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This is our first edition of 2022 and the first since the removal of the remaining domestic covid-based restrictions in England. Law clinics have, like so many of us, had to adapt to new ways of working whilst ensuring the invaluable service offered continued. Similarly, new skills, new connections, valuable lessons learned and a reinvigorated approach to pedagogy have emerged. These themes are represented in this edition, a collection of articles which provide fascinating examples of the range of clinical activities taking place in respect of the development of students and their understanding of what a lawyer should be; the nature of legal pedagogy when forced into remote teaching methods during the pandemic; and returning to the theme of professional identity and the place of students in legal practise.

We begin this edition with Lawton, Saban and Whittam's contribution on the developing of empathy through clinical legal education. This is a timely and significant exploration of a soft skill in lawyering, but one which is the subject of increasing study given the trajectory of lawyers' understanding of the importance of developing and building relationships with their clients. Here the authors use the Basic Empathy Scale to determine a cohort of students' self-reported empathy levels following participation in law clinics in the UK, and offer a useful addition through a gender analysis of this reporting. In an interesting conclusion, the authors explain how operating in a clinical setting can both improve and diminish empathy levels amongst students. However, a statistically significant level of students report increased empathy from their pro bono clinical work, with female respondents more likely to self-report higher empathy scores. Further, the authors provide a valuable recommendation of how to incorporate empathy into the learning outcomes of clinic-

based modules, demonstrating its value to the students' development and reflecting the Bar Standards Board's Professional Statement for Barristers.

The edition continues with Jenni Whelan's paper where an Inside/Out pedagogy is presented, seeking to develop students' awareness of personal and interpersonal attributes (the *inside* of the approach) alongside a framework for purposive engagement grounded in improving access to justice (the *out*) in a legal clinic setting in Australia. This work builds upon Brooks' 'wholehearted lawyering' teaching principles by adding vulnerability theory and therapeutic jurisprudence as mechanisms for the purposeful engagement with legal systems and facilitating of greater access to justice, of legal actors. The study concludes that wholehearted lawyering is a teachable core competency that extends beyond the remit of a law clinic and that each of the students who engaged with the clinic work further developed the personal, interpersonal, and relational dimensions of their professional identities. They moved out of their comfort zones to challenge themselves when they need not have taken this course of action, demonstrating the impact the approach had on their personal, and professional development.

We then move to a practice report from Michal Urban with an implementation and assessment of a flipped classroom pedagogic approach, a consequence of the remote learning protocols many in academia faced during the national lockdown measures from 2020. Here, the forced distance between the students, their colleagues in the virtual classrooms and the tutor often resulted in a 'trap of silence' – all too often filled by increased talking by the tutor leading that session. Michal, using personal experiences and those from others across disciplines in academia, explains the advantages and disadvantages of adopting a flipped classroom, whilst providing a series of questions for personal reflection of any academic wishing to embark on this mode of study. Ultimately, face-to-face sessions enable easier collaboration and the fostering of more immersive discourse, yet the e-learning support provided to

students during virtual teaching programmes is a feature which Michal intends to maintain even when returning to more standard forms of teaching. Michal concludes with reference to Warren Binford who summarizes her essay, *How to Be the World's Best Law Professor*, by asserting that we as educationalists need to 'rethink our teaching methods, our students' study methods, even our law school's curriculum.' In the practice of critical reflection, these are sage words.

Our final contribution is from Lucy Blackburn who, as part of a working group from CLEO, has created a draft guide to law clinics which may be subject to a claim for qualifying work experience due to a student's time at a qualifying law clinic. In our *From the Field* section, guidance, commentary and instruction are offered to clinics and this resource will make an invaluable contribution to senior management and those organising law clinic work, not only as to their obligations, but also as to advice on claiming these hours for students who participated in live-client work in university law clinics. This is a new and developing area, fraught with potential difficulties for all parties, hence the information provided in this submission is of particular importance.

Lastly, we would like to draw to your attention the latest episode of the Clinical Legal Education Podcast (<https://clinicallegaleducationpodcast.wordpress.com>) where our hosts Elaine Gregersen and Molly Doyle interview Professor Amy Lyn Wallace of New York Law. The topics discussed include Street Law clinics, the impact of the pandemic and Amy's clinic research. If there is anything that our guests cover that resonates with you, or if you wish to discuss the podcasts further, please do not hesitate to get in touch with Elaine or Molly via the twitter account @IJCLE.

DO WE WANT A HUMAN FIRST, AND A LAWYER SECOND? DEVELOPING LAW STUDENT EMPATHY THROUGH CLINICAL LEGAL EDUCATION

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Kathryn Saban and Sadie Whittam, Lancaster University

Abstract

In the UK, the legal profession is increasingly acknowledging the importance of emotional intelligence and empathy in legal practice. Furthermore, research has demonstrated that soft skills such as empathy can be taught, and that these skills should be incorporated in legal education. This study uses the Basic Empathy Scale to examine whether law student participation in law clinic and tax clinic modules had any effect on students' self-reported empathy levels. It is submitted that, in general, the students who worked in clinic experienced a statistically significant positive shift in their empathy levels. However, a few students who worked in clinic also experienced a decrease in their empathy levels, and the possible reasons for this are explored. In addition, this paper considers the impact of gender on students' self-reported empathy levels.

1. Introduction

Imagine the Law Clinic scene:

Client: It has been a very difficult time, and I am finding my divorce hard to discuss.

Student 1: Oh...Can you be more specific about the problems you are having?

Client: [Begins to get upset]. Problems have been happening for two years now. I am very worried about getting a divorce and about whether my children can still live with me.

Student 2: Right. When did you get married?

Client: [Now crying] We got married three years ago. My husband can be a very difficult person and has said he is going to sell our house. I am extremely concerned about where my family are going to live.

Student 1: So...my next question is where do you live currently?

Students have received training to work with real clients within a university law clinic setting. They have become well versed in professional conduct, practical legal research, legal letter writing and client interviewing skills. On the day of their first client interview with a member of the public, they are well prepared with their initial research and their interview plan. But then, the individual becomes upset when explaining the facts about the particularly distressing time they have been having trying to remedy their legal issue. This emotional dialogue deviates from the interview plan, and the students freeze and continue with their prepared questions, without acknowledgment of the client's upsetting or difficult situation.

This paper originates from supervising an initial client interview by students on a Law Clinic module where a similar situation to the above scenario happened. First client interviews can be nerve-wracking and unexplored territory for many of our students,¹ so it is unsurprising that students would want to 'stick to the script' and the safety of their interview plan. At a time when the legal profession is seeking emotionally intelligent lawyers,² this experience raises questions about whether law students should, and effectively can, be taught empathy skills and, specifically, whether empathy can be developed by engaging in clinical legal education.

Empathy can include both cognitive and affective elements.³ Cognitive empathy is the ability to identify and recognise another person's feelings and be able to communicate

¹ For wider discussion on students' emotions see: Magdalena Kmak & Ketino Minashvili, 'Students' emotions in clinical legal education: a study of the Helsinki Law Clinic' (2021) *The Law Teacher* 150.

² Susan Douglas, 'Incorporating Emotional Intelligence in Legal Education: A Theoretical Perspective' (2015) 9(2) *e-Journal of Business Education and Scholarship of Teaching* 56, 57.

³ Rajvinder Samra and Emma Jones, 'Fostering empathy in clinical teaching and learning environments: a unified approach' (2019) 6 (1) *Australian Journal of Clinical Education* 1, 5.

these emotions back to that person.⁴ Conversely, whilst affective empathy also concerns the ability to understand and respond to another person's feelings, it can also involve emulating or feeling similar emotions to another person.⁵ Informally, our experience as clinical legal education supervisors suggested to us that as students became more experienced and confident in interviewing members of the public, they began to appropriately adapt their skills to show more empathy towards a client's situation. However, we wanted to establish whether this observation could be supported by empirical research.

By drawing on 76 original student surveys using the Basic Empathy Scale, this paper argues that clinical legal education has the potential to develop empathy levels in our law students. The Basic Empathy Scale seeks to measure both affective and cognitive empathy by asking individuals to self-report their emotional responses to 20 questions. Whilst there is existing, quantitative literature in the medical field, legal scholarship is significantly less developed, and we have a limited understanding of the impacts of clinical legal education on empathy levels. Prior research shows that empathy can both increase and decrease in individuals exposed to a clinical setting and our dataset reflects this. However, the majority of our students had higher empathy scores at the end of their time in the clinics. Clinical legal education had largely beneficial impacts and helped to develop empathy levels in our law students. With this in mind, empathy could form the basis of an additional learning outcome for our clinical environments.

This study also confirms and builds on the existing literature that identifies gender as an important factor in self-identified empathy levels. Female students self-reported more highly in our dataset. Due to the self-reporting nature of the Basic Empathy Scale, this paper also calls for more research to be done to observe how our law

⁴ *ibid*, 5.

⁵ Jean Decety and Philip Jackson, 'A social neuroscience perspective on empathy' (2006) 15(2) *Current Directions in Psychological Science: a Journal of the American Psychological Society* 54.

students react to difficult situations, as self-reported empathy levels may not reflect reality.

1.1. The clinical context at Lancaster

For this paper, we considered whether empathy levels increase or decrease in students engaging in a pro bono clinical setting.⁶ As part of these clinical legal education programmes, students participate and take on the role of a student legal adviser (or that of a tax adviser in the Tax Clinic). This paper draws on four modules (both a University Law Clinic and Tax Clinic)⁷ that ran during the 2020-21 academic year with 68 students in total.

Clinical legal education (CLE) is now an established area of legal scholarship and some law clinics have now been running for decades.⁸ The benefits of clinical learning, which has also been labelled a “self-directed learning environment”,⁹ have been considered extensively in literature. Clinics can expose students to broader questions, such as “how law interacts with society”.¹⁰ They help students to develop solicitor competences, such as to advise clients and act honestly.¹¹ Combe also identifies the possibility of wider skill development and argues that letter-writing, interviewing and reading skills can all be improved through clinical legal education.¹² Participation in

⁶ It is acknowledged that not all clinical settings require pro bono work to be undertaken, such as simulated environments. However, for the purpose of this paper, we will be considering the impacts on empathy of engaging with real-life clients (rather than teacher-created scenarios).

⁷ For details about how the North West Tax Clinic operates see: Amy Lawton, ‘Lemons to lemonade: experiential learning by trial and error’ (2021) *The Law Teacher* 1 (advanced online publication).

⁸ See Richard Grimes, Joel Klaff and Colleen Smith, ‘Legal Skills and Clinical Legal Education - A Survey of Undergraduate Law School Practice’ (1996) 30 *The Law Teacher* 44; Sara Browne, ‘A survey of pro bono activity by students in law schools in England and Wales’ (2001) 35 *The Law Teacher* 33.

⁹ Jonny Hall, ‘Building reflection into the clinic supervision experience: research methods for the reflexive teacher’ (2019) 53(4) *The Law Teacher* 475, 476.

¹⁰ Malcolm Combe, ‘Selling intra-curricular clinical legal education’ (2014) 48(3) *The Law Teacher* 281-295, 281.

¹¹ Rachel Dunn, Victoria Roper and Vinny Kennedy, ‘Clinical legal education as qualifying work experience for solicitors’ (2018) 52(4) *The Law Teacher* 439-452, 445-446.

¹² Combe (n 10), 282; see also, Laura Lundy, ‘The Assessment of Clinical Legal Education: An Illustration’ (1995) 29 *The Law Teacher* 311.

Law Clinics can encourage students to go into legal practice,¹³ and become more “work ready”.¹⁴ It is not all about skills, however, as Grimes notes that clinical learning can also help students understand “the meaning and application of law”.¹⁵ Despite this rich body of clinical legal education literature, quantitative data on our clinic students and empathy is still relatively limited.¹⁶ This paper seeks to provide original data to begin to fill this gap in CLE literature.

All law clinics have slightly differing formats; however, the format of the law clinic and tax clinic requires the students to interview real clients, with real-life problems. They conduct a fact-finding interview to ascertain key details, dates, and information. Due to the COVID-19 pandemic, the students had not engaged in face-to-face client interviews when this research was undertaken. The format of the interview was either via telephone or online, and therefore we have only been able to consider empathy development for students who are working at a distance from their clients. These interviews might not be straight forward and may involve eliciting a protracted history from a client. It can be an emotional time for a client to relive and retell the problems that they have been facing. Following on from the client interview, students research the issue and draft written legal advice to answer the client’s legal query. All advice is supervised by a qualified practitioner.

¹³ Francine Ryan, ‘A virtual law clinic: a realist evaluation of what works for whom, why, how and in what circumstances?’ (2019) *The Law Teacher* 1, 7.

¹⁴ Francine Cantatore, ‘The impact of pro bono law clinics on employability and work readiness in law students’ (2018) 25(1) *International Journal of Clinical Legal Education* 147, 147.

¹⁵ Richard Grimes, ‘Reflections on Clinical Legal Education’ (1995) 29 *The Law Teacher* 169, 171.

¹⁶ There is some discussion of empathy and CLE but this tends to be more abstract in nature, see for example: Andres Gascon-Cuenca and Carla Ghitti and Francesca Malzani, ‘Acknowledging the Relevance of Empathy in Clinical Legal Education. Some Proposals from the Experience of the University of Brescia (IT) and Valencia (ESP)’ (2018) 25 *IJCLE* 218.

2. Empathy and our students

2.1. The role of empathy in the legal profession

The notion of “thinking like a lawyer” has traditionally been synonymous with rational problem solving, objectivity and an adversarial approach to conflict resolution, and emotion has been seen as antithetical to legal practice.¹⁷ However, in the UK, there has recently been a focus on the “emotionally intelligent lawyer”, and both clients and the profession have recognised the need to develop legal practitioner’s soft-skills and people-focused delivery.¹⁸ For example, the O-Shaped Lawyer project is aimed at reimagining the lawyer of the future, and it emphasises the vital importance of lawyers having human skills, such as empathy, influencing, communication and collaboration, in addition to an excellent legal mind.¹⁹ The project motto is “people first, then lawyers”, and the project has gained traction among clients; for example, Centrica and Easyjet have stated that they will only use law firms that are signed up to the O-Shaped Lawyer principles.²⁰ The importance of empathy has also been recognised in the Legal Education and Training Review, which identified empathy as a core legal competency.²¹ However, of the competency frameworks to develop from this, only the Bar Standards Board’s Professional Statement for Barristers explicitly refers to empathy, requiring practitioners to “know how and where to demonstrate empathy, and act accordingly”.²²

The profession is therefore increasingly acknowledging the importance of soft skills such as empathy in legal practice. This is important, as there is a body of research

¹⁷ Douglas (n 2), 57.

¹⁸ *ibid*, 68.

¹⁹ Greg Bott, ‘Now Introducing the O-Shaped Lawyer’ (2020) <https://www.cityam.com/o-shaped-lawyer/> accessed 8 July 2021.

²⁰ *ibid*.

²¹ ‘Legal Education Training Review’ (2013) <https://letr.org.uk/wp-content/uploads/LETR-Report.pdf> accessed 8 July 2021, para 4.85.

²² Bar Standards Board, ‘Professional Statement for Barristers: Incorporating the Threshold Standard and Competences’ (2016) <https://www.barstandardsboard.org.uk/uploads/assets/a4556161-bd81-448d-874d40f3baaf8fe2/bsbprofessionalstatementandcompetences2016.pdf> accessed 8 July 2021.

demonstrating that emotion and cognition are intertwined, and both are necessary for effective decision-making and reasoning.²³ It has even been argued that without empathy, “people could not live together”.²⁴ Empathy inevitably plays a role in legal practice, as lawyers are human and have both emotional and cognitive responses to legal issues.²⁵ Empathy can help lawyers build a rapport and a relationship of confidence and trust with their clients, and it has been argued that empathy is the “real mortar of an attorney-client (indeed any) relationship”.²⁶ Empathy can also help lawyers to better understand client needs and can improve their communication and negotiations with other parties.²⁷ It is therefore a false dichotomy to maintain that emotions such as empathy remain separate from the rational, orderly process of lawyering.²⁸

When discussing the role of empathy in legal practice, it is important to consider what we mean by empathy. Two main types of empathy have been identified. The first type of empathy is affective empathy, which involves identifying, emulating and sometimes feeling the emotion of another person.²⁹ In contrast, cognitive empathy involves consideration of the experiences of another person from that person’s perspective, while retaining a clear distinction between themselves and the subject of their empathy.³⁰ Within legal practice, the focus has predominantly been on cognitive empathy.³¹ However, both types of empathy have advantages and disadvantages. For example, affective empathy could cause a lawyer to over-identify with a client.³² An

²³ Chalen Westaby and Emma Jones, ‘Empathy: an essential element of legal practice or ‘never the twain shall meet’? (2018) 25(1) *International Journal of the Legal Profession* 107, 108.

²⁴ Peter Margulies, ‘Re-Framing Empathy in Clinical Legal Education’ (1999) 5 *Clinical L Rev* 605, 605.

²⁵ Westaby and Jones (n 23), 112.

²⁶ David Binder, Paul Bergman, Susan Price and Paul Tremblay, *Lawyers as Counsellors: A Client-Centred Approach* (2nd edn, West Group Publishing 2004), 49.

²⁷ Samra and Jones (n 3), 3.

²⁸ Westaby and Jones (n 23), 108.

²⁹ Decety and Jackson (n 5).

³⁰ Westaby and Jones (n 23), 109.

³¹ Samra and Jones (n 3), 5.

³² Stewart Mercer and William Reynolds, ‘Empathy and quality of care’ (2002) 52 *British Journal of General Practice* S9; Samra and Jones (n 3), 5.

overly emotional response may be inappropriate in a legal setting and could blur professional boundaries, as lawyers are required to remain professional and pragmatic when giving legal advice and acting on behalf of their client. If cognitive empathy is not combined with emotion, it can be inauthentic.³³ If lawyers solely rely on cognitive empathy its value is somewhat diminished, as empathy effectively becomes a communication tool instead of a way of developing trust and deepening the lawyer-client relationship.³⁴ It is therefore important that lawyers can balance affective and cognitive empathy, as they must maintain objectivity and impartiality, without losing the authenticity of emotional empathetic connection.

2.2. The role of empathy in legal education

Our papers explores whether clinical legal education increases or decreases student empathy levels. This study is particularly relevant in light of the increased focus on the importance of empathy by both clients and the legal profession, and the evidence that empathy is a key part of legal practice. As Silver argues, legal education should therefore “prepare students for the emotional dimensions of lawyering. We fail our students if we fail to prepare them for the impact of their emotional lives, as well as those of their clients, on the practice of law. Legal education should cultivate emotional intelligence”.³⁵ Research has demonstrated that the skills that make up emotional intelligence, including empathy, can be taught, and these skills should be incorporated in legal education.³⁶

Despite this, traditional legal education often focuses on legal analysis, legal rules and their application to hypothetical situations, without consideration of client relation skills, such as empathy and compassion.³⁷ Criticism in the current academic literature

³³ Westaby and Jones (n 23), 115.

³⁴ *ibid*, 8.

³⁵ Marjorie Silver, 'Emotional intelligence and legal education' (1999) 5(4) *Psychology, Public Policy and Law* 1173, 1174.

³⁶ Douglas (n 2), 62.

³⁷ Kristin B Gerdy, 'Clients, Empathy, and Compassion: Introducing First-Year Students to the Heart of Lawyering' (2008) 87 *Neb L Rev* 1, 32.

suggests that legal education often focuses on text-based issues, rather than being client focused,³⁸ with some academics arguing that legal education would be more efficient if it also focused on the human facets needed to be a lawyer, such as empathy, emotions and altruism.³⁹ Fletcher and Weinstein argue that “legal education devotes insufficient attention to developing the attendant skills and mechanisms lawyers need to negotiate successfully the emotional demands of the profession”.⁴⁰ Gerdy argues that “too often students are taught legal analysis in a near vacuum, with little or no discussion of how the legal concepts they are learning actually impact the lives and emotions of real people”.⁴¹

It has been suggested that this could be because lawyers and academics have previously seen soft skills, and the role of emotion and empathy, as irrelevant or as a distraction from the legal issue at hand.⁴² However, as discussed previously, the emotional responses of a lawyer or those of a law-student to their client, directly impacts how they deliver legal services, and therefore needs to form part of legal education.⁴³

The traditional methods of teaching law have come under criticism for failing to provide a mechanism of developing soft skills, including empathy in students. Whilst lectures can allow students to work through hypothetical scenarios, this environment has been found to be unlikely to promote empathy and compassion.⁴⁴ Rosenberg argues that although a lecturer could impart that empathy has a value in legal studies, a large classroom setting would not provide the environment for students to develop their own empathy skills.⁴⁵ In contrast, there is research to suggest clinical legal

³⁸ *ibid*, 32.

³⁹ *ibid*, 31.

⁴⁰ Laure E Fletcher and Harvey M Weinstein, 'When Students Lose Perspective: Clinical Supervision and the Management of Empathy' (2002) 9 *Clinical L Rev* 135, 144.

⁴¹ Gerdy (n 37), 30.

⁴² Fletcher and Weinstein (n 40), 144.

⁴³ *ibid*, 156

⁴⁴ Gerdy (n 37), 34.

⁴⁵ Joshua D Rosenberg, 'Teaching Empathy in Law School' (2002) 36 *USF L Rev* 621, 637.

education programmes allow for the learning of skills already taught in law, such as problem solving and conflict resolution, but extends this remit by ensuring that students also become emotionally intelligent.⁴⁶ It has been argued that clinical legal education programmes provide the 'optimal' environment to promote development of these skills.⁴⁷ Clinical legal education is about learning by doing. Central to participating in clinical legal education is the relationship that the student has with their client.⁴⁸ Emotional intelligence, which includes empathy, has been noted to allow students to enhance their client care skills, communication skills and consideration of ethical situations.⁴⁹ Clinical legal education allows students to feel emotions, observe emotions in others and to reflect and develop their own practice as a result.⁵⁰

If we look to medicine as an example, which utilises clinical education, a review into 27 separate studies of the medical profession found that medical students who had engaged in practical work with real clients had a statistically higher attitude change when working with under-served or disadvantaged patients. This contrasted with no statistical attitude change for those medical students who worked on hypothetical situations only. The conductors of this research suggest that this demonstrates "the transformative power of experiential and empathy-based learning".⁵¹

Rosenberg argues that assisting students to develop their empathy skills can be achieved through a three-stage process, in that students observe model behaviour, students practice that behaviour and individualised feedback is given.⁵² The role of the teacher/supervisor is a fundamental feature of assisting a student with developing their empathy skills. Research suggests that supervisors should: introduce the concept of empathy at the start of the course, develop a framework in which students feel

⁴⁶ Douglas (n 2), 57.

⁴⁷ *ibid*, 68.

⁴⁸ *ibid*, 65.

⁴⁹ *ibid*, 68.

⁵⁰ *ibid*, 64.

⁵¹ Samra and Jones (n 3), 8.

⁵² Rosenberg (n 45), 637.

comfortable with discussing their emotional responses to legal work, model how students should engage in a professional way with clients and encourage self-awareness and reflection.⁵³

A further benefit of a clinical setting is that it allows students the opportunity to consider both the positive and the negative consequences of empathy. It is important for students to be aware that negative emotional responses can impact their ability to meet a client's interest.⁵⁴ In addition, students could become overly attracted to the emotional side of the client's situation, which could distract them from resolving the legal issue.⁵⁵ Providing guidance on self-awareness and boundary setting are offered within the current literature as examples of how to assist students with avoiding any negative consequences of empathy.⁵⁶

It is essential that students are trained and inducted into empathetic awareness and development, and various teaching strategies can be employed. Examples can include: the use of role-modelling (where students observe their supervisor conducting interview techniques), role-play (simulating client interactions), using reflection for students to be able to consider their own experiences and feelings, in class discussions relating to empathy, and hearing the experiences of lawyers who have worked alongside real-clients. Importantly, the current literature suggests that as well as learning from others, students need to have their own experiences to feel empathy and compassion (through experiential learning).⁵⁷ This participatory element is important as observation of others alone has been deemed insufficient to enhance empathy. Rather, it is the participation and the individual feedback from the student's supervisor which research has suggested assists in enhancing empathy as a skill.⁵⁸

⁵³ Fletcher and Weinstein (n 40), 144-152.

⁵⁴ *ibid*, 150.

⁵⁵ *ibid*.

⁵⁶ For detailed consideration of a model for clinical supervision, see: Fletcher and Weinstein (n 40), 156. For consideration of clinical teaching and learning environments, see Samra and Jones (n 3), 10-11.

⁵⁷ For detailed exploration relating to learning activities to promote empathy, see: Gerdy (n 37) 42-62

⁵⁸ Gerdy (n 37), 39.

However, it is also important to recognise that if empathy levels can be increased through clinical education, they can also be decreased. For example, studies have demonstrated that empathy levels decline as medical students take part in clinical education.⁵⁹ Hypotheses for why empathy levels decrease during medical school include the notion that students transition from idealism to realism as a result of clinical work, or that they shed their empathic responses as a coping mechanism to deal with stressors.⁶⁰

The studies from medical clinical education suggest that empathy could also decline in clinical legal education as students start working with clients.⁶¹ As the research suggests that empathy levels can be both increased or decreased through clinical legal education, it is important for educators to develop teaching strategies to develop empathy and prevent its decline as students participate in clinic.⁶² In this regard, it would be helpful for educators to share best practice across clinical disciplines, such as law and medicine, to facilitate interdisciplinary learning.⁶³ In addition, the potential for empathy decline reinforces the fact that students who take part in clinical learning must be supported to discuss the effects of stress or the potential loss of idealism that may result from their participation in clinic.⁶⁴

3. Methods

3.1. Student surveys

This paper draws on a total of three surveys that were conducted during the 2020-21 academic year in a quantitative analysis of empathy in students. The surveys were

⁵⁹ Paula Nunes, Stella Williams, Bidyadhar Sa and Keith Stevenson, 'A study of empathy decline in students from five health disciplines during their first year of training' (2011) 12 *International Journal of Medical Education* 12; Samra and Jones (n 10), 11.

⁶⁰ *ibid*, 12; Samra and Jones (n 3) 11.

⁶¹ Samra and Jones (n 3), 11.

⁶² *ibid*.

⁶³ *ibid*.

⁶⁴ *ibid*, 12.

distributed to two groups of students: the students participating on a clinical module at Lancaster University (two surveys) and a control survey that was distributed to all second and final year students in the Law School.⁶⁵ In total, this paper draws on 76 survey responses (31 control responses and 45 clinic responses (25 for survey 1, 20 for survey 2)). The response rate was therefore relatively low, with around 540 students available to respond to the control survey and 68 students enrolled on clinical modules.

Quantitative methods have been criticized for their lack of flexibility which leads to surface data (i.e., data that is not deep or rich).⁶⁶ The sample size is also relatively small at 76 and so the results are potentially less statistically significant. Despite the small sample size, the data and results from this study are consistent across all three surveys, demonstrating a level of reliability and generalizability to the dataset. In addition, this initial dataset will allow us to *begin* to explore whether there has been any shift in empathy as a result of engaging in clinical legal education.

The first clinic survey and control survey asked demographical questions of students. In the control survey, 84% of respondents identified as female (n=26), 13% as male (n=4) and 3% as questioning (n=1). For the clinic students, 76% identified as female (n=19), 16% as male (n=4), and 8% as non-binary (n=2). 68% of clinic students (n=17) self-identified as fulfilling one or more of the widening participation criteria,⁶⁷ with 81% (n=25) in the control student group. The most common widening participation criteria self-identified with were 'the first in my family to progress to higher education' (n=24), 'from a low income background' (n=20), 'a mental health problem, Specific Learning Difficulty and/or on the autism spectrum' (n=14) and 'from a certain minority ethnic group' (n=13). The data therefore leans heavily towards female

⁶⁵ These modules included the Lancaster University Law Clinic and the North West Tax Clinic. The North West Tax Clinic also had students from UCLan participating in it. The dataset contains one response from a UCLan student. This will not be disaggregated to protect the anonymity of the student.

⁶⁶ Alan Bryman, *Quantity and Quality in Social Research* (Unwin Hyman 1988), 104.

⁶⁷ As adopted by Lancaster University, available at < <https://www.lancaster.ac.uk/widening-participation/our-strategy-and-approach/eligibility-criteria/>> last accessed 16 July 2021.

responses, as well as those who self-identify as coming from a widening participation background. This is important, as:

under experimental conditions, women and men show small differences in empathy for pain, but under conditions which allowed for personal judgement about oneself, the role of gender stereotypes may have underpinned larger differences in empathy scores.⁶⁸

Females also consistently score more highly on measures of empathy.⁶⁹ This bias towards the female voice in the dataset will therefore be borne in mind and a discussion of gender and empathy will take place below.

The reliability and generalisability of data is incredibly important in qualitative research.⁷⁰ Due to the small size and self-selecting nature of the student responses, this data will not seek to set out concrete conclusions on whether clinical legal education (and specifically pro bono clinics in this study) can encourage empathy growth in our students. It is also important to note that the clinical modules were run virtually for the 2020-21 academic year due to COVID-19. Our data therefore draws from the experiences of our students in this context. As there is no literature on whether clients engaged with virtually have any different impact on empathy to clients seen face-to-face, this paper will not attempt to draw conclusions on this point.

That being said, the data in this paper provides a foundation for discussion and further study into the empathy levels in our students and whether learning and teaching methods are able to alter these levels.

⁶⁸ Samra and Jones (n 3), 9.

⁶⁹ Darrick Jolliffe and David Farrington, 'Development and validation of the Basic Empathy Scale' (2006) 29 *Journal of Adolescence* 589, 598.

⁷⁰ Nahid Golafshani, 'Understanding reliability and validity in qualitative research' (2003) 8(4) *The Qualitative Report* 597.

3.2. Basic Empathy Scale (BES)

Various methods have been used to measure empathy but self-reports “constitute the most extensive strategy used for the study of empathy”.⁷¹ The Basic Empathy Scale (BES) was developed by Joliffe and Farrington to overcome the weaknesses of other measures of empathy.⁷² These “shortcomings” of other scales include equating sympathy with empathy.⁷³ Originally, the BES was developed to understand the relationship between empathy and offending;⁷⁴ and it draws on four of the basic emotions to do so (fear, sadness, anger and happiness).⁷⁵ Joliffe and Farrington argue that all emotions stem from the basic emotions allowing the BES to more accurately engage with measures of empathy.⁷⁶ It is a two-factor scale that considers both cognitive and affective empathy factors (where affective empathy is the ability to share the emotional experiences of others, and cognitive empathy is the ability to take the mental perspective of others)⁷⁷ by asking students 20 self-reflective questions.⁷⁸

Self-reports to measure empathy are not without criticism: “because they are based on self-assessment, they usually tell us very little about empathic accuracy”.⁷⁹ That being said, since its development by Joliffe and Farrington, the BES has been validated in

⁷¹ Noelia Sánchez-Pérez et al. ‘Assessing children’s empathy through a Spanish adaptation of the Basic Empathy Scale: parent’s and child’s report forms’ (2014) *Frontiers in Psychology* 1, 1; See also Karen Gerdes et al., ‘Conceptualising and Measuring Empathy’ (2010) 40 *British Journal of Social Work* 2326, 2334.

⁷² Joliffe and Farrington (n 69). Examples of other scales include: the Hogan Empathy Scale, the Questionnaire Measure of Emotional Empathy, and the Interpersonal Reactivity Index (at 590).

⁷³ Joliffe and Farrington (n 69), 591.

⁷⁴ *ibid*, 592.

⁷⁵ *ibid*, 593.

⁷⁶ *ibid*.

⁷⁷ Christine Cox et al., ‘The Balance between Feeling and Knowing: Affective and Cognitive Empathy are Reflected in the Brain’s Intrinsic Functional Dynamics’ (2012) *SCAN* 727,727.

⁷⁸ Although this has been criticised in light of more recent work that suggests there may be three relevant components to empathy: Arnaud Carre et al., ‘The Basic Empathy Scale in Adults (BES-A): Factor Structure of a Revised Form’ (2013) 25 *Psychological Assessment* 679, 680.

⁷⁹ Gerdes et al. (n 71), 2334.

Spain,⁸⁰ France,⁸¹ Italy,⁸² China,⁸³ Slovakia,⁸⁴ Poland and others.⁸⁵ As a widely validated measure, the BES therefore provides a useful starting point for collecting quantitative data on empathy levels in our law students.

3.3. Data Analysis

Descriptive statistics “are an excellent starting point for most statistical analyses and are a good way to summarize and communicate information”.⁸⁶ As such, this paper will use averages (both in total empathy scores and average responses) to look at patterns and changes in empathy levels. To consider whether there is a statistically significant relationship between students’ empathy scores at the start of clinic and at the end, a two-sample t-test will be carried out. All data analysis was conducted via SPSS.⁸⁷

The BES asks 20 questions that requires participants to respond on a 5-point Likert scale from strongly disagree (1) to strongly agree (5). Eight of the BES questions are reversed, which required responses to be back coded into SPSS. The total empathy score that can be generated from the BES scale is therefore between 20-100 and the individual responses can range between 1-5. Lower scores correlate to lower levels of

⁸⁰ Noelia Sánchez-Pérez et al. ‘Assessing children’s empathy through a Spanish adaptation of the Basic Empathy Scale: parent’s and child’s report forms’ (2014) *Frontiers in Psychology* 1.

⁸¹ Carre et al. (n 78), 685; F D’Ambrosio et al., ‘The Basic Empathy Scale: A French Validation of a Measure of Empathy in Youth’ (2009) 46 *Personality and Individual Differences* 160.

⁸² Paolo Albierto, Giada Matricardi, and Diana Toso, ‘La Basic Empathy Scale, uno strumento per la misura della responsività empatica negli adolescenti: Un contributo alla validazione Italiana [The Basic Empathy Scale, a measure of empathy in adolescence: A further contribution to the Italian validation]’ (2010) 14 *Psicologia Clinica dello Sviluppo* 205.

⁸³ Yaogua Geng, Dan Xia, and Beibei Qin, ‘The Basic Empathy Scale: A Chinese Validation of a Measure of Empathy in Adolescents’ (2012) 43 *Child Psychiatry and Human Development* 499.

⁸⁴ Vladimíra Čavojevová, Miroslav Sirota, and Zuzana Belovičová, ‘Slovak Validation of the Basic Empathy Scale in Pre-Adolescents’ (2012) 54 *Studia Psychologica* 195.

⁸⁵ Izabela Zych et al., ‘Psychometric properties of the Basic Empathy Scale in Polish Children and Adolescents’ (2020) *Current Psychology* 1.

⁸⁶ Thom Baguley, *Serious Stats: A guide to Advanced Statistics for the Behavioural Sciences* (Palgrave Macmillan 2012), 4.

⁸⁷ For a useful guide to SPSS, see Daniel Denis, *SPSS data analysis for univariate, bivariate, and multivariate statistics* (Wiley 2019).

empathy. Overall, we expected there to be a correlation between time spent in a clinic and an increase in empathy. We did not expect there to be no change (null hypothesis).

4. Results

4.1. Results: control students

Using the BES, an individual will have a score between 20 and 100, with a lower score indicating a lower empathy response.

	N	Minimum	Maximum	Mean	Std. Deviation
TotalEmpathyScore	31	56.00	96.00	77.0968	11.57110
Valid N (listwise)	31				

Table 1: Average Total Empathy Scores for control group in April 2021.

The control survey was administered to all second and final year students in the Law School in April 2021. From that survey, a total of 31 useable responses were generated, with 16 partial responses that were deleted because the student did not complete the survey.

The average control empathy score was 77, with an average question response of 3.85 (standard deviation: 0.57855). The control survey provides a useful comparison point for our clinic student data. This figure is similar to the figures produced in Jolliffe and Farrington's original development of the BES,⁸⁸ demonstrating that law students are not particularly unempathetic.

4.2. Results: clinic students

The clinic students were surveyed three times during the academic year. However, the response rate for the second survey was lower (13 responses). As such, this paper

⁸⁸ Where females scored >70 and males >60 (albeit in the specific context of helping others). As our dataset has a skew towards females, our results are in a similar range. Jolliffe and Farrington (n 69), 606.

will draw on the first and final surveys that were administered in October 2020 and May 2021 respectively.

	N	Minimum	Maximum	Mean	Std. Deviation
TotalEmpathyScore	25	52.00	88.00	76.2000	9.92052
Valid N (listwise)	25				

Table 2: Average Total Empathy Scores for clinic students in October 2020.

The initial survey received 25 responses and presented an average starting empathy score of 76 for our clinic students. This equated to an average response of 3.81 per question (standard deviation: 0.49603). Whilst this survey was administered six months before the control survey, the first clinic survey produces a score that is not dissimilar to the control score of 77.

	N	Minimum	Maximum	Mean	Std. Deviation
TotalEmpathyScore	20	61.00	96.00	80.1000	10.98755
Valid N (listwise)	20				

Table 3: Average Total Empathy Scores for clinic students in May 2021.

By looking at the average score for the third survey responses, there is a small (around 5%) increase to a score of 80, which equates to an average response of 4.01 per question (standard deviation: 0.54938). However, there was a smaller response rate to the final survey and different students responded. We therefore tracked through the students who had responded to both surveys, to see whether the increase was present there.

	N	Minimum	Maximum	Mean	Std. Deviation
TotalEmpathyScore1	11	52.00	88.00	75.0000	12.44990
TotalEmpathyScore2	11	61.00	96.00	79.6364	12.49218
Valid N (listwise)	11				

Table 4: Average Total Empathy Scores for clinic students who responded to both surveys.

A very similar starting score was present in the 11 students who responded to both surveys. Again, there was an increase from a starting score of 75 to 80 during the final survey – which also sits well with the average survey 3 data. This equated to a shift from an average question response of 3.75 to 3.98 – or an increase of 6.1%.

This is a fairly small increase in empathy response, yet positive growth, nonetheless. To test the reliability and significance of this growth, a paired t-test was performed on the data for the 11 students on SPSS. A paired t-test confirms whether or not there is a positive or negative correlation between two datasets. This means that it can explore whether there has been a statistically significant growth or reduction in empathy for our eleven students (in this instance, whether the growth is statistically significant).

To determine whether a result is statistically significant, a significance level needs to be identified. In statistics, a *p* (significance) value of lower than 0.05 is the conventional threshold for declaring statistical significance.⁸⁹ The significance values for the clinic student data is held in table 5:

⁸⁹ For a discussion of *p* values and the 0.05 threshold, see Giovanni Di Leo and Francesco Sardanelli, ‘Statistical significance: *p* value, 0.05 threshold, and applications to radiomics—reasons for a conservative approach’ (2020) 4 *European Radiology Experimental* 1; see also Baguley (n 86), chapter 3.

Paired Samples Test (t-test)

		Paired Differences				
		Mean	Std. Deviation	Std. Error	95% Confidence Interval of the Difference	
					Lower Upper	
Pair 1	AverageEmpathyScore1 - AverageEmpathyScore2	-.23182	.27044	.08154	-.41350	-.05014
Pair 2	TotalEmpathyScore1 - TotalEmpathyScore2	-4.63636	5.40875	1.63080	-8.27001	-1.00272

		t	df	Sig. (2-tailed) (p)
Pair 1	AverageEmpathyScore1 - AverageEmpathyScore2	-2.843	10	.017
Pair 2	TotalEmpathyScore1 - TotalEmpathyScore2	-2.843	10	.017

Table 5: t-test results for eleven students who took both surveys.

The 2-tailed significance figure is 0.017, which is halved to 0.0085. The results of the t-test produce a p value (or significance value) that is smaller than 0.05 (for our data,

0.0085). This means that the differences between the first survey (with the lower scores) and the second survey (with the higher scores) is statistically significant.

5. Discussion

Overall, there was a positive shift in empathy scores for our clinic students. The literature demonstrates that measuring empathy is not simple, and there are significant questions as to whether empathy can be altered by external activities. In addition, the self-reporting nature of the Basic Empathy Scale raises questions as to whether our students are actually more empathetic in reality. Nonetheless, the data demonstrates that the law students who have engaged in clinical legal education at least perceive themselves to be more empathetic.

<i>Student</i>	<i>Gender</i>	<i>Widening Participation</i>	<i>Total Empathy Score 1</i>	<i>Total Empathy Score 2</i>	<i>Change</i>
1	Female	No	84	80	-4
2	Male	No	52	61	+9
3	Female	Yes	82	84	+2
4	Female	Yes	62	61	-1
5	Female	Yes	81	80	-1
6	Female	Yes	75	78	+3
7	Female	Yes	82	96	+14
8	Male	Yes	57	67	+10
9	Male	Yes	75	81	+6
10	Female	No	88	95	+7
11	Female	Yes	87	93	+6

Table 6: a breakdown of empathy scores for clinic students who took both surveys cross-referenced with self-identified gender and widening participation status.

The table above shows the individual empathy scores for each of the 11 students tracked through the academic year. The right-hand column indicates any change in the empathy scores from the start to the end of the clinic, with a positive number demonstrating a growth in empathy. A negative change applies where the empathy score has gone down. An important starting point is that all 11 students had a change in their score and that the change ranges from 1 to 14. Some students saw very little change, while others had increases that are more significant. The remainder of this discussion will explore two common themes within empathy literature: decreases in empathy from clinics and the gender divide.

5.1. Empathy ups and downs

As Rosenberg argued: an improvement in empathy skills can be achieved where students observe model behaviour, students practice that behaviour and individualised feedback is given.⁹⁰ All but three of the eleven tracked students improved their empathy skills but this was not universal. Indeed, three students reduced their scores, albeit with a -2 point average. The reductions are therefore small. This reflects the position where exposure activities can also decrease empathy levels.⁹¹ There are a number of reasons why this might be the case: as a coping mechanism, because they have started work with clients, or a loss of idealism.⁹² These reasons resonate with experiences in the clinic. Students face difficult situations, clients with complex personal lives, and a legal system that weighs heavily on the unrepresented. For our students at Lancaster, they were specifically dealing with clients with personal difficulties such as bereavement, family estrangement, the threat of court proceedings and diagnosed mental health difficulties.

⁹⁰ Rosenberg (n 45), 637.

⁹¹ Nunes et al. (n 59); Samra and Jones (n 3), 11.

⁹² Samra and Jones (n 3), 11.

Clinics therefore expose students to situated clients, which allow students to:

identify, question and inquire deeply into the complex, embedded practices through which legal rules and doctrines take on meaning in the world through the interpretive activities of lawyers as they engage with clients in understanding their stories and in shaping for and presenting them to the world.⁹³

However, the “client-centredness” in legal literature is seen as a pedagogical theory that develops students,⁹⁴ or even as a “cultural” goal,⁹⁵ rather than a potential emotionally distressing experience that could negatively impact on a student’s ability to empathise in the future. It would be important for us to better understand these emotional impacts of clinical work on our students.

That being said, most students increased their empathy scores in the clinic. Of the students with an increased empathy score, the average gain was 7.1 points. This equates to an 8.9% increase in empathy score, which is much higher than any reductions seen from participating in the clinic. There would appear to be a stronger positive impact of clinics on our students. This is particularly notable in the students who had lower scores at the start of the clinic. The two scores of 52 and 57 are less than halfway along the possible empathy scale. With a potential score of between 20 (low empathy) and 100 (high empathy), the halfway point would lie at 60. By the end of their time in the clinic, they both increased by +9 and +10 respectively, bringing both scores into the 60s. No student finished the clinic with a score below the halfway point.

Gerdy argues that participation and individual feedback promote empathy growth in our students.⁹⁶ It is not, therefore, sufficient to simply place students in a clinical

⁹³ Carolyn Grose, 'Beyond Skills Training, Revisited: The Clinical Education Spiral' (2013) 19 *Clinical L Rev* 489, 497.

⁹⁴ *ibid.*

⁹⁵ in exposing students to the “class” of clinic clients: Douglas A Blaze, 'Deja Vu All over Again: Reflections on Fifty Years of Clinical Education' (1997) 64 *Tenn L Rev* 939, 946.

⁹⁶ Gerdy (n 37), 39.

setting to see their empathy thrive and grow. It is important to frame and structure the feedback that students receive to best promote empathy growth. The data from the Law Clinic and Tax Clinic demonstrate that empathy growth is possible in clinical education.

5.2. Gender and empathy

When considering the empathy scores reported in table 6 above, it is also important to recognise that empathy is a gendered concept. Gender stereotypes such as “boys will be boys”, “girls are emotional”, “real men don’t cry” and “crying like a girl” are prevalent in society and culture, and perpetuate the idea that women are naturally more empathetic and caring than men.⁹⁷

However, this is not borne out by recent research on the topic. Baez et al conducted studies examining empathy and gender differences.⁹⁸ In the first of their studies, they asked 10,802 people (roughly half female and half male) to watch animated scenarios where either intentional or actual harm was inflicted on an individual, as well as a neutral scenario where no harm was inflicted.⁹⁹ Participants were also presented with two moral dilemmas, in which they had to decide whether to harm one person to save five.¹⁰⁰ The results of this study showed that although there were some significant sex differences in the study, the effect sizes were miniscule.¹⁰¹ As such, the authors concluded that “sex does not play a crucial role in empathy”.¹⁰²

Baez et al also conducted a second study, in which participants were asked to complete a self-evaluation questionnaire of their empathy levels.¹⁰³ In this study,

⁹⁷ Sandra Baez, Daniel Flichtentrei, Maria Prats, Ricardo Mastandueno, Adolfo M. Garcia, Marcelo Cetkovich and Agustín Ibañez, ‘Men, women. . .who cares? A population based study on sex differences and gender roles in empathy and moral cognition’ (2017) 12 (6) PLOS One, 1, 1.

⁹⁸ *ibid.*

⁹⁹ Baez et al (n 97), 4.

¹⁰⁰ *ibid.*, 5.

¹⁰¹ *ibid.*, 12.

¹⁰² *ibid.*

¹⁰³ *ibid.*

women reported much higher empathy levels than men.¹⁰⁴ The authors suggested that there might be higher self-reported empathy levels among women because sensitivity and empathy are stereotypically associated with the female role.¹⁰⁵ As such, it is likely that women feel more comfortable presenting themselves as empathetic, although the de facto levels of empathy are similar in men and women.¹⁰⁶

The gendered aspects of empathy are highly relevant to our study, as we asked students to self-report on their levels of empathy. In accordance with Baez et al's second study, female respondents may have self-reported higher levels of empathy than their male counterparts due to gender-relevant social stereotypes about empathy.¹⁰⁷ In Survey 1 (the first clinic survey), students who identified as female scored an average of 79 (or 3.95 per question), while males scored an average of 67 (or 3.35 per question). The students who identified as non-binary scored an average of 67.5 (3.37). The male/ female averages correlate with the control survey scores (female, 77; male, 68.5; other, 94). There is a lack of scholarship on empathy beyond the binary genders, but the initial data suggests that female law students are self-reporting higher empathy levels than their male colleagues.

It is also notable that of the 11 students that we tracked through the academic year, only 3 were male. In addition, of the 3 male students that we tracked, 2 reported initial empathy scores of 52 and 57, which were the lowest initial scores (these scores were less than halfway along the possible empathy scale). By the end of their time in clinic, the 2 male students who had reported the lowest initial scores had both increased their empathy self-evaluation by +9 and +10 respectively, which brought their scores into the 60s. However, this still put them in the bottom three for self-reported empathy levels. It is important to recognise that gender-based societal and cultural stereotypes may have influenced how the male and female students in our study self-reported

¹⁰⁴ *ibid*, 14.

¹⁰⁵ *ibid*, 11.

¹⁰⁶ *ibid*.

¹⁰⁷ *ibid*.

their empathy levels, even if their actual empathic responsiveness was similar.¹⁰⁸ This is a topic that requires further research; for example, it would be helpful to study empathy and sex differences by directly observing empathic behaviours in law clinic, to examine the extent to which self-reported empathy levels match actual behaviour.¹⁰⁹

6. Concluding Remarks

This paper has drawn on 76 student surveys to explore some of the impacts of clinical legal education on our law students' empathy levels through the use of the Basic Empathy Scale. Law students are not unempathetic. The control and initial surveys indicate positive empathy levels amongst our students. However, time spent in a clinical setting can both improve and diminish empathy levels. These ups and downs in empathy levels were seen in the students on the clinical modules at Lancaster. On the whole, however, this paper argues that the impact of pro bono clinical work on students is positive – most saw increases in their empathy scores. These increases were relatively limited (between 5-6%) but were statistically significant.

The self-reporting nature of the Basic Empathy Scale means that our students may not be more empathetic in reality – but they certainly perceive themselves to be. In the very least, pro bono clinics expose law students to difficult and emotionally challenging situations that make them question their empathetic responses. Our data also confirms the existing literature that suggests female students are more likely to self-report higher empathy scores. This does not necessarily mean that our female students are more empathetic in reality. It would be important to develop our understanding of student wellbeing, empathy and our clinical projects. Some clinics engage in some really distressing case work (for example, where clinics engage in asylum work), but the emotional impact on our students is not often picked up on.

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*, 16.

Whether there is a link between developing empathy, student wellbeing, and emotional resilience is an important question for clinical legal education.

The themes that have emerged from the data help us to begin to explore the impact of clinical legal education on student empathy. So far, it would appear that clinical legal education has largely beneficial impacts and helps to develop empathy levels in our law students.

With that in mind, clinical legal educators might want to consider adding empathy as a discrete learning outcome to their clinics or to consider more informally how their clinics help to foster and grow empathy in their law students. While we would not be able to set a Learning Outcome of “become more empathetic” or “understand appropriate empathetic responses” due to the ups and downs of empathy in CLE and also Bloom’s taxonomy of learning;¹¹⁰ we could potentially set a learning outcome requiring students:

To be able to identify emotionally difficult situations in the clinic and reflect on your own response to them.

A learning outcome such as this also reflects the the Bar Standards Board’s Professional Statement for Barristers, which requires practitioners to “know how and where to demonstrate empathy, and act accordingly”. This can then be aligned with assessment by asking students to reflect on a difficult case, an emotional client, or where they struggled with an interview in a reflective journal. This is something that many clinics already do.¹¹¹ Reflective journals are not the only way to scaffold reflection,¹¹² and a more informal, non-assessed approach might be to facilitate open

¹¹⁰ See, for example, David Krathwohl, ‘A Revision of Bloom’s Taxonomy: An Overview (2002) 41(4) *Theory into Practice* 212, 212.

¹¹¹ Anil Balan, ‘Investigating the feasibility of using student reflective journals to understand how clinical legal education can develop the ethical competence of law students’ (2020) 54(1) *The Law Teacher* 116, 127.

¹¹² Debra Coulson and Marina Harvey, ‘Scaffolding student reflection for experience-based learning: a framework’ (2013) 18(4) *Teaching in Higher Education* 401, 407.

discussion on empathy and emotional responses in clinic. Conversations are powerful and can help our students process their experiences in clinic.¹¹³ Such discussions would also allow us to begin to gauge the wider emotional impacts CLE might be having on our students.

Acknowledgments

We would like to thank Richard Grimes for their invaluable input into this paper.

¹¹³ Lawton (n 7); Coulson and Harvey (n 112), 409; for a wider discussion of experiential learning and conversation, see Ann Baker, Patricia Jensen and David Kolb, 'Conversation as Experiential Learning' (2005) 36(4) *Management Learning* 411, 412.

GROUNDING INSIDE/OUT PROFESSIONAL IDENTITY FORMATION BY DEVELOPING WHOLEHEARTED LAWYERS WITH THERAPEUTIC INTENT

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Abstract

Professional identity formation of law students ideally encompasses both development of the necessary attributes of lawyers as well as a robust philosophy to inform the character of their engagement with the justice system throughout their career. Susan Brooks' Wholehearted Lawyering teaching principles and practices provide a sound basis for developing the complex core personal, interpersonal, and relational skills necessary for law students and lawyers to maximise constructive interactions within the legal system. Vulnerability Theory and Therapeutic Jurisprudence too, provide sound principles to guide students' and lawyers' purposeful engagement with the legal system, particularly to facilitate greater access to justice through resilience-building and therapeutic contributions and impacts. This article proposes an Inside/Out pedagogy that develops students' awareness of these necessary personal and interpersonal attributes (the Inside) and that provides a framework for purposive engagement grounded in improving access to justice (the Out). This pedagogy systematically embeds both Brooks' Wholehearted Lawyering scholarship to develop students' core professional attributes, and principles drawn from Vulnerability Theory and Therapeutic Jurisprudence to stimulate students to crystallise their own purpose as lawyers. The article then examines the development and application of this pedagogy in an Australian legal clinic established in 2020 at Western Sydney University in New South Wales, Australia.

Keywords: Wholehearted Lawyering, Therapeutic Jurisprudence, Vulnerability Theory, social justice, clinical legal education, professional identity formation

1. Introduction

This article has three purposes. It contends for a conceptualisation of the necessary professional identity formation of law students that encompasses both the development of necessary personal and interpersonal attributes of lawyers as well as a robust philosophy that will inform the character of their engagement with the justice system throughout their career. It then proposes a pedagogy that develops students' awareness of these necessary attributes and that provides a framework for engagement grounded in improving access to justice. Lastly, it examines the development and application of this pedagogy in an Australian legal clinic established in 2020 at Western Sydney University in New South Wales, Australia.¹

Part 2 defines "professional identity formation" and examines the significance of the way it is conceptualised in law school teaching to guide students' development of their identity and purpose as legal practitioners.

Part 3 proposes an Inside/Out pedagogy that develops students' awareness of these necessary personal and interpersonal attributes (the Inside) and that provides a framework for engagement grounded in improving access to justice (the Out). This pedagogy consists of the systematic embedding of two equally important components: Susan Brooks' Wholehearted Lawyering scholarship in teaching principles and practices to develop student's core professional personal and interpersonal identities and competencies, and core purpose - or engagement -

¹ I would like to acknowledge and thank Professor Anna Cody, Dean of Western Sydney University School of Law for her vision and steadfast and enthusiastic support for the development of the Clinical Program. I would also like to acknowledge and thank Professors Susan L Brooks, David Wexler and Anna Cody for their helpful comments on an earlier draft of this paper. The Clinical Legal Placement unit is run through the Western Sydney University Justice Clinic and taught by Rebecca Dominguez, Principal Solicitor and Clinical Supervisor and myself (Justice Clinic Director and Director of Clinical Legal Education, School of Law, Western Sydney University). To date we have taught nine cohorts of eight penultimate or final year law students in the unit. I would also like to acknowledge and thank Rebecca Dominguez for being the embodiment of a wholehearted lawyer/clinical teacher and for her unique and essential contribution to the development of the Justice Clinic teaching, activities and partnerships.

principles drawn from Vulnerability Theory and Therapeutic Jurisprudence to contribute to therapeutic and resilience-building impacts on the legal system. It explains briefly the principles and practices underpinning Wholehearted Lawyering, and the relevant aspects of Therapeutic Jurisprudence and Vulnerability Theory that are the conceptual foundations of this teaching pedagogy.

Part 4 then examines the systematic embedding of Brooks' scholarship into the principles and practices underpinning teaching in the Justice Clinic and the purposive shaping of clinic activities and community partnerships by reference to engagement principles drawn from Vulnerability Theory and Therapeutic Jurisprudence.

Part 5 then briefly discusses lessons learned and some future steps to continuing to develop the professional identities of wholehearted lawyers with therapeutic intent.

2. Conceptualising Professional Identity Formation and its Significance

Student professional identities are considerably shaped by the way in which being a member of the legal profession is communicated and articulated through law school curriculum design and teaching pedagogy. It is this moulding that makes the way professional identity formation is understood so significant.

Professional identity is a complex construct. It captures the coalescence of the formal rules governing the conduct of lawyers, the technical knowledge required to practice, the skills to implement that technical knowledge, identity (individual values and characteristics) and purpose (reason for being a lawyer, objectives and intention for going into legal practice). The first three elements are essentially generic with objective benchmarks of compliance, development and competence and they are generally the focus of law school curricula. The last two elements, however, are individual and subjective and arguably, determinative of the type or character of the lawyer and the role they will play in the legal system.

Law schools are historically adept at transferring knowledge about the formal rules governing the conduct of lawyers and technical subject knowledge. They are also

increasingly focused, with tertiary education Work Integrated Learning priorities, on transferring practical skills to implement technical knowledge. They are however in embryonic stages of deliberately embedding individual identity and purpose formation in whole of school curriculum design and pedagogy.

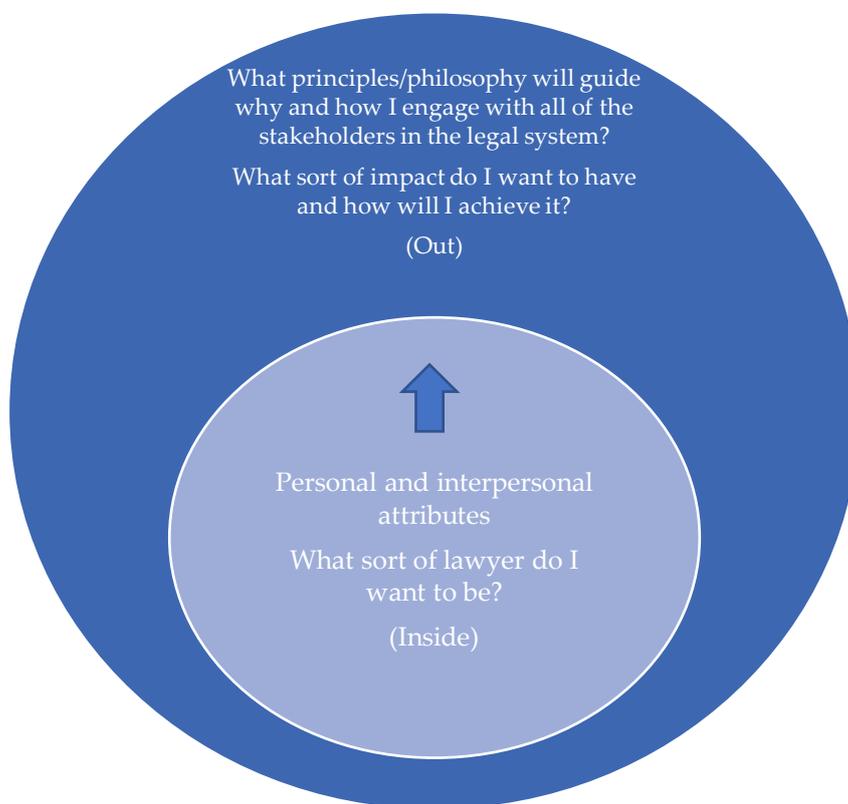
This has two significant and inter-related consequences. Firstly, curriculum design and pedagogy that focuses on knowledge transfer of the formal rules governing the conduct of lawyers, technical subject knowledge and practical skills without an equivalent focus on individual professional identity and purpose hinders the deliberative development of those attributes and renders their development as haphazard, at best. Secondly, failing to purposively embed development of individual identity and purpose in professional identity formation in curriculum design and pedagogy creates a limiting frame for students' understandings of how they anticipate they will, or are expected to practise, as lawyers. To illustrate, professional skills formation that is focused largely on students' understanding of their legal ethical obligations and professional conduct rules form the circumference or outer limits of the conceptual space of professional identity. Within this space, sits students' fledgling understandings of their persona as lawyers (both their internal and their interpersonal professional selves) and their intended impact from their engagement within the legal system. Given that one of our core tasks as legal educators is to find a framework for educational programs to best prepare students for their professional role,² we need to ensure that curriculum design and pedagogy conceptualises and teaches the five elements of professional identity formation holistically.

It must be acknowledged that frameworks for preparing law students for their profession are not value neutral. This is particularly so in relation to the development of individual identity and purpose. Accordingly, the deliberative embedding of these

² Robyn S. Adams et al, 'Being a professional: Three lenses into design thinking, acting, and being' (2011) 32 *Design Studies* 588.

elements into curriculum design and pedagogy ought to be theoretically justifiable. There are numerous critical theories that shape the lenses lawyers and legal educators use to understand their individual identity and purpose as lawyers. The next section proposes a pedagogy that develops one model of students' necessary personal and interpersonal identity attributes as lawyers and sense of purpose. This is conceptualised as an Inside/Out pedagogy that both develops students' awareness of the necessary personal and interpersonal identity attributes (the Inside) and that provides them with a purposive or engagement framework grounded in improving access to justice (the Out) as captured in Diagram 1 below.

Diagram 1: Professional identity formation foci: Inside/Out



This pedagogy consists of the systematic embedding of two equally important components: Susan Brooks' Wholehearted Lawyering scholarship to develop students' core professional personal and interpersonal identities and competencies,

and core purpose - or engagement - principles drawn from Vulnerability Theory and Therapeutic Jurisprudence to contribute to therapeutic and resilience-building impacts on the legal system.

3. Wholehearted Lawyering, Vulnerability Theory, Therapeutic Jurisprudence and Access to Justice

This section explains briefly the principles and practices underpinning Wholehearted Lawyering, and the relevant aspects of Therapeutic Jurisprudence and Vulnerability Theory that are the conceptual underpinning of the Inside/Out teaching pedagogy to develop students' individual identity and purpose as two of the core components of their professional identity formation.

Wholehearted Lawyering scholarship builds on existing professional identity formation scholarship about Relationship-Centered and Relational Lawyering.³ Relevantly, Relational Lawyering is a framework built on three professional competencies: appreciating the interconnected, interdependent context in which people are situated; promoting individual and community choices around legal process that contribute to greater procedural justice; and heightening awareness of the cultural, emotional, and affective dimensions of legal practice.⁴ These concepts are congruent with the self-reflective, compassionate and multi-disciplinary model of lawyering that has a deep history in Australian Community Legal Centre culture.⁵

In 2018, building on this scholarship, Brooks articulated a roadmap to consciously and intentionally guide the professional identity formation of law students focusing on the nature and quality of the web of interconnected relationships at the core of how law

³ See for example Susan L. Brooks, 'Using a Communication Perspective to Teach Relational Lawyering' (2015) 15 *Nevada Law Journal* 477, 481-82.

⁴ Susan L. Brooks and Robert G. Madden, 'Relationship-Centered Lawyering: Social Science Theory for Transforming Legal Education and Practice' (2009) 78 *University of Puerto Rico Law Review* 23.

⁵ Anna Cody, 'Clinical programs in community legal centres, the Australian approach' (2011) 4 *Education and Law Review* 1.

is taught and practised.⁶ Describing that professional identity formation as Wholehearted Lawyering, Brooks articulated the following five principles to guide law teachers:

1. Teach from a place of kindness and curiosity with humility and transparency.
2. Everyone wants to matter: everyone wants to be seen and heard and mattering correlates with academic success and other positive outcomes.
3. We must appreciate our own context, culture and values and the contexts, culture and values of others.
4. Adopt a strengths, optimistic, growth-based teaching and learning orientation.
5. Apply a relational ethic of care by ensuring everyone has a voice, is listened to and heard with respect, and is responded to.⁷

Brooks also recommended adopting the following three teaching practices to implement these principles:

⁶ Susan L. Brooks, 'Fostering Wholehearted Lawyers: Practical Guidance for Supporting Law Students' Professional Identity Formation' (2018) 14 *University of St. Thomas Law Journal* 412. See also Susan Brooks, 'Fostering Wholehearted Lawyering through Clinical Legal Education' *The Best Practices for Legal Education Blog* (Web Page, 26 April 2021) <<https://bestpracticeslegaled.com/2021/04/26/fostering-wholehearted-lawyers-through-clinical-legal-education/>>. In recent years, Brooks has gone on to marry mindfulness practices with relational lawyering scholarship in "mindful engagement". For Brooks, mindful engagement entails bringing our emotional and bodily awareness as well as our analytical minds fully into our work. It contemplates the interconnection and integration of engagement with oneself, engagement with others interactively, and engagement with communities and larger social institutions and systems. See Susan L. Brooks 'Mindful Engagement and Relational Lawyering' (2019) 48 *Southwestern Law Review* 267.

⁷ Brooks, 'Fostering Wholehearted Lawyers: Practical Guidance for Supporting Law Students' Professional Identity Formation' (n 6) 424-425.

1. Promote self-awareness by being fully present, slowing down enough to notice and suspend judgment, encouraging leaning into discomfort and cognitive stretching and getting more comfortable with silence.⁸
2. Create supportive spaces that can contain open and inclusive dialogue including that which is emotionally or politically sensitive or controversial.⁹
3. Be intentional and explicit about fostering empathy, compassion, self-compassion, opportunities for feedback and reflection, and incorporating creativity, joy and gratitude into the classroom to model how students can adopt these qualities into their professional identities and their practice of law.¹⁰

Wholeheartedness and lawyering are not necessarily cognitively consonant concepts for everyone and for some lawyers, the notion that wholeheartedness ought to be a professional identity goal of lawyers is jarring. Yet, from an Inside/Out pedagogy perspective, Brooks' principles and practices neatly promote the development of students' awareness of the necessary personal and interpersonal identity attributes, habits of mind and professional skills to optimise lawyers' ability to work effectively, ethically and resiliently with clients, other practitioners and as actors in the legal system. This is so regardless of the area of law that they will ultimately practice in. They do so by encouraging students to look within, to think critically and reflectively about their individual values, contexts and characteristics, and by building students' understanding of the impact, on themselves and others, of working with (and without) kindness, humility, empathy and compassion. Brooks' application of the relational ethic of care model provides an explicit "vehicle to help students create a positive vision of their professional roles" but it also offers a bridge for the

⁸ Ibid 427.

⁹ Ibid 428.

¹⁰ Ibid 429-432.

development of students' purposive and engagement framework (the Out) by fostering thinking about "their potential impact on society."¹¹

It is core business of law schools to teach about both the administration of justice and the enablers of, and impediments to, accessing justice. This necessarily encapsulates not just understanding the structural barriers to accessing lawyers and the legal system but also the imperative of reforming the legal system to redress those barriers and to better reflect the interests and needs of all people in society. There are numerous valid potential frames that facilitate critical thinking about lawyers' roles in improving or denigrating clients' access to justice. In developing students' individual sense of professional purpose and their future practice objectives it is critical to explicitly name, discuss and reflect on students' own engagement principles. This is particularly so in the Clinical setting where these principles necessarily inform the content and character of teaching modules, stakeholder and community partnerships and specific access to justice and law reform projects. The next two sections examine how principles drawn from Vulnerability Theory and Therapeutic Jurisprudence can be utilised to inform the development of students' thinking about their purpose as lawyers and their objectives for engagement in legal practice.

3.1. Clarifying Professional Purpose and Practice Objectives: Purposive Engagement Principles Derived from Vulnerability Theory

Vulnerability theory is a useful starting point to illuminate for students the impacts of the law being normatively premised on the traditional liberal subject and the false assumption that we are *a priori* equally positioned in society.

Vulnerability theory, as articulated by Martha Fineman in 2008, identifies both the universality of vulnerability as an inevitable and enduring aspect of the human condition and the significance of the role of the State in responding to and alleviating

¹¹ Ibid 425.

vulnerability or, conversely, in compounding it.¹² Fineman's vulnerability theory essentially proposes a reconceptualisation of the relationship between the State and its subjects. The foundation for this reconceptualisation is recognition that actual and potential vulnerability is a universal and constant attribute of all humans. A key conceptual strength of vulnerability theory is that it highlights the normative relevance of embodied vulnerability and the ensuing inequalities deriving from distinct individual embodied experiences.¹³ It eschews the notion that vulnerability is synonymous with "victimhood, deprivation, dependency, or pathology".¹⁴ Instead, it exposes how all people simply by virtue of their physical embodiment require specific conditions for survival, are necessarily socially and relationally dependent on others at some parts of their lives (for example, as babies/children and again in old age). People are also universally susceptible to dependency at other points because their embodiment makes them prone to illness and injury and susceptible to harm as a consequence of social, economic and political events.

Following from this, Fineman argues that premising analysis of social institutions and socio-political structures on the traditional liberal subject instead of the vulnerable subject is inherently problematic. Analysis premised on the vulnerable subject is to be preferred because it disrupts the persistence of inequality that flows from analysis being normatively premised on individualistic conceptions of autonomy and the assumption that we are *a priori* equally positioned, in the traditional liberal subject. Articulating our shared universal vulnerability, as Fineman does, challenges the classical liberal paradigm of the rational, free-choosing, autonomous, and able-bodied person of equal standing in society in relation to others.¹⁵ It rejects this invulnerable,

¹² Martha Albertson Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20(1) *Yale Journal of Law and Feminism* 1 ('Anchoring Equality'); Martha Albertson Fineman, 'The Vulnerable Subject and the Responsive State' (2010) 60 *Emory Law Journal* 251 ('The Responsive State').

¹³ Anna Grear, 'Vulnerability, Advanced Global Capitalism and Co-Symptomatic Injustice: Locating the Vulnerable Subject' in Martha Fineman and Anna Grear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate, 2013) 44-46.

¹⁴ *Ibid.*

¹⁵ Fineman, 'Anchoring Equality' (n 12) 15-19.

disembodied, and de-contextualised liberal subject in favor of a vulnerable subject which is a more authentic justification to protect classes and group identities (such as race and gender) for anchoring substantive equality and distributive justice in liberal democracies.¹⁶

Flowing from this, the notion that States have limited responsibilities to able-bodied legal subjects of equal standing is destabilised. Instead, the logical corollary of the vulnerable subject is what Fineman calls the responsive state.¹⁷ Attending to the relationship between group vulnerability and the responsive state enables interrogation of a causative relationship between laws and policies, resource availability and distribution, and the resiliencies and dependencies of people.¹⁸

Vulnerability theory offers the following four principles that can guide the development of students' critical thinking about assumptions that underpin the way law is traditionally taught and that clients are traditionally understood:

1. Premise legal analysis of client matters on the vulnerable subject rather than the normative traditional white privileged male to challenge assumptions premised on clients as purportedly free-choosing, autonomous, and able-bodied legal subjects of equal standing.
2. Examine the relationships between a client's vulnerability and their social, political and economic positioning in society by scrutinising the interconnectedness of their distinct experiences and their access (or not) to opportunities to accumulate resources or to access social or institutional support.

¹⁶ Fineman, 'Anchoring Equality' (n 12) 8.

¹⁷ Fineman, 'The Responsive State' (n 12) 269.

¹⁸ Martha Albertson Fineman, 'Equality, Autonomy, and the Vulnerable Subject in Law and Politics' in Martha Albertson Fineman et al (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate, 2013) 17, 19.

3. Examine the ways that laws are either vulnerability-mitigating and resilience-building for unequally positioned groups, or resilience-degrading and dependency-increasing to reveal the structural biases and harms embedded in, and obscured by, the law and legal institutions.
4. In law reform and access to justice project work, aim to reduce, mediate and ameliorate the unequal burden on individuals whose vulnerabilities are generated or exacerbated by legal structural and institutional impacts to address the effects of vulnerability and gradually remedy them.

Vulnerability Theory is a particularly useful lens to assist students to counter fallacies that all clients have equal access to justice in the legal system, including that law is value-neutral or that law students and lawyers can properly meet clients' needs by relying exclusively on legal reasoning and analysis. Therapeutic Jurisprudence, as discussed in the next section, builds on this foundational capacity to critique and comprehend the complexity of the law and its impact by providing additional mechanisms to understand the effect and impact of the design and application of the law and a roadmap for purposive, beneficial engagement in practice.

3.2. Improving Access to Justice: Purposive Engagement Principles Derived from Therapeutic Jurisprudence

Therapeutic Jurisprudence, developed initially by David Wexler and Bruce Winick in the late 1980s scrutinises the role of law as an actor and assesses the impact (therapeutic or anti-therapeutic) of legislation and of the application of substantive rules and procedures in legal proceedings.¹⁹ Wexler has neatly captured the approach as follows:

¹⁹ David B. Wexler and Bruce Winick (eds), *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (Durham, 1996). See also David B. Wexler, 'Therapeutic Jurisprudence: An Overview' (2000) 17 *Thomas M. Cooley Law Review* 125, available at SSRN: <https://ssrn.com/abstract=256658>; David B. Wexler, 'The DNA of Therapeutic Jurisprudence' in Nigel Stobbs, Lorana Bartels, and Michel Vols

[Therapeutic Jurisprudence] is an approach that regards the law itself as a potential therapeutic (or anti-therapeutic) agent. It looks at the law *in action*, not simply at the law in books, and it views “the law” as consisting of *rules* of law, legal *procedures*, and the *roles* of legal actors (judges, lawyers, mental health and other professionals working in a legal context). [Therapeutic Jurisprudence] is interested in examining the therapeutic and anti-therapeutic consequences of the law, and in proposing ways that the law may be made or administered in a more therapeutic (or less anti-therapeutic) way, but *without privileging* therapeutic results over due process or other constitutional and related values.²⁰

In assessing the role of law as an actor, Therapeutic Jurisprudence scrutinises the actors who make and implement legal rules and procedures, including legislators, judges, solicitors and barristers and mental (and other health) professionals. Therapeutic Jurisprudence thus offers a normative perspective: where possible, the law can and should be designed and implemented to bestow therapeutic benefits and it ought not produce anti-therapeutic effects. As explained by Winick:

Legal rules, legal procedures, and legal actors (such as lawyers and judges) constitute social forces that, whether intended or not, produce therapeutic or antitherapeutic consequences. Therapeutic Jurisprudence calls for the study of these consequences with the tools of the social sciences to identify them and to ascertain whether the law’s antitherapeutic effects can be reduced, and its therapeutic effects enhanced, without subordinating due process and other justice values.²¹

Significantly, Wexler and Winick do not claim the paramountcy of therapeutic ends over due process, justice embodied in constitutional rights, or the protection of other

(eds), *The Methodology and Practice of Therapeutic Jurisprudence* (Carolina Academic Press, 2019) 3 available at SSRN: <https://ssrn.com/abstract=3731574>. For an excellent examination of the genesis of the field, the core doctrinal and theoretical foundations and application of Therapeutic Jurisprudence, see David C. Yamada, ‘Therapeutic Jurisprudence: Foundations, Expansion, and Assessment’ (2021) 75(3) *University of Miami Law Review* 660. See, in particular David Yamada’s examination of how Therapeutic jurisprudence is underpinned by three core theoretical bases: the therapeutic or anti-therapeutic operation and impact of the law; the recognition of dignity; and the conceptualisation of compassionate motivation.

²⁰ David B. Wexler ‘Mental Health law and the Seeds of Therapeutic Jurisprudence’ in Thomas Grisso and Stanley L. Brodsky (eds), *The Roots of Modern Psychology and Law: A Narrative History* (Oxford University Press, 2018) 78, 79-80 available at SSRN: <https://ssrn.com/abstract=3129093>.

²¹ Bruce J. Winick, ‘The Jurisprudence of Therapeutic Jurisprudence’ [1997] 3 *Psychology, Public Policy and the Law* 184, 185.

societal interests. Rather Therapeutic Jurisprudence ensures that laws' impact is taken into consideration alongside more conventionally recognised considerations.

Therapeutic Jurisprudence is also necessarily interdisciplinary encompassing (at least) law, sociology and psychology. Therapeutic Jurisprudence has impacted on the practice of lawyers, judges, mental health and related practitioners particularly in juvenile justice, mental health, care and protection, and criminal law²² and Therapeutic Jurisprudence scholars have exposed the unintentional harms "imposed inadvertently in the course of the everyday application of the law."²³

Therapeutic Jurisprudence offers the three following crucial practical engagement principles relevant to the formation of students' sense of their purpose as lawyers:

1. Comprehend both the design (legal structures, legislation, procedures) and the application of the law (by all actors who interact with clients, most obviously judges, lawyers, police officers, and other professionals in the relevant area of law being examined) and the crucial interrelationship of these components.
2. Engage enthusiastically with actors from other disciplines who interact with our clients including doctors, psychologists, teachers, and social workers to comprehensively understand our clients' needs and to jointly resolve related issues, where possible.
3. Critically examine ourselves as legal actors ensuring that in all interactions with our clients we act beneficially, not detrimentally, to their interests.

²² In children's law for example, the application of Therapeutic Jurisprudence principles have focussed increased attention on children's mental health in assessing the therapeutic impact of committal, care and protection and juvenile justice proceedings and have resulted in better coordination and cooperation between juvenile justice, care and protection and mental health systems.

²³ Emily Buss, 'Developmental Jurisprudence,' [2016] 88 *Temple Law Review* 741, 749.

Having described the principles and practices underpinning Wholehearted Lawyering and the purposive engagement principles drawn from Vulnerability Theory and Therapeutic Jurisprudence, this section has set out the conceptual underpinning of the Inside/Out teaching pedagogy that develops students' individual identity and purpose as two of the core components of their professional identity. The pedagogy is illustrated in Diagram 2 below.

Diagram 2: The Inside/Out professional identity formation pedagogy



The next section examines the application of the Inside/Out pedagogy in practice.

4. Embedding the Development of “Wholehearted Lawyers with Therapeutic Intent” into the Creation of a New Clinic

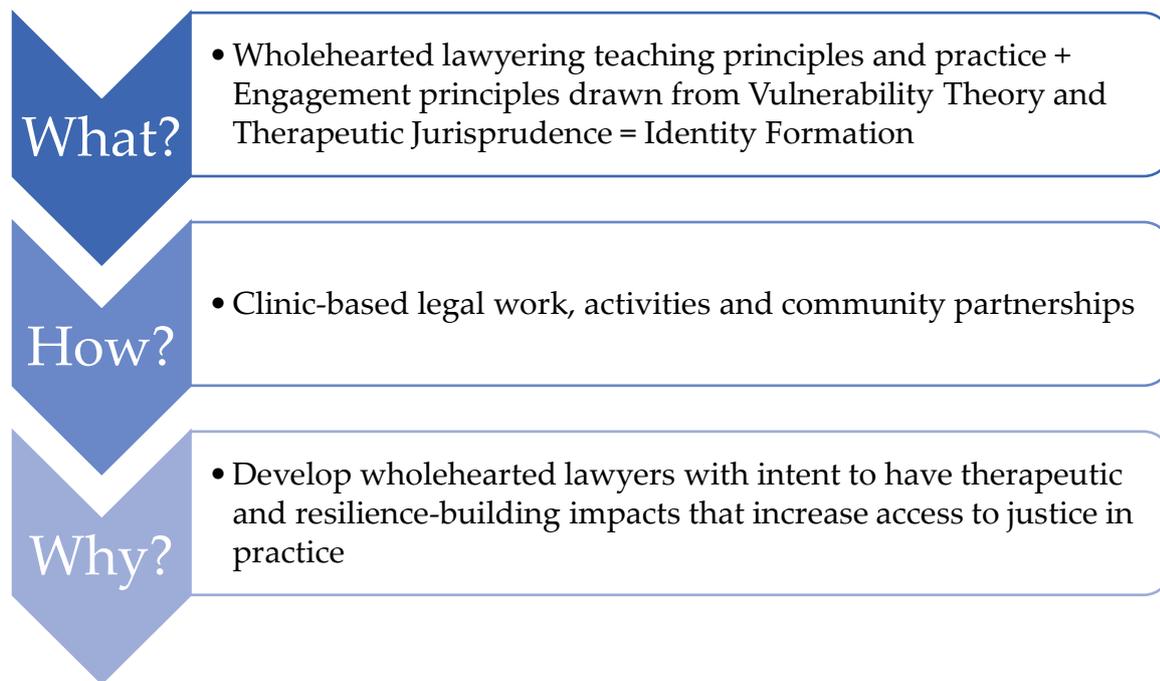
This section examines firstly how the Justice Clinic teaching activities have systematically embedded the development of wholeheartedness as an explicit core professional competency of our Clinic students. It then examines how we have purposively shaped our Clinic activities and community partnerships by reference to engagement principles drawn from Vulnerability Theory and Therapeutic Jurisprudence to encourage students to develop a sense of purpose to achieve a therapeutic and resilience-building impact as lawyers.

4.1. Developing Wholeheartedness as a Core Professional Competency of Clinic Students (and Teachers)

Students attend the Justice Clinic, usually one day per week for 12 weeks across the semester. Students self-enrol in the Clinic unit; there is no competitive selection

process. We have done this deliberately to allow for as diverse cohorts as possible and because we believe any law student will benefit from exposure to the development of wholeheartedness regardless of their grades or career aspirations. Students do a combination of client facing work in the Student Legal Service and through partner referrals, and access to justice and law reform projects. Students also complete eight modules of online asynchronous content and attend five face to face seminars. This content explicitly teaches what is meant by social justice lawyering in practice, what constitutes client-centered lawyering, theories and mechanisms regarding access to justice, the purpose and nature of reflective practice, professional client-facing skills, and what constitutes, and how to achieve, resilience for social justice lawyering in the long term. In terms of assessment, the Clinic unit is pass/fail. Students must satisfactorily attend and participate in all Clinic activities and seminars, complete three critical reflections, complete all assigned professional tasks and complete two self-assessments. Seminars, class activities and assessments are explicitly underpinned by Brooks' wholehearted lawyering principles and practices, and by the improving access to justice principles derived from Vulnerability Theory and Therapeutic Jurisprudence. Diagram 3 below captures how the Inside/Out pedagogy is applied in practice.

Diagram 3: Application of the Inside/Out pedagogy in practice.



The next section provides four examples of how wholeheartedness as a core professional competency is developed in the Clinic. Firstly, looking at the setting of explicit student and teacher behavioural and engagement expectations. Secondly, looking at how students are scaffolded to identify and appreciate their own and others' context, culture and values. Thirdly, examining how students are encouraged to take responsibility for their own part in a strengths, optimistic and growth-based teaching and learning orientation. Lastly, looking at critical reflection as a means of monitoring the development of wholeheartedness (for law school and beyond).

4.1.1. Behavioural and engagement expectations

Students are explicitly told in the Clinical Legal Placement introductory seminar that:

Our hopes for you are that you have an immersive, challenging and inspiring experience in the Clinic where you will see the law in action and get to work on advice, casework, policy and project work. Alongside this practical lawyering experience, you will also be learning about the role of law and the role of lawyers in advancing social justice and access to justice. Throughout your Clinic work and through your Clinic seminars, you will be asked to think deeply and critically about the law as you have learned it, as you see it and as

you experience it. You will also be exposed to how others view and experience the law.²⁴

The Clinic places are limited to eight students each day so everyone is seen and heard. From the first day in the Clinic, the Principal Solicitor and Clinic Director are clear with our students that the ten of us are a Clinic team: that all behavioural and engagement expectations apply mutually; that we regard kindness, humility and transparency as strengths, not weaknesses; and that we will all make mistakes in the Clinic (teachers included) and that we will discuss mistakes and how we can fix them. We encourage students that they will grow their technical and professional skills over the course of the semester and that in the process they may feel discomfort or anxious at times and that they should consciously lean into those feelings as discombobulating moments that they can learn from. We purposively apply a relational ethic of care by encouraging students to speak up, to listen to, and respond to each other with respect. In class discussions we encourage students to express and discuss divergent views and endeavour to model suspending judgment and responding, not reacting, to enable students to have open and inclusive dialogue about issues that are emotionally and politically sensitive and controversial. We assess whether we achieve a learning space that respectfully encourages and accommodates divergent views, in part, by reflecting on students' comments in anonymous student Unit Teaching Evaluations regarding the extent to which teaching staff embrace and encourage differing perspectives.

In guiding these class discussions, we are intentional and explicit about making evidence-based contributions while fostering empathy and compassion. Although the subject matter of much of the Clinic's law reform and access to justice work is challenging, we are explicit with the students about each of our individual responsibility for the "climate" of the Clinic. We try to consistently model that technically excellent lawyers can also be self-aware, compassionate, optimistic and

²⁴ Clinical Legal Placement Unit Introductory video seminar.

kind. We also consciously expose students to other lawyers and stakeholder partners from different areas of the law who exhibit these same personal qualities. Doing so, we emphasise to students that wholeheartedness is a competency that can be embraced regardless of the area of law in which a lawyer practices. We also openly discuss with our students how they can, and why they should, develop these qualities of self-awareness, compassion, positivity and kindness - alongside technical excellence - into their professional identities and their practice of law.

We encourage an engagement expectation of being open to, and seeking feedback from, each other and from teaching staff from day one. In doing this, the students come to view feedback as something to be welcomed rather than feared, and as natural, formative and vital to developing a healthy practice and being a life-long learner. This expectation also links cohesively with the critical reflection students are expected to engage in, discussed further below. Informal and formal structures are in place for this feedback. For example: students witness the Principal Solicitor and Clinic Director give feedback to each other on tasks; we give students written and verbal feedback, individually and as a group, on each assessment and professional task; students are placed in partnerships or groups to collaborate on work where assessing and commenting on each other's contributions naturally occurs; and we have casual debriefing sessions after client interactions.

We also talk explicitly with our students, in the context of teaching client-centered lawyering, about finding their own individual way to centre themselves, through daily exercise, meditation or whatever method works for them, and that knowing and understanding themselves - separate from their professional identity as a lawyer - is crucial to their long-term personal mental health and well-being and their ability to keep engaging interpersonally and relationally in an authentic way.

4.1.2. *Appreciating our own and others' context, culture and values*

Before the students commence in the Clinic they complete an online orientation module that challenges them to think about their own role as a lawyer by asking them to critically reflect on the following questions:

- Why they chose to study law?
- Why might others choose to study law?
- If they intend to practice as a lawyer after they finish studying, what type of lawyer they want to be?

Students are invited to complete the Harvard Implicit Association Test if they wish and are introduced to the concept of unconscious bias by reference to contemporary legal issues. They are also introduced to mind-mapping and asked to develop a mind map that requires them to think purposively about their own journey in the law so far. They identify three key public historical events that have effected their decision to study law and the type of lawyer they want to be, three personal beliefs that have impacted their decision to study law and the type of lawyer they want to be; three past experiences that have impacted their decision to study law and the type of lawyer they want to be, and lastly, any readings or theories that have impacted their decision to study law and the type of lawyer they want to be.

We then discuss the mind-map and students' responses to the unconscious bias testing in their face-to-face seminar on the first morning of the Clinic.

4.1.3. A strength, optimistic, growth based teaching and learning orientation

The Clinic is founded on a strength, optimistic, growth-based orientation. The casework, client work, projects and seminars all allow for a range of different learners to play to their strengths and develop new ones. Clinic students also complete a self-assessment on their first face-to-face Clinic day. They are asked to set personal and professional goals they want to achieve in the Clinic, recognise personal strengths that they will use, and identify personal or professional skills they would like to develop.

We discuss the difference between goals and plans and why it is necessary for us all to articulate our learning and practice goals and plans to understand the extent to which we are achieving them and so that we can continue to develop. At the end of their Clinic experience, students complete a second self-assessment, revisiting and reflecting on those goals, strengths and skills they identified. They track their development of the personal and professional goals in the Clinic and evaluate the extent to which they have used their personal strengths in practice. They also evaluate the way that they have begun developing the professional and personal skills they wanted to develop in the Clinic, discuss their plans for future practice and development as a lawyer and their key learnings, challenges and experiences.

4.1.4. Critical reflection as integral to Wholehearted Lawyering

Reflection is a “cognitive and affective process or activity that”: “requires active engagement on the part of the individual”; is “triggered by an unusual or perplexing situation or experience”; “involves examining one’s responses, beliefs, and premises in light of the situation at hand”; and “results in integration of the new understanding of one’s experience”.²⁵

In the Justice Clinic we teach students explicitly *why* reflection matters for professional identity formation. Reflective practice is essential for lawyers because: it enables us to identify the frames and filters that we personally experience the world through (for example, unconscious biases) and because client-centered practice requires us to reflect on the relationship between our intended consequences and the actual outcomes for clients. Together with the students after client interactions we ask questions including:

- Did the client(s) feel heard and understood?

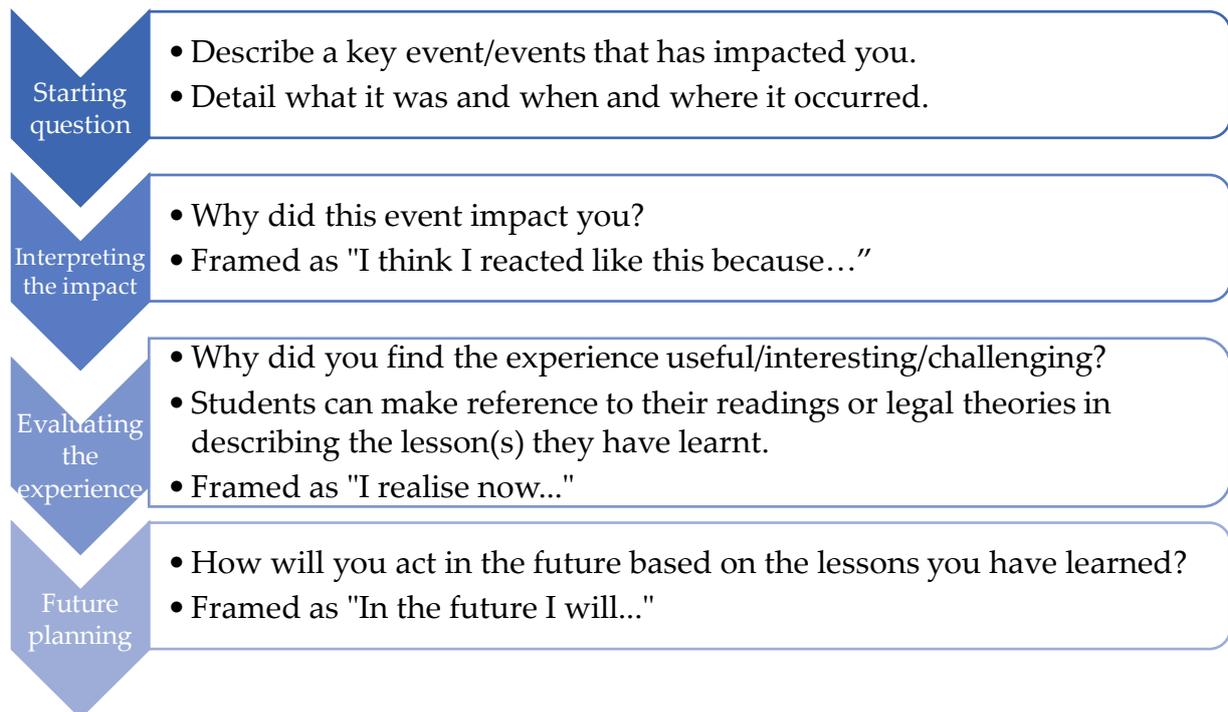
²⁵ Russell Rogers ‘Reflection in higher education: a concept analysis’ (2001) 26(1) *Innovative Higher Education* 37, 41.

- Did my behaviour contribute to them not feeling properly heard and understood?
- What could I do differently next time to achieve a better outcome for my client(s)?

By asking these questions both the teaching staff and students receive feedback that can assist us to critically reflect on the quality of our engagement with the client and grow in self-awareness to support our professional identity formation and continual growth. In this way too, students are also taught explicitly that reflective learning takes place intentionally as a direct result of taking responsibility for capturing and reflecting on events to develop our understanding about legal practice in the context of our previous experience, knowledge, values and beliefs.

Students in the Justice Clinic are also given explicit instruction about *how* to write and structure a four-part critical reflection depicted in Diagram 4.

Diagram 4: Structuring a four-part critical reflection



Students and teaching staff discuss the reflection assessment criteria and satisfactory and unsatisfactory mock reflection examples (written by the Clinic Director). We then discuss as a class what constitutes a satisfactory and unsatisfactory reflection. We discuss their responses to Dewey's statement: "We do not learn from all experiences; we only learn from the experiences on which we reflect."²⁶ Students are also asked to identify what they think will be the most challenging and rewarding aspects of reflective practice and whether, and if so how, reflective practice can assist us to be aware of our implicit or unconscious biases. Students are taught that writing the reflections for assessment is not the goal. Instead, learning to reflect in this way so that it becomes second nature, so that we can do it on our feet, every day, in practice is the goal. The students are also given detailed written feedback and an opportunity to discuss their reflections and feedback at any time. In this way, we attempt to address Brooks' observation that:

Many law teachers want students to be reflective, however, they simply do not spend any class time discussing or offering guidance to students about how to be reflective. Further, many of us assign reflection papers without ever discussing what reflective writing needs to look like, or offering a rubric or other information about how students' reflective writing might be assessed. All of these issues need to be addressed if we want to help students practice reflection.²⁷

4.2. Driving Clinic Activities and Community Partnerships by Therapeutic and Resilience-Building Approaches to the Legal System

In the Justice Clinic, students gain practical lawyering experience and direct client contact by assisting the Principal Solicitor to give advice through the Student Legal Service ("SLS") that runs out of the Justice Clinic and by assisting the Principal Solicitor with regular referrals from Legal Aid NSW for legal aid application work.

²⁶ John Dewey, *Experience and education* (Macmillan Publishers, 1938) 78.

²⁷ Brooks, 'Fostering Wholehearted Lawyers: Practical Guidance for Supporting Law Students' Professional Identity Formation' (n 6) 431.

The SLS provides legal advice to domestic and international students of Western Sydney University about employment, tenancy and accommodation, consumer rights, debt/credit issues, motor vehicle accidents, traffic offences and minor criminal matters. Where the SLS is unable to assist a student because the matter falls outside the SLS practice areas (for example, migration matters) or where the SLS does not have capacity to assist (for example, court representation), the SLS provides warm referrals to other services.

Legal Aid NSW also provides regular referrals to the Justice Clinic to assist their clients to complete applications for legal aid in family law and child protection matters. These referrals come directly from Legal Aid lawyers working in the Family Law Early Intervention Unit of Legal Aid NSW and/or Legal Aid lawyers working with clients of a Western Sydney community-based service: The Shed. The Shed, amongst other activities, provides early intervention support to its clients across legal sectors including family law, crime, child care and protection and housing through stakeholder partnerships that facilitate holistic therapeutic interventions targeting trauma-informed responses.

Clients referred to the Justice Clinic through these pathways are usually seeking urgent or early family law orders in the Federal Circuit Court and Family Court of Australia in relation to parenting arrangements or family dispute resolution. Students assist by reviewing all background court and evidentiary materials, participating in client appointments to complete legal aid application forms, compiling supplementary material for the applications, and advising Legal Aid and/or The Shed of any other related matter(s) the client may need help with.

Students also gain practical lawyering experience by working on complex and contemporary access to justice and law reform matters with key non lawyer expert stakeholders. In the last 12 months, these matters have included: drafting a pro bono complaint to the United Nations Human Rights Committee; working on a coercive control law reform project with a leading law firm and large not for profit; developing

a Modern Slavery Lawyer's Manual with a separate large not for profit and other stakeholders; and developing a Therapeutic Sentencing Database with the District Court of NSW and The Shed to identify therapeutic alternatives to sentencing First Nations Peoples.

Students' participation in these Clinic activities and community partnerships is deliberately structured by reference to the Vulnerability Theory and Therapeutic Jurisprudence engagement principles articulated in Part 3 of this paper.

4.2.1. Application of engagement principles drawn from Vulnerability theory

Very few clients of the Justice Clinic can be characterised as the "traditional liberal subject" of normatively premised white privileged males. When obtaining client instructions, students quickly become aware of the fragility of prior assumptions they may have held premised on clients as purportedly free-choosing autonomous, and able-bodied legal subjects of equal standing.

In both the client-facing SLS and Legal Aid work and the Clinic project work, students are scaffolded to understand the complex ways that our clients share the universal vulnerabilities of all people but also have legal issues that are regularly directly connected to their social, political and economic positioning in society and their access (or lack thereof) to opportunities to access social or institutional (including legal) support. Students witness how clients' legal matters fit within the broader context of the legal system and broader policy contexts, for example the impacts of inadequate consideration of legislative obligations to recognise cultural norms when representing First Nations People in family law and childcare and protection matters. This leads to critical evaluation of the structural biases and harms embedded in, and obscured by, the law and legal institutions. It also leads to critical reflection about the ways that laws are either vulnerability-mitigating and resilience-building or resilience-degrading and dependency-increasing for unequally positioned groups.

By engaging in law reform and access to justice project work such as the Modern Slavery Lawyer's Manual and the development of the District Court Therapeutic Sentencing Database project, students are engaged in practical ways to reduce, mediate and ameliorate legal structural and institutional impacts on individuals.

4.2.2. Application of engagement principles drawn from Therapeutic Jurisprudence

Through the Clinic project work and the client facing SLS and Legal Aid work students comprehend that the operation and impact of the law encompasses consideration of substantive rules and procedures as well as critical analysis of the role and impact of other professionals who interact with clients. Students are briefed to ensure they listen for and identify any related civil issues so the client can be linked in to relevant wrap-around services. Further, while legal advice or access is being given directly to the client, students are encouraged to consider the broader context of the advice, for example the client's family. This is particularly so in complex Legal Aid application matters in the family law and child care and protection jurisdictions where, if the Clinic or SLS cannot help, clients are given a warm referral to other legal or civil services.

Students are led to critically examine whether their own, and our, behaviour and impact as legal actors is beneficial (and not detrimental) in each interaction with a client. Applying the principles and practices of Wholehearted Lawyering previously discussed, students are explicitly guided to be aware of, and develop, the complex core personal, interpersonal, and relational skills needed to ensure beneficial client interactions. This guidance includes shadowing legal advice phone calls to consciously actively listen and to hold client-centered conversations. Students then gradually undertake client intake and initial instruction phone calls while demonstrating these same skills. It also encompasses teaching the introductory professional technical skills required to execute delivery of legal advice in plain English after they are admitted to practice, for example, by undertaking professional research tasks to practice research and drafting skills. Students are invited to critically

examine the extent to which they, and we, act beneficially to clients' interests in pre and post-client interaction debriefing sessions and through their written reflections. Further, by assisting with the provision of broad areas of legal advice in the SLS, students develop an understanding that they can practice wholeheartedness in any area of law (for example, in employment or traffic matters) and not just in traditional "human rights" matters.

The Clinic especially models enthusiastic engagement with professionals from other disciplines in our project work. We consciously design our access to justice and law reform projects with stakeholders and partners by taking a multi-disciplinary, therapeutic approach so as to explicitly build capacity and knowledge to achieve a best practice response. For example, the Clinic projects of developing a modern slavery manual intended to be publicly available to lawyers Australia-wide, and of providing research to inform a coercive control submission for a parliamentary inquiry, both involve collaboration and consultation with multiple partners across a range of professional fields. Prior to commencing these projects, students are introduced to the relevant literature and resources in intersecting disciplines and are introduced to, and able to engage in conversation with, relevant multi-disciplinary stakeholders working on the projects who describe the broad needs of the clients and the context for the law reform project work. In this way, students are given practical exposure to other services, practitioners and to the benefits of multi-disciplinary work so that we can comprehensively understand clients' needs and collaborate with others to jointly resolve related issues. Similarly, multi-stakeholder collaborative projects such as the District Court Therapeutic Sentencing Database introduces students to the concept of themselves, each other, and others - including judges - as legal actors. In this project by identifying the adequacy, or not, of sentencing alternatives that judges have at their disposal, students critically comprehend the roles of, and potential limitations on, other actors in the legal system that impact the extent to which clients can access justice in practice.

Working on these projects also introduces students to different mechanisms for accessing justice in addition to the direct individual client work they are doing with the SLS and Legal Aid. This combination of client-facing and project work highlights the relative benefits and impacts of short term and long term lawyering and the different roles that lawyers can play, as part of multi-disciplinary approaches to meeting clients' immediate needs in a beneficial way while also contributing to systemic change. The combination of immediate client-facing and law reform project work also balances students' exposure to the realities of peoples' sometimes complex and distressing legal difficulties (for example, potentially losing contact with a child who is the subject of care and protection removal proceedings) with an opportunity to work towards broader systemic change that addresses underlying issues (for example, a project targeting improved implementation of maintaining children's cultural connections in child placement determinations).

This section has examined how teaching, stakeholder partnerships, client-facing work and projects in the Justice Clinic have been designed to encourage students to think critically about, and to clarify, the personal and interpersonal characteristics they want to possess as lawyers as well as their individual sense of professional purpose and their practice objectives. This purposive design aims to develop wholehearted lawyers with therapeutic intent: lawyers who are mindful of having a positive impact on individuals accessing justice in their lived context, and who practice with the explicit intention of contributing to therapeutic and resilience-building impacts as part of the legal system.

5. Lessons Learned and Future Steps

This part briefly discusses lessons learned and some future steps to continuing to develop the Justice Clinic program. Four key lessons have emerged in the last twelve months since the inception of the Clinic. Firstly, Wholehearted Lawyering is a teachable and learnable set of core competencies for law students and legal professionals. Secondly, wholeheartedness is multi-layered, nuanced and should be

developed in each year of students' study; its development should not be limited to the clinical legal education context. Thirdly, Wholehearted Lawyering is a competency that many lawyers value and practice but it may be that they do so without explicit awareness of what it is, how to articulate it or how to be unashamed of it. It may be couched and hidden in phrases or concepts such as "client-centered lawyering", "soft skills" or "values-driven lawyering", which potentially devalues the concept, drives it underground and renders it somehow second-tier or "soft". Naming and modelling wholeheartedness as an explicit core professional competency is crucial at a student level so it can be introduced from day one of graduate legal practice and become the norm for legal professionals. Lastly, we have had diverse cohorts through the Justice Clinic in the last twelve months. Without exception, each has engaged with the opportunities provided in the Clinic to develop the personal, interpersonal, and relational dimensions of their professional identities as lawyers and most have chosen to take steps to candidly lean into discomfort in class discussions and reflections, when they could have chosen not to.

Regarding future steps, we aim to devise a method to qualitatively evaluate students' perceptions about the development of their personal, interpersonal and relational professional identities and the development of their understanding of their purpose and the role they play as lawyers, particularly in advancing access to justice. We will also continue to embed Wholehearted Lawyering principles and practices, underpinned by engagement principles grounded in Vulnerability Theory and Therapeutic Jurisprudence in future Clinical programs.

In conclusion, Wholehearted Lawyering, Vulnerability Theory and Therapeutic Jurisprudence scholarship provide complementary frames that illuminate the relational complexities of the legal system and that challenge traditional assumptions about the role and purpose of lawyers. The Inside/Out pedagogy proposed in this article, as implemented in the Western Sydney University Justice Clinic, proposes a

model that puts theory and scholarship into practice by explicitly grounding the professional identity formation of wholehearted lawyers with therapeutic intent.

THE 'FLIPPED' CLASSROOM – A METHOD FOR IMPROVING TEACHING AND LEARNING EVEN IN LARGE CLASSES

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Abstract

The Covid-19 pandemic has forced many of us to transform our approach to teaching and learning. Instead of standing in front of a class in the lecture hall or sitting around a table and interactively debating with students, we, as teachers, have found ourselves staring at students (or just their names) through such platforms as *Zoom* or *Teams* and overcoming the instances of hesitation or silence by, well, talking more. Sooner or later some, perhaps many, of us recognised this “trap of silence” and in searching for better approaches to online teaching began to use – intentionally or not – the flipped classroom method. In this text, I will share my experience from the spring semester of 2021, in which I used the flipped classroom method in a large group setting (over 150 enrolled students).

In the first part of this text, I will describe the course and implementation of the method. Then I will summarize its advantages and disadvantages and identify questions for further consideration. Throughout the paper, I include the experience of other teachers from the field of law and other disciplines to provide more context for my experience with the flipped classroom.

1. What is a Flipped Classroom?

The basic idea of the flipped classroom² is a shift (well, a flip) in the educational approach. In a typical class – be it online or offline – the teacher starts by introducing

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² See William R. Slomanson, 'Blended learning: A flipped classroom experiment' (2014) *J. Legal educ.* 64(1), 93; Lutz-Christian Wolff, and Jenny Chan. *Flipped classrooms for legal education*. (Singapore:

the topic typically either through a lecture, or by providing the content in another way (for example by guided reading, playing a video, or having students share their experience). Then, possibly, comes the practice – by getting students to apply what has been covered by the teacher to cases and problems, or through completing exercises or debating content with their peers or the teacher. This practical aspect of learning, and in some cases almost all of it, happens after the class, often in the form of homework. Despite our familiarity with this pattern and despite the alleged logic behind this approach, there are two main problems with it.

First, contemporary educational theory suggests that there are better and more efficient ways to deliver the content other than by lecturing (which by the way most teachers, including those teaching clinical legal courses, tend to use more than necessary). In fact, some authors and studies point out that there are hardly any worse methods of teaching than lecturing and that we still keep lectures as a backbone of

Springer, 2016); Jacob Bishop and Matthew A. Verleger, *The flipped classroom: A survey of the research*. (2013) 120th ASEE Annual Conference and Exposition, June 23-26; Jalal Nouri. 'The flipped classroom: for active, effective and increased learning—especially for low achievers' (2016) *International Journal of Educational Technology in Higher Education*. 13 DOI: 10.1186/s41239-016-0032-z; Amy Roehl, Shweta Linga Reddy, and Gayla Jett Shannon, 'The flipped classroom: An opportunity to engage millennial students through active learning strategies' (2013) *Journal of Family & Consumer Sciences*. 105(2), 44; Zamzami Zainuddin and Siti Hajar Halili, 'Flipped Classroom Research and Trends from Different Fields of Study' (2016) *The International Review of Research in Open and Distributed Learning*, 17(3). <https://doi.org/10.19173/irrodl.v17i3.2274>; Marcela Castro and Sandra Aguirre, 'Flipped Classroom in Legal Education: Achievements and Challenges of Innovating the Teaching of a Basic Law Course' (2020) *International Journal of Learning and Teaching*, 6(2) doi: 10.18178/ijlt.6.2.119-124; Karim Hajhashemi, Nerina Caltabiano and Neil Anderson, 'Integrating digital technologies in the classroom: Lecturers' views on the flipped classroom approach' (2016) *Australian and International Journal of Rural Education*, 26(3), 17; Jacqueline E. McLaughlin, et al., 'Pharmacy student engagement, performance, and perception in a flipped satellite classroom' (2013) *American journal of pharmaceutical education*. DOI: 10.5688/ajpe779196; Mary Beth Gilboy, Scott Heinerichs, and Gina Pazzaglia, 'Enhancing student engagement using the flipped classroom' (2015) *Journal of nutrition education and behavior*, 47(1), 109; Brenda Alvarez, 'Flipping the classroom: Homework in class, lessons at home' (2012) *The Education Digest*, 77(8), 18; Khe Foon Hew and Chung Kwan Lo, 'Flipped classroom improves student learning in health professions education: a meta-analysis' (2018) *BMC medical education*, 18(38), <https://doi.org/10.1186/s12909-018-1144-z>; EDUCAUSE. 7 Things You Should Know About Flipped Classrooms [online]. (2012) <<https://library.educause.edu/resources/2012/2/7-things-you-should-know-about-flipped-classrooms>>.

many curricula mainly because of two simple reasons: tradition and money.³ Lectures are deeply rooted in our educational past and they are a relatively cheap form of delivery.

Secondly, the time students need us, the teachers, the most is when they apply principles in a practical context. Only then will they start truly asking questions about the content (Do I understand it correctly? Have I solved the problem? Is my way of reading the material the most effective? etc.), and only then will they be truly challenged. But ironically, this part of the class typically happens, at least partially, at home, when students have no direct contact with the teacher and typically also not with their fellow students.

As Binford observes, not even the traditionally used Socratic method is able to satisfyingly fix it.⁴ Although it brought an important shift in law teaching after the Dean of Harvard Law School Langdell firstly introduced it in 1870s and continues to have its benefits, as described e.g. by the Carnegie report,⁵ it clearly has its flaws and critics and needs to be used wisely and not as a universal teaching strategy.⁶

The flipped classroom design addresses these issues by shifting the phases of the lesson. The content is provided before the class in a form of a video, podcast, or

³ See Warren Binford, 'How to Be the World's Best Law Professor' (2015) *Journal of Legal Education*. 64, 542 or Graham Gibbs, 'Lectures don't work, but we keep using them' (2013) *Times Higher Education* <https://www.timeshighereducation.com/news/lectures-dont-work-but-we-keep-using-them/2009141>. article. Professor Binford formulates it rather clearly: "Over 700 studies have confirmed what many of us know based on our own experience as students: Lectures are among the least effective methods for achieving almost every educational goal ever identified. In fact, for some education goals, lectures have been identified as the least effective learning method. Others suggest that they may be worse than no teaching at all since attending a lecture leads to less studying afterward."

⁴ Warren Binford, 'How to Be the World's Best Law Professor' (2015) *Journal of Legal Education*. 64, 542.

⁵ William M. Sullivan et al. *Educating Lawyers: Preparation for the Profession of Law*. (John Wiley & Sons, 2007).

⁶ Warren Binford, 'How to Be the World's Best Law Professor' (2015) *Journal of Legal Education*. 64, 542; Benjamin V. Madison, 'The Elephant in Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students' (2007) *University of Detroit Mercy Law Review*, 85, 293. Binford summarizes the drawbacks of the Socratic method as follows: "Criticisms include the use of the method in abusive and insensitive ways and the fact that the approach is 'too narrow' and trains students, more for conflict than the gentler arts of reconciliation and accommodation."

reading and the time spent in the class is used for practical activities: debate about the content, addressing case studies, formulating follow-up questions, introducing more content, exploring context, or generally challenging students in whatever way teachers find appropriate.

The idea that a teacher standing in front of tens or indeed hundreds of students may be replaced by videos available on e-learning platforms might certainly feel as a loss, a departure from romantic old-fashioned education portrayed numerous times in films and other pieces of popular culture. Yet it would be wrong to dwell on this image solely because we were used to organize learning and teaching in this way. The pandemic forced us to learn to do things differently and we should be careful what the new normal of higher education would look like. Once lectures are recorded and the synchronous meetings used for debates with students, covering additional topics and applying the content to real cases, we might well be on the way to a more meaningful and effective educational model. It should not bother us that the current impulse for this change was not an international conference or release of a ground changing study, but a virus.

2. My Personal Experience with a Flipped Classroom

During the spring semester of 2021, a colleague of mine and I decided to flip our Sociology of Law course. We had little experience with this method and we knew that to bring whatever change into a course for over 150 students logically tends to be more difficult than in smaller courses. Due to the pandemic, we needed to stay entirely online. Our flipped course looked like this:

At the first meeting with the students, we introduced the method and spent time explaining the reasons for the change, naturally stressing the benefits of using the method. Since the approach transfers more responsibility for learning to students, the motivational aspect of the first seminar cannot be overemphasized.

Practice Report

Five days before each of our weekly classes (starting from week two), we published materials for the class in our e-learning platform (Moodle). It included texts (collectively not more than 50 pages) and an audio or video (10 – 45 minutes) in which we offered students guidance on how to read the texts, introduced basic concepts and provided context. Together with the materials, students received four relatively broad questions, which directed them to the major issues in the materials. One day before the seminar, we shared a multiple-choice quiz (10-15 questions) checking their understanding of the materials and topics that had been provided. Each of the 3-4 quiz questions elaborated on one of the 4 broad questions students received with the content materials.

During each of our classes, we spend first 15 minutes or so going through the quiz. We used Google forms, which allowed us to make a self-assessing quiz that gave the students the designated correct answers and included comments from the teacher right after the submission. Additionally, it allowed students to retake the quiz as many times as they wanted – both before the class, and before the final exam (as authors of the *Make it stick* book⁷ point out, tests are a bad assessment method, but are a great method of learning, especially self-learning).⁸ When students arrived in the class, there was no need to give them the right answers and go through all the questions, we concentrated only on typical mistakes and difficult points. It also helped to prevent the challenge of some flipped classes: to come to class and just “*repeat content that has been delivered online*”.⁹ Since we saw the quizzes as a revision as well as learning tool and not a testing device, we even encouraged students to challenge the answers, come with more fitting options and help us to make the quizzes even better.

⁷ Peter C. Brown, Henry L. Roediger (III), and Mark A. McDaniel *Make it Stick*. (Harvard University Press, 2014).

⁸ Warren Binford, ‘How to Be the World’s Best Law Professor’ (2015) *Journal of Legal Education*. 64, 542.

⁹ See: Karim Hajhashemi, Nerina Caltabiano and Neil Anderson, ‘Integrating digital technologies in the classroom: Lecturers’ views on the flipped classroom approach’ (2016) *Australian and International Journal of Rural Education*, 26(3), 17.

Practice Report

During next 20-25 minutes, we went through 4 broad questions, which students received in advance with the materials. Since these questions were going to be used for the final exam (and students knew this from week one), we wanted to make sure that all students knew what materials provide answers, where the controversies lay and how relevant these topics were for law students (it was, after all, Sociology of Law class that some future lawyers might underestimate as irrelevant). One or two of these questions were assigned to online break-out rooms to give students the opportunity to share the results of their work and work together on a collective response. Even with over 150 students participating, when divided into groups of 5-6, it was possible to give them time to tackle the topic in a more intimate setting. Each group then shared their solutions/arguments in a shared document (to avoid lengthy oral briefings) and the teacher provided a more general commentary. When a controversial idea appeared, we spent more time on it, with the most active students formulating their thoughts. The main points of the other 2-3 questions were rather quickly summarized by the teacher.

The following 5-10 minutes provided room for other questions the students might have come across when preparing for the class. As a backup, we also had one or two more challenging questions ready. During the last couple of minutes of the meeting, we provided a quick summary of key points and introduced the topic for the following week.

Interestingly, some students wanted to stay longer and debate topics in more depth. I welcomed that and gradually turned that into an “official unofficial part of the class”: towards the end of each meeting, I offered to stay with students after the class (it typically took another twenty to sixty minutes). It resembled a small seminar for 10-15 active students, who were bringing their inquiries (and disagreements, of course) and debating enthusiastically. In my experience, the online delivery was in fact beneficial in this regard, since after offline class my students of this course typically

either leave, or come up to ask a quick individual question. No doubt, the impact of lockdowns, when people tend to hunger for social contact, played its role.

To support students' motivation and prevent them from falling off the course, we decided to give them a credited test every month (typically after every three weeks of teaching). These tests consisted entirely of questions from the weekly quizzes, we only slightly altered them (e.g. changed a positive statement into a negative or altered the name of the mentioned author) to make sure students read the options and did not just copy the correct answers. They needed to pass these tests (receive at least 50 %) to be allowed to take the exam at the end of the course. The tests thus were, as W. Binford recommends, low-risk tests administered outside of the classroom with low or no impact on the student's grade.¹⁰

3. Benefits of the Flipped Classroom

Based on my experience with the flipped classroom, I see five major benefits of the method. They are as follows:

1. Providing the content materials before the class allowed us to cut the length of weekly synchronous Zoom meetings to roughly half of the typical session length (45-60 minutes instead of 90 minutes). Based on the experience of mine, many of my colleagues and our students from teaching during the pandemic, as well as recommendations for synchronous teaching, good online delivery is rather short.¹¹ Similarly, many authors report the necessity to combat the "Zoom fatigue",¹² effecting majority of participants in synchronous meetings

¹⁰ Warren Binford, 'How to Be the World's Best Law Professor' (2015) *Journal of Legal Education*. 64, 542.

¹¹ Christina Sabo, *Best Practices for Synchronous Online Teaching and Learning | Learning Technologies at College of DuPage* [online] (2020) <<https://www.codlearningtech.org/2020/10/05/best-practices-for-synchronous-online-teaching-and-learning/>>; Amy Wallace, 'Cyberspace Back to the Classroom: Taking Lessons Learned from Teaching Street Law during the Pandemic Back to In-Person Instruction' (2021) *International Journal of Clinical Legal Education*. 28(2).

¹² Jutta Rump and Marc Brandt, 'Zoom-Fatigue' (2020) *Eine Studie des Instituts für Beschäftigung und Employability. IBE, Ludwigshafen* <https://www.ibe-ludwigshafen.de/wp-content/uploads/2020/09/Folien_IBE-Studie_Zoom-Fatigue.pdf>; Liz Fosslien and Mollie West Duffy, 'How to combat zoom fatigue' (2020) *Harvard Business Review*. 2020, <<https://hbr.org/2020/04/how-to>

(one study reported that approximately 60% of respondents state experience with it).¹³ It leads, among others, to reduced concentration and impatience. One of the most effective solutions, well in line with our teaching experience, is to “limit the meeting time” as well as include frequent “breaks between and within meetings”.¹⁴ A. Wallace recommended her Street Law students to limit „screen for less than an hour – ideally around forty-five minutes“ and implemented „a 30/30/30 classroom framework. This schedule was thirty minutes on Zoom, thirty minutes for an independent assignment, and then thirty minutes of Zoom.“¹⁵

2. One of the greatest difficulties of the typical lecture (and to some degree of all teaching) is that it is inevitably delivered at a wrong pace. For some students it runs too quickly, some are bored by its slowness; some are more mentally alert in the morning, and for some their brains only start properly working in the afternoon.¹⁶ By providing the content in a form of a video, podcast or text, students can respect their rhythms, study at whatever speed suits them (I do not mind being played at the 2x, or indeed 0.5x speed) and can revisit the

combat-zoom-fatigue>; Jeremy N. Bailenson, 'Nonverbal overload: A theoretical argument for the causes of Zoom fatigue' (2021) *Technology, Mind, and Behavior*, 2(1) DOI: 10.1037/tmb0000030; Amy Wallace, 'Cyberspace Back to the Classroom: Taking Lessons Learned from Teaching Street Law during the Pandemic Back to In-Person Instruction' (2021) *International Journal of Clinical Legal Education*. 28(2).

¹³ Jutta Rump and Marc Brandt, 'Zoom-Fatigue' (2020) *Eine Studie des Instituts für Beschäftigung und Employability*. IBE, Ludwigshafen, https://www.ibe-ludwigshafen.de/wp-content/uploads/2020/09/Folien_IBE-Studie_Zoom-Fatigue.pdf.

¹⁴ *ibid.* Other solutions might include, as Jeremy N. Bailenson points out “... changes to the design of the Zoom interface. For example, the default setting should be hiding the self-window instead of showing it, or at least hiding it automatically after a few seconds once users know they are framed properly. Likewise, there can simply be a limit to how large Zoom displays any given head... Outside of software, people can use an external webcam and external keyboard that allows more flexibility and control over various seating arrangements. Make “audio only” Zoom meetings the default, or better yet, insist on taking some calls via telephone to free your body from the frustrum.” Jeremy N. Bailenson, 'Nonverbal overload: A theoretical argument for the causes of Zoom fatigue' (2021) *Technology, Mind, and Behavior*, 2(1) DOI: 10.1037/tmb0000030.

¹⁵ Amy Wallace, 'Cyberspace Back to the Classroom: Taking Lessons Learned from Teaching Street Law during the Pandemic Back to In-Person Instruction' (2021) *International Journal of Clinical Legal Education*. 28(2).

¹⁶ Geoff Petty, *Teaching today: a practical guide*. (Oxford University Press, 2016); Warren Binford, 'How to Be the World's Best Law Professor' (2015) *Journal of Legal Education*. 64, 542.

material if needed, which is what many authors report students enjoy.¹⁷ I personally hugely enjoyed the fact that I didn't have to look at bored student faces and know that whatever I do, the way I lecture – even when I do it interactively and only for a couple of minutes here and there during each seminar – is doomed to be truly beneficial only to a minority of students, since for the majority of them it will inevitably be at a wrong pace.¹⁸ Moreover, during the pandemic, many people needed to undertake new duties and benefited from the flexibility the flipped classroom gave them. As J. Nouri observed in his study, “students appreciated learning through using video material, the opportunity to study in their own pace, flexibility and mobility brought about by accessible video lectures, and that learning is easier and more effective within the frame of the flipped classroom.”¹⁹

To find the right pace of teaching is difficult in all classes but the larger the group and the less frequent interaction between the teacher and the students, the more difficult this task gets. Lectures are, as pointed out earlier, popular by managers of education partly because they can accommodate many students at one time (hundreds, like in our course of Sociology of Law, and in some cases even thousands). While it is true that implementing flipped classroom does not decrease the number of students in the group, it does offer some solution to finding an appropriate teaching pace by allowing students to study the content of the lesson at their own pace before the class and

¹⁷ See the results of Jalal Nouri. 'The flipped classroom: for active, effective and increased learning—especially for low achievers' (2016) *International Journal of Educational Technology in Higher Education*. 13 DOI: 10.1186/s41239-016-0032-z; Karim Hajhashemi, Nerina Caltabiano and Neil Anderson, 'Integrating digital technologies in the classroom: Lecturers' views on the flipped classroom approach' (2016) *Australian and International Journal of Rural Education*, 26(3), 17; Amy Wallace, 'Cyberspace Back to the Classroom: Taking Lessons Learned from Teaching Street Law during the Pandemic Back to In-Person Instruction' (2021) *International Journal of Clinical Legal Education*. 28(2); Gregory. S. Mason, Teodora. R. Shuman and Kathleen. E. Cook, 'Comparing the Effectiveness of an Inverted Classroom to a Traditional Classroom in an Upper-Division Engineering Course' (2013) *IEEE Transactions on Education*, 56(4), 430.

¹⁸ See Geoff Petty, *Teaching today: a practical guide*. (Oxford University Press, 2016).

¹⁹ Jalal Nouri. 'The flipped classroom: for active, effective and increased learning—especially for low achievers' (2016) *International Journal of Educational Technology in Higher Education*. 13 DOI: 10.1186/s41239-016-0032-z.

restrict the class time for interactions – between students and students and the teacher –, which is something traditional lectures lack and even modern interactive lectures typically do not provide in sufficient amount.²⁰ It is only fair to add that finding the right teaching tempo might be challenging even for smaller courses and small group sessions, while even there some students work slower and some faster. Therefore, thinking about flipping some parts of even smaller courses does make sense and might in fact lead to even more profound changes in course effectiveness.²¹ Effectiveness of flipping the courses is supported also by experience from other areas, e.g. health professions education.²²

1. Students are given greater responsibility for their own learning. They must find time to cover the content materials and prepare answers for the provided questions. It is up to them to decide whether they want to study alone or with their fellow students. As other authors observe, passing more responsibility for learning to students, when done correctly, tends to increase their motivation and effectivity of learning.²³ Correspondingly, the role of the teacher changes: from lecturing stars in the class spotlight they become more managers of the course, facilitators of discussion and students' learning; and a hopefully valuable resource.

²⁰ For the importance of teaching interactively, see e.g. Nadezhda O. Yakovleva and Evgeny V. Yakovlev, 'Interactive teaching methods in contemporary higher education' (2014) *Pacific Science Review*, 16(2) 75; Amy Wallace, 'Cyberspace Back to the Classroom: Taking Lessons Learned from Teaching Street Law during the Pandemic Back to In-Person Instruction' (2021) *International Journal of Clinical Legal Education*. 28(2).

²¹ For different flipped classroom formats, see: Jacob Bishop and Matthew A. Verleger, *The flipped classroom: A survey of the research*. (2013) 120th ASEE Annual Conference and Exposition, June 23-26.

²² Khe Foon Hew and Chung Kwan Lo, 'Flipped classroom improves student learning in health professions education: a meta-analysis' (2018) *BMC medical education*, 18(38), <https://doi.org/10.1186/s12909-018-1144-z>.

²³ Josephine Bujan, 'Increasing Students' Responsibility for Their Own Learning' (1996); Lyn Corno, 'Encouraging students to take responsibility for learning and performance' (1992) *The Elementary School Journal*. 93(1), DOI <https://doi.org/10.1086/461713>; Gregory. S. Mason, Teodora. R. Shuman and Kathleen. E. Cook, 'Comparing the Effectiveness of an Inverted Classroom to a Traditional Classroom in an Upper-Division Engineering Course' (2013) *IEEE Transactions on Education*, 56(4), 430; Brenda Alvarez, 'Flipping the classroom: Homework in class, lessons at home' (2012) *The Education Digest*, 77(8), 18.

2. The core of my work happens before the class (choosing the right texts, record a video, prepare the quiz and the synchronous meeting) and there are far fewer reasons to feel stressed about the class (“How well will I lecture today?”). To record oneself may be stressful, too (and it certainly was for me at the beginning), and time-consuming²⁴, but I enjoyed that I could record the video as many times as I wanted to and as the number of attempts was steadily decreasing during the semester, since I got used to the camera and became less self-critical, I needed far less time to finish the video.²⁵ Eventually, I chose only audio format, which simplified the process even further. Another great support was that the videos could be made available only to signed-in students and not all university students or even the whole internet, and only for limited time span (the current semester). Like students, teachers also enjoy more flexibility in a flipped class. With proper preparation, the synchronous meetings should run smoothly, supported by the energy of students’ questions and interest in the topic, which is typically sparked by the provided content material and the questions.

3. I found it is far easier and quicker for me to cover the basics of each topic by flipping the class, which allows me to devote more time to its more difficult aspects. With the content provided via recorded videos or texts that students can revisit when it suits them and use when studying for the exam, with comprehension tested through self-evaluating weekly quizzes and with students having the opportunity to formulate their questions in synchronous meetings, I am far more confident that we really covered the basics in this way. During the weekly meetings, we could therefore spend most of the time discussing more challenging rather than basic issues. Additionally, I was far

²⁴ Karim Hajhashemi, Nerina Caltabiano and Neil Anderson, 'Integrating digital technologies in the classroom: Lecturers’ views on the flipped classroom approach' (2016) *Australian and International Journal of Rural Education*, 26(3), 17.

²⁵ See also William R. Slomanson, 'Blended learning: A flipped classroom experiment' *Journal of Legal Education*, 64(1), 93.

more confident that we examined what was truly covered in the course (it was not only “said” during the class, but is stored in videos, podcasts, texts and quizzes students have at their hands). This experience is supported by the data from other courses. One study e.g. found that the flipped classroom model “allowed the instructor to cover more material” and that students “performed as well or better on comparable quiz and exam questions and on open-ended design problems”.²⁶

4. Weak Points of a Flipped Classroom and How we Addressed them

As any method, also flipped classroom has its disadvantages.²⁷ Based on my experience with the method, these stranded out for me:

1. By transferring more responsibility for the learning process to students, teachers naturally lose some control. As a large portion of the student work is done at home, the teacher has no guarantee that students have actually watched assigned videos or read the required texts. Some students might even get lost on the way and de facto drop out of the course during the semester. Understandably, these possibilities are even more relevant in online courses. Other authors also identify students’ engagement as an important challenge in flipping a class.²⁸

To mitigate these risks, we ran weekly quizzes that provided basic feedback to both students and teachers and gave students credited tests every three weeks to keep them engaged during the semester and alleviate pressure typical for the last course week

²⁶ Gregory. S. Mason, Teodora. R. Shuman and Kathleen. E. Cook, ‘Comparing the Effectiveness of an Inverted Classroom to a Traditional Classroom in an Upper-Division Engineering Course’ (2013) *IEEE Transactions on Education*, 56(4), 430.

²⁷ A good summary of challenges of flipped courses contains this meta-study: Gökçe Akçayır and Murat Akçayır, 'The flipped classroom: A review of its advantages and challenges' (2018) *Computers & Education*, 126, 334. The most often mentioned in analysed studies are these: time consuming, quality of videos, limited student preparation before class, workload increase.

²⁸ Karim Hajhashemi, Nerina Caltabiano and Neil Anderson, 'Integrating digital technologies in the classroom: Lecturers’ views on the flipped classroom approach' (2016) *Australian and International Journal of Rural Education*, 26(3), 17.

when tests are more typically taken. This approach is in line with the current scientific research of effective learning, which favours frequent, low-risk testing.²⁹ As W. Binford summarizes it, “self-testing... and low-risk testing that can be administered outside of the classroom with low or no impact on the student’s grade... is a ‘high-utility’ learning method... we need to test our students earlier, more, and in low-risk settings if we want to increase their retention, comprehension, and test performance on that high-stakes final exam that we rely on for final assessment, as well as the bar exam after they graduate.”³⁰ Similarly, a meta-analysis of flipped health professions courses found that their effectiveness increases when “instructors use quizzes at the start of each in-class session”.³¹

Moreover, we deliberately included group work³² in synchronous meetings to activate peer-pressure and give students the opportunity to discuss their understanding of the assigned home materials and experience at least some teamwork. It also helped us to realize that simply attending lectures does not guarantee learning, when students remain passive inside but can even make things worse; it creates an illusion that students are “in certain way in contact with the topic” and deprives students of precious time for studying (even 45 minutes a week makes for a substantial portion of a study time).³³ Some studies also recommend not to apply this method to students of

²⁹ Warren Binford, ‘How to Be the World’s Best Law Professor’ (2015) *Journal of Legal Education*. 64, 542; Harry P. Bathrick and Lynda K. Hall, ‘The importance of retrieval failures to long-term retention: A metacognitive explanation of the spacing effect’ (2005) *Journal of Memory and Language*, 52(4), 566; Nicholas C. Soderstrom and Robert A. Bjork, ‘Testing facilitates the regulation of subsequent study time’ (2014) *Journal of Memory and Language*, 73(1), 99.

³⁰ Warren Binford, ‘How to Be the World’s Best Law Professor’ (2015) *Journal of Legal Education*. 64, 542; John Dunlosky, et al. ‘Improving students’ learning with effective learning techniques: Promising directions from cognitive and educational psychology’ (2013) *Psychological Science in the Public Interest*, 14(1), DOI: <https://doi.org/10.1177/1529100612453266>.

³¹ Khe Foon Hew and Chung Kwan Lo, ‘Flipped classroom improves student learning in health professions education: a meta-analysis’ (2018) *BMC medical education*, 18(38), <https://doi.org/10.1186/s12909-018-1144-z>.

³² For its importance, see e.g. Gökçe Akçayır and Murat Akçayır, ‘The flipped classroom: A review of its advantages and challenges’ (2018) *Computers & Education*, 126, 334; Amy Wallace, ‘Cyberspace Back to the Classroom: Taking Lessons Learned from Teaching Street Law during the Pandemic Back to In-Person Instruction’ (2021) *International Journal of Clinical Legal Education*. 28(2).

³³ See Warren Binford, ‘How to Be the World’s Best Law Professor’ (2015) *Journal of Legal Education*. 64, 542; and Jalal Nouri, ‘The flipped classroom: for active, effective and increased learning—especially for low achievers’ (2016) *International Journal of Educational Technology in Higher Education*. 13 DOI:

the first year (which was the case of our course), since they need to familiarize with the university education first.³⁴

2. Teachers need to accept both the change of their role and that of an acceptable format of study materials. While traditional teaching methods – and lectures in particular – are “one teacher’s show”, where the teacher does most of the work (no wonder they are tired afterward), in flipped classes they become more managers of the course, facilitators of discussions and supporters of the students’ learning process. Not every teacher is ready for such a shift and even those who are persuaded that they are will repeatedly find themselves talking during the classes far more than necessary. Old habits die hard as the saying goes. We certainly did and needed to repeatedly remind ourselves of the benefits of the flipped approach that might be ruined by teachers assuming too much activity in the class. Apart from the role of the teacher, the format of the study materials needs thought and development³⁵ – not only lectures (typically recorded and shortened into more digestible versions) and texts (textbooks, articles) but other aids such as short videos and podcasts are being used.³⁶ In this regard, the pandemic has certainly helped to open us towards using technology and a range of formats, which we previously overlooked or marginalized.³⁷

10.1186/s41239-016-0032-z, s. 13., which concluded that “...this study indicate that the flipped classroom model seem to offer promising ways to engage students in more effective, supportive, motivating and active learning, especially for low achievers and students that may struggle with traditional lectures.”

³⁴ Gregory. S. Mason, Teodora. R. Shuman and Kathleen. E. Cook, ‘Comparing the Effectiveness of an Inverted Classroom to a Traditional Classroom in an Upper-Division Engineering Course’ (2013) *IEEE Transactions on Education*, 56(4), 430; Karim Hajhashemi, Nerina Caltabiano and Neil Anderson, ‘Integrating digital technologies in the classroom: Lecturers’ views on the flipped classroom approach’ (2016) *Australian and International Journal of Rural Education*, 26(3), 17.

³⁵ Some authors require that the materials provided in flipped classroom before the class are videos, not written materials. See: Jacob Bishop and Matthew A. Verleger, *The flipped classroom: A survey of the research*. (2013) 120th ASEE Annual Conference and Exposition, June 23-26.

³⁶ For varieties of the flipped classroom method, see: *ibid*.

³⁷ For concrete instances of out-of-class activities in flipped courses that might be used with the help of technology, as well as challenges that they bring, see the following meta-study: Gökçe Akçayır and

3. Last but not least, any change requires extra input – resource-wise and in terms of time and energy. To follow the status quo is typically – in the short run at least – less demanding, while flipping things around needs effort. The larger the group the more input may be required even if key considerations remain the same. Most of the “transactional costs” of the change lie with teachers, who need to say goodbye to some (or indeed most of) of their previous lesson plans and devote extra time to finding appropriate readings, record videos and prepare quizzes.³⁸ But also students need to get used to a new model of class organization, especially when they have not yet experienced a flipped classroom before. It certainly helped us to introduce the method and its benefits at the very first meeting and repeatedly remind ourselves and sometimes also the students about why this new format has been chosen.

Based on the course evaluation, students support implementing the method (54 % respondents see it as a positive change) and especially appreciate recording videos (66 % of them would even prefer to have them for every lesson) and group work during synchronous meetings. The number of students attending the course was not decreasing, which had rather been a norm in previous years. However, the evaluations also revealed that some students felt overwhelmed and considered the provided materials too demanding, which seems to be the most common challenge in a flipped course.³⁹ For the next year, we clearly need to better both prepare and accommodate students’ expectation of the course and reconsider the length and scope

Murat Akçayir, 'The flipped classroom: A review of its advantages and challenges' (2018) *Computers & Education*, 126, 334.

³⁸ To see how demanding this task may be, see: Karim Hajhashemi, Nerina Caltabiano and Neil Anderson, 'Integrating digital technologies in the classroom: Lecturers’ views on the flipped classroom approach' (2016) *Australian and International Journal of Rural Education*, 26(3), 17.

³⁹ See e.g. this meta-study: Gökçe Akçayir and Murat Akçayir, 'The flipped classroom: A review of its advantages and challenges' (2018) *Computers & Education*, 126, 334.

of provided materials. The experience of other teachers suggest that videos tend to be more effective than texts and that their length might be reduced.⁴⁰

This experience is in line with previous research. As observed in one of the studies, “students recognized that the new format required self-discipline and necessitated some adjustment to their study habits. By week four, students felt that the flipped class was a better use of class time and that the format better prepared them for engineering practice.”⁴¹

Moreover, over the course, students may indeed start watching the videos more often (e.g. one study found that videos tend to be watched almost 3 times by every student).⁴²

Additionally, based on the experience with remote teaching of flipped and traditional courses during the pandemic, I will seriously consider using some proven interactive tools even during face-to-face meetings, such as Jamboard, Kahoot or Padlet.⁴³ Likewise, I am ready to make use of technology and invite virtual guest-lectures, which will allow me to bring professionals from the field and experts from other countries.⁴⁴ The experience with embracing the online dimension of our work and not leaving it completely once schools fully reopen is shared by many teachers and runs e.g. through the papers published in the special issue of the International Journal of Clinical Legal Education from 2020, which maps the responses to coronavirus in clinical and public legal education.⁴⁵

⁴⁰ See: Jacob Bishop and Matthew A. Verleger, *The flipped classroom: A survey of the research*. (2013) 120th ASEE Annual Conference and Exposition, June 23-26. For the question of the video’s length, see the last part of this paper.

⁴¹ Gregory. S. Mason, Teodora. R. Shuman and Kathleen. E. Cook, ‘Comparing the Effectiveness of an Inverted Classroom to a Traditional Classroom in an Upper-Division Engineering Course’ (2013) *IEEE Transactions on Education*, 56(4), 430.

⁴² *ibid.*

⁴³ Amy Wallace, ‘Cyberspace Back to the Classroom: Taking Lessons Learned from Teaching Street Law during the Pandemic Back to In-Person Instruction’ (2021) *International Journal of Clinical Legal Education*. 28(2).

⁴⁴ See *ibid.*

⁴⁵ Hugh McFaul and Francine Ryan, ‘Special Issue - Clinical and Public Legal Education: Responses to Coronavirus’ (2020) *International Journal of Clinical Legal Education*, 27(4).

5. Questions for Further Thought

Despite the generally positive experience with the method, several aspects require further consideration. They might represent space for further development or shortcoming (or even a trap) of the method – I clearly need more experience with the flipped approach to be able to tell. Some of these issues have indeed been addressed by other teachers, whose experience I take as an inspiration.

- a) How much content material should be provided before the class? Generally, the shorter the videos the more students watch them.⁴⁶ Some authors recommend limiting yourself to only circa 10 minutes long video.⁴⁷ But would not it mean that students will naturally stay only on the surface of the topic, unable to address its more difficult aspects? We used combination of circa 30 minutes long video/audio recordings and texts of up to 50 pages.
- b) For the sake of both students and teachers, we started each session with a quick non-credited quiz testing students' understanding of the provided materials. Many other teachers did the same, sometimes upon recommendations of their students, and considered it a "*highly successful practice*".⁴⁸ Some authors suggest that classes may successfully run without these quizzes, since students are adult enough to prepare responsibly for the class and understand the topic.⁴⁹ However, wouldn't even responsible students benefit from checking their understanding through weekly quizzes?⁵⁰ Can teaching effectively work even without these entrance tests, especially in large courses?

⁴⁶ Jacob Bishop and Matthew A. Verleger, *The flipped classroom: A survey of the research*. (2013) 120th ASEE Annual Conference and Exposition, June 23-26.

⁴⁷ William R. Slomanson, 'Blended learning: A flipped classroom experiment' *Journal of Legal Education*, 64(1), 93; EDUCAUSE. *7 Things You Should Know About Flipped Classrooms*. Shorter vid

⁴⁸ Jacob Bishop and Matthew A. Verleger, *The flipped classroom: A survey of the research*. (2013) 120th ASEE Annual Conference and Exposition, June 23-26.

⁴⁹ William R. Slomanson, 'Blended learning: A flipped classroom experiment' *Journal of Legal Education*, 64(1), 93.

⁵⁰ See Peter C. Brown, Henry L. Roediger (III), and Mark A. McDaniel *Make it Stick*. (Harvard University Press, 2014).

- c) In what ways can we include students in the design of a flipped course? They can surely prepare a quiz checking their basic understanding of the content materials and perhaps make collective notes from the class saved into a shared document, but can they make introductory videos or organize synchronous meetings?
- d) A flipped class clearly demands more active students than in traditional settings and might not suit everybody. As a meta-study on flipped classroom summarizes, “*general reports of student perceptions were relatively consistent. Opinions tended to be positive, but there were invariably a few students who strongly disliked the change*”.⁵¹ What other strategies – apart from quizzes, short videos and interactive, student-oriented synchronous meetings – can be used to positively increase student motivation and experience from a flipped class? The literature evaluating the effectiveness of a flipped classroom has many more to offer (e.g. problem solving, groups projects, concept mapping or word clouds).⁵²

Without overlooking the negative side of flipping a class, nor forgetting the questions raised above, I came to the conclusion that its advantages prevail and I intend to use it in the future, be that at distant and/or in face-to-face learning situations. My expectation, based on the experience of others,⁵³ is that it will work even better face-to-face since physical interaction is more likely to aid participation and engagement –

⁵¹ Jacob Bishop and Matthew A. Verleger, *The flipped classroom: A survey of the research*. (2013) 120th ASEE Annual Conference and Exposition, June 23-26. Also a meta-study from the field of health professions education reveals that „*more respondents reported they preferred flipped to traditional classrooms.*“. HEW, Khe Foon – LO, Chung Kwan. *Flipped classroom improves student learning in health professions education: a meta-analysis*.

⁵² See: Khe Foon Hew and Chung Kwan Lo, 'Flipped classroom improves student learning in health professions education: a meta-analysis' (2018) *BMC medical education*, 18(38), <https://doi.org/10.1186/s12909-018-1144-z>.

⁵³ William R. Slomanson, 'Blended learning: A flipped classroom experiment' *Journal of Legal Education*, 64(1), 93.

which is an experience many of us were forced to learn during the pandemic.⁵⁴ By flipping the course even in its face-to-face version and providing the content of the lesson in advance, there will be far more time and space for interactive elements such as group work and discussion. These elements are typically enjoyed by both students and teachers and flipping a class provides more space for them, since it frees much of the time of synchronous meetings.⁵⁵ Recorded videos/audios available during the whole semester for signed-in students, quizzes checking the understanding of homework and robust e-learning support are tools that I definitely intend to use extensively even after the schools fully reopen.

⁵⁴ Amy Wallace, 'Cyberspace Back to the Classroom: Taking Lessons Learned from Teaching Street Law during the Pandemic Back to In-Person Instruction' (2021) *International Journal of Clinical Legal Education*, 28(2).

⁵⁵ See: Jacob Bishop and Matthew A. Verleger, *The flipped classroom: A survey of the research*. (2013) 120th ASEE Annual Conference and Exposition, June 23-26; Gregory. S. Mason, Teodora. R. Shuman and Kathleen. E. Cook, 'Comparing the Effectiveness of an Inverted Classroom to a Traditional Classroom in an Upper-Division Engineering Course' (2013) *IEEE Transactions on Education*, 56(4), 430.

CLEO: CLINICAL LEGAL EDUCATION ORGANISATION

QUALIFYING WORK EXPERIENCE GUIDANCE FOR UNIVERSITY LAW CLINICS

Lucy Blackburn, University of Central Lancashire

1. Introduction

In order to help law clinics navigate the new regulations, a small working group from CLEO have put together this draft guide to the QWE. In developing this guide, we recognise that the new routes to qualification are controversial and we are not endorsing or expressing approval for these routes to qualification. As an organisation, CLEO is committed to developing clinical legal education as a rich and innovative method for teaching law. Legal education, in particular for undergraduates, is about much more than qualifying as a solicitor and indeed many law graduates do not go onto qualify as legal professionals. However, we are aware that many of our members will be offering qualifying work experience, or may be asked by senior management to offer qualifying work experience and we therefore want to develop guidance for our members to assist with navigating the new regulations. This guidance is to assist university law clinics only, when encountering a student's claim for QWE.

Many thanks to the members of CLEO and beyond who have contributed to this guidance.

In this guidance these terms have the following meaning:

Clinic Lead: Solicitor who confirms QWE

Competencies: those listed within the Statement of Solicitor Competence.

SQE: Solicitors Qualifying Exam

QWE: Qualifying Work Experience

2. What is Qualifying Work Experience?

Under the SQE, individuals wishing to be admitted as a solicitor need to complete QWE.

The SRA define QWE as

any experience of providing legal services that offers a candidate the opportunity to develop some or all of the competences needed to practise as a solicitor

The definition of QWE should also be read in conjunction with the guidance issued by the SRA:¹

- QWE involves experience of providing legal services which enables an individual to develop some or all of the competencies outlined in the Statement of Solicitor Competence, including professionalism and ethics needed to practice as a solicitor.
- QWE may be obtained in England or Wales or overseas.
- In total, QWE must be at least two years working full time or the equivalent on a part time basis. There is no minimum or maximum prescribed length of each individual placement or stage.
- QWE can be obtained in up to four separate organisations providing legal services, including non-SRA regulated organisations, including university law clinics.
- QWE is confirmed by a solicitor.
- Historic QWE can be claimed.

¹ <https://www.sra.org.uk/solicitors/guidance/colps-confirming-qualifying-work-experience/>

Candidates register their two years QWE with the SRA by the time they apply to be admitted as a solicitor. However, a candidate can register any completed QWE from now.

For a candidate employed by a firm of solicitors following a traditional training programme, satisfying the definition of QWE will not cause issue. However, different issues arise for students wanting to claim QWE for time spent in university law clinics. This guidance provides these clinics an opportunity to consider whether they can confirm QWE.

3. Legal Services

QWE can only be claimed when engaged in the provision of legal services and that QWE must be grounded in 'legal work'. Whilst the term 'legal services' is not defined within the QWE guidance, for the purpose of this guidance, 'legal services' will be interpreted as having the same definition as 'legal activity' under the Legal Services Act 2007 s12(3)(b) & (d)²:

- (b) any other activity which consists of one or both of the following –*
 - (i) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes;*
 - (ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes.*

- (d) but 'legal activity' does not include any activity of a judicial or quasi-judicial nature (including acting as a mediator).*

The use of the words 'advice' 'assistance' and 'representation' have been interpreted to include most activities undertaken by university law clinics (including Support

² Since the initial distribution of this guidance in October 2021, the SRA now refer candidates to s12 Legal Services Act to assist in deciding whether their role involves delivering legal services.
<https://www.sra.org.uk/become-solicitor/sqe/qualifying-work-experience-candidates/>

through Court projects). What has been excluded from this guidance are clinics that engage in 'quasi-judicial' activities such as mediation or arbitration clinics and clinics which do not provide live-client work, such as simulation clinics. In these circumstances, students will not be able to claim QWE, even if they are working under the supervision of a solicitor and are provided with an opportunity to develop some or all of the competencies.

The following will need careful consideration:

- Policy Clinics: If the clinic has an identifiable client that has asked for legal advice/assistance, this would be classed as QWE. However, if a policy clinic were looking at an issue created by a clinic member of other academic, this lack of identifiable client would prevent the confirmation of QWE.
- The term 'Street law' is used for a multitude of projects which can vary greatly in nature. Universities running Street law projects need to give careful consideration as to whether these are capable as being classed as QWE. Whilst the projects will give students an opportunity to develop all or some of the competencies, not all will be engaged in the provision of 'legal, advice or assistance'. If a project gives information rather than legal advice/assistance to a non-specific client, it would be difficult for this to be classed as QWE. Clinics/universities should also check how their Street law activities are viewed by their insurers; projects may be classed as '*information only*' as opposed to '*advice provision*' for insurance purposes.
- Multi-disciplinary clinics: QWE will only be able to be claimed for the legal advice given. For example: a joint tax/business law clinic will only be able to confirm QWE for the time spent engaged in the provision of legal advice.

4. Confirmation of Qualifying Work Experience

For the period claimed, the candidate must obtain the following confirmation to register the QWE:

1. The period of time being claimed;
2. There was an opportunity to develop some or all of the prescribed competencies for solicitors; and
3. No issues arose during the period being claimed that raise questions over the candidate's character and suitability to be admitted as a solicitor.

The SRA are unequivocal that if a candidate has been given the opportunity to develop some or all of the competencies, QWE must be confirmed. Clinics need to be aware there is no choice about whether or not to confirm QWE claimed. If the opportunity to develop has been arisen, QWE can be claimed and must be confirmed. Any clinics who are **not** wanting to confirm QWE may have to look to changing their clinic provision to one which does not offer a legal activity, as this is the only way in which clinic activities will not amount to QWE.

A solicitor must confirm QWE. Importantly, this person does not need a current practising certificate. However, a barrister or a foreign qualified lawyer cannot confirm QWE. There is no way (at present) to allow a non-English or Welsh solicitor the ability to confirm QWE unless they were themselves to qualify under the SQE.

Clinics will need to decide who will confirm the QWE claimed by the candidate. When dealing with external clinic activities (such as placements), consideration should be given to whether the clinic can confirm the QWE rather than the host organisation. If the latter were to confirm the student has potentially used one of their four stages of QWE. QWE can also be confirmed by solicitors external from the University, as long as they have personal knowledge of the student's work and feedback.³

Clinics should be reminded that confirming QWE is not the equivalent to confirming the competence of the claimant. The test of competence is SQE 2. The solicitor is confirming the candidate had the opportunity to develop the Competencies. QWE

³ <https://www.sra.org.uk/become-solicitor/sqe/qualifying-work-experience/qualifying-work-experience-employers/>

would be able to be confirmed in the event a student failed a credit bearing clinic module, as the solicitor is confirming facts rather than passing judgement on the student's ability.

When confirming QWE, 'the solicitor should confirm they are complying with the Principles within the Solicitors Code of Conduct to act honestly, fairly at all times and not to abuse your position by taking unfair advantage of an individual'.⁴ A refusal to confirm QWE that meets the criteria will be a breach of the SRA Principles. However, solicitors can also rely on the same principles if they cannot, with all honesty, confirm the QWE.

For example, a claim for historic QWE may be refused if:

- No records have been kept
- The claim goes beyond the organisation's data retention period
- There are no individuals from that time still employed who can verify the experience.

5. An 'opportunity to develop'

QWE must include the opportunity to develop all or some of the Competencies assessed in SQE 2. Whilst there is no exact definition of what exactly is an 'opportunity to develop', the SRA have given guidance on what 'good QWE' could look like for non-SRA regulated organisations (which would include law clinics).⁵

- a) Carrying out a diverse and varied work, giving exposure to some or all of the Competencies.
- b) Regular opportunities for candidates to reflect on their performance.
- c) Support through the work experience.

⁴ <https://www.sra.org.uk/solicitors/guidance/colps-confirming-qualifying-work-experience/>

⁵ <https://www.sra.org.uk/solicitors/guidance/meeting-standards-good-qualifying-work-experience/>

- d) Develops professionalism and exposure to ethical issues.
- e) Learn from experienced solicitor-role models within and outside of the organisation.
- f) Effective supervision, to include support in collating evidence to record QWE.

For university law clinics, demonstrating compliance with points b-f will be achievable as these will be expected outcomes of time spent engaged in clinic. However, point a, is more problematic and will be the focus of this section. The SRA acknowledge that repetitive and limited administrative tasks and legal transactions are unlikely to help development, as is undertaking a task on a single occurrence. However, if a candidate undertakes an activity on a couple of occasions and this provides an opportunity to develop a competence, QWE can be claimed. This is a purposefully low bar threshold to allow the maximum amount of activities to be claimed as QWE.

Some clinics may be able to offer an opportunity to develop **all** the Competencies, but all clinics will be able to offer **some**. The individual clinic will have to decide whether the clinic activities are provided to a requirement sufficient to allow an opportunity to develop a competence. To have confidence in the QWE being confirmed, clinics are advised to conduct a full audit of the activities carried out and map these against the Statement of Solicitor Competence. For inter-curricular clinics, this mapping exercise could be linked with the module aims and objectives. (See Appendix 1)

Clinics will then be able to confirm at the start of a candidate's engagement, the exact competencies the candidate will have an opportunity to develop and importantly which competencies they will not. This list of competencies could be included within the initial clinic recruitment meetings or within the contract/agreement signed by the students. Consideration should also be given as to whether this is mentioned in any external communications to prospective students. By limiting the number of

competencies available to be claimed, protection is afforded to the clinic by the prevention of any disagreements with the student.

Students will have to be forewarned that situations may arise where they are prevented from being given an opportunity to develop. For instance, if 'live' clients do not attend meetings and simulation interviews are conducted instead. Here, no QWE can be claimed due to the lack of 'provision of legal service'.

6. Time awarded

There is no minimum time threshold for claiming QWE and no guidance given on how to calculate the time spent; only that QWE must equate to two years FTE. Consequently, the amount of QWE claimed by a candidate in university law clinics for a single placement, may only equate to a small amount of time – days or even hours. The SRA is clear that even a very small amount of time can be claimed as QWE.

Given the lack of lower time limits for QWE, clinics need to counsel their students that just because they CAN claim QWE does not always mean they SHOULD. Claiming QWE for time spent in clinics will count as one of the 'four stages' of QWE. The candidate should be counselled as to the implications of using one of their 'four stages' for what could arguably be a small amount of time. Clinics would be well placed to remind students about the intrinsic value of time spent in clinic generally as work experience, the employability benefit and the social justice arguments.

Students will also need to be counselled that even though QWE claimed in clinic would lead to an earlier qualification date under SQE, some employers may not reduce the length of any formal training programme. Whilst an employer has no discretion about when a candidate will qualify if they have amassed 2 years FTE QWE, this may have no consequence regarding the employment contract (and salary) in place.

When deciding what time should be awarded, university law clinics can use a 'common-sense approach' of confirming average hours. The SRA do not prescribe

what 'full time or equivalent is but expect QWE providers to take a common-sense view of what they mean by full time'. If clinics want to proceed on an average hour basis for awarding QWE, this would be acceptable with the current SRA rhetoric. Clinics are advised as part of the competency mapping exercise to consider how long, on average, a student would be engaged with clinic. Clinics should communicate the hours capable of being claimed to students at the start of any clinic activity. Circumstances may arise where the average hours need to be deviated from, but it is expected these will be the exception rather than the norm. For example, if a student was not in attendance for all the sessions, the clinic may consider apportioning the time awarded on a pro-rata basis.

Clinics may also consider offering a portfolio of QWE to students. If various clinic activities are offered, these can all be rolled together to create one larger and perhaps more substantial amount of QWE and importantly be categorised as only 'one stage' of the potential four. Added to this portfolio could also be time spent on placements (if they meet the QWE criteria and the solicitor confirming has personal knowledge of the student's work and feedback given). Clinics would need to make sure their internal reporting systems allow for numerous segments of QWE to be claimed throughout a student's university career which would be classed as just one 'stage'.

7. Character and Suitability

When confirming QWE, the solicitor must also confirm that no character and suitability issues regarding the candidate arose during the period of QWE claimed.

The SRA guidance confirms:

You are not making a judgement on an individual's suitability to be a solicitor. Instead, if any issues came up during the placement you are confirming, please give us the

details and the SRA will consider them under their character and suitability requirements.⁶

This is slightly more complicated for university law clinics, as staff involved in the clinics may be aware of information about students from outside of the law clinic and this could lead to inconsistencies in the disclosure of character and suitability issues. For example, a solicitor signing off QWE could be aware of such an issue through their role as a course lead/module lead/academic lead, personal tutor and not through their supervision in clinic. As a solicitor, the person confirming the QWE is under an obligation to raise this with the SRA.

The most common example would be an awareness of an academic/assessment offence. Assessment offences are included within the SRA's Assessment of Character and Suitability Rules (Part 2, Rule 4):

You have been adjudged by an education establishment to have committed a deliberate assessment offence which amounts to plagiarism or cheating, in order to gain an advantage for you or others.

The following is a non-exhaustive list of serious academic offences which should be referred to the SRA:

- **Cheating** is a form of examination malpractice relating to formal invigilated exams or other assessments. This could take the form of unauthorised communicating with others in or outside the exam; impersonating a student due to sit the exam, copying/attempting to copy from another exam candidate; possession of prohibited materials (written or electronic).
- **Plagiarism** occurs when a student copies words or ideas from another person and presents these words or ideas as their own in an assessment without properly acknowledging and citing the source. This does not include poor

⁶ <https://www.sra.org.uk/solicitors/guidance/colps-confirming-qualifying-work-experience/>

academic practice, where a student has failed to understand the concept of good academic practice by inadequate referencing, omission of quotation marks and may occur in the early stage of the student's programme of study.

- **Collusion** is an attempt to deceive the examiners by disguising the true authorship of an assessed piece of work in full or part. All students involved will be jointly liable.
- **Commissioning or Contract Cheating** which is asking another person to rewrite their work, such as other students, friends, relations or providers that offer such services for payment. This does not extend to proof reading.
- **Representation** where a student submits the same piece of work (in full or in part), which has already been submitted for academic credit.

Students should be informed at the start of their time in clinic that if they claim QWE, any issues regarding assessment offences, together with any character and suitability issues, will be referred to the SRA. The student will also be under an obligation to disclose these offences at the point of admission. The clinic should make it clear that it is the SRA who makes the decision and not the clinic.

We suggest that students are provided with a privacy notice, when they start their clinic engagement, summarising the procedure the clinic will adopt. This privacy notice should be written in discussion with the relevant parties that will have access to this data, as well as the Institution's data protection officer.

Clinics may wish to adopt the following internal procedures:

- Prior to confirming QWE, the clinic lead is given access to the academic profiles of the students to check whether any academic offences are present

OR

- The clinic lead sends a list of students' names to a designated nominee within the School/Department/University to check whether any academic offences are present.

In both instances, if an academic offence is present on a student record, the Clinic Lead should discuss this with the student and explain if the student chooses to register the QWE with the SRA, the Clinic Lead will disclose the academic offence. The Clinic Lead should also remind the student that even if this portion of QWE is not registered with the SRA, the student is still personally responsible for disclosing the academic offence at the point of admission. The student should understand the Clinic Lead is not making a judgement on the individual's suitability.

8. Registering QWE

This diagram shows the process for a student registering QWE. Students do not have to register QWE within a certain time after completion. Rather they can register all QWE at the point of admission.



The timeline from a student's QWE being 'confirmed' in the clinic to the solicitor 'confirming' with the SRA could be many years. We recommend that clinics are open and upfront with their students about what they believe is a reasonable time in which to 'confirm' QWE with the SRA. This could be linked with the university's own data retention period.

Applicants can claim historic QWE. If a candidate has been given the opportunity to develop one or more of the competencies the claim must be confirmed. Historic QWE does cause issues for university law clinics as it may be many years since a candidate has been at the clinic. In this situation, the responsibility is placed on the student to produce a full breakdown of the time and competencies being claimed. If a solicitor in clinic is being asked to confirm QWE that cannot be adequately evidenced, for example, due to the time elapsed, a solicitor would be acting within their professional duties not to confirm. Clinics may want to consider encouraging students to register confirmed clinic QWE as soon as possible but this should be balanced against the merits of registering a (potentially) small amount of QWE.

As an addendum to this, a student is not under an obligation to register all their confirmed QWE. For example, they could accrue 6 pieces of confirmed QWE but choose which 4 to register.

9. Clinic Compliance

9.1. Insurance

Confirming QWE will not change the activity of the clinic, however clinic leads should make sure the university insurer is aware of the regulatory requirement to confirm QWE. Clinic leads should also check whether insured clinic activities are classed as advice or information, as this may influence whether QWE can be legitimately claimed and thus whether it can be 'advertised' to students.

9.2. Record Keeping and GDPR

Detailed records of QWE confirmed in clinic will be key to enable smooth confirmation with the SRA. When designing their internal records, clinic may perhaps consider:

- The platform used to keep student records needs to be secure but also sustainable to survive any staff turnover. Clinics should consult their

internal IT departments for compatible platforms. This will be separate to any case management system used.

- Checking the compliance of keeping student data for the purpose of confirming QWE with the GDPR and any internal data retention policies.
- QWE records should include the competencies developed, the hours awarded, confirmation a character and suitability check has been made etc, for each amount of QWE claimed.
- Developing a robust system where QWE is internally confirmed by more than one solicitor to allow for staff turnover/absence.
- Incorporating a privacy notice into clinic handbooks/literature, so students are aware of how their data will be held and for what purpose, together with the agreed character and suitability policies.

9.3. Non-English and Welsh Clinics

QWE can be claimed in jurisdictions outside England and Wales if a solicitor regulated by the SRA is present. These clinics need to be aware that students could ask for QWE to be confirmed. In this situation, the clinics should follow this guidance and be aware that these claims cannot be refused if the criteria is met.

Appendix 1: Competency Mapping⁷

Competency	Description	Opportunity to develop in clinic?
A Ethics, professionalism and judgement		
A1	<p>Act honestly and with integrity, in accordance with the legal and regulatory requirements and the SRA standards and Regulations, including:</p> <ul style="list-style-type: none"> a. Recognising ethical issues and exercising effective judgment in addressing them b. Understanding and applying the ethical concepts which govern their role and behaviour as a lawyer c. Identifying the relevant SRA principles and rules of professional conduct and following them d. Resisting pressure to condone, ignore or commit unethical behaviour e. Respecting diversity and acting fairly and inclusively 	
A2	Maintain the level of competence and legal knowledge needed to practise effectively, taking into	

⁷ <https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/>

	<p>account changes in their role and/or practice context and developments in the law, including:</p> <ul style="list-style-type: none">a. Taking responsibility for personal learning and developmentb. Reflecting on and learning from practice and learning from other peoplec. Accurately evaluating their strengths and limitations in relation to the demands of their workd. Maintaining an adequate and up-to-date understanding of relevant law, policy and practicee. Adapting practice to address developments in the delivery of legal services	
A3	<p>Work within the limits of their competence and the supervision which they need, including:</p> <ul style="list-style-type: none">a. Disclosing when work is beyond their personal capabilityb. Recognising when they have made mistakes or are experiencing difficulties and taking appropriate actionc. Seeking and making effective use of feedback, guidance and support where needed	

	d. Knowing when to seek expert advice	
A4	<p>Draw on a sufficient detailed knowledge and understanding of their field(s) of work and role in order to practice effectively, including:</p> <ul style="list-style-type: none"> a. Identifying relevant legal principles b. Applying legal principles to factual issues, so as to produce a solution which best addresses a client's needs and reflects the client's commercial or personal circumstances c. Spotting issues that are outside their expertise and taking appropriate action, using both an awareness of a broad base of legal knowledge (insofar as relevant to their practice area) and detailed knowledge of their practice area 	
A5	<p>Apply understanding, critical thinking and analysis to solve problems, including:</p> <ul style="list-style-type: none"> a. Assessing information to identify key issues and risks b. Recognising inconsistencies and gaps in information c. Evaluating the quality and reliability of information 	

	<ul style="list-style-type: none"> d. Using multiple sources of information to make effective judgments e. Reaching reasoned decisions supported by relevant evidence 	
B Technical Legal Practice		
B1	<p>Obtain relevant facts, including:</p> <ul style="list-style-type: none"> a. Obtaining relevant information through effective use of questioning and active listening b. Finding, analysing and assessing documents to extract relevant information c. Recognising when additional information is needed d. Interpreting and evaluating information obtained e. Recording and presenting information accurately and clearly. 	
B2	<p>Undertake legal research, including:</p> <ul style="list-style-type: none"> a. Recognising when legal research is required b. Using appropriate methods and resources to undertake the research 	

	<ul style="list-style-type: none"> c. Identifying, finding and assessing the relevance of sources of law d. Interpreting, evaluating and applying the results of the research e. Recording and presenting the findings accurately and clearly. 	
B3	<p>Develop and advise on relevant options, strategies and solutions, including:</p> <ul style="list-style-type: none"> a. Understanding and assessing a client's commercial and personal circumstances, their needs, objectives, priorities and constraints b. Ensuring that advice is informed by appropriate legal and factual analysis and identifies the consequences of different option 	
B4	<p>Draft documents which are legally effective and accurately reflect the client's instructions including:</p> <ul style="list-style-type: none"> a. Being able to draft documents from scratch as well as making appropriate use of precedents b. Addressing all relevant legal and factual issues c. Complying with appropriate formalities d. Using clear, accurate and succinct language 	

B5	<p>Undertake effective spoken and written advocacy, including:</p> <ul style="list-style-type: none">a. Preparing effectively by identifying and mastering relevant facts and legal principlesb. Organising facts to support the argument or positionc. Presenting a reasoned argument in a clear, logical, succinct and persuasive wayd. Making appropriate reference to legal authoritye. Complying with formalitiesf. Dealing with witnesses appropriatelyg. Responding effectively to questions or opposing argumentsh. Identifying strengths and weaknesses from different parties' perspectives	
B6	<p>Negotiate solutions to clients' issues, including:</p> <ul style="list-style-type: none">a. Identifying all parties' interests, objectives and limitsb. Developing and formulating best options for meeting parties' objectivesc. Presenting options for compromise persuasively	

	<ul style="list-style-type: none"> d. Responding to options presented by the other side e. Developing compromises between options or parties 	
B7	<p>Plan, manage and progress legal cases and transactions, including:</p> <ul style="list-style-type: none"> a. Applying relevant processes and procedures to progress the matter effectively b. Assessing, communicating and managing risk c. Bringing the transaction or case to a conclusion 	
C Working with other people		
C1	<p>Communicate clearly and effectively, orally and in writing including:</p> <ul style="list-style-type: none"> a. Ensuring that communication achieves its intended objective b. Responding to and addressing individual characteristics effectively and sensitively c. Using the most appropriate method and style of communication for the situation and the recipient(s) d. Using clear, succinct and accurate language avoiding unnecessary technical terms 	

	<ul style="list-style-type: none"> e. Using formalities appropriate to the context and purpose of the communication f. Maintaining the confidentiality and security of communications g. Imparting any difficult or unwelcome news clearly and sensitively 	
C2	<p>Establish and maintain effective and professional relations with clients, including:</p> <ul style="list-style-type: none"> a. Treating clients with courtesy and respect b. Providing information in a way that clients can understand, taking into account their personal circumstances and any particular vulnerability c. Understanding and responding effectively to clients' particular needs, objectives, priorities and constraints d. Identifying and taking reasonable steps to meet the particular service needs of all clients including those in vulnerable circumstances e. Identifying possible courses of action and their consequences and assisting clients in reaching a decision f. Managing clients' expectations regarding options, the range of possible outcomes, risk and timescales 	

	<ul style="list-style-type: none"> g. Agreeing the services that are being provided and a clear basis for charging h. Explaining the ethical framework within which the solicitor works i. Informing clients in a timely way of key facts and issues including risks, progress towards objectives, and costs j. Responding appropriately to clients' concerns and complaint 	
C3	<p>Establish and maintain effective and professional relations with other people, including:</p> <ul style="list-style-type: none"> a. Treating others with courtesy and respect b. Delegating tasks when appropriate to do so c. Supervising the work of others effectively d. Keeping colleagues informed of progress of work, including any risks or problems e. Acknowledging and engaging with others' expertise when appropriate f. Being supportive of colleagues and offering advice and assistance when required g. Being clear about expectations h. Identifying, selecting and, where appropriate, managing external experts or consultants 	

D Managing themselves and their own work		
D1	<p>Initiate, plan, prioritise and manage work activities and projects to ensure that they are completed efficiently, on time and to an appropriate standard, both in relation to their own work and work that they lead or supervise including:</p> <ul style="list-style-type: none"> a. Clarifying instructions so as to agree the scope and objectives of the work b. Taking into account the availability of resources in initiating work activities c. Meeting timescales, resource requirements and budgets d. Monitoring, and keeping other people informed of, progress e. Dealing effectively with unforeseen circumstances f. Paying appropriate attention to detail 	
D2	<p>Keep, use and maintain accurate, complete and clear records including:</p> <ul style="list-style-type: none"> a. Making effective use of information management systems (whether electronic or hard copy), including storing and retrieving information 	

	<p>b. Complying with confidentiality, security, data protection and file retention and destruction requirements</p>	
D3	<p>Applying good business practice, including:</p> <ul style="list-style-type: none">a. Demonstrating an adequate understanding of the commercial, organisational and financial context in which they work and their role in itb. Understanding the contractual basis on which legal services are provided, including where appropriate how to calculate and manage costs and bill clientsc. Applying the rules of professional conduct to accounting and financial mattersd. Managing available resources and using them efficiently	