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'It's been emotional' – An ethnographic pilot study of students working in a university law clinic

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WINNER
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2013
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- **Lawyer/client interaction** represents "law in action" more than any examination of legislation or judicial decisions (Goffman 1959: 739).
- "... law is not what judges say in the reports but **what lawyers say - to one another and to clients in their offices**" (Shapiro 1981: 1198).

- Pilot Study & Conceptual Background
- Emotionally detached approach
 - Protecting emotional self
- Emotionally involved approach
 - Collision of legal and social spheres
 - Handling client's emotions.
- Emotions & legal education
- Perceptions of the legal practice field
- Initial observations

Pilot Study & Conceptual Background

- X2 post-interview meetings.
- X1 ethnographic interview.
- Analysis of the **students and supervisor's perceptions and interpretations**.
- Examining how participants (re)negotiate knowledge at the margins of practice (Gherardi 2014).
- Considering the different spheres of knowledge through Bourdieu's concepts of habitus and capital [(habitus)(capital)] + field = practice] (Bourdieu 1986).
- Looking at how participants rationalise their social action through Weber's conceptual model of rationality (Brubaker 1984).
 - Zweckrational (conscious, calculating attempt to achieve desired ends with appropriate means);
 - Wertrational (conscious belief in the intrinsic value of acting in a certain way regardless of the consequences);
 - Traditional (long standing habits);
 - Affectual (strong feelings).

The emotionally detached approach

- Issue of procedural law.
- Tragic circumstances.
- Client to the point and knowing what she needs.
 - **Supervisor 2:** ... some clients aren't as to the point, are they, and she was very much, this is what I need...
- Pertinent facts not limited to a specific time period.
- Identified appropriate order.
- Identified and considered likely objectors.
- What client needs is available through the law.
- Legal sphere and social sphere not divergent – logically comply.

- 'Detached concern' (See Westaby 2010; Westaby 2014)
 - **Supervisor 2:** *That's awful his mum dying at [X] of [Y] very suddenly... just so upsetting. But if, if, erm, and so there's [x] kids, [y] of them she said were with a younger, that were staying with... Yeah they are obviously his kids and the other [x] are from a former partner.*
- Trying to draw out positives
 - **Student 4:** *They are living, like they are not far away from ... [inaudible] they could see ... [inaudible] quite often.*
 - **Supervisor 2:** *So anyway, but I mean it's, if there's anything good about it, it's lucky that, erm, he's spent so much time with [the client], with [the client]... Because every weekend, that's unusual for a child... to spend every weekend with [the client]...*
 - **Supervisor 2:** *She's obviously hoping that [x] will eventually be well enough. Yeah, I mean, the [x]'s obviously, as well, might have potentially have objected but it sounds like he's just very happy that [the client]s taken over doesn't it?*
- Expressing admiration for the client
 - **Student 4:** *I think [the client] kind of thinks that he's, he's getting better but he's not fully fit as well... so she's kind of stepped up.*
- Zweckrational approach to protecting the self (Hochschild 2003) and possibly (non) rational traditional.

The emotionally involved approach

- Issue of substantive area of contract law.
- Circumstances of the case.
- Client had been deceived.
- Students interested in establishing what the client thought before and at the time of the agreement.
- Client interested in explaining how she had discovered she had been deceived.
- Two spheres colliding:
 - Legal; and
 - Social.
- Students had to deal with client's emotions for the benefit of:
 - Extracting the relevant information at the interview; and
 - Advising the client on the legal situation.

- For the legal sphere, most important factor is what the client **thought** was happening at the time of the transaction.
 - **Student 1:** *It was much more difficult than I thought it was going to be, that, errmm, I think it was difficult getting from her because obviously she was saying everything now that it has all happened and it was **really important to try and understand what she thought at the time ... and I do think at the time she thought she was lending that money to [x] and that [x] would pay it back... not him... which is the problem.***
- For the social sphere what **actually** happened to the client was most important.
 - **Supervisor 1:** *She was projecting in a sense what she's doing is **projecting what actually happened... onto what she thought was happening... at the time to try and make sense...***
- Logic of the legal sphere mismatching with the logic of the social sphere.

- Interactions between lawyer and client can represent an emotional battle of wills (Sarat and Felstiner 1988):
 - Clients want to focus on character and personality dispositions and explain how they were the victims of external circumstances.
 - Lawyers seek to avoid negotiating or engaging with the reality of the situation and prioritise rules analysis and problem solving.
- The law and justice are not homologous.
- Clients can suffer hysteresis and disorientation from habitus mismatch (Bourdieu 1990).

- **Developing mechanisms to deal with disorientation.**
- 'Keeping clients on track'.
 - **Student 1:** *Yeah. It's er... not as straightforward as it looked. Was it? Errmmm, I think it was quite hard to keep the client on track... and to this is what is important.*
 - **Supervisor 1:** *... So if you hadn't of explored first of all... whether there was agreement you would have gone seriously off track. Wouldn't you?*
- **Testing the client's version of events.**
 - **Student 5:** *I think it's... well from those two cases it's that you can believe what your client says but sometimes, of course some things are slight... I wouldn't say exaggerated or that they're lying but they're maybe taken out of proportion for instance, or they're slightly deterred or maybe just can't remember so sometimes maybe you can't take exactly your client's word for it...*
- **Confirming, corroborating and affirming or rebutting, negating and discrediting through documents.**
 - **Student 5:** *... so sometimes maybe you can't take exactly your client's word for it, you've got to ask for the documents and if they've got the documents, get them to send them in, so you have a full picture of what's happened in the case.*
- **Zweckrational to establish all the information relevant to the legal problem.**
- **Legal issue becomes its own independent entity with the client but a witness to the events.**

- **In the interview**
- The importance of recognising and displaying emotions to obtaining the appropriate information.
 - **Student 5:** ... *You have to be sympathetic and empathetic towards your clients. You have to have great interpersonal skills... get your client to open up to you.*
- Understanding how client's feelings can be characterised in her actions.
 - **Supervisor 1:** *She was feeling very embarrassed.*
 - **Student 1:** *Oh she said... I don't... before we start I don't have green written on me and I don't have mug written on me.*
- Handling client's feelings and adopting mechanisms to put the client at ease.
 - **Supervisor 1:** ... *I thought you handled that really well actually because she was clearly, she felt very embarrassed didn't she?*
 - **Supervisor 1:** *So I think, I think when you said you know, the world might be a better place if... we all had the benefit of hindsight, I think that was a really, it was quite a mature thing to say... but I think it sort of, you know, made her feel also that she was... we weren't... nobody was judging, you know, nobody was judging her... for motivations or anything like that... you were just trying to establish the facts and you weren't passing a judgement...*
- Zweckrational purpose of acknowledging emotions and feelings from the social sphere to develop strategies to extract information relevant to the legal sphere.

- **For the advice**
- Taking account of the clients feelings.
 - **Student 1:** *Rather than just saying you haven't got a case. It's important to say these are the reasons why... we have considered it in considerable depth and this is, this is the conclusion we've come to. I don't think you should, if you are telling someone they don't have a case you should ever leave it, at, at that... You should always tell them... why you don't think it is worth pursuing*
 - **Supervisor 1:** *The challenges. They are, I mean they are massive legal challenges... for her and the risk, it, there are risks as well but to do that in a way that is clear... and professional, also has a bit of warmth...*
- Displaying emotions not considered part of professionalism (Westaby 2010; Westaby 2014).
- Wertrational – for the intrinsic value of the action.
- Zweckrational – so the client may understand the legal position better & be able to take control of the problem/demonstrate cultural capital to the supervisor.
- Trying to empower the client.

- Distinguishing approach from empathy
 - **Supervisor 1:** ... *it's not empathy, it doesn't go as far as empathy but there's a sort of, you know, there's a connection...there, you know, that this is going to be, this is probably going to be very disappointing, you know... for you ...*
- Predominant characteristics in practice “... assertiveness, rationality, neutrality and strength” (Sommerlad 1994)
- Cultural capital in power based physical appearances & actions (symbolic violence) (Sommerlad 2007).
- Empathy considered more relevant to women than men & female gender attributes associated with negative cultural capital in the professions (Thornton 1996; Woods 1993).
- Zweckrational approach where understanding client's emotions is orientated towards the intended consequences of extracting the information to analyse the legal problem.

- Contrasting seeing emotions in the LAC with the academic degree.
 - **Student 1:** *And I think that's the big difference to actually being in here and doing it with real people to seeing it on paper is that... there's emotions behind these people... and she did feel quite stupid... and embarrassed for what... she admitted, you know, I haven't even told [x], I haven't told [y] until last week because I felt so embarrassed about it.*
- Dealing with emotions in the LAC is difficult.
 - **Student 1:** *If that was a question in an exam... you could, you know, break it down quite easily. You know, but its not a question in an exam.*
- Emotional responsibility
 - **Student 5:** *... in... academics, when you're looking at a case, it's not real, it's a lot, it's a case... I'm studying this case for my exam, that's basically what it is. When you have it at the law clinic, this client's real, you need to help this client. If this client doesn't get the help where are they going to go? And I think that's what's the big difference like this is going to directly affect your client.*
- Suggesting emotions cannot be factored in the academic degree.
 - **Supervisor 1:** *You can't factor that into an exam question. Or a scenario, in a seminar... whatever.*
- Doxa that emotions, sensitivity and recognition of feelings not relevant to legal education? (Bourdieu & Passeron 1979; Sheldon & Krieger 2004).

Perceptions of the legal practice field

- Money making pressure.
 - **Student 5:** *Well, from the drop in sessions, getting to know solicitors and working and seeing how they work, like if it wasn't for the clinic I probably wouldn't have met these solicitors or seen how they operate and get a different outlook on the law and look at it from our point of view, where it is about helping clients, and then looking at it from solicitors points of view where, well some solicitors, where they are a business and they have to make money.*
- Time pressure.
 - **Supervisor 2:** *It was fast but you don't always need, I think... people... think you should go on for a long time... Actually when you are in practice you get it ... you get all the information as quickly as you can...*
- Perceived injustices.
 - **Supervisor 1:** *Could you imagine if actually not only were you doing that but you were always, you were also going to have to ask her for £500 on account of costs? Can you imagine that scenario?*
 - **Student 2:** *Actual worse. Not really, you can't help her, you are going to have to charge her as well.*
 - **Supervisor 1:** *Or you had to ask for that before you could even have that interview... that meeting with her.*

- Surrounding fields = legal education & legal practice.
- Potential conflicts:
 - Emotionally detached (legal education & legal practice) v Emotionally involved.
 - Extrinsic reward (legal education & legal practice) v intrinsic reward (See Schwartz 1990).
 - Being able to pay (legal practice) v Not being able to pay.

One final thought...

- **LexisNexis Bellwether Report 2016**
- **What do clients value most when dealing with a lawyer?**
- Lawyers answered providing a “clear indication of costs/fixed fee” (Lexis Nexis 2016: 28).
- Clients answered a **"clear understanding of my particular needs"** (Lexis Nexis 2016: 28).
- 77% of clients agreed that **“Lawyers don’t recognise that they are operating in a service industry.”** (Lexis Nexis 2016; see also Menkel-Meadow 2014).

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