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# PROFESSIONAL SECRET IN THE PRACTICE OF SOCIAL WORK AND SOCIAL EDUCATION<sup>1</sup>: A CORNERSTONE OF DEMOCRACY WITH A FOCUS ON CATALAN AND SPANISH CONTEXTS

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<sup>1</sup> In this article, by “Social Education” we refer to the tasks and practices that aim to create educational contexts that support individuals’ integration into social systems of different sorts, whether related to their professional or private lives, and their leisure time.

We are aware, however, of the fact that in other contexts the task of the social educator is often conceived more broadly, and includes any other task that favors social goals. This amounts to what in Germany is labeled “Social pedagogue”, which not only includes the tasks performed by social workers, but also by pedagogues.

In such contexts, the meaning of the expression “Social Education” tends, therefore, to be somewhat ambiguous, and sometimes even to blur the lines. In order to counteract this tendency, the International Association of Social Educators (AIEJI) tries to keep and promote the most precise meaning of the term. We adhere to their account of the field.

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**Abstract:** The aim of this paper is to examine the theoretical foundations of the professional secret and confidentiality in Social Work and Social Education in order to propose an alternative approach to the issue which does not reduce the professional secret to a utilitarian device designed to increase the success of social services. Our approach rests upon the idea that the professional secret not only protects the individual that has confided a secret, but also society as a whole, since intimacy and privacy are a necessary presupposition of all other human rights. Understood this way, the professional secret should be regarded as a cornerstone of democracy. The article therefore concludes by warning policy-makers and social workers and educators of the paradox inhabited by the professional secret: breaching confidentiality may be simultaneously an inevitable measure to safeguard society and a way to render society as a whole more vulnerable.

**Keywords:** *Giorgio Agamben, Aporia, Confidentiality, Democracy, Duties, Professional Secret, Right to Intimacy, Right to Privacy, Social Education, Social Work, Vulnerability.*

## INTRODUCTION

Many professionals often face the dilemma of whether to disclose personal information that a client or a user of the service they practice has entrusted to them. The laws and the deontological codes that regulate professions clearly establish that personal information confided by the user –such as religious beliefs, sexual orientation, race, and personal history and plans– should be kept secret even when the professional relationship has ended: therefore, it is never legitimate to reveal information through petty gossiping or with libelous aims. There are, however, certain situations of force majeure that require –often by law– the revelation of the secret for the sake of the same individual that has confided it<sup>2</sup> or on behalf of a third person whose life would otherwise be endangered.<sup>3</sup>

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<sup>2</sup> Herein lies the Welfare Principle.

<sup>3</sup> Herein lies the Principle of Justice.

Thus, even those professionals who know the law<sup>4</sup> and are rationally extremely competent often find themselves trapped within a juridical collision or antinomia (the duty to keep the professional secret versus the duty to disclose it) and a moral collision (whether his duty is first to the user or to society). This antinomia is particularly challenging in the fields that we will examine, Social Education and Social Work, since their main instrument of change is information (Albers and Morris, 1990, p. 12). Moreover, the vulnerability of the users of these services —often evidenced by drug addiction, alcoholism, maltreatment, children abuse, etc.— further complicates the dilemma.

In an attempt to aid professionals in navigating such situations, scholars and institutions are making an effort to delimit the exceptions to the imperative of the professional secret. In our opinion, in spite of the rigor of the casuistic designed by them, many exceptions have gone too far: sometimes, the application of their “casuistry of exceptions” leads to the disappearance of the very notion of professional secret. In other words, if what the confider wants to be kept secret is to be disclosed each time they so indicate, then these secrets must almost always be revealed, and thus, the professional secret is deprived of its factual existence.

The aim of this article is to revisit the theoretical foundations of the professional secret in order to explore its *raison d'être* and to call for care when tempted to breach it. The article is divided into four sections. In the first one we discuss the juridical framework of the professional secret in Social Education and Social Work. Special attention is paid to the Spanish and Catalan frameworks. In the second one, the exceptions to the professional secret envisioned by said regulations and by current scholars are discussed and problematized: should there really be so many exceptions? Our first thesis is articulated at this point: do not the reasons that underpin the exceptions deprive the very notion of professional secret? The third and fourth try to answer this question by addressing the central issue of this paper: the *raison d'être* of the professional secret. Section 3 offers an overview of the most common arguments employed to legitimize the professional secret, and Section 4 contains our second thesis, which constitutes our original contribution to the issue: an alternative view of

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<sup>4</sup> Which unfortunately is not always the case. See Albers & Morrison (1990). They examine the case of Canadian social workers in the 1980s who assured they knew the importance of confidentiality, but whose practice was totally disconnected from this supposed knowledge.

the *raison d'être* of the professional secret which recasts some ideas by Ian E. Thompson (1979) and some by Giorgio Agamben (1995; 2003), and forces us to reexamine the criteria according to which confidentiality may be breached. The article concludes with a call to prudence for the safeguard of democracy to those considering the possibility of breaching the professional secret.

## SECTION I. JURIDICAL FRAMEWORK

When establishing the moral and juridical foundation of the professional secret, scholars tend to turn to the well-known Hippocratic Oath:<sup>5</sup>

And whatsoever I shall see or hear in the course of my profession, as well as outside my profession in my intercourse with men, if it be what should not be published abroad, I will never divulge, holding such things to be holy secrets.

Nevertheless, as Thompson holds, this appeal to the Oath is a serious mistake. First, because throughout history the Oath was present only intermittently, and second because its origin did not have to do with present-day rights and duties, but rather with an esoteric cult that aimed to preserve trade secrets and control the initiates to the Hippocratic School (Thompson, 1979, p. 57).

The current shape of the professional secret and its associated duty of confidentiality stems from the 12th article of the Universal Declaration of Human Rights—adopted by the UN General Assembly on the 10th of December 1948—namely, the right to intimacy, which reads: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

Ethical and deontological codes of several professions had already mentioned the need to protect the personal information and the private life of their services' users, as was the case of the Code of Ethics of Social Workers in 1922. But ever since the Universal Declaration of Human Rights, several supranational institutions have included the right to inti-

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<sup>5</sup> A document on the Ethics of Medicine written by Hippocrates of Cos (c. 460 – c. 370 BC).

macy among their guiding principles and issued documents accordingly. Such is the case of the European Convention for the Protection of the Human Rights and the Fundamental Freedoms (1950/2010) and the Charter of Fundamental Rights of the European Union (2000/2007).

At the national level, the right to intimacy has been included in democratic constitutions (the Spanish Constitution of 1978 expresses this in Articles 18, 20, 24 and 150, for example) and has consequently given rise to the development of certain laws concerning the professional secret. That is the case of the Organic Law 5/1992, which regulates the automatic treatment of personal data by establishing that such data can only be used with the consent of the person in question. Moreover, the Organic Law 1/1982 of Protection of Honor, Personal and Familiar Intimacy and One's Own Image explicitly forbids the disclosure of information regarding another's private life obtained through one's professional activity. In the same spirit, Article 199 of the Penal Code addresses the professional secret by establishing the sentence for individuals who reveal secrets about others gained, either directly or indirectly, through their work.

In the Penal Code, the crime is considered much more severe if a social worker or a psychologist, for example, reveals a secret, than if the person who cleans the psychologist's office does so. This difference obviously derives from the different ways of acquiring the protected information.

As for minors' rights to intimacy and privacy, Article 4 of the Organic Law 1/96 of Juridical Protection of Minors, following the UN Convention on the Rights of the Child, claims that although parents hold an important role when it comes to their children's education (Article 18), "nation states are required to protect the child from interference with privacy" (Article 16).

Although the professional secret must be kept by all professionals, it is important to highlight that in each profession, this responsibility functions differently, depending on the services' users and goals. This is why social workers and social educators have issued their own documents on this issue. Beyond the Code of Ethics of Social Workers of 1922, The International Federation of Social Workers's ethical principles, laid out in 1994 by the United Nations Center for Human Rights, are of particular relevance, as is the deontological code of the Social Workers approved in 2002 by ASEDES. The issue of the professional secret is so red-hot that hundreds of institutions have devoted relevant efforts to it. In Catalonia, such is the case of the Col·legi Oficial de Diplomats en

Treball Social i Assistents Socials de Catalunya (The Official College of Accredited Social Workers and Social Services Providers of Catalonia), that in 2000 issued a document developed by the Committee on Confidentiality and the Professional Secret addressing this very issue.

Surely, establishing both an international and a local juridical framework as thorough as the one we have presented has been of great help for the preservation of users' intimacy. However, this structure does not prevent the issue of professional secret from being a problematic one for those who must adhere to these codes, mainly for two different reasons. On the one hand, as we have already mentioned, because the right to intimacy sometimes conflicts with other rights that professionals must also protect. On the other hand, because the right to intimacy is not regarded as a *prima facie* right, that is, an end in itself, but as a means to protect other rights, and other people's rights (Ramos & Gabaldón 2012: 9).

Consequently, the very documents that address the professional secret describe it as a user's right that must be kept *as long as possible*, thus insinuating that there are certain cases in which it can be revealed—sometimes *must* be revealed—for reasons of force *majeure*. Determining in which cases and for which reasons such disclosure may be performed is hugely complex, if not impossible, undertaking. Hence, not only do laws try to shed light on this issue, but philosophers, sociologists and scholars belonging to the psycho-educative and bio-healthcare field also endeavor to illuminate this complicated terrain.

## SECTION II. EXCEPTIONS TO THE PROFESSIONAL SECRET

A comprehensive examination of the regulations mentioned in the previous section, relevant academic texts,<sup>6</sup> and interviews that express personal opinions of experienced social workers<sup>7</sup> enables us to outline the

<sup>6</sup> Albers and Morrison (2004), Carlisle et al. (2006), Gewirth (2001), Guedj et al. (2006), Jaruseviciene, Levasseur & Liljestrand, (2006), Mayordomo (2002), Ramos and Gabaldón (2012), Stone and Isaacs (2003), Thompson (1979), Torrance (2003), and Viola (2010).

<sup>7</sup> See for example Guedji et al. (2006). After interviewing several French and British professionals, they conclude: "In the US and the UK, it is legitimate to breach confidentiality in some cases to protect other people at risk [...] In France, in contrast, the emphasis is more on preserving the confidentiality of the patient" (2006, p. 414).

parameters that could/should induce a professional to reveal a professional secret are the following:<sup>8</sup>

- a) The involvement of a third person: if a third person (potentially the professional himself) is at risk, and such danger could be avoided by revealing the information. Herein prevails the Principle of Justice. A common case is that of a man who explains he abuses his wife but says he is trying to stop. The social worker has the duty to report this behavior, as established in Article 11 of the Catalan Law 5/2008 on Women's Right to Eradicate Violence Against Women. According to most scholars, the case is different if the woman herself confides such information to the social workers and wishes for it to remain secret.
- b) The risk of harm to the person who has confided the secret, as in the case just mentioned. Herein clearly lies the Welfare Principle.
- c) A user's lack of autonomy. In this case, regulations and scholars tend to assume that the social worker is responsible for the protection of the subject himself —i.e, if he expresses a desire to commit suicide— and of others. Minors are often included in this category, although most scholars specify that they do not become autonomous when they turn a certain age, but by showing a certain degree of maturity (Stone and Isaacs, 2003).
- d) The severity of the harm that would be inflicted were the secret not revealed. Consequently, were a social worker or social educator to learn that a sixteen-years-old child smokes, he should not consider revealing this information as much as if he expressed his intent to harm another person.
- e) The degree of imminence or remoteness of the harm. If the harm is about to be inflicted, the social worker might feel obliged to report the information. However, if it was inflicted a long time ago and there is no evidence that it will happen again, the social worker or educator ought to bear in mind that his task is not to seek punishment for those who have committed crimes, but

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<sup>8</sup> This article addresses the parameters that induce professionals to reveal not only a secret, but also the identity of the individual who confided it. The cases in which only data are revealed —namely the cases in which some information is revealed in order to be included in statistics and/or to be used for research— are of a completely different sort. See Viola (2010, p. 7).

rather to provide responsible services to users. Therefore, he should seriously consider not reporting this information.

- f) The consent from the confider to reveal the secret (that should always be sought expressly if the secret is, in fact, to be revealed).
- g) Under the auspices of the existence of a legal mandate, although some deontological codes and theorists do not consider this sufficient cause (i.e., Canimas, 2011, p. 7).
- h) Child abuse.

It is important to note that the parameters we have pointed to so far cannot be applied blindly, as each incidence's belonging to any category is always a subjective matter of degree and there exists no scale to measure them objectively. On the other hand, one must also bear in mind that the presumption of innocence should have an impact on the way social workers reveal the information they know.<sup>9</sup>

Lastly, it must also be mentioned that other sort of exceptions have been proposed, but in our opinion are thoroughly illegitimate. This is the case, among others, of some Lithuanian social workers and physicians who, for the supposed sake of family cohesion, have been encouraged to tell parents their daughters were pregnant and sought abortion (Jaruseviciene, Levasseur and Liljestrand, 2006). In our view, such measures of social control pervert the task of social workers.<sup>10</sup>

Going back to the listed factors: in summary, a professional secret can be disclosed<sup>11</sup> *only* if the effects of revealing it are worse than those of preserving it.<sup>12</sup>

This apparently reasonable idea seems in fact highly problematic to us. In the first place, because due to the multiple variables involved in each situation, it is generally impossible to accurately predict the conse-

<sup>9</sup> Unless a sentence is pronounced, one cannot talk of the crime as if it was unquestionable.

<sup>10</sup> It must be said, though, that these practices are also common in countries with long democratic traditions. Think, for instance, of the New Jersey's ban (August 2013) on gay-to-straight conversion therapy. For a description of the controversy this issue raised, see Livio (2013).

<sup>11</sup> Except by lawyers and priests.

<sup>12</sup> This is explicitly stated in Article 20.5 of the Spanish Penal Code. However, it is common among social workers —and deontological codes often suggest it as well— to try to solve the problem by other means, that is, by carrying out socio-educational work.

quences of the disclosure of a secret. A classic conundrum: a woman tells a social worker that she has been abused by her husband, but swears that it was only once and will never happen again, what is the social worker to do? The immediate thought is usually to report it. However, he might think that the consequences of reporting it would be worse than those of keeping the secret (upon learning that his wife has reported the abuse, the husband could harm her again before the legal system –sometimes too slow– could prevent this and other future repeat offenses). On the other hand, if the social worker does not report it, and instead continues with a socio-educational line of treatment with the family in question –which sometimes proves to be more successful than reporting the offense to the authorities– he can never be certain that the abuse will not be repeated (although perhaps it will not) and, if it were to happen to be repeated, he could be punished by law for not having reported it. Hence the tendency to report every single bit of information that the confider asks to be kept secret.

In the second place, the idea that a professional secret can/must be disclosed if the effects of revealing it are worse than those of preserving it seems to us problematic for a second, and more important reason: *it deprives the professional secret of its raison d'être*.

When an individual asks the social worker or social educator not to reveal certain information, it is precisely because one or some of the listed parameters are at play. In other words, an individual only wants some information to be kept secret if a third person is involved (Parameter *a*), and/or if his own life is in risk (Parameter *b*), and/or if he knows that he is not mentally autonomous and consequently someone else might legitimately decide for him (*c*), and/or if the harm at risk is severe (*d* and *e*), and/or if there is a legal mandate (*g*), and/or if it is a case of child abuse (*h*). The individual will want the information to remain secret *precisely because* one was of the aforementioned parameters at work. If none of these parameters were at work, the user would lack any motivation for wanting some information to remain hidden. To put it simply, what usually prompts a social worker to reveal a secret is *exactly* what made the confider ask for this information to remain secret. This is the first thesis we put forth in this paper.

This leads us to think that the professional secret is losing its *raison d'être*. Haven't we perhaps gone too far? This is what Canimas (2011, pp. 25-26) seems to suggest when stating that sometimes the best choice is not to report, and what Ramos and Gabaldón mean when writing that

obeying the law is not always ethical when a professional secret is in question (2012, p. 13).

### SECTION III. WHY SHOULD SOME PERSONAL INFORMATION REMAIN SECRET?

Why should some information remain secret? Why need is there for the professional secret? Why should a professional consider remaining silent when he knows somebody has stolen goods? The reasons vary across professions;<sup>13</sup> we will focus on Social work and Social Education.

Needless to say, if Social Work and Social Education were to be conceived—or were still conceived—on the basis of a paternalistic model there would be no need for confidentiality: the social worker, in order to rescue the user from his vulnerability and marginality, would be allowed to access and circulate any information from or about the user. However, since Social Work and Social Education have evolved around a model based on the autonomy of the user (Ramos and Gabaldón, 2012), confidentiality has become necessary.

The wide range of arguments usually advanced to sustain the professional secret varies across place and author, but the most usual ones can be synthesized into the following four trends. In the first place, the most commonly used argument goes, only if confidentiality is guaranteed will the user speak openly, and since information is the main instrument of change available to social workers (Albers & Morris 1990), only under terms of confidentiality will the service be successful. Confidentiality improves communication and this, in turn, is essential for the social worker to carry out his task which, by its turn, benefits the user. Taken to its ultimate consequences, this implies that there is an inherent danger in the excess of communication, and thus communication must have limits (Canimas, 2011, p. 4). Therefore, the *professional secret can be regarded as one of the conditions of possibility of communication*.

Herein lies a classic utilitarian argument. Utilitarian and consequentialistic arguments also inhabit the heart of several other arguments that legitimize the professional secret. A second and complementary argument holds that the professional secret is designed not only to protect the user,

<sup>13</sup> Two well-known fields which stand out because of their particularities concerning confidentiality are that of lawyers and priests.

but also the professional, since it allows the professional to carry out his job (Canimas, 2011, p. 2). Canimas, by reminding us of the etymology of the term “confidential” —‘with’ plus ‘faith, protection, shelter, credit, honesty, loyalty’— concludes that confidentiality offers a reciprocal protection to those who practice it.

In the third place, some theorists also *utilitarianly* claim that since the goal of social work and education is to better integrate individuals who inhabit the margins of society into the social fabric, thus reducing their vulnerability, breaching confidentiality would be thoroughly counter-productive, since exposing one’s privacy or circulating such privacy renders one more vulnerable. The more vulnerable a subject is, they claim, the more he needs confidentiality (Ramos and Gabaldón, 2012, p. 8).

The fourth reason is being used more and more to argue for preserving confidentiality when the service user is a minor, a particularly delicate case. While the main tendency was formerly to breach confidentiality *more often* when dealing with minors than with adults, maintaining that parents have the right to know about delicate issues affecting their children,<sup>14</sup> Carlisle et al. (2006) argue precisely the opposite and call for a reversal of this tendency. Their argument holds that in order to develop autonomy, minors (and particularly teenagers) need to build a private space to which parents should not always have access. Systematically breaking confidentiality to report each of their child’s steps to parents would therefore prevent said child from appropriately developing his individual autonomy.

Once again, this argument pertains to the realm of utilitarianism. In our opinion, while the four aforementioned arguments are legitimate, there is another argument —often overridden— which is not only heftier, but which moreover does not reduce the professional secret to a means designed to make social services more efficient. Instead, it has to do with considering intimacy and privacy as ends in and of themselves. If intimacy and privacy are means to a higher end, they can ultimately be reduced to nothing. If, by contrast, they are considered values *prima facie*, their *raison d’être* will be protected from the severity of certain situations.

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<sup>14</sup> See Stone and Isaacs (2001), who explore how certain counselors react if they learn that the minors they assist smoke cigarettes, sneak out to meet a boy/girlfriend, have sexual intercourse, smoke marihuana, use crack cocaine, seek abortion the next day, or express that life is too tough for living.

#### SECTION IV. AN ALTERNATIVE APPROACH TO THE FOUNDATIONS OF CONFIDENTIALITY

Priests, after hearing confession, and to some extent, lawyers, by representing their clients, serve and are principally responsible to the individual sharing personal information, and therefore should not breach confidentiality in any way. However, caseworkers serve and are principally responsible to both the individual and to society: in fact, their duty is to help the individual to function within society. This, then, justifies that confidentiality—and with it, individuals' rights to intimacy and privacy—sometimes be suspended. This justification underpins all the utilitarian arguments examined above.

On the one hand, it has been objected that when the interests of society cannot be reconciled with the individual's interests, social workers and specialized educators' first duty is to the most vulnerable part; their primary pursuit was never to punish those who have committed crimes (Canimas, 2011, p. 26). Thus, social work theory turns so often to the so-called "ethics of hospitality". Martin Buber (1923, p. 11) claims that when relating to another, the Other fills the whole arc of sky (1923, p. 11); Emmanuel Lévinas (1961) calls for an unconditional welcome of the other, regardless of his origin and beliefs, without reserves and without calculation.

Yet in our opinion, beyond this objection, there lies another reason why a social workers' equal duty to society as well as to the individual does not legitimize exposing users' secrets so often.

At first glance, the theoretical framework of democracy is incompatible with maintaining the professional secret—why should information that threatens the community be hidden? Within democracy, the argument goes, there must be no dark corner that resists the transparency that safeguards peaceful coexistence. Apparently, then, within the confines of democracy, one is rendered incapable of arguing successfully to legitimate the professional secret.

We want to suggest precisely the opposite: in a democracy, secrets are an immeasurably powerful instrument to protect the collective. Consequently, it could be argued that the professional secret does not threaten democracy, but is actually inscribed within its theoretical frame and must be preserved in order for other generalized tenets of democracy to be functional. What is more: *the professional secret can be regarded as one of the cornerstones of democracy.*

Let us explain this proposal by developing an idea that Thompson mentions only in passing in 1979, but which unfortunately does not appear again in more recent bibliography. Thompson writes:

That the individual should be spiritually inviolate, in the sense of being protected from the invasion, violation and abuse of his privacy would seem to be the necessary presupposition of his possession of any of the other individual human rights claimed for him [...]. We must, I think, grant the existence of a right to privacy on formal grounds once we concede the existence of personal rights in any form (Thompson, 1979, p. 59).

In other words, the right to intimacy and the right to privacy are not mere rights among others equal in scope —“for without it [privacy] there would be no private individuals to have or exercise those rights” (Thompson 1979 59)— but truly *the condition of possibility of all other rights*. *And, in the same fashion, in our opinion, the professional secret is as well*. For without the professional secret, society as a collective would be more vulnerable, given that the theoretical foundation for human rights would be vanquished. Thus, the *raison d’être* of the professional secret is discovered in all its fortitude, and therefore, a gross violation of the foundations of democracy is committed each time a professional secret is revealed.

And yet, the issue is not that simple.

Foucault distinguishes between *zoe* —natural life, the simple fact of living common to all living beings— and *bios* —the form of life typical of social beings, that is, political existence. He argues that for centuries, Man’s life was *zoe*, but then changed in the 18<sup>th</sup> century, when *zoe* became an element of *bios*. Since then, *zoe* could no longer be conceived outside the polis legality. Political power came to meddle in the subject’s life, subjects being therefore configured by a power external to them. The outside of law ceased to exist. According to Foucault, this was the decisive event that opened up modernity. Giorgio Agamben (1995) holds that this phenomenon —a threshold of indistinction between the outside and the inside of the law— constitutes the core of Western politics. He claims that there is no natural life, and that there has never been any life alien to the law —and that this omnipresence of law makes individuals terribly vulnerable. He points out that this omnipresence underpins totalitarian states: these regimes possess the right to know every single aspect of private life —and ultimately, there is no private life: in the Big Brother style,

everything is exposed. The right to intimacy, as any other individual right, might be suspended for the sake of society. But, according to the Italian thinker, the same phenomenon is at work in democracy. Pointing out that Guantánamo Bay Detention Camp does not differ in essence from Auschwitz Concentration Camp, he goes so far as to say that in democracy individuals live in a permanent state of exception<sup>15</sup> in which, as Walter Benjamin put it in his eighth thesis on the philosophy of history, the suspension of the norm has become the rule.

Agamben is thus bringing to light the aporetic core of democracy, which he describes as a double-bind: democracy tries to protect the subjects it needs to render vulnerable in order to guarantee their protection. In other words, the unconditional exposure of everybody's life, the purported goal of which is to protect individuals, also renders individuals more vulnerable. Democracy aims to protect citizens, and hence the existence of human rights, but can suspend said rights in order to protect them. Democracy threatens us precisely *because* it protects us or, put another way, precisely *by* protecting us.

In our opinion, the dilemma of revealing/keeping the professional secret is but a side effect of this aporia. The rights to intimacy and to privacy can be suspended for the sake of society, yet this transgression of rights exposes society to a terrible force that renders it more vulnerable.

## CONCLUSIONS

In Section II we exposed our first thesis: that the reasons why a user would request certain information to be kept secret are the same reasons a social worker or educator would use to justify revealing this very secret.

In Section IV we have put forward an alternative foundation for the professional secret. With this reasoning we mean to have dismantled the dichotomy that holds that revealing a professional secret when “needed” is to stand on the side of society and democracy, while keeping said secret is to stand on the side of the individual —and thus the dark, the irrational, the unjustifiable. By showing that the aforementioned dichotomy is only apparent, that is, by deconstructing it, we have attempted to demonstrate that keeping a secret might, in many cases, be taking a stand

<sup>15</sup> See as well Agamben (2003).

for society/democracy, since the protection of individual intimacy is a cornerstone of democracy.

We therefore conclude that:

- a) A social worker or social educator should bear in mind, when considering breaching the professional secret imperative, that by doing so he is exposing the fragile ground upon which democracy rests.

In *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo* (1966), Mary Douglas examined the arbitrary arguments and facts upon which social order rest. According to her, the system is always founded upon something external to it and cannot be understood by the logic of this system.<sup>16</sup> At the beginning there is always a force, a violence, a sacrifice. It could be argued that the same applies to democracy: as Agamben reveals, democracy rests upon an aporetic logic: it needs to include what it tries to exclude —namely, the suspension of rights.

Douglas further analyzes how the arbitrary forces that open up certain social orders must become taboo in order to protect said order. If such foundations are exposed, sooner or later the order will be overturned. Again, the same applies to democracy. At the root of democracy there is a contradiction which cannot be legitimated by the logic of democracy, but which is self-justifying. In Derridean terms, democracy is self-immune.<sup>17</sup> If this contradiction is too evident, unsatisfied citizens will try to knock down the system.

While we do not mean to hide the problematic foundations of democracy, it is undeniable that exposing such fragility too often renders the democratic system more vulnerable, and hence all of society more vulnerable as well. From our perspective, revealing a professional secret is just such a way of doing so. Had we an alternative sociopolitical and economic system, it would be necessary to exert pressure on these fissures of democracy in order to dismantle it. However, so long as we lack a better alternative system, exposing such fragility can prove extremely dangerous since it can lead to the replacement of democracy by other

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<sup>16</sup> See Derrida (1986) and Ieven (2006) for a thorough examination of the same phenomenon.

<sup>17</sup> See Derrida (2003), where he holds that there is a point in which democracy requires a non-democratical decision. Hence the aporia it rests upon.

systems which have proved worse in many aspects –especially regarding the protection of vulnerable individuals. And we must bear in mind that the double-bind of democracy –protecting and at the same time depriving individuals’ rights– revealed by Giorgio Agamben no longer allows us to state that there *some* citizens are vulnerable; all individual members of society are. Thus, the professional secret protects everyone –at least to some extent.

- b) In no way do we mean that we are opposed to taking the listed parameters into account in order to set out some exceptions to the imperative of confidentiality. We do believe that said parameters are reasonable and legitimate; yet, in our opinion, *the tendency should be to try as much as possible to avoid making such exceptions*. Unfortunately, there are no means by which to establish a clear-cut threshold, but we encourage policy-makers, social workers and educators to incorporate our reflection.

Furthermore, we believe that what should induce social workers and educators to make an exception to confidentiality *in the first place*, ought to be the fact that confidentiality is not only a negative right –a trust based upon *not* saying anything– but also a positive right, that is, it entails positive duties regarding that trust. Gewirth (2001) lucidly –and briefly– exposes this idea:

Viewed directly, confidentiality is a negative right, insofar as the obligation or duty it entails is the negative one of refraining from divulging information about the client or other subjects. [...] But the right to confidentiality is also a positive right in that it entails the positive duty to help the client to maintain her autonomy and trust (2001, p. 485).

The users’ duty, in turn, is to take advantage of the social worker’s guidance. That is, it is not only the caseworker who has duties, but also the client or user. Among others duties, the user has the duty “to try to benefit from the caseworker’s guidance. [...] with the caseworker’s help, [he has] to try to move in that more beneficial direction” (2001, p. 486).

Given the fact that confidentiality is also a positive right, and that the client has a duty to benefit from the guidance offered by the professional, he will have to accept that sometimes the need for confidentiality must be *overcome*: that sometimes the best option is to reveal the information

he initially wished to remain a secret. In this case, the social worker will likely have to guide the user to reach this conclusion.

Foremost in the consideration of revealing a secret should be, then, the positive character of the duty of confidentiality. Consequently, in our opinion, the aforementioned parameters (*a* to *h*) should be taken into consideration *later*, as a subsequent *complement*, only in a secondary scope of consideration. They come as a secondary consideration in the rationale process because so they are indeed secondary, conceptually.

- c) As long as the idea of “revealing” a secret presupposes a certain notion of “revealing the truth”, the notion of “telling the truth” should be re-examined. The text by Bonhoeffer (1937) “What is meant by telling the truth?” could be a suggestive point of departure, as Torrance (2003) already pointed out. Bonhoeffer considers that “‘telling the truth’ means something different according to the particular situation in which one stands” (1937, p. 363). Accordingly, reporting facts is not always a way of speaking the truth. In his own words:

I speak flatteringly or presumptuously or hypocritically without uttering a material untruth; yet my words are nevertheless untrue, because I am disrupting and destroying the reality of the relationship between man and wife, superior and subordinate, etc. [...] The truthful word is not in itself constant; it is as much alive as life itself. [...] [I]f ‘the truth is told’ without taking into account to whom it is addressed, then this truth has only the appearance of truth, but it lacks its essential character (1937, p. 360).

In short: the social worker has to stand on the side of truth, and this does not always imply revealing information in minute detail.

When asking ourselves *what* should be understood by “telling the truth”, one should ask about the most appropriate *ways* to reveal such truth<sup>18</sup> —as there are different levels of confidentiality<sup>19</sup>— and *who* should

<sup>18</sup> At this point, the issue of to what extent communication can ever be successful deserves special attention. See for example Derrida (1972, p. 367).

<sup>19</sup> See Stone & Isaacs (2001). They distinguish four degrees of confidentiality: total confidentiality, “limited confidentiality for which minors waive the right to know what may be disclosed in advance”, “informed forced consent when a child is provided advance notice that information will be revealed”, and no guarantees about confidentiality (2001, p. 344). See also Canimas (2011, pp. 21-23).

know this truth.<sup>20</sup> The same care ought to be taken when filing this “truth”.<sup>21</sup>

- d) It is particularly relevant to explore what sort of information might be treated as a secret. Firstly, without doubt, whatever the confider asks to be preserved. Yet, is there something beyond that which the confider asks explicitly to be kept secret that should likewise not be revealed? Yes, there is.

In our view, any information learned by the social worker —heard, seen or inferred— that he has reason enough to believe that the user would prefer to remain secret should be treated just as any information explicitly labeled a secret —meaning, with the same discretion— and be governed by the same regime of exceptionality. This is the case of a user with a black eye who spends the day with the social worker or other educator and does not explain to him what has happened (Gewirth, 2001, p. 480). The worker may draw the conclusion that her husband hit her, but since she did not mention it, he should deduce that she would prefer him not to have noticed it.

This broader way of conceiving the professional secret is to some extent problematic: which of the data the social worker learns can be revealed? Taken to an extreme, this definition would prevent the social worker from speaking about the user ever. As Georg Simmel puts it in “The Sociology of Secrecy and of Secret Societies”, “[a]ll relationships of people to each other rest, as a matter of course, upon the precondition that they know something about each other. The merchant knows that his correspondent wants to buy at the lowest price and to sell at the highest price. The teacher knows that he may credit to the pupil a certain quantity and quality of information” (Simmel, 1906, p. 441).

<sup>20</sup> If a social worker is aware of the fact a father abuses his child, the professional might consider the possibility of reporting it to the school the child attends. Yet should all the teachers who teach the child be informed? Or rather, should the complete information be reserved for the director and the child’s classroom teacher, while the rest of his teachers should only be told that the child is undergoing “severe familiar difficulties?”

<sup>21</sup> And the ARCO rights should always be respected, that is, the users should be allowed to access, modify, cancel, and oppose the information archived (Spanish Organic Law 15/1999 on the Protection of Personal Information).

Consequently, knowing the other is not a result of dealing for with him for some minimum amount of time, rather a *precondition* of such relationship. We know a great deal about the other even before he says anything. Are social workers entitled to talk about this sort of information with somebody else? In our opinion, any information they have before exchanging a first word with the user should be treated with the same care as the explicitly revealed information.

Of course, the conclusions our article leads to do not simplify the substantially complex issue of discerning when to reveal and when to keep a professional secret, on the contrary: but nevertheless, we believe these new considerations should also be taken into account. Again, drawing the line between what can be said and what should not be is of extraordinary complexity. But we encourage policy-makers, social workers and educators to deal with this issue with the *delicacy* it deserves. And we hope to have shown the foundations for this delicacy. Only by treating this issue with the utmost care will we really be doing something to protect the vulnerable —that is, everyone.

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