

Chapter 3

Clients

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2. Conflicts with self-determination

Self-determination is not an absolute value. We recognize restrictions on someone's right of self-determination for all sorts of ethical reasons. My right to swing my fist stops where your nose begins, and the reason is that each of us has a right not to be harmed which is at least as weighty as the right to self-determination. The right to self-determination is a prima facie right -- a right that ought to be respected and thus can be denied only for ethical reasons more weighty than the reasons supporting the right to be denied. As we have said, 'weighty' is a metaphor and needs filling out in terms of the extent and kinds of harms that would occur were such a right not denied, and as we have seen, determining what reasons are more weighty in a particular case can be difficult.

In Refusing help, the officer needs a good ethical reason to override Wilma's decision not to ride in the ambulance. The threat of harm to her would arguably be weighty enough

only if no other form of intervention were available. In Depressed and ready to die, Dorothy's decision not to have chemotherapy ought to be respected unless very good ethical reasons exist for overriding it.

Wilma and Dorothy were exercising their self-determination in ways that could harm themselves, but self-determination can also conflict with other values in social work practice. Indeed, there are as many possible conflicts with self-determination as there are social work values. Self-determination can harm others, for instance, by causing bodily harm, as when I swing where your nose is, or by denying someone's right to confidentiality, as when a social work practitioner tells someone something given in confidence. We cannot determine ahead-of-time, as the Code emphasizes, 'which values, principles, and standards are most important and ought to outweigh others in instances when they conflict' (Purpose of NASW Code of Ethics).

In *Doing what the judge orders*, John thought Al might be putting others at risk of getting AIDS. But because John received in confidence the information that Al might be HIV-positive, he got his supervisor to go with him to get the judge to order a physical, including a test for AIDS, without telling Al. When we were following through the first step in our method to try to make sense of what John was doing, we attributed to him something like the following reasoning:

1. I ought to minimize the amount of harm that may be caused.
2. Al may cause harm to his foster family and his girl friend.
3. If he is tested for being HIV-positive, we will find out whether he may cause harm to his foster family and girl friend.
4. So he ought to be tested to determine if he is HIV-positive.

In analyzing this case, we decided that the third premise was false. The test may not give us the information we need.

But if we are to understand why John had Al tested without telling him, we also need to attribute to him something like the following:

1. If I tell him he is to be tested, I risk his mother finding out that his mother's social worker has told what was given in confidence.
2. He is 15 years old and so not entitled to much self-determination.
3. The possible harm to others if he is HIV-positive and the loss of confidentiality if he is told are more weighty than whatever right of self-determination he may have as a 15 year old.
4. So I can arrange to have him tested without asking him.

These arguments allow us to see how the values of maintaining confidentiality and not harming others operate for John in *Doing what the judge orders*. John thought the risk to others substantial enough to have Al tested, and he thought the concern not to breach confidentiality weighty enough to deny Al's self-determination.

We might disagree with the ways in which John weighed these values one against another. As the Code makes clear, 'Reasonable differences of opinion can and do exist among social workers with respect to the ways in which values, ethical principles, and ethical standards should be rank ordered when they conflict' (Purpose of the NASW Code of Ethics). But we did not need to get so far as to try to assess the weight of these values in this case. For when we asked what goals John had in mind in testing Al, we realized that whatever he found out, he would have to inform Al, and so we did not need to weigh these

values one against another to determine if John had acted correctly.

Consider another case where the issues of self-determination, confidentiality and harm to others are intertwined for a clinical social worker:

3.4 Lying to save a marriage

'A married woman came to me. She is running around. I am also seeing her husband, and she asks me, "Do you think my husband is running around?" I told her no. And he isn't. He's a good man. I wouldn't tell the husband that the wife is running around if he asks me, but I know damn well she is running around. I have to lie to the husband because if I say, "I don't know" or "I can't tell you," or if I refuse to answer on the ground that I have a professional and confidential relationship with the wife, he will believe his wife is running around.

'Since I am a professional person, I will be believed if I say the wife is not cheating. I am patching up a relationship then. In our culture if you tell a lie with a straight face, it will be believed. Arab culture is a face-saving culture; American culture is a guilt-ridden culture. I will not feel guilt at lying. I would feel shame if someone found out that I was lying, but I will act to protect myself from being found out. I sometimes feel I shouldn't send an Arab client to an American social worker if there is an issue where guilt and shame is involved.'

Mohammed is considering what he would do were the husband to ask about his wife. He is thus beginning the third step of our method:

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

What follows is an object lesson in how to work with (3) of our method. We shall consider only one possible course of action, namely, what Mohammed says he would do, lie. But, to put it briefly, that would not just prevent the husband from being informed about what his wife is doing. It would misinform him. The harms of doing this are many, are of different kinds, and of very different magnitudes.

(a) When we lie to someone, we prevent that person from acting with self-determination to the extent the person acts without the information we fail to provide or on the misinformation we do provide. Suppose I want you to do something for me, but know that, if you knew the truth, you would not do it. So I lie to you, and you, believing me because you think I am your friend, act on that false information.

The harm is not just that I get you to do what you might not otherwise do, but that I get you to do it by treating you as an object -- an intelligent object, with a mind to be manipulated by false information, but an object nonetheless. I deny your capacity for self-determination even more effectively than I would by grabbing your arm and moving it -- since you would then you are being manipulated -- and I deny it in a particularly devious way because I make it seem to you that you are making the decision with full self-determination.

I thus harm you in a special way. As we saw in Chapter 1, I have wronged you, and I wrong you, by denying your self-determination, whatever good may happen to come from what I have done. And I have not just wronged you, I am poisoning our relationship. I am not treating you as a friend if I treat you as an object.

Mohammed says he is giving the husband false information for the good of both the husband and the wife. He says he is 'saving the relationship.' But even if he were saving the

relationship, we should have to weigh his saving it against his wronging the husband by treating him as an object.

(b) If Mohammed thought the husband, if he knew, would choose to save the marriage, he could tell the husband. But Mohammed says he is keeping the information from the husband to save the marriage. So he must be deciding not as the husband would decide, but as he thinks the husband ought to decide. One test we use for making decisions for people who are incompetent is to ask whether, if they were competent, they would choose what we choose for them. If we can answer with good evidence that they would, then we know we have chosen rightly. By this test, Mohammed is harming the husband doubly -- by treating him as though he were incompetent and choosing for him what he might not choose if he were informed.

(c) The wife's self-determination will be harmed. She is now a party to a deceit she must maintain, and so she must be careful not to say or do anything that would reveal what she has told Mohammed. Every time she acts, every time she speaks, she must think about whether what she does or says will reveal the secret she and Mohammed are now a party to. Her self-determination is limited to the extent such hesitation enters into her actions and words.

(d) The marriage will be harmed. On the one hand, the way the wife relates to her husband will be conditioned by the possibility that he will come to know, and that will harm her capacity to be spontaneous, open, and intimate with him. On the other hand, the longer her husband does not know, the more she is in a position of power over him, having deceived him once without any bad consequences, and that will prevent their being in a relationship of mutual trust and respect. Were the relationship to continue, that is, it would be based on a lie, a false understanding. That is harmful in itself, and the falseness may reverberate through the relationship and affect other aspects of it. It is certainly not obviously better that their relationship continue, based on such a lie, than whatever comes about if the husband comes to know.

(e) The relations between Mohammed and the husband and wife will change no matter what happens. If Mohammed tells the husband, he will have broken the confidential relationship that ought to exist between a social worker and a client, for he will have told something the wife told him in confidence. But if he does not tell the husband, he will be a party to the deceit the wife is practicing on the husband. In addition, not telling the husband puts the wife in Mohammed's power. She knows he knows, and he is always in a position to tell.

Much immediate harm thus comes from Mohammed's lying to the husband. Mohammed says he would be believed if he lied because he is a professional and because in his culture lies said with a straight face are believed. But, however that may be, at least one other person knows the wife is fooling around, and so this information may get back to the husband. If it does, he may discover he has been deceived by his social worker as well as his wife. That will change his relationship with the social worker -- as well as, presumably, with his wife.

In short, if we weigh the possible benefit of saving the marriage against the known and likely harms, it is no contest. The supposed benefit is not worth the harms to everyone involved. But the social worker has the information about the wife because he is seeing both professionally. If he were to tell the husband his wife is running around, he would be divulging confidential information. So there is another issue here. Ought he to give the husband such confidential information? How are we to weigh the harms that will come from that against the harms that come from lying to the husband?

Mohammed is not in the best position to make this decision. His telling would harm

his professional relation with the wife, and he would likely be held responsible, justly or not, for any subsequent problems with the marriage. Not telling misleads the husband, but the husband may never come to know that. So the social worker is protecting himself from harm by not divulging the information.

Acting in a way that protects one's self-interest is not wrong if it is the right thing to do, but we have another reason to be concerned about Mohammed's objectivity. He would not be in a position to consider passing on such information if he were not individually counseling both the husband and wife. The difficulty with divulging confidential information would never have arisen, that is, had he followed the practice of never taking on as individual clients people whose interests are so intertwined, like spouses, that knowing about one may cause a change in the relationship with the other.

Mohammed got himself into such a difficult situation because he made a bad decision about whom to take on as clients or because, having made that decision, he failed to follow standard procedure. Before he begins, he should, as the Code puts it,

seek agreement among the parties involved concerning each individual's right to confidentiality and obligation to preserve the confidentiality of information shared by others (1.07(f)).

He should also inform his clients that he 'cannot guarantee that all participants will honor such agreements' (1.07(f)) and that when he does disclose confidential information, he will inform the clients (1.07(g)). Lying to save a marriage is an example of how what seems to be a simple mistake can later produce a difficult ethical problem. But because Mohammed has made the mistake, what ought he do now? What are his options?

It might seem that his only options are to keep the confidence, and so lie to the husband and cause harm to him, the wife, and their relationship, or break the confidence, and so cause other harms. But it helps here to consider the second step in our method and

(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.

Mohammed says his goal for the marriage is to save it, but if he is denying the husband's self-determination by lying to him, it is at the price of both spouses being in a relationship in which they have less than full self-determination. Neither spouse will be able to be fully self-determined. The husband will be acting without full knowledge; the wife will be acting while trying to keep up the deceit. Is saving such a marriage, at such a price, a worthy goal? What is so valuable about a relationship in which the self-determination of both parties is so harmed?

In addition, Mohammed would be in a therapeutic relationship with both the husband and the wife that would be less than fully open -- because deception is necessary to maintain one relation and denial is necessary for the other. Is any potential gain from counselling the husband or the wife worth such costs in such circumstances?

If Mohammed's goal were to encourage self-determination, he would encourage the wife to tell her husband and not lie to him. Instead of taking upon himself the decision whether to break the confidence of the wife or lie to the husband, he could encourage the self-determination of both by encouraging the wife to take responsibility for her actions. It is unclear what the result would be, but Mohammed would at least not be causing harm to produce a harm. He would be encouraging self-determination to encourage relationships in

which self-determination would have a chance to flourish.

Being clear about our goals is thus helpful in determining how to weigh one ethical value against another. Self-determination is not always the most important value, but in this case, when we consider what Mohammed's goals ought to be, encouraging self-determination is the best way of achieving them.

Of course, the wife may refuse to tell her husband, and then Mohammed would have to determine what to do. His options are limited then, and each causes harm. For instance, he could tell the wife that if she does not tell, he will have to tell. But that is a form of coercion and is counter to the trust that ought to exist in a therapeutic relationship and counter to the goal Mohammed ought to have of encouraging self-determination. He could also respond to the husband's question, should he ask, by saying that the information is confidential. Because, he thinks, the husband would then assume his wife was playing around, that answer would presumably encourage the husband to confront the wife. That could have terribly harmful effects -- and certainly should never be taken lightly -- but it also could force the wife to take responsibility for her actions. In short, having agreed to see each person individually, Mohammed has few options and no good ones.

One of Mohammed's arguments in favor of lying to the husband is that, in the culture he and his clients share, he will supposedly be able to succeed in lying. If this is true, the husband will never find out -- from Mohammed at least. But he may find out from some other person, and, in any event, the other harms we have laid out remain.

It is important that social workers have an understanding of different cultural values, and the Code of Ethics speaks to this obligation at 1.05(a) and (b). However, whether Mohammed is right that there is a different cultural norm makes no difference in our understanding of what Mohammed ought to do. Assured success at being deceptive does not justify deceiving.

Of course, that conclusion rests upon some premises about ethical relativism that would need to be defended thoroughly if we were fully to justify it. Briefly, there appear to be three ways of understanding differing judgments about what ought to be done that appear to differ because of the different cultures of those making the judgments:

- Accept that no one in one culture has a right to make an ethical judgment about anyone's acts or omissions in another culture.
- Argue that though those in different cultures appear to make differing judgments about what ought to be done, there are a core set of ethical judgments that are identical. Lying is lying, that is, and is always wrong, but what looks like a lie to someone from another culture may be the truth, appearing to be a lie only because of the different cultures.
- Argue that someone from a different culture has no ethical right within another culture to use the cultural norms of his or her own culture.

Each of these responses to ethical relativism has its problems. The first response, for instance, would seem to imply that if we are not German, we cannot make the ethical judgment that the Nazis were wrong to kill Jews. But we are not going to explore here the various reasons for and against these three kinds of responses. It suffices to note them and to note that the second and third will have the same outcome for at least the core set of ethical beliefs that will generally be at issue in social work practice.