A FRAMEWORK FOR ANALYZING ETHICS CASES[*]

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Professional ethics is an applied field. It is not primarily about theory and rote knowledge, but about shaping our character and fostering good ethical decisions. In what follows, we will examine how people can go about making good ethical decisions when faced with difficult choices.

WHAT IS AN ETHICAL DECISION?

When does a decision become an ethical decision, as opposed to a purely technical decision (e.g., what statistic to use) or an exercise of personal preference (e.g., what clothing to wear when conducting research)? Decisions are ethical when they: (a) pertain to things within our control that (b) will either show respect or fail to show respect to human beings.

Clearly, many things in life harm human beings (like natural disasters) or treat them unequally (like the natural lottery of genetics) but we are only held ethically responsible – praiseworthy or blameworthy – for things within our control. Using the term "decision" suggests that something is within our control, as opposed, say, to sneezing, which happens automatically. That being said, volitional actions that are performed out of habit or unthinkingly may still be viewed as ethical insofar they emanate either from tacit decisions or from habitual responses that developed based on prior decisions. For example, the researcher who has obtained informed consent over one thousand times is as morally accountable for the quality of the consent process as is a new researcher, who may be far more engaged in self-reflection and deliberation throughout the process.

The term "respect" is used in our definition to mean *showing proper regard for key aspects of human beings*: (a) their rationality and self-determination, (b) their need for basic goods, (c) their vulnerability to harms, (d) their equal worth, and (e) their relationality or interconnectedness with other human beings.[i]

Understood in this manner, ethical decisions and actions are performed constantly. When we do the right thing without a second thought we are no less in the domain of ethics than when we are unsure what is the right thing to do or unsure whether we'll do it. Moreover, ethics is not neatly separated from the spheres of technical decisions or exercises of personal preferences. For example, if using the wrong statistical method could reveal the identity of some participants or could lead to the publication of misleading clinical data, then the choice of a statistical method is both a technical and an ethical decision. Similarly, if a researcher's decision to wear a suit and tie while surveying intravenous drug users who are living on the streets will instill in them as sense of mistrust or discomfort, then it could be viewed as both an expression of personal preference and an ethical decision. In both cases, we see that proper regard for key aspects of human beings requires that a reasonable decision be made.

The ethical character of decisions and actions is sometimes lost on us because we often do the right thing – or at least an ethically acceptable thing – without problems, and we tend to equate ethical decisions with the resolution of ethical problems. While the sphere of ethics is in fact much broader, ethical problems are rightly seen as invitations to further reflection.

THREE KINDS OF ETHICAL PROBLEMS

Ethical problems come in at least three flavors: volitional, cognitive, and social. As noted already, we often know the right thing to do. The only dilemma that then exists is *volitional*: Will I actually *do*

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[*] This article is based on Chapter 4 of DuBois (forthcoming).

what is right? Such dilemmas can be tough when individuals have competing interests or powerful motives for doing other than what is right. This is why the matter of conflicts of interest has attracted so much attention in recent years (B. A. Brody et al., 2003).

When is an ethical decision *cognitively* problematic? It is problematic when we experience *uncertainty* about what is the right thing to do. We might find ourselves in a situation where no matter what we do someone will be harmed, or we might recognize that we cannot help an individual while respecting that individual's free choice.

Finally, there are times when we feel certain what the right thing to do is (considered in itself), and we are willing to do it, but the decision is *socially* problematic because there is *disagreement* among stakeholders (that is, among people who have something at stake in the decision).

In this article, we will examine various sources of cognitive uncertainty and social disagreement. We will treat of cognitive and social problems side-by-side because in the field of research ethics decisions typically have both cognitive and social components and the same factors often contribute to both sources of decision-making difficulty.

THE "SO FAR NO OBJECTIONS" (SFNO) APPROACH TO CASE ANALYSIS

Any analytic framework is a conceptual construct, one possible way of comprehending a complex yet unified reality. Thus, many frameworks will be possible, and any framework should be judged in terms of its usefulness in addressing a complex reality. Some frameworks are specific to a profession and the population its serves (Jonsen, Siegler, & Winslade, 2002; Perlin, 1992; Ross, 1986); others are more generic (Jennings, Kahn, Mastroianni, & Parker, 2003; Thomasma, Marshall, & Kondratowicz, 1995). Some of these frameworks are very simple; others are very complex. Simple frameworks may be easy to use but less helpful than highly detailed frameworks; highly detailed frameworks may be cumbersome, overly pedantic, and force one to waste time addressing issues that are of peripheral importance.

The SFNO approach presented here is a simple *common denominator* approach: it identifies four components that all cases share.[ii] While other case analysis frameworks often contain more elements, typically these extra elements: (a) fall within one of the four components (e.g., Jonsen, Siegler and Winslade's (2002) popular medical-ethical framework inquires into specific facts like the patients quality of life or medical indications); (b) constitute tips on addressing one of the four elements (e.g., Haddad and Kapp (1991) recommend speaking with others including your supervisor); or they venture into criteria for justifying a decision (e.g., H. Brody's (1981) framework moves from analysis to application of the golden rule as options are weighed).

The SFNO approach involves a *root cause analysis* insofar as it examines the three major sources of uncertainty or disagreements regarding decisions:

1. Different people are involved who have competing interests (e.g., a participant may seek therapeutic benefits in research, whereas a researcher may seek new knowledge)
2. Uncertainty or disagreement exists about relevant facts (e.g., about the probabilities and magnitude of harms resulting from an intervention)
3. Uncertainty, conflict, or disagreement exists regarding ethical norms (e.g., a beneficial action will violate the principle of autonomy)[iii]

Using the first letter of each element, the following framework can be remembered as the "<u>S</u>o <u>Fa</u>r <u>N</u>o <u>O</u>bjections" framework – an apt name given that it merely lays out elements of an ethical situation but does not yet venture a solution. The framework will be illustrated using the <u>Hepatitis Studies at the Willowbrook State School for Mentally Retarded Children</u>. It simply involves enumerating the following four items:

1. <u>Stakeholders</u>: *Who has a stake in the decision being made, i.e., who will be significantly affected by the decision made?* In the Willowbrook studies stakeholders included the children who were subjects (their health was at stake), their families (because they were interested in the well-being of the children and maintaining their placement in the school), the researchers (they were

interested in new knowledge and curing hepatitis), the institution (they bore some level of liability and had a duty to foster the well-being of the children), and society (public health could be protected through the development of a vaccine for hepatitis).

     Tip: As illustrated here, in the process of identifying stakeholders it is always good to state briefly why people are stakeholders or how they are affected.

2. Facts: *What factual issues might generate disagreement? What facts are relevant to a solution?* In the case of the Willowbrook studies, factual disagreements surrounded the likelihood that the research would result in a new vaccine, the magnitude of harms the children would experience, and the quality of parental permission. Facts relevant to solving the case include that the children were vulnerable – unable to give consent or understand the risks involved; that efforts were made to minimize possible harms to participants through monitoring and sanitary conditions; that hepatitis was widespread within the school and under current conditions most children were likely to become infected; that most cases of infection resulted in no or only mild symptoms.

     Tip: In examining facts it can be helpful to consult experts and scientific literature. The EMHR.net website contains bibliographies for each of the major areas of mental health research ethics and links to guidance documents that often include facts relevant to decision-making.

3. Norms: *What ethical principals, norms, or values are at stake? Which do you think are relevant, and which might appear to conflict or generate disagreement?* In the Willowbrook studies most intermediate ethical principles are relevant: beneficence insofar as the ultimate aim of the study was to enhance public health through vaccine development; nonmaleficence because the study involved infecting children with the hepatitis virus; justice because institutionalized and vulnerable populations often bore the burdens of research without enjoying the benefits; and autonomy because the children could not give consent and their parents' permission may have been unduly influenced. Clearly, some of these principles – beneficence and nonmaleficence – are in conflict. Moreover, the interpretation of what these principles imply was controversial; does nonmaleficence prohibit intentionally infecting someone or merely require extraordinarily good reasons for doing so and a minimization of harms?

     Tip: EMHR.net provides online access to research ethics codes (like the Belmont Report), specific professional ethics codes, and regulations.[iv] It also contains bibliographies with references to ethics articles, textbooks, and other materials.

4. Options: *What actions or policies deserve serious consideration? If the ethical ideal is not possible, what compromise solutions are most attractive?* Options in the Willowbrook study included conducting it as implemented; seeking alternative populations; changing the parental permission procedures; using smaller experimental populations; and improving sanitation for all children prior to recruitment.

     Tip: Options frequently emerge through brainstorming activities with others. Consulting with IRB members, funding agencies, participant communities, and other researchers can be invaluable. The best solutions to ethical problems come from finding alternatives that enable worthy goals to be achieved without sacrificing other values. Searching the literature for similar projects is often a good starting point in this creative process.

By analyzing the Willowbrook study we see that ethical decisions can be very complex. While some ethical problems hinge on just one element (say a factual disagreement), others involve disagreements about stakeholders, facts, norms and a perceived lack of ethically attractive alternatives.

     The focus of this article was on analyzing an ethical problem into basic components in order to ensure that no key aspects are ignored. This "analytic" task is analogous to laying out all of the pieces of a puzzle, right side up, with the 4 corner pieces in place, before trying to solve it. In the next essay, "Justifying Ethical Decisions When Values Clash," a framework is presented for justifying decisions when uncertainty or disagreements exist.

REFERENCES

Brody, B. A., Anderson, C., McCrary, S. V., McCullough, L., Morgan, R., & Wray, N. (2003). Expanding Disclosure of Conflicts of Interest: The Views of Stakeholders. *IRB: Ethics & Human Research, 25*(1), 1-8.

Brody, H. (1981). *Ethical decisions in medicine* (2nd ed.). Boston: Little, Brown.

DuBois, J. M. (forthcoming). *Ethics in mental health research*. New York, NY: Oxford University Press.

Haddad, A. M., & Kapp, M. B. (1991). *Ethical and legal issues in home health care: Case studies and analyses*. Norwark, CT: Appleton & Lange.

Jennings, B., Kahn, J., Mastroianni, A., & Parker, L. S. (2003). *Ethics and the Public Health: Model Curriculum*. Retrieved July 10, 2004, from http://www.asph.org/document.cfm?page=723

Jonsen, A. R., Siegler, M., & Winslade, W. J. (2002). *Clinical ethics : a practical approach to ethical decisions in clinical medicine* (5th ed.). New York: McGraw Hill.

Perlin, T. M. (1992). *Clinical medical ethics : cases in practice* (1st ed.). Boston: Little, Brown.

Ross, J. W. (1986). A process for resolving bioethical dilemmas. In J. W. Ross (Ed.), *Handbook for hospital ethics committees* (pp. 25-27). Chicago, IL: American Hospital Association.

Thomasma, D. C., Marshall, P. A., & Kondratowicz, D. (1995). *Clinical medical ethics : cases and readings : Loyola University of Chicago, Stritch School of Medicine, Medical Humanities Program*. Lanham, MD: University Press of America.

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[i] Chapter 2 of *Ethics in Mental Health Research* develops a framework of ethics that translates all general ethical principles – e.g., autonomy, beneficence and justice – into the language of respect for different dimensions of human persons (DuBois, forthcoming).

[ii] While the SFNO framework was developed independently, it resembles other frameworks that take a common denominator approach, such as Thomasma et al (1995), and Jennings et al (2003).

[iii] As noted above, capturing the complex reality of a moral situation in a framework is always somewhat artificial. The distinction between these three sources of uncertainty is often gray; and interrelationships between them are important to notice. Identifying stakeholders inevitably means identifying those who will be affected by the action in a variety of ways, and thus identifying competing interest and values. Likewise, *morally relevant* facts are seen as value-laden or related to the respect we accord to persons, e.g., the fact that a law exists requiring informed consent, the fact that a population has been exploited in the past, or the fact that a group of potential participants cannot grant consent.

[iv] Should regulations and other laws be treated as norms or facts? I typically treat the fact that a law exists and its specific content and penalties as facts. However, I list a prima facie ethical duty "to obey the law" as a norm.