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Comment and Reply

Moral Philosophy Meets Social Work: Commentary on Alan Gewirth's "Confidentiality in Child-Welfare Practice"

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In recent years, social workers have become increasingly aware of ethical dilemmas in practice. Beginning especially in the mid-to-late 1970s, social work's literature has included a steady stream of reflections on difficult moral choices involving conflicts among professional duties and obligations (Loewenberg and Dolgoff 1996; Congress 1998; Reamer 1998, 1999). To what extent do clients have the right to engage in self-harming behavior without interference? How should social workers allocate scarce or limited resources such as emergency services, shelter beds, funds, and even their own time? Is it ethically permissible for social workers to violate laws and regulations they believe to be unjust?

Ethical choices involving confidentiality—in particular, conflicts between clients' *prima facie* right to confidentiality and social workers' duty to protect others, and sometimes clients themselves, from harm—exemplify the hard moral decisions that social workers now recognize as an inevitable component of practice. Social workers in a wide variety of practice settings are all too familiar with these exceedingly challenging judgments (Dickson 1998). Under what circumstances are social workers obligated to override a client's wishes and share confidential information with an individual the client has threatened to harm? How should a social worker respond to a court order to disclose privileged information that the client does not want shared in open court? Does a minor have a right to expect a social worker to withhold

from the child's parents confidential information about the child's high-risk sexual activity or substance abuse?

Alan Gewirth broaches a number of compelling questions about such matters. What is particularly useful about Gewirth's reflections is that they bring the fresh perspective of an outside observer. Gewirth's philosophical "visit" to social work is not unlike Alexis de Tocqueville's invaluable nineteenth-century commentary on democracy in America from a Frenchman's perspective—it can be helpful to know how a thoughtful observer from another culture, using a different worldview, sees and understands our own.

Gewirth's principal agenda is to lay out the unique challenges involving clients' right to confidentiality in child-welfare settings. He explores the nature and purposes of confidentiality, the extent of social workers' duties surrounding client confidentiality, and also whether clients have certain obligations in conjunction with their right to confidentiality.

Much of what Gewirth argues—drawing on moral philosophy's unique conceptual frameworks, theoretical constructs, and language—is remarkably consistent with long-standing social work principles and practice (see Frankena 1973; Hancock 1974; Rachels 1993; Singer 1993). Gewirth recognizes, for instance, that confidentiality is an essential feature of clinical relationships between practitioner and client, that clients' trust and autonomy depend on their willingness to believe that what they share with social workers about the most intimate parts of their lives will not be shared with others without the clients' explicit permission; that is, information that clients share with social workers will remain "under the seal."

Gewirth acknowledges, however, that there are justifiable exceptions to clients' right to confidentiality. Key among them are social workers' duty to disclose confidential information without clients' consent in order to (a) protect third parties from harm (e.g., an unstable client tells his social worker that he plans to murder his estranged partner), (b) protect clients from harming themselves (e.g., a distraught client discloses her plan to end her own life), (c) address issues of abuse and neglect (e.g., a client discloses that he has seriously abused his child or elderly parent), and (d) comply with a court order (e.g., a judge orders a social worker to disclose privileged information about her client during the course of a child custody dispute between the client and her estranged spouse). In fact, such exceptions are now codified in social work. For example, social workers' legal duty to disclose confidential information, if necessary without clients' consent, in order to protect third parties from harm was established in the landmark case of *Tarasoff v. Board of Regents of the University of California* (1973). Social workers' ethical duty to disclose confidential information to protect third parties from harm was established by the ratification of the National Association

of Social Workers, *Code of Ethics* (standard 1.07[c] 1996). Social workers' duty to report confidential information to child-welfare officials when they suspect abuse or neglect was established by the proliferation of mandatory reporting laws during the 1960s and 1970s (Besharov 1985).

Gewirth uses a philosopher's lens and vocabulary to support what social workers have known for a long time: ordinarily, clients have a right to confidentiality, and social workers have a corresponding duty to ensure that this information is not disclosed to others without clients' explicit consent. However, when social workers have evidence that clients pose a serious, foreseeable, and imminent threat to others or themselves, social workers have an affirmative duty to disclose that information (Reamer 1994). Of course, social workers also have an explicit duty to inform clients of the limits of the clients' right to confidentiality and social workers' obligation to disclose information in exceptional circumstances (see National Association of Social Workers, *Code of Ethics* [standard 1.07(e) 1996]). The idea that certain prima facie rights—e.g., clients' right to confidentiality and self-determination—can be trumped by certain other rights is a familiar one in moral philosophy (Ross 1930). John Rawls, for instance, discusses the concept of a “lexical ordering” among moral rights and duties in his classic philosophical work, *A Theory of Justice* (1971), and Gewirth himself highlights the critically important hierarchy among various moral “goods”—and the rights and duties associated with them—in his *Reason and Morality* (1978).

Gewirth makes a compelling point when he asserts that justifiable disclosures of confidential information are not black-and-white events; indeed, disclosures sometimes require distinctions among subtle shades of gray. When disclosure is justifiable, social workers must use considerable discretion about how much confidential information to disclose and to whom. Confidential information should always be held on a short leash. As the NASW *Code of Ethics* states, “in all instances, social workers should disclose the least amount of confidential information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made should be revealed” (National Association of Social Workers, *Code of Ethics* [standard 1.07(c) 1996]).

In these respects, Gewirth's philosophical arguments and social work's perspectives intersect nicely. Beyond this, however, there is some conceptual and ideological friction. One of Gewirth's claims, for example, is that “a more complete understanding of the right to confidentiality requires that the client be helped to be *worthy of confidence*, so that he can participate more actively and intelligently in the working out of the problems that have led to the need for treatment” (emphasis added). It is true, as Gewirth states, that a client should be “helped to exercise her autonomy without the fears or insecurities that violation of confidentiality would engender” (p.491). That is, social workers' maintenance

of client confidentiality can help foster client trust and provide the secure environment clients typically need in order to explore and address the issues in their lives that they find most challenging and debilitating. But the suggestion that clients may not be worthy of, or do not deserve, confidentiality unless they somehow hold up their end of the moral bargain runs contrary to social work's long-standing and deep-seated beliefs about clients' fundamental rights. Moreover, we must also recognize that a nontrivial percentage of social workers' clients are cognitively or psychiatrically disabled, which would severely limit their ability to help a client to, as Gewirth says, "take hold of her own life in a healthy way" (p. 487). Gewirth recognizes this practical constraint in his comment about Immanuel Kant's assertion that "ought" implies "can." Unfortunately, some clients "can't."

In at least one important respect, Gewirth's proposition is reminiscent of a period in social welfare history that modern social workers have always found objectionable: the pre-twentieth-century distinction between the so-called worthy and unworthy poor (Lubove 1965; Trattner 1979; Leiby 1985). Contemporary social workers have generally rejected the notion that clients must measure up morally in order to be worthy of professional services. This is not to suggest that clients should never be held responsible for their behavior and their impact on others. In fact, the National Association of Social Workers' *Code of Ethics* (1996) states that "social workers promote clients' *socially responsible* self-determination" (emphasis added). At the same time, however, during its century-long history, social workers have actively rejected the conceptual distinction between worthy and unworthy clients. While it is reasonable and appropriate for social workers to encourage and at times even require clients to engage in socially responsible behavior, social workers typically do not hold services as ransom, to be delivered only when clients demonstrate their moral worthiness.

Similarly, clients' right to confidentiality should not be contingent on their willingness to live well, however "well" is defined. By all means social workers should encourage virtuous living and help clients address the social and emotional problems that compromise the quality of their lives; however, social workers' commitment to protecting clients' right to confidentiality should not be a function of clients' willingness or ability to live well (i.e., to be worthy). With the exception of the widely accepted and understood limits to clients' privacy, social workers have a fundamental duty to respect clients' right to confidentiality. Social workers may encounter instances when they find clients' behavior distasteful, repugnant, immoral, or abhorrent. However, no degree of discomfort with clients' behavior in itself justifies social workers' deliberate violation of their right to confidentiality. Only instances that meet the standard threshold criteria—compelling and reliable evidence of a serious threat to others or one's self, or a legitimate court order—justify

social workers' disclosure of confidential information without clients' consent. As a moral philosopher, Gewirth understands the risks involved in claiming that clients' right to confidentiality is inviolable—what the philosopher J. J. C. Smart calls naive “rule worship” (Smart and Williams 1973). Indeed, there are legitimate exceptions to this right, but clients' “unworthiness” should not enter into this equation.

Gewirth's arguments also raise complicated issues pertaining to professional paternalism, another key concept in moral philosophy. Paternalism can be defined as interference with a client's right to self-determination for his or her own good (Dworkin 1971; Carter 1977; Reamer 1983). In contrast to interference with a client's right to self-determination in order to protect others—for example, when a social worker, to protect a child from harm, discloses confidential information against a client's wishes—paternalism would entail disclosing confidential information against a client's wishes to protect the client. An example would involve a social worker who informs a client's family, against the client's wishes, that the client has stated her intention to commit suicide. This interference with the client's wishes would be considered an instance of justifiable paternalism because of the compelling need to save the client's life.

Is it reasonable to apply this line of reasoning to child-welfare cases? Can one argue that social workers should violate clients' right to confidentiality, not only to protect children but, paternalistically, to protect parents from themselves (i.e., based on the belief that the disclosure will trigger the delivery of services that the parents so desperately need)? My concern here is that this sort of claim places our collective foot on the proverbial slippery slope. I want vulnerable parents to receive meaningful services as much as anyone. However, I am nervous about arguments that rest on a claim that disclosures of confidential information about a parent are for the parent's own good. I fear that this form of argument may set a precedent that we will regret, that is, using the language of paternalism to interfere with clients' rights. Over time most social workers have come to believe that, generally speaking, competent adult clients have a right to assume risk, and even to fail, so long as they do not pose a serious threat to others.¹ I would feel more comfortable with a position that asserts that instances may arise when parents must receive services because the services are likely to help parents protect their vulnerable children whose right to well-being is paramount.

It is certainly appropriate for social workers to have an opinion about what is in a parent's best interest and to encourage the parent in that direction (along with facilitating appropriate resources). But social workers must be careful not to lean so heavily that they end up pursuing their own agenda rather than the client's. Gewirth seems to recognize this possibility when he says that social workers “should offer considerate,

compassionate guidance as the client struggles with the problems that help to generate the need for confidentiality. This does not involve that the caseworker impose dogmatic control over the client's life, but it does involve that the caseworker be aware that some alternatives are better than others and help the client to come closer to a judicious understanding and acceptance of the former" (p. 492).

Beyond its astute substantive arguments and insights, Gewirth's essay provides the social work profession with a special opportunity to see itself through someone else's lens. Gewirth's thought-provoking and perceptive observations concerning the nature of professional duties and clients' corresponding rights dovetail with social work's long-standing commitment to client confidentiality and acknowledgment that confidentiality has its limits in certain extraordinary circumstances.

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Note

1. Self-harming behavior involving suicide threats may be an exception. For a general discussion of clients' right to assume risk, see Soyer (1963).