

## Public Policy and Mental Health

### ***Racial Discrimination in Housing and the Assault on Personhood: Recovering Money and Damages for Emotional Distress and Mental Anguish***

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Data from the 2000 United States Census indicate that blacks and whites are only slightly more exposed to each other than was the case in 1990. Many middle-class and affluent blacks are not accepting the “invitation” to integrate residential neighborhoods even though the housing in many white neighborhoods is generally viewed by society as “better” in a number of ways. The anticipation of the psychic harm of housing discrimination may now constitute the prevalent roadblock to integration for many upper-income blacks. Beyond the denied housing opportunity, there lies the personal experience of pain, hurt, humiliation, insult, emotional distress, and mental anguish—the varied intangible injuries that offend a person’s dignity and assault one’s personhood. This is a ‘big deal’, although blacks may not report it and society may not recognize it.

This presentation considers two legal ‘texts’: (1) Title VIII of the *Civil Rights Act* of 1968, known as the “*Fair Housing Act*,” and (2) the common law tort of the infliction of emotional distress. The former law stands in the bad shadow of the latter and this explains, in significant part, why compensatory damages for emotional distress in housing discrimination are relatively low. Traditionally, recovery in tort for ‘stand-alone’ emotional distress has been difficult. The courts have viewed the claim as suspicious: it is difficult to verify, easily fabricated, difficult to measure, and it invites a floodgate of claims. The law has had a difficult time perceiving the “guarantees of genuineness” that would be present if such distress were tied to some other injury. Moreover, the intentional infliction of emotional distress not only requires the distress to be severe, but also that it occur as a result of conduct that is “extreme and outrageous.” Thus, *sub silentio*, tort norms may inappropriately intrude into the area of fair housing law and, because discrimination in the housing market tends to be covert and subtle, it is difficult to see the conduct as outrageous even when that conduct is intentional.

### ***Detaining the Dangerous: Legal and Ethical Implications of the U.K. Government’s Proposals for High-Risk Individuals***

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In December 2000, the government in England and Wales published a White Paper proposing a radical overhaul of current mental health legislation. Part Two of the White Paper contained controversial new proposals to indefinitely detain ‘high-risk’ mentally-disordered individuals. The government believes that the current arrangements for this group are inadequate, both in terms of protecting the public and providing the individuals themselves with the high quality services they need. Consequently, the government is proposing a radical new framework for this high-risk group.

The proposals have attracted a large amount of criticism in both legal and medical circles, and may contravene the *European Convention on Human Rights*. This paper will outline the proposals for reform, and highlight some of their legal and ethical implications, in particular, focusing on the extent to which the proposals may be open to challenge under the *Human Rights Act*, 1998. The paper will demonstrate that the proposals are unsafe, unethical and unworkable and are likely to prove counter-productive in the long-term. It will conclude that the government should take greater steps to develop and enhance services, and bear in mind the results of research about what works best, before introducing draconian new powers to detain ‘high-risk’ individuals.

## ***Abortion, Mental Health and Suicide in Ireland***

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Earlier this year Ireland held its third referendum on abortion, the aim of which was to safeguard the life of the unborn with due regard to the life and safety of the mother. Two other referendums had been held in recent years to clarify issues relating to the interpretation of the previous referenda, in relation to freedom of information about termination of pregnancy, and the right to travel to other jurisdictions to have an abortion.

The recent referendum was unusual in that it sought to enshrine in the Constitution a piece of legislation rather than a principle or aspiration. Had the proposal been carried in the referendum, for the first time the constitution would have enshrined a penalty for an offence. In the proposed constitutional article, suicide or the threat thereof was excluded as a ground for abortion.

As in the previous two referenda dealing with the issue, the wording, which seemed clear and precise on close examination, was revealed as ambiguous and confusing to such a degree that militant fundamentalist pro-life campaigners ended up campaigning on opposite sides of the debate. Their disagreement revolved around the issue of when life begins: at the time of fertilization of the ovum, or the moment of implantation in the uterine wall.

The referendum divided the professions. It also appeared to discriminate against and criminalize women and those suffering from psychotic illness. People were afraid that allowing the risk of suicide or the threat of suicide as grounds for abortion would open the floodgates to abortion-on-demand. The floodgates have been open for many years: 7000-8000 annually women make their way from Ireland to the U.K. to obtain abortion.

The referendum was defeated by the narrowest of margins. As a result, the issue will have to be dealt with by legislation, as it should have been in the first place after the previous referendums. This paper attempts to make sense of the Irish debate on abortion. The ethical, legal, and moral issues that this will raise for the legislature in a conservative country are discussed. The challenges for Irish psychiatry arising from a divisive campaign are set out in detail.

## ***The Tsolo Special High Court Dealing with the Backlog of Serious Violent Crime Cases Emanating from the Tsolo-Qumbu Area***

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Tsolo and Qumbu are towns within the former Transkei, which was an independent homeland in South Africa from 1976-1994. During the years 1990-1996 more than 400 people suffered violent deaths in the Tsolo-Qumbu area, mainly due to violence surrounding allegations of stock theft. A spirit of great lawlessness prevailed in this area in the nineties. This was the period leading up to and immediately after the transition of South Africa to a constitutional democracy. Society divided itself into two factions: alleged stock thieves and those fighting alleged stock thieves. Alleged stock thieves and their families were exterminated – usually shot with automatic rifles in their home after dark. Cases took a long time to come to court – some up to seven years. This was the main reason for the community and victims losing faith in the justice system. When eventually cases came to court, they were postponed innumerable times for any number of reasons; often the defence was not ready to proceed.

In July 2000 a special high court was established in the lower court building, dealing exclusively with the huge backlog of serious violent crime cases emanating from the Tsolo-Qumbu areas. As the same judge sat all the time, reasons for postponements could be noted, and the defence could be tied down. The cases

could run until completion as the judge and prosecutor were there all the time, and only had these cases to deal with.

The community responded very positively. Now they could see justice in operation. The court was there every day; they could go and attend the proceedings. Although the conviction rate was relatively low (58%), the offenders were being brought before court. In many cases the victims gave their views as to possible restorative sentences. This court had a healing influence on the community. After having functioned for eighteen months, and completed about 70 cases, crime levels are down considerably. People now respect state justice, and do not take the law into their own hands. The outstanding features of the court are: (1) The court is present in the community; (2) The defence is not allowed interminable postponements, and (3) cases run to completion.

### ***Restorative Justice***

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The task of presenting a paper on restorative justice predicated the need to address the compensational problems of lack of justice or its insufficiency. This paper intends to embrace the social notions of justice beyond the limitations of its legal concept and application.

Justice, as fragile as it is, is the web that holds any society together, and the entire society reverberates whenever and for whatever reason a part of it is dislocated. Justice remains the pivot that upholds peace, order, unity and stability; while the lack or the insufficiency of it makes the human community susceptible to chaos, disorder, disunity, inhumanity, instability and even war. This is so because there is no rational person or society without a sense of justice. Justice has remained an indubitable treasure; its dynamics have become the very force shaping the history of humanity.

It should be noted, however, that it has not been easy to achieve a universally acceptable concept of justice, as seen from a contextual perspective. I submit that, in order to attain restorative justice in situations where justice is denied to an individual, group, or institution, it is essential to examine the adequacy of compensation awarded in restoring the suffered injustice.