

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

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Abstract

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

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

1. Introduction

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

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

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

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

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

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

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

2. Conceptualising Professional Identity Formation and its Significance

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

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

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

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

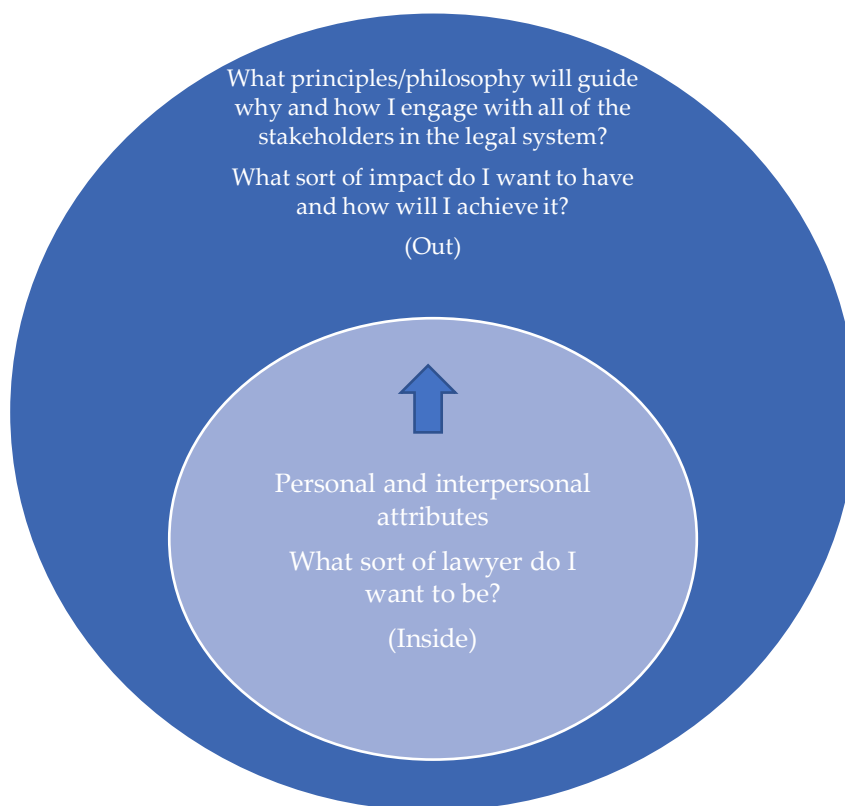
This has two significant and inter-related consequences. Firstly, curriculum design and pedagogy that focuses on knowledge transfer of the formal rules governing the conduct of lawyers, technical subject knowledge and practical skills without an equivalent focus on individual professional identity and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

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

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

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

Diagram 1: Professional identity formation foci: Inside/Out



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁸ Ibid 427.

⁹ Ibid 428.

¹⁰ Ibid 429-432.

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

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

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

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

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

¹¹ Ibid 425.

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

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

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

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

¹⁴ *Ibid.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Diagram 2: The Inside/Out professional identity formation pedagogy



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

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

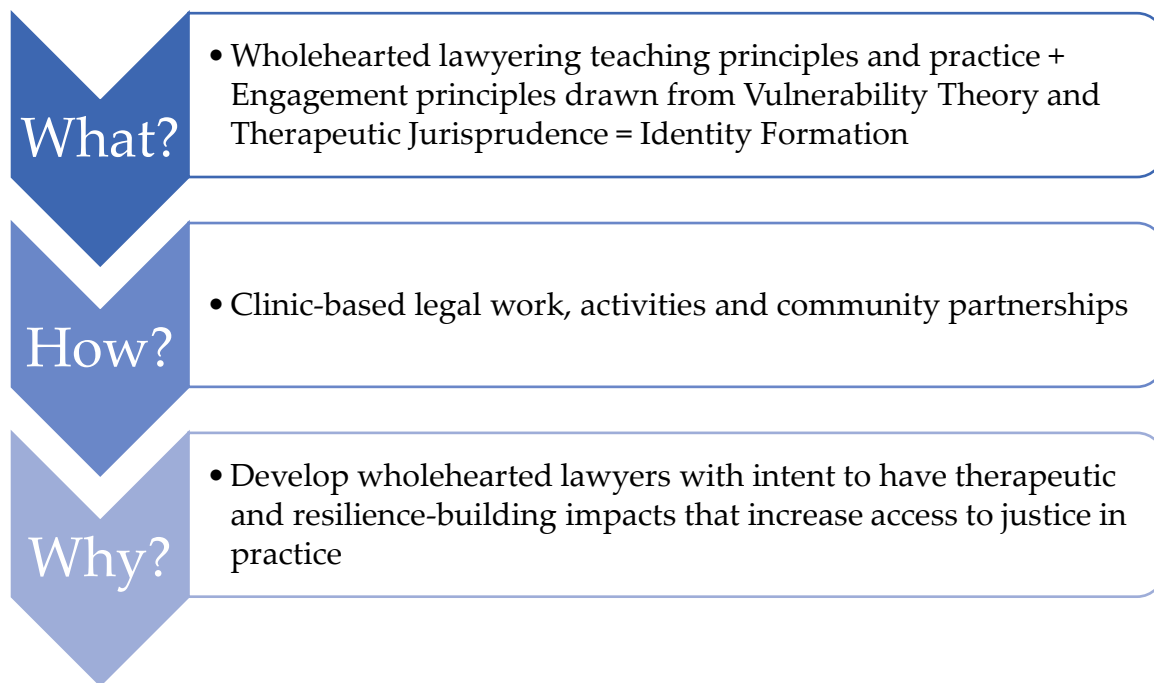
This section examines firstly how the Justice Clinic teaching activities have systematically embedded the development of wholeheartedness as an explicit core professional competency of our Clinic students. It then examines how we have purposively shaped our Clinic activities and community partnerships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

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

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

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

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



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

4.1.1. Behavioural and engagement expectations

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

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

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

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

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

²⁴ Clinical Legal Placement Unit Introductory video seminar.

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

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

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

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

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

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

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

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

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

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

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

4.1.4. Critical reflection as integral to Wholehearted Lawyering

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

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

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

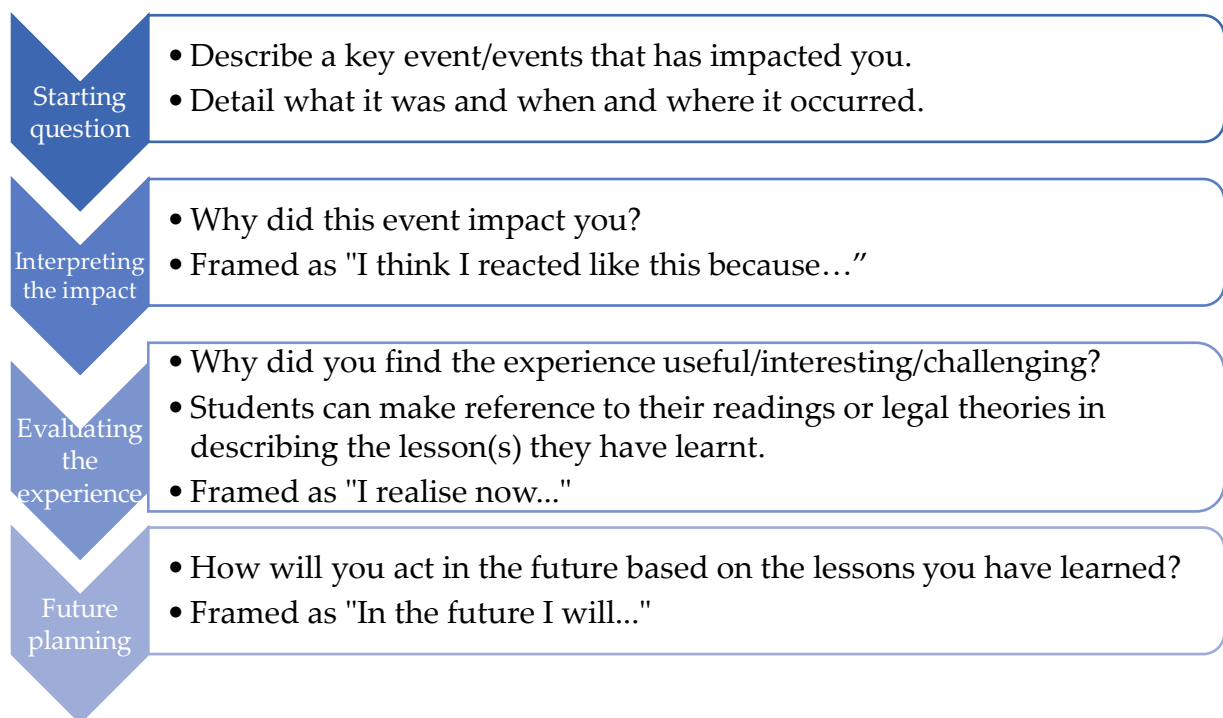
²⁵ Russell Rogers ‘Reflection in higher education: a concept analysis’ (2001) 26(1) *Innovative Higher Education* 37, 41.

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

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

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

Diagram 4: Structuring a four-part critical reflection



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

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

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

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

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

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

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

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

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

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

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

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

4.2.1. Application of engagement principles drawn from Vulnerability theory

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

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

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

4.2.2. Application of engagement principles drawn from Therapeutic Jurisprudence

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

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

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

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

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

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

5. Lessons Learned and Future Steps

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

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

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

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

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