

Clinical Legal Education

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Topics under discussion

- BDS – political climate
- Human rights
- Clinics in the general political climate
- Journal
- Employability, skills, age of students.
- Curriculum – minimum selection of optional modules. Traditional and conservative.
- Professionalism of Parliament and charities.

Sandy Fredman: OPBP – distance learning modules – public interest litigation; use of mainstream media; social media. Upstairs – Downstairs divide. Locality of clinics. Money

Tools to social change and pedagogy

Neta: with every tool there is an assumption about the law and its ability to bring about social change. With the clinics, we have the privilege of experiencing the place that law can bring about change, but we also have ethical duties to our clients, our students, our university, and the public at large. So we also have a duty to stop and reflect and reassess and see what works at a given time, based on the institutional environment.

John Fitzpatrick: what is the purpose of education? What is the role of university teachers in education? What is the role of law and practicing lawyers? How do our teaching and practicing fit into *politics*?

Education: the idea is to allow students to think for themselves, to think critically. But what are we doing? We say that it's a fantastic teaching tool, by broadening and deepening their understanding of law by allowing them to experiencing law in practice. It's not a better way than lectures and seminars, but it's a tremendously useful.

What is the function of law and the role of practicing lawyers? It mediates power, and lawyers know how that works and how to make it work for their clients or for their own agenda. Some of the challenges: first, to what extent is the identification of impact/strategic litigation consistent with dealing prospective clients and students? Is it apt to advance those aims, or are those in tension? Also, as a public (and publicly funded) institution, is the resource that we're teaching, including the areas we're working on and the decision who to help, what should we focus on? Helping individuals receive their benefits or stay in the country; or making social change.

Another distinction – between education and training. Of course they're not mutually exclusive. They are complementary. But there is also a trade-off. There is a lot of pressure from government that universities should do more training, but elite universities (wisely) resist their pressure.

All mysteries in life essentially practical.

The law is moving away from the people, and has gone to the judiciary in the UK and in Europe. There's a great deal of distancing, and people feel that they don't have ownership of decisionmaking. There's a widening gap between lawyers and the people.

Shiri Regev-Mesallem: the project of household debt. The pedagogical agenda – to take the perspective of clients and not to be judgmental (following Lucy White, ‘Sunday Shoes’). This is almost impossible, but it may be achieved through empathy.

Brene Brown – YouTube video: empathy is feeling with people. We need to teach law students to connect with their vulnerable spots. But law students resisted this – ‘I came to study law and not to talk about my feelings’; so this entails convincing students that this is part of doing law. But this raises the issues of boundaries.

Community lawyering: promoting access to justice using litigation in lower courts. The idea is to minimise the gap between lawyers and clients. But it is also important because when students experience community lawyering, they experience ‘poetic justice’, the opportunity to step out of their shoes; they learn not only about the complexity/complicity of the law, but about the complexity/complicity of Israeli society.

What does community lawyering mean to lawyers? It’s an amazing process in which lawyers acknowledge what they don’t know, what are the real challenges that face a client’s life (living 9 people in a room); it challenges the status quo in piecemeal strategic ways. Policies actually did change because authorities know that lawyers are about. And yet, it’s very hard, for two reasons: no one wants a precedent – the client wants the money, the authority doesn’t want to be bound, and the court doesn’t want to write one. And, second, the workload – you don’t have the time to do actively.

Hadas Holzstein-Tamir: Class action clinic does not focus on an individual, but rather on a group. This is a new tool, providing a new pedagogical way to bring about social change and attracts students that normally would not come to clinics. Many of the case are actually about submitting interventions that object to class action settlements that undermine the rights of public.

Jacqui Kingham: ‘rebellious lawyers’.

Nick Johnson: empathy is important for law students in clinics, but also in general. One thing that employers mention quite often – ‘students aren’t commercially aware’; and by that they mean ‘they don’t understand my business’.

International J of Clinical Law – two authors from Pretoria Uni: article on what happened to students 2, 5, and 10 years after law school.

Yael Efron: recommended article ‘if I wanted to speak about feelings, I wouldn’t have gone to law school’.

Environmental Law

Eran Zin: Robert Buller: 'one of the most important predictors of health is zip code'. Environmental justice issues are part of hegemony, and also – neoliberalism and (in Israel) Jewish nationalism.

Barir Field case: the government offers mining rights to one of the largest mining rights for phosphate on Bedouin land, where 10,000 people live, offering the population to leave. The clinic petitioned the Supreme Court, representing 2,000 individuals. As we're in the post-public-law days in Israel, the Court is afraid of writing activist decisions, it prefers to defer decision making, and that was the case here. The Court suggested that the case is not ripe for a decision, and that the people should return in the future.

So, maybe we should revert to non-public-law tools, such as tort and class action.

Example: the Haifa bay area houses 20 of the largest petrochemical industries, where 500,000 people live, suffering 15% excess in different kinds of cancer. The problems: causation (scientific uncertainty); tort fest (which plant is responsible); costs (to pay for expert opinions).

There is a change: people standing together demanding environmental rights, coming together and mobilising to approach the government and Parliament. The clinics don't operate as experts but join the social movement.

Amnon Keren: Animal rights – it's the best of times and the worst of times. There is progressive legislation, but scarcely any enforcement. There is more recognition of animal rights alongside more cruelty. Animal protection organisations have been given standing in courts. For example – a case to recognise animals as subjects for rights who should be granted from bodily harm and in be put in cages. The dilemma – do we start with animals who 'look like us', or go for the mass of 9 million chickens... Working with students: it's a different process, as it's difficult to meet with clients. So the work initially is theoretical, and then working in and with coalitions of NGOs.

Galit Ofer: the main problem is the classic 'tragedy of the commons'. There is a plethora of regulations and agencies that have the power to impose financial and criminal sanctions, for corporations and individuals. But government enforcement suffers lack of resources, so the allocation is somewhat arbitrary and responds to public opinion. This is not enough to make the industry internalise its pollution. What is needed is private enforcement. It's a relatively easy procedure to file against environmental hazard; and there is the possibility of class action. But it's not easy, as costs are high and procedures are long. Moreover, the tragedy of the commons bears over it: the plaintiffs are dispersed; the polluters are big businesses who can afford the best legal advice. In addition – the issues are complex and expert opinions are expensive. Moreover, in a small community – it's difficult to find an expert who will go against the big energy companies, because they work with them. Getting the information under the Fol Act is difficult against private companies. And the courts have not yet developed expertise in dealing with tort, admin, and environmental law.

Two cases: leaks at gas stations. It took almost two years to obtain the information, and by that time the information was not up to date. Second, waste hazards at Teiba-Kalanswa. So perhaps these areas are just too difficult to handle for law clinics. The solution – working with commercial law firms. Why would they do so? Not all of them would, but some of them would accept the challenge, not as pro bono, but there is financial incentive in environmental law.

Employment and Labor Law

Linden Thomas: ETs feel that lack of representation is not a major issue, because it was never felt that it was necessary. But what is needed is preparing litigants in person by explaining what the context is and what their rights are. So the idea is to have a 'StreetLaw' type scheme at the ET.

Students offer two presentations:

First

1. Thinking about bringing a claim
2. What are the forms you need to use.
3. What do you need to disclose.
4. Offer sample documents; witness statement.

Second

The day – how to dress, how to address the other side, the judge, etc.

The feedback is great from students and from the judge.

For the future: litigation/representation – very difficult in terms of resources. Also, in terms of regulation – solicitors in universities are classed as in-house solicitors. Such solicitors are not allowed to give conducting litigation. Options for law clinics:

1. Limit work to work that is not reserved.
2. Only do reserved activity that does not form part of your employer's business.
3. Rely on the exemption at s 23 of the Legal Services Act 2007
4. Set up an alternative business structure
5. Partner with external organisations to supervise and deliver reserved activities.

Idit Zimmerman: project in Jassr a-Zarka

Tammy Krichli-Katz: the tension between teaching about identity discrimination and teaching about class. Students relate far more to the former than to the latter.

Julie Waterstone: Associate Dean of Experiential Learning. The ABA started looking at the pedagogy of legal teaching, and compared the law school to the social work or medical experience. There is now a new rule to require 6 credits of experiential course work – theoretical and practical work, including skills. Courses include: ADR, clinical programme. Externships have changed, as now they also have to be supervised and assessed, and it's not only free labour.

Michael Waterstone: many of the clinics are soft money. At Loyola there has been a move to core funding but not on tenure track

Human Rights and Public Law

Nick Johnson: one of the aims behind the Legal Services Act 2007 was to promote 'access to justice' through the introduction of new players, in the ABS regime.

What can a university ABS/Justice lab do?

- Evaluate and assess different methods of delivering access to justice.
- Endorse access to justice innovations – 'seals of approval'.
- Develop access to justice innovations
- Publish books
- Run sessions/courses
- Help establish law school's place as a socially useful entity with university and wider community
- Whatever legal work we're capable of doing (reserved or not).
- Subject to charitable objects, charge for any of the above.

Reasons not to take on JR/PL:

- Time limits
- Costs.

Jacqui: human rights in law schools are being done in housing, employment, etc. But JR cases are very difficult because of lack of resources, supervision, costs. But there are possibilities: complaints to ombudsmen, local authorities that don't involve litigation.

Roni: Promoting human rights through private/civil law litigation.

Ronen Avraham: insights about the human rights law clinic:

- Public law v private law protection: emerging area of law – constitution and administrative torts, e.g. police doesn't allow you to demonstrate – instead of an injunction, claim damages. This is not only hard in practice, but also in theory – what is the harm and how do you estimate it?
- Heart breaking cases v none, idiosyncratic v general: we're attracted to the heartbreaking but idiosyncratic, but perhaps we should move towards getting most bang for buck, where we can help to the most people.
- Identity politics v class: the tradition is that students are attracted to identity politics, but it's very difficult to convince of the relevance of class
- Jewish and Muslim students in class: very sensitive issues.

Souria Bishara: the international human rights clinic was established to help implement IHR in Israeli domestic law. This includes helping NGOs submitting reports based on IHR, e.g. ultra-orthodox women who cannot vote and cannot be elected to ultra-orthodox political parties. Another example – stateless people in Israel, e.g. Palestinian citizens of East Jerusalem.

Ron Derech: rights of people with disabilities in areas of employment and education