

THE ETHICS OF CIRCUMVENTING THE WAITING LIST

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By describing an ethical dilemma that is encountered frequently by federation professionals—requests by an influential lay leader to circumvent the waiting list for a federation facility—this article demonstrates different ways of thinking about ethics, thereby providing professionals with conceptual tools for analysis. This case illustration serves as a model for the resolution of ethical dilemmas faced by professionals working in any Jewish communal agency; that resolution requires deliberation, a willingness to weigh the many variables and values in conflict, and a tolerance for ambiguity.

In reviewing the literature on federations published in this journal, it has become apparent that no article has been devoted in its entirety to a discussion of ethical issues. Most of the literature deals with the purpose and mission of federations, their relationships to agencies and synagogues, and their responsibilities in fund raising, lay leadership, budgeting and social planning, and allocation of resources. The pages of this journal have been used appropriately as a forum for discussing the purpose, functions, structure, and role of federations in the North American Jewish community. Yet, no one has undertaken the task of examining the many ethical issues that arise in the federation administrative apparatus, its relationship to lay leaders and constituent agencies, and social planning and services.

In a previous article (Linzer, 1986), I analyzed ethical dilemmas in a federation and in different agencies. Here the focus is on the federation itself. This article examines a particular ethical dilemma that arises in federation work. Its purpose is to demonstrate different ways of thinking about ethics in order to provide professionals with some conceptual tools for analyzing ethical dilemmas.

ETHICAL DILEMMA

Two federation professionals describe their responses to an ethical dilemma that they encounter frequently:

One of the most serious dilemmas that I confront practically every other day arises when I get a call from an important rabbi who tells me that A. has applied to the Home for the Aged and there is a waiting list. The person is very sick, lonely, perhaps doesn't have long to live, and I have to get her into the home which may have a waiting list of 200 people.

The ethical dilemma is, what do you do? Those on the waiting list are also needy. I have never been able to resolve this dilemma once and for all. Even though I feel very uncomfortable, there are times when I just try to push for this particular person.

Q: Does it depend on who the caller is?

A: Sometimes yes and sometimes no.

Q: Would you say that it is a function of wealth, prestige, and power?

A: I'm afraid it is. I am not proud of it but we have to live in the real world and not in a theoretical world.

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An area involving lay people, and this is a very "naughty issue," is when they pres-

sure you to get their relatives into a federation facility, such as a hospital or a home for the aged. My mother-in-law had applied for senior housing in the community in which we lived. There was a waiting list, and she waited 3 years before she got an apartment because I did not want to be seen as playing favorites.

Once I was pressured by a president of one of our agencies to get his brother into one of our homes for the aged. After doing some research, I discovered that his brother was not eligible for admission into that facility. I told the gentleman that his brother was not eligible. He cut his gift in half and bought him a place in a private nursing home. I try to act fairly and consistently in these kinds of matters by pointing out that, when there are waiting lists, we try to abide by them.

The question may be asked whether this principle is absolute or if I sometimes use discretion. Do I sometimes lean on people in order to influence them to help somebody else? My answer is that sometimes I do. A colleague recently needed open-heart surgery. He wanted a private room in one of the federation hospitals. When I went to visit him, I saw that it was a very messy situation. I used my influence to get him the proper medical care and the admission to a private room.

Q: It seems that you attempt to use your influence when you are not excluding someone else, such as the hospital and the private room.

A: I am not sure; I may have been excluding someone else. But sometimes I do use influence to lean on people.

DISCUSSION

Although this dilemma may seem trivial compared to the massive issues confronting federations today, such as the resettlement of Soviet Jews, the relationship with Israel, the shrinking government dollar, and increasing domestic needs, it provides an opportunity to conceptualize an ethical dilemma so that the analytic process can be applied to other dilemmas. Analysis

proceeds along two dimensions: value conflict and ethical theory.

Value Conflict

Since ethics is based on values, an ethical dilemma is defined as a choice between two actions that are based on conflicting values. One approach to the analysis of this ethical dilemma is to study the values underlying each action. These values can be categorized into two groups: justice versus fiscal adequacy, and preferred conceptions of clients as strangers versus clients as intimates.

Justice versus Fiscal Adequacy

Refusal of the caller's request can be justified by upholding the value of justice. Acquiescence to it can be justified by commitment to the value of fiscal adequacy—the assurance of fiscal resources ample enough to meet community needs.

The federation operates on the value of justice, which includes such notions as fairness and fidelity, mutual respect, and beneficence. According to Rawls (1981, p. 112):

The main idea is that when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefitted from their submission. We are not to gain from the cooperative labor of others without doing our fair share.

The waiting list can be understood in terms of the principle of fairness, i.e., first come, first served. By agreeing to be placed on a waiting list, applicants restrict their freedom—they must wait their turn for openings. They have a right to a similar acquiescence on the part of the agency that has benefitted from their submission.

The benefit of a waiting list is that it provides a steady stream of clients available to fill beds. The agency's acquiescence is expressed in its agreement to restrict intake to the waiting list as openings occur. Outsiders who want to circumvent the waiting list are not to gain from the "cooperative labor of others" without doing their fair share: they must wait their turn. Thus, the principle of fairness would characterize political, social, and economic pressure as unethical because it violates justice, which is a fundamental value in society.

A contrary value of considerable weight is the fiscal viability of the federation. The donor with financial clout and leadership acumen contributes to the ongoing vitality of the federation. Such a person should not be alienated, lest he or she withdraw needed resources. The positive effect of coddling influential donors is maintaining their continued financial support. The negative effects are the need to yield to their power and influence and a hesitancy to criticize their actions. Whether support for the lay person's actions is due to positive or negative factors, such support reflects the professional's preference for the value of fiscal viability over justice and fairness for clients. Both values can also be seen as coinciding. Having the resources available allows the system to function so that the fairness approach can work.

The value of fiscal adequacy is sometimes related to the reality of political pressure. Fiscal pressure—the threat to withhold contributions—is not always at issue, but rather there is a need to satisfy those lay leaders who possess political clout in the community.

Clients as Strangers or Intimates

In his analysis of the value base of social work, Charles Levy (1973) places values into three categories: values as preferred conceptions of people, values as preferred outcomes for people, and values as preferred instrumentalities for working with people. All of us have preferences in the way we

view people, in the goals we want them to achieve, and in how we work with them. Our preferred conceptions influence the preferred goals and the preferred instrumentalities we use in achieving the goals. The process begins with preferred conceptions of people. How we view the people on the waiting list and the potential client trying to circumvent the list will influence the ethical action we take.

Stephen Toulmin (1981) has decried the tendency to take absolute stances in ethical positions in complex situations. When opponents in an ethical debate, such as abortion, resort to absolute values—pro-choice versus pro-life—the dilemma is unresolvable because both positions are absolute and unyielding. It is only when the details are examined, the variables are noted, and discretion is used that the extreme positions can be tempered and then moves toward compromise can be made. Toulmin then proceeds to distinguish between ethics toward family members and ethics toward strangers. We relate differently toward families, intimates, and neighbors than we do toward complete strangers. In transient encounters our moral obligations are limited to the avoidance of acting in an offensive manner. "So, in the ethics of strangers, respect for rules is all, and the opportunities for discretion are few. In the ethics of intimacy, discretion is all, and the relevance of strict rules is minimal" (Toulmin, 1983, p. 34).

It is necessary to classify the intimates and the strangers in the two scenarios presented above. An influential person has called the federation professional about a certain individual in order to circumvent the waiting list. The potential client is an intimate to the caller, but a stranger to the professional, as are all the people on the waiting list. The caller, as a colleague or friend, may be an intimate of the professional.

For the professional, the question is who is the client. Is the client the caller or the person who wants to be admitted to the nursing home? To the professional, the latter is a stranger, the former an in-

Table 1
APPLICATION OF ETHICAL THEORY

Ethical Theory	Circumvent	Do not Circumvent
Deontological	Duty of non-maleficence Duty of gratitude to donors	Duty of fidelity to people on waiting list Principle of "first come, first served"
Utilitarian	Retain lay leader's involvement in agency Preserve agency's financial viability Prevent loss of job for professional	Person waiting may die—greater harm principle Public protest

intimate. Toward strangers, "respect for rules is all," and the rule is to abide by the waiting list. Toward intimates, "discretion is all," and the rules may be bent.

Were we to agree that the professional's client is the caller, apply the ethics of intimacy, and thereby legitimate the circumvention, a counterargument could be advanced that the client is the group seeking entry to the nursing home and only the home has the jurisdiction over its admissions policy. At this point in time, the home is filled to capacity, and there is a waiting list. As clients-to-be, all the people on the waiting list may be categorized as strangers who will have to abide by the institution's rules and policies. Hence, the caller and the professional are distant players on this scene who may not ethically influence admission decisions. Since there is a waiting list of "strangers," respect for rules is paramount.

Ethical Theory

With the values of justice and preferred conceptions of the client serving as one conceptual framework, ethical theory can serve as another conceptual framework with which to understand this ethical dilemma better. Since an ethical dilemma is based on conflicting values, the professional inevitably experiences ambivalence about the proper action in the situation. In the course of deliberating, the professional may want to consider several important variables: the security of the professional's position in the agency, the strength of the power being

exerted and the consequences of failure to acquiesce, and the depth of the professional's relationship with the caller. These variables are based on different assumptions.

A professional who feels insecure in the job is more likely to succumb to the pressure of circumventing the waiting list than one who feels secure in the job. Yet, even the professional with longevity and a sense of security may not be able to resist the repeated demands of a powerful lay person. The consequences of refusal may be the loss of one's job, reduction or withdrawal of the lay person's gift to the campaign, and his or her leaving the agency's board entirely. The strength of the lay person's power is a function of his or her status in the community: the higher the status, the greater the power, and the more difficult the refusal. The degree of ease of refusal is also a function of the relationship between the lay person and the professional: the deeper the relationship, the greater the sense of obligation to acquiesce. Ultimately, the central questions are these: What is the right conduct, what is the good thing to do?

A grasp of these variables is essential in order to apply ethical theory to this dilemma. The conflict between the right and the good can be located in the conflict between the deontological and utilitarian approaches to ethics. Table 1 illustrates the application of these ethical theories to the case illustration.

Deontological theory posits the inherent rightness of an action for reasons other than their consequences. Some philosophers,

such as W.D. Ross, find intuition and common sense sufficient in determining the rightness of an action. Ross contends that there are several basic moral principles or *prima facie* duties, such as fidelity, non-maleficence (preventing harm), beneficence, and justice, which justify moral action. As an example, we must keep a promise simply because we made it to another person (Beauchamp & Childress, 1989). Thus, it would appear that circumventing the waiting list is simply wrong because the others were there first and there is a duty of fidelity to them. Yet, the principle of "first come, first served" may not be the only one applicable to this situation. The degree of need, especially when there is a threat to life, may supersede that principle. It is conceivable that the person being pushed to the front of the waiting list is more needy than the others. If so, the deontologists might incline in that direction due to the *prima facie* duty of non-maleficence, which, to Ross, supersedes the duty of fidelity. Although one's intuition might incline the right conduct to be in one direction, additional information might incline the intuition toward the opposite conclusion.

Utilitarians maintain that the moral rightness of an action is determined by its consequences. An action is justified if it produces more good than any alternative action. The greatest good for the greatest number is a utilitarian concept. For example, we must keep a promise in order to promote mutual trust in the community (Beauchamp & Childress, 1989).

The consequences of an act, however, are unpredictable and subject to disagreement. At issue in these cases are the possible consequences of refusal. The professional may lose his or her job. The caller may reduce or eliminate the gift, may sever the friendship, or may quit the federation. If the caller is a major donor, the loss may be felt keenly. From one point of view these consequences may be construed as harmful. Therefore, it is better to acquiesce in order to reduce negative consequences.

The act of giving in can thereby be viewed as ethical.

Yet, consideration needs to be given to the possible negative effects of acquiescence. It is conceivable that the person superseded on the waiting list is in more dire need than the donor's relative, and the delay in institutionalization may hasten death. Moreover, though such decisions are usually made with discretion and public access to them is limited severely, the action may become known, which could generate public protest. Thus, to avoid these negative consequences, it is necessary to resist the pressure. By insisting on an ethical standard of fairness, the professional adds to the credibility and authenticity of the agency and the profession.

The deontological-utilitarian framework may also be applied to the value conflict of justice versus fiscal adequacy described earlier. Deontologists could maintain that the waiting list should be inviolate because the agency had established a relationship of trust with the people awaiting entry. The *prima facie* duty of fidelity carries considerable weight against the intrusion of a new person with whom there is no prior relationship (Pritchard, 1912). The *prima facie* duty of gratitude could also be operating here. Federation executives often convey to potential sizeable contributors that some day they may need the services of the agencies for themselves or for a member of their family. There is an implicit promise that they could be served immediately, ahead of the others. Thus, the professional would feel a sense of duty to fulfill the promise.

Utilitarians could maintain that the financial viability of the federation supports the duty of gratitude and supersedes the duty of fidelity. If the consequence of refusal is the withdrawal of financial support and a possible threat to fiscal solvency, then refusal is unethical as it may cause greater harm.

The ambivalence of the professionals in this ethical dilemma may be attributed to different philosophical approaches to ethi-

cal decision making. These theories do not lead to a particular decision. The deontological and utilitarian approaches can be used to support the pros and cons of each side. Yet, they facilitate the exploration of options and locating them in a theoretical base. Since there is invariably more than one option in ethically ambiguous situations, it is difficult to maintain a consistent stance in all instances. Professionals' ethical instinct should deem the waiting list to be inviolate, but they may find it difficult to withstand the pressure of influential lay people.

CONCLUSION

The ethical dilemma selected for study among the many encountered in the course of federation work was designed to serve as a model for analyzing its underlying conflicting values and ethical theories. The hallmark of a professional is reflected in action that stems not from instinct but from a rational process of deliberation. To analyze and resolve ethical dilemmas re-

quires concerted thinking, a readiness to weigh the many variables and values in the conflict, and a tolerance for ambiguity.

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