

Dare we disobey the law?

Stanley Milgram's experiments in obedience in the early 1960's are infamous¹. Subjects were asked to apply electric shocks to participants (actually his associates) who answered questions wrong. The shocks increased gradually up to 450 volts. When the subjects questioned 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 was concerned to explore the famous Nuremberg defence of collaborators with the Nazi regime, 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 United Kingdom 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, as social workers, we accept the laws of our country as having an authority that we need not question, we are on a path of dangerous blind obedience like that of Milgram's subjects.

All very well, but if we all decide for ourselves the extent to which we do or do not obey the law, will we not have anarchy? Cannot the law itself provide a moral framework within which social work can safely operate? If not, where can we look?

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 destitution²; then in 2002 to require the withholding and withdrawal of support from people in certain 'excluded classes'³.

It is worth reiterating that if social workers were to make autonomous human rights decisions, and to challenge unlawful practices, as discussed in previous articles, 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 described the government's use of destitution as a tool of immigration policy as "Destitution by Design"⁴; Lord Justice Jacobs in the Court of Appeal described it as "abhorrent, illogical and very expensive"⁵. But by what moral standard exactly is it appropriate for us to question the laws passed by Parliament for us as social workers to implement?

Lord Justice Bingham, Britain's most senior law lord, set out his vision of what was meant by the "Rule of Law", in an important speech in Cambridge three months ago⁶. There were, he said, eight elements, among which are 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 the will of 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 all. 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. 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 GSCC Code of Practice at paragraph 5.5 which says we must not "discriminate unlawfully or unjustifiably against service users, carers or colleagues."⁷ So does the fact that the discrimination is lawful make it consistent with anti-oppressive and anti-discriminatory practice? I suggest not, and in so suggesting point up an inherent conflict between what legislation expects of us 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.

What, exactly, do we do then, when we find ourselves in conflict with the laws that bind us?

Our Code of Ethics⁸ requires us to "bring to the attention of those in power and the general public, and where appropriate 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 create an obligation to be an activist for change – no invitation there to unquestioningly accept the law!

At a personal level, be an activist for change. Whether it be the treatment of people subject to immigration control, or other issues such as the placing of all our children on a national database, draconian reforms to mental health law, 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 on the Fairford protests⁹ (against the bombers flying to Iraq from RAF Fairford) demonstrates both that activism might unexpectedly turn out to be civil disobedience (it appears many of the protesters had no plans to break the law) and that activism may unexpectedly turn out not to be civil disobedience, as their Lordships held both that the protesters were in fact unlawfully detained and there had been a breach of their human rights of assembly.

Even so, that road is not for many. At least, be educated and belong. If you work with asylum seekers, have you read *The Destitution Trap*¹⁰? If you work in health care, *First Do No Harm*¹¹? If with children, *The End of the Road*¹²? If with survivors of domestic violence, *How Can I Support Her*¹³? All published in recent months, the publications were by or supported by charities and campaigning groups needing your support: Refugee Action, Amnesty International, the Refugee Council, Oxfam, Barnardos and Southall Black Sisters. And there are local research findings, at least in Birmingham, Coventry, Derby, Leeds, Leicester, London, Newcastle-upon-Tyne, Scotland, and probably others. 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.

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 ourselves 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 that it is quite consistent with professional practice to assist your client to get the help they need to challenge your decision, quite consistent with good management to question the validity of your internal policies, and quite 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 may not 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 conclusion is reassuring to all of us who, in any capacity, 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).

Footnotes

1. [Milgram, S \(1974\) 'The Perils of Obedience' Harpers Magazine](#)
2. [Section 116 of the Immigration and Asylum Act 1999](#)
3. [Schedule 3 to the Nationality, Immigration and Asylum Act 2002 as amended](#)
4. [Greater London Authority \(GLA\) \(2004\) 'Destitution by Design – Withdrawal of support from in-country asylum applicants: An impact assessment', GLA, London](#)
5. [Secretary of State for the Home Department v Limbuela & Ors \[2004\] EWCA Civ 540 \(21 May 2004\)](#)
6. [Centre for Public Law, University of Cambridge \(2006\) 'The Rule of Law' The Rt. Hon Lord Bingham of Cornhill KG, 16th November 2006](#)
7. [General Social Care Council \(2002\) 'Codes of Practice for Social Care Workers and Employers'](#)
8. [British Association of Social Workers \(2002\) 'The Code of Ethics for Social Work'](#)
9. [Laporte, R \(on the application of \) v. Chief Constable of Gloucestershire \[2006\] UKHL 55 \(13 November 2006\)](#)
10. [Refugee Action \(2006\) 'The Destitution Trap: Research into destitution among refused asylum seekers in the UK'](#)
11. [Kelley, N & Stevenson, J \(2006\) 'First Do No Harm: denying healthcare to people whose asylum claims have failed', Refugee Council and Oxfam, London](#)
12. [Barnados \(2005\) 'The End of the Road: The impact on families of Section 9 of the Asylum and Immigration \(Treatment of Claimants\) Act' 2004, Barnados, London](#)
13. [Southall Black Sisters \(2006\) 'How Can I Support Her? Domestic Violence, immigration and women with no recourse to public funds'](#)