

Lord Kilbrandon – my grandfather.

Heather Shaw

Abstract

The Kilbrandon Lecture Series, gives an opportunity to analyse and debate the impact of the 1964 Kilbrandon Report and its impact on the children's hearing system and other issues that affect children in need of care and protection. The 15th Kilbrandon Lecture was delivered by the First Minister Nicola Sturgeon. In this article, Lord Kilbrandon's granddaughter gives a personal account of her grandfather and family life

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Corresponding author:

heather@shawslaw.co.uk

Over the last few years, I have had the privilege of being invited to attend the Kilbrandon Lectures. The Kilbrandon Lectures are a joint enterprise hosted by Strathclyde University and supported by the Scottish Government. Each year a speaker is invited to give a lecture against the background or context of Lord Kilbrandon's Committee Report from the 1960's, which resulted in the creation of what is now known as the Children's Hearings system.

The lectures I have attended have covered many different and interesting topics. Some had their subject matter firmly centred around the children's hearings systems, others with a nod to the principles and ideology that underpinned Lord Kilbrandon's report.

Ever since the lectures began in 1991 there has been a family member in attendance. My granny attended for many years and then more recently, I was asked by my uncle if I would take on the privilege.

This year, I was asked if I would write an introduction for the publication of the 2017 Kilbrandon Lecture. The brief was to write a short biography and some detail of Lord Kilbrandon's work, together with some of my own personal recollections.

I was quite daunted by the prospect, largely due to my shameful lack of knowledge about my late grandfather's work. This is perhaps even more embarrassing given that I am a lawyer myself!

Grandfather (we never called him anything else), was tall in stature and had an imposing aura about him. We always had to be on our best behaviour when at granny and grandfather's and I think this was because he always appeared to be

reading. The house was lined with books and old-fashioned legal statutes. He could be found reading in any chair in the house. He walked with a prominent limp and he couldn't bend one of his legs. I remember we were always terrified that one of us would inadvertently trip over his leg while he was reading. Ironically, the reason grandfather couldn't bend his leg was attributed partly to having damaged his knee following a fall after tripping over the Chief Constable's feet!

I know that grandfather came from a line of lawyers. He was the fifth generation to join the legal profession. Grandfather entered the bar in 1932 and following his service in the Second World War, he returned to his practice in 1945. He was made Queen's Counsel in 1949. When he was appointed to the bench of the Court of Session in 1959, he took the judicial title of 'Lord Kilbrandon'.

Kilbrandon was the name of his home on the coast of Argyll. I understand that for quite some time, he and granny lived in Edinburgh during the week and spent their weekends at 'Kilbrandon'. Granny once said that grandfather always moaned that when in Edinburgh, the specific book he needed to refer to was in Argyll and when in Argyll, the book he needed, was in Edinburgh!

In 1965 he was appointed the first chairman of the Scottish Law Commission. During his tenure, he had the task of considering proposals for constitutional devolution. In 1971, he was made a Lord of Appeal in Ordinary, in the House of Lords.

It was not until I became a solicitor myself, that I appreciated the significance of his career. I was an English solicitor before I became a Scottish solicitor. This was only because I left home at 17 to join the Royal Navy and I didn't have

plans then to practice law in Scotland when I embarked on my law career. While studying, I remember coming across one of his judgments in my course study materials. I turned to my neighbour and blurted out “that’s my grandfather!” I think he thought I was an odd-ball and he shifted nervously away from me. It prompted me to learn more about grandfather and his work, although studying in England, the resources (which back then meant physically trawling through statutes and journals in the library), were limited to his work as a law lord in the House of Lords. I spent many hours in the university library reading his opinions when I should have been studying course materials!

One of the recurring themes from the lectures I have attended, and from commentary about grandfather’s work, is that he was extremely forward thinking; that his proposals and views were ahead of his time. He was also considered a very fair and liberal man.

Back in the 1960’s / early 1970’s, juvenile delinquency was the main concern with regard to children as opposed to today when concerns are often in relation to children as victims from a lack of parental care. The Kilbrandon Committee Report recognised that in order to understand delinquent behaviour, it was necessary to understand all the facts and circumstances of the individual child so that the child’s needs could be addressed. This was a shift from looking at the child’s ‘deeds,’ i.e. his or her delinquent behaviour. In order to make this shift in practice, it was proposed that children’s matters including those of delinquency, were taken out of the traditional court system, and instead, a panel of lay persons would be set up to assess the children’s needs. The fact that a panel of lay persons as envisaged by the Committee still operates today is credit to the forward thinking of the Kilbrandon Committee.

Another key principle of the Report, is that the child and family were both to be helped. Punitive penalties were seen at odds with helping children and their families in need. This set the tone for future legislation. As a solicitor who has represented clients at children's hearings and also in court seeking children's orders, the mantra 'the welfare of the child is paramount' is one that is very familiar to me.

Grandfather was considered forward thinking in his personal life too. It is hard to convey the disparate worlds that he and I inhabited. Grandfather came from a legal and a privileged background. He attended Charterhouse School, a prestigious private school and he studied at Balliol College Oxford and Edinburgh University.

My dad, the eldest of grandfather's five children, bucked the trend and left school at 16 with no qualifications to join the merchant navy. When he married my mum, he left the merchant navy as he knew then that he wanted to be a stay at home dad if he was to have a family. This was in 1964 and I'm told it was quite a bold move to get married without a job! My mother's family were shocked by my dad's lack of employment and career prospects but I'm told that grandfather was only ever supportive of my dad and his siblings' career and life choices.

Similarly when one of my siblings went off the rails as a teenager, and ironically was the subject matter of the local children's reporter, grandfather was, I am told, an amazing support. He not only promoted the ideals of the children's hearing system academically and professionally, but he embodied them in life too.

When I was about 12, grandfather gave me and all my cousins, a small booklet entitled 'Notes for my Grandchildren'. I didn't read them at the time as they were hard to relate to because his world seemed so far removed from my own world. I re-read his notes recently. There were two short incidents mentioned that struck me. I wondered whether they helped shape his liberal and fair outlook. Both incidents occurred during his time at school at Charterhouse when he would have been aged about 14-16.

The first involved a master by the name of George Mallory (the famous mountaineer). He says in his notes that George Mallory was very kind to him when he first arrived at school. He later learnt why. Grandfather had narrowly failed to get a scholarship but Mallory had stood up for him, on the grounds that he wrote better English than the others; (English was Mallory's subject!).

The second incident involved a master of Austrian origin whom he describes as having an attitude to life, institutions and opinions of one of questioning. "How do you know? Who said that? What makes you think he was right (or wrong)?"

The incident he described, was during a trip with school friends to the continent, hosted by the Austrian master, with the purpose of educating them to different cultures. Grandfather's view was that after the 1914 – 1918 war, the feeling was much bitterer against the Germans than it was in 1939 – 1945, and to this bitterness, a man of Austrian origin, must have been particularly sensitive. He says that when they were crossing the Bodensee, his tutor said: "Observe these men on the pier. They are Germans. You will notice that they do not have horns or a tail." I can't help but wonder if this master, in educating his pupils to have a questioning mind, helped shape grandfather's sense of fairness and equality.

Grandfather retired from working when I was quite young. He died when I was 18 so just at the time when I would have loved to have picked his brain and have had adult conversations with him about the law! I always had an interest in law and grandfather was a huge inspiration. I didn't pursue it until later in life as I didn't think I was clever enough. When I left school, I worked in a lawyer's office in Oban. Grandfather used to say to me that I should get an apprenticeship and become a lawyer. At the time, I thought he was out of touch to suggest such a thing. An apprentice lawyer? Really? I couldn't imagine there was such a thing. It wasn't until I eventually qualified as a solicitor that I learnt that there existed a route of becoming a lawyer, both in England and Scotland whereby you achieve it from going through the ranks – basically an apprenticeship!

I often thought of him when appearing in court. Before giving a plea in mitigation or appearing at a children's hearing I wondered what would he have thought of me. It occurs to me that so much of what I did when practising law in the context of children's issues, likely stemmed from the outcome of his report. I would have so enjoyed discussing matters with him.

I think grandfather would be astonished to learn of the Kilbrandon Lectures and the fact that the principles arising from his report still resonate today. I think he would be delighted with the direction that children's rights have taken in Scotland and the long-lasting impact his work has had in the treatment of young persons in Scotland. His ethos continues and is evident both in policy and practice and in the Kilbrandon lectures I have had the privilege of hearing. The recent initiatives re Getting It Right For Every Child (GIRFEC), could arguably have been born out of the Kilbrandon Committee 1964 report.

The 2017 Kilbrandon Lecture, given by The First Minister Nicola Sturgeon confirmed her vision for a progressive modern Scotland that has a focus on children, their rights and their needs. Our challenge is perhaps to be as forward thinking today, as Lord Kilbrandon was then, and to ensure that we continue to endeavour to do right by future generations.

About the author

Heather Shaw is a solicitor with a small legal practice in Oban, Argyll. She qualified and practiced initially in England in family law. She returned to Scotland in 2008 and re-qualified in order to practise law in Scotland. Initially she focused on family law which was always her preferred area of law. She set up her own law firm, Shaw's Law Ltd in 2013 and now practises predominantly conveyancing and property law.

Heather lives near Oban with her nine year old son and his multiple gaming devices. They both enjoy cycling and other outside activities when Argyll weather permits.