

## NOT A BLUEPRINT: REFLECTIONS ON THE CARDIFF ENVIRONMENTAL LAW AND POLICY CLINIC

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### Introduction

This article addresses the evolution of environmental clinical legal education at the School of Law and Politics at Cardiff University, with particular reference to the shift in its clinical focus from 'law' to 'policy'.<sup>1</sup> Law and policy are of course deeply intertwined, and the shift under consideration is to be understood neither as abrupt nor comprehensive. It is one of emphasis, which in turn is a reflection of the richness and complexity of the discipline of law within which clinical legal education, like all legal education, operates.<sup>2</sup> The article examines the nature of, and factors shaping, the shift in Clinic emphasis towards law and policy. It addresses some of the practical implications of this for a host of clinical considerations (including resourcing, training and expertise, relationships with clients and management of outputs and impacts in

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<sup>1</sup> The focus on 'purely' legal aspects within Cardiff's 'cluster of clinics' has been analysed. See: J Tucker, 'Third-Sector Funded Clinical Legal Education in the United Kingdom: A Reflection and Proposal for Future Partnerships' in L Thomas, S Vaughan, B Malkani, and T Lynch (eds), *Reimagining Clinical Legal Education* (Hart 2018) 77, 79-96

<sup>2</sup> For early recognition of the complex array of 'legal' and 'political' or 'policy' dimensions to legal education see L Gower, 'English Legal Training' (1950) 13 *Modern Law Review* 137, 170.

the real world). It is hoped that this case study will feed into a wider literature around environmental clinical legal education, and the policy dimension in particular.<sup>3</sup>

The Cardiff Clinic is housed in a multi-disciplinary School of Law and Politics, which contains a wider clinical provision beyond the 'Environment', including a world-leading Innocence Project. This is the broader institutional context within which the Environmental Law and Policy Clinic is situated, and it is with this that our analysis begins in Section 1. We highlight what we call the 'strategic accident' and 'accidental design' underpinning the School's clinical provision, as a core dynamic which is carried through in the analysis of the environment-focused Clinic. Section 2 elaborates on the substantive environmental law and policy context within Wales and the UK as a whole, and how this has shaped the increasingly policy-oriented nature of work of the Clinic. Section 3 critically reflects on the Cardiff experience, drawing in part on feedback the authors have obtained from student participants, as well as the authors' own perspectives, to evaluate the developments under scrutiny.

## **I Accident by Design: Clinical Legal Education at Cardiff**

This section introduces the institutional context within which the Clinic under consideration has evolved. The section takes the form of an interview conducted in

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<sup>3</sup> See R Dunn, L Bengtsson, and S McConnell, 'The Policy Clinic at Northumbria University: Influencing Policy / Law Reform as an Effective Educational Tool for Students' (2020) 27 *International Journal of Clinical Legal Education* 67; W Patton, 'Getting Back to the Sandbox: Designing a Legal Policy Clinic' (2011) 16 *International Journal of Clinical Legal Education* 96; M Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' (2007-2008) 39 *University of Toledo Law Review* 233; L Curran, 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change' (2004) 6 *International Journal of Clinical Legal Education* 162

Summer 2023 between the Head of Law (co-author 2), in conversation with the Co-Head of Pro Bono and Clinical Legal Education (co-author 4). Interviews between co-authors are a means of providing the reader with insight into the relational nature of the subject matter at hand, including in this instance the relationship between leader of a clinical programme on the one hand of leaders of a specific environmental cluster within that programme on the other.<sup>4</sup> The interview highlights the roles in the environment Clinic's evolution played by accident and design. This is referenced in the title of the article, which speaks to the extent to which the Clinic is neither adopting or proposing a 'blueprint'.

Q. I'm intrigued by the beginnings of the Cardiff model of the Clinic. Could you share a bit about its origins and initial goals? How did you design it and what was the initial focus?

*The evolving Cardiff model of Clinic is unique – by accidental design! In 2005, armed with a blank sheet, the task (led by me) was to create a Clinic befitting the capital city of Wales, capitalising on its devolved status and proximity to national government. Cautious strategic planning was absent. “Give it a go” was the order of the (less risk averse) day. In those days, academic freedom seemed to extend to the prerogative of never allowing lack of substantive knowledge to stand in the way of ambition!*

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<sup>4</sup> For some examples, see: A Blick and B Dickson, 'Why Does the United Kingdom Now Need a Written Constitution?' (2020) 71 Northern Ireland Legal Quarterly 59; E Stokes and B Pontin, 'Historical Futures and Future Futures in Environmental Law Pedagogy: Exploring 'Futures Literacy'' (2022) 18 International Journal of Law in Context 40. The Cardiff Ethics Committee did not consider that its approval was required for interviews 'internal' to the authorial team.

Q. I'm curious: what was the first priority you identified for the Clinic, and how did you go about addressing it?

*First shopping list priority was to acquire a new-fangled 'Innocence Project'. A bunch of young students trying to free someone wrongly in prison – a cinch. The only exposure to criminal law being three points on my driving licence was no barrier for the naïve me. So, we proudly emerged from a visit to the genre-pioneers at Bristol University<sup>5</sup> with a handful of serious crime cases to review. We were in business.*

Q. Impressive start! After addressing that initial priority, in what other areas did the Clinic expand, and how did those partnerships come about?

*Murders in the bag, what next then for Cardiff? Rugby, naturally. A collaboration with the WRU and legal advice for amateur Welsh rugby clubs soon followed.<sup>6</sup>*

*Then, in partnership with Hugh James law firm, we opened a NHS Continuing Healthcare scheme. Working on cases for dementia patients, our students recovered more than £300,000 in wrongly-paid nursing home fees.<sup>7</sup>*

Q. Can you talk about how the Clinic continued to grow into different areas of law and policy? Any key achievements or partnerships during this period that you'd like to highlight?

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<sup>5</sup> Innocence Network UK, 'Impacts' <http://www.innocencenetwork.org.uk/impacts> accessed 1 August 2023.

<sup>6</sup> For more information, see 'Access all areas for Law students on rugby pro bono scheme' (15 December 2016) <[WRU scheme](#)> accessed 1 August 2023.

<sup>7</sup> For more information, see 'Celebrating 16 Years Of Our Pro Bono Scheme With Cardiff University' <[Hugh James' Pro-bono scheme welcomes next-generation lawyers Blog](#)> accessed 1 August 2023.

*Elements of long-term planning still thin on the ground, we expanded ad hoc, based on research interests of academic colleagues. We peaked at 23 separate projects, and won an award for best Pro Bono Clinic.<sup>8</sup> Working with a human rights law firm on cases involving abuses in African mines, our Global Justice scheme was mentioned in a Westminster parliamentary committee.<sup>9</sup>*

Q. Turning to the topic of this paper, could you share more about the partnership with the Environmental Law Foundation and the significant cases the Clinic worked on as a result?

*A partnership with the Environmental Law Foundation was brokered by co-author 2, and through this connection we started environmental client work. The cases were commonly not straightforward (in fact they were highly complex), and we roped in a sage practitioner - co-author 3 - on a pro bono basis. One of the first cases centred on the energy company EDF's plans to dispose of nuclear waste contaminated sediment in Cardiff Sands, under a public law decision-making process, which included the UK Government and Natural Resources Wales. This can be understood as a classic 'legal' case. It led to the Clinic drafting a complaint against the UK before the European Commission. Our subsequent focus has involved less emphasis on litigation, although this aspect remains open to us.*

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<sup>8</sup> For more information, see Cardiff University, 'Students providing vital legal assistance to those in need' (19 December 2019) <[Students providing vital legal assistance to those in need - News - Cardiff University](#)> accessed 1 August 2023.

<sup>9</sup> For more information, see 'Global Justice Pro Bono students mentioned at parliamentary Human Rights committee' <[Global Justice Pro Bono students mentioned at parliamentary Human Rights committee - News - Cardiff University](#)> accessed 1 August 2023.

Q. Can you describe how the Clinic's focus on policy work evolved and how you responded to the growing student interest and demand?

*Within this expansion, our "policy" work was growing, despite us not attaching a policy label at that point. Student demand for Innocence Project involvement was growing along with our "fame" as we became the only UK innocence project to have overturned a conviction.<sup>10</sup> In an attempt to accommodate growing student numbers, we created a prisons policy study group, which considered the effects of excessive cell confinement in UK prisons. Students analysed the human rights context and the effects on health, family contact and developments in technology. We did a piece of work for the grassroots campaign group JENGBA (Joint Enterprise Not Guilty by Association), to consider the possible scope for appeals based on the Court of Appeal Ruling in *R v Jogee* 2016<sup>11</sup>. Then we conducted a review of historical sex offence convictions worked on by our Innocence Project, identifying recurrent themes that featured in these cases. Our partnership with adult learning disabilities charity, Mencap Cymru, won a prestigious national award.<sup>12</sup> Under this "public legal education" initiative, students created a series of legal toolkits,<sup>13</sup> downloaded thousands of times by the charity's stakeholders and user-groups.*

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<sup>10</sup> For more information, see 'Cardiff University Innocence Project overturns second case at Court of Appeal' <[Cardiff University Innocence Project overturns second case at Court of Appeal - News - Cardiff University](#)> accessed 1 August 2023.

<sup>11</sup> *R v Jogee* [2016] UKSC 8

<sup>12</sup> For more information, see 'Mencap Cymru and Cardiff Law Students Launch Toolkit for Adults with Learning Disabilities' <[Mencap Cymru and Cardiff law students launch toolkit for adults with learning disabilities - News - Cardiff University](#)> accessed 1 August 2023.

<sup>13</sup> For more information, see 'Learning Disability Legal Guides - Know Your Rights' <[Learning Disability Legal Guides - Know Your Rights | Mencap](#)> accessed 1 August 2023.

*Co-author 1 had been an early innocence project student, and led a piece of policy work for an organisation working on a miscarriage of justice case with a partner firm, and ended up leading a student team on environmental casework. Lending her hand to policy as well as casework, she organically contributed to the breadth of our policy work, her enthusiasm readily courted by the other co-authors.*

*Then came the covid years. As for everyone else, online everything became the new norm. We had to deal with hugely increased student numbers, so we recalibrated two of our activities under a Grand Challenges umbrella – our miscarriages of justice work, and Climate Change – both capitalising on in-house expertise. Wanting to embrace our newly-merged school of Law, Politics and International Relations, a colleague led a mixed student cohort writing for the Welsh Government website on Wales Climate Week, which fortuitously followed COP26 being hosted in Glasgow. Parallel to this, co-author 3 rewrote his extra-curricular module to become Stage 1 that could accommodate hundreds of students if need be, followed by a selection process for Stage 2, where “real” policy work would take place.*

*So our environmental policy footprint was expanding by stealth, albeit once again not by strategic planning...*

## **II Experimental and Experiential: Teaching Environmental Law and Policy in Wales**

It was in a similar, rather spontaneous, way that the introduction of an Environmental Clinic at Cardiff coincided with the increasingly active environmental movement,

both in the UK and overseas, and the increasingly urgent demands made by communities for governments to act on the nature and climate crisis.<sup>14</sup> The story of environmental law in Wales is primarily one of legislative reform, and it is within this context that an Environmental Law and Policy Clinic at Cardiff has come to fruition.

In 1999, seven years after the inaugural Earth Summit<sup>15</sup> had brought forth the Rio Declaration<sup>16</sup> and set out an unprecedented ambition at a global scale to make sustainable development the new status quo for developed and developing economies, Wales became a devolved nation. Under the original Government of Wales Act of 1998,<sup>17</sup> environmental matters fell under the remit of the newly formed National

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<sup>14</sup> House of Commons, 'The Rise of Climate Change Activism?' June 2020. Available at: <https://commonslibrary.parliament.uk/the-rise-of-climate-change-activism/> (Accessed 1 August 2023). The rise of environmental activism since 2019 has largely been attributed to the publication of report by the UN Intergovernmental Panel on Climate Change concluding that only 12 years remain to limit the predicted climate change catastrophe. See: IPCC, 'Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C' (2018). Available at: <https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/> (Accessed 1 August 2023). The environmental movement, both in the UK and across the world, reached a peak when the youth movement Fridays For Future coincided with protests organised by the activist group Extinction Rebellion in Autumn 2019. See: M Taylor, H Pidd, and J Murray, 'Hundreds of Thousands of Students Join Global Climate Strikes' *The Guardian* (29 November 2019). Available at: <https://www.theguardian.com/environment/2019/nov/29/hundreds-of-thousands-of-students-join-global-climate-strikes>; V Bennett, '2019, The Year the World Woke Up to Climate Change' (November 2019) European Bank for Reconstruction and Development. Available at: <https://www.ebrd.com/news/2019/2019-the-year-the-world-woke-up-to-climate-change.html>.]; A Sabherwal et al, 'The Greta Effect: Familiarity with Greta Thunberg Predicts Intentions to Engage in Climate Activism in the United States' (2021) *Journal of Applied Social Psychology*. <https://doi.org/10.1111/jasp.12737>. See also the emergence of the Greener UK Alliance of environmental non-governmental organisations around Brexit, discussed in C Abbot and M Lee, *Environmental Groups and Legal Expertise: Shaping the Brexit Process* (UCL Press 2021).

<sup>15</sup> United Nations Conference on Environment and Development (UNCED), 'Agenda 21', Rio de Janeiro, Brazil, 3-14 June 1992 UN Doc A/CONF.151/26 (vol I), 31 ILM 874 (1992).

<sup>16</sup> United Nations Conference on Environment and Development (UNCED), 'Rio Declaration on Environment and Development', Rio de Janeiro, 1992.

<sup>17</sup> United Kingdom Parliament, 'Government of Wales Act 1998', c. 38, 1998.



Assembly for Wales – now the Senedd – which met for the first time in May 1999.<sup>18</sup> Sustainable Development – then a term almost synonymous with environmental policy – was amongst many considerations on the agenda at this first meeting,<sup>19</sup> but over time has become *the* dominant area of Welsh law and policy.<sup>20</sup> Out of this has evolved ‘world leading’ substantive environmental legislation.<sup>21</sup>

The first was the Government of Wales Act 2006,<sup>22</sup> which required Welsh Ministers to set out how they would promote sustainable development.<sup>23</sup> A decade later, Wales saw the Well-being of Future Generations (Wales) Act 2015<sup>24</sup> and the Environment (Wales) Act 2016<sup>25</sup> passed into law. The Well-being of Future Generations (Wales) Act fully entrenched the principle of sustainable development in law,<sup>26</sup> reflecting the ambitions of what are now the UN Sustainable Development Goals,<sup>27</sup> committing

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<sup>18</sup> The National Assembly for Wales (First Meeting) Order 1999, SI 1999 No 944, pursuant to the Government of Wales Act 1998. For an early history of Welsh environmental policy and law, see V Jenkins, ‘Environmental Law in Wales’ (2005) 17 *Journal of Environmental Law* 207

<sup>19</sup> R Stevenson and T Richardson, ‘Policy integration for sustainable development: Exploring barriers to renewable energy development in post-devolution Wales’ (2003) 5 *Journal of Environmental Policy & Planning* 95–118.

<sup>20</sup> V Jenkins, ‘Sustainable Development of Natural Resources: Lessons from Wales’ (2018) 30 *Journal of Environmental Law* 399.

<sup>21</sup> H Davies, ‘The Well-being of Future Generations (Wales) Act 2015 – A Step Change in the Legal Protection of the Interests of Future Generations?’ *Journal of Environmental Law* (2017) 29, 166–175.

See also: H Davies, ‘The Wellbeing of Future Generations (Wales) Act 2015: Duties or Aspirations?’ (2016) 18(1) *Environmental Law Review*

<sup>22</sup> s. 79, United Kingdom Parliament, ‘Government of Wales Act 2006’, c. 32, 2006.

<sup>23</sup> A Ross, ‘Why Legislate for Sustainable Development? An examination of Sustainable Development Provisions in UK and Scottish Statutes’, *Journal of Environmental Law* 20 (2008) 35–68.

<sup>24</sup> National Assembly for Wales, ‘Well-being of Future Generations (Wales) Act 2015’, anaw 2, 2015.

<sup>25</sup> National Assembly for Wales, ‘Environment (Wales) Act 2016’, anaw 3, 2016.

<sup>26</sup> First articulated in the Brundtland Report in 1987; World Commission on Environment and Development, ‘Report of the World Commission on Environment and Development: Our Common Future’ (20 March 1987) UN Doc A/42/427.

<sup>27</sup> Welsh Assembly Government, ‘One Wales, One Planet’ – The Sustainable Development Scheme of the Welsh Assembly Government. Access: <https://sdgs.un.org/partnerships/one-wales-one-planet>

public bodies in Wales to make decisions in the pursuit of economic, social, cultural and environmental well-being for both this and future generations.<sup>28</sup> The Environment (Wales) Act, perhaps more pragmatically, established the principle of ‘Sustainable Management of Natural Resources’, based on an ecosystem services approach and designed to deliver ecosystem services. One of the words pertinent to our discussion commonly used to describe this legislation, especially the 2015 Act, is ambitious. Another is ‘symbolic’.<sup>29</sup> Entrenching well-being in statute is considered to symbolise an aspiration for a better future, driven by values. On this reasoning the ‘law’ is not straightforwardly ‘legal’, in the sense of a duty enforceable in the court.<sup>30</sup> It is political. The years since these ambitious enactments can be described as an invisible tug of war between the Senedd finding its feet as a devolved power, while remaining intertwined with the ever-present power of Westminster, with Wales enacting ambitious pieces of environmental legislation, while the UK Government continues to influence the availability of the requisite funding, locked behind an intricate Barnett approach to distribution. Moreover, while the Well-being Act in particular is a landmark in municipal environmental legislation viewed globally– for the first time ‘enshrining’

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<sup>28</sup> See: I Carter and E MacKillop, 'Can we promote plural local pathways to sustainable development? Insights from the implementation of Wales's Future Generations Act' (2023) *Journal of Environmental Policy & Planning* 25(5) 554-569; S Nesom & E MacKillop, 'What Matters in the Implementation of Sustainable Development Policies? Findings from the Well-being of Future Generations (Wales) Act, 2015' (2021) 23 *Journal of Environmental Policy & Planning* 432–445.

<sup>29</sup> B Pontin, E Stokes, Z. Hayward and G Xenophontus, 'Government Reporting on Significant Developments in Environmental Legislation around the World: The Challenges of Symbolic Legislation' (2023) 35 *Journal of Environmental Law* 149, 151

<sup>30</sup> Lord Thomas, 'Thinking Policy Through Before Enacting Aspirational Legislation', Lord Renton Annual Lecture, Statute Law Society, IALS, 21 November 2019.

the rights of future generations in law<sup>31</sup> - it continues to lack any explicit mechanism to enforce practical implementation of these ambitions.<sup>32</sup>

The 2016 EU Referendum introduced a further pivot through the removal of the EU framework for environmental governance and is currently giving rise to a new generation of ambitious environmental legislation in Wales. The Agriculture (Wales) Bill, on the floor of the Senedd at the time of writing, introduces a framework for Sustainable Land Management, while a White Paper, published in January 2024, introduces a new framework for post-EU environmental governance as well as legally-binding nature recovery targets to echo those agreed on the international stage at CoP27<sup>33</sup> last Autumn.

The Welsh environmental agenda has over the past decades therefore brought forth an exciting – though arguably still experimental – national framework for the delivery of the commitments first set out for the world in Rio. This fast-moving legislative landscape of environmental law in Wales provides a rich ground for any aspiring lawyer, leaving room for policy development while maintaining strong ties to international law and capturing an ongoing dynamic interplay between devolved and reserved matters, all within the challenges and opportunities arising from Brexit.

An Environmental Law and Policy Clinic in Cardiff therefore provides a practical forum for students to engage with environmental law and policy in the context of

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<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> '27th Conference of the Parties to the United Nations Framework Convention on Climate Change'

wider questions of governance, politics, law and policy at the local, national, EU and international level. And, for Cardiff Law School, it provides an opportunity to facilitate students having a real impact on the future of environmental law and justice in Wales. The remainder of the article explores some of the details in this respect.

### **The Cardiff Model(s)**

The Environmental Law and Policy Clinic has broadly followed a specialist model,<sup>34</sup> working on environmental issues spanning climate change and conservation law, as well as key peripheral areas of law such as this extensive work on freedom of information that provide wider transferable tools to achieve environmental justice. It has concentrated on cases in or near Wales, or has used Wales as a good standpoint for addressing issues elsewhere, as with the Palestine project (discussed below, as linked to the well-being goal of a 'globally responsible Wales').

#### *Climate Change Legal Project*

The Project examined the law on climate change mitigation in Wales, particularly how it applies to transport and to biodiversity conservation. In the first two years of the project, the students were tasked with analysing the law in the UK and in Wales on climate change adaption and mitigation. This was introduced initially by a series of generalist lectures, setting out the history of climate change, how scientific consensus emerged, and the international efforts, through events such as the Rio 'Earth Summit'

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<sup>34</sup> E Winkler, *Clinical Legal Education: A Report on the Concept of Law Clinics* (2012)

and the UN Framework Convention on Climate Change<sup>35</sup>, which lead to the UK Climate Change Act 2008<sup>36</sup>. The students then chose a subject area – transport, conservation, agriculture – to examine in more detail in small, self-led groups.

The students examined the practical effect on the procedural structures laid down in the 2008 Act and how that might be applied in their chosen subject area. For example, students explored how pattern of land use in farming in Wales might be precipitated by the procedures laid down in the 2008 Act, following recommendations by the UK Committee on Climate Change. It is fair to say that the students were generally concerned that the reporting cycles and budgeting processes set down in the 2008 Act would not create what they felt to be the required urgency. In the run up to CoP26 in Glasgow<sup>37</sup>, the students were highly engaged and, on their own initiative, produced a number of differing outputs.

These ranged from a detailed response to a Welsh Government consultation on agriculture, a briefing on the blockages to full electrification of trains within Wales, to a formal Petition to the Senedd on a very specific aspect of urban biodiversity, which students then promoted widely to their peer group. All of these outputs showed how an initial critical consideration of the law quickly shifted to generating what might be considered to be more traditionally ‘political’ outputs.

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<sup>35</sup> United Nations Framework Convention on Climate Change. United Nations, FCCC/INFORMAL/84 GE. 05-62220 (E) 200705, Secretariat of the United Nations Framework Convention on Climate Change, Bonn, Germany

<sup>36</sup> Climate Change Act 2008 c 27

<sup>37</sup> ‘26<sup>th</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change’

## FOI Project

Over the last academic years, the Clinic has focused on the public right of access to environmental information, led by co-author 3.

Access to justice is a fundamental right in democracy, allowing individual citizens to challenge the decision making of the government. This right is secured through the European Convention on Human Rights<sup>38</sup> and the Charter of Fundamental Rights of the European Union<sup>39</sup>.

The Aarhus Convention<sup>40</sup> specifically allows individuals to challenge the decisions of governments when these break environmental law. It sits alongside the EU Directive on public access to environmental information<sup>41</sup> and the Environmental information Regulations 2004,<sup>42</sup> and enshrines the public's right to access environmental information, public participation in environmental decision making and access to justice. It is therefore a crucial pillar of environmental justice.

Of course, logically, you cannot have *full* access to justice or *informed* public participation in decision-making, without there being a right of access to environmental *information*. Freedom of Information has been one of the unsung environmental success stories in the UK in the last 40 years, during which the UK has

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<sup>38</sup> Article 47 of the European Convention on Human Rights

<sup>39</sup> Article 47 of the Charter of Fundamental Rights of the European Union

<sup>40</sup> The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted 25<sup>th</sup> June 1998, Aarhus, Denmark

<sup>41</sup> Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

<sup>42</sup> The Environmental Information Regulations 2004, UK Statutory Instruments 2004 No. 3391

moved from being a closed system, with information on environmental policy and related matters held in Whitehall and, *in extremis*, protected by Official Secrets Acts, to one where the public has a right of access to environmental information held by all and any public authorities, including privatised utilities, a right that applies without the public even having to explain any purpose for wanting the information.

Co-author 3 recalls the excitement at the Major Government's tentative steps towards Open Government,<sup>43</sup> towards informing and involving the public in government, and the arrival of the first iteration in UK law of the right to environmental information, the Environmental Information Regulations 1992<sup>44</sup>. This right is heavily relied upon by environmental NGOs in a way that, prior to the Aarhus Convention was simply not possible.

Students have examined the practical effect on the procedural structures laid down in the 2004 Regulations – the initial request, the request for internal review, referral to the Information Commissioner – and have come up with a number of proposals to streamline and make more effective the public right of access, particularly within Wales. Based on this, students produced a mini-report. It is hoped the proposals in that report will yet be considered by the Senedd, as part of the Petitions Committee process, off the back of a Petition the students also lodged concerning the threat to the

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<sup>43</sup> UK Government new Transparency Strategy: 'Making Open Data Real' (2011), <<https://www.gov.uk/government/consultations/making-open-data-real>> accessed 1 August 2023, along with the UK Government's First National Action Plan (2011-2013) on Open Government <<https://www.opengovpartnership.org/documents/united-kingdom-first-national-action-plan-2011-2013/>> accessed 1 August 2023

<sup>44</sup> Environmental Information Regulations 1992, implementing the *Council Directive 90/313/EEC*

right of access to environmental information that the Retained EU Law Bill,<sup>45</sup> at that stage, posed. The students gathered the requisite number of signatories to require a response from the Senedd Petitions Committee. The Petition Committee has since passed the report the Climate Change, Environment and Infrastructure Committee, who is considering the report at the time of writing.

The EU formally approved the Aarhus Convention in 2005, and today's cohort of students (though perhaps not all of Cardiff University's students from countries outside the EU remit) may take this right for granted. However, access to justice is a right that's often overlooked and not properly implemented in national and EU law, with Brexit presenting a direct challenge to this revolutionary treaty which must be cherished and guarded at all costs. The Clinic, within the wider context of the changing legislative landscape set out above, therefore also plays a key role in bridging the gaps left in access to environmental justice.

### *Hedgerow Project*

In the same year, the Clinic was commissioned by the Interim Environmental Protection Assessor for Wales (IEPAW) to undergo a systematic review of consultation responses to the Assessor's review of the UK Hedgerow Regulations. The IEPAW role was established in Wales as a temporary stop-gap following the loss of

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<sup>45</sup> Retained EU Law (Revocation and Reform) Act 2023, the way for which was paved by the European Union (Withdrawal) Act 2018



EU oversight following the EU Exit referendum to oversee the function of and compliance with environmental law.

Led by co-author 1, the work allowed students to engage in a specialised, albeit niche, deep dive into the heart of the modern landscape of conservation policy in Wales, exploring the cultural, as well as environmental, significance of hedgerows in the British and Welsh landscape. Crucially, by discussing existing shortcomings of the law and discussing potential reform, students had to develop a working knowledge of hedgerows as particular, and vital, ecosystems, and understand that a functioning environmental framework is one that is informed by the laws of the natural environment.

The students reviewed the consultation responses that had been submitted to the Assessor as part of a formal Call for Evidence, and produced a report summarising the breadth of responses to highlight existing concerns with the Regulations. The students then produced a supplementary report to provide recommendations for legislative reform, based on their review of the submissions. This included, amongst other recommendations, an exercise in legislative drafting to understand how UK Regulations could be adopted in Wales as a devolved piece of law. The work went beyond legal recommendations and let students explore the potential of solutions outside of legal reform. The Interim Assessor of Wales is expected to publish the final recommendations, based on the report, in Spring 2024.

*Palestine – Environmental Justice Project*

At the beginning of their second year a student member of the Cardiff Student Lawyers Without Borders Society approached co-author 2 to ask if there was scope for taking forward a report of 2014, *Remedying Environmental Injustice in Occupied Palestinian Territory*,<sup>46</sup> which the co-author had written.

The student wanted to help victims of environmental nuisance at the hands of Israeli companies operating in Palestine, and they considered that the Welsh policy context outlined above made the Clinic a suitable forum for taking this forward.<sup>47</sup> This led to co-author 2 corresponding with the NGO Al Haq which published the report, out of which the Clinic was invited to take part in a summer school on issues raised by the report.

The summer school in Ramallah (the administrative capital of Palestine) in August 2023 was attended by 20 Palestinian law masters students, and academics from many universities in Palestine, as well as two Clinic members, co-author 2 and a colleague. It lasted a week. Clinic students and academics began the week by giving a presentation to the group. This was followed by attendance at three days of field visits to farms and residences whose environment was adversely affected by the Israeli occupation of the West Bank.

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<sup>46</sup> B Pontin, V de Lucia, J Gamero, *Remedying Environmental Injustice in Occupied Palestinian Territory: Problems and Prospects* (Al Haq 2014).

<sup>47</sup> See in particular 'Well-Being Goal 7: A Globally Responsible Wales', under the Well-being of Future Generations (Wales) Act 2015.

The project concluded with the Clinic members giving a presentation feeding back on what had been learned, and listening to students doing likewise. One outcome was the beginnings of a collaboration between the Clinic and clinicians in Palestine, around publicising injustices and researching any legal or political avenues for redress.

### III Not a Blueprint:<sup>48</sup> Reflections on the Cardiff Environmental Law and Policy Clinic

Over the course of its short history, the Cardiff Clinic has illustrated this shift away from advising on the application of the black letter law, to the examination and challenging of law in the context in which it operates, thereby allowing students to understand how law as it could be. Cardiff Law School, as an academic institution, has an established 'law in context' culture, recognising the need to situate black letter law within the wider cultural, social, political and economic context in which it operates.<sup>49</sup> Policy provides a particularly useful lens through which to understand law in this very context. In 1950, the Gower Survey, exploring the future of legal education, highlighted that:<sup>50</sup>

"It is no longer true, if it ever was, that all a lawyer has to do is to advise his client on what his legal position is and to translate into legal phraseology policy decisions

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<sup>48</sup> C King and D Jones, 'Cui (pro) bono: Working in Partnership: A Possible Blueprint for the Future of Legal Education', in *Reimagining Clinical Legal Education* (Hart 2018) 25.

<sup>49</sup> W Twining, *Blackstone's Tower: The English Law School* (Hamlyn Lectures 1994); W Twining, *Law in Context: Enlarging a Discipline* (Clarendon Press 1997).

<sup>50</sup> Gower, 170 – 171.

already reached by the client. He [sic] is also expected to advise on what the policy should be.”

Referring to the practitioner (which many students hope to be), Gower stated that, “the barrister and solicitor has, in the broadest sense, to make law as well as to advise on what it is at present; to be a legislator as well as an ` adjudicator’<sup>51</sup>

The value of students understanding not just how the law operates in context, but the context itself, has only grown in pertinence with changing demands for legal practice careers. With law student numbers rising nationally,<sup>52</sup> additional pressure is put on both staff and students. To date, our effective strategy has involved providing an option for pro bono or clinical work to our growing student body (with the exception of first-year students). It's important to note that students may not always get their preferred choice; sometimes, the opportunities might involve simulated client interactions instead of actual client or policy engagements. Our Innocence Project, the most sought-after program, demands a rigorous application process where students undertake a detailed analysis task mirroring real casework. Out of the 170 second-year students enrolled in our optional Miscarriages of Justice module, which supports the project, 110 expressed interest in applying, leading to 53 actual applications.

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<sup>51</sup> *Ibid.*

<sup>52</sup> The Higher Education Statistics Agency figures released in January 2023 (Higher Education Student Statistics: UK, 2021/22 - Subjects studied | HESA, accessed 16th January 2024) show totals for 2019/20 as 122,795, for 2020/21 as 138,080 and for 2021/22 as 142,320.

For staff, this process is demanding in terms of resources, as each application must be carefully reviewed and feedback provided, consuming approximately 50 hours of staff time. We have the capacity to accept only around 35 new participants, in addition to about 30 returning students. This inevitably results in some students not being selected. The 'massification' of education, where universities must accommodate increasingly large cohorts to meet the demands of the current economy has added a particular pressure to law schools. Thornton argues that, as a result, 'even though [...] the vastly increased number of law graduates are not all able to obtain positions as practising lawyers, the institutional aspiration that they will do so remains a powerful determinant'.<sup>53</sup> With a 4:1 ratio of graduates to training contract,<sup>54</sup> it is more crucial now than ever for law students to be prepared for a career that takes them outside of law.

Clinics, in the employability context, have a crucial role to play in helping students understand, as Strevens et al. write, the 'wider picture than the black letter law applied to a given set of facts' as a key element of commercial awareness.<sup>55</sup> Research by McConnell has shown that students themselves are aware of the importance commercial literacy plays at this early stage in their legal career, regardless of future

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<sup>53</sup> M Thornton, 'The Demise of Diversity in Legal Education: Globalisation and the New Knowledge Economy' (2010) 8(1) *International Journal of the Legal Profession* 43.

<sup>54</sup> The Law Society, Trends in the solicitors' profession, annual statistics report 2021, September 2022. [Access here: Annual statistics report 2022: what does the solicitor profession look like? | The Law Society](#)

<sup>55</sup> C Strevens, C Welch, and R Welch, 'On-line Legal Services and the Changing Legal Market: Preparing Law Undergraduates for the Future' (2011) 45 *The Law Teacher* 328-347.

career paths.<sup>56</sup> Our own experience with students more than supports this. When asked to reflect on their participation with the Clinic during the 2022-2023 academic year, one student noted that it was 'very useful' to learn about the legislative process, since it is 'the basis of law.' The student's reflection on the importance of understanding the legislative process demonstrates a successful grasp of the concept that law emerges from and exists within a wider context of the political landscape, where policy makers are elected by citizens and informed – or influenced – by stakeholders.

### **'Bridging the Gap' between Education and Skills**

Over the course of the past years, students have been allowed to develop skills that – we hope – will be of use to them regardless of their chosen career. The importance of 'bridging the gap' between academic skills and more practical skills is well established.<sup>57</sup> This seems particularly pertinent at a time when skills-based recruitment is on the rise, with recruitment based on academic transcripts alone falling.<sup>58</sup>

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<sup>56</sup> S McConnell, 'Commercial Awareness and the Law Student Journey into the Legal Profession – Definitional Challenges and the Lived Experience of the Graduate Interview' *International Journal of the Legal Profession* 30:2, 189-215 (2023).

<sup>57</sup> See: D Binder and P Bergman, 'Taking Lawyering Skills Training Seriously' (2003) *Clinical Law Review* 10, 301; J Dickson, 'Clinical Legal Education in the 21st Century: Still Educating for Service?' (2000) *International Journal of Clinical Legal Education* 1, 33-46; R Grimes, 'Legal Skills and Clinical Legal Education' (1995) *Web Journal of Current Legal Issues* 3; Tribe Mkwebu, *Research on Clinical Legal Education: Unpacking the Evidence in The Clinical Legal Education Handbook* (Institute of Advanced Legal Studies, 2019).

<sup>58</sup> Institute of Student Employers, 'ISE Student Recruitment Survey 2023'.

The substantive output of the Clinic covers a wide range of topics. As just one example, the Climate and Environment Project has, over its three years, taken a particular environmental topic and encouraged and facilitated students to look closely at the law and practice in that area. This is often in far greater detail than the students would anticipate in core undergraduate modules.

Rather than an exercise in learning a new area of law, this Project aimed to encourage students to analyse critically the application of law on a particular environmental topic, and then give students 'free rein' to consider how things might be improved. The aim is not to make the student 'expert' on the area of environmental law, but to get used to picking apart the detail of the law and making constructive suggestions on potential legal reform.<sup>59</sup>

A core component of the Clinic's work therefore also involves enabling students to understand the decision-makers within the relevant project; for instance, students were required to develop an in-depth understanding of the role of the Information Commissioner and the Interim Environmental Protection Assessor for Wales in particular, for the FOI and the Hedgerow project respectively, against the wider backdrop of the role of the Welsh Government and the working of the Senedd. For those students with environmental law electives, the Clinic of course also becomes a

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<sup>59</sup> The skills/substantive knowledge dichotomy is complex, but in this setting the Clinic is addressing the concern of MacFarlane that emphasis on 'skills' can lead to an uncritical acceptance of the substantive law status quo: MacFarlane, 'Look Before You Leap: Knowledge and Learning in Legal Skills Education' (1992) 19 *Journal of Law and Society* 293, 296.

platform to expand and test academic knowledge, and to understand the role of those organisations, as well as environmental NGOs, as potential future employers.

The Clinic has actively encouraged a more experimental approach to policy, allowing students to propose alternative legal solutions and explore the process of law drafting. This innovative approach fosters a level of creativity that traditional legal clinics might not encompass. Moreover, students begin to understand the wider forces at play, the decision-making process behind pieces of legislation, and that law does not operate in a vacuum.<sup>60</sup>

Most importantly, students are given the chance to become themselves decision-makers in this space, developing an understanding of the shortcomings of existing law and in turn providing their own recommendations for reform. Ultimately, the students really are given the chance to ‘make their voices heard and contribute to how the law can be, not just how it is already’.<sup>61</sup>

### **Student Experience**

Research conducted by McConnell suggests a diversity of experience by students with clinical education, where ‘some students perceived that they had developed commercial awareness in clinic and that some developed it more than others’.<sup>62</sup> There is no doubt that in the past year’s cohort, students have had varied experiences with

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<sup>60</sup> Dunn et al (2020), p 68

<sup>61</sup> *Ibid*, p 69

<sup>62</sup> S McConnell, 'A Study of Supervisor and Student Views on the Role of Clinical Legal Education in Developing Commercial Awareness' (2022) *IJCLE* 61 61



the Clinic. However, in each cohort, the same pattern emerged. The students were often hesitant at first, but once reassured that there was not necessarily any correct answer to the questions their own analysis had raised, and in the absence of any formal assessment forming part of their degree courses, they felt increasingly able to provide potential solutions for discussion within the group. In time, student noted the value of learning 'communication with policy makers and gain[ing] their views'. These reflections paint a picture of students who are coming to terms with the fact that the law is created, written, shaped, influences, and implemented by real people, and that they, too, have a role in a system in which the law is constantly changing.

Crucially, when we asked students from the 2022/2023 cohort about their future career choices, one student responded that, while they are more interested in working in the commercial sector, they 'really enjoyed having the power and knowledge to change / reinforce policies', while another noted that while they were more interested in advocacy, their involvement in the project has allowed them to better interpret the law. One student observed that 'having an insight into both law and policy has helped [them] recognise the limits of both.' These reflections show these projects are going some way in preparing students not just for a career in law, or indeed for a career in environmental law, but is providing them with the skills needed in any variety of vocations they might be passionate about.<sup>63</sup>

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<sup>63</sup> Responses from students in the 2022/2023 cohort. Reproduced here with permission.

In 1950, Gower argued that 'every lawyer, whether he devotes himself to private practice or the public service, has to make policy decisions demanding a knowledge of economics, political science and sociology, and that somehow an attempt should be made to teach him something about them.'<sup>64</sup> The current Cardiff cases outlined above regarding FOI, climate, hedgerows and Palestine are examples of this reality being taken seriously by the Clinic. On reflections of the past year's work, one student said that it would be useful as 'legal practitioners should strive to create laws that are coherent with policy' and that, 'by understanding the policy reasoning, it allows us to interpret the law in a socio-legal way.'

### **Reflections on Environmental Justice**

One of the most remarkable aspects of the Cardiff Environmental Project, and the Clinic as a whole, is that it is, for the most part, underpinned by volunteers – whether this is internal staff committing more time than allocated, external staff contributing on a true 'pro bono' basis, or, of course, students. It goes without saying that, particularly in the early days of creating a clinical portfolio, many academic staff, keen students, and supportive pro bono practitioners go over and above to make a clinic work. Weekends sometimes merge into weekdays, and with it a lot of mutual goodwill is generated and appreciated, often with and by alumni. This remains central to the success of a clinic. The Clinic's contribution to overturning miscarriage of justice cases is not just exceptional in its own right, but even more so in that, compared to

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<sup>64</sup> Gower, p 170

similar clinics, it has continuously and consistently been underfunded, especially when considering the amount of output – measurable in terms of referrals, and in terms of invaluable support to victims and their families - it has provided.

However, the intrinsic value of clinical work in harbouring this passion for pushing the boundaries of the law in a pursuit to address real social and environmental injustices must be finely balanced against the values of higher education measured in economic terms, both for the university in sustaining a clinic financially, and for students faced with an already competitive job market in law<sup>65</sup> as well as the increasingly competitive graduate market,<sup>66</sup> all while making student debt feel worth it.<sup>67</sup> This balance is captured in perennial tensions, and has at Cardiff played out primarily in the discussion of voluntary contributions, by both staff and students, on which the Clinic has had to rely.

In the Cardiff Environmental Law and Policy Clinic, much of the early work was rather loosely funded, if funded at all. Some came under co-author 2's 'Collegiality' workload bundle, but much was led by co-author 3, who gave time pro bono prior to fractional employment. This enabled the Clinic to bring proceedings on behalf of a

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<sup>65</sup> In 2021/2022, the number of total law graduates was 19,913, with 14,751 second class graduates and 4,417 first class graduates. The number of traineeships available in 2021/2022 was 4,952. See Law Society Report, footnote 54.

<sup>66</sup> Institute of Student Employers found that graduate applications per vacancy increased through 2023, with an increase of 38%, with an average of 86 applications per vacancy. 'ISE Recruitment Survey 2023' [https://ise.org.uk/page/ISE\\_Recruitment\\_Survey\\_2023](https://ise.org.uk/page/ISE_Recruitment_Survey_2023) accessed 28 January 2022.

<sup>67</sup> The cap on student loan interest rates were increased by 7.5% in December 2023, the highest level ever. See: P Bolton, 'Student Loan Statistics', House of Commons Library, 1 December 2023 <https://commonslibrary.parliament.uk/research-briefings/sn01079/>.

client against the UK in respect of nuclear waste. Without voluntary efforts the case would not have been brought. Likewise, in the Palestine project, the university funded the travel costs to Palestine, whilst the client supplied accommodation, some food and local transport. But students and staff gave their unpaid time. The project would not have taken place without the volunteer element. Even with the Hedgerow project, which received funding from the client, much of the labour on both the students' and staff side was given gratuitously.

To some extent, the flexibility afforded through an informal build on voluntary contributions allows the Clinic to consider cases that would not, despite obvious injustices, make it past the cost/benefit assessment of a law firm, and highlights the real value that clinics can add to achieving social and environmental justice. While the consistent stream of voluntary contributions in Cardiff tells a remarkable story about the Clinic itself, and the generosity of voluntary contributions is invaluable, we feel it is critical to acknowledge the real risks of a clinic *relying* on a model that has no funding for sustaining it. This reliance brings forth real issues regarding both internal structures within the university space as well as wider systemic issues prevalent in the pro bono work and of particular concern when moving in the environmental sector.

### *Internal Structures*

For one, there can be institutional non-recognition of the significant extra time it takes to run activities that involve both student learning, facilitating their ongoing

reflection, and maintaining a professional and efficient relationship with clients and prospective clients. In a higher education landscape that increasingly utilises non-flexible workload allocation models to dictate a sometimes unreasonable hours/minutes time framework for academic roles, there is less room for colleagues to devote their valuable time to work that is not recognised by their employer. Sometimes it can be positively framed under a civic mission or engagement banner with its own time allowance, but that's not always the case, and colleagues on Teaching and Scholarship contracts often find themselves using the Scholarship element to try to develop clinical activity linked to their own interests.

This leads to a further, critical, question of the voluntary contributions of students at the centre of the Clinic. 'To assess or not to assess' is a regular discussion for clinicians. The revised QAA Benchmark statement in Law makes a clear feature of the importance of Law in society, and the impact of Pro Bono activity within it.<sup>68</sup> On the one hand, credit-bearing clinical activity has to attract core teaching funding. But many employers want to see students "going over and above" their studies. So most law schools provide a balance of assessed and voluntary opportunities. The latest survey conducted by LawWorks and the Clinical Legal Education Organisation shows that 77 of 78 responding UK law schools had clinical provision.<sup>69</sup> The survey ranked

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<sup>68</sup> QAA Subject Benchmark Statement – Law (March 2023) (especially para 2.8 and 3.7).

<sup>69</sup> Law School Pro Bono and Clinic Report 2020 – [LawWorks Law Schools Report 2020\\_0.pdf](#).

educational value and employability as very important for around 90% of respondents, but 71% also ranked social justice as very important.

Above all, the question of voluntary contributions on behalf of both staff and students perpetuates barriers to accessing the sector; arranged around the academic timetable of students, and in part also aligned with other commitments of staff, the Clinic runs in the evening, from around 5pm onwards, immediately excluding those with family commitments. The issue of timing also raises a wider question of access – the Clinic, built around voluntary contributions, is only really accessible to teaching staff with jobs flexible enough to allow this additional commitment, and, more crucially, only open to those students who have the financial security to not need to spend this time with a part-time, paid job to support themselves.

The success of the Cardiff Clinic as a whole, built as it is on generous contributions of passionate practitioners, academics and current (sometimes even former) students, is a story we are proud of. But as with other clinics,<sup>70</sup> a lack of adequate, strategic funding has hampered medium-term planning and has led, necessarily, to ad hoc reactionary decisions about student numbers and about which schemes will run year-on-year, often at short notice. Ultimately, this also undermines the ambitions of the Clinic in delivering valuable work for clients and genuine work experience to

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<sup>70</sup> M Katz, 'Understanding the Costs of Experiential Legal Education' (2015) 1(1) *Journal of Experiential Learning* 28.

students.<sup>71</sup> But, ironically, our very success story can have a perverse consequence: the Clinic shooting itself in its volunteer foot when it has to persuade institutional budget holders that core funding is essential for sustainability and scalability.

### *Systemic Issues*

The Clinic as such, immediately and inevitably, excludes everyone else. This is a particular concern in the environmental sector, which is already under heavy criticism for being inaccessible, and, as a sector, has a complicated and indeed uncomfortable contemporary culture of being exclusive. This systemic challenge of the environmental sector in the UK pervades both across conservation as a knowledge base,<sup>72</sup> as well as the sector itself, which has been found to be the second least diverse sector in the UK, after Farming.<sup>73</sup>

The exclusivity of this sector is particularly sensitive given the role of conservation in colonial exploitation, both in resource exploitation and environmentally degrading practices on the one hand, and conservation practices that excluded indigenous

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<sup>71</sup> T Mkwebu, 'Unpacking Clinical Scholarship: Why Clinics Start and How They Last' (2016) 4(1) *Asian Journal of Legal Education*. See also, Mkwebu, 'A Systematic Review of Literature on Clinical Legal Education' (2015) 22(3) *International Journal of Clinical Legal Education* 238-274.

<sup>72</sup> L F Rudd et al., 'Overcoming Racism in the Twin Spheres of Conservation Science and Practice' (2021) 288 *Proceedings of the Royal Society B*.

<sup>73</sup> R Norrie, 'The Two Sides of Diversity: Which Are the Most Ethnically Diverse Occupations?' (2017) *Policy Exchange*. <https://policyexchange.org.uk/wp-content/uploads/2017/03/The-two-sides-of-diversity-2.pdf>.

communities from land on the other.<sup>74</sup> This consideration provides a further complexity to the ongoing discourse untangling legal knowledge from its 'euro-modern' origin,<sup>75</sup> as well as the ongoing need to tackle a lack of diversity within higher education.<sup>76</sup>

The reliance on informality provided through voluntary contributions by both staff and students, of course, also carries risks. For example, the Hedgerows Project unfolded without any clear contractual framework as to how the work would be done. When unpacked, this is linked to the reputation of the University and its employees (and quality of students in a 'Russell Group' Law School). The 'upside' of this is that the projects can proceed speedily, with flexibility. They can be responsive to evolving circumstances. And, fortunately, from feedback, the clients have been satisfied with the results.

In the case of the Palestine project, the inherent risks had to be explicitly acknowledged and acted on in the form of a risk assessment. The Clinic was required to follow Foreign Office guidance in sticking to territory within Palestine which it was safe to visit. Yet the assessment was generic, rather than tailored to the project. Much, therefore, again relied on trust, as some risks were difficult to fit within the

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<sup>74</sup> R Grove, *Green Imperialism: Colonial Expansion, Tropical Island Edens and the Origins of Environmentalism, 1600–1860* (Cambridge University Press, 1995).

<sup>75</sup> F Adebisi, *Decolonisation and Legal Knowledge: Reflections on Power and Possibility* (Bristol University Press, 2023).

<sup>76</sup> UUK 2020. Equality, Diversity and Inclusion last Accessed February 2023 <https://www.universitiesuk.ac.uk/topics/equality-diversity-and-inclusion?pageREportSummary=2>.



University's assessment template. That is particularly true of the 'political' and 'emotional' risks arising from a historical and contemporary 'white saviour industrial complex' often associated with British volunteers working on addressing post-colonial problems in situ.<sup>77</sup>

Moreover, returning to the issue of the Clinic in the context of wider structural issues, as Bethany Elce explains in her doctoral thesis devoted to British human rights activism in Palestine,<sup>78</sup> British volunteers are liable to being seen by Palestinians as part of the colonial problem out of which the occupation – and its human rights legacy – has arisen. Applied to our case, when that volunteer is a student working within a Welsh Law and Policy Clinic, issues of 'safety' extend beyond risk of physical harm.<sup>79</sup>

While internal structures continue to provide financial limitations for the future of the Clinic as it stands, especially as a clinic set out to achieve social and environmental justice, it feels imperative for us to acknowledge the real risks associated within the wider systemic context, both on a personal level in excluding those with less privilege

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<sup>77</sup> T Cole, 'The White-Savior Industrial Complex' *The Atlantic*, 21 March 2012. <https://www.theatlantic.com/international/archive/2012/03/the-white-savior-industrial-complex/254843/>. (accessed on 01 February 2024). See also: D Gillborn, 'Education Policy as an Act of White Supremacy: Whiteness, Critical Race Theory and Education Reform' (2005) 20 *J. Educ. Policy* 485-505 and Joe Flaherty, *No More Heroes: Grassroots Challenges to the Savior Mentality* (AK Press, Edinburgh, UK, 2016), noting on specifically the complex history and US and global relationship with Palestine as a key target for white saviourism.

<sup>78</sup> Bethany Elce, *The Accompanied and the Accompanier in Occupied Palestine: Human Rights Activism and the Self who Intervenes*, PhD Thesis Submitted to SOAS, 2023.

<sup>79</sup> The clinician here is having to grapple with profound questions of collective and personal responsibility, arising from their being 'implicated subjects (Bethany Elce, 'The Balfour Conversations: British human rights activists and the call to reckon with implication' (2022) *International Journal of Postcolonial Study* 1)

and in perpetuating the real challenge of engaging with environmental issues – locally and internationally – in a conscientious way. If acknowledged, and addressed, clinical education, especially when situated within socio-legal academic environment as in Cardiff, allow for real ‘room to break these seals’<sup>80</sup>.

### Teaching the Lawyers of the Future

The value that clinics add to wider communities has long been established with reference to their ability to ‘fill the gap’ that law firms and other providers of legal advice leave in what are primarily social justice concerns: housing, care, unsafe convictions.<sup>81</sup> In turn, Nicolson names the creation of social justice lawyers as one of the ‘principal pedagogical goal[s]’ of clinical legal education.<sup>82</sup>

The experiential – and, in the case of the Cardiff Clinic, often experimental – approach appears crucial in achieving this pedagogical goal by empowering students to apply and interrogate legal principles within a wider social – end environmental – justice context,<sup>83</sup> and ultimately fosters a real ‘social justice ethos’.<sup>84</sup> Such an educational

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<sup>80</sup> Adebisi, p 2

<sup>81</sup> L Bengtsson and A Speed, 'A Case Study Approach: Legal Outreach Clinics at Northumbria University' (2019) 26 *International Journal of Clinical Legal Education* 179. See also: R Voyvodic and M Medcalf, 'Advancing Social Justice through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor' (2004) 14 *Washington University Journal of Law and Policy* 101-132; J MacFarlane, 'Bringing the Clinic into the 21st Century' (2009) 27(1) *Windsor Yearbook of Access to Justice* 35; P McKeown, 'Can Social Justice Values be Taught Through Clinical Legal Education?' in *Social Justice and Legal Education* (Cambridge Scholars Publishing, 2018) 84-110; F Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011).

<sup>82</sup> D Nicolson, 'Our Roots Began in (South) Africa: Modelling Law Clinics to Maximize Social Justice Ends' (2016) 23(3) *International Journal of Clinical Legal Education* 87-136.

<sup>83</sup> T Mkwebu, 'Research on Clinical Legal Education: Unpacking the Evidence' in *The Clinical Legal Education Handbook* (Institute of Advanced Legal Studies, 2019).

<sup>84</sup> Dunn, Bengtsson and McConnell: Building a policy clinic network: from the field: (p. 246)

approach is anchored in experiential learning, which not only empowers students to apply and interrogate legal principles within a wider social justice context but also enables them to see the real-world impact of their work. Crucial to this experience, however, is not just the teaching of a rights-based values system, but the conveying of the skills, knowledge, and confidence needed for students to themselves be able to deconstruct values and value systems.<sup>85</sup>

One student on the FOI project who reflected that it was valuable to learn ‘how legislation overlaps and how it can be omitted or manipulated by extending deadlines by using ambiguity’ was a useful insight, while a student on the Hedgerow project noted that it was useful to understand ‘the difficulty in reality outside the black and white letter law’. The student also observed that it is was useful to learn ‘the interpretation of the law in practice and its impact.’

This speaks to a more personal and – although less tangible - perhaps more valuable output of the Clinic: the ability of a student to be allowed to take ownership of their own work, not accountable to a tutor or a grade, but to a system operating in ‘the real world’. Allowing students to measure themselves against the expectations of the real work, and watching them, in some cases, go beyond those expectations, is a teaching experience that goes beyond the academic, allowing students to contribute to ‘how the

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<sup>85</sup> P McKeown and E Hall, 'If We Could Instill Social Justice Values through Clinical Legal Education, Should We?' (2018) 5(1) *Journal of International and Comparative Law* 143-180.

law can be, not just how it is',<sup>86</sup> and build the foundations for socially- and environmentally-conscious lawyers of the future.

This pedagogical approach is particularly pertinent in the context of an unfolding global environmental crisis, as well as the precarious governance systems at the centre of holding to account those who perpetuate this crisis, including basic access to information as outlined above, which leave an increasingly grave role for future lawyers, and the clinics who train the lawyers of the future, to fill the emerging and expanding gaps in environmental justice.<sup>87</sup>

## Conclusion

The Cardiff 'story' around the environment and clinical legal education described above has been one of strategic, yet organic, evolution. Much of it is unique, and necessarily so. The projects highlighted owe almost everything to the personalities involved, the 'local' problems and opportunities which have presented themselves,

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<sup>86</sup> Dunn, Bengtsson and McConnell, p. 246

<sup>87</sup> In 2018, the International Panel on Climate Change (IPCC) published its report on limiting global emissions to 1.5C. The panel concluded that emissions would have to "decline by about 45% by 2030 and reach a net zero around 2050. Access: [Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by governments – IPCC](#). In 2019, the Intergovernmental Panel on Biodiversity and Ecosystem Services (IPBES) published its report on the unprecedented decline of species and the real risk of ecosystem collapse. The new Global Biodiversity Framework sets out to halt the decline of biodiversity by 2030 and reverse biodiversity loss by 2050. Access: [Global Assessment Report on Biodiversity and Ecosystem Services | IPBES secretariat](#). In 2021, the IPCC and the IPBES published their first joint report to highlight the need to tackle the nature and the climate crisis as one. Access: [20210609\\_workshop\\_report\\_embargo\\_3pm\\_CEST\\_10\\_june\\_0.pdf \(ipbes.net\)](#). At the same time, the UN Environment Programme has found that the number of climate change cases to hold governments and the private sector to account has more than doubled since 2017. See: Sabin Center for Climate Change Law, 'Global Climate Litigation Report: 2023 Status Review' (July 2023) Access: <https://climatecasechart.com/>

and the resources at the Clinic's disposal, whether that be the students, the University (in allocating limited funds), the staff who have given their time, and the clients who have placed trust in the Clinic.

As a result of letting the Clinic evolve more by accident than design, steering into the opportunities that present themselves, not all of our activities fit neatly under a traditional law clinic or policy clinic banner. Some are hybrids and might even be seen as non-assessed extensions to other typical undergraduate law modules. All, however, contribute to a dynamic, wide-ranging clinical portfolio open to students. Nevertheless, what has appeared to the outside as a 'strategic' shift in the Clinic's focus from 'law' to 'policy', has been of general interest. While the value of integrating policy into legal education has been long recognised, the experience in Cardiff of a Clinic evolving from law into policy in a circumstantial, rather than designed, way, is not an unusual one. In fact, reflecting on the past years, it is difficult to see how the dynamic could have been otherwise, given the circumstances at hand.

Students, least of all, care about labels, provided the activities are enjoyable and enhance their employability – so who needs labels? Indeed, if we paid more attention to classification of 'law' or 'policy' clinic, the latter might result in a more difficult recruitment exercise for us, given traditional student enthusiasm to acquire 'law clinic' experience. Might there be more reluctance for students to sign up for 'policy' clinic opportunities? Strict labels – or models, as it were – run the risk of creating a false

dichotomy, and would itself undermine the very assumption that law and policy go hand in hand.

One student observed that 'studying and practising law on its own [...] began to feel tiresome. Indulging in policy has made me appreciate law again and feel rejuvenated in my decision to study law.' Regardless of label, what the Clinic has so successfully done is develop a real experience in exposing weaknesses in current environmental law, and empowering students to put forward recommendations for real legal change.

Looking ahead to the 2023/2024 academic year, increasing student numbers within a School that has combined Law with Politics and International Relations means that pragmatism prevails for our clinical offerings. Annual internal forces, such as changes in leadership and ongoing financial constraints, and well as current external factors, such as changes to Qualifying Work Experience under the Solicitors' Qualifying Examination regime, will no doubt have an impact on the future of the Clinic.

And amongst all of this, current resourcing and size means that our clinical portfolio has reached a perfect watershed. As we look to the future of the Clinic, perhaps the only thing we can know for certain is that it will continue to evolve - perhaps by strategic accident, as it always has.