NURTURING PROFESSIONALISM THROUGH CLINICAL LEGAL EDUCATION

for the International Journal of Clinical Legal Education
and
European Network for Clinical Legal Education
Joint Conference,
Olomouc, Czech Republic
July 17, 2014
“What can [clinical] legal educators do to instill in law students a sense of moral responsibility toward their [future] clients, the legal system, and society?”

Graham
Why?

- The public believes lawyers to be untrustworthy, self-centred and in it for the money.
- The costs of legal advice outstrip all but the ability of the rich to pay -- and something must change.
- The need to redress the needs of the marginalized and disadvantaged through law.
- Moral development is an indicator and requirement of higher learning and professional practice.
Aims of this presentation:

- argue that moral development should be an explicit goal of a clinical legal education
- establish that moral development is an essential element of professionalism, a set of qualities that should be found in legal professionals
Aims of this presentation:

- submit that we teach professionalism through a “hidden curriculum” and that we can and ought to teach it directly
- suggest approaches to teaching and learning that are likely to influence moral development
- conclude that clinical legal education is the preferred means of teaching professionalism (and moral development)
Goals for participants

- Participants will seriously consider:
  - the incorporation of the direct teaching of professionalism in their teaching
  - the conduct of research into the effects of legal education and CLE on the development of professionalism in their students
Goals for participants

- Participants will seriously consider:
  - undertaking the inclusion of a systematic approach to learning/teaching professionalism from experience in CLE through reflection
  - establishing strategies for their own professional development and that of their colleagues that will help secure the professionalism agenda in their clinics and law schools
  - recruiting students and colleagues with a commitment to moral behaviour
The critique upfront

- It’s too late to affect ethical commitment and professional responsibility, our students are too old and
- Moral character is essential to ethical conduct, but “established early in life in the context of the family.”
- Teaching moral development = inculcation or pushing ideologies (Carnegie)
The critique upfront

- it’s wrong and unworkable to try to teach morality; it is personal
- it’s not as important as.....
- why bother? -- effective teaching will likely be undermined, negated or transformed by poor practice experiences (Zemans/Carlin)
Professionalism is...hard to define:

- attention to humanistic needs, from promoting social justice goals in the profession to treating one another with respect

- professionalism involves "complete virtue" or "excellence" in virtue. (Aristotle)

- knowing how to act at the "right time," with the "right motive," in the "right way," with "reference to the right objects," and "towards the right people."

  in Graham
Professionalism is, in part, characterized by:

- intelligence
- integrity
- maturity
- thoughtfulness
- courage
- honesty
- dependability
- loyalty
- conscience

- openness
- sensitivity to clients
- trustworthiness
- willingness to take responsibility
- humility
- respectfulness
- sensitive moral judgment
- respect for privacy and confidentiality

Chief Justice’s Task Force: Ontario, Canada
Overall, professionalism is behaving…:

with commitment to:

- expert knowledge, accountable
- respect for rule of law, social justice
- self-regulation and commitment to ethical practice
- fiduciary duty to altruism
- evincing core humanistic values
- client centredness: meet needs, promote client autonomy
- autonomy, self-efficacy, self-authorship, self-reflection

Hamilton and others
Morally developed behaviour:

- behaviours and feelings are included
- ethical behaviour integrates:
  - moral sensitivity -- ability to recognize ethical issues
  - moral commitment -- determination to do what is right
  - with moral behaviour -- skills at implementation
“In the almost exclusive focus on medical ethics as problem solving or ‘dilemma ethics’, the ethics of character has been lost. The Hippocratic tradition is rooted in virtue ethics where the moral agent, rather than the principles for problem solving, is central…”

Kenny, N et al.
Insights into the process moral development

- Aristotle  } moral philosophy
- Kohlberg  } moral development, social psychology
- Gilligan  } moral development, social psychology
- Perry  } educational psychology
- Kegan  } developmental psychology
- Rest  } moral psychology
- Krathwohl  } educational psychology
- Magolda  } educational development
- Bandura  } social cognitive theory
- Hall  } anthropologist, cross cultural researcher
Aristotle and others.....

- action and habitual use are prerequisites to understanding ethics
- virtuous actions must be integrated with practical reason before a person can become completely virtuous: complete virtue involves listening to the dictates of reason.

Graham
Moral development

- We learn morality and professionalism.
- It is a staged, developmental process.
- We proceed through stages at varying rates.
- Not all proceed to the last stage.
- All of the approaches to development are descriptive, mostly derived from empirical research.
- Derived from thought and action.
Kohlberg cognitive—equity, justice and right

Post-conventional
personal conscience;
self-determined
behaviour

Conventional
actions approved by others,
trust, loyalty important; duty,
doing right thing

Pre-conventional
receive rewards/avoid punishment
Gilligan cognitive connection, care response

**Post-conventional**
- Non-violence, harm neither self nor others
  - (transition – tension: caring for self and others)

**Conventional**
- Self-sacrifice is good, more care towards others
  - (transition from selfishness to caring for others)

**Pre-conventional**
- Individual survival
Perry cognitive+ – commitment and relativism

Commitment
knowledge integration, reflection, openness
Relativism
all answers evaluated using evidence, reason, etc.
Multiplicity
conflicting equal choices, learn how to choose, guided by teachers
Dualism
answers from external authorities: good/bad, right/wrong
Krathwohl affective – internalizing a philosophy

- Characterization by value set – integrating ideas, beliefs and values
- Organization: making choices
- Valuing: committing to a value
- Responding: show interest
- Receiving: awareness
through pedagogy educators can intentionally help learners to advance developmentally

“Research also provides evidence that from the early to mid twenties, peers and mentors can still shape or influence individual’s values.”

via White et al. p. 601

teachable/learnable according to Krathwohl
Generalizing about moral development

“regardless of the number of stages, positions, or perspectives, the sequence invariably suggests movement from the dualistic, objectivist view of knowledge to a more subjective, relativistic stance and ultimately to a contextual, constructivist perspective of knowing.”

Hofer in Casey p. 321
Generalizing about moral development

- from externally to internally determined
- from right and wrong to relativist and on to personal
The *hidden* curriculum

...*unavoidable* and *pervasive*
Informal learning in the hidden curriculum

“The main agent of informal learning is a model used for imitation. Whole clusters are learned at a time, usually without awareness that they are being learned at all or that there are patterns or rules governing them.”

Edward T. Hall “The Grip of Culture”
Bandura’s theory of models (examples)

"... most human behavior is learned observationally through modeling: from observing others one forms an idea of how new behaviors are performed, and on later occasions this coded information serves as a guide for action."

Albert Bandura, Social Learning Theory, 1977
From models to role models

“Example is not the main thing in influencing others, it is the only thing.”

Albert Schweitzer in *Thoughts for Our Times*, p. 51

The clinical legal education literature also deals with role models, largely in the context of skills teaching; however much less so respecting the hidden curriculum and its effects on the development of professionalism.
Role Models

A role model is “a person considered as a standard of excellence to be imitated.”

“overlap between teaching and role modelling, but … the latter [is] more *implicit* and more *encompassing*.”

A role model articulates values silently.

Role models reflect character and morality

Wright and Carrese

Modeling or role modeling is what teacher *does*. 
“[V]irtuous physicians both model good behaviour and comprehend the reasons for their choices; virtuous physicians can explain why they are acting in a given manner, and are motivated by concern for the whole patient.

Role modeling is at the heart of professional character formation.”

Kenny, N et al.
Imitating good people

- A person learns virtues by **imitating** good people and good actions . . . . After a while the habit of acting in a good way become (sic.) one's own. At this point the student of virtue has made part of her or his moral potential a disposition, and when he or she then reflects upon the nature of the good actions he or she can understand the virtuous character.

Graham quoting Condlin
Role models practise what they teach

- the physician literature suggests that senior practitioners are very influential
- positive role models demonstrate expertise, empathy, and positive communication processes with patients and their families as well as with co-workers
- positive role models’ teaching styles equally humanistic
- a teacher must be alert to acting intentionally as a positive role-model(er)

Jochmemsen et al.
“For young physicians to become more humane and effective healers, they must demonstrate professional conduct, which they are unlikely to do unless their education also explicitly nourishes motivation and virtue. My criticism of the professionalism movement is that, in the attempt to render professionalism more quantifiable, it may use skills and practices as surrogates for virtue.

Becoming a physician involves witnessing, and not just behaving.” (talk and walk the talk)
While [in medicine] the explicit curriculum focuses on empathy, communication, relief of suffering, trust, fidelity, and pursuing the patient’s best interest, in the hospital and clinic environment these values are **largely pushed aside by the tacit learning** of objectivity, detachment, self-interest, and distrust — of emotions, patients, insurance companies, administrators, and the state.

Coulehan

REVERSE IN LAW?
The law school’s hidden curriculum

Law school’s (non)moral agency
- rational/thinking like a lawyer
- law not justice
- mono disciplinarity
- objective
- dispassionate, uncaring
- not a healing/helping profession
- decontextualized
- dehumanizing
The law school’s *hidden* curriculum

Law school’s (non)moral agency

- psychological battering
- win/lose: competitive
- *my* client over all, whatever works
- lawyer centred/hierarchical
- benefit of *status quo* interests
- work/life imbalance
- Carnegie’s moral lobotomy: “smart people without a purpose”

but see Evans and Palermo Australia
Legal education contributes…

- “Longitudinal studies suggest that law school has a corrosive effect on the well-being, values, and motivation of students, ostensibly because of its problematic institutional culture.”
- “…the emotional distress of law students appears to significantly exceed that of medical students and at times to approach that of psychiatric populations.”

Sheldon and Krieger p. 883
Counter-attitudinal advocacy

- dissonance caused by arguing and acting on views that are inconsistent with one’s own beliefs may force change of those beliefs to conform with what is argued or done

Chemerinsky referring to Festinger
Learning professionalism

Students need:

- to receive explicit teaching
- to witness role models reflect on their own understanding of role models
- reflect on their own experiences, including the experience of observing their role models
- to focus on and be exposed to positive professionalism

Quaintance et al.
Constructivism and collaboration

- in practice the supervisor and student work together
- active learning helps learners achieve self-authorship
- self-authorship connects to constructivism as self-authors struggle to make sense of things in light of their own knowledge and experience
- here students construct their own values and standards from their experience and its interpretation

White et al
Self-reflective practice

- “A reflective practitioner is somebody who considers who they are, where they are, what they’re doing, their position in the community, the purpose of the work they are doing and how they are doing it, and takes it as an ongoing process of learning and moving forward.”

- “[X] remarked that reflecting on one’s values also allows for the integration of ethical concerns.

Leering pp. 97-98
Integrative self-reflective practice

- “Emphasizing integration recognizes that reflective practice is actually a developmental path to a higher level of professionalism.”

- “Reflective practice then becomes ‘a way of being, an orientation,’ supporting a lifelong journey of learning, professional growth, and commitment to action.”

- Learning to learn for life
Integrative self-reflective practice

“The integrated reflective practitioner is self-aware and critically reflects on practice and theory as a self-directed lifelong learner, reflects collectively and in community, and takes action to improve his or her practice. Reflective practice becomes a ‘way of being.’”

Leering 99-100
Modes of reflection

- Schon (before-), in- and on-action (self-directed)
- Reflection on practice (skills)
- Critical reflection (on knowledge)
- **Self-reflection** (on values, attitudes, beliefs)
- a variety of stances, perspectives, points of view

see Leering

Casey, Timothy. *Reflective Practice in Legal Education: The Stages of Reflection* offers another way to think about reflection.
The Integrative Reflective Practitioner

Reflecting in Community

Reflection on Practice

Self-Reflection

Critical Reflection

see Leering
A Reflective Professionalism Cycle

1. DESCRIPTION: What did I do? How did I act? What was the result?

2. REACTION: How do I feel about how I acted/what I did?

3. EVALUATION: Did I do the right thing, in the right place, at the right time, in the context, etc.?

4. ANALYSIS: Were the consequences as expected?

5. CONCLUSION: What else could I have done? What else should I have done?

6. ACTION PLAN: If the same thing arose again how would I act?
Stages of reflection -- Casey

#1 Competence
Did you meet the standard?

#2 Difference/choice
Were there different ways? When did you choose? Did you make choice consciously?

#3 Internal context
Why did you choose it? What about you and your background influenced your choices?
Stages of reflection -- Casey

#4 External context
Why did you choose it? How did others’ views affect your choice?

#5 Societal context
Why did you choose it? How did societal views affect your choice?

#6 Metacognition
How has your thinking changed as a result of what you did? How has your thinking process changed as result of reflections?
Some mediums for reflection

- reading, listening to narrative/stories
- story-telling
- small groups or learning communities
- journals
- clinical rounds
- debriefing
- the one-minute exam
- Aristotle’s dialectic
Storytelling

- “Storytelling is one way we deal with our own experience and understanding of the world and of ourselves in the world... We find out who we are as persons... the way we imagine ourselves, and the way we are able to understand and reflect on the way our lives unfold.”
  
  Elkins

- Storytelling both in small groups of peers and with facilitators and in journals provide opportunities for self-reflection and exploration.
  
  Tyler and Mullen
Our teachers’ stories are powerful study findings

- spark new ideas about professionalism
- reinforce previously held conceptions
- suggest ways to resolve future problems
- heighten student commitment
- offer inspiration
- provide enjoyment
- deepen relationships with supervisors
- develop knowledge, attitudes and skills
- reinforce role model role

Story telling both appreciative inquiry and situated learning.

Quaintance et al.
Are *we* suited to teach professionalism?

- we cannot avoid it
- the hidden curriculum will overtake us
- intention
- attention
- skills
- underlying values
- behaviour
- schemas
- we must know ourselves and be open
Becoming a role model in CLE

- make clinical trainers aware of their [role] model function
- continuous awareness of the role model task vital to role modeling
- key attributes of positive role models = foundation of training
- assess an instructor's improvement after the intervention
- facilitate reflection on the behaviours modeled
Becoming a role model in CLE

- use positive role model criteria to assess and provide feedback
- develop an instrument
  - for enhancing clinical trainers’ awareness of being a role model
  - to give trainers feedback on their role-modeling behaviours
- recommend incorporating the attributes into a tool to help trainees determine whether to imitate a trainer’s role-modeled behaviour.
Learning professionalism in practice

Students need:

- to receive explicit teaching on professionalism
- to witness role models reflect on their own understanding of role models
- to reflect on their own experiences, including the experience of observing their role models
- to focus on and be exposed to positive professionalism

Quaintance et al.
“It is helpful to remember that what the student [ultimately] does is actually more important in determining what is learned than what the teacher does.” (Shuell, 1986 cited in Biggs, 2003, p. v)

“Learning takes place through the active behaviour of the student: it is what he [ultimately] does that he learns, not what the teacher does.” (Tyler, 1949 cited in Biggs, 2003, p. v)

Research and development agenda

- effects of law school on values, beliefs and morals
- key attributes of positive role models in law
- select students by their stage of moral development
- appoint faculty by their stage of moral development
Research and development agenda

- train role models – how, by whom, with what characteristics?
- train clinical faculty
- widen the clinic opportunities
- apply in post admission CPD
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