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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 6\textsuperscript{th} November 2014, covered in the Law Society Gazette, 10\textsuperscript{th} 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 wellbeing 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

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

• What are the values of the legal profession?

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/

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Inspiring tomorrow’s professionals

Inspiring tomorrow’s professionals
Kholberg’s levels of ethical awareness

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