



Care as a Legal Concept

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Care as a Legal Concept

- *Duty of care*: The responsibility or legal obligation of a person or organization to avoid acts or omissions that could likely cause harm to others.
- *Standard of care*: Standard of care is only relevant when a duty of care has been established. The standard of care speaks to what is *reasonable* in the circumstances. If one does not owe a duty of care, there is no need to meet any standard of care.
- *Reasonable person*: A person who is thought to be careful and considerate in their actions.

Lord Atkin's Principle

- People must take reasonable care not to injure others who could foreseeably be affected by their action or inaction
- Every man ought to take reasonable care that he does not injure his neighbour



Quoted from https://en.wikipedia.org/wiki/Donoghue_v_Stevenson (snail in a bottle case)

http://sites.thomsonreuters.com.au/journals/files/2018/07/Justice_Peter_Applegarth_2016-90-ALJ-711.pdf

<https://slideplayer.com/slide/12102735/>

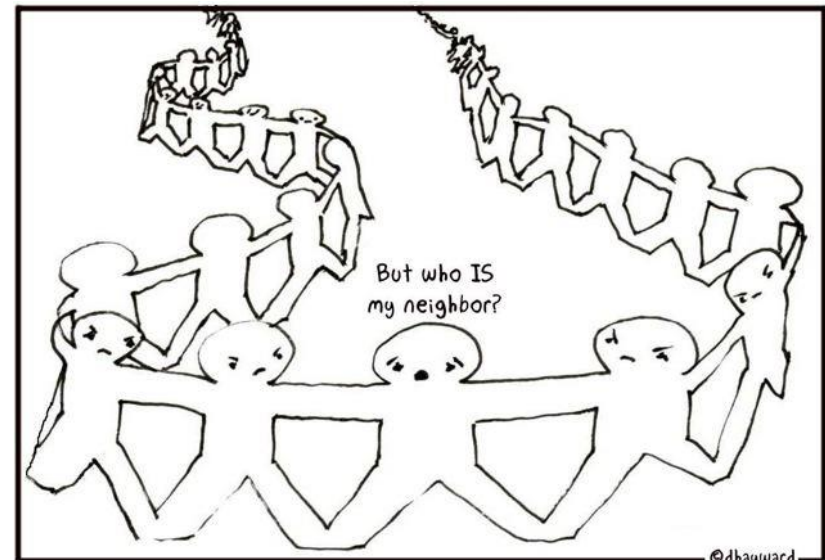
Neighbours

“The rule that you are to love your neighbour becomes in law, you must not injure your neighbour” – Lord Atkin

- Who is your neighbour? Everyone? No.
- “Questions of proximity and deliberation as to the fairness, justice and reasonableness of the imposition of a duty of care should be considered.”

<https://www.lawteacher.net/free-law-essays/tort-law/neighbour-principle.php>

<https://cxgentlemen.wordpress.com/2012/10/15/the-neighbour-principle/>



Special Relationships

A duty of care exists

- “if it could be shown that a special relationship subsisted between the parties” e.g. “where it is plain that the party seeking the information or advice was trusting the other to exercise such a degree of care as the circumstances required”
- However, “recognising the need to protect professionals whose work inherently poses susceptibility to negligence claims.”



<https://www.lawteacher.net/free-law-essays/tort-law/neighbour-principle.php>

<https://www.amazon.ca/Care-Virtue-Special-Relationships-Character/dp/384737320X>

Good Samaritan Laws



- Bystanders are mostly not required to provide assistance (expectations exist, e.g. in Vermont, Quebec or on Seinfeld)
- The intent is generally to protect bystanders who render aid, even if they were negligent (but not if they were *grossly* negligent)
- They *do not* protect professionals where a duty of care exists

<https://www.lhsfna.org/good-samaritan-laws-what-exactly-do-they-protect/>

<https://www.aafp.org/fpm/2008/0400/p37.html>

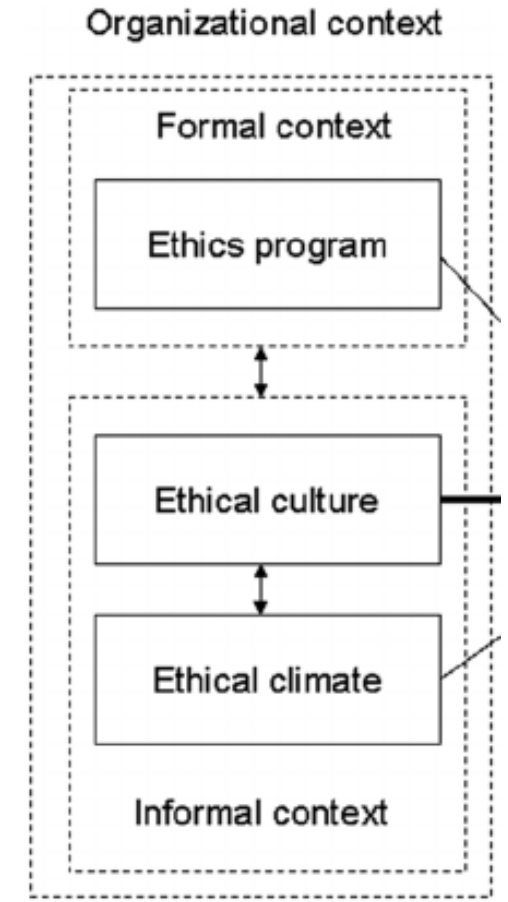
Ethics as a Context

Ethics has the same purpose as other standards, namely:

- To standardize profession's work
- Protect public, serve client, support other standards, etc.
- Similar development
- Begins with common sense
- Modified based on experience of profession
- Never final (since experience continues)
- Needs practical context to make sense
- Each profession is defined by a certain sort of judgment
- Judgment can only be exercised in a context.

<http://ethics.iit.edu/teaching/professional-ethics#4>

https://www.researchgate.net/publication/254097714_Understanding_Unethical_Behavior_by_Unraveling_Ethical_Culture



The Basis in Ethics for a Duty of Care in Law

- For Cranmer & Nhemachena, ‘moral duties trigger how we ought, should or are expected to behave’ (2013 p.141). Furthering this, Johnstone notes that duty comes from the deontology ethical theory and this sees duty as ‘the basis of morality and holds...that some acts are obligatory’ (1994 p. 65).

<http://oro.open.ac.uk/49091/3/Duty%20of%20care%20-%20Cornock.pdf>

- “Duty of care may be considered a formalisation of the social contract, the implicit responsibilities held by individuals towards others within society.” (Wikipedia)

https://en.wikipedia.org/wiki/Duty_of_care

Duty of Care in Business

“Duty of care refers to a fiduciary responsibility held by company directors which requires them to live up to a certain standard of care. This duty—which is both ethical and legal—requires them to make decisions in good faith and in a reasonably prudent manner.”



Levels of Duty of Care

- *Intentional Injury*: the injured person has a right to recover damages
- *Negligence*: acts creating a foreseeable risk of injury to others
- *Recklessness*: acting with utter disregard for the safety of others.
- *Strict Liability*: cases involving manufacturing defects in products



Roles and Ethics

“the role an individual assumes in society (such as “engineer” or “physician,” when it is a voluntary role, or “grandmother” when it is not) oftentimes has a corresponding moral value, or moral obligations that can go beyond or differ from what is seen as ordinary morality.

“We can hold many roles simultaneously in society, and these roles are constantly shifting and being negotiated by society and by ourselves.”

“Roles are not always contracts, nor are they simply means of protecting others.”

Andre, Judith. “Role Morality as a Complex Instance of Ordinary Morality.” *American Philosophical Quarterly* 28:1 (January 1991) 73-80. <https://www.jstor.org/stable/20014357>

Rules, Roles and Relations



Dorothy Emmet (1966):

- Analysis of causal, functional explanations of roles
- Depersonalization of role relations “is not only to misconstrue their nature and their importance in human society, but also to miss the subtlety and sophistication of their interpretation and realisation in action.”

<https://prabook.com/web/dorothy.emmet/3757344>

https://www.academia.edu/5745220/Robert_Merton_and_Dorothy_Emmet_Deflated_Functionalism_and_Structuralism

The Role of the Teacher

Herbert Kohl:

- Thinking of the role of a teacher the way *anyone* might perform it (which is for the most part *impersonal*)
- Thinking of it from the perspective of how a *specific person* performs it
- Being a teacher for Kohl is not simply a job, it is a *vocation* (Blum, 1994, p. 107)
- *The Discipline of Hope* “is grounded in the relationship between teacher and student; it dwells on the mutuality between the two as they teach each other.”

<https://www.betterworldbooks.com/product/detail/discipline-of-hope-learning-from-a-lifetime-of-teaching-0684814129>



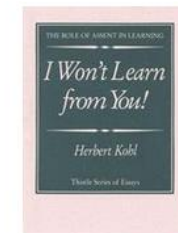
The Long Haul: An Autobiography
Herbert R. Kohl



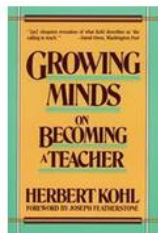
"I Won't Learn from You": And Other Essays on Teaching
Herbert R. Kohl



Should We Burn Babar?: Essays on Teaching
Herbert R. Kohl



I Won't Learn from You: The Role of the Teacher
Herbert R. Kohl

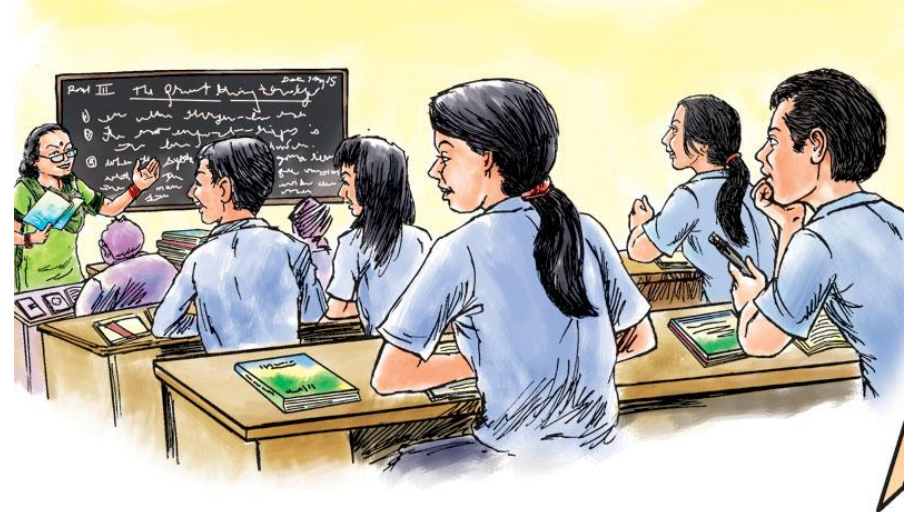


Growing Minds on Becoming a Teacher
Herbert R. Kohl

Teachers and Ethical Codes

- Codes of ethics provide an incomplete depiction of teacher deontology
- Extensive corporatist content in the codes is negative and confusing
- For teacher education, codes of ethics have important limitations

“Regulatory codes can draw attention away from other, possibly richer ways of conceptualizing how professionals can and should negotiate the ethical demands and complexity of professional life.”



Maxwell & Schwimmer, 2016

<https://www.sciencedirect.com/science/article/abs/pii/S0742051X16301433>

School as Person-Centered

Michael Fielding argues for “a person-centred approach in which the purposes of educational organisations are accomplished, not by abandoning their distinctively educational aspirations, but rather by transforming their organisational forms and capacities into the vibrancy and creativity of inclusive educational communities.”

<https://www.researchgate.net/publication/248975866> The Hum an Cost and Intellectual Poverty of High Performance School ing Radical Philosophy John MacMurray and the Remaking o f Person-Centred Education

Schools as Impersonal Organisations	Schools as Affective Communities	Schools as High Performance Learning Organisations	Schools as Person-Centred Learning Communities
<i>Intellectual Animus</i> Mechanistic	<i>Intellectual Animus</i> Therapeutic	<i>Intellectual Animus</i> Organic	<i>Intellectual Animus</i> Personal
<i>Organisational Type</i> Mechanistic Organisation	<i>Organisational Type</i> Affective Community	<i>Organisational Type</i> Learning Organisation	<i>Organisational Type</i> Learning Community
<i>Form of Unity</i> Exclusive		<i>Form of Unity</i> Inclusive	
<i>Ontological Standpoint</i> The negative excludes the positive <i>The Functional</i> Marginalises the Personal	<i>Ontological Standpoint</i> The positive excludes the negative <i>The Personal</i> Marginalises the Functional	<i>Ontological Standpoint</i> The positive is subservient to the negative <i>The Personal is for the Sake of / Expressive of the Functional</i>	<i>Ontological Standpoint</i> The negative is subservient to the positive <i>The Functional is for the Sake of / Expressive of the Personal</i>
<i>Relation to the Other</i> Juxtaposition ▪ One sided valorisation of the functional	<i>Relation to the Other</i> Juxtaposition ▪ One sided valorisation of the personal	<i>Relation to the Other</i> Interrelationship of Incorporation ▪ Centrist ▪ Centripetal	<i>Relation to the Other</i> Interrelationship of Dialogue ▪ Heterocentric ▪ Centrifugal
<i>Contemporary Strength</i> Intellectual Capital	<i>Contemporary Strength</i> Emotional Capital	<i>Contemporary Strength</i> Organisational Capital	<i>Contemporary Strength</i> Holistic Development
<i>Community / Organisation Standpoint</i> Community is Unimportant / Destructive of Organisational Purposes	<i>Community / Organisation Standpoint</i> Community has no / few Organisational Consequences or Requirements	<i>Community / Organisation Standpoint</i> Community is a Useful Tool to Achieve Organisational Purposes	<i>Community / Organisation Standpoint</i> Organisation Exists to Promote Community
<i>Performance Motif</i> Efficient	<i>Performance Motif</i> Restorative	<i>Performance Motif</i> Effective	<i>Performance Motif</i> Morally and Instrumentally Successful

Figure 1. The organisational and communal orientation of schools

The Burden of Care

“This burden falls on traditionally marginalized workers, and because caring is often thought of as ‘women's work’, the bulk of the burden falls on them.”

We need to recognise where the burden of care falls in higher education. Lorna Campbell, Wonkhe, 2020/03/07

<https://wonkhe.com/blogs/we-need-to-recognise-where-the-burden-of-care-falls-in-higher-education/>



Care as a Legal Concept

- Starts out as a principle of good neighbours
- Becomes a legal responsibility
- Creates specific rules for special relationships
- Thought of as a context-specific 'standard'
- Care in shifting roles, shifting responsibilities
- Legal principles have important limitations
- Impersonal organizations vs personal communities
- A growing burden on care workers

