

Valuable Learning, Unwelcome Assessment: What LLB and JD Students Really Think about Group Work

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Abstract

This article contributes to current debates about the appropriate role of group work in legal curricula by providing insights into the attitudes of Bachelor of Laws ('LLB') and Juris Doctor ('JD') students towards such tasks. It begins by reviewing arguments for incorporating group work in legal education, both as a result of the recognition of its educational benefits, and as a response to increasing regulatory expectations regarding student collaboration skills. The article then reports the findings of a UNSW Law School Student Assessment Survey designed to determine how law students perceive group work and its assessment in law. One of the most striking findings is that many of the law students surveyed recognise and appreciate the learning and skills development benefits of group tasks, but are resistant to summative assessment of group work. Moreover, there are marked differences in attitude between LLB and JD students, and across year cohorts within those degrees. These findings suggest that further thought needs to be directed towards the specific purposes underpinning the choice of group work as a pedagogical tool, and assessment that is congruent with those purposes, taking into account the varying needs and experiences of different cohorts of students. The article concludes by considering whether meaningful group work can exist without summative assessment.

I Introduction

Group work is an important, but often under-utilised, learning and assessment strategy in formal legal curricula. This learning and assessment approach is widely considered to be beneficial for both the academic and social aspects of student

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learning.¹ In recent years, group work has gained further credence among legal education scholars due to its perceived ability efficiently to develop specific legal skills and generic skills or graduate attributes beneficial for the workplace, including collaboration.² However, the ‘theoretical, practical and pragmatic reasons’³ for incorporating group work into legal education are often overshadowed by law teachers’ lack of familiarity with, and law students’ ambivalence and even resistance to, this pedagogical approach.⁴

This article contributes to current debates about the appropriate role of group work in legal curricula by examining the attitudes of both Bachelor of Laws (‘LLB’) and Juris Doctor (‘JD’) students to group work as a method for enhancing learning and developing professional skills in collaboration, and the impact of assessment on these attitudes. We introduce this discussion with an analysis of the growing momentum for incorporating group work in legal education; a momentum that arises from both recognition of its educational benefits, and from the need to respond to increasing regulatory expectations regarding the development of students’ collaboration skills. The combined force of these trends underscores that the option of avoiding group work altogether is becoming increasingly untenable for law schools. To inform debate in this context, the article reports on the findings of the University of New South Wales (‘UNSW’) Law School Student Assessment Survey (‘LSSAS’), a survey that included items designed to examine how law students perceive group work and its assessment in law. One of the most striking findings of this research is that many of the law students surveyed recognise and appreciate the learning and skills development benefits of group tasks, but are resistant to summative assessment of group work. These findings suggest that further thought needs to be directed towards the specific purposes informing the adoption of group work as a pedagogical tool, appropriate assessment that aligns with those purposes, and clear communication of these purposes and assessment methods to ameliorate the negativity of many law students’ attitudes to group work.

There is a growing body of Australian research examining group work in legal education,⁵ including valuable discussion of how to enhance the success of

¹ See, eg, Marlene Le Brun and Richard Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Law Book Company, 1994) 288–9, 291–2; Margaret Castles, Maureen Goldfinch and Anne Hewitt, ‘Using Simulated Practice to Teach Legal Theory: How and Why Skills and Group Work can be Incorporated in an Academic Law Curriculum’ (2007) 26 *University of Tasmania Law Review* 120, 141–2; Jane Burdett, ‘Making Groups Work: University Students’ Perceptions’ (2003) 4 *International Education Journal* 177, 177–8; Mary Keyes and Kylie Burns, ‘Group Learning in Law’ (2008) 17 *Griffith Law Review* 357, 361.

² Castles, Goldfinch and Hewitt, above n 1, 141.

³ Keyes and Burns, above n 1, 357.

⁴ Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian University Teaching Committee* (AUTC) (2003) 302, 372–3 <http://www.cald.asn.au/docs/AUTC_2003_Johnstone-Vignaendra.pdf>; Castles, Goldfinch and Hewitt, above n 1, 143.

⁵ See, eg, Mark Israel, Elizabeth Handsley and Gary Davis, ‘“It’s the Vibe”: Fostering Student Collaborative Learning in Constitutional Law in Australia’ (2004) 38 *The Law Teacher* 1; Castles, Goldfinch and Hewitt, above n 1; Kate Lewins, ‘The Groupwork Experience in Civil Procedure’ (2006) 13 *eLaw Journal: Murdoch University Electronic Journal of Law* 225 <https://elaw.murdoch.edu.au/archives/issues/2006/1/eLaw_Lewins_13_2006_13.pdf>; Adiva Sifris and Elspeth McNeil, ‘Small Group Learning in Real Property Law’ (2002) 13 *Legal Education Review* 189; Elizabeth A Reilly, ‘Deposing the “Tyranny of Extroverts”: Collaborative Learning in the Traditional Classroom

group work.⁶ However, the LSSAS discussed in this article is, we believe, the first attempt to capture student attitudes towards group work across different years of a degree program, and to compare responses of LLB and JD students.⁷ Significantly, our results show that JD respondents are more sceptical of the utility of group work than LLB respondents for a number of reasons, including its perceived lack of authenticity with the realities of teamwork in the workplace, and the practical difficulties of arranging group work meetings outside class time. Given the increasing number of Australian law schools that are offering JD programs instead of, or in addition to, undergraduate LLB programs,⁸ it is timely to consider the different educational outcomes of group work activities intended to be achieved for both undergraduate and postgraduate law students, and the ways in which these can be clearly explained and justified to students.

II The Growing Expectation of Group-based Learning in Law

There is a growing expectation in Australia that group-based learning should be an identifiable characteristic of the curriculum and assessment regime of a university legal education. Although there is no standard definition of group work in the academic literature on legal education and higher education more generally,⁹ for the purposes of this article, Berry's definition of 'group work' as 'students working together in small groups with little or no [teacher] input' will be adopted.¹⁰ In the following discussion, 'group work' will be used as an umbrella term that encompasses different structured and unstructured approaches to group learning, but is not wedded to a particular practical or theoretical approach.

Format' (2000) 50 *Journal of Legal Education* 593; Archie Zariski, 'Positive and Negative Impacts of Group Work from the Student Perspective' (Paper presented at Higher Education Research and Development Society of Australasia Conference 'Advancing International Perspectives', Adelaide, 1997) <<http://www.herdsa.org.au/wp-content/uploads/conference/1997/zarisk01.pdf>>; B Dick et al, 'A Case Study of the "Offices" Project (Teacher-Less, Cooperative Learning Groups) at Griffith University: Implementing Educational Theory' (1993) 4 *Legal Education Review* 273; Samantha Hardy, 'Role Playing in Consumer Protection Law: The Market Day Project' (2004) 14 *Legal Education Review* 204; Lee Godden, Debbie Lamb and Marlene J Le Brun, 'The "Offices" Project at Griffith University Law School and the use of Video as a Tool for Evaluation' (1994) 12 *Journal of Professional Legal Education* 149; Lee Godden and Marlene J Le Brun, *Transforming the Undergraduate into the Graduate: Resource Tools for Introducing Teacher-less Group Work in Law* (Griffith University, 1994).

⁶ See, eg, Elizabeth Handsley, *Good Practice Guide (Bachelor of Laws): Collaboration Skills, Threshold Learning Outcome 5* (Australian Learning and Teaching Council, 2011) 19–21 <<http://www.lawteachnetwork.org/resources/gpg-collaboration.pdf>>; Nickolas James and Rachael Field, *The New Lawyer* (John Wiley & Sons, 2012) ch 9.

⁷ This article provides preliminary insights into differences between LLB and JD students' attitudes towards group work, but, due to space restraints, other types of comparisons based on, for example, the gender of LSSAS survey respondents and/or their other degree will not be examined here.

⁸ Donna M Cooper et al, 'The Emergence of the JD in the Australian Legal Education Marketplace and its Impact on Academic Standards' (2011) 21(2) *Legal Education Review* 23.

⁹ Keyes and Burns, above n 1, 358.

¹⁰ Elspeth Berry, 'Group Work and Assessment — Benefit or Burden?' (2007) 41 *The Law Teacher* 19, 19.

A recent article by Laurens, Steel and Huggins¹¹ critically analyses the lack of terminological clarity surrounding definitions of group work, and broadly identifies four different *types* of group work approaches: cooperative learning, collaborative learning, team-based learning and ad hoc or casual groups. We argue that understanding the different types of group work activities allows for a scaffolded and sequential approach to supporting students' demonstrable attainment of collaborative skills. Identifying the types, and the different learning outcomes associated with each, allows for their successful integration within a desirable whole-of-curriculum approach to the achievement of educational goals. While we argued in the previous article that a better general descriptor or umbrella for these activities is 'small group learning', a key reason the phrase 'group work' has been retained in this article is to prevent confusion as the LSSAS, which was completed prior to the Laurens et al article, specifically asked students about group work, rather than small group learning.

There is considerably more agreement than dissent in educational literature about the deep learning benefits of group work activities and their use as a pedagogical tool,¹² and this is a key reason for the increasing expectation that law schools integrate group work into their curricula. A second and more recent reason is increasing regulatory requirements for law schools to demonstrate students' acquisition of collaboration skills,¹³ for which group work provides an obvious curricular solution. The two general rationales for group learning in law schools — deep learning and workplace skills development — which underpin these mounting expectations are often cast in oppositional terms in broader philosophical debates about the appropriate purpose of a university legal education.¹⁴ Each of

¹¹ Julian Laurens, Alex Steel and Anna Huggins, "'Works Well With Others": Examining the Different Types of Small Group Learning Approaches and Their Implications for Law Student Learning Outcomes' (2013) 6 *Journal of the Australasian Law Teachers Association* 101.

¹² Paul Ramsden, *Learning to Teach in Higher Education* (Routledge, 2nd ed, 2003) 98; Clifford S Zimmerman, "'Thinking Beyond My Own Interpretation": Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum' (1999) 31 *Arizona State Law Journal* 957, 995. Johnson and Johnson note '[w]orking together to achieve a common goal produces higher achievement and greater productivity than does working alone. This is so well confirmed by so much research that it stands as one of the strongest principles of social and organizational psychology': David W Johnson and Roger T Johnson, 'Making Cooperative Learning Work' (1999) 38(2) *Theory Into Practice* 67, 72.

¹³ See, eg. Australian Qualifications Framework ('AQF'), 'The Australian Qualifications Framework' (2nd ed, 2013) 48 <<http://www.aqf.edu.au/wp-content/uploads/2013/05/AQF-2nd-Edition-January-2013.pdf>>; Sally Kift, Mark Israel and Rachael Field, *Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement December 2010* (Australian Learning and Teaching Council) 7 <[http://www.cald.asn.au/assets/lists/Education/Kift et al TASStandardsStatement2010%20TLOs%20LLB.pdf](http://www.cald.asn.au/assets/lists/Education/Kift%20et%20al%20TASStandardsStatement2010%20TLOs%20LLB.pdf)>; JD Sub-committee of the Associate Deans' Law Network, 'Juris Doctor Threshold Learning Outcomes' (2012) <[http://disciplinestandards.pbworks.com/w/file/57628366/JD%20TLOs%20\(March%202012\).pdf](http://disciplinestandards.pbworks.com/w/file/57628366/JD%20TLOs%20(March%202012).pdf)>.

¹⁴ That such 'tensions between differing ideas about the purposes and methods of legal education' remain in Australia and in other jurisdictions was noted by French CJ of the Australian High Court: Chief Justice Robert French, 'Judges and Academics — Dialogue of the Hard of Hearing' (Inaugural Patron's Lecture, Australian Academy of Law, Sydney, 30 October 2012) 2 <<http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj30oct12.pdf>>. See also Lyndal Taylor, 'Skills — Kind, Inclusion and Learning in Law School' (2001) 3 *University of Technology, Sydney Law Review* 85, 87; Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' (2004) 26 *Sydney Law Review* 537; Johnstone and Vignaendra, above n 4, 468.

these rationales and the extent to which students see them in tension will be examined below.

A further area of debate in educational literature concerns the extent to which assessment drives learning. Assessment certainly influences learning, but the influences may not always be those that the assessment setter intends.¹⁵ The way assessment is marked may well have perverse effects on the intended learning outcomes.¹⁶ We consider that, while assessment influences learning, it is too reductionist to see learning as only occurring for or during assessment. Part of what we advocate in this article is the importance of seeing learning activities such as group work in their own right, rather than as being defined by their assessment.

A *The Learning Benefits of Group Work*

Encompassing academic and social dimensions,¹⁷ the positive learning outcomes of group work activities are well documented in legal education literature.¹⁸ For example, group work has been shown to result in higher educational achievement, improved critical thinking and problem solving ability, and increased creativity.¹⁹ It can encourage students' intrinsic motivation, and engender positive attitudes towards the learning process.²⁰ By presenting students with alternative

¹⁵ Gordon Joughin, 'The Hidden Curriculum Revisited: A Critical Review of Research into the Influence of Summative Assessment on Learning' (2010) 35 *Assessment & Evaluation in Higher Education* 335.

¹⁶ D Royce Sadler, 'Indeterminacy in the Use of Preset Criteria for Assessment and Grading' (2009) 34 *Assessment & Evaluation in Higher Education* 159.

¹⁷ Keyes and Burns, above n 1, 361.

¹⁸ For an overview of recent American studies, see, eg, Verna Monson and Michelle Tichy, 'Turning Legal Classrooms Upside Down: The Pragmatic and Moral Power of Cooperation to Foster Ethical Professional Identity in Legal Education' (Holloran Centre for Ethical Leadership in the Professions; University of St Thomas School of Law, Working Paper, 14 December 2012) <<http://ssrn.com/abstract=2021455>>. See also Le Brun and Johnstone, above n 1, 288–9, 291–2; Castles, Goldfinch and Hewitt, above n 1, 141–2; Vernellia R Randall, 'Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools' (1999) 16 *Thomas M Cooley Law Review* 201, 218. See generally Burdett, above n 1, 177–8; Dorothy H Evensen, 'To Group or Not to Group: Students' Perceptions of Collaborative Learning Activities in Law School' (2004) 28 *Southern Illinois University Law Journal* 343.

¹⁹ Keyes and Burns, above n 1, 361; Castles, Goldfinch and Hewitt, above n 1, 141–2; Roberta K Thyfault and Kathryn Fehrman, 'Interactive Group Learning in the Legal Writing Classroom: An International Primer on Student Collaboration and Cooperation in Large Classrooms' (2009) 3 *John Marshall Law Journal* 135, 148; Randall, above n 18, 218–19.

²⁰ Zimmerman, above n 12, 994; Keyes and Burns, above n 1, 361. In a related vein, Howieson has shown that dispute resolution teaching methods, which often include collaborative approaches such as role-plays and group debriefing, enhance students' engagement, sense of belonging, and psychological wellbeing: Jill Howieson, 'ADR Education: Creating Engagement and Increasing Mental Health through an Interactive and Constructive Approach' (2011) 22 *Australasian Dispute Resolution Journal* 58. See also Kathy Douglas and Becky Batagol, 'ADR and Non-adversarial Justice as Sites for Understanding Emotion in Dispute Resolution' (2010) 20 *Journal of Judicial Administration* 106. More broadly, research on Self-Determination Theory ('SDT'), which is an influential branch of educational and positive psychology, shows that the subjective perception of fulfilment of each of the basic needs of autonomy, competence and relatedness promotes experiences of wellbeing and thriving: see Richard M Ryan and Edward L Deci, 'Self-Determination Theory and the Role of Basic Psychological Needs in Personality and the Organization of Behavior' in Oliver P John, Richard W Robins and Lawrence A Pervin (eds) *Handbook of Personality: Theory and Research* (Guilford Press, 3rd ed, 2008) 654, 656–9, 666–9.

perspectives, yet encouraging consensus, group work can provide a critical mechanism by which students can receive formative feedback from their peers, and assists them to become self-reflective learners.²¹ Group work is seen to be particularly adaptable and responsive to diverse learning styles, thus helping to ameliorate potential disadvantage from occurring in an environment where a student's learning style — for reasons including gender and/or cultural background — may not be compatible with a strongly individualistic and competitive ethos.²²

In addition to the abovementioned academic benefits, Keyes and Burns have highlighted the social benefits of group work for law students, suggesting that it results in improved psychological wellbeing and higher self-esteem when compared to predominantly individualistic and competitive learning and assessment approaches.²³ They argue that formal group work provides a significant source of social support and can facilitate the development of positive peer relationships, which are of particular value for first year students.²⁴ A further significant advantage stemming from the academic and social benefits of group work is that it develops collaborative and communication skills seen to be desirable by law schools²⁵ and in the workplace.²⁶ Moreover, it is argued that

Recent research investigating the factors that contribute to Australian law students' distress demonstrates that low peer engagement is one of a number of factors significantly associated with moderate and severe depressive, anxiety and stress symptoms, supporting SDT's predictions about the links between relatedness at law school and law students' wellbeing: Wendy Larcombe and Katherine Fethers, 'Schooling the Blues? An Investigation of Factors Associated with Psychological Distress among Law Students' (2013) 36 *University of New South Wales Law Journal* 390, 411, 414, 417.

²¹ Castles, Goldfinch and Hewitt, above n 1, 141; Keyes and Burns, above n 1, 359–60. See also Roark M Reed, 'Group Learning in Law School' (1984) 34 *Journal of Legal Education* 674, 681.

²² Keyes and Burns, above n 1, 360; Randall, above n 18, 222; Stephen R Ripps, 'A Curriculum Course Designed for Lowering the Attrition Rate for the Disadvantaged Law Student' (1986) 29 *Howard Law Journal* 457, advocating a special course based around small group learning to support disadvantaged students' learning and introduction to the discipline. Note the UNSW Law School runs a successful 'pre-law' program for Indigenous law students. See also Susan Bryant, 'Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession' (1992–93) 17 *Vermont Law Review* 459, which focuses particularly on women and those whose cultural backgrounds mean they do not easily relate to 'individualistic' learning in the Western manner; Jeffrey A Van Detta, 'Collaborative Problem-Solving Responsive to Diverse Learning Styles: Labor Law as an Active Learning Experience' (2001) 24 *North Carolina Central Law Journal* 46, which looks at accommodating diverse learning styles through small group learning. For discussion of the use of collaborative learning to break down 'class barriers' and to include non-majority students in the education process, see, eg, Paulo Freire, *The Politics of Education: Culture, Power and Liberation* (Greenwood, 1985) 24–5, 54–5. Shor also suggests that cooperative learning has improved learning in minority and low-achieving groups of students and has created harmony between different racial classes: Ira Shor, *Empowering Education: Critical Teaching for Social Change* (University of Chicago Press, 1992) 164.

²³ Keyes and Burns, above n 1, 362; see especially discussion, above n 20; see also Helen Stallman, 'A Qualitative Evaluation of Perceptions of the Role of Competition in the Success and Distress of Law Students' (2012) 31 *Higher Education Research & Development* 891, 892–3, 898, 900.

²⁴ Keyes and Burns, above n 1, 362.

²⁵ These are often reflected in graduate attributes: Castles, Goldfinch and Hewitt, above n 1, 141.

²⁶ See, eg, Elisabeth Peden and Joellen Riley, 'Law Graduates' Skills — A Pilot Study Into Employers' Perspectives' (2005) 15 *Legal Education Review* 87. See also Commonwealth Department of Education, Employment and Workplace Relations, *Employability Skills Framework Stage 1: Final Report* (January 2012) <<http://www.vetpd.qld.gov.au/resources/pdf/tla/employability-skills-framework-phase-1-report.pdf>>.

group work can foster an ethical approach to professional legal activity such as litigation,²⁷ and promote the development of an ethical professional identity among the legal profession more generally.²⁸

There have been consistent calls for Australian legal education to move away from a 'traditional' and 'outmoded' focus on 'what lawyers need to know' to one where students are instructed in 'what lawyers need to be able to do'.²⁹ This shift towards developing both generic and specific graduate attributes and employability skills has become increasingly codified by the emerging regulatory regime overseeing Australian legal education. A significant impetus for the incorporation of group work in legal curricula is thus provided by specific requirements that students must demonstrate attainment of collaborative skills.

B *The Emergent Regulatory Regime*

Until recently, the major external requirement on Australian law schools was to ensure students were adequately trained, as part of their degree, in a set of legal doctrines required for admission to legal practice. Since 1992, the content of Australian law courses has been shaped by the 'Priestley 11',³⁰ which refers to 11 prescribed 'areas of knowledge' that the Consultative Committee of State and Territory Law Admitting Authorities requires students to have studied before admission to legal practice.³¹ In the last few years, increased government interest in regulating tertiary qualifications has led to both institution-wide requirements within universities and also the articulation of a standards-based quality assurance framework for higher education providers in Australia administered by the Tertiary Education Quality Standards Agency ('TEQSA').³² Accreditation of university degrees by TEQSA will require proof of adherence to the Australian Qualifications Framework ('AQF'),³³ which is designed to provide a 'single comprehensive national qualifications framework' for Australian education and training.³⁴

²⁷ Castles, Goldfinch and Hewitt, above n 1, 141.

²⁸ See, eg. Monson and Tichy, above n 18.

²⁹ Australian Law Reform Commission, *Review of the Federal Civil Justice System*, Discussion Paper No 62 (1999) [3.23]; Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000) 120, 142; David Weisbrot, 'What Lawyers Need to Know, What Lawyers Need to be Able to Do: An Australian Experience' (2002) 1 *Journal of the Association of Legal Writing Directors* 21. For discussion on the recommendations of the Australian Law Reform Commission, see Sharon Christensen and Sally Kift, 'Graduate Attributes and Legal Skills: Integration or Disintegration?' (2000) 11 *Legal Education Review* 207–11. For a concise critique of the traditional model of Australian legal education, see Keyes and Johnstone, above n 14.

³⁰ Keyes and Johnstone, above n 14, 544.

³¹ The prescribed areas of knowledge are criminal law and procedure, torts, contracts, property, equity, company law, administrative law, federal and state constitutional law, civil procedure, evidence, and ethics and professional responsibility: see Law Admissions Consultative Committee, 'Uniform Admission Rules 2008, Schedule 1: Prescribed Areas of Knowledge' (2008) Law Council of Australia <http://www1.lawcouncil.asn.au/LACC/images/pdfs/212390818_1_LACCUniformAdmissionRules2008.pdf>.

³² *Tertiary Education Quality and Standards Agency Act 2011* (Cth) s 3(b)(i) ('TEQSA Act').

³³ *Higher Education Standards Framework (Threshold Standards) 2011* (Cth) ('Threshold Standards Instrument').

³⁴ AQF, above n 13.

Relevantly, the AQF requires graduates of a Bachelor Degree to ‘demonstrate the application of knowledge and skills ... with responsibility and accountability for own learning and professional practice *and in collaboration with others* within broad parameters’.³⁵ In what might appear an odd omission, there is no requirement of collaboration for the JD, which is a level 9 Masters (Extended) qualification under the AQF framework.³⁶ Nonetheless, it is likely that the presence of collaborative learning in the LLB will lead to a similar emphasis in the JD.

Expanding on these requirements, a set of Discipline Standards for law, known as Threshold Learning Outcomes (‘TLOs’), have been developed under the auspices of the former Australian Learning and Teaching Council, and adopted by the Council of Australian Law Deans as ‘an appropriate statement of the Threshold Learning Outcomes that are required of Bachelor of Law graduates from any Australian university’.³⁷ A modified version of these learning outcomes for the JD has also been adopted.³⁸

The TLOs for both the LLB³⁹ and JD⁴⁰ require graduates to be able to ‘collaborate effectively’. The commentary on the LLB TLOs states:

Collaborate effectively: This phrase encompasses teamwork, working in groups, and working cooperatively with others. Through the LTAS consultation process, many members of the profession have emphasised these skills as critical to the modern legal workplace. Constructive approaches to collaboration include an ability to negotiate and work effectively through team disputes and problems with team dynamics.⁴¹

Significantly, the TLOs serve as external reference points in TEQSA’s accreditation of degree programs.⁴²

These developments are in line with a broader movement in Australia to require graduates to have generic or transferable skills. Higher education institutions are being asked to not only equip students with graduate attributes, but also to demonstrate the points in the degree program where students are acquiring these attributes.⁴³ Similarly, in the international arena, graduates are increasingly

³⁵ Ibid 48 (emphasis added).

³⁶ Ibid. The omission may be justifiable; see the discussion in the Conclusion below.

³⁷ Kift, Israel and Field, above n 13, 7.

³⁸ JD Sub-committee of the Associate Deans’ Law Network, above n 13.

³⁹ Kift, Israel and Field, above n 13, 10.

⁴⁰ JD Sub-committee of the Associate Deans’ Law Network, above n 13, 4.

⁴¹ Kift, Israel and Field, above n 13, 22.

⁴² *Threshold Standards Instrument*: In ch 3, the Threshold Standards instrument outlines the requirements for higher education ‘Provider Course Accreditation Standards’ pursuant to s 58(1)(c) of the *TEQSA Act*. Relevantly, as part of these accreditation standards, a higher education provider must have ‘robust internal processes for design and approval of [a] course of study’, which includes ‘tak[ing] account of external standards and requirements, eg published discipline standards, professional accreditation, input from relevant external stakeholders, and comparable standards at other education providers’: at [1.2].

⁴³ Impetus for equipping graduates with ‘higher level generic skills’ has come from the federal government, representatives of which have described such skills as ‘critically important’: see Higher Education Council (Australia), National Board of Employment, Education, and Training, *Achieving Quality, Higher Education* (Australian Government Publishing Service, 1992) 20. See

being required to demonstrate their ability to collaborate. The American Bar Association requires law schools to ‘offer substantial opportunities for ... small group work through seminars, directed research, small classes, or collaborative work’.⁴⁴ In a related vein, the United Kingdom Quality Assurance Agency requires law graduates to have ‘a basic ability ... to work in groups as a participant who contributes effectively to the group’s task’.⁴⁵

Despite this national and international momentum for increased emphasis on the development of students’ generic skills, including collaboration, prominent members of the Australian legal profession have been reluctant to consider collaboration as an essential element of legal practice. In 2011, the Law Admissions Consultative Committee — the peak body of jurisdictional admitting authorities, chose to take a ‘wait-and-see’ approach to the role of the TLOs in qualifying graduates for legal practice, in large part due to the concerns of the New South Wales Legal Profession Admission Board:

[The New South Wales Board’s chairman Justice Slattery] noted that ‘[m]any highly competent and well respected admitted lawyers would fail aspects of the six TLOs’. Thus, ‘Admitting authorities currently admit many individuals to practice who are exceptional lawyers who do not, cannot or are not inclined to “collaborate effectively”’, as would be required by the proposed TLOs.⁴⁶

In light of the broader requirements across the higher education sector and internationally, such a defensive position is not likely to be of much assistance for law schools in their discussions with university administration, and it seems inevitable that all law schools will be required, independently of admitting bodies, to demonstrate that their graduates have some skills in collaborative work.⁴⁷ In fact, such attitudes tend to reinforce the need for collaborative learning in law schools.

In this environment, law schools must therefore examine the most appropriate way to incorporate the development of skills of collaboration into legal

also, Sally Kift, ‘21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law’ (2008) 18 *Legal Education Review* 1, 5–11.

⁴⁴ American Bar Association, ‘ABA Standards for Approval of Law Schools 2007–2008’ (2008) Standard 302 Curriculum (b)(3) <http://www.americanbar.org/content/dam/aba/migrated/legaled/standards/20072008StandardsWebContent/Chapter_3.authcheckdam.pdf>.

⁴⁵ United Kingdom Quality Assurance Agency (‘QAA’), *Subject Benchmark Statement: Law* (2007) 4 [8.2] <<http://www.qaa.ac.uk/Publications/InformationAndGuidance/Documents/Law07.pdf>>. The QAA goes on to inform law schools that: ‘A variety of activities can be used to demonstrate that students can work together in teams. Group projects are a typical way in which individual students provide evidence of their team working skills, but team negotiations or student-led tutorials would be other alternatives. Teamwork can be demonstrated not only by activities in class, but also on work placements or student-led court visits, as well as in some extra-curricular activities’: at 10.

⁴⁶ Law Admissions Consultative Committee, *Reconciling Academic Requirements and Threshold Learning Outcomes* (2011) 2–3. <<http://www1.lawcouncil.asn.au/LACC/images/pdfs/20110624-ReconcilingAcademicRequirementsandThresholdLearningOutcomes-DiscussionPaper.pdf>>.

⁴⁷ It is an interesting question whether collaboration skills are inherent requirements of working as a lawyer (cf *Disability Discrimination Act 1992* (Cth) s 21A). If individual employers consider this to be the case, there may well be a requirement to teach such skills despite the Legal Profession Admission Board’s attitude. But that assumes a law degree is intended to produce ‘practice-ready’ graduates, rather than a more academic conception of a law degree.

curricula. Group work is seen to be one way to achieve these aims.⁴⁸ In the context of the abovementioned learning and social benefits of group work, and mounting regulatory pressures to demonstrate students' acquisition of collaboration skills, it is timely to examine law students' attitudes towards group work as a learning, skills development and assessment strategy.

III Aims and Methods of the UNSW LSSAS

In 2012, all UNSW LLB and JD students were invited to participate in the UNSW Law School Student Assessment Survey.⁴⁹ The LSSAS was administered online via Survey Monkey and students were invited to participate via email. Student participation was entirely voluntary and anonymous, and the survey had ethics approval.⁵⁰ The survey provides an environmental scan of students' responses to group work, including their preferences and resistances, and evaluations of its utility for learning, skills development, and as an assessment task. It provides a more broadly based quantitative and qualitative complement to the qualitative research previously undertaken in other studies.⁵¹

The data was analysed using the SPSS Statistics and Survey Monkey online analysis tools. The survey provides a cross-sectional snapshot of student attitudes across years. In the discussion that follows, this cross-sectional data is used as a proxy for a longitudinal study of UNSW students. There is some evidence to suggest that such a methodology has an acceptable degree of validity,⁵² but we would see our analysis as inescapably heuristic.

⁴⁸ Elsewhere, we have argued that another method for doing so is Assessable Class Participation: Alex Steel, Julian Laurens and Anna Huggins, 'Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students' Engagement, Skills Development and Deep Learning' (2013) 36 *University of New South Wales Law Journal* 30.

⁴⁹ The survey contained 81 items spanning six areas of law school assessment. The areas were: (1) class participation; (2) group work; (3) legal problem questions; (4) essays; (5) examinations; and (6) general assessment and feedback questions. The items were a mixture of forced choice Likert scale responses to statements, open-ended text-based answers to questions, and multiple choice single answer questions, and were developed based on a literature review and the investigators' hypotheses of likely student issues. The discussion in this article will focus on the survey responses in relation to group work, addressed in 14 of the survey items. The survey formed part of UNSW Law's contribution to a university-wide Assessment Project: see Alex Steel, 'The Law School and the Assessment Project' in Richard Henry, Stephen Marshall and Prem Remburuth (eds), *Improving Assessment in Higher Education: A Whole of Institution Approach* (University of New South Wales Press, 2013). The aims of the survey were: to provide an empirical basis for understanding the student experience of assessment, as well as an opportunity for students to provide feedback to inform the future development of curriculum and assessment at UNSW Law; to create a benchmark against which innovations and refinements of assessment practices could be tested by follow up surveys; and to inform further academic research into best practice approaches to assessment in the teaching of law. In addition to complementing the aims of the UNSW Assessment Project, the survey findings helped to inform aspects of the Law School's 2011–13 Curriculum Review, which included a significant emphasis on connecting the curriculum to the needs of graduates in the workplace: see *Curriculum Review: Designing An International, Experiential, Research-Focused Curriculum for a c21 Law School* (UNSW Law, 2013).

⁵⁰ UNSW Human Research Ethics Committee, application and approval no 12 058.

⁵¹ For prior Australian studies on group work in law, see above n 5.

⁵² Mantz Yorke and Elena Zaitseva, 'Do Cross-Sectional Student Assessment Data make a Reasonable Proxy for Longitudinal Data?' (2013) 38 *Assessment & Evaluation in Higher Education* 957.

A *Profile of UNSW Law Students and Classes*

UNSW Law offers both an undergraduate dual Bachelor of Laws degree and a graduate Juris Doctor degree. Both degrees, when coupled with practical legal training, qualify students for legal practice in Australia. As previously mentioned, practitioner admission requirements dictate coverage of a range of doctrinal courses in the qualifying degree, such that at UNSW two-thirds of both these degrees are comprised of compulsory courses. Consequently, there is substantial similarity in the content of both LLB and JD degrees.

Typically, LLB students take the equivalent of the first year of law over the course of the first three years of their studies while completing their non-law degree. In most cases, three quarters of their first year of study is in non-law courses, reducing to one half by the third year. Fourth and fifth year are predominantly law courses.⁵³ The most popular combinations in 2012 were Commerce/Law (55 per cent), Arts/Law (19 per cent) and International Studies/Law (10 per cent).

While JD students complete a full year of law courses in their first year, the elongated sequence of these classes across three years for LLB students means that there are significant differences between the degrees in terms of the development of skills alongside content, and this necessitates different approaches to teaching the content in courses taught across both degrees. Formally, the teaching methodology in both degrees is the same, as both degrees are taught in interactive seminar-style classes only (two two-hour classes per week for compulsory courses). Further, an emphasis on class participation by students is a hallmark of both degrees, although the learning needs of students in each degree differ.

In summary, this means that the survey captured responses from both school leaver and mature graduate law students, but in a context in which the learning environment was sufficiently similar to validly draw comparisons between the two groups.⁵⁴ Whereas the appraisal of group work by JD students would have been influenced by their experiences in their undergraduate degree and work-history, LLB students' main tertiary educational experiences in the early years of their degree are in their non-law degrees. This means that as they experience group work in their law degrees, they are likely to have simultaneous experiences of group work in their other degrees, allowing points of comparison. As the survey was completed at the end of the first semester, respondents in the first year of the LLB would have only completed one law course, 'Law, Lawyers and Society' — which has a strong focus on in-class discussion as a way of introducing students to

⁵³ This assumes the non-law degree, if taken alone, would be three years in length. Longer degrees, such as engineering, result in students undertaking six years of study and a consequent elongation of the sequencing of law courses.

⁵⁴ Further data on the differences and similarities between the cohorts is contained in Alex Steel and Anna Huggins, 'Law Student Lifestyle Pressures' in James Duffy, Rachael Field and Colin James (eds), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Ashgate 2014, forthcoming).

legal studies. First-year JD respondents would have completed this course and up to three other law courses.⁵⁵

While UNSW Law has long placed emphasis on in-class discussion and associated small group break-out sessions,⁵⁶ there is little history of separate summatively assessed group work in compulsory courses. This lack of group work experience had an impact on the survey findings. At the time of the survey, there were no compulsory group work activities that were individually assessed in the first three years of the LLB or in the first semester of the JD.⁵⁷ Group work assessments had been set in some compulsory courses in some semesters, but this was not consistent across years.⁵⁸

B Profile of the Survey Respondent Sample

The group work questions in the LSSAS were answered by 176 LLB students (11 per cent) and 98 JD students (20 per cent).⁵⁹ Across the year cohorts, the LLB responses averaged nine per cent for years one to four and jumped to 21 per cent for the fifth year.⁶⁰ The JD cohorts averaged a response rate of 20 per cent across the three years. In addition, 81 (46 per cent) of LLB respondents and 57 (58 per cent) of JD respondents provided additional open-text based comments prompted by the group work questions.⁶¹

Responding students were asked to indicate the number of assessed group work activities (other than as part of a class participation mark) they had undertaken by the time of the survey. When broken down by year cohorts, the percentages of respondents who had not done any group work in law were:

⁵⁵ Note, however, that a significant proportion of JD students are enrolled on a part-time basis.

⁵⁶ Steel, Laurens and Huggins, above n 48.

⁵⁷ There was one compulsory group work task in Law, Lawyers and Society, and an opt-in assessment in Litigation 2, both then taken in the fourth year. There is more group work in the new curriculum.

⁵⁸ One of the aims of this survey was to inform an increased emphasis on group work in the new curriculum; it has achieved this aim, as in 2013 a new curriculum was introduced that incorporates more compulsory group work tasks.

⁵⁹ At the time of the survey there were 1612 LLB students (cohorts of 381, 372, 320, 316 and 223 students in each of the five years) and 488 JD students (cohorts of 204, 153, 131 in each of the three years). This data is based on official University of New South Wales enrolment numbers. There may be some differences between the respondents' sense of the year they are in and official identification by stages.

⁶⁰ Fifth and sixth year responses were combined, as there were a number of respondents who had been enrolled for six years because of the length of their non-law degree, but had only completed the equivalent of five years of law studies.

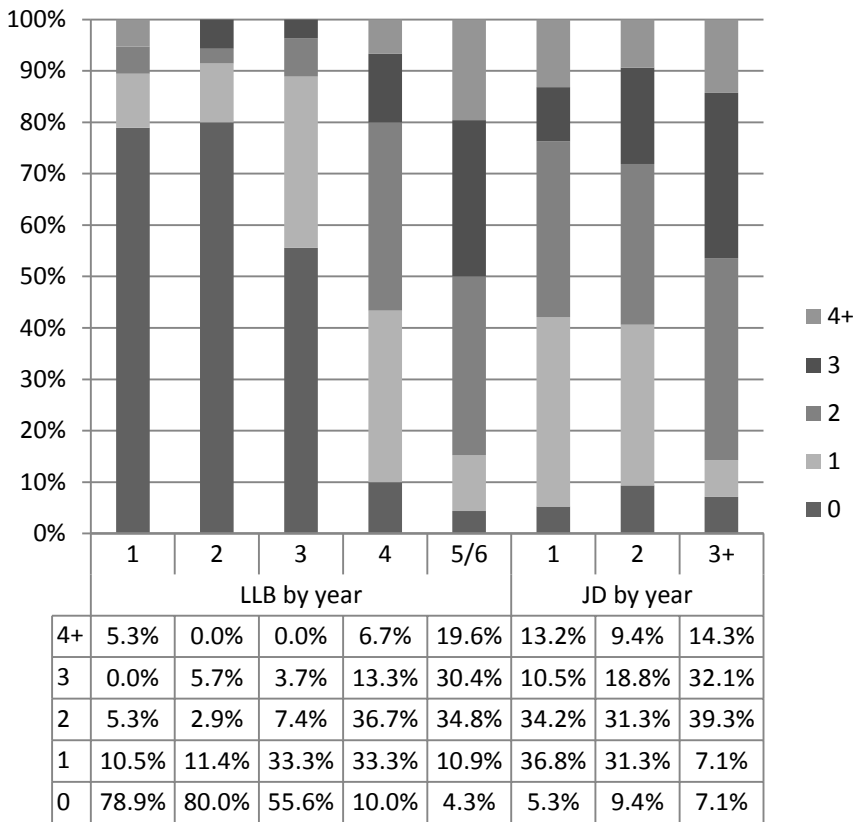
⁶¹ A majority of respondents were female (LLB 54 per cent and JD 58 per cent). While only seven per cent of LLB respondents were international students, 27 per cent indicated that English was not their first language. Of the JD respondents, 16 per cent were international students, but for 25 per cent, English was not their first language. The survey did not ask for student age, but University of New South Wales enrolment data indicate that LLB students were overwhelmingly school leavers, and the average age of a JD student at the start of their degree was 28: UNSW Law School, *The UNSW Juris Doctor 2013 Program Guide* (2013) 4 <<http://www.law.unsw.edu.au/future-students/unsw-jd>>. Because of space restrictions, these demographics are not further analysed in this article.

Table 1: Percentage of respondents who reported not having done any group work, by year of enrolment

Years of enrolment	1	2	3	4	5
No group work assessed in LLB (%)	79	80	56	10	6
No group work assessed in JD (%)	5	9	8		

Given the lack of any separately assessed group work tasks in the first two years of the LLB degree, those respondents indicating that they had completed group work can only have been referring to work done as part of another assessment, but it is difficult to determine what this might have been.

Chart 1: Number of assessed group work tasks



As the chart above demonstrates, even by the end of the degree, only 20 per cent of LLB and 14 per cent of JD respondents had undertaken four or more assessments they identified as group work. This finding was quite significant as it suggests that the respondents' attitudes to group work were largely based on either experiences in other degrees, or on very limited experience.

IV Respondents' Perceptions of Group Work

A *The Survey Questions*

Respondents were asked questions about a range of issues related to group work, which were informed by extant Australian literature on group work in legal curricula.⁶² A number of these studies have reported mixed views among law students as to the benefits of group work in enhancing learning.⁶³ We asked UNSW law students to rate holistically the extent to which they had positive attitudes to 'group work in my law degree', and their 'experience of group work at UNSW'. These two questions were designed to assess whether there was any difference between students' individual experience and overall opinion of group work, and also to capture the attitude towards group work of those who had actually done little group work. We also asked students to rate their 'experiences of being assessed for group work' in their previous or other degree. This was in order to control for negative attitudes to group work developed outside of the law degree and to see the extent to which students saw group work in law as better or worse than group work in their other degrees or previous studies. We were also interested to discover if students recognised the educational benefits of group work and whether their agreement with those benefits correlated with positive attitudes towards group work in law. Accordingly, we asked students to report on the extent to which they agreed with the propositions: 'Group work is beneficial for learning in law'; and 'Group work in law school develops skills that are useful in the workplace'.

Having assessed general attitudes towards group work in law, we then asked a series of more specific questions: if given a choice, would students choose group or individual assessment; and should there be more group work assessments across the degree? We also asked for students' responses to the proposition that 'group work is important but does not need to be graded to be beneficial'. This question sought to determine whether a higher proportion of students would be in favour of group work if it was not summatively assessed. Finally, a set of questions assessed students' attitude regarding: how groups should be formed — randomly, by student choice, or by teachers based on student characteristics; whether students felt they had the skills to 'manage negative situations that can arise within group work'; and whether they would like more instruction on how to make groups work more effectively. Respondents were also able to provide free-text comments on the positive or negative aspects of group work in the law school.

B *The Analysis*

The questions were analysed in a number of ways. First, all answers were split between LLB and JD cohorts before each of these cohorts was analysed as a whole. The results were then analysed by year cohort to determine if there were any trends across the years. While results for the year cohorts across the JD and final years of the LLB represent 20 per cent of the total student body, results for the

⁶² See above n 5.

⁶³ See, eg, Zariski, above n 5; Godden and Le Brun, above n 5.

first four years of the LLB only represented nine per cent of each year's cohort. For the LLB, this analysis resulted in a skew toward the final-year respondents, but as these students were more experienced, the results were considered valid. Although most questions required answers based on a four-point Likert scale, the analyses largely proceeded on the basis of binary responses of agreement or non-agreement.

C Results

1 General Attitudes to and Experiences of Group Work

Overall, LLB respondents were evenly divided in their reactions to their group work experiences in their non-law degrees, with 51 per cent agreeing the experience in their other degree was positive. JD respondents, by contrast, were less impressed, with only 41 per cent considering the experience in their prior degree to be positive. When asked to rate their attitude to group work *within* the UNSW law program, there was a higher positive rating among 63 per cent of LLB respondents and 54.1 per cent of JD respondents.⁶⁴ There were statistically significant correlations between answers to both questions.⁶⁵ This higher rating compared to non-law group work is interesting. While lower levels of approval of group work generally might be some confirmation of what is said to be a predominant personality predisposition of law students that favours individualism over group effort,⁶⁶ the higher rating of group work in law suggests that, instead, attitudes are influenced by the variable quality of group work in tertiary education generally.⁶⁷

Whatever the causes, these attitudes to group work might be expected to be constant throughout all year cohorts. However, when broken down by year there was a clear trend in both degrees, with respondents in later years less likely to see their experiences positively. For LLB respondents, a minority saw non-law group work negatively in years one to three (range of 34–41 per cent), but this figure jumped dramatically to 60 per cent in year four, and 70 per cent in year five/six. For the JD respondents, the negative responses to group work jumped from 53 per cent in first year to 69 per cent (year two) and 57 per cent (year three).

Similarly for attitudes to group work *within* UNSW Law, negative responses rose from 18 per cent for first-year LLB respondents to 54 per cent by the final year, and for JD respondents from 40 per cent to 57 per cent from the first to final years. Significant correlations existed between responses for all years,⁶⁸ other than in the second year of the JD.

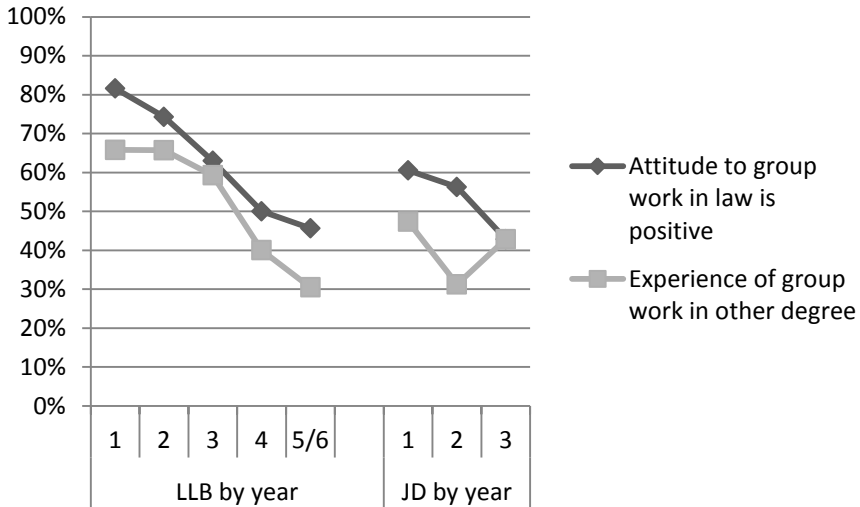
⁶⁴ 62.5 per cent of LLB respondents had a positive attitude to group work in their law degree, which was significantly greater than those with a negative attitude ($\chi^2(1) = 11, p < .05$). 54.1 per cent of JD respondents had a positive attitude but there was insufficient evidence at the .05 level of significance to conclude that there were more JD respondents with a generally positive attitude toward group work in law than a negative one ($\chi^2(1) = 0.653, p < .05$).

⁶⁵ The correlations were significant for LLB respondents generally (at the 0.01 level using Pearson's r 0.542) and Year 3 JD respondents (at the 0.01 level using Pearson's r 0.558).

⁶⁶ See, eg. Stallman, above n 23.

⁶⁷ Similar indications were found by Israel, Handsley and Davis, above n 5, 18.

⁶⁸ The correlations were significant for all students for the following years: JD Year 1 (at the 0.01 level using Pearson's r 0.658) and Year 3 (at the 0.05 level using Pearson's r 0.417). LLB Year 1

Chart 2: Positive attitudes to group work in law and experiences elsewhere

When the approval levels for both questions are represented graphically, it becomes clear that the fall is not only largely linear, but that the fall in approval by JD respondents roughly maps onto the final years of the LLB. This raises the possibility that approval levels for group work are strongly affected by age and maturity.

Only five open-text responses referred specifically to the respondents' experiences in their other degrees. None were very positive about their experiences in their other degrees. One noted:

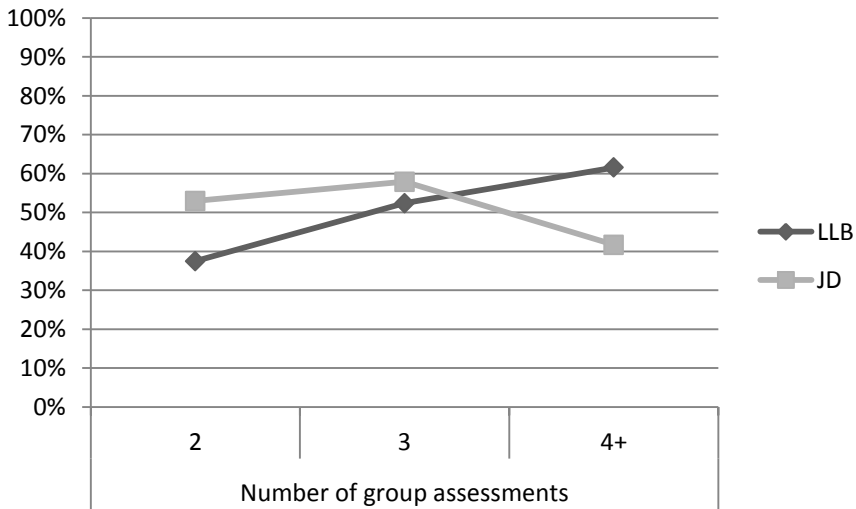
I think the ability to both work and learn independently is a critical skill when it comes to law and work. So fewer group work [sic] is acceptable for me. As other degrees always have a group work component, which makes the need for group work in law degree become less imminent [sic].

(at the 0.01 level using Pearson's r 0.516); Year 2 (at the 0.01 level using Pearson's r 0.539); Year 3 (at the 0.01 level using Pearson's r 0.613); and Year 4 (at the 0.01 level using Pearson's r 0.680). For those students who had completed two or more group work assignments in law, there were significant correlations for the JD Year 1 (at the 0.01 level using Pearson's r 0.647) and Year 3 (at the 0.05 level using Pearson's r 0.467), and for the LLB Year 4 (at the 0.01 level using Pearson's r 1.000) and Year 5 (at the 0.05 level using Pearson's r 0.327).

2 *Experience of Group Work in Law*

One significant rider on interpretation of these attitudes is the fact that most respondents had not done group work in their law degrees.⁶⁹ To overcome this issue, we excluded from our analysis of students' responses to the question on *experience* of group work in law those who reported completing less than two assessed group work tasks. When responses by this smaller group of respondents⁷⁰ were examined, data showed a range of experiences in both degrees, but as the chart below demonstrates, there was a trend towards greater approval levels for those LLB respondents who had done more group work. As group work would have been largely undertaken in electives, it may have been the case that students strongly opposed to group work might have avoided subjects where it was required, and thus the results were skewed towards positive attitudes. On the other hand, the trend was in the opposite direction for the JD respondents, which suggests that the more group work JD students did, the less they saw it as a positive experience, and elective choice did not have any skewing effect.

Chart 3: Positive attitude to group work for two or more assessments



Overwhelmingly, these respondents were in their final year of the JD or years four to five/six of the LLB. There were strong correlations between these respondents' answers to both the questions about attitudes to, and experience of, group work in law.⁷¹ Again, these results suggest a fundamental difference in the approach JD students have to group work, which may be reflective of age and maturity.

⁶⁹ Presumably these students' responses were therefore informed by their experiences of group work in their other degrees.

⁷⁰ There were only 66 LLB respondents (32 had done 2, 21 had done 3 and 13 had done 4+) and 65 JD respondents (34 had done 2, 19 had done 3 and 12 had done 4+ group work tasks) in this category.

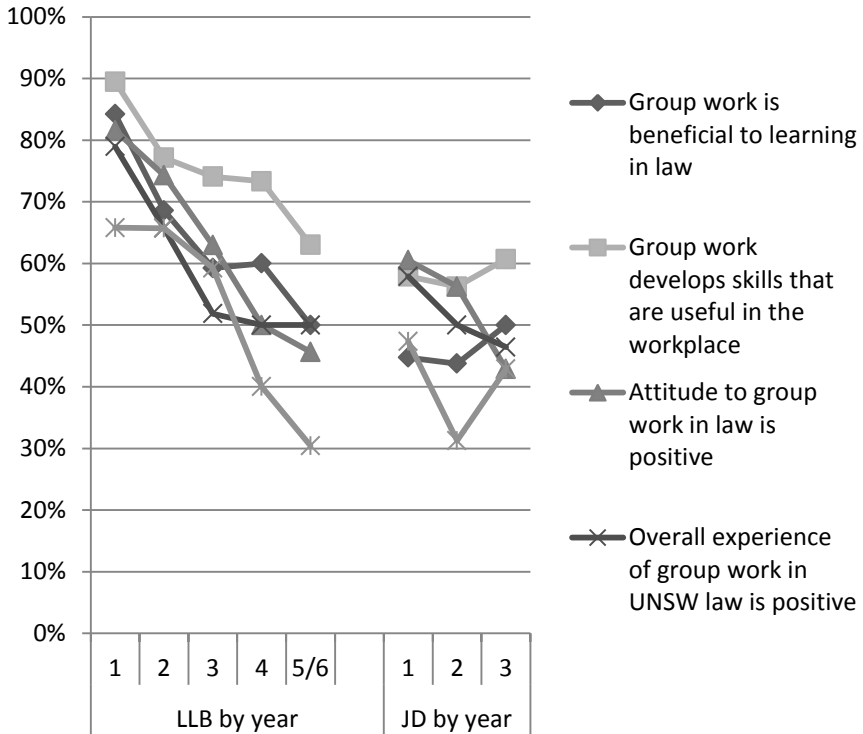
⁷¹ For both LLB and JD cohorts, the correlations were significant at the 0.01 level using Pearson's r 0.665.

3 *Is There a Difference between Group Work for Learning and Group Work for Developing Professional Skills?*

Stepping back from their actual experience of group work, respondents were more positive about the educational benefits of group work. Overall, 64 per cent of LLB respondents and 46 per cent of JD respondents considered group work to be 'beneficial for learning in law'. An even stronger positive response to the question on whether group work 'develops skills that are useful in the workplace' was observed, with 75 per cent of LLB and 58 per cent of JD respondents agreeing with the statement.⁷² Again, it is evident that JD respondents were less impressed than LLB respondents.

When examined on a year-cohort basis, a trend of falling approval for group work across the LLB respondents was again observed. The level of positive responses for the proposition that group work was beneficial to learning was high in the first year of the LLB at 84 per cent, falling to 50 per cent in year five/six. The percentage of the JD respondents agreeing increased slightly over the three years from 45 per cent to 50 per cent. For building workplace skills, support in the early years of the LLB was also very strong, with first year respondents having a 90 per cent approval rate, which dropped to 63 per cent by the final year. JD respondents again remained relatively static over the three years, moving between 58 and 61 per cent.

⁷² Thus, 92 per cent of respondents who considered group work to be beneficial also thought it developed workplace skills, and 83 per cent (LLB) and 87 per cent (JD) also agreed that their attitude to group work in law was positive. Between responses to the statements 'group work is beneficial for learning in law' and 'my attitude to group work in my law degree is generally positive', the correlation was significant at the 0.01 level using Pearson's r 0.572 (LLB) and 0.603 (JD). Between 'group work is beneficial for learning in law' and 'group work in law school develops skills that are useful in the workplace', the correlation was also significant at the 0.01 level using Pearson's r 0.472 (LLB) and 0.698 (JD). Between 'my attitude to group work in my law degree is generally positive' and 'group work in law school develops skills that are useful in the workplace', the correlation was significant at the 0.01 level using Pearson's r 0.447 (LLB) and 0.547 (JD). These correlations also existed when the data was analysed by year cohorts. The correlations for the JD remained significant at the 0.01 level, as did the majority of correlations for the LLB. The remainder were significant at the 0.05 level.

Chart 4: General attitudes to group work by year cohort

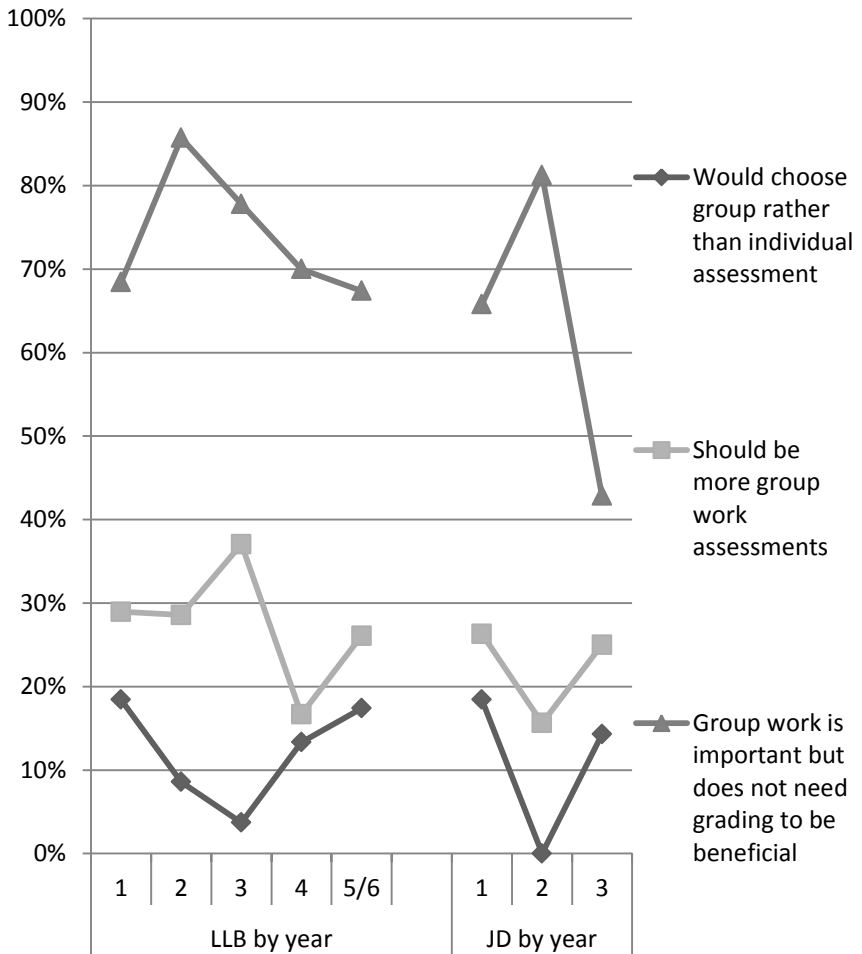
Although the levels of agreement regarding the educational and skills benefits of group work dropped throughout the LLB and in the first two years of the JD, they remained consistently higher than the respondents' level of positive attitudes to group work. This strongly suggests that while respondents accept the theoretical promise of group work, they found the practice of group work in the law school to be less than it could be. This could be a negative reflection on the quality of group work activities they had done, but if that was the case one could expect a much lower level of positive attitudes across the respondents. It is more likely to be a combination of the quality of group work and some other structural factors. The slightly higher levels of agreement that group work was beneficial by those in the last year of the JD degree defies the overall trend, but this year also was the most dissatisfied with their actual experience of group work within the Law School. Taken together, this remains consistent with an overall lowering of positive attitudes to group work throughout both degrees.

4 *Is the Assessment of Group Work the Main Cause of Resistance?*

We hypothesised that resistance to group work might instead be attributable to the fact that it was summatively assessed. When respondents were further asked to nominate whether they had a preference for group assessment or individual assessment there was, unsurprisingly, a high level of preference for individual

assessment. Overall, the preference for individual assessment amongst LLB respondents was 87 per cent, and 89 per cent for JD respondents. By year cohort, the preference for individual assessment of group work rose to 96 per cent in the third year of the LLB and 100 per cent in the second year of the JD. But despite the consequently very small preference for group assessment, a larger proportion of respondents — 27 per cent of LLB and 22 per cent of JD respondents — agreed, perhaps altruistically, that there should be more assessed group work in the degree.

Chart 5: Respondents' group work assessment preferences



In an attempt to separate out attitudes to assessment and the nature of group work, we asked students whether they agreed with the statement: ‘I think group work is important but it does not need to be graded to be beneficial.’ Importantly, this question required respondents to agree both that group work was important and also that it should not be graded. There were high levels of agreement with this statement from 73 per cent of LLB respondents and 64 per cent of JD respondents.

Interestingly, the suggestion that group work could exist without being graded led to higher rates of agreement than there had been for the statement that group work was beneficial for learning. Instead of a constant downward trend, there was a clear jump up to agreement levels over 80 per cent in the middle years of both degrees.

Given these higher levels of agreement, the responses were cross-tabulated with responses to the statement that group work was beneficial for learning in law. The results were mixed, with only 47 per cent of LLB and 32 per cent of JD respondents agreeing with both propositions. This clearly demonstrates that both those who believe group work is beneficial, and those who do not, have a strong preference that group work not be graded. The negativity towards grading includes significant numbers of those who would be in favour of more group work in their degree. This reflects Sifris and McNeil's findings of a marked difference in satisfaction between lightly and heavily assessed group work in their attempt to introduce group work into the LLB, which led them to conclude that group work in Property Law was best continued in an informal, non-assessed format.⁷³

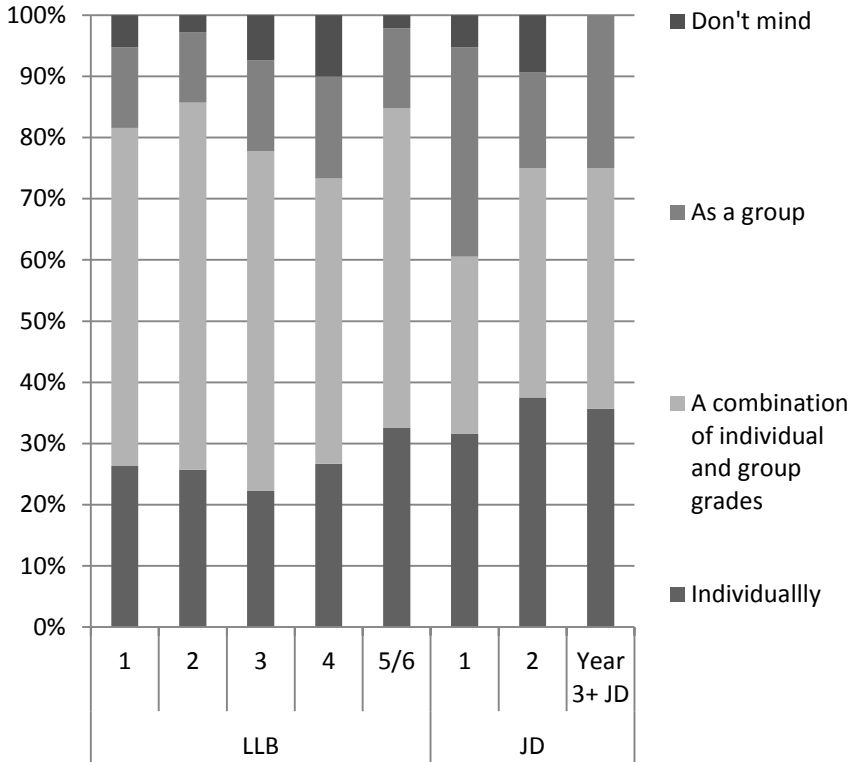
A number of free-text responses commented on this issue. One respondent noted:

Working on problem questions as a group in class in a non-assessable form (other than reporting back to the class for CP points) is highly beneficial and gives an opportunity for students to ask questions of each other, see how others reason and bounce ideas around. This is more like what I have experienced/observed working as a team of lawyers in practice.

Students were also asked to nominate how grades should be awarded within group work assessments. The options were: individual marks, a group mark, a combination of group and individual marks, and no preference. Most respondents had a preference. Among the LLB respondents, there was general consistency across all years with 54 per cent preferring a combination of individual and group, 27 per cent preferring individual, and 14 per cent preferring a group mark. Among JD respondents, individual and combined assessment was equally popular at 35 per cent, with group assessment garnering 26 per cent support.

⁷³ Sifris and McNeil, above n 5, 219.

Chart 6: Preferences of grading of group assessments: by group cohort



Taken together, this data suggests that, while most law respondents recognise the benefits of group work, they are strongly resistant to its summative assessment. However, if they are to be assessed, there is not an overwhelming insistence on individual grading as might be expected in a strongly individualistic culture.⁷⁴ Instead, only 27 per cent of LLB and 34 per cent of JD respondents preferred to be solely individually assessed. This suggests that students recognise that if the task set is a group one, it is appropriate to have some form of group-based grading.

A potential reason for the resistance to assessed group work is provided by the following open-ended text based answer from one respondent.

Given WAM⁷⁵ is so important for a variety of reasons (employment, internships/clerkships etc), I think it is totally unreasonable to force students to sacrifice their grades for the purpose of building skills associated with group work. The skills you gain are disproportionate to the marks that can be lost if

⁷⁴ Stallman, above n 23.

⁷⁵ The weighted average mark ('WAM') is similar to a grade point average and it provides an average grade for the whole degree.

you are placed in a group with people who are uncommitted or poor performers.

This respondent's perspective appears to reflect a broader trend in which law students are generally more preoccupied with achieving high grades in all courses than their counterparts from other disciplines.⁷⁶

5 Overall Comments on Attitudes to Group Work

Some Australian commentators have argued that a significant contributor to the widespread aversion to group work is that the dominant focus in legal education remains the achievement of the individual.⁷⁷ One critic has claimed Australian law schools are promoters of a 'cult of individualism' based on a competitive ethos of 'survival and success for the fittest'.⁷⁸ There is also some evidence of this internationally.⁷⁹ The results of the LSSAS do not demonstrate clear evidence of individualism, instead suggesting a more complex confluence of factors. While it is true that the proportion of respondents with positive attitudes to their experience of group work in law school and their experiences of group work in other degrees generally diminishes throughout the law degree — suggesting an individualistic aversion to group work — this falling approval is not based on a sustained experience of group work. For those respondents who had completed two or more group work assessments, approval of group work increased in the LLB and decreased in the JD.

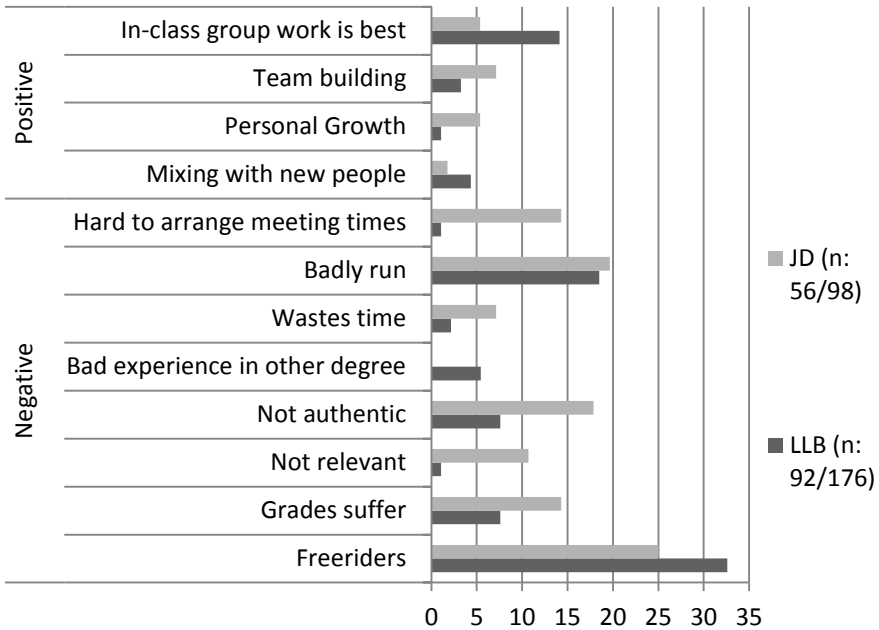
Free-text comments shed further light on the complexity of this issue. When comments were analysed by issues raised, there was a clear emphasis on negativity.

⁷⁶ Massimiliano Tani and Prue Vines, 'Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?' (2009) 19 *Legal Education Review* 3, 12–25. See also Wendy Larcombe, Ian Malkin and Pip Nicholson, 'Law Students' Motivations, Expectations and Levels of Psychological Distress: Evidence of Connections' (2012) 22 *Legal Education Review* 71, 87; Lawrence Silver, 'Anxiety and the First Semester of Law School' (1968) *Wisconsin Law Review* 1201, 1202.

⁷⁷ Keyes and Burns, above n 1, 364; Keyes and Johnstone, above n 14, 553.

⁷⁸ Helen Brown, 'The Cult of Individualism in Law School' (2000) 26 *Alternative Law Journal* 279, 279. Zimmerman notes that quite often it is the law schools themselves which are hesitant to embrace alternative learning approaches: 'The root of institutional concern lies in four notions embedded in traditional legal education: competitiveness, teacher control, authorship/individualism, and individualized grading': Zimmerman, above n 12, 971.

⁷⁹ See, eg. Evensen, above n 18, 378. At 385, Evensen states that '[m]ost [students] recognized a need to "do" law school differently. However, they persistently held to notions of learning as an individual, idiosyncratic enterprise and appeared disdainful or dismissive of pedagogical attempts to encourage group activity'. Note that Evensen's work was based upon American law student experiences with student-led extra-curricular study groups, as opposed to a teacher-set, formal, assessable activity. However, her study is of value to the present article because her interviews with students included questions regarding their experiences of and attitudes towards, 'group work' more generally.

Chart 7: Issues raised in free-text comments (percentages)

Disapproval of group work by JD respondents may, in fact, be due to their greater life experience and responsibilities — including the likelihood that they had worked in group environments, and the fact that many had significant competing time-pressures such as family and part-time work which would have made group work outside of class more difficult to arrange. These suggestions are supported by a number of the free-text comments. One respondent commented:

For JD students scheduling can be an issue with group work. Part-time students are on campus less. Some have families, careers, businesses. Older students are far better at communicating and touching base than younger students who sometimes don't make contact until the night before a presentation or paper. I would think that most JD students have had reasonable experience as a team player before starting the degree. Not sure that it should be an important part of the degree. I would be happy not to ever do another group assignment or presentation again!

The comments also demonstrated a feeling amongst those JD respondents who disliked group work that it did not reflect their own work experiences, and as mature students they should not be forced into doing it. As one JD student stated:

I have never done any at UNSW however plenty during my undergrad. However I am a professional full-time worker and I do not buy into the whole 'it will prepare you for when you work'. This is especially true of JD students where many of us have worked for a long time, and continue to do so. To be frank, I think group work is a cop-out on behalf of any university so there is less marking to do, and they never provide resolutions for lazy group members. JD students are often of mature age, we work, we have families, we

do not need to also be tied to finding time to all work together etc and I can tell you as a manager, doing group work at university is totally unlike the real work force. In the real workforce, I have options to negotiate with people, and then enforce penalties for continued poor performance. With over 10-years management experience, I roll my eyes whenever I hear a university state that it 'helps prepare people for real work environments'. In the work force, there is the HR department and a proper management structure to deal with these issues. PLEASE, NO GROUP WORK.

Similar complaints were made by a number of LLB respondents who had work experience:

Group work at uni is terrible. Even the worst team work in a commercial environment I've seen is better than the ordinary experience of group work in law school. While it's important to know how to work in groups, law school group work is nothing but agitate [sic].

While LLB students are part of a peer group who are typically still students and yet to begin a professional working life, many JD students are interrupting their work and family lives to complete a law degree. The UNSW JD is structured to allow as much flexibility for these students as possible, allowing both a compressed and part-time approach to study. In such an environment, the logistics of group work may be seen as a negative. There was a clear sense of group work as an inefficient use of time. As one JD respondent put it:

Group work is a waste of time and should be scrapped. Classes should focus on intensely examining the materials we have been assigned as a whole. Group work is merely an excuse for catching up on your weekend activities. It is a patronising farce.

Earlier Australian studies of law students who had completed innovative group work assessments have reported high levels of student dissatisfaction with the logistics of organising groups outside of class time. Sifris and McNeil found this to be a problem for a majority of students in their study.⁸⁰ Similar results were reported by Lewins.⁸¹ We found the same issues coming through in the free-text comments, particularly from JD respondents. For example:

I think group work can be really difficult in the JD degree when people are working full-time. There simply isn't the time to be meeting up with fellow students to complete group assignments when one is already working during the day. I think there needs to be an acknowledgment of the fact that in a postgraduate degree where people are working fulltime, group work is something people do every day in their professional lives. Many of my fellow students in the CBD JD program are working, have children and families and other caring responsibilities. Group work adds an additional responsibility to already busy lives and the benefit just isn't there.

This data and respondents' comments suggest that LLB and JD students may see different benefits in undertaking group work, and that external life circumstances may significantly impact their attitudes to the way group work is organised. Importantly, as discussed below, a significant portion of those who are

⁸⁰ Sifris and McNeil, above n 5, 202, 209.

⁸¹ Lewins, above n 5, 226.

critical of the actual practice of group work still consider that there are benefits to the use of group work in a law degree. This raises questions about whether it is possible to increase acceptance of group work by more intentionally tailoring it to the needs and circumstances of different law student cohorts, and explicitly conveying to students the justifications for group work in a particular context.⁸²

6 *Is the Problem with Group Work Other Students?*

One issue that is often associated with student reluctance to engage in assessed group work relates to the ‘equity of contribution’ of other students.⁸³ Similar sentiments emerged in our study. The free-text comments by students reflect a strong concern with free-riders (students who achieve higher marks in group assessments on the back of the hard work of others) and a corresponding concern that the respondents’ own marks would be dragged down by poorer students. The following comments from an LLB respondent are typical:

I’ve found group work to be a very unfair form of assessment. What (almost invariably) happens is that work gets passed to the most committed student(s) while others don’t do their share or do it at a low standard; the good student(s) then do much more work than they would have in an individual assessment, while the weaker students reap a windfall from this extra effort.

Similarly, in the words of a JD student:

In all my group work one person is left carrying the project while the others take an almost-free ride. A large portion of this is driven by differing aspirations for the mark. I am trying to maintain a high WAM, so every assessment matters to me. In my experience, group work overburdens the people who care most, and is an almost zero learning experience for the others. I think it is hugely unfair if everyone shares the same mark.

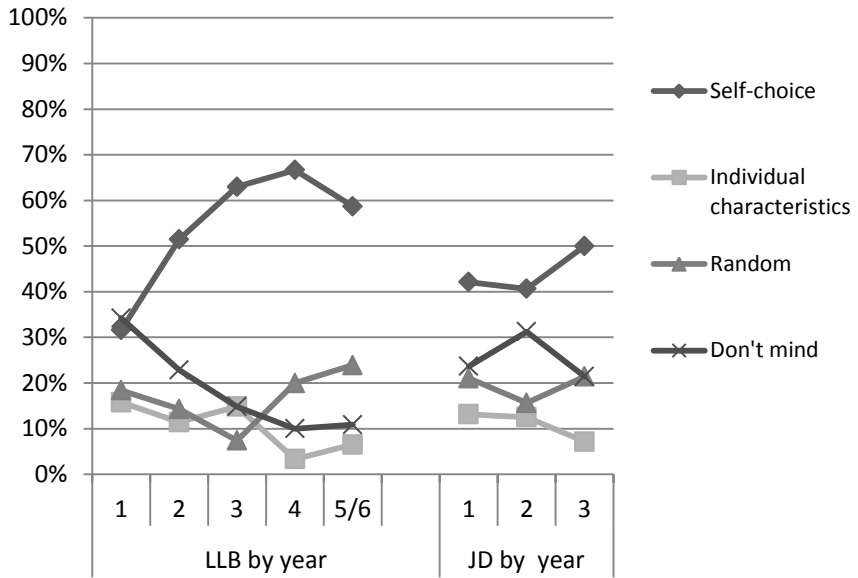
While we did not ask students directly about free-riders, we did ask them about issues that we thought would be contributing factors to issues within groups — the selection of group members, peer control of group dysfunction, and lack of instruction on how to manage group work.

In terms of group formation, we asked students if they preferred to choose their own groups, have them assigned randomly or wanted them selected based on individual characteristics (‘to be allocated to a group by the teacher based on individual strengths and weaknesses, and other attributes such as cultural background or gender’).

⁸² One way to do this is outlined in Israel, Handsley and Davis, above n 5.

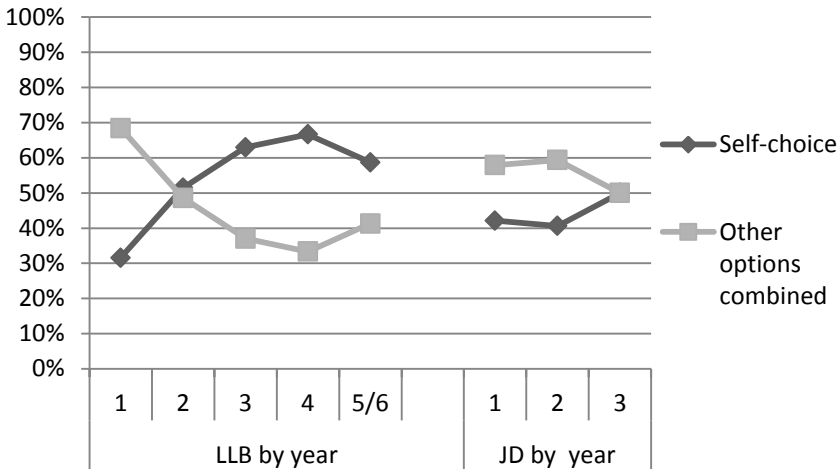
⁸³ Hardy, above n 5, 207. See also the findings of Zariski, above n 5. Anticipating the issue of ‘social loafing’, Israel, Handsley and Davis instigated measures to attempt to deal with this: see Israel, Handsley and Davis, above n 5, 13.

Chart 8: Respondents' preferences on group formation



What emerged from responses to this question was a strongly increasing trend towards respondents' preferences for choosing group membership themselves. Self-selection of groups was also highly preferred by the later year LLB students in Lewins' study.⁸⁴

⁸⁴ In Lewins' study, 82 per cent of respondents preferred to choose their own groups: Lewins, above n 5, 23.

Chart 9: Individual versus assigned or no preference for group formation

This preference was, this time, significantly stronger in the LLB than in the JD cohorts, but began at a lower base.⁸⁵ This might reflect a stronger development of friendship bonds over the course of five years of study. The lower levels in the early years might reflect the lack of friendships and the consequent fear of not being able to find others to partner with. There are differing views on what is the best way to organise groups.⁸⁶ However, Keyes and Burns argue that, in their experience, first-year student groups are more effective when they are allocated randomly by the teacher, and that students in later stages of their degrees often prefer to self-select group participants.⁸⁷

In groups where the members are not good friends, and thus do not have established communication protocols and conflict resolution strategies, issues around ensuring respectful and conscientious contribution by other members may be exacerbated, and this may be a factor in some law students' resistance to group work, and especially assessed group work. The issue of students reducing the effectiveness of small group learning because they lack skills in navigating the group work dynamic is discussed widely in the literature. Burdett notes that there is often an implicit assumption that group work skills will be learned simply by being part of a group and then by giving the student more opportunities to work in groups.⁸⁸ For Castles, Goldfinch and Hewitt, however, this assumption is untenable.⁸⁹ Some research has found that students have little knowledge of how to work effectively in groups unless such skills are demonstrated.⁹⁰ Keyes and Burns

⁸⁵ It should be noted, however, that the first year LLB respondents were only nine per cent of the total student body and thus their views may not be representative.

⁸⁶ See, eg, the literature review in Keyes and Burns, above n 1, 367.

⁸⁷ Keyes and Burns, above n 1, 367.

⁸⁸ Burdett, above n 1, 178–9.

⁸⁹ Castles, Goldfinch and Hewitt, above n 1, 146.

⁹⁰ Maurice Phipps et al, 'University Students' Perceptions of Cooperative Learning: Implications for Administrators and Instructors' (2001) 24 *The Journal of Experiential Education* 14, 19; Zimmerman, above n 12, 1007.

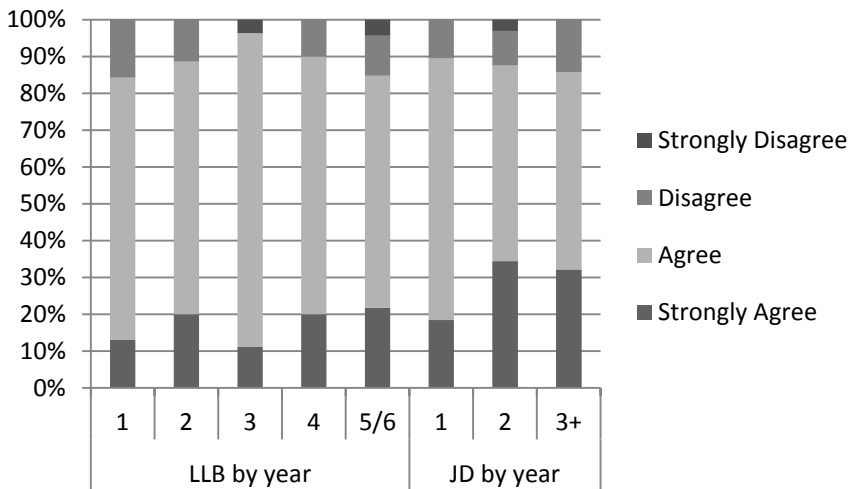
argue that students need to be given ‘explicit’ instruction in group work skills and note that resistance by some students towards participating in cooperative activities may indicate a lack of confidence (‘self-efficacy’) in undertaking them.⁹¹ As Miller, Trimbur and Wilkes state:

Collaborative learning requires students to participate actively and perform cognitive and social tasks that are new and often difficult. It is not surprising that students do not always greet this experience with unalloyed enthusiasm.⁹²

However, given the increasing prevalence of group work in secondary and tertiary education, it may be that the general skill level has risen in recent years.⁹³

To test these arguments in the context of students’ minimal exposure to group work in their law degrees, students were asked how they perceived their ability to work in groups. We hypothesised that there might be a link between reticence to engage in group work and a sense of under-preparedness for such tasks. In fact, we found the opposite was the case. Across all years and both degrees, there was a very high level of belief among respondents that they had ‘the skills to manage negative situations that can arise within group work,’ with 88 per cent of both LLB and JD respondents agreeing with this proposition. Perhaps reflecting their previous working experience, 28 per cent of JD respondents strongly agreed with the statement, as did 18 per cent of LLB respondents.

Chart 10: I have the skills to manage negative situations that can arise within group work



This suggests that lack of skill/expertise in managing group tasks is not perceived by respondents to be nearly as problematic as the risk of unfair assessment and grading outcomes arising from group work. Yet, despite their

⁹¹ Keyes and Burns, above n 1, 365. They go on to say at 373 that ‘it is essential to specifically include activities [in the curriculum] to facilitate group functioning’.

⁹² Judith E Miller, John Trimbur and John M Wilkes, ‘Group Dynamics: Understanding Group Success and Failure in Collaborative Learning’ (1994) 59 *New Directions for Teaching and Learning* 33, 43.

⁹³ Cf Israel, Handsley and Davis, above n 5.

belief that they could handle the negative aspects of group members, respondents were also keen to receive ‘more instruction on how to make group work more effective’.⁹⁴ Overall, 65 per cent of LLB and 52 per cent of JD respondents agreed with this statement. However, across the years there was less interest in such instruction in the first (58 per cent) and fifth/sixth (59 per cent) LLB years, with an average agreement of 73 per cent in the middle years; and a steady increase in the JD from 48 per cent to 57 per cent across the three years. The final year drop among LLB respondents could be explained by the lack of relevance at the end of their degree programs, and the first year respondents might well be reacting to cognitive overload. But the increasing trend through the degree in light of the fall in positive attitudes to group work does suggest that more explicit instruction in group work techniques may positively affect overall attitudes, and that respondents increasingly recognise their need for assistance.

V Conclusion

There is a growing expectation that law schools will incorporate group work into legal curricula from both educationalist and regulatory perspectives, meaning that the option of avoiding group work within legal education appears increasingly unrealistic. On a practical level, however, efforts in law schools to utilise group-based learning more frequently, and to assess such group work summatively, are commonly met with significant student (and sometimes staff) resistance.

The results of the LSSAS conducted at UNSW Law School in June 2012 suggest that most law student respondents recognise the benefits of group work, both for learning and for workplace skills development. However, they strongly resist being assessed for group work as they perceive it as a less fair form of assessment than individually based assessments. The responses suggest that, from the students’ perspectives at least, the primary issue is *not* that the students lack the skills to engage in group work effectively. This is despite complaints about free-riders in the free-text comments by some respondents.⁹⁵ Instead, resistance is predominantly clustered around issues relating to the summative assessment of group work. Our findings suggest that there therefore needs to be more focused consideration of when and how group work is assessed, the purposes for which it is assessed (for example, learning and/or skills development), and how the rationales for assessed group work can be clearly communicated to students.

It is abundantly clear from this survey that JD respondents are less convinced of the utility of group work than their LLB counterparts. Free-text comments suggest that the main issues JD respondents have with group work are both the lack of authenticity for those with experience of the workplace — assuming group work is intended to build workplace skills — and the increased inconvenience of arranging group work meetings for those with broader life responsibilities. Thus, it is necessary to consider further exactly what educational outcomes are intended by involving postgraduate law students in group work activities, and to clearly explain and justify these to students. Logistically, a stronger emphasis on in-class or online

⁹⁴ Cf the approach in Israel, Handsley and Davis, above n 5, 13.

⁹⁵ This might, of course, suggest some respondents have skills deficiencies of which they are not aware.

forms of collaboration may be appropriate for these students. Universities have long structured social learning through classrooms and individual learning through out-of-class study. Requiring students to engage in social learning outside of pre-arranged attendance hours — other than through asynchronous online communication — is unlikely to replicate the in-office experience of group work in the workplace. It should therefore be independently justified to students, and appropriately timetabled as part of student study requirements.

An overall review of these findings suggests group work is more likely to be accepted by undergraduate law students in their early years of their degree and, at that point, teacher assigned groups may be more appropriate. Use of group work later in the degree and with JD students will need more careful thought. This is perhaps not surprising. As students mature, both educationally and emotionally, they become more efficient and effective self-directed learners. As previously noted, there is no requirement of collaboration for the JD under the AQF. While this may at first appear to be an odd omission, our research suggests that the much lower levels of acceptance of group work by JD respondents could be evidence that further training in collaboration skills is not appropriate for higher degree students, many of whom will have done group work in their undergraduate degrees. The challenge is to develop group work activities for such students that enhance their learning beyond what they are capable of achieving on their own, and/or the learning and skills they have already mastered through group work in other contexts.

Assessment of such activities becomes increasingly problematic. As one respondent forcefully noted, group work in the workplace is monitored and assessed not by grades and WAMs but by promotion, demotion and, ultimately, firing. Authentically replicating that in an assessment scheme might mean, for example, that group work becomes a threshold or barrier assessment where if students fail satisfactorily to engage in group work, they will be ineligible to pass the course. Similar approaches apply to the development of key skills, such as the ability to take blood from a patient, in disciplines such as medicine and nursing. This approach could concentrate on the process of group work, and any products such as written work and presentations could remain individually assessed. In-class group work could also form part of class participation assessment schemes. Such approaches could well satisfy regulatory requirements that students acquire collaboration skills without causing student disquiet over unfair or inauthentic assessment regimes. Additionally, students' perceptions of the effectiveness of such in-class group-based learning could be gauged by an annual student survey, such as the Law School Survey of Student Engagement.⁹⁶ Such an assessment approach may simultaneously appeal to students, satisfy external regulatory requirements and, importantly, preserve the learning and skills development advantages of group-based learning in law.

⁹⁶ Law School Survey of Student Engagement ('LSSSE') <<http://lssse.iub.edu/>>. LSSSE is a national survey of United States law schools, run annually since 2004. In 2012, the survey was conducted for the first time outside of North America, at UNSW Law: see Steel and Huggins, above n 54.