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Law Clinics Educating for Complexity Through Integrative Learning

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Abstract

When we view the legal education system as a complex system nested within the broader systems of law and society, it is clear that the law clinic offers unique value. The law clinic provides an opportunity for transparency across and a connection within and between the systems. This is due, in part, to the integrative learning experiences that are afforded within the law clinic setting. This article introduces the reader to the complex system of legal education and describes the environment in which it is nested. This article then discusses the importance of the law clinic from a complexity perspective by pointing to the various integrative learning experiences that are inherent within it. The article also draws on complexity scholarship in order to provide unique insights for the benefit of clinical legal educators.

I INTRODUCTION

This article considers law clinics through a complex systems lens in order to highlight the value that is derived by participating in such an experience. This article draws on complexity thinking to situate the legal education system within the broader complex systems of law and society and to recognise the unique role played by law clinics in assisting the student to traverse these systems. The article explains, through the application of that same theoretical framework, several of the integrative learning methods that are used by clinical legal educators in educating the student for the complex systems in which they will practice. While this article is primarily aimed at architects of law school curricula and clinical legal educators, clinical educators within other disciplines may also find this article of value. It is also hoped that this article will add value to the continuing discussions regarding the further integration of clinical legal education within the law school curriculum.¹

A significant number of Australian law schools offer clinical legal education opportunities to their students.² Clinical legal education is often understood to be 'law school experiential learning that places students in the role of lawyers representing clients with legal questions or problems'.³ While some authors define clinical legal education to extend to learning that occurs in simulated environments, this article focuses on clinical legal education that places students under the supervision of a lawyer representing real clients.⁴ These opportunities are often referred to as law clinics. A law clinic is typically offered as a for-credit subject or as a volunteer opportunity. A student may be placed in a law clinic that is operating within an organisation (often, a not-for-profit organisation) that delivers a legal service. On the other hand, the law clinic itself may be a stand-alone clinic set up (often, by the university in partnership with others) to provide legal services. Students participate in activities such as client intakes, client interviewing, file management, legal research, the provision of verbal and written legal advice, letter writing, and making referrals. Students might also work on law reform submissions and community education campaigns. Students enrolled in a law clinic are supervised by a practicing lawyer. They also work closely with an academic educator who, among other things, coordinates the experience, facilitates curricular alignment, manages student welfare, and ensures that any academic learning objectives are met. Students undertaking clinical subjects that carry academic credit are required to submit assessments such as written reflections. These are typically assessed by the academic educator. The Council for Australian Law Deans has recognised the value of law clinics by requiring that law schools 'endeavour to provide ... experiential learning opportunities' and 'seek to engage with the wider community' within the CALD Standards for Australian Law Schools.⁵ Both of these requirements 'include, for example, and so far as is practicable, clinical programs'.⁶

While many scholars have discussed the benefits derived from participating in law clinics,⁷ there is very little literature considering law clinics through a complex systems lens. Ross describes the ground-breaking work of Professor Frank Remington in embedding a 'systems approach to clinical education' at the Frank J Remington Centre at the University of Wisconsin.⁸ It is the author's view that methodologies that recognise the complexity of systems, such as the one

¹ See, eg, Adrian Evans et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press, 2017) 39-40, 45, 60 and 62 and Svetlana German and Robert Peltier, 'Clinical Legal Experience and the Benefits of Practical Training: Student Perspectives' in *The Future of Australian Legal Education* (Thomson Reuters, 2018) 269, 269 and 292.

² Jackson Walkden-Brown and Lindsey Stevenson, 'Preparing for Practice: Clinical Legal Education through the Lens of Legal Education Discourse' (2018) 3(1) *Australian Journal of Clinical Education* 1, 1.

³ Evans et al (n 1) 41.

⁴ The approach taken by the author appears to be the generally accepted position: Evans et al (n 1) 44.

⁵ Council of Australian Law Deans, *CALD Standards for Australian Law Schools* (Council of Australian Law Deans, 2009) 4 and 12.

⁶ Ibid.

⁷ See, eg, Evans et al (n 1) 12-14 and Francina Cantatore, Linda Crane and Deborah Wilmoth, 'Defining Clinical Education: Parallels in Practice' (2016) 1(2) *Australian Journal of Clinical Education* 1, 2.

⁸ Meredith Ross, 'A "Systems" Approach to Clinical Legal Education' (2007) 13 *Clinical Law Review* 779.

described in Ross' article, warrant further attention, especially now that these approaches are rising in prominence in other disciplines.

Complexity science has been adopted in both the natural and social sciences. Most relevantly, for our purposes, it has also been adopted by educational scholars. Educational systems are complex systems nested within broader social systems.⁹ The legal education system is a complex system nested within the complex systems of law and society. Once one views this typography from a complex systems perspective, the law clinic stands out as delivering potentially unique value. Complexity thinking reveals the law clinic to be an opportunity that delivers transparency across and a connection within and between the systems. This is due, in part, to the integrative learning experiences that are afforded within the law clinic environment.

This article introduces the reader to the idea of, and identifies the legal education system as, a 'complex system'. The article then discusses the place of legal education nested within the broader complex systems of law and society. Finally, the article discusses various integrative learning experiences that are inherent within the law clinic experience from a complexity perspective and provides insights for clinical legal educators. This article does not discuss the complexity of learning itself, and nor does it offer a complexity critique of the various learning theories in the context of the law clinic. These are related topics that will likely form the basis of follow-up endeavours.

II COMPLEX SYSTEMS

In order to appreciate legal education as a complex system, one should first consider the general nature and operation of complex systems. It is somewhat challenging to define a complex system, in the typical sense, as that would necessitate simplification of the complex reality of the system.¹⁰ Instead of lingering within this conundrum of definitional circularity, most complexity scholars begin by describing a complex system. They do so in order to offer their readers a starting point to build upon, acknowledging the difficulties encountered when one seeks to reduce complexity for the sake of definition. There is no one universally recognised description or theory that informs the work in the field of complexity science.¹¹ Levy describes a complex system as:

[O]ne whose component parts interact with sufficient intricacy that they cannot be predicted by standard linear equations; so many variables are at work in the system that its overall behaviour can only be understood as an emergent consequence of the holistic sum of all the myriad behaviours embedded within.¹²

The 'component parts' are the 'agents', or participants, within the system.¹³ When complexity theory is applied in physiology, these agents may be organisms, cells, or biomolecules. When applied in sociology, these agents may be people. In social systems, there are human and non-human networks. The human network is the social network. The non-human networks include information networks.¹⁴ To put it in basic terms, the author suggests that the reader considers the complex system to be like a multi-dimensional model. The social network of people is the base model, and the non-human networks are overlays to that model that cannot be separated.

While the agents within a complex system are important, it is their interactions and the consequential behaviour of the system that sees it labelled as 'complex'. Complex systems are

⁹ Eileen S Johnson, 'Ecological Systems and Complexity Theory: Toward an Alternative Model of Accountability in Education' (2008) 5(10) *Complicity: An International Journal of Complexity and Education* 1, 3 and 6.

¹⁰ Julian Webb, 'Law, Ethics, and Complexity: Complexity Theory and the Normative Reconstruction of Law' (2005) 52 *Cleveland State Law Review* 227, 228 and 232.

¹¹ Ibid 228.

¹² Steven Levy, *Artificial Life: The Quest for New Creation* (Random House, 1992) 7-8. By way of further description, complex systems are generally recognised as having common traits. Cilliers' traits of a complex system are summarised in Paul Cilliers, 'Knowing Complex Systems' in Kurt Anders Richardson, *Managing Organizational Complexity* (IAP, 2005) 7, 8-9.

¹³ Neil F Johnson, *Simply Complexity: A Clear Guide to Complexity Theory* (Oneworld, 2012) 13.

¹⁴ J B Ruhl and Daniel M Katz, 'Mapping Law's Complexity with "Legal Maps"' in Thomas Webb, Steven Wheatley and Jamie Murray (eds), *Complexity Theory and Law* (Routledge Ltd, 2018) 23, 33.

dynamic, in that they 'emerge' in response to internal and environmental influences.¹⁵ The concept of emergence is recognised as a milestone complexity theory contribution.¹⁶ Emergence is usefully described by Johnson as:

[The system's] agents residing on the one scale start producing behaviours that lay one scale above them: ants create colonies; urbanities create neighbourhoods; simple pattern-recognition software learns how to recommend new books. The movement from low-level rules to higher-level sophistication is what we call emergence.¹⁷

Due to the complexity of the system, an analysis of its individual agents does little to help one understand the system and its behaviour.¹⁸ In order to understand such systems, complexity thinking emphasises the interrelations between the agents and the systems themselves and focuses on the self-organisation and emergence that arises as a result of those interrelations.¹⁹ Given that complex systems display self-organisation and emergence, they are said to be 'more than the sum of [their] parts'.²⁰

III LEGAL EDUCATION AS A COMPLEX SYSTEM

Complexity thinking has been applied to many disciplines. Complexity theory's provenance can be found in the natural sciences, cybernetics and mathematics.²¹ It has also been adapted for use within the social sciences.²² Social systems are recognised as complex systems.²³ Social systems are inherently complex, or 'hyper-complex', due to the often undefinable nature of human relationships and interactions.²⁴ Organisations are recognised as social systems that are 'artificial and socially constructed around a particular purpose'.²⁵ Organisations are thus complex systems. In an organisational setting, complexity theory has been applied, for example, to organisational leadership.²⁶

Complexity theory is also developing to become a prominent theory with educationalists. Complexity theory has been applied to the philosophy of education and educational research.²⁷ It has also been applied to learning and teaching.²⁸ To broadly categorise, complexity theory is

¹⁵ Keith Morrison, *School Leadership and Complexity Theory* (2002, Routledge) 12. The author thanks the Australian Journal of Clinical Education's anonymous reviewer for the suggested wording.

¹⁶ Mark Mason, 'What Is Complexity Theory and What Are Its Implications for Educational Change?' (2008) 40(1) *Educational Philosophy and Theory* 35, 37.

¹⁷ Steven Johnson, *Emergence: The Connected Lives of Ants, Brains, Cities and Software* (Scribner, 2001) 18 cited in Mason (16) 37.

¹⁸ Beverley Ellis and Stuart Ian Herbert, 'Complex Adaptive Systems (CAS): An Overview of Key Elements, Characteristics and Application to Management Theory' (2011) 19(1) *Informatics in Primary Care* 33, 34.

¹⁹ Christine Jorm and Chris Roberts, 'Using Complexity Theory to Guide Medical School Evaluations' (2018) 93(3) *Academic Medicine: Journal of the Association of American Medical Colleges* 399, 399-400.

²⁰ Fiona McKenzie, *Complex Adaptive Systems: Implications for Leaders, Organisations, Governments and Citizens* (Policy Briefing Paper No 1, Australian Futures Project, May 2014) 2.

²¹ Ramray Bhat and Dharma Pally, 'Complexity: The Organizing Principle at the Interface of Biological (Dis)order' (2017) 96(3) *Journal of Genetics* 431, 432.

²² See, eg, David Byrne, *Complexity Theory and the Social Sciences: The State of the Art* (Routledge, 1998).

²³ John H Miller and Scott Page, *Complex Adaptive Systems: An Introduction to Computational Models of Social Life* (Princeton University Press, 2007) 10.

²⁴ Christopher Koliba et al, 'Complexity Theory and Systems Analysis' in Christopher Ansell and Jacob Torfing (eds), *Handbook on Theories of Governance* (Edward Elgar, 2016) 364, 367; Louis Klein, 'Understanding Social Systems Research' in Mohamed Nemiche and Mohamed Essaaidi (eds) *Advances in Complex Societal, Environmental and Engineered Systems* (Springer, 2016) 51, 52.

²⁵ Elizabeth Anne Eppel, *The Contribution of Complexity Theory to Understanding and Explaining Policy Processes: A Study of Tertiary Education Policy Processes in New Zealand* (PhD Thesis, Victoria University of Wellington, 2009) 19.

²⁶ See, eg, the collected works published in Mary Uhl-Bein and Russ Marion (eds), *Complexity Leadership Part 1: Conceptual Foundations* (Information Age Publishing, 2008).

²⁷ See, eg, Mark Mason, 'Complexity Theory and the Philosophy of Education' (2008) 40(1) *Educational Philosophy and Theory* 4 and Keith Morrison 'Educational Philosophy and the Challenge of Complexity Theory' (2008) 40(1) *Educational Philosophy and Theory* 19.

²⁸ See, eg, Brent Davis and Dennis Sumara, *Complexity and Education Inquiries into Learning, Teaching, and Research* (Taylor and Francis, 2014).

relevant in pursuing two main challenges that arise in an educational context: 1) the complexity of educational systems (the complexity of the systems in which education is provided); and 2) the complexity of education (for example, the complexity of learning and teaching, and educational content).²⁹

The Organisation for Economic Co-operation and Development (the OECD), through its Directorate for Education and Skills, has made significant contributions to the collective literature that considers the increasing complexity of educational systems and education. Initially, these contributions were made available through working articles published as part of the OECD's Education Working Article Series.³⁰ More recently, the OECD's Centre for Educational Research and Innovation published the results of its Governing Complex Education Systems Project.³¹ This substantial work recognises the complexity of educational governance systems and proposes that reform in such systems be considered through a complexity lens.

Blanchenay states that 'education systems are in fact complex systems — that is, networks of interdependently linked actors whose actions affect all other actors, and which evolve, adapt and reorganise themselves'.³² Generally speaking, educational systems are recognised as being complex systems.³³ National education systems — which deliver primary, secondary and tertiary education — are complex systems.³⁴ The various sub-systems within an educational system can also be identified as complex systems.³⁵ This is consistent with the idea that systems are nested within other systems.³⁶ It is also consistent with the slightly alternative idea that a system's environment is made up of other systems.³⁷ Higher education systems are complex systems.³⁸ In fact, systems thinking is recognised for its potential to inform answers to numerous questions that arise in a higher education context.³⁹ The interacting agents of a higher education system are, for example, 'students, faculty, administrative units, courses and [information technology]'.⁴⁰ Just like other organisations such as schools,⁴¹ universities are recognised as being complex systems.⁴² Drilling down to lower-order sub-systems, higher-educational programs, such as

²⁹ Jim Kaput et al, 'Two Roles for Complex Systems in Education: Mainstream Content and Means for Understanding the Educational System Itself' *Planning Documents for a National Initiative on Complex Systems in K-16 Education* (Web Page) <<https://necsi.edu/two-roles-for-complex-systems-in-education>>.

³⁰ See, eg, Sean Synder, 'The Simple, the Complicated, and the Complex: Educational Reform Through the Lens of Complexity Theory' (OECD Education Working Article No 96, Organisation for Economic Co-operation and Development, 12 December 2013).

³¹ Tracy Burns and Florian Koster (eds), *Governing Education in a Complex World, Educational Research and Innovation* (OECD Publishing, 2016).

³² Patrick Blanchenay, 'Policy Experimentation in Complex Education Systems' in Tracy Burns and Florian Koster (eds), *Governing Education in a Complex World, Educational Research and Innovation* (OECD Publishing, 2016) 161, 162.

³³ Lucie Cerna, 'Innovation, Governance and Reform in Education' (Conference Background Article, OECD Centre for Education Research and Innovation Conference, 3-5 November 2014, Paris) 16-9.

³⁴ Mihály Fazekas and Tracy Burns, 'Exploring the Complex Interaction Between Governance Knowledge in Education' (OECD Education Working Paper No 67, Organisation for Economic Cooperation and Development, 2012) 7.

³⁵ Marilyn Cochran-Smith et al, 'The Challenge and Promise of Complexity Theory for Teacher Education Research' (2014) 116(5) *Teachers College Record* 1, 6.

³⁶ Nastaran Keshavarz et al, 'Schools as Social Complex Adaptive Systems: A New Way to Understand the Challenges of Introducing Health Promoting Schools Concept' (2010) 70 *Social Science & Medicine* 1467, 1468.

³⁷ Sylvia Walby, 'Complexity Theory, Systems Theory, and Multiple Intersecting Social Inequalities' (2007) 37(4) *Philosophy of the Social Sciences* 449, 458-9.

³⁸ Elena Hadzieva et al, 'Higher Education from a Complexity Theory Perspective' in *Conference Proceedings from the International Scientific Conference, The Education at the Crossroads – Conditions, Challenges, Solutions and Perspectives, 10-11 November 2007* (Macedonian Science Society, 2008) 41, 42.

³⁹ John M Smart and Willard B Spalding, 'Concepts of Systems and Higher Education' (1970) 34(2) *The Educational Forum* 167, 170.

⁴⁰ Munir Mandviwalla and David Schuff 'Reimagining the Higher Education Experience as a Socially-Enabled Complex Adaptive System' in *2014 4th Hawaii International Conference on System Science* (IEEE Computer Society, 2014) 4546, 4548.

⁴¹ Morrison (n 27) 22; Davis and Sumara (n 28) 5-6; Johnson (n 9) 6; Keshavarz et al (n 36) 1473.

⁴² Rómulo Pinheiro and Mitchell Young, 'The University as an Adaptive Resilient Organization: A Complex Systems Perspective' in Jeroen Huisman and Malcolm Tight (eds) *Theory and Method in Higher Education Research* (Emerald Publishing Limited, 2017) Vol 3, 119.

undergraduate degrees, are complex systems.⁴³ Classes are also complex systems.⁴⁴ Webb recognises that legal education is a complex system,⁴⁵ and its various sub-systems are similarly complex.

IV LEGAL EDUCATION AS A NESTED SYSTEM

The legal education system is not solitary and insulated.⁴⁶ The system is an 'open system' in that it 'exchange[s] energy or information with [its] environment'.⁴⁷ As touched on above, some theorists classify systems as being 'nested' within in other systems. Others, instead, identify a system's environment as being made up of other systems. In the context of legal education, what might these other systems be? Or, to put it another way; what systems form the environment of the legal education system? What environment 'constrains and enables [the] activities [of the system]'?⁴⁸

Teacher education is recognised as being nested within the education system.⁴⁹ Similarly, the legal education system is nested within the law system. Webb describes the legal education system as 'exist[ing] within an environment over which it may have some influence, but little control'.⁵⁰ The Australian Learning and Teaching Council developed the Threshold Learning Outcomes (TLOs) for various disciplines, including law.⁵¹ The TLOs 'represent what a graduate is expected to know, understand and be able to do as a result of learning' within the relevant program.⁵² In drafting the TLOs, there was acknowledgement of the vital role played by universities in preparing students for legal practice.⁵³ The legal profession is a stakeholder in legal education.⁵⁴ Students study law, which is, to some extent, a product of the legal profession. The profession prescribes admission requirements that influence the content taught by law schools. A number of students pursuing careers in the profession select and tailor their experiences to meet the perceived demands of their future employers. It is evident that energy or information moves from the profession to the legal education system. However, energy or information also moves from the legal education system to the profession. Tilbury reminds us of this when he says that 'the formative influence of legal education on later actors in the legal process is critically important in shaping any legal system'.⁵⁵

Law is regarded as a complex system.⁵⁶ In fact, a recent collection of scholarly works discusses complexity and the law in some detail.⁵⁷ The agents in the law system are described

⁴³ Elly Govers, 'Embracing Complexity of Educational Programs' (2016) *Cogent Education* 1, 3.

⁴⁴ Craig Newell, 'The Class as a Learning Entity (Complex Adaptive System): An Idea From Complexity Science and Educational Research' (2008) 2 *Simon Fraser University Educational Review* 5.

⁴⁵ Julian Webb, 'Why Learning is a Complex Business', *The Higher Education Academy, UK Centre for Legal Education* (Conference Paper, 2004) <<http://ials.sas.ac.uk/ukcle/78.158.56.101/archive/law/learning-inlaw-annual-conference/2004/papers/webb/index.html>>.

⁴⁶ Ibid.

⁴⁷ Cilliers (n 12) 8.

⁴⁸ Mandviwalla and Schuff (n 40) 4548.

⁴⁹ Cochran-Smith et al (n 35) 7.

⁵⁰ Webb (n 45).

⁵¹ Sally Kift and Mark Israel, *Bachelor of Laws Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, 2010).

⁵² Ibid 9.

⁵³ Ibid 8.

⁵⁴ Fiona Cowie, 'Introduction: Contextualising Stakeholders in the Law School' in Fiona Cownie (ed) *Stakeholders in the Law School* (Hart Publishing, 2010) 1, 9-11 and Andy Boon and Julian Webb, 'The Legal Profession as Stakeholders in the Academy in England and Wales' in Fiona Cownie (ed) *Stakeholders in the Law School* (Hart Publishing, 210).

⁵⁵ Michael Tilbury, 'Marion Dixon, Thirty Up: The Story of the UNSW Law School 1971–2001' (2002) 25 *University of New South Wales Law Journal* 255, 259.

⁵⁶ Webb (n 10) 232-8; J B Ruhl, 'Law's Complexity: A Primer' (2008) 24 *Georgia State University Law Review* 885, 897-901; Complexity theory has been applied to a number of legal disciplines. A useful list is provided by Ruhl and Katz in J B Ruhl and Daniel M Katz, 'Measuring, Monitoring, and Managing Legal Complexity' (2015) 101 *Iowa Law Review* 191, 205-6.

⁵⁷ Thomas E Webb and Steven Wheatley (eds), *Complexity Theory and the Law, Mapping an Emergent Jurisprudence* (Routledge, 2018).

in an early chapter of that collection as including institutions and individuals with legal roles.⁵⁸ The law is also an agent.⁵⁹ The system is described as complex because it is an 'emergent, self-organising system in which an interactive network of many parts — actors, institutions and 'systems' — operate with no overall guiding hand, giving rise to complex collective behaviours that can be observed in patterns of law communications'.⁶⁰ Among other things, the system of law is a system of clients, lawyers, law firms, courts and regulators — of human and institutional interactions and influences — of values, beliefs and ethics — of principles, policies and rules — of mandates and discretions — of social contexts. The agents within the system interact in non-linear ways.⁶¹ The interactions are 'rich' in that they effect various other agents within the system.⁶² As a result, the agents jostle, shift and adjust, ultimately resulting in, what is called, self-organisation and emergence.⁶³ Given the relationship between law and society, each influencing the other, it can also be said that law and society are part of a broader 'law-and-society system' that behaves in a similar way.⁶⁴ The legal education system is nested within this system. In fact, the legal education system is nested within numerous interdependent systems. By way of example, these include the education system and the economic system.

Once we accept that legal education is a complex system nested within, among others, the complex law-and-society system, we can draw on complexity thinking to assist us in our educational endeavours. Complexity thinking assists us to understand that law students are not merely learning the law, they are learning about complex systems. However, the author asserts that complex systems thinking takes us a step further than this. It assists us to understand that our students are not only learning about these systems, they are presently agents within these systems. Law students are agents seeking to further their professional relationship within the systems. Legal theorists draw on complexity theory to, among other things, propose strategies for dealing with the complexity of the law-and-society system.⁶⁵ Educational theorists, draw on the same theory to, among other things, consider how we might prepare students for that same complexity.⁶⁶

V THE COMPLEXITY GAP

Nursing and teaching educators have historically grappled with the criticism that the undergraduate education in their individual disciplines leaves graduating students with a 'theory-practice gap'.⁶⁷ In the context of nursing, the theory-practice gap is described as 'the distancing of theoretical knowledge from the practical dimension of nursing'.⁶⁸ Similar criticisms have been levied at the legal education system.⁶⁹ This gap is often attributed, at least in part, to the doctrinal focus of traditional law schools.⁷⁰ While legal skills are taught more frequently,⁷¹ there are still

⁵⁸ Ruhl and Katz (n 14) 31.

⁵⁹ Ibid.

⁶⁰ Jamie Murray, Thomas E Webb and Steven Wheatley, 'Encountering Law's Complexity' in Jamie Murray, Thomas E Webb and Steven Wheatley (eds), *Complexity Theory and the Law, Mapping an Emergent Jurisprudence* (Routledge, 2018) 3, 3.

⁶¹ Cilliers (n 12) 8; Ruhl (n 56) 898.

⁶² Paul Cilliers, *Complexity and Postmodernism Understanding Complex Systems* (Routledge, 2002) 3-4.

⁶³ Mason (n 16) 36-7; Ruhl (n 56) 899.

⁶⁴ J B Ruhl, 'Complexity Theory as a Paradigm for Dynamical Law-and-Society System' (1996) 45(5) *Duke Law Journal* 849, 851-2.

⁶⁵ Ruhl and Katz (n 14) 29.

⁶⁶ See, eg, Brent Davis and Dennis J Sumara, 'Cognition, Complexity, and Teacher Education' (1997) 67(1) *Harvard Educational Review* 105.

⁶⁷ Margaret G Landers, 'The Theory-Practice Gap in Nursing: The Role of The Nurse Teacher' (2000) 32(6) *Journal of Advanced Nursing* 1550, 1551-2; Bryson D Kinkadian, 'Why Are We Unable Bridging Theory-Practice Gap in Context of Plethora of Literature on Its Causes, Effects and Solutions?' (2017) 8(6) *Journal of Education and Practice* 102, 102-3.

⁶⁸ Natashia Josephine Scully, 'The Theory-Practice Gap and Skill Acquisition: An Issue for Nursing Education' (2011) 18(2) *Collegian* 93, 94.

⁶⁹ See, eg, Susan Daicoff, 'The Future of the Legal Profession' (2011) 37(1) *Monash University Law Review* 7, 14.

⁷⁰ Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' (2004) 26(4) *The Sydney Law Review* 537, 543.

⁷¹ David Barker, *A History of Australian Legal Education* (The Federation Press, 2017) 5.

significant gaps.⁷² This is especially the case in the context of a legal profession that is itself grappling to modernise, both from a technical and client services perspective.⁷³ To the extent that students are exposed to context, it is principally theoretical.⁷⁴ When the student transitions from the sub-system of legal education, there is a gap in their capability to practice within the law-and-society system.

The theory-practice gap extends beyond a gap in practical skills. There is also a complexity gap.⁷⁵ The assertion is that graduating students are underprepared for the complexity of the law-and-society system. Beckett and Hager state that 'universities readily atomize human performance into component parts.'⁷⁶ In the traditional law school curriculum, learning is separated into doctrinal subjects. In Australia, this division usually mirrors, at least in part, the division of topics that appear in the Priestley 11. Legal educators teach knowledge, but they do not always teach students about its use.⁷⁷ If students do learn how to use that knowledge, it is often lacking certain context. Legal educators ask students to research and write in response to self-contained hypothetical problems. Students are asked to engage with skills such as mooting, negotiation and client interviewing within simulated environments. No matter how authentic the simulations, some of the genuine complexity of client interaction and client care is lost.⁷⁸ Also lost is the complexity of the inter-professional and other relationships that are often formed outside of the lawyer-client relationship.⁷⁹ Further, the true complexity of law, which spans across and beyond the Priestley 11 divisions, and its operation within context, often escapes attention. Though simulations are often purposefully designed to reduce complexity in order to facilitate learning, we ought to guard against implementing such approaches across entire law programs.⁸⁰ The learning that is delivered within the walls of the academy insulates the student from the realities of the complex system and much of what makes it complex.⁸¹

The complexity gap is likely the result of the manner in which the systems have coevolved.⁸² The development of this gap is steeped in history and is complex in its own right.⁸³ While some gap is to be expected, complexity theory assists us to understand that there will likely be systemic consequences (which might include major disruption or system failure) where there is insufficient

⁷² Daicoff (n 69) 14.

⁷³ See generally, New South Wales Law Society, *The Future of Law and Innovation in the Profession Report* (New South Wales Law Society, 2016).

⁷⁴ Julian Webb, 'Where the Action Is: Developing Artistry in Legal Education' (1995) 2(2) *International Journal of the Legal Profession* 187, 189.

⁷⁵ Many authors, such as Landers (n 67) 1550-1, state that the theory-practice gap results from, among other things, a failure to keep pace with increasing complexity. Ross (n 8) 787 discusses the early work of Professor Remington in identifying such a gap in the context of a graduating students' capability to work in the American criminal justice system.

⁷⁶ David Beckett and Paul Hager, 'A Complexity Thinking Take on Thinking in the University' in Søren S E Bengtsen and Ronald Barnett, *The Thinking University: A Philosophical Examination of Thought and Higher Education* (Springer International Publishing, 2018) 137, 144.

⁷⁷ Webb (n 74) 190.

⁷⁸ Richard Grimes, 'The Theory and Practice of Clinical Legal Education' in Julian Webb and Caroline Maughan (eds), *Teaching Lawyers' Skills* (Butterworths, 1996) 138, 140; Nina W Tarr, 'Current Issues in Clinical Legal Education' (1993) 31(1) *Howard Law Journal* 31, 36; Lefroy and Yardley highlight some of the differences between simulation in medical education and practice in Janet Lefroy and Sarah Yardley, 'Embracing Complexity Theory Can Clarify Best Practice Frameworks for Simulation Education' (2015) 49(4) *Medical Education* 344, 345.

⁷⁹ Taylor discusses interprofessional relationships between lawyers and social workers and advocates for interprofessional education in Sarah Taylor, 'Educating Future Practitioners of Social Work and Law: Exploring the Origins of Inter-Professional Misunderstanding' (2006) 28(6) *Children and Youth Services Review* 638, 639-40 and 649-50.

⁸⁰ Ricca discusses the problems of complexity reduction in Bernard Ricca, 'Beyond Teaching Methods: A Complexity Approach' (2012) 9(2) *Complicity: An International Journal of Complexity and Education* 31, 35-6.

⁸¹ Lyubov Laroche, Cynthia Nicol and Jolie Mayer-Smith, 'New Venues for Science Teacher Education: Self-Organizational Pedagogy on the Edge of Chaos' (2007) 4(1) *Complicity: An International Journal of Complexity and Education* 69, 70. Ricca discusses the problems of 'sub-system isolation' in Ricca (n 80) 36.

⁸² Coevolution is discussed in Keith Morrison, 'Educational Philosophy and the Challenge of Complexity Theory' (2008) 40(1) *Educational Philosophy and Theory* 19, 20 and Keith Morrison, 'Complexity Theory and Education' (Conference Paper, APERA Conference, 28-30 November 2006) 3.

⁸³ See generally Barker (n 71).

adaption between interdependent systems.⁸⁴ The author is not suggesting that legal education should necessarily accommodate the demands of the profession as this would be ignoring the fact that the system extends beyond the law system to include society and other systems.⁸⁵ However, law schools ought to be aware of how they presently manage gaps, such as the one outlined above, so that they may recognise the potential value in doing so.

VI LAW CLINICS EDUCATING FOR COMPLEXITY THROUGH INTEGRATIVE LEARNING

The 'systems approach' used in the design of the Frank J Remington Centre offers an insightful perspective.⁸⁶ The complexity of the criminal justice system was recognised by the founder, who established the Centre with the specific objective of educating students for the complexity of that system.⁸⁷ Even where law clinics are not launched with a complex-systems agenda in mind, complexity thinking nonetheless reveals the highly valuable role served by law clinics within the legal education system. While the law clinic experience educates for complexity in many ways, the author will focus on how the law clinic prepares students for the complexity of the law-and-society system through integrative learning.⁸⁸ As the author progresses, she will also propose insights for clinical legal educators that are derived from existing complexity scholarship.

In its report titled 'Greater Expectations: A New Vision for Learning as a Nation Goes to College', the Association of American Colleges and Universities encourages tertiary education institutions to educate the 'intentional learner' who, among other things, stands out for 'being [an] integrative thinker... who can see connections in seemingly disparate information' and 'integrating knowledge of various types and understanding complex systems'.⁸⁹ Integrative learning, in the form of Work Integrated Learning (WIL), is promoted in Australia in the 'National Strategy on Work Integrated Learning in University Education'.⁹⁰ Integrative learning is now widely recognised as preparing students for a setting beyond formal education.⁹¹ Integrative learning, which is defined as a learning approach that 'develops the ability to make, recognize, and evaluate connections among disparate concepts, fields, or contexts',⁹² is specifically recommended in preparing students for complexity.⁹³ Some of those who adhere to integrative learning methods in order to teach science, call this method 'connected science'.⁹⁴ They emphasise an educator's role in 'help[ing] students create more than the sum of the parts'.⁹⁵ In order to prepare students for complexity, legal educators should be drawing on these same principles to teach 'connected law'.

⁸⁴ These concepts are discussed in Marguerite Schneider and Mark Somers, 'Organizations as Complex Adaptive Systems: Implications of Complexity Theory for Leadership Research' (2006) 17(4) *The Leadership Quarterly* 351, 355.

⁸⁵ The disconnect between lawyers and society driving change in the industry is discussed in Diacoff (n 69) 14. While not the focus of this paper, an adaptive law curriculum is the focus of author's Doctor of Philosophy, which she is in the process of completing.

⁸⁶ The article by Ross (n 8) describes this approach.

⁸⁷ Ibid 788.

⁸⁸ Rosenau et al note that complexity science supports, among other things, integrative learning in Patricia Rosenau et al, 'Educating for Complexity In Nursing Practice: A Baccalaureate Curriculum Innovation' (2015) 1(3) *Quality Advancement in Nursing Education - Avancées en formation infirmière* 1, 2. The potential value of recognizing and understanding integrative learning in the context of clinical legal education is discussed by Evans et al (n 1) 14.

⁸⁹ Association of American Colleges and Universities, *Greater Expectations A New Vision for Learning as a Nation Goes to College* (National Panel Report, 2002) 21-2.

⁹⁰ Universities Australia et al, 'National Strategy on Work Integrated Learning in University Education' (Pdf Document) <<http://cdn1.acen.edu.au/wp-content/uploads/2015/03/National-WIL-Strategy-in-universityeducation-032015.pdf>>.

⁹¹ Debra Humphreys, 'Why Integrative Learning? Why Now?' 2005 7(4) *Peer Review* 30, 30.

⁹² Mary Taylor Huber et al, 'Leading Initiatives for Integrative Learning' (2007) 93(2) *Liberal Education* 46, 46.

⁹³ William H Newell, 'Educating for a Complex World: Integrative Learning and Interdisciplinary Studies' (2010) 96(4) *Liberal Education* 6.

⁹⁴ Tricia A Ferrett et al, *Connected Science Strategies for Integrative Learning in College* (Indiana University Press, 2013) viii.

⁹⁵ Ibid 15.

It is understood that the human agents in a complex system derive a benefit from understanding the systems in which they operate.⁹⁶ The law clinic provides students with opportunities to understand the human and non-human interrelations that exist outside of the academy. Wizner states that 'law students in the clinic learn that legal doctrine, rules, and procedure; legal theory; the planning and execution of legal representation of clients; ethical considerations; and social, economic and political implications of legal advocacy, are all fundamentally interrelated'.⁹⁷

The author suggests that law clinics should be acknowledged as performing an important function from a complexity perspective. Giddings describes the law clinic as 'an inherently integrative activity'.⁹⁸ Schoo and Kumar's scholarship places the nursing clinical educator within the complex system.⁹⁹ The authors refer to 'domains' instead of sub-systems and present a conceptual model where:

[Clinical educators are] at the centre of a complex and dynamic system spanning four domains and multiple levels. The four domains are: personal (encompassing personal/professional needs and expectations); health services (health agencies and their consumers); educational (education institutions and their health students); and societal (local community/region and government).¹⁰⁰

Schoo and Kumar identify that the nursing clinic creates a unique nexus between systems and emphasise the importance of the interrelationships within such a clinic.¹⁰¹ While these authors focus on the system from the perspective of the clinical educator, it is clear that the nursing student is also a beneficiary of this nexus. Similarly, the law clinic exposes the law student to various agents and interrelations within the law-and-society system. If the student is still situated within the legal education system, they are visiting experiences that occur beyond it. The student is placed within a collective of social agents (typically lawyers, clients and perhaps other students) that engage and respond to legal problems through an exchange within social and other networks.¹⁰² This includes working within wider information networks. As such, the law-and-society system is made more transparent and the student better appreciates, at least in some way, their own relationship within that system.¹⁰³

Clinical educators will find value in turning to complexity theory to enhance their own understanding of these systems.¹⁰⁴ Davis and Sumara identify a 'complexified awareness' as being critical to educators.¹⁰⁵ Clinical educators may also share that approach with their students who will likely benefit from looking at the system from different vantage points.¹⁰⁶ Given the complexity of the system, it is not possible to map the system with accuracy.¹⁰⁷ However, students can begin to imagine the complexity of the system by attempting to visualise its human and non-

⁹⁶ Sarah Fraser and Trisha Greenhalgh, 'Coping with Complexity: Educating for Capability' (2001) 323 *British Medical Journal (Clinical Research Edition)* 799, 800; Mary W Chaffee and Margaret M McNeill, 'A Model of Nursing as a Complex Adaptive System' (2007) 55(5) *Nursing Outlook* 232, 236.

⁹⁷ Stephen Wizner, 'The Law School Clinic: Legal Education in the Interests of Justice' (2002) 70(1) *Fordham Law Review* 1929, 1930.

⁹⁸ Jeff Giddings, *Promoting Justice through Clinical Legal Education* (Justice Press, 2013) 27.

⁹⁹ Adrian Schoo and Koshila Kumar, 'The Clinical Educator and Complexity: A Review' (2018) 15(4) *Clinical Teacher* 287, 287.

¹⁰⁰ Ibid.

¹⁰¹ Ibid 289.

¹⁰² Fenwick presents this idea in the context of a workplace project in Tara Fenwick 'Reclaiming and Re-Embodying Experiential Learning through Complexity Science' (2003) 35(2) *Studies in the Education of Adults* 123, 130.

¹⁰³ Ibid.

¹⁰⁴ Schoo and Kumar (n 99) 290; Tara Fenwick and Madeleine Abrandt Dahlgren, 'Towards Socio-Material Approaches in Simulation-Based Education: Lessons from Complexity Theory' (2015) 49(4) *Medical Education* 359, 361.

¹⁰⁵ Davis and Sumara (n 66) 120. Davis and Sumara state that 'complexified awareness' requires an understanding 'of how one exists simultaneously in and across [the] levels, and how part and whole co-emerge and cospecify one another'.

¹⁰⁶ Steve Collins and Hermia Ting, 'Integrated School-Based Teacher Education: From Apprenticeship to a Complex Learning System' (2007) 14(1) *Complicity: An International Journal of Complexity and Education* 3, 12.

¹⁰⁷ Cilliers (n 12) 11-2; Mark Mason, 'Complexity Theory and Systemic Change in Education' in Tracy Burns and Florian Koster (eds), *Governing Education in a Complex World, Educational Research and Innovation* (OECD Publishing, 2016) 41, 51.

human agents.¹⁰⁸ Traditional organisational hierarchies and structures are useful, but not all encompassing.¹⁰⁹ Law clinic students might consider the clinic as a starting point. Students might like to visualise the clinic and the extended system from their own perspective, the lawyer's perspective, the client's perspective and society's perspective.¹¹⁰

Students might gain further understanding if they are also provided with opportunities to engage beyond the law system.¹¹¹ In the context of a law clinic that assists homeless persons, students might be encouraged to volunteer with or visit other homeless services, such as meal and accommodation services. The many clinical educators who do incorporate such exercises for the benefit of their students, may find some utility in explicitly linking these opportunities to, among other things, a complexity theory rationale.

Given the community service focus of many law clinics,¹¹² the student placed in a law clinic will likely be working with communities on service-orientated matters. Community service clinics have been recognised as a valuable integrative learning tool because they give students the opportunity to work with people from various demographics and to work among varying perspectives.¹¹³ In fact, Giddings refers to the community service law clinic as 'the integration of learning and service'.¹¹⁴ From a student's perspective, this occurs, in part, because they are asked to engage in furthering service objectives. Community service law clinics seat the student within a 'social justice setting', working on, for example, access to justice matters.¹¹⁵

A community service law clinic also educates a student about the operation of complex systems in that the student engages with the laws impact within the wider law-and-society system. Each agent within a complex system exerts an effect on numerous other agents.¹¹⁶ This effect has the potential to flux across the system.¹¹⁷ Ross discusses this in the context of the American criminal justice system when she describes 'the decisions by an actor at any point affecting actors at other points'.¹¹⁸ Agent behaviours may lead to both large and small changes in the system, which may not be predicted ahead of time.¹¹⁹ Through their participation in a community service law clinic, a student will likely better appreciate that due to the complexity of the system, the actions of agents, even minor ones, can have unexpected, and sometimes major, flow-on effects. This is recognised by Copeland who says that 'a clinical course can offer students a first hand experience of the ways in which the legal system functions and fails, the way it denies some while benefiting others and how real people deal with issues'.¹²⁰ The student might also be enabled to view their 'potential as a change agent' within the system.¹²¹ This will especially be the case where clinical legal educators engender student interest in undertaking such work again in the future.¹²²

Davis and Sumara are critical of the traits of clinical-type education that encourage students to merely copy or mimic the practitioners that they work with.¹²³ It is, therefore, important that

¹⁰⁸ Derived from an idea presented in Angus McMurty, 'Complexity Science and the Education of Interdisciplinary Health Teams' (Doctoral Theses, University of Alberta, 2007) 76-7 cited in Fenwick and Dahlgren (n 104) 361.

¹⁰⁹ Ruhl and Katz (n 14) 32.

¹¹⁰ Derived from an idea presented in McMurty (n 108) 76-7.

¹¹¹ Derived from an idea presented in Collins and Ting (n 106) 12.

¹¹² Evans et al (n 1) 12-13.

¹¹³ Newell (n 93) 8.

¹¹⁴ Giddings (n 98) 27.

¹¹⁵ Evans et al (n 1) 97.

¹¹⁶ Cilliers (n 12) 8.

¹¹⁷ Ibid; Russ Marion, 'Organizational Leadership and Complexity Mechanisms' in Michael G Rumsey (ed), *The Oxford Handbook of Leadership* (Oxford University Press, 2013) 184, 185.

¹¹⁸ Ross (n 8) 786.

¹¹⁹ Russ Marion, *The Edge of Organization* (Sage Publications, 1999) 5-6.

¹²⁰ Anna Copeland, 'Clinical Legal Education within a Community Legal Centre Context' (2003) 10(3) *Elaw Journal: Murdoch University Electronic Journal of Law* 1, 5.

¹²¹ Jorm and Roberts (n 19) 399. Jorm and Roberts discuss a complexity approach to medical school assessments that, among other things, may see a shift toward 'reimagining students as reaching their future potential as change agents, who transform health systems and the lives of patients'.

¹²² Giddings (n 98) 50.

¹²³ Davis and Sumara (n 66) 106.

students are given the freedom to, among other things, 'improvise' and 'take risks'.¹²⁴ The author suggests that opportunities like this might be provided by encouraging students to contribute creatively to the system. New or transitory agents of the system should be valued for their potential to contribute new perspectives.¹²⁵ The clinical educator encourages the student to contribute to the system by ensuring that the student is an active participant within the clinic environment. Clinical educators also provide students with their own debriefing and feedback opportunities. However, the clinical educator might also encourage innovative contributions, including those that might disrupt the system. Involving students in law reform projects seems like an obvious way of achieving this objective. However, encouraging students to develop reform ideas need not be limited to such projects. A student who is situated within the system, may have valuable ideas about how the law, or the processes used to administer the law, might be changed for the better. Ross provides an example of a student working within a department of corrections who made recommendations for improvements to the department's internal systems as part of a written assessment submitted to her clinical educators.¹²⁶ These opportunities likely assist students to better value their role as change agents even where the ideas are presented directly to the clinical educator outside of the clinical setting. Of course, they must be designed so that they don't interfere with duties to the client, but perhaps these types of exercises might more readily find a home within clinical experiences and assessments.

Clinical experiences are sometimes criticised for their inability to provide students with a predictable and replicable experience, especially in relation to the tasks that they are engaged in from day to day.¹²⁷ However, Fraser and Greenhalgh state that 'the imaginative dimension of professional capability is best developed through non-linear methods – those in which learners embrace a situation in all its holistic complexity'.¹²⁸ In the context of legal education, Webb cautions us against an overuse of 'carefully mapped out learning' and suggests that we may be 'designing out those messy, unpredictable moments in learning'.¹²⁹ While much of the traditional law school curriculum is linear, the law clinic experience is primarily non-linear. The experiences are non-linear because the problems have not been vetted or simplified.¹³⁰ The interactions with the client are unprescribed, untidy and can require different responses.¹³¹ The client presents their problem in the complex way that is understood and felt by them.¹³² The emotions expressed are genuine and sometimes unexpected. The client's problem is a compound problem in that it is multifaceted and not created with a task or solution in mind.¹³³ Uncertainty as to approach is possible and solutions have the potential to traverse doctrinal and interprofessional divisions.¹³⁴ Provided that quality assurance is maintained,¹³⁵ and that students are properly prepared and

¹²⁴ Lyubov Laroche, Cynthia Nicol and Jolie Mayer-Smith, 'New Venues for Science Teacher Education: Self-Organizational Pedagogy on the Edge of Chaos' (2007) 4(1) *Complicity: An International Journal of Complexity and Education* 69, 70-1.

¹²⁵ Alan Bleakley, 'Broadening Conceptions of Learning in Medical Education: The Message from Teamworking' (2006) 40(2) *Medical Education* 150, 155.

¹²⁶ Ross (n 8) 790.

¹²⁷ See, eg, Paul Bergman 'Reflections on US Clinical Education' (2003) 10(1) *International Journal of the Legal Profession* 109, 112-4.

¹²⁸ Fraser and Greenhalgh (n 96) 801.

¹²⁹ Webb (n 45).

¹³⁰ Evans et al (n 1) 160-1; Tarr (n 78) 36.

¹³¹ Evans et al (n 1) 160-1; The conversations with the client are similar to the doctor's conversations with the patient described in Sanjiv Ahluwalia and John Launer, 'Training for Complexity and Professional Judgement: Beyond Communication Skills Plus Evidence' (2012) 23(5) *Education for Primary Care* 317, 317.

¹³² Evans et al (n 1) 160; Kosuri states that a law clinic 'adds the complexity of real life into the equation' in Praveen Kosuri, 'Losing My Religion: The Place of Social Justice in Clinical Legal Education' (2012) 32 *Boston College Journal of Law and Social Justice* 331, 337. The interpersonal learning objectives of clinical legal education are discussed in Carrie Menkel-Meadow, 'Two Contradictory Criticisms of Clinical Education: Dilemmas and Directions in Lawyering Education' (1986) 4 *Antioch Law Journal* 287, 290.

¹³³ Evans et al (n 1) 161.

¹³⁴ Evans et al remind us that client problems are likely to involve different areas of law in Evans et al (n 1) 161.

¹³⁵ See, eg, Tertiary Quality and Standards Agency, *Guidance Note: Work Integrated Learning Version 1.2* (Guidance Note, 11 October 2007) and Adrian Evans et al 'Best Practices Australian Clinical Legal Education' Council of Australian Law Deans (Pdf Document, September 2012) <<https://cald.asn.au/wp-content/uploads/2017/11/Best-Practices-Australian-Clinical-Legal-Education-Sept-2012.pdf>>.

supported, a complexity perspective favours educational experiences that expose students to these non-linear experiences. While law schools should provide some surety as to a student's experience from a skills perspective,¹³⁶ they also need to retain non-linear learning experiences.

While the law clinic does not offer full immersion,¹³⁷ it has long been a recognised part of the solution in bridging the 'theory-practice gap'.¹³⁸ This position is supported by complexity thinking, which values the law clinic as an integrative learning opportunity.

VII CONCLUSION

Complex systems thinking offers a unique contribution to the continuing discussion of clinical legal education. In particular, it highlights a, perhaps unnoticed, contribution made by law clinics.

From a complexity viewpoint, it is clear that the legal education system is a complex system nested within, among others, the law-and-society system. The law student is an agent who will eventually migrate from the legal education system. Even if law graduates do not go on to practice law, they will be engaging within other complex systems. The work of complexity scholars, particularly in the field of education, informs the approaches taken in preparing law students for the complex systems in which they will eventually participate. Of particular relevance, are the integrative learning methods adopted by those who seek to educate for complexity. A student undertaking a law clinic engages in the learning described by these authors. Among other things, these methods provide transparency across and a connection within and between systems. As such, law clinics appear to serve a valuable role in educating students for complexity.

The author is not suggesting that law schools dispose of the non-clinical aspects of their programs. In fact, complexity thinking would caution against such decisions without considering the whole-of-system implications. However, this article does highlight the value of law clinics from a unique perspective. With this value in mind, perhaps it is time to further consider the calls for the better integration of law clinics within law programs with the aim of, among other things, further reducing the complexity gap.

¹³⁶ For recommendations, see, eg, Ross Hyams, 'On Teaching Students to "Act Like a Lawyer": What Sort of Lawyer?' (2014) 13 *International Journal of Clinical Legal Education* 21, 29-30.

¹³⁷ See generally, Collins and Ting (n 106) who highlight the problems of a partially integrated approach in the context of teacher education.

¹³⁸ Jessica Dopierala, 'Bridging the Gap between Theory and Practice: Why are Students Falling off the Bridge and What are Law Schools Doing to Catch Them' (2008) 85(3) *University of Detroit Mercy Law Review* 429, 443; Robert J Rhee, 'On Legal Education and Reform: One View Formed from Diverse Perspectives' (2011) 70 *Maryland Law Review* 310, 334; Michael Weir, 'The Dissonance Between Law School Academics and Practitioners - The Why The How The Where To Now' (2012) 9 *QUT Law Review* 143, 155.