

Mental Health and Employment Law

1) Thesis abstract

Anti-discrimination laws are well versed with the harm principle, as classically formulated by John Stuart Mill, which holds that legal intervention is permissible only insofar as to prevent harm to others. However, research indicates structural levels of discrimination continue unabated notwithstanding the 'do not discriminate' approaches. This thesis explores whether the angle of well-being is a conceptually sounder footing to address inequalities and disadvantage faced by those with mental health (MH) issues in the workplace.

2) Context: work and mental health

- ❖ Work described as 'nature's best physician and essential to human happiness' [1]
- ❖ Mental illness often goes hand in hand with unemployment. [2]
- ❖ MH called key health challenge of 21st Century. [3]
- ❖ Anxiety, stress and depression most common forms of MH issues but vary greatly in degree
- ❖ Stigma leads to fear of disclosure
- ❖ Presenteeism, absenteeism and employee turnover result in significant costs and lost productivity in the workplace. [4]



3) Legal Basis

- ❖ Minimalist v Maximalist perspective
- ❖ What is law for? Avoid suicide club (HLA Hart) or a richer conceptualisation of a coercive force to bring about social ends we desire?

4) Natural Law

Thesis looks at work of John Finnis' 'new' natural law theory, which rests upon the notion of basic goods and practical reasonableness to aid human flourishing. This provides a legal theoretical basis in tune with well-being that could address MH with greater coherence.

5) Wider issues

- ❖ Match global with economic and social needs
- ❖ Identity predicament with MH and disability
- ❖ Type of regulation/litigation and enforcement

References

- [1] Galen. A.D. 172
- [2] Waddell G. & Burton, A.K. 'Is Work good for your Health and Well-being?' (Norwich: Stationary Office, 2006)
- [3] Wittchen, H.U *et al*, 'The Size and Burden of Mental Health Disorders and Other Disorders of the Brain 2010' *Eu Neuro*, 21 (2011) 655
- [4] Mental Health at Work: Developing the Business Case, Policy Paper 8. (London: Salisbury Centre for Mental Health, 2007)
- [5] Gulamhusein, A. 'Employment Discrimination: The Last Great Taboo' 160 *NLJ* (2010) 1243
- [6] Wilson, A. & Beresford, P. 'Madness, Distress & Postmodernity' (London: Continuum, 2002)



Andrew P Young
PhD candidate
a.p.young@durham.ac.uk