



**Northumbria  
University**  
NEWCASTLE

# **IJCLE CONFERENCE**

# **2019**

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## What am I covering?

- Discuss the role of clinic in advancing the rule of law
- Appraise the welfare benefits system in the United Kingdom (UK)
- Consider the impact of legal aid cuts to benefits claimants
- Review the proliferation of social security legislation
- Examine the impact this has on legal needs and capabilities
- Evaluate the extent clinic to which protects benefits claimants
- Conclude by suggesting further research in the area

# Clinical pedagogy and I

## Why clinic?

- Significant part of my consciousness
- Passion for experiential learning
- Postgraduate research programme in 2013
- Clinic supervision
- Gaps in legal needs and legal capabilities
- Barriers to access justice
- Progressive erosion of the rule of law

## The Executive, the Legislature and the Judiciary

- UK Supreme Court judgement in the *Miller* [2017]
- Roles, powers and structure of different organs of a state
- United Kingdom Supreme Court is law
- Independence of the Judiciary
- Acceptance of court rulings by the Executive
- Culture of law and the rule of law
- Freeman proclamation - Magna Carta 1215 – rule of law genesis
- British Bill of Rights 1689 – Supremacy of Parliament

## The Authority and Influence of Law

- Characteristics of law
- Laws by Parliament, not by the discretion of Executive
- Equality before the law, respect for human rights and just treatment for all
- Government of law and not government of men – **John Adams**
- Underlying principle of any political and legal system
- ***Entick v. Carrington*** [1765] – civil liberties versus scope of Executive power
- Reigning supreme is the rule of law as interpreted by the Judiciary
- No one is above the law
- Watergate Scandal - ***United States v. Nixon*** [1974] - ***Bush v. Gore*** [2008]
- Judiciary should not be subjected to improper influence



# Welfare benefits system

## A historical perspective of the UK's welfare benefits system

- The state has a duty to provide financial support
- Groups of people who may claim state handouts
- Types of benefits and attempts at reforming the system since 2010
- ***Wiles v. Social Security Commissioner and Another*** [2010]
- The Poor Relief Act 1601
- Compartmentalisation of recipients of state handouts
- The system then is not alien to the system today

# System versus doctrine

## The UK's welfare benefits system and the rule of law

- DWP Benefits Statistical Summary, February 2019
- 20 million people are in receipt of state handouts
- Disability Rights UK report, May 2017
- DWP's KPI target of Mandatory Reconsideration requests was 80%.
- ESA Work Capability Assessments, Mandatory Reconsiderations and Appeals Summary, March 2017
- 88% of Mandatory Reconsideration Requests made were not revised
- Actual set target is awful – exceeding KPI target is deplorable
- Second Independent Review of the Personal Independent Payment, UK Parliament, Section 89 of the Welfare Reform Act 2012
- Public trust lost – tax payer money wasted – lack of respect for the rule of law



# Legal education and skills

## The hiatus between legal education and legal profession

- **Felix Frankfurter** – *law is what lawyers are – lawyers are what law school makes them*
- Exaggeration of a level of effectiveness in teaching skills?
- Relationship between legal education and professional skills
- Controversial assertion - abstract theory/experiential learning
- Is the law school responsible for training students to be competent?
- Social values raise professional responsibility awareness
- Law school (with a clinic) - a better suited platform for this and more



# The English legal education

## The history of legal education in England and Wales

- Inns of Court in London – 15<sup>th</sup> Century
- Learning through observation, moots, debates, court trials
- Apprenticeships replaced Inns of Court legal pedagogy - 1642
- Learning through observing and practice
- Criticisms of apprenticeships then
- **Blackstone's** rallying call – law be taught at universities
- Law Oxford 1750 – Cambridge 1800 – UCL first LLB
- Academic – vocational training – pupillage/training contracts
- New kid on the block! The SQE is taking root
- Therefore need a new kind of different social justice practitioner

# Different model of lawyering

## A different model of lawyering in the United Kingdom

- Clinic helps students gain practical lawyering skills
- Indigent members of the community receive free legal advice
- Global clinical movement
- *“...a momentum has begun to develop that (which) has helped sustain existing clinical programs and ease the path toward institutionalizing clinical education. In other words, the global reach of clinical legal education has aided and facilitated its growth and acceptance” (Bloch)*
- Growth of clinics
- Students gain substantive knowledge and practical legal skills
- A start towards establishing a role in protecting liberty rights

# The role of a lawyer in general

## What does a lawyer do?

- Role of a lawyer – starting point in considering role of clinic in advancing rule of law
- Role of a lawyer – not without its own difficulties
- Breadth and complexity - different histories and legal traditions
- In common, however – the need for stability in society
- Economic dynamics impacts on the legal needs and capabilities
- In demand is the expertise of social security law practitioners
- Process of lawyering is more than just thinking like a lawyer
- The **MacCrate Report** – fundamental lawyering skills and values



# Clinical pedagogy drive

## **Towards a competence driven clinical pedagogy**

- Not every law course covers all MacCrate fundamental skills and values
- May be covered by elective courses taught alongside substantive law
- No requirement for exposure to MacCrate fundamental skills and values
- However, job market is incredibly competitive – hence need to innovate
- Clinic covers almost all of the MacCrate fundamental skills and values
- At Northumbria Law School – curriculum brings students closer to practice
- Operation of the welfare benefits law clinic within the Student Law Office
- Focus of the undergraduate LLB in the United Kingdom – substantive law
- Case for a renewed curriculum that embeds clinic as a primary route
- Solicitors Regulation Authority’s Code of Conduct – professionalism
- Provides assurance to the client



# Clinic and social justice

## The role of clinic in training lawyers for social justice

- UK Civil and Social Justice Survey 2010 and 2012
- Significant gap in legal knowledge and legal capability
- Half of UK population experiences justice issue every 36 months
- Impact on levels of confidence – sense of disempowerment
- Complexity in legislature and completion of claim forms
- Is it deliberate? – to discourage claims perhaps?
- National Statistics Office - 7.8% of UK population at risk of poverty
- Complexity - proliferation of legislation – impacts on legal capability
- Enacted laws must be comprehensible – simple rule of law principle
- Anything contrary is arbitrary



# Clinic and social justice

## The role of clinic in training lawyers for social justice

- Clinic sits in the juncture between legal advice and knowledge creation
- Social justice is a public institution for the public and by the public
- Clients are stewards of justice system not beneficiaries
- Awareness and knowledge of law and legal processes
- My conviction that experiential learning is effective - Confucius' quotation
- *"I hear and I forget, I see and I remember, I do and I understand"*
- Application of the famous quotation to a clinic setting .....
- By so doing students not only learn the role of a lawyer they practice it
- Clinic is a good platform to hone lawyering skills
- Student commitment invigorates client appreciation of the legal process
- Sets a culture of law in motion



# Fostering a legal culture

## The role of clinic in fostering a legal culture in the welfare system

- Massive cuts on public funding of legal cases in the UK
- Severe impact on the population's social and economic health
- Legal exclusion – social and economic disadvantage
- Access to routes of affordable legal service is appalling
- Do nothing about it or represent self – both are dangerous options
- This is where clinical legal education comes in
- Regardless of the outcome of a case – due process achieved
- Clients are appreciative
- Change in attitudes shaped by pre-existing beliefs and traditions
- Clinic is a form of public legal education

# Conclusion

## Clinic role in maintaining rights and advancing the rule of law

- Cynics – clinic role is insignificant – only small numbers do clinic
- Defeatists need only observe the good work students do
- Clinic fills vacuum left by traditional legal and advice service providers
- Platform for attaining education and for the provision of legal services
- For the client, clinic improves levels of legal capability too – key life skill
- Helps in preventing problems escalating in future – new claims
- Awareness of and framing legal issues, empowerment and confidence
- Recognise the real-life value of legal information
- Clinic embraces principles of justice
- Antithesis of the existence abuse of human rights and decay in rule of law
- Students and supervisors - main source of defence and support of the role
- Future research agenda .....





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# Any Questions?

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