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2.2 Professional discretion and social exclusion

Beth R. Crisp

Introduction

In 1770 Samuel Johnson, who developed the English dictionary, observed that ‘a decent provision for the poor is the true test of civilization ... The condition of the lower orders, the poor especially, was the true mark of national discrimination’ (in Harris 2000: 61). Slightly later in 1776, the Scottish economist Adam Smith claimed:

no society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable. It is but equity, besides, that they who feed, clothe and lodge the whole body of the people, should have such a share of the produce of their own labour as to be themselves tolerably well fed, clothed and lodged.

(in Harris 2000: 62)

More than two hundred years after these pronouncements, I found myself as a first year social work student assigned to a 14-week placement in a welfare agency located in one of the poorest and most stigmatised suburbs of Melbourne. Furthermore, the families we worked with were among the most disadvantaged and excluded within this community. While they had many issues, a lot of energy went into responding to immediate crises in respect of basic needs in food, clothing and housing. Every three months the agency received a small fund of money which could be distributed to service users who needed ‘emergency relief’. Compared to the needs we encountered everyday, this money was nothing more than a token, and was always expended well before the next instalment would arrive. Decisions needed to be made as to how this money would be distributed and as a member of the social work team, I found myself making recommendations to the agency manager about this. I soon learnt that that this required the exercise of professional discretion as there were no formalised rules about how much could be provided in particular situations as indeed every situation was different.

Two decades later, I am a social work educator, and a key component of my teaching involves exploring dimensions of social exclusion on the basis
that 'social work ... is ... almost exclusively concerned with the most dependent and least economically successful minority groups in the populations' (Pinker 1989: 85). In the program in which I teach, we have a stated commitment to the principles of anti-oppressive practice. We hope that our students will learn to appreciate that some approaches to practice have the potential to redress experiences of social exclusion while other approaches may reinforce exclusion. At the same time, students have to learn that despite how deserving they may warrant a situation, their ability to respond will be constrained by a range of factors beyond their control:

Social work ... agencies are given specific responsibilities and powers through statute, and social workers ... have to practice within legislative frameworks and organisational policies and procedures. They have to balance the needs, rights, responsibilities and resources of people with those of the wider community, and provide appropriate levels of support, advocacy, care, protection and control.


Balancing the needs and rights of numerous and diverse stakeholders in an environment of limited resources, and exercising professional discretion, also describes my work as an educator. This is particularly so whenever I am selecting new students into the social work degree or making determinations about current students.

**The professional gatekeeper**

Notwithstanding the key aim of social work education being to prepare students for professional practice, course providers have often been viewed as 'gatekeepers' whose task it is to screen out those unsuitable for professional practice (Moore and Unwin 1991). This typically commences at the point of seeking entry into a course of study. It would seem that while often quick to embrace the opportunities to promote social inclusion, social work educators frequently find themselves policing entry and maintaining the exclusiveness of the profession. While such actions are invariably done with the best possible motives, we risk further marginalisation of some already excluded populations (Crisp and Gillingham 2008).

Since its establishment in 1977, Deakin University has placed a high priority on offering educational opportunities to potential students who demonstrate aptitude for university study but due to various reasons require a flexible mode of delivery in order to access higher education. Hence, many of the university’s courses, including social work, are offered so that students can study either full or part-time and in on or off campus modes. Students who successfully complete the final year of secondary school in Australia obtain an ENTER score which is a national ranking of achievement used by universities to select applicants into undergraduate courses. However, applicants for the
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Bachelor of Social Work often apply for entry under Deakin University's Access and Equity Program. The program aims to offer a substantial minority of places to applicants who have experienced educational disadvantage which either did not allow them to complete their schooling, or if they did complete their schooling, to achieve an ENTER score which reflects their ability to succeed at further study. Categories of disadvantage include socio-economic disadvantage, having a disability or other health impairment, or living in a rural or remote area. Such applicants need to demonstrate the capacity to succeed at university studies but can do this by alternative means such as by having completed courses since leaving school, or through relevant paid or voluntary work experience. Many of these applicants will have extensive experience in the welfare sector as workers and/or as service users. Furthermore, some will have completed vocational qualifications equivalent or higher than final year secondary studies but do not have an ENTER score which enables them to be ranked directly against successful secondary school completers. Also, a substantial number of applicants for our undergraduate social work degree have already undertaken previous studies in higher education, sometimes demonstrating much greater aptitude for university study than an ENTER score obtained some years earlier might have predicted.

As occurs in many Australian universities, Deakin University selects social work students on the basis of their written applications and supporting documentation including academic transcripts, details of previous employment, personal statements and applications for special consideration. On the basis of all this information, selection officers have to determine which applicants are best able to succeed in their studies. Conversely, I also had to identify any applicants who should not be offered a place on the grounds that they have not been able to demonstrate academic capacity to complete the four year social work degree program. While the university provides some guidance to assist selection officers to identify those applicants to whom an offer of a place should be made, the process necessarily relies on selection officers being able to exercise a degree of professional discretion in the form of academic judgements.

Importantly, the use of professional discretion during student selection allows for the possibility of selecting some students who, as a result of social exclusionary processes, have been denied an opportunity to succeed in the final year of secondary schooling. As at May 2007, 28.7 per cent of Australian adults aged 20 to 64 had not completed a final year of secondary schooling or completed any post-school qualification. A further 18.4 per cent had completed certificate level qualifications only since leaving school which may have been undertaken without completing a final secondary year at school (ABS 2007a). Many applicants to Deakin University's social work degree are in these categories, but bring a wealth of experience to their studies and have proved excellent students despite not having formally completed their secondary schooling.

A second category of access and equity applications comes from applicants who have completed their final year of secondary schooling but suffered some
degree of disadvantage during their schooling which left them unable to fulfil their potential and gain an ENTER score which is a realistic appraisal of their abilities. Requests for special consideration range from those who outline situations which appear trivial and not outside the norm, to requests from students who have completed their schooling in what can only be described as incredibly adverse circumstances and evoke a response of sheer admiration for having done as well as they have done. Again it becomes a question of academic judgement as to whether an applicant has a better chance of succeeding in the course than would be suggested by their ENTER score alone.

In making academic judgements as to who should be selected into a finite number of places in a social work degree, it is assumed that the selection officer has the expertise to exercise professional discretion appropriately. At Deakin University, this has required me to make judgements about an individual’s academic capacity to undertake a course of university study. The principles of student selection in higher education require Australian universities to take into account equal opportunities legislation, which imposes a duty on them not to discriminate against students according to age, gender, race, disability, sexual orientation or criminal background (Shardlow 2000). This differs from the role of selection officers in some overseas social work courses who are more explicitly charged with making moral judgements as to who is fit and proper to be a social worker, and consequently who is suitable to undertake a course of study leading to qualification as a social worker (Crisp 2006). This has substantial implications when considering applicants who have substantial criminal records.

Applicants with criminal records

Occasionally in the process of selecting students, an applicant discloses that he or she has a criminal record, or even that they are currently serving a prison sentence. This in itself is not grounds to exclude an applicant for study at Deakin University, but does raise a series of questions around the junction between promoting social inclusion, my professional duty of care, and how professional discretion is administered in this situation.

It has been argued that imprisonment is the ultimate form of social exclusion (Smith and Stewart 1998). Moreover, persons who are at greatest risk of experiencing social exclusion as a result of factors such as poverty, lack of education, unemployment and/or being a member of a racial minority, are disproportionately likely to have become prisoners (Mair and May 1997; Smith and Stewart 1998). In Australia, this is particularly an issue for indigenous Australians (Wilson 1997). So extensive and enduring is their exclusion, that many offenders accept it as a ‘fact of life’ (Smith and Stewart 1998). Consequently, it has been proposed that promoting social inclusion is essential, not only for reintegrating former prisoners into society, but to reduce the likelihood of re-offending (Clements 2004; Smith and Stewart 1998).
One of the most common methods of promoting social inclusion among prisoners is through the provision of education and training. Research indicates that those who undertake studies while imprisoned are not only more employable and have significantly higher incomes than those who were not involved in a prison education program (Fabelo 2002), but also lower rates of re-offending in the first few years post-release (Chappell 2004). While the research literature has very much focused on the potential of education to reduce economic exclusion, one might readily surmise that the unstated aim of some prison education programs is to enhance social connectedness by increasing employability. A more cynical view (and not one I would espouse) might be that education enables an individual to move away from the criminal sub-culture in which they are supposedly enmeshed, to moving with a so-called ‘better’ class of individuals.

Notwithstanding the fact that offenders who have undertaken post-school studies are more likely to gain employment than those with less formal education (Holzer et al. 2003), the extent to which graduate offenders obtain employment in their field of qualification is unclear in previous research. It may be that graduates with a criminal record are being employed in positions requiring less skill than those for which they are qualified. To some extent, employability in particular professions may be determined by the type of offence committed and employer’s perceptions as to its relevance to the position applied for (Albright and Denq 1996). Graduate positions generally involve significant levels of trust (Waldfogel 1994), but a criminal record can be perceived by employers as suggesting a lack of trustworthiness (Holzer et al. 2003), a position which may be reflected in corporate policies pertaining to the recruitment and retention of staff (Taxman et al. 2002). But even if these are not explicit policy, employer beliefs certainly contribute to an offender’s likelihood of obtaining employment (Fletcher 2001). Furthermore, there may be legal barriers preventing persons with a criminal record from obtaining or retaining employment in many professions (Heinrich 2000). Professional registration, where it exists, typically requires applicants to demonstrate ‘good moral character’ which can be perceived by those controlling access to employment as an insurmountable problem for persons with a criminal record (Heinrich 2000).

Over the past two decades, several writers from both the United Kingdom and the United States have debated the risks associated with employing social workers who have criminal records and consequently, the appropriateness of allowing persons who have a criminal record to participate in a program of education leading to qualification as a social worker (for an overview of this literature see Crisp and Gillingham 2008). While some have argued that admission of persons with a criminal conviction should occur on a case by case basis (Perry 2004; Scott and Zeiger 2000), others have argued vehemently against this (Magen and Emerman 2000). Difficulties in ensuring placements on courses, and subsequent jobs on graduation, can be secured for students with criminal convictions has sometimes been used to justify screening of
offenders at the point of selection into a degree program in social welfare (Perry 2004). However, this may lead to presumptions as to local welfare agencies having the presence of policies, e.g. forbidding employment of convicted offenders, which in fact may not exist (Miller and Rodwell 1997; Smith 1999).

Rather than taking the line of some other universities and automatically rejecting applicants to social work degrees who disclose any serious criminal convictions, the approach at Deakin University has been for such applicants to be considered on precisely the same grounds as any other applicant, namely whether they have the academic ability to undertake and succeed at a course of studies. Information for prospective applicants does however warn that in order to complete the placement requirements of the Bachelor of Social Work degree, students will be required to obtain a Police Records Check prior to each placement, and may also need to obtain a Working with Children Check. This generates the occasional query from applicants who can then be provided with advice as to the likelihood of the university being able to obtain the necessary placements for them to complete the degree. Potential applicants can then make an informed decision as to whether to apply for a place in the social work degree.

Professional discretion

The use of professional discretion, as I have described above, has enabled me to select some students into a degree program at university on the basis of a much wider, and often highly individualised set of criteria than simply considering the ENTER scores obtained by successful school finishers. This has in the past enabled the university to contribute to overcoming experiences of social exclusion, particularly in respect of individuals whose exclusion has impacted on their educational attainment. For such individuals, obtaining a university qualification in a field in which there are numerous job opportunities is likely to have long-term benefits for the individuals involved and for some has the potential to break cycles of intergenerational poverty. This includes individuals who did not have the opportunity to complete their schooling, who live in rural areas where educational opportunities are limited, who have been victims of violence or family breakdown, have a serious illness or disability, grown up in a family which was impoverished and/or experienced other difficult circumstances. The university also has programs which aim to provide higher education opportunities to indigenous Australians.

Although it is often suggested that the ability to exercise discretion is what distinguished a professional from a functionary (Baker 2005; Clark 2005), the exercise of professional discretion necessarily involves a degree of subjectivity and the potential for different outcomes depending on who is actually making the decisions, even when using the same general principles:

The beliefs held by citizens about society's responsibility for the disadvantaged and vulnerable among them and about how assistance ...
should be designed form the moral conditions for discretion. On a general level, most people can agree on fundamental principles of action. Reaching consensus on how those principles should be concretised in specific cases is, however, a trickier matter and one that causes difficulties for street-level bureaucrats.

(Dunér and Nordström 2006: 430)

A study involving 52 frontline workers whose role it was to assess access to benefits under California’s Welfare to Work program, CalWORKS, were asked to determine which of a range of benefits should be provided to a fictitious client and her family. Participants in this study were also asked to comment on the extent to which each of a list of 24 factors or issues concerning the client and her family influenced their decision making. Finally, participants were asked what, if any, information about this client suggested that the goal of finding work for her would be problematic. Overall there was a lack of consensus on almost every factor as to whether it should be used to form an assessment and how it would influence an assessment. Not surprisingly, participants identified a diverse range of short and long term goals for the client within the limits allowed by the program (Johnson et al. 2006).

Like the CalWORKS assessors, my role in selecting students places me as what Robert Lipsky (1980) has described as a ‘street-level bureaucrat’. Lipsky applies this definition to a wide range of professionals who work at the interface between the organisations which employ them and the public, and whose work involves them interpreting policy imperatives when faced with individuals in diverse circumstances. As such;

The work of street-level bureaucrats is multifaceted and of a contradictory nature. Demands and expectations are imposed on them from a variety of sources ... Their tasks entail making decisions based on the needs of the individual within the confines of prevailing policy. They are forced to make necessary prioritisations when they must bring into alignment public objectives and the individual’s need for assistance and support with available resources.

(Dunér and Nordström 2006: 426)

There are some particular dilemmas arising from my role as a selection officer which I share with a relatively small pool of colleagues in universities who have a similar role, and most readers might not relate to these. However, the question as to how use of discretion can promote or hinder social inclusion is potentially an issue for a very wide range of professionals, both within and beyond the human services and higher education sectors.

The existence of discretionary provision arrangements typically makes assumptions that the decision makers will be appropriately qualified to perform their duties (Stein-Roggenbuck 2005). The effectiveness of discretionary measures in reducing social exclusion does however require that professionals
are aware of discretionary measures open to them and being willing to adopt a discretionary approach when required (Palley 2004). Nevertheless, in situations in which decision making appears highly routinised, there will often be some workers who seem to be able to find ways to introduce a degree of discretion which recognises and addresses various forms of disadvantage or exclusion (Baker 2005; Evans and Harris 2004). This no doubt reflects the fact that for many professionals, being required to make decisions but having no discretion leads to alienation from the work (Cyrus and Vogel 2003).

While I have outlined a case as to why professional discretion has its place in professional practice, it nevertheless retains the ability to be problematic. Those at greatest risk of social exclusion may in fact benefit least from discretionary provisions (Stein-Roggenbuck 2005; Triandafyllidou 2003). Knowing what information to provide, and in what format this might influence a decision is essential (Lipsky 1980), but those who are most excluded may be further disadvantaged in such circumstances. Professional discretion is a potentially powerful tool in addressing social exclusion, but only if used appropriately (Evans and Harris 2004).