

Chapter 1

‘Clinical Legal Education Reimagined’

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Academics working in law schools in England and Wales live in interesting times. The last four decades have borne witness to a complex of changes in government, markets, and society which push and pull at the aims, organisation and delivery of legal education. These include, at the macro level: (i) the globalisation, stratification, and massification of higher education;¹ (ii) tensions in universities between the demands of research and teaching;² (iii) ongoing changes in technology;³ (iv) the neoliberal focus of successive UK governments (including privatisation and the increasing importance of a ‘value for money’ ideology);⁴ (v) rising student fees and evolving student expectations;⁵ (vi) the government’s ‘employability agenda’;⁶ (vii) the metrification of higher education through league tables, the National Student Survey and the Teaching Excellence Framework;⁷ (viii) ongoing impacts of the recent global financial crisis and associated ‘austerity measures’;⁸ and (ix) the implications of Brexit (on university funding, visas for international students and staff, and the future market for graduate employability among other matters).⁹ These factors have caused, and continue to cause, a

¹ This includes a social mobility project which opened up universities to women, ethnic minorities, and other ‘non-traditional’ entrants, as well as the reframing of former polytechnics. See, eg: Sheila Slaughter and Larry L Leslie, *Academic Capitalism: Politics, Policies, and the Entrepreneurial University* (The Johns Hopkins University Press 1997); Muriel Egerton and Albert Henry Halsey ‘Trends by Social Class and Gender in Access to Higher Education in Britain’ (1993) 19(2) *Oxford Review of Education* 183-196.

² See: Mary Henkel, ‘Academic Identity and Autonomy in a Changing Policy Environment’ (2005) 49(1) *Higher Education* 155-176; William Locke, ‘The Dislocation of Teaching and Research and the Reconfiguring of Academic Work’ (2012) 10(3) *London Review of Education* 261-274; and Louise Archer, ‘Younger Academics’ Constructions of “Authenticity”, “Success” and Professional Identity’ (2008) 33(4) *Studies in Higher Education* 385-403.

³ See, eg, the current 94 guides produced by JISC, the body which champions the importance and potential of digital technologies for UK education and research: <<https://www.jisc.ac.uk/guides>> (accessed 31 January 2018).

⁴ See Mark Olssen and Michael A. Peters, ‘Neoliberalism, Higher Education and the Knowledge Economy: From the Free Market to Knowledge Capitalism’ (2005) 20(3) *Journal of Education Policy* 313-345; and Cris Shore, ‘Beyond the Multiversity: Neoliberalism and the Rise of the Schizophrenic University’ (2010) 18(1) *Social Anthropology* 15-29.

⁵ See David Greenaway and Michelle Haynes, ‘Funding Higher Education in the UK: The Role of Fees and Loans’ (2003) 113 *The Economic Journal* 485; and Sue Hubble and Paul Bolton, ‘House of Commons Library: Briefing Paper: Number 07258, 8 February 2017: Abolition of Maintenance Grants in England from 2016/17’ (2017).

⁶ See: Ewan Ingleby, ‘It Does More Than it Says on the Tin! Problematizing Higher Education in Further Education in England’ (2017) *Studies in Higher Education* 1-11.

⁷ The NSS and TEF are two ways in which the government assesses (and permits the ranking of) universities in the UK. See, for a discussion: Amanda French and Matt O’Leary, *Teaching Excellence in Higher Education: Challenges, Changes and the Teaching Excellence Framework* (Emerald Publishing 2017); and Carl Senior, Elisabeth Moores, and Adrian P Burgess, ‘“I Can’t Get No Satisfaction”: Measuring Student Satisfaction in the Age of a Consumerist Higher Education’ (2017) 8 *Frontiers in Psychology* 980.

⁸ Peter Taylor-Gooby, ‘Root and Branch Restructuring to Achieve Major Cuts: The Social Policy Programme of the 2010 UK Coalition Government’ (2012) 46(1) *Social Policy and Administration* 61-82.

⁹ Brexit is the popular term for the United Kingdom’s withdrawal from the European Union following a referendum in 2016. For an account of how Brexit may impact on the university sector, see: <<http://www.universitiesuk.ac.uk/policy-and-analysis/brexit>> accessed 14 August 2017.

reorientation of the relationships that universities in England and Wales have with their staff and their students, with the government, with the local communities in which they are situated, with employers, and with other third parties (including business investors and research funders). As Zeldin has observed, 'there is now unprecedented disagreement about what universities are for.'¹⁰ Further developments at a more micro level for law schools have brought additional opportunities and challenges which everybody involved in legal education must face. These include: (i) the proposed introduction of what is effectively a national qualifying exam for aspiring solicitors;¹¹ (ii) the increasing acceptance that one need not undertake a law degree in order to pursue a career as a solicitor;¹² (iii) the ongoing liberalisation of the regulation of legal services provision;¹³ and (iv) the reduced career pathways for new lawyers in light of the drastic cuts to legal aid following the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act in 2012.¹⁴

These macro and micro level developments have an impact across the range of programmes and courses that law schools offer, but this edited collection focuses specifically on the implications of such changes on Clinical Legal Education (CLE). A fuller definition of CLE is provided later in this chapter, but broadly speaking it is a method of legal teaching which is centred on the pedagogical benefits of exposing students to practical legal experience, rather than the more traditional model of lectures and reading. CLE is increasingly offered as an assessed or extra-curricular option in law schools. Prompted by developments such as those set out above (insofar as they had arisen at that time), Linden Thomas, the manager and in-house solicitor of Birmingham Law School's Centre for Professional Legal Education and Research (CEPLER),¹⁵ organised a workshop, held in March 2015, entitled 'Reimagining Clinical Legal Education'. Contributors were invited to explore the futures of CLE in a dynamic and developing context, and this edited collection comprises a selection of papers based on, or inspired by, presentations given at the workshop.

We were interested in the extent to which clinical legal education has been (or should be) responding to the changing legal services market and higher education sector, and the opportunities and threats presented by those changes. We were interested in whether cuts to legal aid prompted (or should prompt) a re-evaluation of the role and purpose of clinical legal education (i.e. should law schools be doing more to contribute to the ocean of unmet legal need in England and Wales?)¹⁶ On an instrumental level, we wanted to learn more about who was

¹⁰ Theodore Zeldin, 'Foreword' in David Watson, *The Question of Conscience: Higher Education and Personal Responsibility* (Trentham Books 2013).

¹¹ As from 2021, those wishing to become solicitors will need to sit the nationally set Solicitors Qualifying Examination, overseen by the Solicitors Regulatory Authority. For more on this, see: <<https://www.sra.org.uk/home/hot-topics/Solicitors-Qualifying-Examination.page>> accessed 14 August 2017.

¹² It is often a source of wonder to those not from the UK that it is possible to qualify as a solicitor either without a law degree (a degree in another subject plus a one-year law 'conversion' course suffices) or without a degree at all (via the on-the-job Chartered Institute of Legal Executives route). Unlike some other jurisdictions, law in England and Wales is primarily an undergraduate degree programme.

¹³ Hilary Sommerlad, Sonia Harris-Short, Steven Vaughan and Richard Young (eds), *The Futures of Legal Education and the Legal Profession* (Hart Publishing 2015).

¹⁴ On LASPO, see: Catrina Denvir, Nigel J Balmer, and Pascoe Pleasence, 'When Legal Rights Are Not a Reality: Do Individuals Know Their Rights and How Can We Tell?' (2013) 35(1) *Journal of Social Welfare and Family Law* 139-160; and Chris Bevan, 'Self-Represented Litigants: The Overlooked and Unintended Consequence of Legal Aid Reform' (2013) 35(1) *Journal of Social Welfare and Family Law* 43-54.

¹⁵ For more information on CEPLER, please see: <<http://www.birmingham.ac.uk/facilities/CEPLER/index.aspx>> accessed 31 January 2018.

¹⁶ For recent data on how legal aid reforms have impacted access to justice in England and Wales, see: <<https://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on/>> accessed 31 January 2018.

doing CLE in England and Wales and how they were doing it. And whether, or to what extent, those involved in CLE saw it as preparing law students for the world of (legal) work. Stepping back, we were also interested in CLE as a field: its relationships with other forms of teaching and student experience; and the approaches to, and quality of, CLE scholarship. The aim of the workshop, and thus this collection, was to bring together different stakeholders, including leading academic scholars, senior figures from professional practice, students, and representatives of third sector organisations who contribute to the delivery of CLE in law schools, in order to reflect on the key issues arising from this transformative period. This aim sits well with the overarching purposes of CEPLER of promoting in undergraduate and graduate legal education an enhanced awareness of professional culture, values and practices, and fostering innovative research on the legal profession and legal education.

The remainder of this introductory chapter unfolds in three parts. We begin by setting out a definition of CLE, and we consider its relationship to ‘pro bono’. We then turn to the purpose of legal education, giving context to the history of CLE in law schools in England and Wales and offering a snapshot of what we know (and do not know) about the current CLE offering in law schools. Part three sets out summaries of the chapters that follow, wrapped in four distinct ways which shed light on how CLE can be reimagined. The first reimagining goes to the forms and formats CLE takes and considers three different, distinctive clinical models. The second goes to the possible relationships of CLE providers and students with third parties in the form of government (i.e. the regulation of CLE) and legal services providers. Third, we explore how those who ‘do’ CLE in law schools (clinicians, or ‘clinical faculty’) are perceived and perceive themselves. Finally, we come to CLE as a distinct field of scholarship.

Before we begin, it is worth noting that what follows in this book intentionally covers diverse ground and we want this collection to present a range of perspectives. CLE is a meeting place. It is a point at which academia blends with practice; students encounter clients; and practitioners become teachers. As such, this collection, like the workshop that preceded it, reflects this diversity and the coming together of many stakeholders. There are chapters which draw heavily on theory, others which are empirically grounded, and a number that are reflective case studies. One is written by a student, and another by a practitioner with decades of experience of learning and development in a ‘magic circle’ law firm. This breadth of insight and multiplicity of perspectives was a key strength of the CEPLER workshop, and we hope that it is perceived as a strength of this collection. Because we were also keen to place our thoughts and insights in a global context, the collection ends with three postscripts that offer short commentaries on our reimagining’s based on CLE practice in Australia, the United States of America, and Eastern Europe.

For some readers, aspects of that which is to come will be familiar territory. Indeed, we make no claims that what we offer up is revolutionary. And, to be clear, we are not necessarily trying to suggest new models of CLE in the case studies discussed. This collection is not intended to be a roadmap to the future of CLE. Our intention is to consider instead the role that particular models are likely to have going forwards, bearing in mind the current and likely future contexts in which clinics will operate. Two decades ago, Brayne et al suggested that ‘both the theory and practice of the clinic are beset by challenges’.¹⁷ That is as true today as it was then, although the relevant challenges have grown in number and strength. To chart, shape and reimagine the possible futures of CLE, it is important to understand the past, as well as where current trajectories are likely to take us. We hope that readers of this book will reflect on the diversity of its contributors. Our aim is to offer up thoughts, experiences and ideas that could form stepping-off points for conversations between academics (clinicians and others),

¹⁷ Hugh Brayne, Nigel Duncan and Richard H Grimes, *Clinical Legal Education: Active Learning in Your Law School* (Blackstone Press 1998) 16.

students, employers, regulators, and third sector organisations alike on the path to a future in which CLE, and those who deliver it, are sufficiently robust and adequately prepared to rise to the challenges and opportunities that will continue to abound.

I Framing and Defining CLE

We are somewhat hesitant about setting out a definition of CLE, though we realise that such is necessary in a collection which seeks to reimagine the subject. Our reticence arises because while definitions are important they can also be divisive:

One risk of attempting such a definition [of CLE] lies in alienating those law teachers who find a method which they consider to be clinical excluded. Conversely, those who do not wish to have their work labelled ‘clinical’ may be antagonised. In either case, such reaction may deter these teachers from constructive contribution to the broader educational debate.¹⁸

At heart of CLE, as the authors of the first book on CLE in England and Wales set out in 1998, is a ‘commitment to the empowering of the student’.¹⁹ In other words, active learning and student ownership of learning form the core starting points of CLE. This does not necessarily get us very far, as many academics may lay claim to similar premises in their non-CLE teaching. In 1987, Boone et al identified five requirements that are basic to CLE.²⁰ The first was active participation; the second interaction in role, ‘used here to mean any role other than that of teacher or student.’²¹ The third requirement was the dynamic nature of the problem, which goes to the live or ‘real’ aspect of clinic: ‘by contrast with problems presented in seminars or examinations, the “facts” in clinical exercises are not completely known but are discoverable, and are variable according to what is discovered’.²² The fourth requirement is student responsibility for outcome; and the fifth is that clinical experience should ‘exist within the context of a planned curriculum as part of a strategy to achieve pre-determined and stated learning goals’.²³

A decade later, Brayne et al set out that definitions of CLE could take broad or narrow forms.²⁴ The broad definition, ‘is learning by doing the types of things that lawyers do’.²⁵ And the narrower definition, ‘takes as its focus the reason for using the method’ and is concerned with the development of students’ critical and contextual understanding of the law as it affects people in society.²⁶ This narrower definition, and most writers on CLE, start from the premise that CLE is about more than skills development.²⁷ We come back to this below. We like, and would very much endorse, the line taken by Brayne et al that CLE, ‘is not an end in itself but a means by which the law and the legal process can be understood.’²⁸ In this way, we might

¹⁸ Andrew Boone, Michael Jeeves and Julie Macfarlane ‘Clinical Anatomy: Towards a Working Definition of Clinical Legal Education’ (1987) 21(1) *The Law Teacher* 61-71, 62.

¹⁹ Brayne, Duncan and Grimes (n17) xi.

²⁰ Boone (n18) 65 ff.

²¹ *ibid* 66.

²² *ibid* 66.

²³ *ibid* 67.

²⁴ Brayne, Duncan and Grimes (n17).

²⁵ *Ibid* xiii.

²⁶ *ibid*.

²⁷ Nicolson, for example, suggests that reflection is at the core of CLE experience and assessment. See: Donald Nicolson, ‘Problematising Competence in Clinical Legal Education: What Do We Mean by Competence and How Do We Assess Non-Skill Competencies?’ (2016) 23 *International Journal of Clinical Legal Education* 66.

²⁸ Brayne, Duncan and Grimes (n17) 2.

think of CLE as sitting alongside the panoply of methodologies (doctrinal; socio-legal; comparative etc) that can be brought to bear with the law. Equally, just as there is no one, agreed way of ‘doing’ socio-legal work, so too is there no single way of ‘doing’ CLE.

A related difficulty in defining clinical legal education lies in its dichotomous nature. There are tensions between CLE as a process, and the outcomes of CLE. There are debates over the relative value of ‘realistic’ CLE (involving role plays and simulated client work) when compared to ‘real’ CLE (involving real clients with real legal issues). There are differences between in-house CLE (taking place inside universities), and CLE that involves students undertaking external placements. Some clinics offer a representation to clients; others offer initial advice only. Some clinics offer advice on a range of legal issues; others specialize in one or more distinct areas. In some law schools, CLE is accredited and counts towards students’ final degree classification, but in other law schools it is an extra-curricular activity. The funding of clinics can vary too: some are wholly funded by the university or from external sources; others are partly funded by internal and external sources. At a less practical and more philosophical level, there are debates over whether the primary imperative of CLE is to further social justice by providing legal help to those in need, or whether the educational and employability objectives of CLE are to be prioritised. What this means then is that the possible combinations of what CLE is and how it looks are incredibly wide.²⁹

As Gold suggested in the inaugural contribution to the *International Journal of Clinical Legal Education*:

CLE is not a single method or approach to learning lawyering. It knows no jurisdictional boundaries, nor is it culturally limited in its application. It may be adapted to need, environment, context, time and purpose as a complement or supplement to variety of formats for legal education. It can also stand on its own as a powerful methodology for learning.³⁰

Given the above, and for the purposes of this collection, we see clinical legal education as the learning of the law and its implementation in the real world through action and reflection that has educational, public interest and employability benefits. Such a definition, we hope, covers the diversity of practices that we talk about in this book and the possible worlds of CLE that we aim to reimagine. In our view, CLE ought to be a broad church if it is to be able to embrace innovations and opportunities that are likely to be heralded by some of the developments and external pressures outlined earlier in this chapter. The link to educational benefits in our framing (and the framing of most others) is the key factor which distinguishes CLE from ‘pure’ pro bono, the term commonly used to describe lawyers (student or otherwise) providing legal services free of charge in the public interest.³¹ Much CLE will fall within the broader definition of pro bono, but not all. First, although often the case, it is not a pre-requisite that advice or

²⁹ For a comprehensive consideration of the different models of clinic and the multitude of options facing those looking to establish a clinic see Donald Nicolson, ‘“Our Roots Began in South Africa”: Modelling Law Clinics to Maximise Social Justice Ends’ (2016) 23(3) IJCLE <<http://www.northumbriajournals.co.uk/index.php/ijcle/search/search?simpleQuery=donald&searchField=query>> accessed 17 August 2017.

³⁰ Neil Gold, Why not an International Journal of Clinical Legal Education? (IJCLE, November 2000, Vol 1) 7-12

³¹ A commonly accepted definition of pro bono in England and Wales is contained in the Pro Bono Protocol. See: <<https://www.lawsociety.org.uk/Support-services/Practice-management/Pro-bono/The-pro-bono-protocol/>> accessed 10 August 2017.

representation offered through CLE must be provided free of charge.³² Furthermore, as Kerrigan argues ‘clinical *experience* is not the same thing as clinical *education*’.³³ Sound pedagogical practice dictates that in CLE, as elsewhere, deep learning derives from having the opportunity to practise, reflect, reformulate and try again.³⁴ So simply ‘doing’ pro bono will not necessarily deliver educational benefits.

We also think it important to take a moment to speak to the public interest aims of CLE. We know that not all students do CLE because of their wish to better society. Many do it because they want to make themselves more attractive to potential employers.³⁵ Equally, not all students who do CLE then go on to work in fields of law (or elsewhere) that concern the public interest (e.g. social welfare law; legal aid work). And yet the connection between CLE, access to justice and the public interest runs deep. It seems to be commonly accepted that, at least historically, a central goal of CLE has been ‘to expose students to social injustices in society and to the potential (and limits) of the law and lawyers in addressing those injustices’.³⁶ This has much to do with the means by which clinical programmes in the USA (an early adopter of CLE) came into being; borne out of the civil rights movement in the 1960s and 70s which led to an influx of ‘civil rights and poverty lawyers to law schools.’³⁷ This gave those lawyers a continuing desire to ‘inculcate in their students an understanding of and concern for the circumstances of those who live in poverty or otherwise lack access to legal services’.³⁸ Indeed, many clinicians still consider that a defining feature of CLE is the commitment by those involved to ‘reforming legal education by reorienting it toward educating lawyers for social justice’.³⁹ It is not difficult to perceive how or why social welfare law and CLE make good bedfellows. In England and Wales, as in many other parts of the world, there is a vast amount of unmet legal need and the assistance provided by student law clinics goes at least some way to addressing this. As Nicolson argues, CLE can lead to both direct and indirect social justice impacts.⁴⁰ The direct impact is made through the provision of legal services by student law clinics to those in need of legal advice and assistance who would not otherwise be able to access it.⁴¹ In reference to the indirect impact of CLE, Nicolson points to, ‘growing evidence... that clinical experience can prompt students to enhancing ATJ [access to justice] once they

³² Some law schools in England and Wales are contemplating charging for their legal services. See eg, Legal Futures, ‘The First “Teaching Law Firm”? Law School Applies for ABS Licence’ (*Legal Futures*, 13 March 2015) <<https://www.legalfutures.co.uk/latest-news/the-first-teaching-law-firm-law-school-applies-for-abs-licence#>> accessed 16 February 2018.

³³ Kevin Kerrigan, ‘What is Clinical Legal Education and Pro Bono?’ in Kevin Kerrigan and Victoria Murray (eds), *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave Macmillan 2011) 7.

³⁴ David A Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Prentice-Hall 1984).

³⁵ Paul McKeown, ‘Law Student Attitudes Towards Pro Bono and Voluntary Work: The Experience at Northumbria University’, (2015) 22(1) *IJCLE* 22; Paul McKeown, ‘Pro Bono: What’s in it for Law Students? The Student Perspective’, (2017) 24(1) *IJCLE* 43; and Bharat Malkani and Linden Thomas, ‘The Birmingham Law School Pro Bono Group: A Case Study of Social Justice in Legal Education’ in Chris Ashford and Paul McKeown (eds), *Social Justice and Legal Education* (Cambridge Scholars Publishing [Forthcoming]).

³⁶ Stephen Wizner, ‘Is Social Justice Still Relevant?’ (2012) 32(2) *Boston College Journal of Law & Social Justice* 351, 351.

³⁷ Praveen Koshuri, ‘Losing My Religion: The Place of Social Justice in Clinical Legal Education’ (2012) 32 *Boston College Journal of Law and Social Justice* 331, 333.

³⁸ Wizner (n35) 352.

³⁹ Frank S Bloch ‘The Global Clinical Movement’ 269 in Frank S Bloch (ed), *The Global Clinical Movement Educating Lawyers for Social Justice* (OUP 2011).

⁴⁰ Nicolson (n29) 92.

⁴¹ *ibid.*

qualify.⁴² Yet in recent years there have been those in the CLE community who have started to challenge the fundamentality of social justice to CLE. Commercial clinics have begun to spring up across the globe, often giving advice to clients that could afford to pay for legal services.⁴³ Clinicians who run commercial law clinics put forward compelling arguments for this diversification of the clinical offering, as an opportunity to expose students to ‘many other strata’ of society.⁴⁴ They argue that the primary purpose of a law school is to educate, and that ‘clinic is an educational tool’ which can expose students to a wealth of learning including, but not limited to, social justice.⁴⁵

To reiterate our earlier point, we would endorse the suggestion that clinic ought to be a ‘broad church’. As Knowles and Kinghan and Blackburn explain so clearly in their contributions to this collection, clinicians often find themselves ‘othered’ within their faculties and institutions.⁴⁶ If this is the case, then clinicians do themselves no favours by allowing schisms to develop within their own community. Although there may be disputes as to whether the primary objective of CLE ought to be social justice or legal education and employability, it seems common ground for all those writing on this issue that there is room for both. It is merely the focus, or primacy, of each of these objectives over which there is debate. We do not feel it necessary to choose sides in this chapter. Instead, we would encourage the development of a diversity of clinics, each with a focus that reflects the diversity of its many stakeholders and responds to the needs and objectives of its clients, students and faculty members alike. We hope that the definition we have suggested for CLE is sufficiently expansive to encompass all such clinics.

II Law Schools and CLE in England and Wales

To understand the history and functions of CLE, it is necessary first to know something about wider tensions in legal education. Primarily, what we are interested in for the purposes of this collection is whether (or to what extent) law school is (or should be) seen as a liberal arts endeavour and/or as the first stepping-stone on the path to admittance as a lawyer. There are those, like Bradney, who see legal education purely as an intellectual pursuit, unconnected to legal practice.⁴⁷ Others are more pragmatic. In the seminal 1996 text, ‘What Are Law Schools For?’⁴⁸ Birks noted that while English law schools have always maintained a distinctively scholarly mission (reflecting a wider liberal commitment to education), the increasing commercialisation of higher education has meant that law schools need to think hard about their roles. Twining sets the tension in these terms:

...two main conceptions of the role of the law school have competed for dominance: the first is the law school as a service institution for the profession (the professional school

⁴² Donald Nicolson, ‘Legal Education, Ethics and Access to Justice: Forging Warriors to Justice in a Neo Liberal World’ (2015) 21(1) *International Journal of the Legal Profession* 51, 57.

⁴³ Elaine Campbell, ‘A Dangerous Method? Defending the Rise of Business Law Clinics in the UK’ (2015) (49)2 *The Law Teacher* 165.

⁴⁴ Koshuri (n37) 340.

⁴⁵ Campbell (n43).

⁴⁶ See the chapters by Knowles and Kinghan and by Blackburn in this collection

⁴⁷ Anthony Bradney, *Conversations, Choices and Chances: The Liberal Law School in the 21st Century* (Hart Publishing 2003).

⁴⁸ Peter Birks, *Pressing Problems in the Law: Volume 2: What are Law Schools For?* (OUP 1996).

model); the second is the law school as an academic institution devoted to the advancement of learning about law (the academic model).⁴⁹

This debate between the academic and vocational aspects of law is long standing. As AV Dicey said in his inaugural lecture in 1883, if eminent counsel were asked to respond to the title of his lecture ('Can English Law Be Taught at Universities?'), 'they would reply with unanimity and without hesitation, that English law must be learned and cannot be taught, and that the only places where it can be learned are the law courts or chambers'.⁵⁰ Up until the 1960s, law degrees in the UK were few and far between.⁵¹ As Leighton sets out, at that time, 'legal professionals, including judges, if they were graduates, tended not to hold a degree in law, favouring ones in classics and humanities.'⁵² Law (Roman Law and Canon Law) had been taught at Oxford and Cambridge since the 12th century, but the first 'English' law school is said to be University College London, which was established in 1826. A non-graduate apprenticeship model of legal education (as way of entry into the legal profession) then continued well into the nineteenth century.⁵³ As Boon and Webb set out:

It was not until after the report of the Ormrod Committee in 1971 that the solicitors' profession became a graduate-entry profession and abandoned five-year articles of clerkship as an alternative path to qualification. It took until 1979 for the Bar Council to make a similar rule change.⁵⁴

Today, more than 100 universities in the UK offer law as an undergraduate subject of study, and demand to study law has been consistently strong over many years. In 2015-16, there were 23,855 UK student applicants to study first-degree courses in law in England and Wales, of whom 17,335 (72.6 per cent) were accepted.⁵⁵ Competition for places can be fierce, particularly amongst the most popular universities, with ratios of applicants to admissions easily exceeding 10:1.⁵⁶ This competition rears its head once again when applications are made for the vocational stage of legal education and training, and again when applications are made for training contracts and pupillages (the gateways to practice as solicitors and barristers). It is perhaps little surprise to find, then, that there is much demand for CLE among law students, as every addition to a CV can be a vital advantage.

There is a tension in legal education between knowledge and skills.⁵⁷ More specifically, much of the academy resists what it perceives to be the pull of practitioners to make legal education less knowledge-focused and more skills-focused, in order to prepare students for

⁴⁹ William Twining, *Blackstone's Tower: The English Law School: Discipline of Law (Hamlyn Lecture)* (Stevens and Sons/Sweet and Maxwell 1994) 52.

⁵⁰ Inaugural lecture, delivered at All Souls College, Oxford, on 21 April 1883.

⁵¹ For an account of this history, see: Twining (n49).

⁵² Patricia, Leighton, 'The LLB as a Liberal Degree? A Re-Assessment from an Historical Perspective' (2015) 22(1) *International Journal of the Legal Profession* 87-102, 88.

⁵³ See further: Andrew Boon and Julian Webb, 'Legal Education and Training in England and Wales: Back to the Future?' (2008) 58(1) *Journal of Legal Education* 79-121.

⁵⁴ *ibid*, 87.

⁵⁵ <<http://www.lawsociety.org.uk/law-careers/>> accessed 27 November 2017.

⁵⁶ Legal Education and Training Review, *Literature Review, Current Equality, Diversity and Social Mobility Issues* 6 <<http://letr.org.uk/wp-content/uploads/LR-chapter-7.pdf>> accessed on 27 August 2016.

⁵⁷ This, to be clear, is not the only tension in legal education. Tensions abound. For wider accounts, see eg: Fiona Cownie, *Legal Academics: Cultures and Identities* (Hart Publishing 2004); and Chris Ashford and Jessica Guth, *The Legal Academic's Handbook* (Palgrave Macmillan 2016).

legal practice.⁵⁸ The 2013 Legal Education and Training Review (the largest review of legal education in the UK in four decades) found that legal employers were concerned about the lack of certain skills among law graduates.⁵⁹ Students' writing, research and communication skills were thought to be particularly poor. At the same time, the job market for all graduates is challenging. Nearly 40 per cent of graduates are looking for work six months after graduation, while a quarter are still unemployed after a year.⁶⁰ The Office of National Statistics found that half of graduates in employment held jobs for which there was no need for a degree. Having a law degree does not make a student immune. In 2016, 14 per cent of law graduates were working as retail, catering or waiting staff six months after their degree.⁶¹

The current regulation of law degrees by the legal services regulators (the Solicitors Regulation Authority and the Bar Standards Board) is found in the 'Joint Statement.'⁶² This prescribes the 'foundations of legal knowledge' that must be taught (Contract, Land, Tort etc) and also sets out a series of 'general transferable skills'. However, these skills are highly generic and do not necessarily match what employers expect of would-be lawyers.⁶³ Looking forward, as from 2021 those wishing to qualify as a solicitor in England and Wales will be required to successfully complete a centralised professional entrance exam, known as the 'Solicitors Qualifying Examination' (SQE). The SQE will be divided into two stages. The first, which can be taken following the attainment of an undergraduate degree in *any* discipline (ie, not just law), will consist of a series of tests designed to assess legal knowledge (on areas such as property law, dispute resolution, criminal law, etc), professional conduct and legal research and writing skills. The second stage, which many students will likely sit following two (or so) years of legal work experience, will assess practical legal skills such as client interviewing, advocacy and case analysis. What will be treated as qualifying work experience for the purposes of qualification is also set to change and time spent working in student law clinics will fall within scope.⁶⁴

At present, many so-called 'professional skills' are not found in undergraduate degrees but are instead part of postgraduate vocational academic training (the Legal Practice Course and the Bar Professional Training Course). This, however, poses a challenge for students seeking legal employment, as they are required to demonstrate these professional skills during their undergraduate degrees on vacation schemes, mini pupillages, internships, work experience etc, without ever having had a real opportunity to explore and practise them. There is a wealth of evidence to suggest that students from lower socio-economic backgrounds (which include a majority of black and minority ethnic students) fail to secure these forms of legal work experience or, when they do secure them, fail to translate those experiences into

⁵⁸ Jessica Guth and Chris Ashford, 'The Legal Education and Training Review: Regulating Socio-Legal and Liberal Legal Education?' (2014) 48(1) *The Law Teacher* 5.

⁵⁹ <<http://letr.org.uk/wp-content/uploads/LETR-Report.pdf>> accessed 1 February 2018.

⁶⁰ Hussein Kesvani, 'Nearly 40% of Graduates Still Hunting for Jobs Six Months After Leaving University' *The Independent* (London, 18 February 2014) <<http://www.independent.co.uk/student/news/nearly-40-of-graduates-still-hunting-for-jobs-six-months-after-leaving-university-9135958.html>> accessed 1 February 2018.

⁶¹ Higher Education Career Services Unit, 'What Do Graduates Do?' (HECSU, 2016) <https://www.hecsu.ac.uk/current_projects_what_do_graduates_do.htm> accessed 16 February 2018.

⁶² Solicitors Regulation Authority, 'Joint Statement on the Academic Stage of Training' (SRA undated) <<http://www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page>> accessed 1 February 2018.

⁶³ As was found in the LETR report. See Slaughter and Leslie (n1) ch 2.

⁶⁴ Solicitors Regulation Authority, 'A New Route to Qualification: The Solicitors Qualifying Examination' (SRA 25 April 2017) <<https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page>> accessed 11 August 2017.

employment.⁶⁵ It is suggested that this is, in part, down to their lack of certain skills.⁶⁶ While CLE is not (as we have set out above) only about skills, or only about preparing students for the world of work, or indeed just about making those students more employable, the fact that CLE *can* and *does* engage students in professional skills development means that CLE as an approach, and CLE clinicians as faculty, are part and parcel of this tension inside law schools between what is perceived as ‘academic’ and what is perceived as ‘vocational’. And, given what we have just said about the future of qualification as a solicitor, and the possibility of time in clinic to ‘count’ for regulatory workplace learning requirements, these tensions may grow.

A A Brief History of CLE in England and Wales

In 1933, American lawyer and scholar, Jerome Frank, posed the question ‘Why Not a Clinical Lawyer-School?’⁶⁷ Yet, it was not until the 1970s that CLE arrived in England and Wales. In 1976, a live casework clinic was established at the University of Kent law school. This clinic failed but was happily later resurrected. Then, in the 1980s, clinics sprung up at Warwick University, South Bank Polytechnic and at Birmingham Polytechnic. During the 1980s, a further two law schools offered four-year ‘sandwich’ degrees which incorporated work-experience placements (Brunel University and Trent Polytechnic). Most of these early clinics were delivered on an extra-curricular basis.⁶⁸ According to Brayne et al., many such clinics found their efforts ‘thwarted’ by the conservative and risk averse attitudes that abounded in the UK at that time.⁶⁹ A decade later, a study by Grimes et al showed that of 79 universities offering law degrees, just eight ran ‘live client’ clinics.⁷⁰ Since that time, there has been exponential growth in the number of universities to engage in CLE, no doubt thanks to the efforts of early UK clinicians to build CLE networks, share experiences and good practice. For example, the Clinical Legal Education Organisation (CLEO) was established in the early 1990s. Now a registered charity, CLEO has since its inception sought to ‘act as a representative body and support group’ for clinicians.⁷¹

The latest national survey of CLE in UK universities was conducted in 2014 on behalf of LawWorks, a charity that supports the provision of pro bono advice and the establishment of law clinics.⁷² This survey indicated that, by the end of 2013, at least 70 per cent of all UK law schools were delivering some type of pro bono and/or CLE, with 25 per cent of these schools offering credit-bearing CLE programmes.⁷³ Over 6,000 students each year participate in clinical activities, although the authors of the LawWorks report noted that this is a

⁶⁵ See, for an overview, Hilary Sommerlad, Lisa Webley, Liz Duff, Daniel Muzio and Jennifer Tomlinson, *Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choices* (Legal Services Board 2010).

⁶⁶ Hilary Sommerlad, ‘Discourses of Diversity and Merit and Exclusionary Practices: Barriers to Entry and Progression’ in Linda Cooper and Sarah Walters (eds) *Critical Perspectives on Lifelong Learning and Work* (Human Sciences Research Council 2009).

⁶⁷ Jerome Frank, ‘Why Not a Clinical Lawyer School?’ (1933) 81(8) *University of Pennsylvania Law Review and American Law Register* 907.

⁶⁸ Kerrigan (n33) 10.

⁶⁹ Brayne, Duncan and Grimes (n17) 5.

⁷⁰ Richard Grimes, Joel Klaff and Colleen Smith, ‘Legal Skills and Clinical Legal Education - A Survey of Undergraduate Law School Practice’ (1996) 30(1) *The Law Teacher* 44-67.

⁷¹ Brayne, Duncan and Grimes (n17) 6.

⁷² For more on LawWorks see: <<https://www.lawworks.org.uk/>> accessed 11 August 2017.

⁷³ Damian Carney, Frank Dignan, Richard H Grimes, Grace Kelly and Rebecca Parker, *The LawWorks Law School and Pro Bono Clinic Report 2014* (LawWorks 2014) <<https://www.LawWorks.org.uk/solicitors-and-volunteers/resources/LawWorks-law-school-pro-bono-and-clinics-report-2014>> accessed 11 August 2017.

conservative estimate.⁷⁴ The clinical offering is extremely diverse, including public legal education, generalist advice clinics, subject-specialist advice clinics, miscarriage of justice clinics, and court and tribunal representation.⁷⁵ It is clear that CLE in England and Wales is flourishing and, with the changes heralded by the SQE on the horizon, its future is bright.

III Reimagining Clinical Legal Education

In the final part of this chapter, we offer up an overview of the eclectic range of contributions to this collection, which we have grouped into four overarching themes.

A The Forms and Shapes of CLE

As we have set out above, clinical legal education takes many forms.⁷⁶ Students can engage in clinical legal education through in-house clinics⁷⁷ or externships.⁷⁸ They can provide advice services delivered by way of written advice, or verbally. In turn, these advice services can be delivered via drop-in clinics,⁷⁹ during pre-booked appointments, or through online forums. Some universities offer full representation as part of their clinical programme; others may include public legal education within their clinical ambit.⁸⁰ As outlined above, for some institutions, clinic is a credit-bearing part of the degree programme;⁸¹ for others, it is entirely extra-curricular. And, where clinic is credit-bearing, what form this takes also differs significantly; as does the form of assessment CLE students undertake.⁸² The University of Ulster provides an example at postgraduate level of an LLM obtained by clinic activity.⁸³ Many universities will offer several, if not all, of these different models of clinic within their clinical programme and, indeed, it is perfectly possible for many of these variables to be ‘combined in various proportions in the same clinic’.⁸⁴ For example, at the time of writing, we deliver 14

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ The remainder of this paragraph is taken from Linden Thomas’ contribution to this collection.

⁷⁷ Such as the Free Legal Advice Group run by the University of Birmingham

<<http://www.birmingham.ac.uk/schools/law/flag/index.aspx>> accessed 17 July 2017 and the Student Law Office at the University of Northumbria <<https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/study/student-law-office/>> accessed 17 July 2017.

⁷⁸ For more on externships and a summary of different types of clinics see, Adrian Evans and Ross Hyams, ‘Specialist Legal Clinics: Their Pedagogy, Risks and Payoffs as Externships’ (2015) 2 *IJCLE* <<http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/426/810>> accessed 17 July 2017.

⁷⁹ For eg, London South Bank University runs a successful drop-in advice clinic, see

<<http://www1.lsbu.ac.uk/ahs/downloads/law/lsbu-drop-in-clinic-manual-v1>> last accessed 17 July 2017.

⁸⁰ Public legal education done by universities is often referred to as Streetlaw or Street Law. For a summary of Street Law practised around the globe, see Richard Grimes, David McQuoid-Mason, Ed O’Brien and Judy Zimmer, ‘Street Law and Social Justice Education’ in Frank S Bloch (ed), *The Global Clinical Movement Educating Lawyers for Social Justice* (OUP 2011).

⁸¹ There is a wealth of literature on clinic as an assessed part of a degree programme. For one insight into assessing clinical programmes see Ross Hyams, ‘Student Assessment in the Clinical Environment – What can we learn from the US Model?’ (2006) 10 *International Journal of Clinical Legal Education* <<http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/79/82>> accessed 17 July 2017.

⁸² For a discussion of CLE assessment, see the papers in the following special issue: Elaine Hall, ‘The Special Issue: Problematising Assessment in Clinical Legal Education’ (2016) 23 *International Journal of Clinical Legal Education* 1.

⁸³ See: <<https://www.ulster.ac.uk/lawclinic/home>> accessed 1 February 2018.

⁸⁴ Nicolson (n29) 133.

separate clinics at the University of Birmingham, which include in-house clinics, externships, public legal education, and research projects.⁸⁵

With this collection, we wanted to take stock of some of the forms of CLE operating in England and Wales and what those approaches may suggest for how CLE can, or could, be reimagined. We recognise that it is not possible in a collection such as this to fully capture the diverse and multifaceted clinical offering alluded to above. Instead, we offer up case studies of three projects that were presented at the original March 2015 ‘Reimagining Clinical Legal Education’ workshop. What is particularly interesting to note is that, whilst the three projects that are discussed here are all very different, a common theme runs throughout: collaboration. A collaborative approach lies at the heart of each, and each of our contributors has something to say about the role of the university, the faculty, and the students in working in partnership with those outside of the university to achieve positive outcomes for clients and students alike. Perhaps then, one possible future for CLE will be towards greater collaboration. This idea is certainly not new, and we are well aware that clinicians have worked in partnership with external third sector organisations and law centres for decades,⁸⁶ but perhaps the future offers new possibilities as to the extent to which we collaborate, what it means to collaborate, and how such collaborations are resourced and maintained.

One obvious choice for partnership working is with Citizens Advice, a well-known and well-respected advice charity with branches across the country.⁸⁷ Several university law schools have partnered with Citizens Advice over the years and, in their chapter, Christopher King and David Jones set out the advantages that such a collaboration can offer to both the university and the charity. Through the lens of their case study of the successful and long-running clinical placement programme offered by Birmingham City University, in collaboration with Citizens Advice Sandwell, King and Jones consider the positive impacts of such a partnership in the post-LASPO world.⁸⁸ They offer up detailed guidance on how their model is structured, implemented, and assessed and, in so doing, suggest one possible blueprint for future successful collaborative initiatives. A distinguishing feature of their model is that students undertake their initial orientation and training with Citizens Advice over 12 weeks during their summer holidays in order to be able to act as fully-fledged Citizens Advice advisors (working under supervision) once the academic year begins. This substantial commitment on the part of the students is inspiring not only because of the dedication it shows on their part to the clinical programme and the charity, but also because it is an example of how, as clinicians, we should continue to challenge our boundaries and those that are imposed upon us. We should not assume without question that we are limited by our resources, restricted by our experiences, or even that we are constrained by the confines of the academic calendar.

A further model for collaborative working is proposed by Jane Krishnadas, who speaks in her chapter of how the Clinical Legal Outreach Collaboration model (CLOCK) came into being at Keele University following the powerful compulsion to help that she and an audience of undergraduate students felt upon hearing the story of a domestic violence survivor who struggled to navigate the complexities of the legal system without adequate support and guidance. Krishnadas reflects on the synergies between her work, following this revelatory moment, which spurred her and her students into action, and her earlier work with women in relief camps in post-earthquake India. She goes on to outline the mechanics of the CLOCK

⁸⁵ For more on the University of Birmingham’s clinical programmes see:

<<http://www.birmingham.ac.uk/schools/law/life/pro-bono/index.aspx>> accessed 11 August 2017.

⁸⁶ See, eg, Claire Sparrow, ‘Reflective Student Practitioner: An Example Integrating Clinical Experience into the Curriculum’ (2009) 14 *International Journal of Clinical Legal Education* 70.

⁸⁷ <<https://www.citizensadvice.org.uk/>> accessed 11 August 2017.

⁸⁸ See our comments above on the cuts to legal aid that have come into force in the UK following the implementation of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO).

project, which has garnered much recognition within England and Wales as an effective means of responding to the impact of the cuts to legal aid and, as a consequence, reflects upon the public duty upon universities to act, in collaboration with legal practitioners and the third sector, in the face of such overwhelming unmet need.

As with so many things, a lack of money can be a significant barrier to the delivery of clinical programmes. It is with this in mind that Jason Tucker offers in his chapter a reflective account of working with third sector organisations which fund the provision of clinical work. One of the key lessons that Tucker sets out is the need to provide core skills training to students prior to them undertaking clinical work with the partner organisation, so that they can hit the ground running, and so that the third sector partner is getting value for money. Thus, Cardiff University, which provides the setting for Tucker's reflection, is in the process of integrating CLE into the undergraduate curriculum.

B CLE, Regulation and Employability

The last three decades have seen significant shifts in the regulation of legal services.⁸⁹ As Sommerlad et al set out:

By the late 1990s/early 2000s... the hegemony of neo-liberal rationalities had produced the neo-liberal political consensus that public service provision should be reformed through marketization and/or privatisation, and that this private provision should also be liberalised.⁹⁰

What this meant was a complete overhaul of the primary apparatus by which lawyers were regulated and the introduction of the (long and complex) Legal Services Act 2007 (the 'Act'). The Act effectively ended the professional right to self-govern, created a series of 'frontline' legal services regulators (including the Solicitors Regulation Authority), hived off the professional associations (such as The Law Society) as representative bodies only (in theory at least),⁹¹ and created an independent Office for Legal Complaints. Since its creation in 2007, the Solicitors Regulation Authority (SRA) has sought to liberalise, where possible, the market for the legal services it oversees, as part of a broad approach to encouraging competition.

At present, the SRA regulates via its Handbook, which was first introduced in 2011. Version 18 of the Handbook was published on 1 November 2016 and stands at 401 pages. In May 2014, the SRA published a Policy Statement, 'Approach to Regulation and its Reform',⁹² to provide clarity about the purpose of its regulation. This has led, in turn, to 'Looking to the Future: Flexibility and Public Protection', the SRA's phased review of its regulatory approach. What this likely means in practice is a revised, much shorter, more focused Handbook and the publication (in due course) of associated guidance documents.⁹³ Legal services in England and

⁸⁹ For an account of these, see: Sommerlad, Harris-Short, Vaughan and Young (n13) ch 1.

⁹⁰ Hilary Sommerlad, Andrew Francis, Joan Loughrey and Steven Vaughan, 'The Legal Profession in England and Wales: At the Vanguard of Professional Transformation?' in Hilary Sommerlad et al (eds), *Lawyers in Society* (Hart Publishing 2018).

⁹¹ The complexity of the Act means that, for example, the SRA is not quite fully independent of The Law Society and that while The Law Society is largely a representative body (in effect, a trade union for solicitors) the Act confers various regulatory powers on The Law Society and not the SRA (with The Law Society then passing on those powers to the SRA). It is, in short, a regulatory hot mess.

⁹² See: Solicitors Regulation Authority, 'Approach to Regulation and its Reform' (SRA 26 November 2015) <<https://www.sra.org.uk/sra/policy/regulation-reform.page>> accessed 1 February 2018.

⁹³ See the SRA's June 2017 response to its 2016 consultation: Solicitors Regulation Authority, 'Looking to the Future - Flexibility and Public Protection' (SRA June 2017) <<https://www.sra.org.uk/sra/consultations.page>> accessed 1 February 2018.

Wales are presently regulated by both title (eg, the title of solicitor) and by activity (eg, the activity of conveying land). Regulation by activity takes the form of restrictions on those who can conduct ‘reserved activities’.⁹⁴ Only individuals or firms authorised by the front-line regulators, or employees of these firms, can do so. Much legal work is, however, non-reserved (for example, advice on housing law, or the buying and selling of companies) and will either be regulated by sector-specific legislation and/or by the common law. It is within this regulatory morass that CLE clinics operate.⁹⁵

For those wishing for a guide to this regulatory maze, Richard Grimes and Linden Thomas’s chapter in this collection offers up a detailed, but still highly-accessible, account of what the regulatory legal services framework affecting university law school clinics currently is, and may become given pending proposals, particularly in relation to the qualification routes for aspirant legal practitioners. We think it should be required reading for all law school deans and CLE clinicians. Grimes and Thomas provide illustrations of how legal services regulation works in practice for clinics, and of the various options those clinics have for how they fit (or could be reimagined to fit) into the regulatory landscape. To give one example of potential regulatory reimagining, at present only two law school clinics in England and Wales have incorporated as an ‘Alternative Business Structure’ (essentially, a law firm which has the possibility of non-lawyer ownership and management).⁹⁶ These ABSs are distinct legal entities from their law schools/universities (meaning their clinicians may no longer be employed by their host university but rather by the ABS) and can, if they so choose, charge their clinic clients fees (prompting questions about the public interest role and purpose of CLE).⁹⁷ Might we then imagine a future in which law schools employ some of their own students, after finishing their law degrees and showing their competence on undergraduate CLE programmes, as trainee solicitors (and later supervising solicitors) in their own ABS entities which, in turn, charge reduced fees to their clients and reinvest those profits into the ABS and the school’s clinical programmes? For some, such a possibility will be anathema. For others, it is a potentially very economically-attractive solution to clinic resourcing challenges.

As we set out above, it was important to us that this book offer up a diversity of voices. Tony King has held a series of roles relating to learning and development, including spending the last 25 years of his legal career managing the internal learning and development function at Clifford Chance. Who better then to offer up a personal reflection on the potential benefits of CLE from a law firm employer’s point of view? His view is, understandably given his starting point, less on the educational benefits of CLE and more on the ways in which CLE offers insights into the world of law, can improve various skills, and enhances the attractiveness of the student to potential employers. In his chapter, King speaks to the relative merits and demerits of students engaging in CLE versus other forms of experience (such as law firm internships/vacation schemes, mini-pupillages in chambers, sporting activities, drama, and music). His advice is that where students have a range of activities to choose between, they should: ‘give thought to which activity will help them develop useful skills to the full bearing in mind employers will look at applicants “in the round” in the light of the particular skills,

⁹⁴ See Section 12 and Schedule 2 of the Legal Services Act 2007.

⁹⁵ For a consideration of the difficulties and limitations that this regulation can impose on University law clinics see Linden Thomas, ‘Law Clinics in England and Wales: A Regulatory Black Hole’ (2017) 51(4) *The Law Teacher* <<http://www.tandfonline.com/doi/full/10.1080/03069400.2017.1322858>> accessed 17 August 2017.

⁹⁶ The two are Nottingham Law School and the University of Law. ABS’ were the creation of the Act. For further insights into how they differ to traditional law firms, and uptake of the ABS model, see: Sundeep Aulakh and Ian Kirkpatrick, ‘Changing Regulation and the Future of the Professional Partnership: The Case of the Legal Services Act, 2007 in England and Wales’ (2016) 23(3) *International Journal of the Legal Profession* 277-303.

⁹⁷ For a discussion of ABS’ and CLE, see: Elaine Campbell and Carol Boothby, ‘University Law Clinics as Alternative Business Structures: More Questions than Answers?’ (2016) 50 *The Law Teacher* 132.

experience and capabilities needed for the role they are seeking to fill.’ In other words, CLE is not (for law firm employers) a panacea for poor academic achievement and only one of a number of possible ways of enhancing a CV. We realise that, for some readers, King’s views may come across as instrumental. But this is entirely the point. While for those involved in CLE, the educational and public interest benefits may be clear, it is equally clear that: (a) some students will seek to do CLE, in whole or in part, for employment-related purposes; and (b) CLE has potential as a ‘value-add’ on student CVs. The employability benefits of CLE do not necessarily need to crowd out any of the other benefits.

Given the way in which King talks about the power and potential of CLE from an employment perspective, the data offered up in Linden Thomas’ chapter is therefore striking. Having interviewed 18 professionals involved in the recruitment of either trainee solicitors or pupil barristers in the United Kingdom, Thomas found that employers self-confessedly know very little about CLE as a concept and were largely unable to provide any definition at all of CLE, despite most having heard something about clinical programmes in practice. Perhaps even more striking is the fact that, following her associated review of the websites of the UK’s top 50 law firms, *not one* of those top 50 firms expressly mentions experience of CLE or pro bono as an example of experience sought in future trainee solicitors in the ‘who/what we look for’ sections on the firms’ graduate recruitment webpages. Thomas argues that we should reimagine the role that law schools have to play in promoting the employability advantages of CLE to prospective employers. Her view is that that law schools need to be more proactive in this endeavour if they are to act in the best interests of their students. This, Thomas suggests, extends into clinicians’ dialogue with their students, so as to ensure that students participating in CLE recognise the skills and attributes they are developing that will make them more attractive to potential employers. As such, it is perfectly possible for students, employers and clinicians to be alive to, and made explicitly aware of, the multiple and many (educational, public interest, and employability) benefits of CLE.

C CLE Faculty

Hierarchies abound in academia. Some are explicit, whether or not we pay them much attention (vice-chancellor, pro vice-chancellor, dean, professor, reader, senior lecturer etc). Others are more subtle and are likely based in assumptions about ‘worth’. Doctrinal scholars may or may not have views about the relative worth of work by socio-legal scholars, and vice versa. The private lawyers and the public lawyers may look at similar problems through different lenses (each believing their own to be the most appropriate). And, with CLE, those who engage in clinics stand out from those who do not. This ‘standing out’ can separate the CLE clinicians from the ‘ordinary’ academic members of the Law School. This is despite the fact that, before the 1960s, most British universities relied on full-time practitioners for their faculty.⁹⁸ It seems to us that, at present, many CLE clinicians are in a jurisdictional competition with non-CLE members of law schools.⁹⁹ Given this, we are interested, for this collection and more generally, in the academics who ‘do’ CLE: the challenges they face; the things that unite and divide them; who they are; what they do; where and how they work; and what their professional future might hold. We are using the term ‘clinician’ for want of a better term for all those who ‘do’ CLE.

Clinicians come in all shapes and sizes (metaphorical and literal). The same is true for members of law schools who hold professional qualifications. Some of them have PhDs; some

⁹⁸ Richard L Abel, “‘You Never Want a Serious Crisis to Go to Waste’”. Reflections on the Reform of Legal Education in the US, UK And Australia’ (2015) 22(1) *International Journal of the Legal Profession* 3, 12.

⁹⁹ Andrew Abbott, *The System of Professions: An Essay on the Division of Expert Labor* (University of Chicago Press 2014).

do not. Some left private practice early on in their careers; others in their twilights. Some carry on private practice alongside their academic life; others ‘practise’ via CLE (either through direct supervision of students, or via managing external legal advisors); and others still leave the world of lawyering behind. Some engage in research; others do not. Some of that research speaks to CLE; but much does not. These people are employed on a variety of contracts (full-time and part-time; permanent and temporary; ‘research’ focused and ‘teaching’ focused). Of the four editors of this collection, for example, three are professionally qualified (one at the Bar; two as solicitors) and one is not. Two of us have PhDs; and the other two are working towards their doctorates. All of us engage in CLE scholarship, but for two of us our primary fields of scholarship lie outside of CLE and legal education. Diversity abounds.

The authors of chapter eight also represent an interesting diversity. Jacqueline Kinghan qualified but never practised and is responsible for the ‘academic’ side of clinical provision at University College London’s Faculty of Laws. Rachel Knowles is qualified and has practised in the third sector. Knowles’ introduction to the life academic, to which the contributors speak in their chapter, was as a hybrid employed part by UCL and part by their third sector organisation, Just for Kids Law (JFKL). Between them, Knowles and Kinghan use UCL’s relationship with JFKL to consider the role of the clinician as the ‘teaching practitioner’ navigating the often-tricky terrain and sometimes competing demands of being both a practitioner and an educator. They advocate the benefits of ‘teaching practitioners’ who are embedded in both camps (the law school and the third sector organisation), particularly when it comes to negotiating what they term ‘uncomfortable positions’ such as meeting the professional duty to act in a client’s best interest whilst also offering a meaningful and valuable educational experience for the participating students.

In her chapter, Lucy Blackburn aims to fill part of the gap in the CLE literature on the academic clinicians who are involved in CLE. She looks at the rise in the number of law school clinicians, especially since the ‘clinical boom’ of 2006 onwards,¹⁰⁰ and frames her exploration of the role of the clinician in terms of duties: duties to students; duties to clients; and duties to university employers. Blackburn explores whether clinicians engaging in CLE scholarship can ‘reinforce a clinician’s position’ within their law school. She ends with this powerful question: ‘do we not have a duty to engage in such scholarship to further the subject, rather than advance a clinician’s own personal career agenda?’ It is one we would answer in the affirmative. It is to the field of CLE that we now turn.

D CLE as a ‘Field’

One of the most interesting things for us, as editors, in producing this collection has been in trying to get our heads around CLE as a ‘field’: on the scholarship that exists on CLE; on the gaps in this scholarship; on who writes about CLE; on what they write and why they write; and on where they publish their work. There is, as many readers will already be aware, a dedicated CLE journal based in England and Wales, the *International Journal of Clinical Legal Education*, which started in 2000 and is currently on Volume 24. Equally, there have been 179 papers in *The Law Teacher* which refer to CLE since 1974.¹⁰¹ Further afield in English legal scholarship, however, papers on CLE are noticeable for their absence. The *Modern Law Review* (MLR), a top-tier generalist law journal in England and Wales, started in 1937. There are four papers, in total, in the MLR which mention CLE (and these are really only passing comments

¹⁰⁰ See specifically: Carney, Dignan, Grimes, Kelly and Parker, (n73) 4.

¹⁰¹ Accurate as of 12 December 2017. *The Law Teacher* is the journal of the UK-based Association of Law Teachers and is a fully-refereed journal concerned with the teaching of law and issues affecting legal education at all academic levels.

on the subject).¹⁰² Five papers in *Legal Studies* reference CLE; and then 10 in the *Journal of Law and Society*, some of which are relatively substantial. There is a core agitating question, which we raise here but do not seek to answer, about why CLE scholarship has yet to break out of its own disciplinary boundaries and why work on CLE is not routinely appearing in top-tier, generalist law journals. Years ago, one might have put forward a trickle-up argument (that the lack of publications in top journals was due to a lack of maturation and development in the field). Today, however, this simply cannot be the case. The papers in *The Law Teacher* and the *IJCLE* are evidence of a sufficient body of weight in this area. We think there is a risk in those writing on CLE in only speaking to those interested in CLE (ie, in only, or primarily, publishing in specialist CLE journals). We think it is about time a CLE paper was published in the MLR, both on a point of principle (ie, because the field is good enough to support such a paper) and because publication in generalist journals will allow CLE to gain further recognition from academics working in other fields.

The Research Excellence Framework (REF) acts as a dominant narrative in higher education in England and Wales. Introduced in earlier form (as the RAE) in 1986,¹⁰³ the REF is a periodic assessment (normally every six years) of the quality of research in UK universities.¹⁰⁴ For those outside the UK, a little detail may be instructive. Up to and including the last REF, academics could be entered or not entered by their institutions for the REF (ie, there were elements of selection going on). If entered, that academic's outputs (journal articles, books, book chapters etc) are collated by 'units of assessment' (for our purposes, law schools) and sent to specialist REF sub-panels for evaluation. In the last REF, which took place in 2014, 154 UK universities submitted 191,150 outputs covering 52,061 staff in REF2014.¹⁰⁵ Each submitted member of full-time staff was required to enter four outputs, and each output was graded by the REF sub-panels on a scale of 1*-4*. Work which has 'quality that is recognised nationally in originality, significance and rigour' would be rated at 1*, whereas work that has 'quality that is world-leading in originality, significance and rigour' would be rated at 4*. In general, research active staff are encouraged to produce work that will be classified at 3* or 4*. The REF 'star' ratings for the outputs for each 'unit of assessment' are then added up and lead to overall disciplinary (and university-level) results. So, for example, in law we can see that Anglia Ruskin University law school (the first alphabetically on the list of law school REF results) was assessed as having two per cent of its outputs at 4* level and 26 per cent at 3* level, and the University of Ulster law school (the last alphabetically on the list) was assessed as having 45 per cent of its outputs at 4* level and 43 per cent at 3* level.¹⁰⁶ Although a range of factors are taken into account when determining the ranking of an output, the place of publication can have a bearing on perceptions of that piece's quality. Thus, there are pressures to publish in certain journals, and there are pressures to publish research that others in legal academia will consider to be of sufficient gravitas. While the so-called leading journals in the sector marginalise CLE scholarship, there are risks that CLE scholars will not be viewed as 'REF-able' members of staff.

¹⁰² We note that 15 further papers refer to 'pro bono' but these are exclusively concerned with pro bono work done by qualified lawyers. Accurate as of 12 December 2017.

¹⁰³ For an account of the RAE, see for example: Lee Harvey, 'A History and Critique of Quality Evaluation in the UK' (2005) 13(4) *Quality Assurance in Education* 263-276 and; Valerie Bence and Charles Oppenheim, 'The Evolution of the UK's Research Assessment Exercise: Publications, Performance and Perceptions' (2005) 37(2) *Journal of Educational Administration and History* 137-155.

¹⁰⁴ The REF also currently assesses research impact and the research environment. For more on these, see: <<http://www.ref.ac.uk/about/>> accessed 14 August 2017.

¹⁰⁵ See: <<http://results.ref.ac.uk/>> accessed 14 August 2017.

¹⁰⁶ See: <<http://results.ref.ac.uk/Results/ByUoa/20>> accessed 14 August 2017.

While the REF exercises are much maligned,¹⁰⁷ they hold significant sway in the UK and performance in REF is important on a number of levels. Primarily, doing well or not well in the REF determines how much money that university receives in research funding from the government.¹⁰⁸ Institutional and subject level REF rankings are also used for various league tables.¹⁰⁹ And, and on a more granular level, an individual academic's own REF output scores (and whether or not they were entered into the REF) can impact significantly on status and promotion prospects.¹¹⁰ It is important to note that which academics are entered or not entered into the REF depends on a variety of factors. Some universities and departments have been accused of 'game playing' the REF (ie, only entering a small number of their academics with the most stellar work to make it look as if the entire department is equally stellar). Each university, and possibly each department, will have different processes in play for doing their own internal assessments of the quality of the work produced by their academics and whether that work is 'good enough' to be entered into the REF. Linked to the ideas explored above about who CLE clinicians are and what role(s) they hold, we are interested in how many clinicians: (a) are employed on contracts which require them to engage in research; and (b) had their CLE research submitted to the REF2014. Both questions are answerable, if yet unanswered.¹¹¹ Looking forward to the next REF,¹¹² and the extent to which CLE scholarship will be returned and assessed, three core questions need to be answered: (i) which clinicians are eligible for REF return?;¹¹³ (ii) if eligible, do those clinicians have 'significant responsibility for research'?;¹¹⁴ (iii) what quality assessment, in REF terms, will be made of their CLE outputs? These questions are important and go, as the chapters by Blackburn and by Knowles and Kinghan highlight, to the perceived status, role and self-worth of clinicians in law schools in the UK. They are also relevant to the perceived status of CLE scholarship more generally. For example, when the Law sub-panel for REF2014 reported back on the quality of the research it had reviewed for the 2014 exercise, it said: 'The sub-panel was pleased to receive submissions relating to legal education, but the methodological rigour and significance exhibited by some of these outputs was uneven.'¹¹⁵ To what extent does this cover, or is

¹⁰⁷ See, eg: Ben R Martin, 'The Research Excellence Framework and the 'Impact Agenda': Are We Creating a Frankenstein Monster?' (2011) 20(3) *Research Evaluation* 247-254.

¹⁰⁸ For how this works, see: <<http://www.hefce.ac.uk/rsrch/funding/>> accessed 14 August 2017.

¹⁰⁹ These league tables are legion, but see eg: <<https://www.timeshighereducation.com/news/ref-2014-results-table-of-excellence/2017590.article>> and <<https://www.theguardian.com/news/datablog/ng-interactive/2014/dec/18/university-research-excellence-framework-2014-full-rankings>> both accessed 14 August 2017.

¹¹⁰ See: Rosalind Gill, 'Breaking the Silence: The Hidden Injuries of Neo-Liberal Academia' in Róisín Ryan-Flood and Rosalind Gill (eds), *Secrecy and Silence in the Research Process: Feminist Reflections* (Routledge 2009) 228-244.

¹¹¹ Such could be answered using data from the Higher Education Statistics Agency and from surveying all CLE clinicians in the UK.

¹¹² The exact contours of REF2021 are still under review. For the latest, see: <<http://www.hefce.ac.uk/rsrch/refconsultation/>> accessed 1 February 2018.

¹¹³ In REF2014, eligible 'Category A' staff were those who: 'are defined as academic staff with a contract of employment of 0.2 FTE or greater and on the payroll of the submitting HEI on the census date (31 October 2013), and whose primary employment function is to undertake either "research only" or "teaching and research"'. See para 78 onwards of: HEFCE, 'Assessment Framework and Guidance on Submissions' (London, January 2012). As such, eligibility depends on 'primary employment function', an interesting question for CLE clinicians.

¹¹⁴ This phrase comes from the Stern Review noted above. See here for a discussion of what this might mean: <<http://blog.hefce.ac.uk/2017/07/21/significant-responsibility-an-update-on-the-consultation-for-ref-2021/>> accessed 14 August 2017.

¹¹⁵ Research Excellence Framework 2014, 'Overview Report by Main Panel C and Sub-Panels 16 to 26' (REF2014 January 2015) 71.

applicable to, CLE scholarship? Our own sense is that some CLE scholarship certainly lacks the rigour and significance that 4* research possesses, but such is equally true of other fields (ie, there is poor scholarship everywhere). In thinking about the field of CLE, what we also find interesting (but remain somewhat unclear on) are the interfaces and overlaps between CLE scholarship and other scholarship on legal education. Is CLE a subset of legal education scholarship? And, if it is, why does it appear to us that so few papers on CLE substantively situate themselves in wider legal education debates and/or, further on, in contemporary debates on higher education?

Given the questions we have just raised, we felt it important to show that CLE scholarship has much to offer. This is what Hall and Sylvester demonstrate in their chapter. Drawing upon an Aristotelian framework, they consider the divisions that persist within the discipline between the practice of law and academia. In doing so, they challenge the rationale for this continuing dichotomy, citing CLE as a means by which students can answer some of the ‘big disciplinary questions and discourses’ and explore the complex realities of law.

In her chapter, Meredith Daniel uses her experiences as a student on the LLM programme at the University of York as a lens through which to explore the unique benefits of delivering, and undertaking, CLE at postgraduate level. In terms of academic rigour, CLE is often compared unfavourably next to ‘traditional’ law modules but situating a clinic within the postgraduate programme illustrates the pedagogical value of such a course. At a more practical level, postgraduate students can provide leadership and mentoring for undergraduates who are undertaking clinical work, thus adding to the development of skills for the postgraduate; assisting the undergraduate; and lightening the load of the academic member of staff overseeing the clinic. Daniel also surmises that postgraduate clinical work offers the prospect of more searching scholarship on the nature of CLE generally. We would agree.

IV CLE Beyond England and Wales

Given the jurisdictional boundaries that dictate many of the forces outlined earlier in this chapter, the emphasis in this collection is primarily on CLE reimagined in England and Wales (and in places, other parts of the United Kingdom). However, we were also keen to get sense-checks on whether, and to what extent, the issues, challenges, opportunities and threats we explore in this collection resonate or do not resonate with others working the field of CLE elsewhere. To do that sense-checking, we asked leaders in CLE in Australia, continental Europe, and the United States for their thoughts. These sit as short post-scripts to this collection and help to situate this collection within a larger CLE community. These post-scripts also shed light on how the issues raised in this collection rear their heads in other jurisdictions.

Let us end this chapter by thanking our contributors and the external peer reviewers who blind reviewed those contributions. We would also have been unable to undertake this collection without the support of Tina Martin (at the University of Birmingham) and the wonderful (and patient) team at Hart. Julie Price and Lisa Webley also kindly gave us some valuable feedback on this chapter. We hope that you will enjoy reading the chapters which follow as much as we have, and that they offer you much food for thought on CLE and how it may be reimagined.