

DESIGNING AND IMPLEMENTING AN ENHANCED CLINICAL PROGRAM IN THE AGE OF DISRUPTION.

Part Two: Clinical Activities¹

Professor Bryan Horrigan²

INTRODUCTION

Part One of this article addressed key institutional challenges in designing and implementing an enhanced clinical program, informed by a law dean's perspective on the various institutional and individual interests involved. Part Two of this article engages with some of the key controversies and disruptions with which an enhanced clinical program needs to engage in the 21st century, one way or another. The underlying theme in this concluding part of the article is the repositioning of legal clinical programs and legal clinicians within their broader and fluid surrounding environments.

¹ For Part One: see Horrigan, B. 'Designing and Implementing an Enhanced Clinical Program in the Age of Disruption. Part One: The Environment for Clinic.' *International Journal of Clinical Legal Education* 26.2 (2019): 75-104.

² Bryan Horrigan BA, LLB (Hons) (Qld), DPhil (Oxon); is the Dean of the Faculty of Law at Monash University, Melbourne, Australia. I am grateful to Emeritus Professor Adrian Evans for comments, Jarryd Shaw for research assistance, and the editors and anonymous peer reviewers for comments, and assistance with the diagram. All responsibility is mine.

TESTING THE OUTER LIMITS AND PURPOSES OF LEGAL CLINICS

One key disruption for legal clinical programs concerns challenges from reconceptualising them in the context of the changing landscape around them. Many clinics in many law schools in many countries adhere to a model that is predicated upon providing free legal advice and assistance to the most vulnerable, marginalised, and disadvantaged people in society. In the first section of this part of the article, I accept as a 'given' that this model will continue to have a central role in CLE programs. However, I question whether the *context* for the evolution of *that* model to meet *that* societal need conclusively determines the only or best model for CLE programs from here onwards. Moreover, even where that traditional model dominates, it relies upon premises and assumptions whose own contingencies are worth re-examination.

Is it inherent and integral to the notion of a legal clinic that it operates outside the private sector and serves only a social justice constituency and only for free? Increasingly, the 21st century answer to that question is likely to be 'no', or at least 'not always'.

That answer is controversial and arouses strong views on all sides of the fundamental questions addressed and amongst the various stake-holding interests implicated. A few elements of that answer therefore warrant further and discrete unpacking, as follows.

First, the areas of socio-economic need encompassed by access to justice are neither confined neatly to non-commercial areas of law (e.g. residential tenancy is a commercial matter, as is consumer mistreatment by banks) nor experienced only by those who are poor, vulnerable, or disadvantaged individuals. For example, small businesses and franchises (which are often family-run businesses) are also suitable subjects of socio-economic justice, and can be just as exploited as other constituencies needing access to justice. Even relatively well-resourced NGOs and multi-stakeholder coalitions need support to achieve better access to justice outcomes by holding multinational corporations and governments to account for human rights abuses through stakeholder lobbying, shareholder activism, and third-party interventions (where permitted) in commercial arbitration.

Secondly, many areas of traditional clinical focus can now be characterised simultaneously in more than one way, cutting across boundaries between sectors, departments of law, and areas of legal practice. For example, human rights are no longer a matter primarily for international and public law and of concern mainly to governments and civil society groups, in an era of transnational 'hard' and 'soft' law concerning the responsibilities of multinational corporations and other business enterprises (including law firms and law schools, for this purpose) in protecting and enhancing people's human rights. Similarly, victims of human rights abuses are not the only worthy stakeholders in need of clinic-amenable assistance and advice when engaging with companies about their approach to corporate social responsibility

(CSR), in an era when everyone from human rights advocacy groups to institutional investors wants companies to engage better with environmental, social, and governance (ESG) considerations in business and finance.³

Thirdly, those who argue that a clinic must always be free and reserved for those who cannot afford a lawyer and who do not otherwise qualify for publicly funded legal aid must go on to confront other conditions in maintaining that claim. Governmental policy decisions to reduce areas of publicly funded legal aid cannot be the sole arbiter of who is worthy of clinical support. Even people of moderate income find it extraordinarily costly when left with no real choice other than to engage with the legal system to try to achieve some kind of justice, often with their families and livelihoods at risk. This reality in no way diminishes the equal need for well-resourced clinics focused upon poverty-related law; it simply extends the definition of unmet, contemporary legal need.

Nor is the funding of a clinic an irrelevant consideration, because all clinics need resourcing of one kind or another, and their resourcing is hard enough in an era of reduced university and public funding without setting up distinctions based on direct and indirect sources of funding. Just as other aspects of a law school's income-generation and other funding can cross-subsidise a clinical program, so too some parts of a clinical program potentially might cross-subsidise others. For example, in a

³ For more on this topic by the author, see: 'Boards Brace for a Perfect Storm', *The Australian*, (25 April 2019), pp.30; and *Corporate Social Responsibility in the 21st Century*, (2010) Edward Elgar, UK.

landmark and future-looking assessment of changes in the legal profession, the Law Institute of Victoria's then President (Katie Miller) authored a report that included the following recommendation:⁴

If you manage or are on the board of a CLC, discuss and consider with your board opportunities for using paid services to cross-subsidise your regular services. Consult widely (including with current funders); discuss concerns; and, if you decide to proceed, design a service that manages those concerns.

Fourthly, law firms and other organisations can be suitable partners for clinics of one kind or another. What makes clinical partnership with some arms of the legal profession (e.g. courts/tribunals, governmental departments and agencies, CLCs, and NGOs, for example) inherently more worthy than other arms of the legal profession (e.g. commercial law firms, commercial bars, and in-house corporate legal departments, for example), at least in clinical and 'access to justice' terms? Any difference is not readily explainable simply on the grounds of the 'public-private' divide, area of legal work, or source of funding support.

Partnering family law firms in clinics to achieve social justice for families can be less controversial in some clinical quarters than developing clinics with commercial law firms, but many commercial law firms do pro bono work too. So, it is not self-evident

⁴ Miller, K. *Disruption, Innovation and Change: The Future of the Legal Profession* (Report, December 2015) 20.

that having a clinic for pro bono clients of a law firm is any less worthy a contribution to access to justice than clinics with non-commercial law firms, even if the pro bono work assists the commercial law firm in tangential ways, such as helping its lawyers meet professionally mandated hours of pro bono service to maintain professional accreditation or even helping a law firm to meet pro bono targets that qualify it to be on panels for governmental legal services work.

Finally, to the extent that clinics provide benefits for students as well as clients, giving the former exposure to the full range of legal services work and organisational contexts is a legitimate objective of CLE. It also informs and tests their aptitude for commercial or non-commercial legal careers, if they head towards careers in the legal profession. The client-focused orientations and skills acquired in clinics are transferable to graduate positions even in commercial law firms, regardless of the context in which they were acquired.⁵

So, students who work in family law assistance clinics, human rights clinics, and tenancy dispute clinics, for example, develop interpersonal, team-based, administrative, and other skills that are equally valuable to early careers in commercial law firms. Conversely, even if a student is destined for legal or non-legal careers in community activism, NGOs, and public advocacy, experience from the inside of a commercial law firm (and acting for multinational corporations, financial

⁵ The author acknowledges instructive discussions on this point with the Monash University Faculty of Law's External Professional Advisory Committee.

institutions, and governmental regulators) can be invaluable when representing clients or organisations on the other side of the fence.

DISRUPTIVE TECHNOLOGIES, DIGITAL LITERACY, ARTIFICIAL INTELLIGENCE (AI), AND CLE

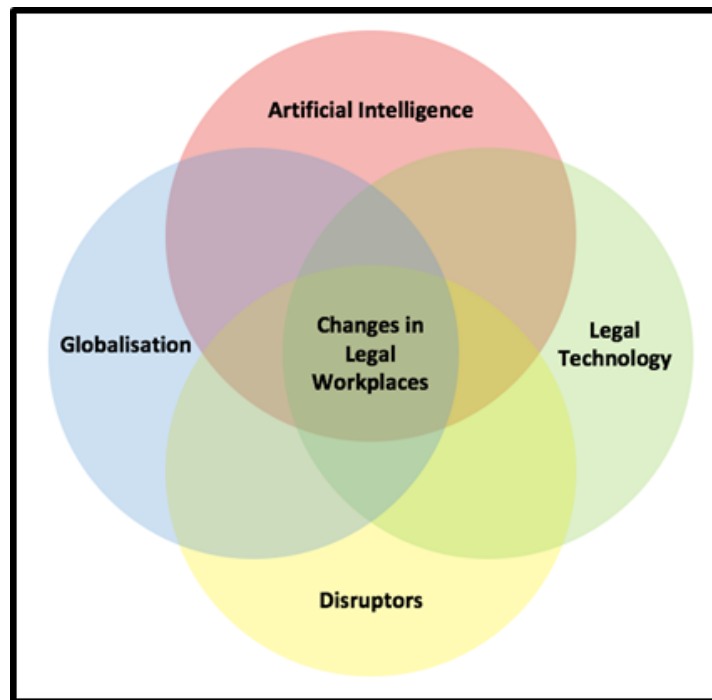
A second major challenge to conventional CLE stems from disruptive technologies. University legal education generally and CLE in particular are as susceptible to disruption as other parts of the tertiary education and legal services industries. Few law schools today can remain immune from considering legal technological advances in terms of areas of taught law in the curriculum (eg innovation law and privacy, smart contracts, blockchain etc), modes of teaching delivery (eg online resources supplementing 'flipped' classrooms), co-curricular student experiences (eg student involvement in legal technology hackathons), and emerging career possibilities for students (eg legal technologists, AI-analysts etc). CLE is not immune from that disruptive influence, in terms of the subject matter of clinics (eg clinics about start-ups), the tools and analytics available to service clinical clients (e.g. online legal assistance and AI-assisted research on client-related matters), the modes by which clinical students might interact with a range of participants (e.g. transnational clinics involving two clinical groups from two law schools in online collaboration), and familiarity with technological resources used by organisations partnering with law

schools in delivering clinics (e.g. legal research and documentary analysis technologies).

The classic clinical model is under pressure. It relies heavily upon point-in-time physical visits by clients to meet an available community lawyer in a face-to-face meeting in a law school-supported clinic or other CLC to identify what (if any) legal problem they face and what (if any) free expert legal assistance might be provided for them there or on referral elsewhere. Digital and technological disruption of that model is already happening, and many law schools and their clinicians and students are adapting accordingly.⁶ Virtual clinics, clinical apps and bots, smart online clinical ‘triage’ assessments, client and CLC match-making systems, and other technological innovations are already here, with more on the horizon.

Changes in all legal workplaces (including courts and law schools) are being influenced by a key number of overlapping drivers in the fourth industrial era (i.e. from industrialisation and electrification to digitalisation and interconnectivity [i.e./ ‘the Internet of things’]). The volume and impact of change is compounded exponentially where AI, other legal technology, globalisation, and other disruptors all converge, as illustrated in the following diagram:

⁶ Eg A. Thanaraj and M. Sales, ‘Lawyering in a Digital Age: A Practice Report Introducing the Virtual Law Clinic at Cumbria’ (2015) 22 *International Journal of Clinical Legal Education* [ci].



Judges and other lawyers in practice have already coped in recent decades with transitions from physical evidence to DNA-tested evidence, physical courtroom appearance to video-linked courtroom proceedings, fax to email, print-based research to online and even computer-assisted research, and manual dictation to digital voice recognition. It is not too great a distance for them to adapt to ongoing transitions from individualised personal profiling to mass facial recognition technology, delayed print-based court transcripts to instantaneous computer-assisted transcription, handwritten judges' notebooks to e-handbooks and other digital courtroom tools and software, wholly judge-directed physical case management to online case management, physical jury evidence to jury technology-enabled evidence, and paper-based courtrooms to paperless courtrooms and virtual courts.

To be sure, those innovations might not test fully the moral, empathic, creative, or adjudicative capacities that some (perhaps many) doubt that AI can reach, at least anytime soon.⁷ However, there are dangers in anthropomorphising AI and assuming that such human qualities completely define lawyerly professionalism.⁸ On this crucial point, two much-cited legal futurologists sound a sobering warning for academics, judges, and other legal practitioners alike; on a prudential view, this means that the jury is still out on the extent to which AI will replace the ‘decomposed’ segments of what academics, judges, and other lawyers actually do:⁹

The main themes of our book, *The Future of the Professions*, can be put simply: machines are becoming increasingly capable and so are taking on more and more tasks. ... It is indeed hard to imagine a machine thinking with the clarity of a judge, empathising in the manner of a psychoanalyst, extracting a molar with the dexterity of a dental surgeon, or taking a view on the ethics of a tax-avoidance scheme.

... But there is a danger of being excessively human-centric. In contemplating the potential of future machines to outperform professionals, what really matters is not *how* the systems operate but whether, in terms of the outcome, the end product is superior. In other

⁷ Susskind, R. & Susskind, D. ‘Robots v Experts: Are Any Human Professions Safe from Automation?’, *The Guardian* (online), (uploaded 28 March 2017).

⁸ *Ibid*, (2017).

⁹ *Ibid*, (2017).

words, whether or not machines will replace human professionals is not down to the capacity of systems to perform tasks as people do. It is whether systems can out-perform human beings. And in many fields, they already can.

In other fora, the Susskinds reinforce the point that expert lawyers (including judges and academics) cannot be too complacent about how AI and technology might affect, change, or rival at least some of what they currently do.¹⁰ While accepting that judicial handling of “complex issues of principle, policy, and morality is well beyond the capabilities of current and foreseeable computer systems”, Richard Susskind argues that there is “no compelling argument against analysing and dividing judicial work into separate parts and, where appropriate, finding alternative and more efficient ways of undertaking some of these tasks”.¹¹

In “decomposing” judicial work in much the same way as he decomposes modern law firm practice, he recommends greater use by judges of standardisation tools, document assembly technology, computerised research, e-filing and e-submissions, computer-assisted transcription and real-time judicial annotation, document display systems, electronic and visual evidence presentation, online dispute resolution, and “virtual” courts.¹² The correlative disruption of traditional clinical models and the

¹⁰ Approaches to numerically-based ethics assessment regimes for lawyers are already being canvassed; see, for example: Evans, A. *Assessing Lawyers' Ethics*, (2011). Cambridge University Press

¹¹ Susskind, R. ‘Tomorrow’s Lawyers: A Virtual Judiciary – Extract’, *The Guardian* online, (uploaded 29 January 2013).

¹² *Ibid*, (2013).

decomposition of clinical work into its various components, with a re-imagined alignment between clinics, enabling technology, and access to justice are no longer distant points on the horizon.

The future of AI, technology, and law is only one aspect of the future of the legal profession explored in recent reports by legal industry peak bodies and publishers.¹³

The relationship between AI and robotics, law, and workplaces is now a subject of study by the International Bar Association (IBA).¹⁴ The Australian Human Rights Commission is also focused upon the human rights implications of AI and other new technologies.¹⁵

Regulating AI forms another strand of the classic 'is-ought' dilemma: just because we *can* do something does not automatically mean that we *should* do it. Hence, we need adequate socio-ethical, legal, and regulatory frameworks for AI and technology. Many early attempts at developing frames of reference for this work focus upon developing broad principles of practice¹⁶ and other fundamental frames of reference.¹⁷

¹³ *Disruption, Innovation and Change: The Future of the Legal Profession*, Law Institute of Victoria, (2015); *FLIP: The Future of Law and Innovation in the Profession*, Law Society of New South Wales, (2017); and LexisNexis, Lawyers. "Robots." *Conversations around the Future of the Legal Industry* 3 (2017).

¹⁴ IBA Global Employment Institute *Artificial Intelligence and Robotics and Their Impact on the Workplace*, (2017).

¹⁵ *Human Rights and Technology Issues Paper*, (2018), AHRC.

¹⁶ Boden, M. 'Principles of Robotics: Regulating Robots in the Real World' (2017) 29 *Connection Science* 124; and *Statement on Artificial Intelligence, Robotics and 'Autonomous' Systems*, European Group on Ethics in Science and New Technologies, European Commission, (2018).

¹⁷ Leenes, R. et al., 'Regulatory Challenges of Robotics: Some Guidelines for Addressing Legal and Ethical Issues' (2017) 9 *Law, Innovation and Technology* 1.

Much of the literature is concerned with the ‘nightmare’ of the world that AI might unleash in terms of human liability and irrelevance, as distinct from the ‘noble dream’ of its potential and opportunities for human benefit.¹⁸ Groups of multi-disciplinary scholars are combining to explore accountability in the design and use of AI in legal and regulatory contexts involving compliance and responsibility,¹⁹ with particular reference to regulating data-creation and data flows that pass through multiple hands in numerous application contexts.²⁰

In the legal world, the growing literature makes sobering reading for law-makers, regulators, courts, legal practitioners, and legal academics. Some themes are as follows. All law is simply data, at least in terms of AI analytics. All such data can be analysed – everything from the words in judgments, legislation, and contracts to commentaries, texts, and social media mentions. Beyond law itself, human beings regularly create or consent to the creation of data about themselves that is captured, replicated, and analysed digitally, often being generated initially in commercial dealings.

¹⁸ Buranyi, S. ‘Rise of the Racist Robots – How AI is Learning All Our Worst Impulses’; *The Guardian* (online), (uploaded 8 August 2017); Sodhani, S. ‘A Summary of Concrete Problems in AI Safety’, *Future of Life Institute*, (uploaded 26 June 2018); ‘Franken-Algorithms: The Deadly Consequences of Unpredictable Code’, *The Guardian* online, (uploaded 1 September 2018). The ‘nightmare’ and ‘noble’ dream’ contrast uses HLA Hart’s famous description of two competing visions about the nature of law and adjudication.

¹⁹ Eyers, D. et al., ‘Towards Accountable Systems’. (2018). Report from Dagstuhl Seminar 18181.

²⁰ Pasquier, T. et al., ‘Data Provenance to Audit Compliance with Privacy Policy in the Internet of Things’ (2018) 22 *Pers Ubiquit Comput* 333.

In analysing all such data, non-human intelligence can potentially reach levels, identify patterns, run simulations, model alternative scenarios, and do a vast range of other things faster, longer, more accurately, more completely, more connectively, and more currently than individual human intelligence can. When the use of non-human intelligence is added to endless data flows and passages through various systems in their application, the usual rules of privacy and other rights, strict and vicarious liability, causation and remoteness of damage, ownership of responsibility, *and* broader implications for access to justice for all are tested at or beyond their limits.

At that point, for example, the usual and borderless means of creating informed consent for legal purposes – ie clicking on ‘I agree’ to conditions that are largely unread as a means to access the next clickable webpage item – are also exposed as being inadequate, as are our conventional socio-ethical, legal, and regulatory frames of reference in dealing with them. Sooner or later, all courts and lawyers will have to deal with these implications as they arise in matters before them, whatever else AI might do in changing the systems and processes by which courts and lawyers conduct legal business. The issues sketched briefly above are new frontiers and battlegrounds for access to justice.

What does all of this mean for CLE in law schools, CLCs, and associated clinical partners? First, digital disruption of CLE is already here. At the 2018 Global Legal Hackathon, for example, a team from Monash University that included law students with clinical experience developed a winning proposal of how technology might be

used to address a legal need, centred upon online communication and analytical tools to overcome the problem of too many worthy CLC clients, too few available lawyers, and unduly onerous transaction costs of a 'triage' model based upon solely upon in-person appointments between lawyers and clients up front. The team – named ANIKALegal – ultimately came second in the world in their category.²¹

Secondly, both law firm involvement in clinics and the range of problems for clients of clinics are apt to expose students to an emerging need for digital literacy in clinical work. Some examples of new areas of societal need in delivering access to justice with which clinical supervisors and students increasingly must become familiar include: (i) digital fraud and theft of personal identities; (ii) online dispute resolution; (iii) problems emerging from smart contracts; (iv) victims of robo-trading and market-affecting algorithms; (v) victims of computer-generated letters from official agencies to householders; (vi) discriminatory use of facial recognition technology; (vii) familiarity with jury technology in criminal trials; (viii) unpacking inherent human biases in sentencing and other algorithms that result in miscarriages of justice; (ix) AI-assisted analysis of successful legal and constitutional arguments across jurisdictions in death penalty cases; and (xi) web-based engagement with royal commissions and public inquiries seeking information and case studies from victims. Indeed, at least

²¹ ANIKALegal later won an industry start-up award and a governmental financial grant. A second Monash-affiliated team from the 2019 Global Legal Hackathon (CYNAPSE) also reached the global final of the competition in New York. The imperative to use technology in designing and delivering a solution to a legal problem creates opportunities to address social injustices at scale.

some staff and students will need to become involved clinically in public advocacy and research-based submissions about law reform that protects individual privacy and other human rights in the digital age.

Thirdly, the nature and delivery of clinics has potential for evolution in the digital age. Virtual clinics already offer an established example of clinics using technology. The Monash Law Moot Court, for example, is a multi-million-dollar, technologically enabled, and multi-functional facility that we use for clinical purposes too, with potential to bring together academics, clinicians, students, and key experts and stakeholders for dialogue and collaboration in real time, regardless of their location in the world. Given what CLE offers to our understanding of ethics and professionalism in lawyering, digital literacy for lawyers also touches upon broader questions of how lawyers do and should conduct lawyering through technology, with opportunities to expose clinicians and students to such questions and experiences too.²²

Finally, suitable ethical and legal frameworks are yet to be developed for dealing systematically and globally with the issues of fairness and justice implicated in advances in legal technology and AI-assisted analysis. These fundamental questions are suitable areas of focus in a clinical context about the future of access to justice, particularly to ensure that its ideals are secured and not compromised by advances in systems and processes through technology. Indeed, given the capacity for AI-assisted

²² See, for example, Thanaraj, A. & Sales, M. 'Lawyering in a Digital Age: A Practice Report Introducing the Virtual Law Clinic at Cumbria' (2015) 22 *International Journal of Clinical Legal Education* [ci].

analysis to replicate in-built human biases and errors at mass scale (e.g. discriminatory racial profiling in criminal investigations and sentencing), if not identified and corrected at an appropriate stage in the decision-making chain, new issues of access to justice are also generated by the digital age.

Toby Walsh's *2062: The World that AI Made* quotes a 2017 AI conference comment that is a good touchstone as we look ahead to what AI will mean for all arms of the legal profession: 'Anyone making confident predictions about anything having to do with the future of Artificial Intelligence is either kidding you or kidding themselves'.²³ Despite that sobering warning against AI predictions, we know enough now to agree on the following high-level propositions with some degree of confidence:

1. Digital enabling and disruption is real and will become the new normal in time, with all arms of the legal profession being fundamentally challenged and changed by it;
2. The challenges of AI require appropriate socio-ethical, legal, and regulatory frameworks;²⁴

²³McAfee, A. quoted in Walsh, T. *2062: The World that AI Made* (2018). La Trobe University Press, pp.34.

²⁴ See, for example, Tasioulas, J. 'First Steps Towards an Ethics of Robots and Artificial Intelligence', (Paper, 2018). Available at SSRN: <https://ssrn.com/abstract=3172840> or <http://dx.doi.org/10.2139/ssrn.3172840>.

3. In developing those frameworks, we need technologists and AI-specialists to know a little bit more about law and ethics, and we need lawyers (including judges) and ethicists to know a little bit more about technology and AI;
4. All legal workplaces need to equip themselves and their staff with digital, technological, and AI literacy as part of their organisational DNA, and so all organisational leaders across all arms of the profession have an individual and collective stake in cultivating this new form of literacy as a core workplace skill;
5. Given that much legal work can now be automated or computerised, what law graduates need to be work-ready is different from what sufficed in the recent past;
6. Given that computer algorithms can replicate erroneous human assumptions and biases at scale, most lawyers will need to know enough about AI to assess and translate its inputs and outputs in using AI-assisted analytics, and some lawyers and service providers to lawyers (eg legal technologists) will need to know coding as a core skill; and
7. Access to justice and its instruments – from courts, barristers’ chambers, and law firms, to publicly funded legal aid, CLCs, and others in the social services sector - are not immune from being challenged and disrupted, on one hand, and either enabled or harmed, on the other, by AI, technology, and the digital revolution.

In short, everyone in the CLE business will eventually need some degree of digital and/or AI literacy too. This is because students will be familiar with it, graduates will

work in organisations where they need it, clinical partnering organisations will use it in client-related work to which clinical students are exposed, the needs of access to justice for clients will demand it, and advocacy in service to contemporary democracy will be left behind without it.

LAW SCHOOLS AND THE 'ACCESS TO JUSTICE' COMMUNITY IN THE NEW DEMOCRATIC PROJECT

The disruptions for CLE programs and providers from the forces of globalisation and digitalisation have a flip side. The promise of borderless mass connectivity also creates new opportunities for partnering and networking for law schools as one arm of their local and global legal professions, in pursuit of the realisation of access to justice under the rule of law. The next section of this part of the article repositions CLE programs in law schools within a broader and transnational democratic project. In that sense, disruptive challenges for CLE programs and clinicians are driven by the combined forces of digitalisation, globalisation, and democratisation.

What are the roles of CLE-supportive law schools and CLCs as actors in evolving accounts of democracy in an age of globalised and digitalised interconnectivity? On a broader level, law schools and their members join with other governmental and non-governmental parties as part of a network of oversight and accountability for the use and abuse of political and legal power in the continuously evolving democratic

system. As we move from focusing solely upon the formal institutions of democratic government (such as free elections and law-making by majority vote in legislatures) and curbs on their abuse (such as institutional protection of fundamental human rights, including through judicial review) as *exclusively* defining the features (as distinct from the formalities) of democracy, there is a new focus upon multi-order and multi-constituency accountability for all exercises of public power over others under 21st century conditions of what is variously called ‘participatory’, ‘deliberative’, and ‘monitory’ democracy.²⁵

Under this re-imagining of democracy and its participants and their interactions, the organs and actors of government are exposed to enhanced standards of public ‘contestability’, ‘deliberation’, and ‘justification’ in their official decisions and reasons for action, including courts, tribunals, legislative committees, public sector agencies, and others with whom CLCs and law school-supported clinics engage on behalf of clients and in other forms of advocacy in the pursuit of improved access to justice.²⁶ Conversely, policy or funding constraints upon the capacity of non-governmental actors to exercise oversight on the use and abuse of official power also affects the system of checks and balances in this evolving form of democratic engagement. If equal access to justice under the rule of law involves action and advocacy to ensure

²⁵ Keane, J. *The Life and Death of Democracy* (2009). W W Norton and Company, New York; and Gutman, A. & Thompson, D. *Why Deliberative Democracy?* (2004). Princeton University Press, Princeton.

²⁶ *Ibid*, (2004).

that the non-value-neutral impact of leasing, taxation, and other laws upon poor, vulnerable, and disadvantaged people is addressed, for example, then enabling non-government parties to represent and give a voice to such people in policy-making, law-making, and law reform processes is just as valid an object of clinical work, law school endeavours, and multi-dimensional contemporary democracy as any other.

Under such a conception of democracy, governments might still remain at the centre of multi-stakeholder networks, standard-setting initiatives, and essential law-making and policy-making, but with other participants meaningfully involved systemically as well. For example, various arms of the legal profession and other community stakeholders can become engaged in the public goods of law-making, the administration of justice, access to justice, and the rule of law. The legal academy does so by various means, some of which leverage or flow from others, such as:

- a) submissions to public and parliamentary inquiries;
- b) public advocacy and thought leadership on social justice issues;
- c) evidence-based research that informs public policy development and law reform;
- d) contracted research and consultancies for parliamentary and other governmental bodies;
- e) expertise-based membership of ministerial and other advisory committees;
- f) appointment as commissioners in regulatory and law reform agencies;

- g) authoring of amicus curiae briefs, community advocacy programs, and targeted (or strategic) public interest litigation, through research centres, student clinics, and partner CLCs;
- h) partners with other arms of the legal profession, the institutions of government, and the private and community sectors in collaborative research grant projects on social justice;
- i) multi-stakeholder enterprises across geographical and sectoral boundaries;
- j) being an independent knowledge-broker, relationship-builder, expertise-sharer, and resource-provider with governmental, professional, and community organisations tackling social justice problems; and
- k) collaborative endeavours that serve public goods as well as institutional and societal needs, such as law school involvement in CLE through CLCs and joint enterprises (eg the Monash Law Faculty's involvement in VicBar's pro bono assistance to self-represented litigants in appeals before the Victorian Court of Appeal).

In these ways and others, law schools are active participants in the systems for securing both democracy and access to justice, in the broader senses in which they are used in this article. In other words, there are increasingly important connections to be drawn between democracy, the rule of law, and access to justice, on one hand, and CLCs, CLE, and law schools, on the other.

Of course, the institutional capacity (from a decanal or other senior management perspective) and personal capacity (from an individual academic's or clinical group's perspective) to pursue such activities as part of broader democratic engagement must again be exercised within the usual strategic and operational parameters of the business of running law schools and universities (and they *are* businesses, on at least some levels). As with other option explored in each part of this article, questions of choice and filters for making those choices inevitably arise. The point worth reiterating is that while some of those choices might involve trade-offs in time, focus, and effort between the various options identified, not all of them do. In most cases, there are smart ways to create alignment between institutional needs and individual preferences, and the trick lies in identifying and navigating such journeys.

In doing so, individual academics and clinical groups can leverage most (if not all) of the items listed to individual and institutional advantage. In an Anglo-Australian tertiary sector regulatory landscape in which research excellence is increasingly measured and ranked (although not necessarily funded) in terms of research quality, impact, and engagement, research-based advocacy in the form of submissions to public inquiries, legislative committees, and law reform agencies by reference to evidence-based work and research with 'access to justice' constituencies have a place in both institutional concerns and individual career development, even if such publications do not necessarily count in terms of 'high quality' publications in 'high quality' publication outlets for the purpose of institutional research activity and

performance standards. In other words, the question is how they count, not whether they count, and those variables change as institutional environments change. At the same time, academics must also confront the reality that they cannot necessarily make such things count for all purposes institutionally. Institutional priorities and individual choices can align but they are not always co-extensive.

At the same time, nothing presented here from a decanal standpoint about institutional leverage and alignment of individual and group choices for strategic advantage and smart career navigation in clinical domains should be mistaken as a conservative call to conform rather than challenge the institutional status quo. The point simply is that the two are not mutually incompatible across the board, and that more clinicians and clinical groups could do more to take advantage of the opportunities that such leverage and alignment present in institutional contexts.

In those and other ways, values are implicated in clinical commitment to speaking truth to power, facilitating access to justice, remedying socio-economic justice (reconceived broadly, as advocated in this article), and fully realising the rule of law. Are there also ways in which lawyerly responsibility across all arms of the legal profession as participants in systems governed by the rule generates ancillary responsibility towards access to justice for the poorest and most vulnerable people in society?

In a recent International Bar Association (IBA) forum, I advanced twin and inter-related claims that the rule of law is necessarily diminished (or imperfectly realised)

in any place where poverty remains and that, as a result, true lawyerly commitment to the rule of law means that all lawyers have individual and collective responsibility (on some level and in some form) to join the legal war against poverty.²⁷ These two claims might be surprising and even confronting for many judges and other lawyers. They have direct implications for lawyers across the public, private, and community sectors in their commitment to the rule of law through engagement with law schools and other partners in combatting poverty by enhancing access to justice, especially at the intersection of the societal responsibility of legal organisations, CLEs and CLCs, and community legal assistance for those people who are impoverished or otherwise in need.

Access to justice is a fundamental element of the rule of law, on any view of the rule of law. In this incarnation, access to justice is a broad concept, extending beyond free expert assistance in litigation for anyone who needs it, to embrace access to advocacy and other levers of power in influencing laws that adversely impact upon poor people. On this view, the rule of law falls short of the ideal at best and is fatally compromised at worst whenever and wherever meaningful access to justice is less than optimal.

The conditions of poverty undermine all essential elements of the rule of law and consequently limit the access to justice and engagement of poor people in the legal and political systems. The rule of law is therefore diminished and imperfectly realised

²⁷ Horrigan, B. 'The War Against Poverty is Not Optional for Lawyers', (2015) accessible via the IBA website for the Poverty, Empowerment, and Rule of Law Working Group, available at this link: <http://www.ibanet.org/Article/Detail.aspx?ArticleUId=f9ce20d3-15f9-417e-a9d8-59198ea304b2>.

in any jurisdiction where (and to the extent that) poverty is tolerated. In that sense, lawyerly fidelity to the rule of law is integrally implicated and itself limited by any acceptance of poverty as an unpreventable reality in the localities where lawyers conduct business and wield influence. The priority given to eradicating poverty and otherwise achieving social justice in various cross-sectoral goals within the global Sustainable Development Goals (SDGs) further reinforces exploration of the connection between poverty, access to justice, and the rule of law. Once the reality of global climate change and its impact upon accomplishment of many or all SDGs are brought into focus, there is no better time to integrate law schools' traditional and CLE programs to greater effect in securing access to justice locally and globally.

In that sense, the responsibility of lawyers towards the legal conditions of poor people and flowing from true fidelity to the rule of law therefore encompasses lawyerly responsibility towards access to justice as part of the rule of law. Is that really such an outrageous claim, in an era of modern slavery reporting requirements, 'social licence to operate' requirements in corporate governance standards, 'social' dimensions of environmental, social, and governance (ESG) considerations in investment decision-making, UN and IBA guidelines for lawyers on business and human rights, and sustainable development goals (SDGs) that prioritise both eradication of poverty and access to justice?

CONCLUSION

In light of the analysis above, all CLE programs are nested in a series of co-extensive and socially significant identities and functions. They are located in law schools, which operate in broader university and professional environments, or in CLCs, which (along with law schools) also have roles as part of an access to justice constituency, as actors within contemporary democracy under the rule of law, and as participants in a global legal profession owing fidelity to full realisation of the rule of law. Their success in the future turns, at least in part, on how well they respond and adapt to disruption through technology, globalisation, and democratisation. Successfully pitching, designing, resourcing, and implementing something like Monash Law's Clinical Guarantee can only be done with due sensitivity towards all of those dynamics.

In that important sense, the macro-level considerations canvassed in the second part of this article, about how enhanced clinical programs relate to their external environments, dovetail with the micro-level considerations canvassed in the first part of this article, about how designing and delivering enhanced clinical programs navigates internal institutional environments for law schools and their clinicians. Making CLE part of the DNA of a law school increasingly requires nothing less.