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# Patients, Clients, and Workers: The Right to Decide

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- A patient undergoing a breast biopsy refuses to sign a consent form authorizing her doctor to perform whatever procedure he judges to be in her best interest. Aware of the medical controversy surrounding different ways of treating malignancy, she has resolved to look carefully into her available options and to come to her own decision.
- A lawyer tries strongly to dissuade her client from pleading guilty to the greater of two charges after he is arrested for a drunken driving fatality. But the client holds fast to his decision to confess his crime publicly and expiate his guilt in prison.
- When a chemical company geneticist uncovers evidence of undue chromosome breakage among workers (a possible precursor of cancer), the company refuses to inform anyone, claiming that it would be irresponsible to create premature alarm. But disclosure would permit workers to make better informed decisions about the levels of risk they are willing to bear.

Patients, clients, and workers are frequently faced with decisions that importantly affect the rest of their lives. In the three cases above, the patient must choose between disfiguring surgery or possible death from cancer; the client must choose between severe loss of liberty and a tortured conscience; the workers must choose between unemployment and risk of cancer. Doctors, lawyers, and employers frequently exercise their authority and expertise to relieve or deprive other individuals of their decision-making responsibility. In our three cases, some professional authority seeks to intervene in the choice to be made: the lawyer tries to pressure the client to make a certain decision; the employer withholds information necessary for a knowledgeable decision; the doctor tries to take the entire burden of the patient's decision on himself.

At issue in these cases is a conflict between the autonomy of patients, clients, and workers and the authority of those who at least purport to be acting on their behalf. The doctor claims to know better what medical procedures will maximize his patient's chances of full recovery; the lawyer claims to know better what course of action is in her client's long-term interests, dispassionately assessed; the employer claims to have a clearer and calmer understanding of workplace risks. But patients, clients, and workers may reject the intervention of even the best-informed and best-intentioned experts as unjustified paternalism. They may refuse to allow decisions to be made on their

behalf unless they have first freely given their fully informed consent. Decisions that affect the whole course of their futures, they claim, are theirs and theirs alone.

The conflict between personal autonomy and professional authority can arise at two different points in the decision-making process. When both parties share the same goal (curing the patient's illness, winning the client's case, protecting workplace health and safety), they may differ on the best means of achieving that goal. Patients, clients, and workers may disagree with doctors, lawyers, and employers about how to bring about an outcome jointly desired. A conflict can arise as well at the prior stage of choosing the goal or end to be pursued. Patients, clients, and workers may have quite different goals from those of their doctors, lawyers, and employers. Furthermore, their goals may differ from those that even well-meaning others think they should have. Professional authorities may honestly devote themselves to furthering what they consider to be the best long-term interests of those in their care. But most of us have values that go beyond our best long-term interests.

When conflict arises over the choice of means to an end, a stronger case can be made for allowing expertise to overrule autonomy. But both in choosing means and in choosing ends, personal autonomy has a value that merely prudential considerations cannot usually outweigh.

## Choosing Means

When a dispute concerns only how some common goal is best to be achieved, there would seem to be a strong presumption in favor of leaving the final decision to the experts. The doctor has had years of medical education followed by years of clinical experience; the lawyer has devoted her professional life to figuring out how to get the best deal for countless clients; let us suppose that the employer is especially well placed to assess difficult technical information about workplace risks.

In his recent book, *Doctors' Dilemmas: Moral Conflict and Medical Care*, Samuel Gorovitz places this question in the mouths of many physicians: " 'Are we to interrupt [our patients'] illnesses . . . in order to send them through medical school so that they can understand as we do what their problems and options are?' " He notes that critics of the biopsy patient hold that "it was foolish of her to think that she could make a better decision than her physicians about an issue so complicated that even the medical community was having difficul-

ty deciding what the best course of treatment should be in cases like hers."

The courts have held that lawyers are permitted, and indeed encouraged, to override a client's decision regarding legal tactics. In *Nelson v. State*, the court denied the appeal of a client who protested that his attorney had not utilized the defense strategy he recommended: "Our reasons are that only counsel is competent to make such a decision. . . . One of the surest ways for counsel to lose a lawsuit is to permit his client to run the trial."

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Allowing patients, clients, and workers final authority—or even full participation—in the decision-making process poses potential risks that they will end up injuring their own interests. Gorovitz cites charges that medical decision-making is hazardous to one's health: "Patients, because of their necessarily limited understanding, may make decisions that are detrimental to their own health. Also, there is a danger that patients will be more directly harmed by the fears and anxieties induced by a more accurate understanding of the risks and discomforts they actually face." The court in *Nelson* ruled that "if such decisions are to be made by the defendant, he is likely to do himself more harm than good." Mary Gibson, in her forthcoming book, *Workers' Rights*, lists common reasons given by employers for withholding information about workplace hazards: workers will not understand the information correctly, will misinterpret the information, and will become "unduly alarmed." Thus they may be led needlessly to jeopardize their own interest in continuing employment.

Full patient, client, and worker involvement in decision-making has other costs as well. "The time and effort required to produce a high level of understanding by the typical patient," Gorovitz writes, "are more than can reasonably be allocated by the typical physician without placing the fulfillment of other responsibilities in jeopardy, so moral costs are associated with informing patients fully." Lawyers who fully respect client autonomy would also be required to make a far greater investment of time and energy to educate clients about their full range of legal options. Gibson suggests that these other "costs" of informing workers about health and safety risks are indeed the central issue: "The real issue behind that of the right to know . . . is control of the workplace. Employers foresee (correctly) that recognition and implementation of the right to know threatens to undermine what has long been recognized as the employers' prerogative to make all

decisions about what to do and how to do it."

None of these considerations, however, tells against the patient's, client's, or worker's *right* to make important decisions regarding his or her fate. Gorovitz explains: "First, the fact that the patient's knowledge will always be imperfect, and will often be inferior to the physician's, does not alter the fact that the patient has dominion over his or her own body, such that (except in an emergency or other circumstances of radically diminished capacity) treatment imposed without permission is abuse. Secondly, the fact that knowledge is *imperfect* does not imply that it is *inadequate* for the purpose at hand. Thirdly, the fact that a patient may, will, or does make the wrong decision about treatment does not entail that the patient lacks the right to make that decision. . . . The right to make choices about the fate of one's body does not presuppose a good understanding of the consequences of the choices one makes." Likewise, the client has a right to make his own decisions about legal matters even if his decision turns out to be the wrong one.

There is a danger, furthermore, that claims of the ill effects of informed decision-making may be exaggerated and self-serving, particularly in the workplace, where the underlying interests of workers and employers are likely to diverge. "When employers talk about workers becoming unduly alarmed," Gibson writes, "what they really mean, I suggest, is alarmed enough to want to do something about the hazards they face and to participate in decisions about them." Far from counting increased worker control as a cost of informed consent, Gibson treats it as one of its chief virtues: providing the conditions for genuine consent to workplace risks is a first step toward affirming the right of workers to make a wide range of decisions importantly affecting their lives.

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### Choosing Ends

However strong the case for allowing expertise to limit autonomy in the choice of means to some common end, the case for limiting autonomy in the choice of ends is far less convincing. Experts in any one professional field have no special expertise in the broader questions of how we are to live our lives. Thus Gorovitz writes, "Medical decisions are often too important to be made on medical grounds alone. . . . The wrong decision from a purely medical point of view may thus not be the wrong decision from the broader perspective of the patient's life." Many things matter to us besides our health and our liberty, even besides

the length of our lives—things like the quality of our lives, or what they stand for or achieve.

We may pursue ends that we value deeply even though their pursuit is not in our own long-term self-interest. When we do, David Luban argues in "Paternalism and the Legal Profession," it is unjustified for a lawyer to overrule our values, even if he does so only by appeal to our own interests. Interests, according to Luban, are such things as freedom, money, health, "those goods that enable the person to undertake the normal range of socially available actions." These things are good for us to have, in some sense, however much or little we care about them: "whether or not a person wants money or values freedom, in our society it is in the person's interest to have money and freedom." But values, unlike interests, are definitive of the person who holds them: "Values . . . are those reasons [for acting] with which the agent most closely identifies—those that form the core of his personality, that make him who he is."

Because of the special role that our values play in defining who we are, Luban argues, "to change a person's values by main force, or to override them, directly assaults the integrity of his or her personality." This means that a lawyer or judge must tread gingerly in any paternalistic intervention that addresses itself to the client's own values and goals. The lawyer in our opening example, for instance, has no business overruling her client's desire to expiate his guilt, for he values the expiation in a way that he does not value his liberty. The lawyer cannot decide that the client's "true" values must be in better accord with what the rest of us would choose to do in his situation; the client's true values are just *his* values, and the lawyer must respect them as such.

If it is impermissible to overrule someone's values in the name of that person's interests, even less justifiable is overruling someone's values in the name of someone else's interests. When workers are denied the right to make informed decisions about the risks that face them in the workplace, all too often what is at stake is the employer's competing interest in avoiding the added expense or inconvenience of reducing those risks or in making sure that the workers are not in a position to demand shared decision-making power in assessing risks. Such a clear willingness to use workers as a means to employer ends, on Gibson's view, is nothing more than a flagrant violation of workers' rights.

### Conclusions

Control over one's own fate must be of central importance in any human life. For Gorovitz, medical procedures performed on patients without their informed consent constitute bodily assault; for Luban, legal procedures undertaken in defiance of a client's values constitute an assault on personal integrity; for Gibson, exposing workers to health and safety risks without their informed consent violates their rights to make decisions that affect the rest of their lives. Fulfilling rights may have costs, and these have their place in moral deliberation. But the costs of permitting assaults on an individual's body, integrity, and dignity as a person may be greater still.

*Samuel Gorovitz's views are taken from Doctors' Dilemmas: Moral Conflict and Medical Care (New York: Macmillan, 1982); Mary Gibson's views are taken from Workers' Rights, forthcoming from Rowman and Littlefield; David Luban's views are taken from "Paternalism and the Legal Profession," Wisconsin Law Review 1981, no. 3: 455-93.*

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## The Moral Foundations of Assertiveness Training

As the "me decade" spills over into the 80s, assertiveness training has come of age. Assertiveness manuals crowd the self-help shelves of chain bookstores; assertiveness courses, counseling, and workshops proliferate in adult education catalogs—all designed to teach and inspire trainees, primarily women, to "start living your own life NOW," without being anybody's doormat. This marriage of feminism and pop psychology proceeds with the dual objectives of proclaiming rights and debunking obligations. The centerpiece of most assertiveness theory is some "bill of rights"; one manual goes as far as reprinting the splendidly irrelevant "Universal Declaration of Human Rights," but most content themselves with rights to

"express feelings" and to make mistakes. As trainees learn to stand up for their rights, they learn as well to refuse false obligations without feeling guilty.

Obligations and rights are the stuff of moral theory, and a good deal of moral theory underlies assertiveness training. It is not, however, very good moral theory. It is not surprising that assertiveness counselors do not spout Kant and Mill; indeed, one is rather glad that they don't. But insofar as the moral theory of the assertiveness school is seriously confused, its proponents undermine their own aim of not only teaching but *legitimizing* assertive behavior. For assertive behavior may be more forcefully justified by moral considerations that its proponents ignore.