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Repairing the Legal Dialogue by Reflective Practice

A Constructive Response to the Dutch Childcare
Benefits Scandal

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Council of State,
High Administrative Court



REFLECTION

Defined as:

Reflectere – to bend / to turn back

“A highly personal, cognitive process ... in which a person makes connections to other experiences, and filters it through personal biases.” (Dewey, 1910/1933, p. 9)

Characterized as:

- cognitive
- affective
- collective

(Van Seggelen-Damen et al., 2017)

Classified according to:

- timing (before, during, after act)
- cognitive effort
- level of reflection

Approaches toward reflection:

- self-awareness
- self-interest
- self-inquiry



REFLECTIVE PRACTICE

Defined as:

“(simply) creating a habit, structure, or routine around examining experience.” (Amulya, 2004)

“periodically stepping back to ponder the meaning of what has recently transpired to ourselves and to others in our immediate environment.” (Raelin, 2002)

Procedure

(Mahdloom, 2019)

Competence

(Leering, 2017)

Ways in which reflection is manifested through individual and collective action

(Pekkola, 2015)



REFLECTIVE PRACTICE IN LAW

Learn from experience

connect theory and practice; improve professional competence.

Critically examine law, justice, and legal institutions.

Develop self-awareness

strengthen professional identity, wellbeing, and resilience.

Engage in collaborative reflection

improve communication, conflict resolution, and teamwork.

Translate reflection into action

by promoting ethical practice, integrity, and positive change

(RPLP Call for papers, 2026)

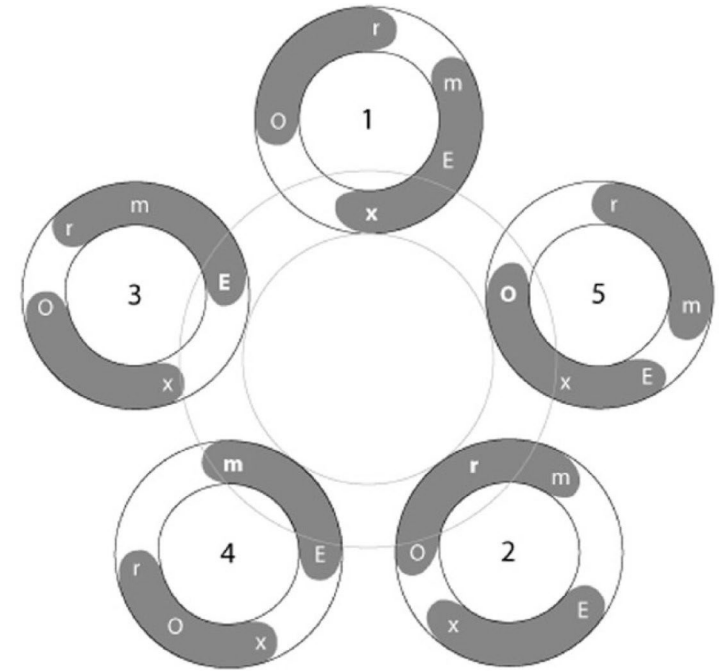
REFLECTIVE PRACTICE

Benefits

- learning, development (instrumental)
- change, innovation (transformative)
- enhances reflective dialogue

Challenges

- reliability and validity (bias; subject = object)
- sustainable praxis; “invitation to slow down”



Van Seggelen et al., 2017

Law as reflective dialogue

- A. Professional interactions between courts and the other branches of government ('constitutional dialogue') and parties to cases
- B. Dialogue presupposes and enhances reflective attitudes.

Dutch Childcare Benefits Scandal 2010-2019

- A. Parent provides account of childcare use and co-payments for past year.
- B. Tax authority finds inaccuracies in account or deficiency in co-payments.
- C. Tax authority files case under ‘fraud’ and reclaims all benefits from that year.
- D. Parent is unable repay.
- E. Highest Administrative Court supports this with faulty legal reasoning.

Legal dialogue broken by unreflective and unresponsive high court

- A. Judgments not adequately reasoned (breach of fair trial criteria, art. 6 ECHR)
- B. Unresponsiveness to communication by courts (decisions, letters, informal meeting)

Lessons learned from reflection on practice

- A. 'Skills training (competence) and adapting working methods (procedure)'
- B. 'Dialogue with the outside world'
- C. '(Renewed) cooperation with district courts, National Ombudsman, and academia'

Lessons not learned

- A. Recognition of own role and faulty legal reasoning.
- B. Openness of reflection programme and openness about implementation of lessons from 'reflection reports': no assessment of reliability and validity.

Implications for legal education

- A. Practice reflective and open attitude from the start of legal education, in university as well as professional training.
- B. Repeat professional ethics training every 5 years to maintain the open reflective mindset and practice.



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