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Structuring Ethical Values through Clinical Legal Education

Philip Drake & Stuart Toddington
Structuring ethical values through clinical legal education

- Our Jurisprudential Foundations
Does the common law system protect civil liberties?

• ‘The case against common law’
  Professor Conor Gearty’s Lecture at LSE on the 6th November 2014, covered in the Law Society Gazette, 10th November 2014
• ‘The courts were happy [prior to the Human Rights Act] to act as benign legitimating forces… their various rulings serving to throw the necessary constitutional camouflage over successive exercises of raw state violence.’
  Following the Human Rights Act these judges ‘… took to human rights as their penance for past sins’.

• What would be the position if the HRA was removed?
• Is it important to question the rules where justice is threatened?
• Should the rule of law be manipulated to achieve justice or avoid injustice?
The parents predicament was stark, indeed shocking…
– Facing the permanent loss of their child;
– Had learning difficulties and unable to represent themselves;
– Could not afford legal representation.

To require them to proceed without proper representation would be unconscionable; unjust; involve a breach of Articles 6 and 8; and be a denial of justice.

D is also entitled to a fair trial.

Directed a hearing to decide who will fund the costs of representation:
– the Local Authority;
– the Legal Aid Fund; or
– Her Majesty’s Courts and Tribunals Service.

Could or would this challenge have been made without the existence of the HRA?
Ethical norms and values in the clinical environment

• Are rules necessary to think ethically?
• Important how we educate our law students in ethics.
• What are our ethical values within the clinical environment?
• Impact upon the social well-being of students
  – Sheldon & Krieger.
• What cases should we take on?
• Social norms and values for the practising lawyers of the future.
• Reflection and ethical autonomy in the clinical environment.
• “... the teaching and maintenance of professional ethics and values are central to the assurance of integrity in the administration of justice and quality across the entire legal services sector”. (Page vii)

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• "... strengthen requirements for education and training in legal ethics, values and professionalism..." (page ix)
• Ethical development and values

MORAL CHARACTER / COURAGE
MORAL MOTIVATION
MORAL JUDGEMENT
MORAL SENSITIVITY

Rest’s model of ethical development

• Values influence our goals; our decision making; and our motivations.

• What are the values of the legal profession?
Schwartz’s Value Circumplex

http://valuesandframes.org/handbook/2-how-values-work/

Universality: Understanding, appreciation, tolerance, and protection for the welfare of all people and for nature.

Benevolence: Preservation and enhancement of the welfare of people with whom one is in frequent personal contact.

Tradition: Respect, commitment, and acceptance of the customs and ideas that traditional culture or religion provide the self.

Conformity: Restraint of actions, inclinations and impulses likely to upset or harm others and violate social expectations or norms.


Power: Social status and prestige, control or dominance over people and resources.

Achievement: Personal success through demonstrating competence according to social standards.

Hedonism: Pleasure and sensuous gratification for oneself.

Stimulation: Excitement, novelty, and challenge in life.

Self-direction: Independent thought and action—choosing, creating, exploring.
Kholberg’s levels of ethical awareness

http://mdeering.weebly.com/lawrence-kohlberg.html

Level 1: Pre-conventional morality
- Right and wrong determined by rewards/punishment
  - Stage 1: Punishment/obedience. Whatever leads to punishment is wrong
  - Stage 2: Rewards. The right way to behave is the way that is rewarded

Level 2: Conventional morality
- Views of others matter. Avoidance of blame; seeking approval
  - Stage 3: Good intentions. Behaving in ways that conform to “good behaviour”
  - Stage 4: Obedience to authority. Importance of “doing one’s duty”

Level 3: Post-conventional morality
- Abstract notions of justice. Rights of others can override obedience to laws/rules
  - Stage 5: Difference between moral and legal right. Recognition that rules should sometimes be broken
  - Stage 6: Individual principles of conscience. Takes account of likely views of everyone affected by a moral decision
Final thoughts…

• Access to justice no longer available to all.
• Should justice and more particularly, social justice, be a central value of the legal profession?