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Author/Presenter Positionality Statement

This presenter looks at ethical obligations through the lens of her work as researcher and practitioner in access to justice specifically work that focuses on those who are the most excluded.

Currently around the world, they are disproportionately least likely to gain legal support and or expertise. This is in contrast to repeat players in the legal system such as governments and well-resourced entities such as corporations. The latter who use most of taxpayer money in their use of courts and other administration at the same time as many in the population which the research tells us are likely to have multiple, cascading and intersecting legal issues get little if any help at all.

I have worked for legal aid, NGOs and legal assistance services as well as been a litigation lawyer, consumer lawyer and worked for private law firms. My research and evaluation work is around effective legal practice and impacts this can have if done well on the lives of community members.

Would a rise in ethical lawyers help public trust and stereotype reductions.



Problems with access to justice around the world present a significant barrier. What is the ethical lawyers' role here?

Lawyers have a fundamental ethical obligation to ensure that they address these barriers in the ways in which they work.

Brief Examples: United Kingdom

The constitutional principle of the rule of law.

Moorhead et al note (see references in this Power Point) individual lawyers' duties to the rule of law are particularized in requirements and differ amongst the numerous regulators.

This fragmentation (9 regulators including the Legal Services Board of England and Wales - I believe though is not helpful).

Moorhead et al. note that integrity, independence, and honesty are central to the rule of law.

Moorhead et al identify (page 4-5) ways in which lawyers already need to behave for example: Discriminating against potential clients; Representing likely wrongdoers with the effect of knowingly or recklessly enabling and/or being complicit in their continued wrongdoing; Misleading the court or others, Abusing or taking unfair advantage in pre-action and litigation action etc.

Problems with access to justice around the world present a significant barrier. What is the ethical lawyers' role here?

Moorhead et al state:

These values inhibit: misleading courts; the making of false claims about law; the exploitation of power in the name of law when it is inappropriate; the putting of powerful organisations beyond legality and legal scrutiny; and improper private ordering that prejudices rule of law values. Honesty, integrity, and independence are essential to facilitate good governance of the state, organisations, and individuals according to the rule of law, and can be supported by proportionate regulation.

Problems with access to justice around the world present a significant barrier. What is the ethical lawyers' role here?

- Lawyers have a fundamental ethical obligation to ensure that they address these barriers in the ways in which they work.

Examples: Australia

- Australian Solicitors Conduct Rules (ASCR)

3. PARAMOUNT DUTY TO THE COURT AND THE ADMINISTRATION OF JUSTICE 3.1 A solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.

4. OTHER FUNDAMENTAL ETHICAL DUTIES 4.1 A solicitor must also: 4.1.1 act in the best interests of a client in any matter in which the solicitor represents the client; 4.1.2 be honest and courteous in all dealings in the course of legal practice; 4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible; 4.1.4 avoid any compromise to their integrity and professional independence; and 4.1.5 comply with these Rules and the law.

Problems with access to justice around the world present a significant barrier. What is the ethical lawyers' role here?

Australia (cont.)

- Under... Conduct Rules ... lawyers have duties to the administration of justice. Accordingly, legal professionals have a role in identifying systemic problems because of their explicit obligations to ensure confidence in and integrity of the legal system. Being a lawyer is not limited just to the delivery of legal services as part of an industry. Lawyers as officers of the court have a deeper ethical obligation to identify and respond to systemic problems that impede confidence in the legal system and undermine its integrity. The advocacy by lawyers for clients through law reform and campaigns for change to policy administration are core to the lawyers' ethical duties where laws are unjust and unfair. (See Curran 2017 in References below)

Problems with access to justice around the world present a significant barrier. What is the ethical lawyers' role here?

Lawyers have a fundamental ethical obligation to ensure that they address these barriers in the ways in which they work.

- For a moment think about what the ethical standards are in your own country for lawyers around the Rule of Law and Equality before the law.

Problems with access to justice around the world present a significant barrier. What is the ethical lawyers' role here?

- There is a real problem in democracies. Why? Because underpinning an effective democracy is the rule of law which requires substantive equality before the law.

Video Link CURRAN, L., 2023. [Evidence - effective justice interventions making a difference.](#)

Link <https://nottinghamtrentuniversity.wistia.com/medias/7fk20dcouc>

- Unethical Practice in the legal profession has flow on effects with poor outcomes for clients and community members from this poor practice e.g. Sub Postmasters in the UK (discussed later and in references)

The reasons this is a problem

- The overwhelming body of research demonstrates that the poor and those who experience disadvantage by reasons of their race, colour, health, disability, age etc. cannot avail themselves of the law for a range of complex reasons.
- This exposes people to poor practice, maladministration, unethical behaviour and often abuse by those who hold power and authority. This has been exemplified in Australia by the Robo-debt (<https://www.bbc.co.uk/news/world-australia-66130105>) policy of the government and in the United Kingdom by the Post Office scandal (<https://www.bbc.co.uk/news/business-56718036>).
- These practices were predicated on people not being able to access their rights or enforce them. This entices powerful and influential organisations to exploit and cover up broken or exploitative conduct.

My Research

- *Already improving Access to Justice - Evidencing how to improve outcomes to shape and inform improved service delivery, policy, and practice to address laws or poor administration to avert systemic inequality and exclusion.*
- *Evaluation and research also explores impact and effectiveness. It shares good practice to shape services and service design. It looks at innovation and human centred, responsive design working closely with philanthropy, governments, the legal profession, and charity partners.*

How:

- *Documents how (by harnessing law) inequality is addressed.*
- *Focuses on the poor, disadvantaged/vulnerable.*
- *Provides practical solutions and effective change for practice and in policy and funding decisions.*

Your reactions and views?

- Discussion and examples of what lawyers can and have done in your experience to advance the rule of law?
- Do you think this is important and why?
- What do you think facilitates/inhibits this work?

SDG relevance

SDGs, poverty (SDG 1), good health and wellbeing (SDG 3) inequality (SDG 10), collaboration (SDG 17) justice and strong institutions (SDG 17). These are also the origins of the UN in its identification of the SDGs. The social determinants of health which were integral in shaping the SDGs (see terminology section) are also included in the benchmarking.

Australia and the United Kingdom – some examples of what lawyers do and how

- important role that public interest lawyering that is connected to grassroots communities can play in ensuring accountability and ethical conduct.

Examples West Heidelberg, Albury Wodonga

- examination of multi-disciplinary practices.

Examples

- ‘the values of ‘mixed models’ of legal service delivery connected with pro bono services and community organisations.

Examples Robo debt, Bulk Negotiation

- movement or change lawyering – USA
- A role in Policy and Law Reform to Improve laws and their administration.

Australia and the United Kingdom – where things can go wrong?

- Discussion -the importance of this work as an ethical obligation of lawyers for the common good.

Australia and the United Kingdom – where things can go right

- the importance of this work as an ethical obligation of lawyers for the common good.
- good practice in access to justice measures alongside examples of what occurs when there is a failure to provide access to justice.



Discussion and Questions

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