

BOOK REVIEW

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*Christine Parker and Adrian Evans, Inside
Lawyers Ethics (Cambridge University Press 2007)
269pp*

Inside Lawyers Ethics is a new textbook, designed to train lawyers in ethics using a non-traditional method. The authors rightly point out that traditionally law students in ethics classes are taught how far they can go before they have to go to jail, rather than being given the ethical knowledge and skills to deal with their professional role in society and their clients. This text attempts to address this gap in education, by concentrating on approaches to legal ethics. They differentiate between a lawyer being an adversarial advocate, a responsible lawyer, a moral activist and using an ethic of care.

Adversarialism is identified as the traditional approach to the profession. The other three alternatives are presented as increasing degrees of ethical, and arguably compassionate, conduct.

The first two chapters outline the differences between the different approaches. After that the authors address different issues for legal professionals from each of the four perspectives. Many of these issues would be standard for any professional conduct course in a law faculty, including regulation of the profession, negotiation and alternative dispute resolution, billing and overcharging and corporate misconduct. Others may not be so standard such as proof in truth in criminal justice and conflicting loyalties. Each chapter is also accompanied by the standard tools of any good textbook, namely, case studies, discussion questions and recommended further reading.

Overall, the authors are to be commended for their approach to this text. They have addressed complex problems from alternative approaches in a reasonably concise 250 pages. The only problem with their approach is that it could be argued that this book still requires additional material to make it useful. Individual chapters concentrate so much on a comparison of the alternative approaches that they sacrifice a necessary level of detail of the more mundane aspects that students in a professional conduct or ethics

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course still require. As the authors say themselves in the introduction, ‘This book, therefore, will not provide a comprehensive coverage of the law of lawyering, but will provide a basis for ethical critique of professional conduct principles.’¹ Perhaps it is assumed that this book will either be complimentary to another text, and/or a series of lectures. This is neither a major problem nor an unreasonable assumption.

I also feel is necessary to raise a note of caution for those who are considering this text. I think it is fair to say that the authors are advocates of both moral activism and an ethic of care, and are highly critical of the traditional adversarial approach to the law. Anyone who reads the text will be acutely aware of how much the authors wear their hearts on their sleeves. When they discuss moral advocacy they also have a clear agenda which they would like the reader to adopt. Having said that, this text is extremely useful in providing students with an introduction to these lines of argument as a contrast to the more well-known adversarial and responsible lawyer in approaches. I do however want to take a moment to raise a few points of disagreement with the authors.

It is the nature of the ethic of care to promote a subjective view of the individual. The ethic basically seeks a negotiated solution to an issue in the best interests of the parties, where the burdens of the solution are carried by those most able to meet them. On my reading of the book, I felt that the authors preferred individual lawyers to promote their own views of what the law ought to be, rather than what the parties to the dispute would prefer. Whenever subjective attitudes like this are privileged for one person, everyone’s subjective views must logically have the same value. This can undermine the objectivity of justice. There is an air of paternalism in the text’s version of the ethic of care, as it is proposed that lawyers judge for themselves what the outcome ought to be and take such steps as are necessary to bring this about, with or without the consent of their clients. I cannot see how a combination of activism and an ethic of care could allow a person to remain in the profession; they would not allow a person to engage with the courts or rely on the law. It seemed more applicable to the political sphere than the justice system. In addition, it would be dangerous to a client’s interests to ignore the other side’s adversarial manoeuvres whilst pursuing a dogged attempt to avoid conflict.

Justice, as an objective process, and the presumption of innocence were absent from this book. The case studies have the flavour of presuming guilt on the part of the wealthiest or most capable party. For example, a large corporation that sues its critics for defamation is portrayed as exploiting the legal system to silence opponents. The possibility that the comments were actually defamatory is never raised.² The discussion questions presume evil intent on the part of the parties the authors did not support, for example, one discussion question begins: ‘If there ever was a client who was clearly capable of abusing the legal system, Mr Herscu was that client.’³ Having commenced with this *ad hominem* the question then asks students to consider how they would react to having him as a client. I would prefer to see a more balanced range of questions.

There is also an air of contradiction in so far as the respondent in a civil matter must be given the benefit of the doubt, but criminal matters that involve negotiation of sentences

¹ C Parker and A Evans, *Inside Lawyers Ethics* (Cambridge University Press, 1st ed, 2007) 4.

² *Ibid* 67.

³ *Ibid* 85.

or seek consensus must be rooted out.⁴ It appears there is no ethic of care in the criminal jurisdiction.

The authors also see an absolute distinction between rules and ethics. They do not seem to countenance the idea that rules can be ethical and be developed from ethical positions. They actively promote the avoidance of rules where a person believes them to be unethical. This to me seems contradictory to the role of a lawyer within the legal system and the operation of the Rule of Law, another concept which does not appear in this book.

In conclusion, the overall theme of the book is to create a higher standard of care, customer service and performance within the legal profession. While at times, the authors become unreasonably aspirational, their goal is worthy. It can be shown over time that the community has progressively set higher standards that they expect of some lawyers and by which they judge them. This text will go a long way to educating new lawyers about an extended range of ethics, and hopefully setting high standards within themselves.

⁴ Ibid Chapter Five.