



Drawing a line

In the third and final installment of his series examining social work, human rights and the law, **Allan Norman**, calls on social workers to question unjust laws and establish their own moral frameworks

Stanley Milgram's experiments in obedience in the early 1960's are infamous. Subjects were asked to apply electric shocks to participants who answered questions wrong. The shocks increased gradually up to 450 volts. When the subjects queried who was responsible, the experimenter assumed full responsibility. Despite distress, no-one backed out before 300 volts and over 60% administered shocks (as they believed) all the way to 450 volts. Milgram wanted to explore the famous Nuremberg defence of Nazi collaborators, that they were 'only obeying orders'.

Milgram demonstrated beyond all doubt the capacity of ordinary people to participate in unimaginable horror, when acting under the instructions and authority of someone else. Are we social workers any better than Milgram's subjects? Might social work have found a place in the concentration camps, offering support to people waiting for the gas chambers, or making a case that apartheid was consistent with anti-discriminatory practice? Closer to home, the issue for this final article is whether we in the UK should accept the authority of the laws that bind us.

My clear conclusion is that the proper response to Milgram is to make a

commitment that you will never obey authority unquestioningly, and to establish for yourself a moral framework against which orders can be tested. If we accept our laws as having an authority that we need not question, we are on a path of dangerous blind obedience, like Milgram's subjects.

Anarchy?

All very well, but if we all decide for ourselves the extent to which we do or do not obey the law, won't we have anarchy? Can't the law itself provide a moral framework within which social work can safely operate?

My previous two articles were set in the context of Section 21 of the National Assistance Act, so let's return there one more time. The power of a social services authority to provide a destitute person with accommodation and subsistence support under this section has been expressly restrained by parliament, at least twice. Parliament legislated in 1999 to prohibit

support to people subject to immigration control, whose needs arose solely because of destitution; then in 2002 to require the withholding and withdrawal of support from people in certain 'excluded classes'.

It is worth reiterating that if social workers were to make autonomous human rights decisions, and to challenge unlawful practices, many of those currently denied help would receive it. But not all of them, and clearly it is the intention of the legislation that some people are to receive no support, accommodation or subsistence whatsoever.

A report by the mayor of London in 2004 described the Government's use of destitution as a tool of immigration policy as 'Destitution by Design'; Lord Justice Jacobs, in the Court of Appeal, described it as "abhorrent, illogical and very expensive". But by what moral standard is it appropriate for us to question the laws passed by parliament?

Lord Justice Bingham, the UK's most senior law lord, set out his vision of what was

"If, as social workers, we accept the laws of our country as having an authority that we needn't question, we are on a path of dangerous blind obedience"

meant by the 'rule of law', in a speech to the Centre for Public Law, University of Cambridge, in November. There were, he said, eight elements, including that the laws of the land should apply equally to all; that the law must afford adequate protection of fundamental human rights; and that there must be compliance by the state with its obligations in international law.

The rule of law is said to be one of the enlightening principles underpinning our constitution. It is essential to appreciate that the rule of law is not synonymous with the rule of parliament; indeed the principles set out by Lord Bingham are principles against which legislation can be tested; it must, therefore, be possible to question parliament without undermining the rule of law.

I have already bemoaned, in my first article, how legislation on the application of Section 21 is inconsistent with international human rights standards. I have already observed, in my second article, how the intent of parliament has been thwarted by successful challenges in the courts. I suggest, then, that it is possible to uphold the rule of law while simultaneously questioning the authority of parliament.

Let's further explore another aspect of the rule of law identified by Lord Bingham – that the laws should apply equally to everyone. Anti-oppressive and anti-discriminatory practice is well-established as a core value of the social work profession. Yet these laws are inherently oppressive and discriminatory.

Discrimination

Apart from anything else, they amount to indirect race discrimination as defined in the Race Relations Act. The indirect discrimination is lawful because immigration control is excluded from the scope of that Act. Arguably, such discrimination is, therefore, also permitted for the purposes of the General Social Care Council Code of Practice, paragraph 5.5, which says we must not 'discriminate unlawfully or unjustifiably against service users, carers or colleagues'. So, does the fact that the discrimination is lawful make it consistent with anti-oppressive and anti-discriminatory practice? I suggest it does not, and that there is an inherent conflict between what legislation dictates and what our professional standards expect of us.

If I have been able to bring you with me, you will have arrived at an acceptance that we have a moral duty not to unquestioningly accept the will of parliament, that legislators themselves are bound by the rule of law, that our professional obligations might be inconsistent with legislation, and that it is possible to put forward all these propositions without descending into anarchy.



“Stanley Milgram (above) demonstrated beyond doubt the capacity of ordinary people to participate in unimaginable horror, when acting under the someone else’s instructions”

What exactly do we do then, when we find ourselves in conflict with the laws that bind us? The BASW Code of Ethics requires us to 'bring to the attention of those in power and the general public, and where appropriate (to) challenge ways in which the policies or activities of government, organisations or society create or contribute to structural disadvantage, hardship and suffering, or militate against their relief'. The Code appears to anticipate conflict with the Government, and creates an obligation to be an activist for change – no invitation there to unquestioningly accept the law.

At a personal level the Code calls on us to be activists for change. Whether it be the treatment of people subject to immigration control, the criminalisation of our service users for acts that would not have breached the criminal law but for the existence of an ASBO, or any of the other controversial issues associated with social work practice, be prepared to challenge the Government.

Responsible campaigning may be characterised as being peaceful, and being public. The latter means both that it is for public rather than personal or private benefit, and that it is in the public domain. The judgement of the House of Lords in the last few weeks in respect of the Fairford protests (against the bombers flying to Iraq from RAF Fairford) held that the protesters were unlawfully detained and there had been a breach of their human right of assembly.

Even so, that road is not for many, in which case it is important to at least ensure you are educated in the issues with which you grapple and that you belong to the cause. If you work with asylum seekers, have you read *The Destitution Trap*, produced by Refugee Action, or, if you work in health care, *First Do No Harm*, published by the Refugee

Council and Oxfam? Likewise, if you work with children, ensure you read *The End of the Road*, a 2005 Barnardos publication on the impact on families of Section 9 of the Asylum and Immigration Act. All published relatively recently, the publications were by, or supported by, charities and campaigning groups needing your support. Be educated, belong, support, and if you can, be active.

At an organisational level, too, be an agent for transformation. Seriously, it is not impossible to construct services around a model in which the social worker assesses need rather than rations services, human rights decisions are made by social workers rather than lawyers, and decisions to deny based on rationing or rights are decisions calling for advocacy, not implementation.

Advocacy

At an individual level, be an advocate, not a bureaucrat. Have you found it strange to note how, increasingly, service users are held to need an advocate in their dealings with social workers? Why are we not their advocates? Where you have discretion, use it sympathetically; where the service user has rights, make him or her aware of them; where you believe these rights are being denied, assist him or her to find an advocate. Remember, it is consistent with professional practice to assist your client to get the help they need to challenge your decision, consistent with good management to question the validity of internal policies, and consistent with the rule of law for the courts to review the application of legislation in the light of international human rights standards.

What we cannot do is simply obey orders. The Nuremberg defence is no defence. And as Lord Bingham expresses it, under the rule of law "the state for its part accepts that it may not do... all that it has the power to do but only that which laws binding upon it authorise it to do". If correct, this is a reassuring conclusion to all of us who devote our professional lives to the service of the law. For it means that we are "the guardians of an all but sacred flame which animates and enlightens the society in which we live".

Allan Norman is a social worker, a solicitor, and a member of BASW's Standards and Ethics Board. His practice, Celtic Knot (www.celticknot.org.uk), is a combined law firm and social



work consultancy. He also works for the specialist community care charity B-Mag (www.b-mag.org.uk). Allan will be speaking on 'Human Rights: social work does it for the lawyers' at the BASW Independents' Forum conference, 3 March 2007.