

**When is deviation perversion?**

**How do we assess real harm?**

**Legality is often easier to define than wisdom**

**David Zigmond**

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The unexpected often alerts us to the potentially malign. Defensive responses follow, often then blinding us to other possibilities. Here is a surgeon who stepped out of line. How did we respond? What did it mean?



*A man of humanity is one who, in seeking to establish himself, finds a foothold for others and who, desiring attainment for himself, helps others.*

– Confucius (6<sup>th</sup> century BC), *The Analects*

December 2017 saw a brief clustering of headlined media reports of a very strange kind. A much-liked, previously highly esteemed liver surgeon (LS)<sup>1</sup> with a long and excellent record was found guilty of ‘assault by beating’ and faced possible imprisonment. At his sentencing the judge condemned his ‘arrogant crimes ... betrayal of trust and abuse of power’.

Both the charge and the judge’s statement have the implication of violence, danger and psychopathy – yet such characteristics are not at all consistent with the rest of his long record or the many appreciative descriptions by patients.<sup>2</sup> So what had he done?

It was discovered, by a subsequent liver surgeon, that LS had earlier written his initials on a patient’s liver with an argon beam. Such an unusual act is not dangerous and would usually fade with time, so no physical harm was done but – crucially – the anaesthetised patient could not consent to this transient marking of a deceased person’s liver now gifted to them. So legally this lapse of protocol could now be construed as ‘assault by beating’.

Once his illegal initialling was exposed, LS was immediately suspended by his now sternly mistrustful NHS Trust. Densely procedural formal investigations were instigated by the Trust and then the General Medical Council. He acknowledged that he made this ‘serious mistake’ on two anaesthetised patients in 2013. On each

occasion he made his unusual but personal mark at the successful completion of a long, demanding and hazardous liver transplant – as it often is – before the more safe and quotidian closing and sewing-up. He did this slowly and clearly, in full sight of his numerous surgical team.

Admitting this, he resigned from his senior and prestigious post.

A ‘serious mistake’ was LS’s vague mitigation, ‘assault by beating’ the Court’s stern verdict. These may be expedient or legally cogent categories of guilt, but they are almost absent of other human sense or meaning.

Why did this very clever and able man – described by so many as also kind, warm and attentive – do something so inexplicable? What is its meaning? What was his motive?

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The veteran neurosurgeon, Henry Marsh, wrote of his perplexity when trying to explain LS’s now criminally convicted eccentricity. Marsh tentatively conjectures that it was ‘an ill-judged joke’, attempting somehow to relieve the tensions of long and dangerous surgery. But he is clearer that LS’s strange actions seem devoid of any real harm or vindictiveness.

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Let us see if some comparisons can help us.

Marking others who are conscious, but without personally autographing them, is much commoner. Religious or tribal circumcision, or cosmetic facial scarring, is meant to confer group inclusion and distinction. More malignly, sporadically and individually it is about sadism: the wish to dominate, destructively objectify, intimidate, inflict pain, disfigurement or humiliation. The possibility of these darker motives is, presumably, why we employ the law as a severe deterrent.

Yet nothing else known about LS suggests the kind of motives that might usually impel the inferred 'assault by beating'. So what else might explain this perplexing tale?

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We need here to consider the difficulty of our enquiry, for all motivation refers to *internal* phenomena. None can be directly experienced or evidenced by others, so our notions are necessarily determined by inference and imagination: we cannot *know*. Our best hypotheses are more certainly possibilities, less certainly probabilities, and impossible to be certainties. So no attributed motivation can ever be finally either refuted or proven; we hope for a science of psychology but never, really, leave the realm of philosophy. Practically we must make-do with levels of plausibility.

Even this can be treacherous: even candid and rational people, acting with thoughtful good faith, will later find they have deceived themselves, wandered into a hinterland that earlier they could not see, nor thought plausible.

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So how does all this help us with understanding LS's motives, which may be unconscious, and always uncertain? All the usually assumed notions – mentioned above – lack plausibility. LS's behaviour is very unusual; we here need less familiar ideas about what motivates the strange or incongruous.

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Consider the following: Edmund Hilary planting a flag on Everest's summit on its first ever ascent; a similar image from the moon landing; thousands of Victorian builders or engineers leaving small, discreet, personal marks or plaques of achievement on buildings and bridges; the artist's autograph on the lower corner of a completing painting; the bark of a giant tree gouged patiently with the names of two lovers...

What motivates these kinds of marks and artefacts? It is not about tribalism or sadism. Egotism may be present sometimes, but is mostly an inadequate explanation. Notably LS is not otherwise described as vain or egotistical.

We can postulate other, much more positive, urges and aspirations indicated by these examples: wanting to share and celebrate a major achievement; symbolically then making this into a personal gift. Expressing love as an eternal life-current outspanning our individual human frailty and mortality (the ancient oak here is like the precious stone – a symbol of enduring and suprahuman worlds). Sharing the

burden and pain of our conscious mortality – recognising that time passes inexorably: all that we do is transient, so we must cleave to each act's significance...

Can we think of such acts, then, as a kind metalanguage for the fraternal, the spiritual and the hardly knowable?

It is this kind of explanation – of motivation – that may serve us best in understanding LS's argon autography. It could be – albeit unconsciously – a mark of his compassionate fraternalism; a personal benediction for all our mortal voyages. His acts, then, were like a priest's blessing.

If this sounds irrelevantly arcane it is worth noting that such human, fraternal and spiritual dimensions of relationships are often those that many – doctors and patients – lament as painfully vanishing from medical practice. Could it be that LS, either consciously or unconsciously, was, in a small and symbolic way, trying to restore to care our lost personal identifications and humanity? Was this argon autograph a benign personal totem, a foil against anomic care? All unprovable speculation? Yes, of course: this territory makes that unavoidable.

So, do I think any surgeon should be able whimsically to graffitise any patient, whenever and however they choose? Certainly not.

So do I think, therefore, LS should be severely punished for a criminal act? No, probably not.

Clearly we are left with complex questions. The law can judge and direct but cannot, in other ways, illuminate or resolve.

*The unexamined life is not worth living*

– Socrates, 469-399 BC

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#### **Notes**

1. I have not used this surgeon's true initials or name here as I wish the article to focus primarily on the broader issues, rather than linger over personal details or identity.

LS was, of course, named in much media coverage. This brought much shame and obloquy without much (if any) deeper understanding. He then self-terminated an otherwise illustrious career. This article – and withholding his name – may, at least, help us pause for thought.

2. The wide-ranging support of LS was emphatic. This link – <https://tinyurl.com/y86udslld> – provides a sample.

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