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LAW SCHOOL LEMONADE

Or Can You Turn External Pressures into Educational Advantages?

*By Elizabeth Handsley, Gary Davis and Mark Israel**

In a context of ever-dwindling resources, this article encourages legal academics to seek innovative strategies to safeguard the integrity of our mission. Teaching innovation funding, more effective use of students as a resource and a willingness to be flexible when it comes to content coverage are suggested as means to maintain, or even improve, not just teaching quality but morale among academic staff. The article challenges the notion that smaller class sizes are necessary for higher teaching quality, suggesting the alternative of collaborative learning groups to keep students engaged and to encourage deep and independent approaches to learning. Collaborative learning provides additional benefits in freeing up staff time and engaging us in the educational process at a level more commensurate with our skills and expertise.

If life gives you lemons, make lemonade. (Unknown)

The lemons of the title to this article are the familiar factors that have made life more difficult, complex and stressful¹ for legal academics over recent years. Changes to policy by successive federal Liberal and Labor governments, and especially cuts to government funding of higher education, have required legal academics to try harder to please larger, more diverse and more demanding groups of students. Our scope for judgment about what and how we teach is being circumscribed by quasi-market pressures. These may undermine important educational goals.² Our commitment to traditional university values like free intellectual inquiry is being made more difficult to sustain.³

All in all, this represents a sizeable bowl of lemons. We could toss them back and attempt to carry on, in an environment of despair. At best, this might lead to a situation where even change for the better has only been 'uneven,

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¹ Clark and Tsamenyi (1996), p 35.

² Keyes and Johnstone (2004), p 554.

³ Clark and Tsamenyi (1996), p 43; Thornton (2004), pp 494–95, 501.

often temporary, and has struggled entirely to transcend the traditional model of legal education.⁴ Or, as we prefer, we could take the view that the only credible solution is to find sugar, water and a squeezer and turn the lemons into lemonade.

This article will develop some ideas on how one might find the right equipment and ingredients in the 'new' teaching environment. We describe how the new emphasis on teaching quality, and increased pressures to achieve teaching efficiency, paradoxically have stimulated a return to the kind of student-centred learning favoured by the Pearce Report in 1987. In fact, the invention born of necessity in this field might even have inspired a firmer and more reliable basis for this kind of teaching. In addition, student-centred learning can conserve the time and energy of academic staff that has been drained by changes in the environment. In this sense, it can have an industrial effect rather similar to that of a refreshing drink on a hot day.

In developing our case, we will make particular reference to an innovation introduced at Flinders University in 2002.⁵ We do so in order to explore the very process of innovation in legal education. Rather than seeing innovation as a mere technical fix, we consider it within the social, economic and political, as well as educational, contexts of legal education. Accordingly, we begin with a contextual outlook.

The Context of Legal Education

Relations with Students

It is trite to say that in law schools we are being required to do more with less. We are expected to be more 'accountable' in both a qualitative and a quantitative sense — that is, we are being watched more intently, in relation to more fields than previously. A notable addition has been the field of teaching. Student evaluations have taken on a significance that could only have been imagined by the previous generation.⁶ In addition, increasing financial impositions on students, exacerbated by the rhetoric and implications of the 'new knowledge economy',⁷ have led to a demanding consumer mentality on their part, very much oriented towards 'credentialism'⁸ and 'careerism'.⁹ As Vivienne Brand notes, the 'key, and apparently contradictory, themes' of increasing vocationalism and broadening curriculum to cater to students with

⁴ Keyes and Johnstone (2004), p 537.

⁵ See Israel, Handsley and Davis (2004).

⁶ For evidence, see Johnstone and Vignaendra (2003), pp 428–35; Coaldrake and Stedman (1998), pp 81–82.

⁷ See Thornton (2004), pp 482–84.

⁸ Thornton (2004), p 484.

⁹ See, for example, James (2004), p 51.

diverse employment futures have had implicit in them 'the need to cater to student career intentions'.¹⁰

Paradoxically, moves to improve teaching standards might encounter resistance from students imbued with this mentality, as they are more likely to take a narrow, black-letter view of what they 'need' from a legal education,¹¹ as well as the skills and information for which they are prepared to pay.¹² Speaking of similar developments in the United Kingdom, Abdul Paliwala relates the consumerist mentality to anti-intellectualism.¹³

Support exists for the view that students 'frame their expectations of, and satisfaction with, their [legal education] in terms of their hopes and fears about post-graduation employment'.¹⁴ New teaching methods¹⁵ — which many academics believe will improve, intensify and deepen the learning experience¹⁶ — can be resented by many students as 'not providing them with the information they needed to understand and pass subjects'.¹⁷ There are, for instance, students who see small-group discussions, at least in some subjects, as a poor attempt to 'teach' them by compelling them to interact with other students who have an equally poor understanding of the subject: 'We're all at sea before we go in and when we come out. How can students teach other students about contracts? It's stupid.'¹⁸ Such perceptions go hand in hand with a belief that the methods in question interfere with students' preparation for the world of work.¹⁹

Meanwhile, the reorganisation of funding in the late 1980s led to an explosion of new law schools around Australia and a corresponding explosion in numbers of law students through the 1990s. Law schools numbered 12 in 1987 and grew to 28 by 1998.²⁰ Student numbers nationwide increased by 60.7

¹⁰ Brand (1999), p 121. See also Clark and Tsamenyi (1996), p 36 (noting a tendency 'to undermine traditional teacher-student relationships'). This trend has been noted in the United Kingdom as well: see Johnstone (1995).

¹¹ This is an attitude possibly enhanced by the conventional structure of a law course, with its heavy compulsory component (lately reinforced by the 'Priestley requirements' (see below)) leading, it has been argued, to the student perspective that law is 'necessarily constituted by these things ... [that] it is about substance ... not critique': see Johnstone and Vignaendra (2003), p 90.

¹² Brand (1999), p 138.

¹³ Paliwala (2002), p 188.

¹⁴ Johnstone and Vignaendra (2003), p 275.

¹⁵ Identified by students as 'something other than the straight lecture format': Johnstone and Vignaendra (2003), p 271.

¹⁶ On the question of what many legal academics are attempting to accomplish as teachers see Johnstone and Vignaendra (2003), pp 282–86.

¹⁷ Johnstone and Vignaendra (2003), p 271.

¹⁸ Johnstone and Vignaendra (2003), p 271.

¹⁹ Johnstone and Vignaendra (2003), p 275.

²⁰ Simmonds (1998), pp 56–57; the 29th, at Edith Cowan University, came on the scene in 2005.

per cent per cent between 1988 and 1992.²¹ One result of these developments is that law teachers are dealing with a more diverse group of students than ever before. To use South Australia as an example, Bradsen and Farrington found in 1986 that, at the University of Adelaide — then the only law school in the state — ‘upper-income family [law] students ... outnumber[ed] the low-income family students by three to one’.²² At Flinders University in 2003, by contrast, only 45 per cent of law students lived in suburbs falling in the top 25 per cent of the city’s population for socio-economic status.²³ Students from the middle 50 per cent of suburbs constituted 38 per cent and those from the lowest 25 per cent made up 5 per cent.²⁴

Noting in 1998 the growth in numbers of mature-age students, Coaldrake and Stedman went on to report that:

There are nowadays more women students, students from different ethnic and cultural backgrounds, overseas students studying in Australia before returning to their home countries, students with disabilities, students with lower levels of English proficiency, and so on.²⁵

Moreover, as the law school explosion was fuelled by a perception that law could be taught cheaply,²⁶ most of us have found ourselves teaching larger classes.²⁷ This was in spite of the strong recommendation of the 1987 discipline review (Pearce Report) in favour of small class sizes.²⁸

Varnava and Burridge suggest that increases in student numbers without corresponding increases in resources ‘may be inimical to some of the social objectives of law — the ideals of justice and empowerment’.²⁹ This is because the management of such numbers makes it difficult for law teachers to move away from traditional authoritarian modes of teaching, thereby compromising our ability to transmit messages about ‘consideration of others who lack knowledge’.³⁰

²¹ Clark and Tsamenyi (1996), p 21. This figure compares with a 33.9 per cent increase in all fields over the same period.

²² Bradsen and Farrington (1986), p 31. A study by Jack Goldring of seven law schools in southeastern Australia at about the same time found that ‘an overwhelming proportion of law students come from families where the status of one or more parents is relatively high’: Goldring (1986).

²³ Department of Education Science and Training (2003).

²⁴ Department of Education Science and Training (2003). The figures were pushed down further if the whole of Australia was used as the comparison (44 per cent high, 43 per cent medium and 12 per cent low).

²⁵ Coaldrake and Stedman (1998), p 78.

²⁶ Clark and Tsamenyi (1996), pp 20–21, 32; Simmonds (1998), p 66; McInnis and Marginson (1994), p 233; Keyes and Johnstone (2004), pp 539, 557.

²⁷ Johnstone and Vignaendra (2003), pp 325–31.

²⁸ Pearce et al (1987), pp 159–60.

²⁹ Varnava and Burridge (2002), p 13.

³⁰ Varnava and Burridge (2002), p 12.

Relations with the Profession

The pressures are also felt in our relations with the profession.³¹ The influence of the profession over law school curricula has its historical basis in control over admission to practice.³² This culminated in the so-called 'Priestley 11', the 'areas of knowledge' adopted by law schools as required parts of the curriculum. Adoption followed pressure exerted by the 1992 conclusions of a 'Consultative Committee of State and Territory Law Admitting Authorities' (chaired by Justice Priestley). New pressures have flowed from the rising need to raise funds from elsewhere than government.³³ Many law schools have looked to law firms for the support needed to maintain and enhance their programs and activities. These can be relatively small — sponsoring academic prizes and competitions³⁴ — or quite substantial:

In 1991, the Sydney Law School secured \$500,000 from Sydney law firm Allen Allen & Hemsley in return for naming rights for the School's library; also on offer were rights to name lecture halls and professorial chairs.³⁵

While it may be going too far to assert a loss of academic independence as a result of these relationships,³⁶ they must enhance the opportunity for the practising profession to exert influence.³⁷ It would be surprising if there were no impact at all on our willingness to change our activities in any way that risked discomfiting our benefactors. Such an impact would be found particularly in the areas of curriculum and teaching delivery. The involvement of practitioners and judges in teaching, and in course planning, monitoring, advice and review, is now common.³⁸ It is difficult to imagine any Australian law school implementing and sustaining changes that might be perceived in the profession as compromising the 'relevance' of our degrees.³⁹ Indeed, a law

³¹ It does need to be noted, however, that 'the profession' is not monolithic and, importantly, those practitioners and judges who have had a hand in monitoring course content in law schools 'have typically not been representative of the profession as a whole': Brand (1999), p 112.

³² Clark and Tsamenyi (1996), p 19.

³³ See Brand (1999), pp 118, 120; James (2004), p 58; Keyes and Johnstone (2004), p 557.

³⁴ James (2004), p 58

³⁵ Brand (1999), p 120.

³⁶ But note the assertion by James of an 'apparent willingness by many law teachers to defer to the profession': James (2004), pp 49–50; see also Keyes and Johnstone (2004), p 555 (academy's 'largely subservient relationship to legal practice').

³⁷ James (2004), pp 58–59.

³⁸ James (2004), pp 58–59; the scope for influence is magnified with the entry of several law schools into a domain formerly tightly guarded by the practising profession, namely the provision of practical legal training.

³⁹ See generally Brand (1999), p 118.

school making curriculum changes without securing a professional imprimatur may risk disaccreditation.⁴⁰

Conversely there is a strong advantage in changes that could be seen as enhancing that ‘relevance’,⁴¹ and some law schools — in a nod to market forces — play that up to establish their distinctiveness.⁴² Recent national consultations with legal employers disclose that most are of the view that insufficient emphasis is given by the law schools to practice-related skills.⁴³ In the language of the age-old debate about legal education, there is a spectrum from trade-school to ivory tower,⁴⁴ and the pressures to move towards the former end are probably greater than at any time in living memory.⁴⁵ Some might think it would be a good thing for law schools to provide more focus on what lawyers need ‘to be able to do’ instead of what they ‘need to know’,⁴⁶ but those who became academics because they subscribe to traditional university values are likely to demur.⁴⁷

⁴⁰ See, for example, *Legal Practitioners Admission Rules 1994* (NSW) r 44 (obliging law schools to give annual notification to the Legal Practitioners Admission Board of actual or proposed material alterations to the curriculum, with the Board then having the power and duty to approve or not approve the alteration and, if the latter, withdraw accreditation for the law degree).

⁴¹ Another term frequently used in this context is ‘responsive’: see, for example, Sourdin (2004), p 65.

⁴² Keyes and Johnstone (2004), pp 548–49.

⁴³ Johnstone and Vignaendra (2003), p 4; given the same authors’ observation that ‘arguably the most significant of all of the developments in Australian legal education in the past decade is the focus on teaching legal skills within the undergraduate curriculum’ (p 133), one may well surmise either that this employer view is not well informed, or that law schools do not do (or are not able to do) as good a job at teaching legal skills as they claim.

⁴⁴ Framing the debate in this way is not intended to reject Jack Goldring’s thoughtful observations questioning the existence of a dichotomy between the ‘academic’ and the ‘practical’ in legal education: see, for example, Goldring (1987); see also Johnstone (1995). Indeed, the Australian Law Reform Commission was quite critical of the assumption that there must exist a rigid divide between academic legal education and professional legal training: Australian Law Reform Commission (2000), pp 138–42.

⁴⁵ James (2004), p 61 (and citing data taken from Johnstone and Vignaendra (2003), pp 26–29) notes that 11 law schools explicitly identify themselves as ‘professional’ law schools, or as oriented to the profession, and 13 emphasise their focus on practical legal skills.

⁴⁶ Australian Law Reform Commission (1999), p 46.

⁴⁷ See Varnava and Burridge (2002), p 12 and, trenchantly, Thornton (2004), pp 494–95, 501; the ideal position is perhaps found in the recommendation of the ALRC in its 2000 *Managing Justice* report: ‘in addition to the study of core areas of substantive law, legal education in Australia should involve the development of high level professional skills and a deep appreciation of ethical standards and professional responsibility’: Australian Law Reform Commission (2000), p 142.

Relations with Government

Running through all of these developments is the ever-present impact of government policy. Governments want more people in university: they want fewer young people in the dole queue and they don't want to have to justify to the electorate the expenditure of apparently large amounts of money on 'elite' institutions.⁴⁸ In political discourse in the last 20 years, there have been a few unalloyed 'goods' and one of them is 'more university places'.⁴⁹ However, as Coaldrake and Stedman point out:

The rapid growth in higher education in Australia was not a product of any acceptance by government of the civilising role of universities; it was always pragmatically based, vocationally focussed and sought to achieve its ends as cheaply as possible.⁵⁰

This 'massification' of higher education has not led successive Labor and Liberal governments to take responsibility for addressing the quality of the experience for those who fill the new places; rather, they have cut money from the system,⁵¹ especially since 1996.⁵² The exception has been a few exercises in auditing for 'quality', backed up by the arguably illogical 'carrot' of substantial grants to those who came out on top of each exercise. It is certainly arguable that the structure of the quality audit process gave the lie to any suggestion that the government was really *taking responsibility for improving* quality. Rather, as Clark and Tsamenyi argue:

it must be recognised that what underlies much of the government's 'quality' response is the belief that governments should apply to universities the same managerial/corporate values which promote fee competition with the accompanied linking of input and output measures.⁵³

Quite possibly the real effect — if not the real purpose — of this kind of exercise is to challenge 'traditional university values of independence and

⁴⁸ See Karmel (2003).

⁴⁹ On the growth of higher education generally and of law in particular up to 1992, see McInnis and Marginson (1994), pp 11–15.

⁵⁰ Coaldrake and Stedman (1998), p 24.

⁵¹ Clark and Tsamenyi (1996), p 32; McInnis and Marginson (1994), pp 17–23; Coaldrake and Stedman (1998), p 176 (stating that there was a 'thirteen per cent fall in discretionary teaching income per full-time student' between 1985 and 1998).

⁵² This was the year that the 'Vanstone cuts' were announced: see Coaldrake and Stedman (1998), pp 22, 173. The authors point out that the cuts were greater than they appeared to be because of the government's refusal to fund an overdue pay increase to university staff.

⁵³ Clark and Tsamenyi (1996), p 37.

autonomy'.⁵⁴ Paliwala suggests that such measures 'have an impact on the freedom to teach as they constrain the teacher within approved forms and approaches to learning'.⁵⁵

As to the massification movement generally, it has enhanced the pressures, mentioned above, towards vocational models of education and away from the liberal:

The existing system, in which a small elite received a liberal education, whilst the mass of ordinary people received at best a narrow 'vocational training' designed to adapt them to the existing industrial regime as disciplined and effective workers, had to be displaced.⁵⁶

As Brand indicates, from the 1990s on: 'Law schools were no longer to be left largely to self-regulation, but were to be viewed as instruments of economic policy, to be assessed against benchmarks of community expectation and fiscal responsibility'.⁵⁷ Thornton fears 'the life of the academy [being] allowed to ebb away in favour of the one-way transmission of sterile technocratic knowledge in the interests of the market'.⁵⁸

Meanwhile, the government has asked students to make higher contributions to the cost of their education, setting the scene for the consumer mentality mentioned earlier.⁵⁹ Nowhere has this been felt more keenly than in law, the only discipline positioned in the lowest funding band but the highest fee band. This has resulted in local students' contributions to their course costs increasing from the 36.2 per cent it was prior to the introduction of differential Higher Education Contribution Scheme (HECS) to about 80.1 per cent.⁶⁰ A recent report commissioned by the state education ministers predicts that, under the new 'HECS plus' system, law students will pay 84 per cent of course costs.⁶¹

The federal Liberal government sought to justify the treatment of law students under differential HECS by the unsupported assertion that law students make high salaries on graduation.⁶² While of course some do, 'it is the occupational choices of students (a law graduate might choose, for example, to serve disadvantaged communities or work for a major corporate law firm) [that

⁵⁴ Clark and Tsamenyi (1996), p 43 (referring also to 'demands for strategic planning [and] accountability').

⁵⁵ Paliwala (2002), p 191.

⁵⁶ See Johnstone (1995).

⁵⁷ Brand (1999), p 115.

⁵⁸ Thornton (2004), p 502.

⁵⁹ The most direct impact of HECS increases on law schools has been to 'alter ... law student consciousness towards a consumer orientation': Brand (1999), p 122.

⁶⁰ Karmel (1999), p 14.

⁶¹ 'Higher Fees Bring New World Order', *Australian*, 28 July 2004, p 32 (citing a study by consultants Phillips Curran).

⁶² Brand (1999), p 123 (quoting Vanstone 1996).

among other factors] determine the actual return to an individual'.⁶³ Accordingly, such an assertion risks becoming a self-fulfilling prophecy: graduates who owe more money *need* to make higher salaries to pay their debts within a reasonable time, and graduate employment in the less remunerative fields of legal practice is, at least potentially, inhibited.⁶⁴ This is bad news for at least three groups: those students who lack the inclination to go into higher-paid fields of practice,⁶⁵ or who lack the personal attributes to make them attractive to employers in those fields;⁶⁶ those people and causes who would have benefited from the availability of able and well-trained but modestly salaried lawyers; and academics who might have hoped to interest students in dimensions of law beyond the directly applicable and the mercantile.

Summary

It will be seen from the above discussion that there is a certain artificiality to separating the impact of students, the government and the profession in this context. Relations with one group are inevitably mediated by relations with one or both of the others. Our relations with students are influenced by government policy, which treats students as if they are our customers, and therefore encourages them to act that way in their dealings with us. Students' expectations of law schools are conditioned by their perceptions of the needs of the profession.⁶⁷ The under-resourcing of legal education by government drives law schools to regard the profession as an alternative funding source and inexpensive pool of legal expertise to supplement teaching and assessment needs, rendering law schools more susceptible to the profession's expectations and vision of legal education. The resulting picture is one of law schools either starved of or scrambling for scarce resources, compelled to sacrifice sound educational objectives, critical inquiry and intellectual cultivation on the market-built altar of credentialism, careerism and pragmatism.

From this perspective, there is a sense of helplessness, as if law schools are subject to a matrix of relationships between powerful players with very little scope to determine our own priorities and directions. We wait, in vain, for the injection of public funds and the changes in government policy that will dispose of the 'lemons'. What if, however, we regarded ourselves also as

⁶³ Senate Employment, Workplace Relations, Small Business and Education Committee (2001), para 3.26.

⁶⁴ See Johnstone and Vignaendra (2003), p 4.

⁶⁵ These tend to be commercially oriented fields: Vignaendra (1998), p 30. Subventions from law firms might tend to be concentrated in these areas as well: Bradney (1995).

⁶⁶ There is some evidence that mature-age women are particularly disadvantaged on this score: Vignaendra (1998), pp xxv, 111. Roper found that, among those law students graduating in 1997: 'Male graduates tended to earn higher incomes than female graduates.': Roper (2001), p 16.

⁶⁷ A focus group comment is instructive: 'We are all really clued up about what employers want — we have to be.': see Johnstone and Vignaendra (2003), p 268.

players? Could we not be sufficiently flexible and imaginative to adapt to the environment and make it work for us, our students, the profession? There is, in our view, room for us, as legal academics, to have positive impact on the future of legal education. This article discusses some of the flexibility in the system that can work to our advantage. To continue the metaphor, we look at the ingredients that can be added to the lemons that will allow the lemonade to be made.

The Sugar: Funding Teaching Innovation

Not very long ago, it was common to hear complaints about the narrowness of the criteria applied in tenure and promotion processes, and in particular their restriction to research. Extra effort put into teaching — especially if it came at the expense of research output — paid few dividends. Quality in teaching was little valued.

That has changed. There is enough evidence — in the form of changed tenure and promotion criteria, university and national awards for teaching excellence, the burgeoning scholarly literature on legal education (and journals that publish it) — to demonstrate the invigoration of teaching and learning in law schools.⁶⁸

A key initiative in the movement to emphasise teaching quality has been the funding of teaching innovation. Nationally, this commenced with the Committee for the Advancement of University Teaching, established in June 1992 and succeeded by the Committee for University Teaching and Staff Development in 1997 and the Australian Universities Teaching Committee in 2000. It continues with the Carrick Institute for Learning and Teaching in Higher Education, established in 2004.

In some senses, teaching innovation funding is emblematic of the frustrations of university teaching in the 1990s. Following the funding squeeze and increases in student numbers, it was obvious that universities needed more funds to pay and support more teachers, just to maintain the quality we had previously been able to achieve. Therefore, many academics perceived this limited project funding to ‘advance’ university teaching as at best a band-aid solution and at worst a slap in the face. However, limited project funding was a logical extension from the thinking that gave us competitive research grants.⁶⁹ From the government’s perspective, such funding structures not only avoid some of the fiscal liabilities associated with organisational funding, but can also reinforce the ‘accountability’ message that was the electoral *leitmotif* of public administration during that period. Anything that required funded institutions periodically to go back to the government with a begging-bowl served to enhance the perception that these ‘elites’ were not being given privileged access to taxpayers’ money. Taking the universities down a peg or two in the name of teaching quality could be a rhetorical, if not an electoral, winner.

⁶⁸ See generally Keyes and Johnstone (2004), pp 551–52.

⁶⁹ See McInnis and Marginson (1994), pp 29–30.

When money is being taken out of operating grants and channelled into project funding, there is a risk that time will be wasted trying to fit ongoing needs into a project framework in order to claw back some of what has been taken away. As Coaldrake and Stedman point out, one of the 'main drawbacks with any grant scheme [is] that it is hard to take a systematic approach which will have a major influence'.⁷⁰ For those who wished to tap into this new source of funds, there was a real challenge associated with moving past the need for more ongoing teaching resources and conceiving new and better ways of doing things that could be supported by a one-off grant.

Our experience has proved that this challenge is not insurmountable provided innovation is regarded as part of a larger process. In 2002, we received a grant from Flinders University to introduce a teamwork skills component in Constitutional Law. Previously lectures had been supplemented by weekly, one-hour, 15-person tutorials. These tutorials were abandoned in favour of fortnightly, two-hour, 30-person workshops in which randomly assigned, permanent groups of four to six students worked on past examination problems. The student contact hours did not change, but the doubling of class sizes represented a significant saving of staff time. Staff acted as roving group facilitators, aiming to spend a roughly equal amount of time with each small group, reviewing the group's approach to the examination problems and answering their questions. A further saving of resources flowed from the replacement of the traditional mid-semester written assignment by a group presentation in the last round of workshops. Subject to variations in the event of serious freeloading, all members in a group received the same mark. This was justified because the primary assessment criterion was the quality of the group process evident. It is fair to hold all group members equally responsible for this. In sum, the project introduced a new teaching method (collaborative learning) to impart a new skill (teamwork) and thereby to conserve resources.⁷¹

By aiming to conserve teaching resources, we came at the dilemma of project funding from a different angle: we asked for funding to set up a system that would make up for some of the effective loss of operating resources over preceding years. As far as this went, the project constituted a response to the governmental context of legal education. It was actually about teaching efficiency, or possibly an exercise in guarding against the loss of quality in the face of resource pressures and larger class sizes.⁷² It also was a response to the

⁷⁰ Coaldrake and Stedman (1998), p 95.

⁷¹ The project (including the steps taken to properly train students and cater for potential pitfalls), its evaluation and outcomes are described in full in Israel, Handsley and Davis (2004). Other examples of collaborative learning and/or teamwork in law include corporations law at the University of Western Sydney (see Sourdin (2004), p 66); the 'Offices' project at Griffith University (see Kift and Airo-Farulla (1995); Dick et al (1993); Godden et al (1994)); a project in Property Law at Monash University (Sifris and McNeil (2002); and a program to embed teamwork skills in the LLB at Queensland University of Technology (Burton (2003)).

⁷² The idea for the project, together with a small amount of seed funding, had its origins in a funded investigation of increasing class sizes in universities:

professional context, improving teaching and learning via the introduction of a 'generic skill' that is increasingly valued by law firms,⁷³ but under-emphasised in legal education.⁷⁴ Considering the status of these skills as another species of unalloyed good in the utilitarian world of modern higher education policy,⁷⁵ this must have been seen as a significant strength of our application.

Returning to the efficiency dimension of the project, it is quite possible that this would have been sufficient motivation to do it even without the funding. Essentially the funding enabled us to do a *better* job, and it is primarily in this sense that we think it played much the same role as sugar plays in the making of lemonade. It made the exercise more palatable, particularly for the students. It also made the expenditure of (considerable) effort by the Constitutional Law staff seem more worthwhile. This is particularly so considering the existence of a funded and named project seems to add a good deal more to one's teaching portfolio than an unfunded innovation would do. In this, our project and our experience have been very much of their time: they have been driven by educational impoverishment, the new emphasis on teaching quality in assessing academic performance and the pressure to make higher education 'relevant' to students' future working lives.

However, we see another, less cynical and less depressing, perspective on our activities. By including teamwork in the curriculum at the same level as legal research, oral advocacy, interviewing and drafting,⁷⁶ we managed to strike a blow against the narrow vocational conception of the purpose of a law degree, starkly captured in the view some law students reported to Johnstone and Vignaendra that group work 'interfered with "what the law degree should be about"', being fundamentally opposed to their attitude that the study of law is 'an individual pursuit, one done in competition with others ... a pursuit for high grades, which would, in turn, "land" them either a highly competitive, lucrative or a prestigious job or [at least a job that would allow them to clear their education-related debts].'⁷⁷ Contrast this 'individualised and isolating'⁷⁸ vision of legal education with Gerry Johnstone's advocacy for a broader purpose of making the student a better person:

Commonwealth of Australia, Australian Universities Teaching Committee, 'Teaching Large Classes Project' <http://tedi.up.edu.au/largeclasses/>, described further in Israel, Handsley and Davis (2004), p 23.

⁷³ Bermingham and Hodson (2001).

⁷⁴ Johnstone and Vignaendra report that fewer than 20 per cent of student survey respondents agreed with the statement that team-building skills were being developed at law school: Johnstone and Vignaendra (2003), p 249.

⁷⁵ That is, an unalloyed good to rival 'more university places': see n 49. On the utilitarian attitude to higher education, see n 54.

⁷⁶ All of these skills are expressly included in the Flinders curriculum and paired with a 'substantive' topic, thus Legal Method [Legal Research]; Administrative Law [Interviewing]; Advanced Contract [Oral Advocacy] and Corporate Law [Drafting].

⁷⁷ Johnstone and Vignaendra (2003), p 273.

⁷⁸ Keyes and Johnstone (2004), p 542.

University legal education should seek to promote personal development by cultivating knowledge and understanding, intellectual virtues, imagination, intellectual skills, self-reflection, moral virtues and habits, a capacity for social and political involvement, and a sense of responsibility for the values one espouses and the relationships into which one enters ...⁷⁹

There is evidence that teamwork is important to legal practice,⁸⁰ but learning it has an additional capacity to contribute to some of the personal development aims mentioned above.⁸¹ Placing students in groups gave them access to their peers as a resource in a way we had not seen for some time (see below). And, perhaps most importantly, the replacement of weekly one-hour 15-student tutorials with fortnightly two-hour 30-student workshops divided into groups of four to six represented a shift to a better environment for students to engage actively with material, and take a deeper approach to their learning.

The problem of finding ways to tap into teaching excellence project funding, in the early days at least, was exacerbated by the fact that the funding was not intended to support educational research — even if the research in question was a *sine qua non* of an improvement in teaching quality. The only obvious kinds of projects left that would require an initial injection of funds and then become self-sustaining were those centred around the development of materials or software. It took some imagination to move beyond that model. Our project combined some of the elements mentioned above: there was some research done on the significance of teamwork skills in legal practice and the foundations for collaborative learning,⁸² and some materials developed from the training literature for introductory sessions. Money was also spent renting, and eventually buying on video cassette, films that could demonstrate to students aspects of the teamwork process. Finally, and most importantly, the grant was used to relieve one of us (Israel) from some of his usual teaching in other subjects to act as a consultant, troubleshooter and evaluator in the introductory stage.

Once again however it needs to be emphasised that this project required the commitment of substantial ‘normal’ staff time by those who are usually

⁷⁹ Johnstone (1995). See also Bradney (1995): ‘Universities seek to provide their students with the intellectual means to make better choices about their lives ... allowing the student to explore their humanity.’ Compare Wasserstrom (1984), p 158: ‘[law graduates] if educated soundly and well, would have and display a deep and abiding attachment to and concern for the moral worthiness and rightness of all that they do, of whatever they choose to do as lawyers, and a corresponding sense of responsibility for the justness and goodness of the legal system that their skills and training equip them to understand and to utilize.’

⁸⁰ See, for example, Sourdin (2004), p 66; Weisbrot (1990), pp 254–58.

⁸¹ See, for example, Reece (1998), p 20.

⁸² For example, Reilly (2000); Dominguez (1999); Prince and Dunne (1997); Corcos et al (1997); Hertz-Lazarowitz (1992); Colbeck et al (2000); Palincsar and Herrenkohl (2002); Parsons and Drew (1996).

involved in the teaching of Constitutional Law. Happily the staff in question saw this as time well spent: in addition to the impact on one's teaching portfolio, such an experience can provide sorely needed invigoration following a period of low morale. Finally, it is important to remember that this was a project that would save money and resources in the long run.

The Water: Students as a Resource

In the depressing (and at times threatening) atmosphere of higher education in recent years,⁸³ it has been easy to see all the extra students in the system as nothing but vessels to be filled. Coupled with diminishing resources, this perception fuels an adherence to, or even impetus to return to,⁸⁴ the traditional model of legal education, with its emphasis on the large lecture involving, at best, one-way transmission of knowledge. Often this now occurs without the mediating effect of discussion tutorials⁸⁵ and the addition, by contrast, of intensification in the form of 'block' teaching.⁸⁶

In addition, the presence of more and more law students, especially in large classes, fewer tutorials and together for limited, concentrated periods of time, tends to inhibit or dilute the development of mutual support networks that would naturally come from day-to-day interaction between students. This is particularly so on a suburban campus (like ours at Flinders) where many students come for their classes and then leave again, without participating much in the social life of the institution. A recent report prepared for the Australian Vice-Chancellors' Committee states that the modern student spends more time in paid employment than his or her earlier counterpart.⁸⁷ This contributes to a lower level of university presence and resulting attenuation of supportive relationships with other students. Another factor which can contribute to this effect is the diversity of the student body: where few students know each other from school (especially because they have been out of school for some years), where they commute from different parts of the city, are different ages and have different cultural backgrounds, social groupings do not form so easily. At Flinders, some students who are advised to borrow a friend's notes from a missed lecture reply that they do not know anyone in the class well enough to ask.⁸⁸ This can be contrasted with the positive comments that were made in the 1990s about the University of New South Wales'

⁸³ See above section on 'The Context of Legal Education', particularly 'Relations with Government'.

⁸⁴ Thornton (2004), pp 486–87; Johnson and Keyes (2004), p 552.

⁸⁵ Thornton (2004), p 486.

⁸⁶ Thornton (2004), p 484.

⁸⁷ See Long and Hayden (2001), p 13.

⁸⁸ This phenomenon is perceived as leading to an over-reliance on information technology to supplement non-attendance. The 'lecture notes on the internet' syndrome might in turn encourage non-attendance, and we need to ask at what cost to the quality of our teaching? See also Thornton (2004), p 484, who derides this 'ultimate in efficient delivery, euphemistically dubbed "flexible learning"'.

‘powerful social climate’ and ‘unusually closely knit and egalitarian social community’.⁸⁹

It is not, however, necessary to see the large number of ‘insufficiently funded’ students as a burden and nothing else. A different view is to regard the students themselves as resources for effective teaching. The commonly advocated position for this is a setting where:

the class can take the form of discussion and problem-solving, so that what the student has read is applied, reinforced, and consolidated. The student is able to put the more general theory into a context of specific applications, as well as learning to generalise from specific instances in a rational way. This is vastly better preparation for the learning activities that students will have to engage in throughout their working careers.⁹⁰

Another illustration of students being a resource for each other’s learning (in the experience of two of the present authors) was found at the University of New South Wales in the 1980s, with upper-year students often having the option to fulfil part of their assessment by way of a moot. Students would work together on a problem and their mutual interdependence (along with the impending trial by performance) would provide high motivation and, typically, a greater commitment of time and effort than would be given for a traditional written exercise.

It would be unrealistic to aim for such practices in the current educational environment for law students, as outlined above. Both assume the routine presence of (and financial resources supporting) small-size classes (for more about this, see below). In the first example, small classes are needed to allow the desired constant active and participatory learning in the classroom setting. In the second example, there would be an unrealistic burden of setting problems, scheduling, room booking, judging and so on if the number of students were too high.

The challenge, if we are to concoct a drinkable lemonade, is to imagine other ways to foster relationships among students,⁹¹ and harness the resource that their number — daunting as it is — represents. While collaborative learning remains uncommon at law schools,⁹² it is known that students engaging with one another promotes effective learning⁹³ and encourages a

⁸⁹ McInnis and Marginson (1994), p 92. The second comment is quoted from a study of class size by Andresen from UNSW’s Professional Development Centre.

⁹⁰ Goldring (1993), p 164.

⁹¹ Another interesting model for encouraging the development of peer support is the ‘Metamorphosis’ project at the University of Western Australia: Allen and Baron (2001).

⁹² Only slightly more than 20 per cent of respondents to a student questionnaire reported that ‘co-operative learning’ occurred regularly in their legal education: see Johnstone and Vignaendra (2003), pp 253 [Table 10.5], 254.

⁹³ Dominguez (1999).

deep approach to learning.⁹⁴ Our teamwork project, accordingly, tapped into students as a resource in a way in which the lecture–tutorial format cannot. One observable effect was that students were more likely to read in preparation for the lectures, possibly because they did not want to drag their group down by having an inferior understanding of the material with which their team was dealing. Coming to the workshops better prepared, they asked more sophisticated questions that made better use of the resource that academic staff represent: rather than leading them through the basic principles, staff were able to engage with students at a level of analysis more commensurate with their expertise.⁹⁵

It is interesting to reflect on this fact in light of Goldring's observation that the traditional lecturer was 'aloof, pompous, paternalistic, capable, capricious, knowledgeable and, above all, authoritarian'.⁹⁶ This characterisation seems to link expertise with the more undesirable interpersonal attitudes that lead education to be teacher-centred rather than student-centred. Yet one wonders whether an academic's expertise is genuinely engaged in teacher-centred environments. The experience in our teamwork project makes traditional lecturing look more like babysitting than like an activity befitting our expertise.

Students also served as a better resource for each other. We forced their hand in one sense by deciding not to post any lecture materials on the internet for them — rather, we offered to email materials to individual students on request. We received very few such requests, but we frequently noticed students turning to fellow team members for copies of notes from missed lectures — this was observed both in class and over the WebCT discussion tool, where we established a separate, private discussion topic for each team. Naturally there were also the effects derived directly from students' interdependence in team tasks, and in particular their need to work together to produce a presentation at the end of the semester. Since each small group spent only part of each workshop with a facilitator in attendance, they spent the rest of the two hours relying on themselves and each other.

Water is a useful metaphor for law students in this context because it seems to be inexhaustible but is often taken for granted. As the most important substance for life to exist, it needs to be conserved and not wasted, even if it does exist in abundance. While water is not really a resource for itself in the way that students are a resource for themselves and each other, there are certain protective effects against evaporation to be achieved by keeping water in larger bodies. As a component of lemonade, water is at least as important to palatability as sugar is — and in our project the students were at least as important as the funding. Possibly more so: would you rather drink diluted, unsweetened lemon juice or a concentrated mixture of lemon juice and sugar?

⁹⁴ See Baron (2002), p 129; Tang (1998), p 113.

⁹⁵ Israel, Handsley and Davis (2004), p 21.

⁹⁶ Goldring (1993), p 159.

The Squeezer, or What About Coverage?

Conventional legal education has been driven by content.⁹⁷ Any new method of teaching that affects coverage of material can be difficult to embrace,⁹⁸ and this was so for us. Space was made in the lecture program for introducing teamwork as a skill and briefing students on presentation skills. Changing from weekly tutorials to fortnightly workshops meant that some material had to be dropped from the tutorial program. This might seem like educational vandalism to some. Others, noting that overloading students increases the likelihood that they will adopt a surface approach to learning,⁹⁹ are not so focused on coverage as on things like depth, skill development and the provision of an environment where students are more likely to develop an interest in the material. We took the view that these latter aspects were more important than the question of whether this or that area of constitutional law was the subject of treatment in a tutorial, or indeed included in the course at all¹⁰⁰ — a view reinforced by the recognition that, with the sheer volume of law that exists and its almost instantaneous availability, coverage is a ‘perennial problem’ for virtually all law teachers, whatever methods of teaching are adopted.¹⁰¹

Innovative approaches to course content in a given doctrinal area are made possible by examination of what place that area occupies in the curriculum, and why. In the case of Constitutional Law, that place is in the compulsory core. If we accept it is necessary to go beyond the Priestley benchmark for the ‘why’,¹⁰² that question is a little more difficult, and likely to vary from school to school. We take the view that the justifications for making Constitutional Law compulsory in our school are twofold: first, it can illustrate much about the interface between law, policy and judicial method that can extend understanding in other fields; and second, practitioners in a wide range of areas need to be able to spot certain kinds of constitutional issues — not necessarily solve them in great technical depth, but spot them, because many of them can crop up virtually anywhere.

Having identified these justifications, it is natural for us to choose aspects of constitutional law that serve one and ideally both of them. Therefore we do not consider it necessary to go into great depth on the trade and commerce and

⁹⁷ Keyes and Johnstone (2004), p 540.

⁹⁸ Keyes and Johnstone (2004), p 555; Anker et al (2000), p 137.

⁹⁹ See Baron (2002), p 129.

¹⁰⁰ Goldring considers that the profession tends to over-emphasise ‘content coverage’ to the exclusion of ‘the importance of the learning process’: Goldring (1993), p 166. That observation could be extended to many of our academic colleagues. It seems a similar tension exists between the UK professions and law schools: Varnava and Burridge (2002), p 7; see further the discussion in Keyes and Johnstone (2004), pp 545–46.

¹⁰¹ Johnstone and Vignaendra (2003), pp 343–44.

¹⁰² It is clear that some law schools have chosen not to be limited by ‘Priestley’ in devising their compulsory core curricula: Johnstone and Vignaendra (2003), pp 94–98.

corporations powers. These areas are fairly settled now, so we are unlikely to see many new issues cropping up in practice. Moreover, the absence of recent cases means these powers illustrate little about how the current High Court works. Other areas, such as the industrial relations power, are fairly contained and adequately covered in electives for those students who might want to practise in relevant areas. We consider it more important to cover matters such as inconsistency, freedom of interstate trade, and individual rights and freedoms: these are more like legal 'wild cards', in that they can arise in virtually any field of practice. External affairs and the races power are included for their ability to fulfil the first justification — that of illustrating the interface between law and politics.

We emphasise that the results of this kind of reflective process will be different for different schools, possibly at different times. The point we wish to make is that if the process can relieve anxieties about coverage, it can take considerable pressure off both staff and students, and can free up time to engage in more student-centred activities. As Goldring has pointed out:

At a time when basic legal encyclopaedias — such as *Halsburys* — run into 40 or 50 volumes, there is no possibility that students — even those who wish to practise as barristers or solicitors — should learn all the law.¹⁰³

What we did with coverage was quite similar to what one does when one squeezes a lemon, which is to extract from the fruit the part that is essential to one's project. It required close reflection on what we were trying to achieve in teaching constitutional law, and a willingness to jettison the parts that were not essential to that purpose. It also required a reconsideration of the assumption that students cannot learn something effectively without formal classroom instruction, and was assisted by the introduction of some alternative methods of helping students to work through material.

For some of the material, we were able without much effort to provide detailed lecture notes, because that is how the lecturer concerned prepares his material. Without having to confront the question of whether reading the written lecture is the educational equivalent of hearing it delivered 'live', we could be fairly confident that access to the written lecture was at the very least a substantial start to supporting students' learning.

For other material, we made use of the quiz function on WebCT. Early in the semester, a short quiz on characterisation was set at 10 per cent of the overall assessment of the subject. Later, when the workshop program was winding down, lecture material on judicial power was supplemented by a self-test quiz. The former quiz was fairly easy and designed more as a way of forcing students to start using WebCT and boosting their confidence with the material. The latter quiz was considerably more difficult, being intended to extend students' thinking in the same way a good tutorial should.

¹⁰³ Goldring (1993), p 162.

A further strategy was to adjust the examination format to include an essay component. The reasons for doing this are not all related to the teamwork project, and we might have wanted to do it in any event. However, it did have the attraction of taking the pressure off the tutorial program. This is because material to be assessed by essay does not require the same level of attention to doctrinal detail. An adequate understanding can be achieved by students who read the material carefully and attend a lecture, especially if that lecture works a sample question or two. This is what we did.

The Tasting: Replicating and Improving Upon the Benefits of Small Class Sizes

It has become an item of faith in law teaching in Australia that improving the quality of legal education virtually mandates that teaching take place in smaller classes.¹⁰⁴ Briefly, here is why that claim is made.

The small-class model of teaching is advanced as a means of engaging students in active learning,¹⁰⁵ which in turn has a greater capacity to foster a deep approach to learning.¹⁰⁶ Active learning can bridge the gap between 'skills' and 'knowledge' (or their surrogates, 'vocational' and 'academic' training) by developing both in tandem. That is, students who actively construct their own knowledge are building higher-order thinking skills (such as analysis and critical evaluation) at the same time. Active learners are independent learners, and therefore more likely to have the flexibility to respond to the challenges facing them over their working life, possibly through a number of different careers. As Clark and Tsamenyi suggest: 'In the future there will be a premium ... on legal education which provides students with higher order, critical thinking skills.'¹⁰⁷ Active learning is also more enjoyable, less likely to be perceived as a chore and more likely to be a satisfying process.

An alternative way of describing the benefits of small class sizes is that they provide an environment in which student-centred learning can flourish; small classes can 'provide a space that is much more amenable to student participation, to student/instructor and student/student interaction'.¹⁰⁸ Goldring contrasts the authoritarian lecturers and exam-alone assessment of his own legal education, resulting in 'some lawyers [being] almost entirely self-taught',¹⁰⁹ with the capacity of small class sizes to help students:

¹⁰⁴ For the purposes of discussion, this will be taken to mean classes of about 30, on the basis that the Pearce Committee used 30–35 as the cut-off for small groups: Pearce et al (1987), p 57.

¹⁰⁵ See, for example, Allen and Baron (2001).

¹⁰⁶ See Coaldrake and Stedman (1998), p 79. On the benefits of deep approaches to learning, see Goldring (1998), p 87 and sources there cited; Varnava and BurrIDGE (2002), p 18 ('more likely to produce learning that lasts').

¹⁰⁷ Clark and Tsamenyi (1996), p 32.

¹⁰⁸ Anker et al (2000), p 104.

¹⁰⁹ Goldring (1993), p 167. This provides an interesting twist on the idea of 'student-centred learning', with Goldring suggesting elsewhere that it happens 'by default'

to learn to understand and apply changing rules and practices, how to develop rational and telling criticisms of outmoded laws, how to conduct research independently, how to analyse fact situations, present arguments, and communicate and how to think creatively and laterally.¹¹⁰

These learning outcomes are seen as desirable because they provide more of what lawyers need in practice, and what was not provided by traditional models of legal education.

There can be no doubt that adherence to the small-group model of legal education made a significant contribution to the Pearce Committee's favourable assessment of the degree offered by one of the model's pioneers, the University of New South Wales.¹¹¹ The model was adopted in the mid-1990s at the University of Sydney Law School to underpin a change in culture that would '[optimise] a productive teaching and learning environment'¹¹² and it has found favour elsewhere.¹¹³ Keyes and Johnstone have recently hailed the trend towards smaller class sizes as one of the two 'most significant improvements to teaching and learning in Australian law schools since the late 1980s'.¹¹⁴

However, as noted above, creating and maintaining smaller classes have been and continue to be threatened by government resourcing policies. We are not the first to note the irony that the new wave of law schools in the early 1990s, of which Flinders was one, were set up on a traditional lecture-tutorial model.¹¹⁵ At the very moment when the traditional model had been identified as a less effective means of teaching law, the sector succumbed to the call of the high-quality, cheap students a law school could attract.¹¹⁶

Yet the newer law schools have done some of the most interesting things with law teaching in recent times: one need only look at the achievements of

when 'law teachers have given ... little thought to the learning process, and simply purvey information to the students': Goldring (1987), p 111.

¹¹⁰ Goldring (1993), pp 159–61; for a large selection of other academic voices on the motivations for and benefits of small-group teaching, see Johnstone and Vignaendra (2003), pp 297–306.

¹¹¹ Pearce, Campbell and Harding (1987), pp 227–28. See also Goldring (1993), pp 160–61. Two members of our innovation team had had extensive experience with this teaching model at UNSW: Davis taught there from 1981–89; Handsley was a student there from 1981–86 and taught there from 1988–90.

¹¹² Anker et al (2000), p 105.

¹¹³ McInnis and Marginson list a 'further expansion' of the trend towards smaller groups as one of the overall impacts of the Pearce Report: McInnis and Marginson (1994), p 170; for a more recent snapshot, see Johnstone and Vignaendra (2003), pp 306–7 [Table 12.1].

¹¹⁴ Keyes and Johnstone (2004), p 552; see also Thornton (2004), pp 485–86.

¹¹⁵ See, for example, Clark and Tsamenyi (1996), pp 20–21, 32; Brand (1999), p 119. But see *contra* Simmonds (1998), p 63.

¹¹⁶ See Brand (1999), p 119. A similar perception appears to exist in the United Kingdom: see Bradney (1995).

Marlene Le Brun and others at Griffith,¹¹⁷ or of Jack Goldring and colleagues at Wollongong,¹¹⁸ to see that these were some of the most exciting places to be teaching in the 1990s.¹¹⁹ Part of that excitement came from the challenge of finding new ways to teach large classes more effectively *without* the resources that would be needed to move to the small-class model.

Our teamwork project was designed to fit within this tradition. Rather than bemoan the lack of resources and the corresponding inability to teach in small classes, we were able¹²⁰ to reproduce benefits that are claimed for smaller classes — interactivity, preparatory reading as the norm, supportive relationships among students.

Further, our project improved upon the small-class model. The mere fact of smaller classes does not guarantee higher quality teaching, a deep approach or active learning.¹²¹ Any students who lack the educational background to enable them to get the most from small class sizes¹²² would naturally benefit from alternative or additional strategies to ease the transition. Moreover, it is entirely possible to deliver a boring and didactic lecture to a class of 30. Indeed, it is possible for traditional tutorials to degenerate into lectures. Smaller classes may facilitate the adoption of beneficial approaches for those who wish to do so, but they also risk engendering complacency. The smaller size of the class can become a substitute for genuinely engaging teaching.

Collaborative learning workshops used to inculcate teamwork skills avoid these risks. The key difference is in the instructor's role as a roving resource,¹²³ rather than the focus of the learning experience. In this way, student-centredness is built into the structure of the learning environment, rather than relying on the efforts and willingness of both teacher and students. These are often the first casualties of difficult times,¹²⁴ so the establishment of a collaborative learning structure can be seen as a form of insurance. The workshop structure leaves students to their own resources, with the instructor as back-up when ideas run out or as reassurance to confirm the correctness of an approach or conclusion. The very concept of 'teams' creates a closeness, a sense of cohesion and mutual purpose that is lacking in ordinary small-group discussion exercises. Also, the integration of teamwork as a skill requires students to identify and address situations where individual students are not prepared, not participating or not cooperating. Indeed, students are rewarded

¹¹⁷ See, for example, Kift and Airo-Farulla (1995); Dick et al (1993); Godden et al (1994); Le Brun and Robertson (1997).

¹¹⁸ See, for example, Goldring (1993), pp 161–69; Greig (2000).

¹¹⁹ Brand notes further that satisfaction tended to be higher amongst graduates of the newer law schools: Brand (1999), p 136.

¹²⁰ See fully Israel, Handsley and Davis (2004).

¹²¹ See McInnis and Marginson (1994), pp 164–66; Goldring (1987), p 111; Paliwala (2002), p 192.

¹²² Allen and Baron (2001), p 348; see also Varnava and Burrige (2002), p 17.

¹²³ See n 71.

¹²⁴ That is, time involving restrictions on resources and/or increases in student numbers: see above, 'The Context of Legal Education'.

for doing so, because any steps taken to address such difficulties are evidence of good team process. In other words, students become the 'police' or 'enforcers' of each other's active, deep learning. They might well be better equipped for that task than academic staff.

In summary, and as we have reported elsewhere (following an evaluation process which involved focus groups, an external facilitator and responses to questionnaires):

there was considerable evidence that many students were able to share their individual experiences, develop group and conflict-resolution skills, achieve a higher level of understanding of many of the substantive concepts and a more positive attitude towards the topic. The topic convenor reported substantial changes in her relationships with students as she was able to concentrate on improving student high level understanding rather than providing grounding in basic concepts. Finally, given the current state of the tertiary sector in Australia, the School was particularly pleased to save a significant amount of money by adopting a less resource-intensive teaching model that also improved students' generic skills and helped them create supportive peer networks.¹²⁵

Conclusion: A Refreshing Change

Keyes and Johnstone conclude their recent article on the past and future of legal education by expressing hesitancy about their decision to publish. Their concern flowed from the belief that the substantial changes they were promoting would be met with claims of lack of resources and colleagues already overworked.¹²⁶ We have our own hesitancy, because it hardly works in favour of receiving more public funds to attempt to demonstrate that quality legal education can be delivered in the current environment. On the other hand, we see no evidence to give us any optimism whatsoever that an injection of public funds into legal education is a realistic proposition. Accordingly, we prefer to look for means to turn to our advantage the factors that are currently at play within the system.

The introduction of collaborative learning in Constitutional Law, we believe, has lessons for our academic colleagues beyond the desirability of the particular methods we adopted. While those methods carry particular benefits,¹²⁷ especially the reduction in marking time when students are assessed in groups and the inculcation of a generic skill, the experience provides a broader example of how the strategic investment of time in planning teaching can ultimately help to relieve many of the pressures that have been making our lives more difficult in recent years.

First, it can enable us to tap into some of the relatively new sources of funds. This provides not only appreciated resources, but a career boost — at

¹²⁵ Israel, Handsley and Davis (2004), pp 25–26.

¹²⁶ Keyes and Johnstone (2004), p 564.

¹²⁷ Israel, Handsley and Davis (2004), pp 15–25.

least in those institutions which value teaching in career advancement processes. If teaching innovation is valued, funded teaching innovation will be valued even more highly. Nor need it detract (in the long run) from one's pace of publication, but rather it might provide one with new material to write about and the interest to motivate one to do the writing.

Second, the investment of time in teaching innovation can boost morale by invigorating the relationships that have been squeezed by growing numbers and shrinking resources. Moreover, it can transform relationships between staff and students to make them more cognisant of the reason many of us believe we are there: rather than leading students through the basic principles, as virtually any recent graduate could probably do, we can create environments that provide opportunities to engage with students over the more difficult aspects of the law. The trade-off between teaching and research time does not look so painful if we feel we are using our full faculties in our dealings with students. In short, teaching can provide us with some of the intellectual stimulation we wanted to get out of academic life and expected to find in research.

Third, the transformation of teaching methods and structures often requires the examination of our beliefs about content coverage. Such examination can be generally beneficial. If overloaded students tend to opt for surface approaches to learning, it is in our interests to keep content down and use processes that can allow students to explore the material in depth. Coverage might be the last frontier of reflective practice in law teaching.¹²⁸

We started this article by painting a depressing picture of the lot of the modern academic, and have finished with something that might look, to some, improbably rosy. We are reminded of the character in a Kurt Vonnegut novel who described to a friend her vision of heaven: sunshine, manicured lawns and golf buggies. The friend commented that it sounded like the kind of place where people would drink a lot of lemonade. The character replied: 'I love lemonade.'

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