
PERCEPTIONS OF LAWYERS [at 20]

What makes the public distrust lawyers?

1. Media coverage concentrates on criminal defence lawyers. Lawyers defending unpopular causes creates image lawyers will do anything.
2. Lawyers are portrayed earning high incomes and manipulating the law for the benefit of rich clients.
3. Lawyers are often privy to personal information of clients. Creates feelings of fear and resentment in clients. Furthermore lawyers are required to be objective and will not empathise nor sympathise.
4. Clients approach lawyers to solve problems which gives lawyers control. Also the law seems mystifying which adds to make the client feel powerless and alienated.
5. Lawyers lose cases or make negotiated settlements which are not satisfactory to clients. The lawyer is always paid.
6. There are bad and or corrupt lawyers who may be unethical and not afraid to break the law.
7. Even powerful clients hold lawyers in low esteem if the do their bidding without regard to their clients ethics.

ETHICS & MORALS IN LEGAL EDUCATION [at 24]

The separation of law from morals leads to a very narrow view of law, which is corrupting to the human spirit. A major study in the US showed that many students develop personality distortions. They become increasingly anxious and develop feelings of being overwhelmed. They view the law in terms of power.

Our present law teaching has not only failed to help the student develop good moral attitudes but instead has frequently imbued in students bad moral development.

[at 25]

Lawyers believe that they are acting morally for their clients or themselves as long as they are following the rules (the law). Shklar, J. coined the term 'legalism' 30 years ago. Legalism is the emphasis on case by case treatment of social issues and structuring of human relations into claims and counter claims. Shifts emphasis away from arbitration, negotiation and other ADRs.

But today, some movement to ADRs but traditional view prevails.

LAWYERS & ETHICAL THEORIES [at 30]

Role differentiation is a term put forward by Wasserstrom. In the context of morals, it leads lawyers to do things for their clients that they would find immoral if they acted similarly for themselves or non-clients.

[at 31]

Role differentiation leads lawyers to becoming 'amoral'. That is, lawyers have no morals when dealing with their clients. The lawyer is required to pursue with the utmost skill and aggression and diligence the client's objectives, as long as they do not violate the law (see Shklar). (Note gender issues in approach).

There are good arguments for this approach for criminal defences.

- Need to prove guilt beyond reasonable doubt.
- Everyone is assumed to be innocent until proven guilty.
- Guarantees that every criminal defendant will have his or her day in court (but with representation – *Dietrich*)

But in other areas this approach is almost certainly excessive and at times may be inappropriate. But if lawyers are to judge clients, access to law becomes subject to veto by the lawyer.

Wasserstrom points out four reasons for a moral approach in non-criminal work

1. The present institutional rules and practices are unjust, unwise or undesirable.
2. An amoral approach will encourage competitive rather than cooperative; aggressive rather than accommodating; ruthless rather than compassionate; and pragmatic rather than principled behaviour.
3. The work lawyers do is not like that of doctors. He says it is intrinsically good to cure a disease but it is not intrinsically good to try to win every lawsuit or help every client realise his or her objective.
4. By being amoral in their professional lives lawyers pay a social price because this becomes for many of them the dominant role in their personal lives.

[at 46]

GOOD LAWYERS

To become both a good lawyer and person you can not adopt a legalist position and strictly follow the ethical rules of the profession because;

1. These rules allow a large degree of interpretation by the individual practitioner.
2. There are many situations not covered by ethical rules.
3. Even if the problem is clearly covered there may be a higher moral or theological principle that governs the situation and overrides the rule.

Need to become sensitised to the presence of ethical problems.

- Ethical problems do not announce themselves.
- 'Good' is a relative term. [I believe Ross means good morals]

LAWYERS NEED TO CHANGE

[at 47]

Critical mass change is needed. Presently not all lawyers are amoral [but maybe there aren't enough]. If we don't change and place legal work in a truly moral context the present system will prevail.

From Bottomley and Parker at 149

Ethical rules are rarely enforced in practice, partly because the profession closes rank in all but the most serious cases of dishonesty, and partly because the lay person has an uphill struggle in making a complaint.