

Universities Look at the Cuts

An academic workshop on: what does it mean to be a criminal legal aid lawyer in the 21st century?

On 19 March, the University of Warwick, in conjunction with Monash University (Victoria, Australia), hosted a workshop with academics, practitioners and civil society actors to discuss the impact of legal aid funding cuts in relation to the changing face of the legal profession; the lawyer/client relationship; and the broader social consequences. This provided an opportunity to draw from first-hand experiences and expertise to examine how the cuts may shape the future of the English legal system. A second workshop examining these issues in the Australian context will be held at Monash University in July.

Legal aid crisis crossing borders

Academics from Australia's Monash University – Dr Asher Flynn, Professor Arie Freiberg, Professor Jude McCulloch and Ass/Professor Bronwyn Naylor – attended the workshop to reflect on the situation in the Australian State of Victoria, where funding cuts to social and welfare services, underpinned by a government rhetoric of austerity, have increased demand for legal need, while simultaneously increasing the extent of unmet legal need. In this setting, Victorian criminal courts are working with minimum levels of legal aid resources, and, mirroring England, this has brought into sharp focus concerns of legality, due process and the ability for vulnerable individuals to access justice.

Across both jurisdictions, government justifications for cutting funding have revolved primarily around saving money; yet it is highly unlikely the cuts will deliver significant savings, as they fail to consider the broader implications, like higher levels of incarceration, fewer quality lawyers working in legal aid and the resources/costs involved as unrepresented defendants attempt to navigate the complex legal system.

Workshop attendees discussed such impacts and what opportunities or best practice models might be drawn upon to respond. It was recognised that in negotiating the cuts, lawyers have been forced to reconcile legal ethics, morality and financial constraints in determining when and how they can assist the most people with decreasing resources. This was highlighted in the changing face of the legal profession and the lawyer/client relationship sessions,



The Warwick and Monash University Access to Justice research team (L to R): Ass/Prof Bronwyn Naylor; Prof Jackie Hodgson; Prof Jude McCulloch; Dr Asher Flynn; Ass/Prof James Harrison; Emeritus Prof Arie Eriberg; and Ms Natalie Bryom

which illuminated the problematic shift for criminal legal aid lawyers in how they must respond to, and represent, their clients.

The conveyor belt system

The sessions were framed around the question: what does it mean to be a legal aid lawyer in the 21st century? Academics and practitioners alike responded to this, identifying the shift the cuts would force towards a conveyor belt mentality: a process that each client/case would be compelled to fit within. In this context, the lawyer/client relationship was seen as becoming less about the individual and more about a “process” of representation. It was argued the cuts would strip discretion from lawyers to advise clients in a manner reflective of due process, to respond instead in an institutionalised manner, dictated by structure, managerial direction and money. In this way, it was predicted that lawyers may not always be able to act in the defendant's best interests; a fixed fee, for example, was seen to encourage opportunities for “non-caring”, on the basis that lawyers are literally not able to afford (in monetary or time measures) to fully comprehend or consider each client's individual needs.

Another concern is the decreasing expertise that may permeate the criminal law profession. Academics discussed the trend in students making career decisions based on paying bills, not necessarily the most satisfying or rewarding legal work. Thus there were concerns that the existing expertise in criminal law would not be

replaced as readily as in areas like commercial law, where government cuts had less impact.

On entirely pragmatic grounds, it was questioned whether the government had given sufficient thought to the increase in police and court costs/resources that would be wasted through a minimalistic model of legal representation. To date, there has been little government recognition of the economic benefits of lawyers within the legal system; this is a major flaw. It is well recognised, for example, that “problematic” clients can dramatically slow the legal process. In the past, this has been mitigated by the involvement of lawyers who can advise clients, and assist in managing them through the process more efficiently. By essentially removing the lawyer/client relationship and the capacity to take into account individual client needs, defendants will be less able and willing to disclose information to their lawyer. In turn, they will be less susceptible to being “managed” by their lawyer. Aside from this increasing the resources/costs in other areas of the legal system, it will also lead to individuals feeling less satisfied, and less like they have received justice – an outcome research consistently shows reduces legitimacy and confidence in the law, leading to lower levels of co-operation and an erosion of trust in all layers of the legal system.

A two-tiered system of justice

A tangible fear exists among English practitioners and academics that legal aid cuts are creating a two-tiered system of justice: one for the haves; one for the have-nots. In this system, those who can afford representation will receive justice; those who can't,

won't. While we cannot predict the full impact of the cuts, we know this. The cuts have the potential to impact on due process. They have the potential to negatively change the relationship between lawyers and their clients, and they have the potential to fundamentally change the operation, values and safeguards of the English legal system – once regarded as a model of procedural and substantive justice.

From here, it is vital that a new narrative around the law is created and the dominant view that legal advice is unnecessary, and that legal aid cuts are unavoidable, is discounted. Public understanding and debate concerning the fundamental importance of procedural safeguards and due process must be reinvigorated. How people need, use and understand the law is integral to ensuring that any funding cuts avoid radically re-shaping legal values. Academics, practitioners and activists must continue to work together to rebuild belief in the value of law; in the value of accessing and understanding law; and in the value of the quality of law. If we publicly illuminate the importance of meeting legal need, we might be able to redress some of the consequences of ill-considered, quick-fix cuts, which can irreversibly damage the rule of law as we know it.

A report from the workshop and more information on the Monash/Warwick project and workshops can be found at:

<http://www2.warwick.ac.uk/fac/soc/law/research/centres/accesstojustice/>

– Dr Asber Flynn, lecturer in Criminology within the School of Social Sciences at Monash University

Book Review

In Love's Shawl – poems by Greg Powell

Centaur Press

Christopher Stoakes is a former lawyer. His Selected Poems 1970-2010 is available from Amazon.

In Love's Shawl is Greg Powell's first collection of poetry. Poetry is like golf. The most you can hope for in a round is two or three good shots. In a collection by a poet who's new to you, if you can find a few you like, you're doing well.

The key is musicality: poetry is music and a poet with a tin ear is going to be clunky. Thom Gunn had a tin ear. He struggled to avoid writing in iambic pentameters so took to syllabics (seven syllables to a line). Syllables have got damn-all to do with stress, with music. So can Greg Powell swing a club?

In the real world, Powell has far more important

things to do than write poetry, like run a law firm (Powell Spencer & Partners), act for the family of a Guantanamo detainee, be president of the LCCSA, campaign against the accursed legal aid cuts and regularly champion the criminal law on radio and TV. Yet in between all of that he's found time to write this:

Love does not have / The smooth roundness / Of
this stone taken from the pebble / Beach where
we walked / Or its weight / So similar to your
hand in mine

And this (on a train):

I had not appreciated the vanity of nature / Until
I saw on the other side of the window / Clouds
posing as the muscles of beasts

In terms of language, Powell has a touch of the pyrotechnics, like an early Craig Raine or Paul Farley:

Listening to the bat / Squeak of the rundown /
Smoke detector