University of Kent

Kent Law Clinic

ADRIAN TAYLOR MEMORIAL

University of Kent
19 November 2016

PROGRAMME

11.15am-12.00pm

Gather and welcome
Wigoder Building Foyer

Speaker Richard de Friend

Light refreshments and chance to tour new building

12.15-1.15pm

Plaque unveiling
Law Clinic Suite, Ground Floor Wigoder Building

Speakers Brian Ankers
John Fitzpatrick
Unveiling Yvette Gibson

1.30-3.30pm

Lunch
Rutherford College Dining Hall

3.30pm

Departure




THE LAW CLINIC, 1973-76

Adrian's Lecture to students at the University of Kent Law Clinic in 2012

Introduction

When the Law Clinic opened its doors at this University in November 1973 it was the first such body to find its way on to any campus in the UK. Why and how that came about is what I have been asked to talk to you about today. It is, of course, my own account. Other people will have their own stories.

The structure and content of the conventional law degree, a half century ago

I take **Hull** as an example, as I have some direct knowledge, having gone there to teach in 1964. The Law course there could not have differed much from that at any other English red-brick University, and apart from the greater prevalence of split degree courses at Oxbridge, was not substantially different from the Oxbridge syllabus. The same "core" subjects (Contract, Tort, Land Law, etc), the same textbooks; the same content, ie, "the rules", and only the rules, and the same methods, that is, formal lectures and socratic tutorials.

The need to gain exemptions from Part 1 of the Professional examinations was acknowledged and accepted. Most students intending to practise. Some scope for individual initiative certainly existed, for example, Jurisprudence and Evidence, (both of which I was asked to teach) were compulsory at Hull, and in my opinion rightly so. In the Jurisprudence course we spent some time on the American Realist movement, a loose grouping of academic lawyers whose attention was focused on what lawyers and courts do with rules, rather than the rules themselves.

Not much involved in the core syllabus at Hull, I had no quarrel with the general approach. There was a sense of camaraderie and a feeling of community there, but the grass elsewhere seemed greener.

Robbins At the same time winds of change were blowing. Following recommendations of the Robbins Committee, half a dozen new Universities were planted in some of the more salubrious parts of the country. New was the word. Not only new buildings but new approaches to go with them. But what were they to comprise?

At a meeting of the Society of Public Teachers of Law, AW Bradley suggested that a conference on Law and the Social Sciences would be a good idea. The thinking may have been to reduce the hermetic quality of legal education, explore new possibilities, see where matters might be taken. Anyway, it fell to me to organise that Conference in 1966. Among the speakers were Anthony Bland, about to set-up a new course at Sussex, and PJ Fitzgerald, a former practicing barrister, moving from Leeds to Kent. These 2 set-out their stalls; Sussex in effect to be a combined course, with Major and Contextual components, Kent to implant Law into the midst of a wider Social Science field. Fitzgerald spoke of Law developing like an historic town, the oldest part at the centre, new, eg, industrial quarters growing at the edges. Anyone interested can read about the meeting together with the papers read by Bland and Fitzgerald in my report on the conference, at (1967) 9 JSPTL 328, entitled "The Concept of a Law Degree: Law and the Social Sciences". Reading that report myself a few days ago, for the first time in a long time, I was struck by the number of people who took part, their calibre and the range of opinions they voiced on where legal education stood and what direction it ought to take.

The Kent experiment So in 1967 off to Kent we went, where Fitzgerald, having collected a miscellaneous half-dozen people to teach law, some of them recent graduates (non-practitioners), others erstwhile solicitors, (ex-practitioners) planted them as a Sub-Faculty within the Social Sciences Faculty. There a single paper, initially "Introduction to Law", (later "Contract and Tort 1") would be taken in the 1st 4 terms by every student in the Faculty, together with some 4 or 5 other subjects, followed by 5 terms for the law students to cover the rest of the syllabus, consisting of a mix of traditional and novel papers, eg, "Law **and** the Family", Law **and** Industry", etc, with Jurisprudence being collapsed into 2 terms of "Philosophy and Sociology of Law". Clearly such an arrangement left no time for Evidence and precious little for any extensive study of substantive law. It should be borne in mind that academic lawyers, then and doubtless now, constituted a profession separate and distinct from the practising professions, and there was, generally speaking, quite a gulf between them in terms of recruitment, class and values.

You get a strong whiff of this in the Presidential Address given to the SPTL in the mid-60s by RE Megarry, newly raised to the Chancery Bench, in which he addressed his mind to contrasting characteristics and preoccupations of each, claiming humility, at least humiliation, to be a professional risk of the Bar, in contrast with the safety of the academic milieu. (See Megarry, "Law as Taught and Law as Practiced"(1966) JPTL 176.) I later recognised this address to be in truth an opening skirmish in a sustained campaign between leading academics and the practising Establishment for control not only of the undergraduate syllabus but also of subsequent training for practice. This campaign reached Departmental levels before the academic initiative stalled in face of institutional inertia and for lack of Government support. I cannot recall any discussion of this at Kent, and I suspect that it passed over our heads. (For anyone interested, there are a few words about that episode in "Clinical Legal Education", (1977) 2 Studies in Higher Education 137. ("My 1977 article", for short.)

But having said all that, we were not entirely immune from the world outside, particularly the world of 1968. Some lawyers at Kent became attracted to "radical law", at least as a state of mind, and one colleague, by way of social action originating from the University, initiated a market stall, providing legal advice and assistance to lay people, one example that comes to mind ending-up in the House of Lords. Other colleagues found a powerful focus for study in "critical law".

When you come to consider what effect the Kent experience left on students, you get a mixed, even confusing, picture. On the one hand, an unpublished Survey of UKC Law Graduates 1969-71 by R De Friend, which I cited in my 1977 article, gave

THE LAW CLINIC, 1973-76 (CONT)

the impression that many students arriving with the idea of going into practice failed to do so on leaving, put-off by insistence on the role of law as little more than an instrument of social control. On the other hand, an elegant piece of undergraduate research (by Mrs Eileen Mitchelhill, The "UKC law student: a survey, published in 1974 in PRAXIS 3, (to which we will come in a moment,) gave the local figure for post-graduate professional entry not far below the national average of 70%.

Elsewhere, meanwhile, attention was being drawn to the fact and extent of the unmet need for legal services, courses on Welfare Law were being designed, the Law Centre movement was building-up, organised and staffed by socially concerned and active young lawyers, many, if not most of them, products of conventional law courses.

I came to the view that Law at Kent, in view of the limited amount of time available for its study, and particularly in a general concentration on "critical law", contained more of the "critical" than of the "law". I felt that it had come to a dead end, and found that unacceptable.

Any way out of a dead end?

Taking a term's sabbatical, I think in Michaelmas term 1971, I took myself off to Yale, where I attended a few highfaluting lectures on Jurisprudence and received an invitation to attend the Law School picnic. In my national dress.

Back home, back to the drawing-board.

And since any account of clinical education here must start with the American experience, let us consider that now. By 1971, when Robert Stephens' account of a century of American Law Schools was published, 2 in every 3 American Bar Association Law Schools were involved in clinical legal work, and it has been claimed that by 1973 there were some 125 Law Clinics operating in 143 Law Schools. That did not happen overnight, and their development did not come about without disagreement between conservative-leaning' academics and people associated with the realist movement. And not without dissension (possibly associated with personal rivalries) between' one realist and another, together with a substantial degree of inertia.

By way of example, Karl Llewellyn, regarded by many people as the leader of the movement, if such it was, had written, according to Jerome Frank, in favour of clinical elements as early as 1935, but by 1947 notwithstanding ample opportunity, had done nothing about initiating any. And Frank, claimed in some quarters to stand at the opposite extreme to Llewellyn, was pointing out that his own sustained advocacy since 1931 of a clinical method "as a central part of law school activities" had fallen on deaf ears. My 1977 article, from which I have plundered this account, goes on to mention that within a year of the publication of Stephens' article, 4 States out of 5 had promulgated student practice rules and the Supreme Court of the United States had recognised the contribution that law students could make to the representation of the poor.

But although those developments were clearly a source of inspiration to me, I have no recollection of when I became acquainted with them. And although references to much material on clinical education in the US were soon to find their way into the documents created to describe, explain and justify the clinical programme at Kent, (see the Index to Materials in "Notes on the Clinical Programme, 1976/7"), what I do remember is that my first steps in that direction took the form of a model of an operating system, constructed in the Chemistry laboratories here, from a series of glass vessels though which coloured liquids were made to flow, demonstrated and elucidated to audiences at Kent and elsewhere who must have found it somewhat baffling. I think that a diagram of that model (referred to by my children as "the juice machine") appeared on the front cover of an issue of PRAXIS. I must have been harping-on about the model for some time before my long-suffering companion suggested that instead of talking about a Clinic I should do something about opening one.

The idea realised

So on the basis that the Kent countryside was likely to provide examples of unmet need for legal services which Law students, motivated and reasonably trained and supervised, might be able to meet, reflect upon and from which to draw conclusions, and in possession of £500 donated by a musical friend for that purpose, in 1972 I proposed to the authorities a mobile Law Clinic in the form of a second-hand single-decker bus. The prospect of UKC students roaming the country, seeking to give assistance to distressed proletarians must have concentrated the attention of the relevant decision-makers, because by November 1973 the first Clinical Programme was published and the Law Clinic opened for business in Giles Lane at 2 Olive Cottages, later moving to a nissen hut at Beverley Farm.

As to our rationale, I may be allowed to quote a couple of passages from the 1976/7 Clinical Programme

"A clinical education involves the acquisition of both knowledge and skills through observation and participation in problems as they are currently experienced. This involvement, not with abstractions, but with those who are facing the problems (the clients) supplements a purely theoretical and conceptual knowledge of legal issues by providing direct awareness of the reality of the law and of the institutions which have been created for its enforcement"...

"This experiment involves a commitment to redefine our objectives and methods in the light of experience. To understand the law requires both a critical awareness of lawyers' roles and the ability to handle legal rules with imagination and skill. These do not just happen and they are not to be learnt by reading alone. What we seek to achieve is the ability to relate practice to theory by way of informed action. This is what we mean by praxis."

Before we look at how we set about realising that programme, let me also state what we claimed to be the objects of the Law Clinic itself.

I quote from the 1973/5 Report on the Clinical Programme at Kent

"The objects of the clinic are:

a to promote the teaching and learning of law by providing opportunities for law students to gain first-hand experience of legal tasks, and the legal skills required for their accomplishment;

b to advance legal research by directing the attention of law teachers and students to problems of legal substance, procedure, technique and organisation revealed by clinical work;

c to alleviate distress in the community by the provision of information, advice and assistance with regard to their legal rights and obligations to persons who would otherwise be disadvantaged by their inability to obtain such information, advice and assistance from other sources."

What **the clinical programme** involved in practical terms was a progressive approach, moving from group visits in Year 1 to Courts, ranging from local Magistrates all the way to the hearings of the Judicial Committee of the House of Lords, to Moots in Year 2 on issues arising from clinical casework and Vacation placements in places where lawyers work, or legal advice is given, including Solicitors' offices, Law Centres and CAB's; on completion writing a dissertation to include a description of what they had experienced and a note on a matter of law dealt with there, that dissertation (of approximately 8000 words) to be ascribed with the agreement of the relevant teacher to a particular course, where it would count for 50% of the marks in that subject. Assistance in the Law Clinic, attendance at Clinical Seminars and contribution to Praxis were optional. It has to be said that all this increased the burden on my colleagues. And also that there was never any doubt in my mind that a clinical approach ought to permeate, (I do not say dominate) the entire syllabus.

In this connection, a word about **Praxis**. It ran to 4 issues, of which I now only possess copies of 2.

They were type-set and laid-out in the Law Clinic, and printed at the University Press by photo litho.There may be the odd copy on display. Praxis 3 contains 5 articles, 4 by students or post-graduates, and the other by a member of the law staff. Subjects ranged from a Welfare Benefits project, Landlord and Tenant notes, the Survey of Students already mentioned, to a report on recent developments in clinical education in the USA.

Praxis 4 contains 6 articles, 3 by students, of which one, a survey of unmet need in the Medway, gave rise to a legal advice centre in that area, staffed by a recent graduate.

My own opinion, for what that is worth, is that the student work published in Praxis could hold its head up in any company.

It goes without saying that students showed positive interest and a degree of enthusiasm for these opportunities to engage. And what we were doing here began to attract some attention more generally; some young law teachers, (among them WM Rees at Cardiff and Martin Partington at LSE) writing in positive terms, others (Bankowski and Mungham, "Warwick University Ltd") critical if not hostile, suggesting that what we were really engaged in was a quest for property, both material and intellectual. And there was a fair amount of appreciative Press interest, mainly in the Times Higher Educational Supplement and the Guardian.

Let us turn to **the Law Clinic**. From the start we were fortunate to have a young secretary who typed, cut stencils and duplicated large numbers of copies of vast numbers of documents created over the following 3 years. In December 1974, Larry Grant, previously Legal Officer to the National Council for Civil Liberties, was appointed Solicitor to the Clinic as a half-time Lecturer and, as I think, on the understanding that he would reimburse the University half the cost of his employment, which it was thought would require him to seek waivers of those of the Law Society's Practice Rules which in those days prevented Solicitors from advertising or sharing their fees with outside bodies.

By 1975 six members of staff and four post-graduates had acted or were acting for half a day each week in term-time as Duty Officers, supervising over 100 students in groups in the conduct of interviews, drafting, case-preparation and research.

According to the 1976/7 Notes on the Clinical Programme, by the end of September 1976, over 1200 cases had been undertaken by the Clinic, activities ranging from advice to representation across a wide field, from housing to mental health, and clients coming almost equally from within the University and outside, and this without advertising.

Among those cases a few still deserve mention, and a couple may well have left long shadows.

In '74, a student sit-in occurred in the University Registry. The authorities moved for summary possession, ex parte on informal notice. It was believed that contractors had been hired to carry out the eviction with dogs immediately an order was obtained. With the hearing due to take place on the following morning, the Clinic was asked through me late in the evening to act for the demonstrators. I instructed a solicitor by telephone, and he instructed Stephen Sedley (now Sedley LJ) who, armed with a copy of the University Statutes, advanced the subtle argument that the students, as members of the University, were more entitled to occupy its premises than the Plaintiffs, who were only its Officers. That was enough to establish an arguable case which rendered the matter unfit for summary disposal. No eviction took place and the sit-in eventually came to a peaceful end without any further involvement by the Clinic.

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During '74 and '75 the Clinic took both Canterbury Council and British Rail to Court, each on 2 occasions, over their attempts to evict squatters from properties long held empty and over which they could, following Circular 18/74 (entitled "Homelessness"), have granted licences to occupy. A 2nd-year student produced in early '76 a balanced and well-informed article on the Council's attitude to the Circular for PRAXIS 5, an issue which never appeared, for reasons to be mentioned.

In 1974 Dr Brian Ankers, a Chemistry post-graduate, who had spent 2 ½ years as a nursing assistant at St. Augustine's Psychiatic Hospital, Chartham, sent to the District Health Authority a short paper entitled "A Critique Regarding Policy", which he and a colleague had written, complaining of lack of policy and containing allegations in general terms of unacceptable standards of care, neglect, mistreatment and malpractice at the hospital, and calling for an investigation. Under the headline "an amazing attack on a psychiatric hospital – and a stinging reply to allegations", the Kentish Observer published the Authority's reaction, quoting the statement of the Management Team that "in the absence of details of the alleged mistreatment and malpractice the whole document tends to be suspect". Dr Ankers and his colleague then detailed over 70 specific examples of the matters complained of. Finding himself at the sharp end of a campaign to intimidate him into withdrawing his allegations, Dr Ankers came to the Law Clinic. What to do now?

The advice I gave him was straightforward; come back when you have got statements from witnesses to the abuses, giving full details of each allegation; perpetrator, witness, time and place, what did the witness do about it, and with what result?

It did not occur to me that in order to obtain that evidence he would need to ensure the willingness of every witness to risk their career. Dr Ankers came back some months later with 2 large files containing every detail I had asked for.

Those files became the main body of evidence at the Enquiry established by the Regional Health Authority under the chairmanship of JH Inskip, QC. In the course of the next few months, the Panel of Enquiry heard evidence under cross-examination from witnesses ranging from student nurses to hospital Consultants and Administrators, and finally from a member of both the Hospital Management Committee and the Area Health Authority, who happened to be the wife of the Vice Chancellor of the University of Kent. By the time she came to give evidence it was clear to everybody else in the room, the Panel and all Counsel and solicitors, that the case had been made out.

But not to that lady. Her blithe statement that she knew of nothing at all at St Augustines to complain about, (with the result that nobody felt it necessary to cross-examine her), was echoed by statements to the same effect made in the Commons at Question-time on 31 March 1976 by MPs for the 3 neighbouring constituencies, following publication of the Report of that Inquiry, where the Clinic had represented Dr Ankers and which upheld Dr Ankers' complaints. Inskip prefaced that Report with this passage from Michael Tippett's "A Child of Our Time":

"I would know my shadow and my light, so shall I at last be whole. Then courage brother, dare the grave passage".

The Report, and the evidence presented to it, featured prominently in a large number of medical, psychiatric and nursing journals, as well as the New Statesman, New Society, and every newspaper in the country, an it was the subject of further Minister's Questions on 25 May and the focus of an Adjournment Debate on electro-convulsive therapy in the House on 7 June.

Much of what the Inquiry heard was extremely distressing, and I have not sought to make this the occasion for harrowing your sensibilities with any details. But to give you some idea of what Dr Ankers and many other people found unacceptable, take this extract from the Hansard report of the June 7 debate. Christopher Price, MP speaking:

"Doubts and worries about ECT and the way it is used in hospitals have been enormously increased by the recent and excellently-written report of Mr Inskip, QC, on the state of affairs at St Augustine's Hospital, Canterbury. I draw my Honourable Friend's attention to two incidents in the Report. The first is described as "Incident 6" where a man described as "Mr GHI", an informal patient, received 30 treatments, many of them without specific authority from the doctor, and ended-up with organic cerebral deficit.

"Incident 67" concerned a "Mrs JKL" who was admitted to hospital with a broken back. She was not examined by her doctor. She had to be carried by four nurses. This woman was given ECT treatment which the doctor ordered without examining her. She died five days later. Both these incidents concerned one doctor. The report makes it clear that St Augustine's hospital was not untypical and was no different from any other psychiatric hospital in the country".

I should mention that in none of the nation-wide press coverage of this affair was the Law Clinic mentioned by name. In the light of later events, it was being talked about closer to home.

The empire strikes back

A man with whom I soldiered a long time ago used to maintain that "a good deed never goes unpunished". That may well account for the events in 1976 leading to the closure of the Law Clinic and the abandoning of the Clinical Programme at Kent.

At the beginning of 1975 The Dean of Social Sciences told the University House Magazine

"...it seems to me that institutions like law clinics and neighbourhood law centres, and to some extent lawyers generally, just' do tread on people's toes..."

By the middle of that year our application for waivers was hanging fire. We know, from an article by Michael Zander in the Guardian (in July) that Hillingdon Law Centre's application was being blocked by opposition from the local Law Society. It seems likely, though nobody told us, that our application was meeting similar opposition. In the same issue in which Zander's article appeared, and on the same page, the Guardian ran a substantial article on the Law Clinic, which it described as "the boldest experiment in bringing law into people's grasp", making the point that "to survive, it needs waivers". It included an interview with the Dean, (who was one of the Professors of Law) in which, after repeating his earlier message that "by its nature a law clinic is going to tread on people's toes", he now added "but relations would be better all round if they sometimes lost a case. They always seem to pick winners. They're too good." Better for whom? we were later to ask.

At that time the Law Board put-up to Faculty a proposal designed to advance the financial stability of clinical work at Kent by the establishment of an Institute on the model of the Institute of Judicial Administration at Birmingham,whose work was funded by grants from such bodies as SSRC and Rowntree. Instead of looking into the merits of that proposal, the Dean set-up a "Working Party", consisting of 3 non-lawyers, chaired by the Professor of Accounting. I wish I could recall its terms of reference.

Whatever they were, it speedily came up with some radical proposals of its own, so to speak, predicated on a supposed need to avoid confusion between the educational and the service roles of the Clinic (or, in plainer English, to avoid embarrassment to vested interests inside and outside the University), by withdrawing the University's sponsorship, removing the Law Clinic from the campus, and the establishment elsewhere of an "economically independent Law Centre", under 3-year contract to the University and whose forensic activities would be subject to its control.

The underlying rationale for these recommendations, as we were not slow to point out, rested on a complete misunderstanding of a precondition for waivers, namely operational independence. Commenting on that Report in November 1975 we said that those recommendations were calculated to lead inevitably to the extinction of the clinic and were on that account unacceptable; that insofar as they envisaged a slow death rather than an instant one, there was no reason to prefer them.

It should come as no surprise that those proposals slipped through Faculty Board's Cabinet, the Planning and Development Committee. My recollection is that the Law Board passed them first. I may be mistaken on that, but putting it at its lowest, they did not put-up a fight. In December they came before Senate, where I was kindly allowed to state our case. I pointed both to the run-of the mill cases forming the larger part of the clinic's case-load and to the powerful interests we saw as behind this move. Let me quote from that statement's closing paragraphs:

"All our case-work involves the vindication of legal rights. The cases that make news do so because they involve the powerful. We don't go looking for them. They come to us, and they do so because there is no-one else to go to. As far as we are concerned our clients are entitled to the same standards of advice and representation whether their opponent is an obscure individual or the Mayor of Dodge city.

"It is this insistence on availability to people in need, on a single standard of advice and assistance, on making the law work, which lies behind our case-load and our successes, which reflect the commitment and sheer hard work of our students and the Clinic staff who guide them.

"That experiment is now in your hands. If you recognise its value you will not let the cost of a couple of academic posts deter you from giving it your full and continued support.

If on the other hand you are prepared to abandon an educational innovation which has clearly benefited the local community and enhanced the national reputation of this University, simply on what, in its proper perspective, is a temporary embarrassment caused to a handful of local scallywags. in a small provincial town, that is your privilege".

No surprise, then, that Senate followed the Dean. But I was more successful in dissuading the large number of students massed outside the Senate building, in "T"-shirts bearing the inscription "The Law Clinic Lives", from starting another occupation. Some months later, in a privately circulated paper, the Dean made the claim, later repeated in the columns of the Times Higher Educational Supplement, that the Clinic had been doomed by our incompetence in failing to obtain waivers. We had no difficulty in exposing the emptiness of that claim.

On 1st April 1977 The Guardian published a letter from Larry Grant and me, headed "We can see the broken eggs; now show us the omelette", in which we canvassed the spurious reasoning, the ill-effects and the questionable motives behind the manoeuvres which had brought about the closing of the Law Clinic and the termination of the first attempt in this country to provide clinical legal education.

By a curious coincidence, 3 Days later, on April 4th, the newspapers were reporting that a review conducted by the Area Health Authority had repudiated the findings and rejected the recommendations of the Inskip Enquiry. That review must have been some time in the preparation. "The Sun", at that time a serious popular newspaper, headlined its front page "Gestapo Hospital Shock, Rapped staff let off in new probe", castigating it in an editorial as a "blatant whitewash"

I took a sabbatical, read for the Bar, and left the University. Larry Grant went into private practice and died some time ago.

The world has changed since then; this University with it, and I am happy to see the Law Clinic, in its present incarnation and under John Fitzpatrick's leadership, operating so successfully.

AT
March 2012

DPC 122819 11/16

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Law Clinic