

Tackling Challenges to Socio-Legal Practices: The Best Way Forward

¹Joshua Kwonyike

¹Moi University, Department of Development Studies P.o. Box 3900 Eldoret,

Abstract

Problems where social work and the law over-lap have consistently challenged socio-legal professionals and the challenges promise to continue. The overlap exposes important interdisciplinary issues, which are best addressed when certain conditions are met. The article describes these conditions within the context of a perspective that underlines the interaction between the two fields and structures the professional's approach to these interdisciplinary problems. Many practical challenges confront professionals who deal with problems where social work and law overlap. The challenges can be seen on several levels. First, legislation remains a conspicuous legal structure for social welfare funding (Reamer, 2007). Second, practitioners encounter client problems that are becoming increasingly "legalized" (Cavanaugh and Sarat, 2006). Third, social service clients possess even if they're unaware an array of legal rights (Hannah, et al., 2008). Finally, increasingly, professional conduct is being measured against legal requirements (Woody, 2004; Besharov, 2003). Collectively, these developments portend significant consequences for professionals working at the law-social services juncture.

The literature on this subject includes diverse viewpoints, including the benefits of inter-professional collaboration (Hoffman, 2004; Needleman, 2004; Weil, 2002; Constantino, 2001), the settings that require legal skills (Craig, 2002; Schroeder, 2002), the prerequisites for implementing legal mandates (Sosin, 2009; Moss, 2004), the prospects of teaching law and legal skills to social workers (Miller, 2000; Katkin, 2004), the inquiry into who should administer the social services (Gelman, 2006), the phenomenon of legal discretion and its implications in terms of decision-making (Gaskins, 2001), the principle of confidentiality and its relation to practice (Wilson, 2009), the legal consequences for irresponsible professional conduct (Woody, 2004), and the issues that arise with particular target groups or in particular settings (Besharov, 2003; Gelman, 2006).

These contributions are descriptive and helpful as such, but the practitioner needs more. Although they describe certain inter-disciplinary issues, they stop short of explicating a way to structure problem-solving. Given the potential for growth in this area, then, the question arises: How can the social work professional address multi-dimensional problems? A unifying perspective, such as the one proposed in this article, would provide a mechanism that would bring into focus the interaction between the two fields and thereby enhance the professional's approach to these interdisciplinary problems. The perspective's practical worthiness, therefore, lies in its ability to inform professional conduct and to promote an awareness of disciplinary interdependence (Woody, 2004).

Key Words: Socio-Legal Professionals, law, Social Workers, Practitioners and Legal Framework

INTRODUCTION

Understanding Socio-Legal Challenges in Social Work Practice

Law fulfills many roles in society, and each shapes the scope of social problems that emerge ultimately in social work (Kutchins, 2000). "Conflict between relatives, friends, and neighbors," according to Cavanaugh and Sarat (2006), "belongs to the province of family or community. As both lose their ability to impose order and develop normative consensus, disputes that once would never have been expressed in terms of legal breaches of legal duty are increasingly cast in precisely those terms "Regulation by public processes, especially litigation, re-replaces regulation by parents, teachers, and clergy and the order provided

by shared norms ."

Social workers figure prominently in this interchange between law and social processes. Their role is based on longstanding concerns about the conditions under which legal intervention into an individual's private affairs is appropriate. Consequently, they assume a mediating role (Schwartz, 2010) in an array of knotty issues, such as: judicial control of disputes as volatile as child abuse (Hardin, 2013; Besharov, 2003), spouse abuse (Constantino, 2001), involuntary commitment (Whitmer, 2010), and divorce; institutional reform litigation (Moss, 2004); juvenile and criminal justice settings (Roberts, 2008); and agency regulations and public participation in the regulatory process (Albert, 2009). The concrete problems that unfold within this law and society context, as a practical matter, can be defined operationally as socio-legal. The definition is both practical and consistent with similar conceptualizations in the literature. It also places social work in relation to law in a way that exposes the legal context within which social work problems unfold. More important, it underlines that the interdisciplinary dimensions of these types of problems are sufficiently entangled to require the professional to structure their problem-solving approach accordingly (Albert, 2009).

The operational definition is also connected to a very straightforward perception of client concerns in a socio-legal setting: clients bring problems to social workers and don't articulate the various dimensions of their troubles; they seek assistance expecting to place themselves in a better position than they were in prior to social work intervention. Practitioners can meet this expectation, but only if they appreciate the complicated (i.e. interdisciplinary) nature of the problems they encounter (Roberts, 2008).

Perspectives for Tackling Socio-Legal Problems

In constructing the perspective, the author borrowed from a method suggested by Mullen (2003) and drew heavily on literature that specifically dealt with socio-legal issues in social work practice. Some may seem obvious, but the literature suggests they're all interrelated and important. As the discussion below will show, then, the perspective is built around recognition that socio-legal problems are addressed most effectively when the social work professional appreciates:

- (1) that there are legal boundaries for service delivery and for social worker--client relations;
- (2) that a problem may provide a legal basis for intervention and/or may suggest a strategy for law reform;
- (3) that inter-professional collaboration can be productive if occasionally frustrating

(1) The Existence Of Legal Boundaries

The legal context for social work practice takes several forms: the legislative structure for social welfare funding; the boundaries that simultaneously protect the client's legal rights and control official discretion; and the sanctions for professional misconduct.

First, we note that legislation articulates social policy choices, identifies rights and obligations, and allocates funding for program implementation. Under these circumstances, legislation specifies the limits of available program funds, provides the framework for services to be delivered, and outlines substantive rights, the broad purposes and goals of the legislation and its intended beneficiaries.

Second, the legal context helps protect a client's legal rights by imposing a structure, which typically includes regulations that stem from a specific piece of legislation, designed to guard against an administrative agency official's abuse of "discretionary power". These safeguards are the result of the law's increasing reliance on administrative agencies and the officials who control them in order to implement the goals embodied in social legislation (Freedman, 2003).

Hoshino's (2004) discussion of the pursuit of administrative justice in the welfare state illustrates this structure. "The social service state," he observes, "is characterized by mass bureaucratized professionalized administrative agencies. Because of their statutory authority, functional roles, command of highly-specialized knowledge and skills, ability to ration or secure access to needed or desired services, and

capacity to apply sanctions in overt and subtle ways, professionals in service delivery systems have enormous discretion, and therefore, power over the ordinary individual. Under these circumstances, how does the individual cope with large bureaucracies, especially if he is poor, or a minority group, or is socially, or legally vulnerable?" Thus, he concludes, administrative agency officials still exercise considerable discretion despite the existence of these limits on their exercise of authority.

Finally, Wilson's (2009) discussion of legal boundaries stresses the existence of sanctions awaiting professionals whose conduct exceeds legal limits. "The topic of confidentiality," she observes, "is becoming a primary area of concern for many of the helping professions. The consumer's increasing sensitivity to confidentiality and his desire to assert and protect basic privacy rights are giving rise to complex legal and ethical problems which were not imagined only a few years ago." A corollary concern is the confidential communications privilege. Although not all organizations are currently providing for such privileges, professional licensure of social workers may increase the likelihood that this protection will be extended to the officially licensed practitioner. When this occurs, no professional will be able to escape knowing the legal prerequisites for protecting client communications. The discharge of this duty may require the therapist to take one or more of various steps, depending on the nature of the case. Thus, it may call for him to warn the intended victim or others likely to appraise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances.

(2) Dealing with the Problems from Socio-Legal Scope

The interchange between law, social policy, and social problems, given the law's multiple social functions, exemplifies the debate over legal competency and effectiveness (Kidder, 2003). Social workers enter the fray by instigating an examination of the law's responsiveness to client needs and social issues.

As a practical matter, however, identifying the problem's legal aspects is compounded because problem identification varies with the social caseworker, the clinical social worker, the agency administrator, the social planner, and the community organizer. This does not mean that each allows their particular methodological approach to limit their professional world view, at least it should not because they are all connected by a shared knowledge base, by professional values and ethics, and by the profession's stated commitment to social justice. Nevertheless, professional training and experiences directly influence the practitioner's selection of intervention options, which, in turn, can shape their recognition of and response to any interdisciplinary aspects of client problems (Schwartz, 2010).

Lukton (2004), for example, discusses an apparently straightforward social work problem whose scope was broadened to recognize and take advantage of its underlying legal issues. The challenge, then, is to delve underneath the problem to scratch behind the surface and to expose its legal dimensions. As suggested above, the task may be difficult; but the worker who backs away from this challenge does so at the client's expense.

(3) Inter-professional Cooperation And Conflict

There are numerous opportunities for friction between social workers and lawyers. The basis for these confrontations has remained essentially unchanged since Lukton (2004) observations on the topic. Although conflict will continue, it is not unreasonable to expect the differences to yield to rational discussion. Indeed, the array of socio-legal settings suggests that a growing number of social work problems are cast in interdisciplinary terms. Given these types of settings, inter-professional collaboration will need to be the norm.

The events depicted by Lukton (2004), for example, illustrate the potentially fruitful opportunities for social worker-lawyer alliances. Constantino's (2001) description of lawyer-social worker collaboration in dealing with for example battered women provides another example of the benefits to be gained from inter-professional partnerships. Barton and Bryne (2007) assert that social worker-lawyer tensions could be reduced if they better understood each other's roles, values, purposes, methods, and the contributions each could make to support mutual interests.

CONCLUSION

Essentially, the above perspective is an attempt to at once expose some of the unique interdisciplinary dimensions of socio-legal problems and elucidate a way of thinking about how these dimensions surface for the practitioner. We have discussed several conditions that the literature have identified as central to the resolution to these types of problems. These conditions are not offered as an absolute formula for problem-solving. Rather, the intention is to express that they constitute a foundation for structuring the professional's approach to a particular type of practice situation; namely, where social work and law converge. And these instances, as this article has argued, are best addressed when the social worker is aware that certain influential questions arise concerning the existence of legal boundaries, the legal basis for intervention, the role and impact of social worker-lawyer partnerships, and the requisite legal knowledge and skills to support intervention. These questions are not exhaustive, and others will be presented in the course of practice. The important point is that they're threshold concerns; ones that are sufficiently fundamental to initiate a search for an effective interdisciplinary resolution. In the light of the law's expansive role in social policy formulation, then, social work professionals will be pressed to respond to an increasing number of situations that contain both legal and service delivery aspects. The above perspective is offered to prod practitioners to think about these types of problems. The conditions described, therefore, are perhaps best viewed as introductory, and the reader is urged to evaluate their validity through application in practice.

REFERENCES

- Albert, R (2009). "Social Work Advocacy and the Regulatory Process." *Social Casework*, 64, 473-481.
- Barton, P. and B. Byrne (2007). "Social Worker services in a Legal Aid Setting." *Social Casework*, 56, 226-234.
- Besharov, D. (2003). "Protecting Abused and Neglected Children: Can Law Help Social Work?" *Family Law Reporter*, 9, 4029-4037.
- Cavaugh, R. and A. Sarat (2006). "Thinking About Courts: Toward and Beyond a Jurisprudence of Judicial Competence." *Law and Society*, 14, 371-404.
- Constantino, C.(2001). "Intervention with Battered Women: The Lawyer-Social Worker Team." *Social Work*, 26, 456-460.
- Craige, H. et al., (2002). "The Practice of Social Work in Legal Services Programs." *Journal of Sociology and Social Welfare*, 1982, 9, 307-317.
- Freedman, J. (2008). *Crisis and Legitimacy*. Philadelphia: University of Pennsylvania Press.
- Gaskins, R. (2001). "Discretion in the Legal and Social Service Systems." *Social Casework*, 1981, 62, 387-397.
- Gelman, S.(2006). *The Developmentally Disabled: A Social Work Challenge*." In L. Winkler and M. P. Keenan (eds.) *Developmental Disabilities*. Maryland: National Association of Social Workers.
- Hannah, G. T. et al.,(2008). *Preservation of Client Rights*. Free Press, New York.
- Hardin, M. (2013). *Foster Children in the Courts*. Butterworth Publishers. Boston.
- Hoshino, G.(2004). "The Pursuit of Justice in the Administrative State." *Public Welfare*, 32, 63-71.
- Kidder, R. (2003). *Connecting Law and Society*. Temple University Press, Philadelphia.
- Kutchins, H. and S. Kutchins (2000). "Advocacy and Social Work." In G. Weber and G. McCall (eds.) *Social Scientists as Advocates*. Sage Publishing, California.
- Lukton, R. (2004). "Social Services, Social Policy and the Law." *Social Casework*, 58, 523-529.

- Miller, J.(200) "Teaching Law and Legal Skills to Social Workers." *Journal of Education for Social Work*, 1980, 16, 87-94.
- Moss, K. (2004). "A-Social Work Role in Institutional Reform Litigation." *Social Service Review*, 58.
- Mullen, E.(2003). "The Construction of Personal Models for Effective Practice." *Journal of Social Service Research*, 1978, 21, 45-63.
- Needleman, C.(2004). "*Conflicting Philosophies of Juvenile Justice*." In A. Roberts (ed.) *Social Work in Juvenile and Criminal Justice Settings*. Spring-field: Charles C. Thomas Publisher, 1984.
- Roberts, A. (2008). *Social Wore in Juvenile and Criminal Justice Settings*. Charles C Thomas Publisher, Springfield.
- Schroeder, L. (2002) *The Legal Environment of Social Work*. Prentice Hall, New Jersey.
- Schwartz, W. (2010). "*Private Troubles and Public Issues: One Social Work Job or Two?*" In R. Klein and R. Ryan (eds.) *The Practice of Social Work*. California: Wadsworth Publishing.
- Sosin, M.(2009). "Social Work Advocacy and the Implementation of Legal Mandates." *Social Casework*, 59, 265-273.
- Weil, M. (2002). "Research on Issues in Collaboration between Social Workers and Lawyers." *Social Service Review*, 56, 393-405.
- Wilson, S.(2009). *Confidentiality in Social Work*. Free Press, New York.