

Commission on Justice in Wales

Response to Consultation from Professor Jane Williams, Lead on Innovation and Engagement, Hillary Rodham Clinton School of Law, Swansea University

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Introduction

Since the beginning of devolved government in Wales, Law faculty at Swansea University have engaged proactively with the issues about the justice system and with the community of interest amongst the legal profession, judiciary, government and non-governmental sectors. On the occasion of her investiture at Swansea University, Hillary Rodham Clinton recognised the significance of the evolving constitution of Wales, and the contribution that the law schools can make, remarking on the value to other countries, well beyond our borders, of learning from the innovations being undertaken in Wales.

Many of the issues about justice in Wales are very well-rehearsed and several members of the Commission on Justice and its secretariat are very familiar with them. They include issues about accessibility of law, legal information and advice, accessibility of legal dispute resolution, challenges in operationalising the equality of the Welsh and English languages in governance and justice systems, low levels of legal capability amongst the public and widespread misunderstanding about the Welsh constitution, law-making and the justice system. Several members of the Commission have researched, written about, debated and advocated about the consequences for the justice system of Welsh devolution and the various challenges and opportunities for 'Legal Wales'. They have promoted and in some cases executed changes in the administration of justice, aimed at better alignment with the evolving constitution of Wales and the increasingly distinct legislative and policy context.

Accordingly, this response to the Commission's consultation does not attempt to rehearse those issues or repeat to the members of the Commission what cumulatively they already know, but rather to draw attention to examples of what the Welsh law schools can contribute in responding to the issues and to suggest some developments that could be taken forward collaboratively with strategic support at the national level.

A. Legal education

Incorporation in syllabi of divergence in laws applicable in Wales and England

It is self-evident that legal education in Wales should ensure that future practitioners gain knowledge and understanding of Welsh law and the wider context of constitutional transitions in Wales, the UK and Europe.

Research by Professor Richard Owen, who now directs the Swansea Law Clinic at Hillary Rodham Clinton School of Law, into the responses of the Welsh law schools to devolution, was published in 2014. There is no more recent or comprehensive audit of the content of legal education programmes offered by the law schools in Wales which would enable a view

to be taken about the adequacy of content on divergence between law applicable in Wales and England, nor of content designed to ensure appreciation of the law as it applies in Wales and how to research it.

The Commission may wish to consider the case for promoting such an audit at the Wales national level and if this ought to be done, whether it would best be coordinated by Welsh Government, the legal professional bodies or the 5 Welsh law schools acting collaboratively, or – ideally - by a combination of all three.

The role of experiential legal education

The past 30 years has seen growth of experiential legal education in law schools across the UK and beyond. This may take the form of client-facing work (e.g. litigation and law reform projects), community legal information and education (e.g. 'Street Law') and simulations (e.g. mooting, interviewing and negotiating skills). There are varying drivers for growth and differing models for delivery. (Law School Pro Bono and Clinic Report, Law Works/LexisNexis 2014) Objectives of experiential legal education (sometimes referred to as 'Clinic') include: improving student employability, developing professional capacity in students, assisting local communities, delivering access to justice and meeting unmet legal need. (Access to Justice through University Law Clinics, Drummond and McKeever, Ulster University, 2015) Opinion differs as to whether such activities can or should fill gaps in unmet legal need, but research findings suggest that in practice they do increase access to justice for underserved groups. (ibid)

However, the impact on experiential legal education of post-devolution divergence in the laws of Wales and England has not been explored, and many third sector initiatives supportive of experiential legal education relate mainly or exclusively to non-devolved and/or England-only laws. As the Commission is well aware, the law applicable in Wales is significantly different in areas including social services, health and wellbeing, education, housing and planning, yet is not always easily accessible even to the practising profession. (Law Commission No. 366, 2016) This further exacerbates issues of access to justice arising from socio-economic and demographic conditions in Wales, the relatively low number of lawyers and law firms and their uneven geographic distribution. In this context, experiential legal education in Wales assumes special significance in relation to both accessibility of the law and access to justice.

The Hillary Rodham Clinton School of Law has invested in development of experiential legal education by establishing the 'Swansea University Legal Centre'¹, a shared resource for experiential legal education, community outreach and service delivery. It currently services the Swansea Law Clinic², directed by Professor Richard Owen, and the Children's Legal Centre³, which is an initiative emerging from the work of the Observatory on Children's Human Rights⁴. Common to all the activities supported by the Centre is the combination of experiential learning opportunities for students, service delivery and research. The activities are characterised by a high level of engagement with community, NGO, professional and statutory partners.

Amongst a suite of experiential modules supported by the Swansea University Legal Centre from 2017-18 is the first accredited Street Law module in Wales (and amongst the first in

¹ <http://www.swansea.ac.uk/law/legalcentre/>

² <http://www.swansea.ac.uk/law/lawclinic/>

³ <https://childrenslegalcentre.wales/>

⁴ <http://www.swansea.ac.uk/law/wales-observatory/>

the UK), available to undergraduate and taught Masters students in Law and Criminology. This initiative is rooted in the public education and information activities of the Children's Legal Centre. The first cohort of students delivered, as part of their assessment, interactive sessions to groups of secondary school pupils on law-making in Wales, racism, hate crime, social media/ right to be forgotten and employment law. Evaluation both by students and the school participants has been very positive, with some of the students continuing to deliver sessions on a voluntary basis during the summer vacation. The module delivery team is engaged with a wider, growing Street Law community in the UK and there are plans to host an international and UK Street Law Conference in Swansea in 2021.

Despite ample anecdotal evidence of the popularity of Street Law, its impact on students, community participants and wider society is not adequately researched. The Swansea module delivery team is working collaboratively Street Law UK practitioners to develop proposals for such research.

The Commission may wish to consider the role that Welsh Government, professional bodies and other interested parties could play in encouraging collaborative engagement in research on the contribution that Street Law can make to delivery of both devolution-sensitive legal education and increased public understanding of the law and legal system in Wales.

The Commission may also wish to note the following recommendations from research conducted by the Children's Legal Centre (Bussicott and Williams, 2018, 'The Desert'), a copy of which is submitted together with this response;

- 1. Interested parties in all sectors in Wales should come together to develop a Welsh approach to Public Legal Education (PLE), to encourage operational partnerships and to engage with PLE providers elsewhere in the UK and the world. The Welsh approach should include development of a specifically Wales-focused framework for baseline assessment and evaluation.***
- 2. Further, larger-scale and longitudinal research should be carried out to improve understanding of the impact of PLE in Wales on participants (including children and young people, other members of the public, law students, researchers, the legal profession and others as applicable).***
- 3. Street Law programmes and other types of PLE in Wales should be rooted in understanding of and should accurately reflect the Welsh constitution, Welsh laws, Welsh institutions, the Welsh policy environment and the importance of Welsh language and culture. Programmes designed for English audiences should not be simply 'rolled out' in Wales.***
- 4. Consideration should be given to including more legal education in schools curricula in Wales. Children and young people should be involved, and evidence about their experiences, views and preferences should be taken into account when devising curricular requirements and delivery methods, as well as extra-curricular opportunities.***
- 5. Public sector bodies including local authorities and health boards should consider how they can develop PLE provision relevant to their staff and service users.***

B. Access to Justice: Children and Young People

Hillary Rodham Clinton School of Law is home to the Observatory on Children's Human Rights and the Wales Children's Legal Centre.

The Observatory has a general mission to support implementation in practice of children's human rights, which have a particular place in the law applicable to Wales because of laws passed by the National Assembly for Wales and because of policies, administrative schemes and strategies of the Welsh Government and policies adopted by several local and national public bodies in Wales.

The Children's Legal Centre shares the Observatory's general mission but is specifically dedicated to provision of free legal information, education, advice and representation. It is the first such Centre in Wales (previously the only country in the UK which did not have one) and it aims to fill a gap in provision of services.

The Observatory and the Children's Legal Centre are worthy of note in the context of the Commission's work because they are further examples of the contribution that in Wales, the law schools, and higher education more broadly, can make to addressing issues about justice in Wales.

Both these initiatives contribute to formal education and offer experiential opportunities for students, conduct research and engage widely with impact partners. As such, they have taken root and are sustained by the University as an aspect of delivery of its core mission as a higher education institution. But they also deliver support and services going beyond this. The Observatory's highly-acclaimed⁵ Lleisiau Bach Little Voices projects empower and support children to conduct their own research and advocate for change within a framework of human rights derived from the Convention on the Rights of the Child. The Children's Legal Centre offers accessible information about the law as it affects children via its website, as well as access to legal advice, support and representation.

Some of this additional functionality is funded by project-related grants, such as for example most of the work of the Observatory's Lleisiau Bach Little Voices team, which receives funding from Big Lottery People and Places, and the legal content writing for the Children's Legal Centre website⁶, funded initially by Paul Hamlyn Foundation and latterly, by diverse sources. Other sources of funding include trading income via a spin-out company and potentially, with commercial partners.

These projects are comparable in some ways to law centres and community action projects undertaken by NGOs, for example children's law centres, community law centres and public education projects elsewhere in the UK and beyond. However, situated in the University environment, their scope and potential are enhanced by proximity to research and innovation across disciplines. This enables, for example, experimentation in applications of digital technology, including the opportunity to develop machine-assisted learning tools and digital office facilities for delivery of legal services. It also offers opportunities to embed learning from practice in taught programmes, to conduct research on legal needs and on the effectiveness of types of public engagement and service delivery. Examples of this include the School's module offered from 2017 – 18 on Human Rights Based Approaches to

⁵ <https://www.publicengagement.ac.uk/do-engagement/inspire-me/case-studies/little-voices>

⁶ <https://childrenslegalcentre.wales/>

Research with Children developed from the Lleisiau Bach work, and modules proposed within the new (and a UK-first) LLM in Legal Technology from 2018-19.

The Commission may wish to consider the implications of these approaches for the development of skills for justice and democratic engagement amongst children and young people, and for development of technological solutions to issues about access to justice in Wales.

In particular, the Commission may wish to consider the potential of project-based learning underpinned by human rights values to help raise levels of knowledge and skills for justice and democracy amongst children and young people, and whether consideration should be given to promoting these approaches in teacher training and curriculum delivery in schools in Wales.

Conclusion

This submission has not attempted a comprehensive response to all the questions posed by the Commission in its consultation document. The response has highlighted two main areas in which the role of the Welsh law schools can be exemplified. Aware that other contributions are also being made by colleagues Dr Simon Hoffman and Professor Richard Owen at the Hillary Rodham Clinton School of Law, the author has sought to avoid repetition of their content.

The overall key message here is that the Welsh law schools can play a significant role in responding to many of the issues about justice in Wales. They can help to build the right capacity in future legal practitioners but equally can play their part in delivery of service to the public in the here and now, and in the development of innovative, technologically supported approaches to legal service delivery.

Any inquiries about this submission should be directed to:

Jane.m.williams@swansea.ac.uk