clearly contains ethical pronouncements. But codes of ethics have histories -- have changed, that is, as professions have changed -- and the changes are evidence that at least some of a code's pronouncements are not the truths of ethics some may imagine. It used to be common practice in medicine, for example, for medical practitioners to talk about their cases in public places. It is still common practice for those at admitting desks in hospitals and doctors' offices to ask, loudly enough for others to hear, whether one has insurance and if so, with what insurer. That such practices were or are common does not make them right, and it is a sign of the ethical maturity of a profession to critique its own code of ethics, as the social work profession has recently done, and make the changes it now sees are needed to ensure that the code better accords with what is ethically right. That a code of ethics is ethically better obviously does not mean that it is ethically the best it can ever be. History teaches us otherwise.

But where a code of ethics does embody the standard practice of a profession, one may think that at least it provides clear guidance as to what the profession thinks we ought to do in particular cases. Unfortunately, although appealing to a code of ethics for a profession provides some guidance about the sorts of ethical considerations we should keep in mind in trying to resolve an ethical problem, it is no better than appealing to the standard practice in guaranteeing true ethical premises and not much help in resolving the difficult ethical cases we are considering.

e. Appealing to the Code of Ethics

In the best of cases, codes of ethics contain the essential values of a profession, making explicit the ethical commitments of those in the profession to those whom the profession is to serve. Those learning about a profession may look to its code to understand the profession's mission and how its practitioners see themselves as working to fulfil it in an ethical way. They will also find prohibitions against certain sorts of behavior (like speaking about cases in a public place) and admonishments to further certain goals (like furthering the self-determination of clients).

But what neither those learning about a profession nor those in the profession will find is much guidance for the sorts of ethical problems we laid out in Chapter 1. These problems arise in specific cases where the details make a difference, and no code of ethics can be expected to guide us in everything we must do. And these are hard cases, about which seasoned professionals may disagree, and the Code recognizes that such cases exist and does not attempt to resolve them by fiat.

Consider what John in *Doing what the judge orders* would find were he to look at the Code of Ethics of the National Association of Social Workers to help him determine what he ought to do when told by another social work practitioner that his client's mother, Jane, has AIDS. In the section of the social work Code concerned with confidentiality and privacy, we find the following rule:

The social worker should protect the confidentiality of all information obtained in the course of professional to pass it on in a professional setting unless she has a compelling professional reason. So the Code is helpful in giving us some guidance about what not to do. It does that in telling us what kind of reason we ought to have to deny someone's confidentiality.

It then provides an explanation of what count as compelling professional reasons when it says that

...the general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person...(1.07(c)).

This is the right sort of reason to justify denying confidentiality. Causing harm to others if we retain confidentiality is arguably unethical if the harm is foreseeable and imminent and of sufficient magnitude.

But requiring that we know that harm will occur sets a high standard to meet, and so the Code will be unhelpful in the most difficult cases -- the ones in which we know of a risk of harm, even a great risk, but do not know for sure that harm will occur. Deborah's problem in *1.1 The death of a baby* is of just that sort.

Second, if John is to act to prevent harm, what ought he to do?

- Tell Al that he may be HIV-positive?
- Tell Al that his mother has AIDS and that he may be HIV-positive?
- Tell Al that he may have something, but they are not sure what?
- Not tell Al anything, but tell others who may act for Al?

These are ethically different ways of responding to the problem. The first two respect Al's self-determination, giving him information he would need to make an informed decision. But they differ in that only the latter explains why John thinks Al may be HIV-positive -- although only by implication, leaving it to Al to figure out that John thinks he and his mother are sexually intimate.

The third provides Al with no information about the source of a possible infection or about what the infection is. So it protects the confidentiality of Al's mother, but leaves Al without the information John has that makes informed consent possible for Al. If I am told I have something, but have no suspicion it will lead to AIDS, I cannot willingly consent to a procedure that will test for my being HIV-positive. So when I make a decision, I will have the illusion of self-determination.

The fourth alternative denies Al even the illusion. It is the one John chose, and it denies his self-determination. Others are deciding for him what ought to be done about him.

These four options differ ethically, and John made an ethical choice when he chose the fourth. Is there anything in the Code that might necessitate or justify that choice? Only one section is relevant:

Social workers may limit clients' right 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 (1.02).

This Code gives John permission to limit Al's self-determination, and for almost, but not quite, the same reasons that must hold for the general expectation of maintaining confidentiality to be lifted.

We are justified ethically in breaching a client's right to confidentiality when there is 'serious, foreseeable, and imminent harm to a client or other identifiable person.' We are justified in denying a client's right to self-determination when there is 'a serious, foreseeable, and imminent risk to themselves or others.' Denying confidentiality requires knowing that harm will occur; denying self-determination requires knowing that a risk of harm will occur.

The Code thus sets different standards for denying self-determination and confidentiality. We are permitted to limit a client's right to self-determination when we believe there is a risk that harm will occur and we are 'generally expected' to deny confidentiality when harm will occur. It is thus easier to deny someone's right to self-determination than it is to breach someone's confidentiality. For the former we need only know that a risk of harm will occur whereas for the latter we must know harm will occur. The Code thus makes breaching confidentiality ethically worse than denying self-determination because we need more to justify breaching confidentiality than we do to deny self-determination. So when John chose to deny Al's self-determination rather than breach the confidence, he was acting consistently with the Code.

But it is not at all obvious that confidentiality ought to have more ethical weight than self-determination. The Code implies that it does, but that does not make it true.

And that is one problem. Even if it were true, its being in the Code would not be sufficient to justify John's behavior. Citing a provision of a code does not give the ethical reasons for doing what it says to do. It is not enough to say, 'The Code told me so.'

Second, John cannot properly cite the Code. The Code tells him to break a confidence only for a compelling professional reason, but he only has a compelling professional reason if harm is to occur. But he cannot know that harm is to occur without knowing the results of Al's test. He thus cannot use the harm's occurring as the reason for having Al tested. Indeed, even if we were to lower the threshold and require only a increased risk of harm, he would not be able to act because he cannot know that Al is putting anyone at risk before Al is tested. So John must find some independent basis, something other than the Code to justify having Al tested.

In general, if a client has an ethical right not to have confidentiality breached except for compelling professional reasons, only an ethical reason can be the right kind of reason. In addition, the reason must be compelling enough, must outweigh -- to use a metaphor -- the ethical heft of a client's right to confidentiality. So we always need to ask the following two questions when we are considering denying a client's ethical right:

- (a) Do we have the right kind of reason for doing that?

Wanting your friends to know how difficult the case is that you are working on is not the

right kind of reason for denying confidentiality, but even if we have an ethical reason, we must ask,

(b) Is the reason compelling enough to deny the right?

We have the same reasons for ensuring that what a client says to a social work practitioner remains confidential as we do for ensuring that a patient's concerns are kept confidential by the physician and other medical practitioners who have access to them. Patients and clients need to be assured that they can speak freely, without having their remarks read or passed on to anyone, so that, among other things, physicians and practitioners can be sure that they have all the information they need to give informed assistance. That others may come to know of something the client finds embarrassing or wants to maintain private is an impediment to the client's engaging in the free and open exchange necessary for informed professional practice.

But besides this practical reason for maintaining confidentiality, clients have an ethical right, independently of the practical consequences, that what they tell to a social work practitioner be kept private. The information they provide is about aspects of their lives that are not, presumably, general knowledge to the world at large, and just as we all have a right that others not disseminate private information about us, clients have a right that those whom they see professionally keep private what was private.

But whatever we do, we must also -- always -- ask a third question:

(c) Is our act or omission firmly enough grounded with ethical reasoning that it can properly serve as a precedent for others?

Every decision -- to act or not to act -- creates a precedent others may appeal to in determining and justifying what they do, and so we need to be careful when we make decisions not to provide a precedent that can readily be misused. Otherwise, we may find our decision being cited as a precedent for someone's denying confidentiality, for example, for reasons we do not think relevant or for relevant reasons we do not think weighty enough. The latter difficulty is common to every distinction in which lines cannot be clearly drawn. If a particular reason is judged weighty enough to justify breaching someone's confidentiality, a similar reason almost as weighty may be thought weighty enough even if a closer call. And so on down the slippery slope.

The problem of our judgments about what we ought to do being precedents is compounded because judgments about what ethical weight various considerations have are subject to no clear calculus. Well-intended, well-informed and bright individuals may disagree. And so others may think your decision an obvious precedent for what they ought to do even if you do not, and what counts is not what you think or would say if asked, but how what you did is understood by others -- even if you understand it differently.

In general, to summarize, codes of ethics fail to provide solutions to hard cases. They fail because of what a code is designed to do and because of the nature of ethical dilemmas and problematic cases. A code of ethics is meant to define a profession. For instance, nurses ought to act for the well-being of their patients. That concern is of such importance that it outweighs the self-interest of a nurse. But those in business would not long survive if they took as a primary obligation caring for their customer's well-being rather than their own. A complete and well-articulated code of ethics for a profession would distinguish one profession from another ethically.

Yet professionals can reach agreement about what defines their profession only if the

provisions are of a high enough generality that their articulation does not cause disagreement. As soon as we begin to specify the reasons why a nurse is obligated to put the well-being of a patient above his or her own, or begin to specify exactly what it is that a nurse ought to do in such a situation, we discover disagreement. Is a nurse to care for a patient if the nurse is likely to get very ill, with AIDS, for instance? Such a question raises disputes about what count as relevant reasons and about how weighty various relevant reasons are. Social workers must encourage as much self-determination as possible and yet intervene to help others, sometimes making decisions for them about what is in their best interest. Determining how much to intervene to encourage self-determination or prevent harm requires giving reasons and assessing them, and no code of ethics can state how we are to resolve this sort of problem in the multitude of cases in which it occurs. We can see how this occurs in each of the three kinds of ethical problems we can face -- ethical dilemmas, factually problematic cases, and conceptually problematic cases.

In The death of a baby, Deborah's problem was that she did not know what happened and yet had to decide how much she should hold Hal responsible. But merely knowing of a possible harm to others is generally not enough to justify denying a right. When a case is factually problematic, its very nature -- the state of our ignorance -- makes appeal to the Code problematic.

The same is true for conceptually problematic cases. If John decided to break confidentiality, he would need to decide whether a 15-year-old is old enough to provide informed consent and then whether this 15-year-old is an exception to whatever generally holds. He did not do either, but, in any event, the Code of Ethics would be no help. What it is to be 'old enough to provide informed consent' is conceptually problematic, people disagreeing whether the concept is applicable even when they agree on the facts. In addition, codes of ethics fail to be specific enough to be helpful, and, obviously, no code could help decide whether AI is an exception to whatever the general rule is.

Codes also fail to be specific enough to help with ethical dilemmas. Dilemmas are especially sensitive to details. If the harm to one side were just a little more, or were this kind of harm rather than that, we might be justified in deciding one way rather than another. We cannot know until we look at the details, but no code of ethics can provide detailed prescriptions for every case that may arise, let alone do that and be general enough to obtain the general assent of a profession.

As we have stated, codes of ethics state, in one readily discoverable place, what a profession has presumably agreed upon as its essential values and norms. So codes can be used, among other things, to socialize members into a profession and to provide a basis for corrective measures and sanctioning members for violations in order to protect both individuals and the social good. And, as we saw regarding the situation where a co-worker tells you in a lunch line about a case, the Code of Ethics provides clear and helpful guidance about what social workers are and are not to do in some kinds of cases and provides a map to guide social workers about what is relevant and what is not in more difficult cases.