'WORKS WELL WITH OTHERS': EXAMINING THE DIFFERENT TYPES OF SMALL GROUP LEARNING APPROACHES AND THEIR IMPLICATIONS FOR LAW STUDENT LEARNING OUTCOMES

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ABSTRACT

In the current regulatory climate, there is increasing expectation that law schools will be able to demonstrate students' acquisition of learning outcomes regarding collaboration skills. We argue that this is best achieved through a stepped and structured whole-of-curriculum approach to small group learning. 'Group work' provides deep learning and opportunities to develop professional skills, but these benefits are not always realised for law students. An issue is that what is meant by 'group work' is not always clear, resulting in a learning regime that may not support the attainment of desired outcomes. This paper describes different types of 'group work', each associated with distinct learning outcomes. It suggests that 'group work' as an umbrella term to describe these types is confusing, as it provides little indication to students and teachers of the type of learning that is valued and is expected to take place. 'Small group learning' is a preferable general descriptor. Identifying different types of small group learning allows law schools to develop and demonstrate a scaffolded, sequential and incremental approach to fostering law students' collaboration skills. To support learning and the acquisition of higher-order skills, different types of small group learning are more appropriate at certain stages of the program. This structured approach is consistent with social cognitive theory, which suggests that with the guidance of a supportive teacher, students can develop skills and confidence in one type of activity which then enhances motivation to participate in another.

I. INTRODUCTION

The need for law students to participate in small group learning activities is becoming increasingly difficult to ignore. While the pedagogical reasons for their inclusion in an assessment regime are well recognised, there is also an emergent external regulatory regime for Australian law schools which requires law graduates to have attained workplace ready collaboration skills. Consequently, assessment tasks which foster the acquisition of collaboration skills will need to be embedded in a sequential and demonstrable manner throughout the curriculum. Activities most closely associated with the development of collaboration skills are traditionally referred to as 'group work'. However, as this paper argues, 'group work' is not itself an activity, and moreover is an inadequate descriptor for the types of active learning activities we associate with the encouragement of deep learning and the development of collaboration skills in educational settings. Rather, we identify that there are distinct *types* of active learning activities associated with different outcomes in which students work in *small groups*. Identifying the characteristics of these types allows for a structured and scaffolded approach to assessment using small groups, which promotes cognitive development and student achievement.

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In the next part of this paper, the regulatory pressures for developing students' collaboration skills, and the desirability of a whole-of-curriculum approach to developing such skills, are outlined. The third part then canvasses the theoretical underpinnings, premised on active learning, for our proposed approaches to small group learning. Part IV argues that small group learning provides a more meaningful descriptor than 'group work', and Part V discusses different types of small group learning. The implications of our discussion and the conclusion are presented in parts VI and VII, respectively.

II. The Regulatory Context

Under the new regulatory regime administered by the Commonwealth Tertiary Education Quality Standards Agency (TEQSA),[1] university degrees will only be accredited if they can demonstrate adherence to the Australian Qualifications Framework (AQF).[2] Relevantly, the AQF requires graduates of a bachelor Degree to 'demonstrate the application of knowledge and skills … with responsibility for own learning and professional practice and *in collaboration with others* within broad parameters'.[3]

Expanding on this, the Council of Australian Law Deans has adopted Discipline Standards, developed under the auspices of the former Australian Learning and Teaching Council. These are regarded as 'an appropriate statement of the Threshold Learning Outcomes that are required of Bachelor of Law graduates from any Australian University'.[4] The Threshold Learning Outcomes (TLOs) require LLB[5] and JD[6] graduates to be able to 'collaborate effectively'. The commentary to the LLB TLO states:

> *Collaborate effectively*: This phrase encompasses teamwork, working in groups, and working cooperatively with them. 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.[7]

Significantly, the Discipline Standards have also been included as an external reference point in a legislative instrument clarifying aspects of TEQSA's Higher Education Standards Framework.[8]

The Australian developments that culminated in the articulation of the TLOs for law can be seen as part of a broader global shift towards outcomes-focused education in recent decades.[9] Applying outcomes-focused educational paradigms, it is considered optimal to adopt a 'whole-of-curriculum' approach to learning, teaching and assessing outcomes-based curriculum objectives.[10] The adoption of such an approach is one of the intentions behind the TLOs, which is reflected in the following comment of the drafters of the law TLOs in the *Standards Statement:*

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1   *Tertiary Education Quality and Standards Agency Act 2011* (Cth).

2   *Higher Education Standards Framework (Threshold Standards) 2011* (Cth) ('Threshold Standards instrument').

3   Australian Qualifications Framework (AQF), 'The Australian Qualifications Framework' (2nd ed, 2013) 48 (emphasis added) <http://www.aqf.edu.au/Portals/0/Documents/2013%20docs/AQF%202nd%20Edition%20January%202013.pdf>.

4   JD Sub-committee of the Associate Deans' Law Network, 'Juris Doctor Threshold Learning Outcomes' (2012) <http://disciplinestandards.pbworks.com/w/file/fetch/57628366/JD%20TLOs%20(March%202012).pdf>.

5   Sally Kift, Mark Israel and Rachael Field, *Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement December 2010* (11 February 2011) Australian Learning and Teaching Council 10 <http://www.cald.asn.au/assets/lists/Education/KiftetalLTASStandardsStatement2010%20TLOs%20LLB.pdf>.

6   JD Sub-committee of the Associate Deans' Law Network, above n 4, 4.

7   Kift, Israel; and Field, above n 5, 22.

8   Threshold Standards instrument, above n 2.

9   Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association, 2007) 45–7.

10 Richard Johnstone, 'Whole-of-Curriculum Design in Law' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) 1, 2; Sally Kift, '21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18(1) *Legal Education Review* 1, 16−20.

> [W]ithin the range of diverse programs developed by the various law schools, graduates' acquisition of the TLOs will most likely be facilitated in a structured and integrated, whole-of-curriculum approach through learning, teaching and assessment.[11]

This raises the question of how a 'structured and integrated, whole-of-curriculum approach' to the development of collaboration skills can best be achieved in practice. Ideally, to facilitate systematic and comprehensive development of students' collaboration skills throughout the Bachelor of Laws degree, collaboration skills or a localised variation of this concept would be included in law schools' statements of program-level learning outcomes.[12] Significantly for Australian law schools, statements of course learning outcomes describing students' 'knowledge, skills, application of knowledge and skills, and generic learning outcomes' are now required by TEQSA's Threshold Standards instrument 'to facilitate comparability with AQF qualifications'.[13]

The next step in a whole-of-curriculum approach to achieving educational goals is the alignment of statements of outcomes at the program level with the articulation of goals at the individual subject level.[14] Learning outcomes for each individual subject can be derived from the program learning outcomes, but will necessarily be more specific to reflect the focus of each particular subject.[15] Once the subject learning outcomes, that is the educational outcomes that students will have acquired and be able to demonstrate by the completion of the subject, have been clearly articulated, appropriate assessment approaches that measure the extent to which students are achieving the subject outcomes can be designed.[16] Such approaches can be both formative, providing non-assessed feedback to help students improve their performance, and summative, providing 'evaluative feedback' typically in the form of a grade.[17] Somewhat counter-intuitively, the final step in a whole-of-curriculum approach is the planning and development of learning and teaching strategies that prepare students to achieve the subject learning outcomes.[18]

It is beneficial to have programmatic oversight of the learning, teaching and assessment of learning outcomes so that both staff and students 'know when, where, and how each desired outcome will be accomplished in the overall program of instruction'.[19] A curriculum map is an effective tool for identifying which learning outcomes are addressed and assessed in each subject, and for providing an overview of any gaps and overlaps in the treatment and development of learning outcomes throughout the degree program. Curriculum mapping provides a mechanism for ensuring that the learning, teaching and assessment of law graduates' acquisition of collaboration skills is appropriately 'integrated, contextualised, sequential and incremental' across the law curriculum.[20]

A whole-of-curriculum approach to developing students' collaboration skills is a particularly pertinent issue to address as a number of discrete suggestions for curricular strategies that promote the aims of TLO 5 are presented and discussed in the following parts. There is a risk, however, that one or more of such strategies may be adopted by some law teachers in an ad hoc, piecemeal fashion, which will be insufficient for supporting student acquisition of this important learning outcome throughout the law degree. The importance of scaffolding, programmatic congruence and oversight of the learning, teaching and assessment of collaboration skills should thus be borne in mind whilst reading the following discussion.

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11 Kift, Israel and Field, above n 5, 9.

12 Stuckey, above n 9, 40–55; William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass, 2007) 182.

13 *Higher Education Standards Framework*, above n 2, Ch 4, ss 1, 2, 3.

14 Stuckey, above n 9, 55–9.

15 Janet W Fisher, 'Putting Students at the Center of Legal Education: How an Emphasis on Outcome Measures in the ABA Standards for Approval of Law Schools Might Transform the Educational Experience of Law Students' (2011) 35 *Southern Illinois University Law Journal* 225, 236–42.

16 Ibid, 237.

17 Ibid, 239.

18 Ibid.

19 Stuckey, above n 9, 93.

20 Johnstone, above n 10, 15.

III. THEORETICAL UNDERPINNINGS

The strategies for developing collaboration skills outlined in the following part are premised on tenets of active learning informed by social learning theory. Adopting active learning strategies such as small group learning allows students to participate in a *process* of inquiry; creating and sharing knowledge and developing understanding in a 'positive, connected manner' has been demonstrated to result in superior deep learning.[21] More specifically, the learning possibilities of small group learning derive from its consistency with social learning theory. Closely associated with the work of Lev Vygotsky and Albert Bandura[22], a key principle of social learning theory is that '[p]eople do not function in isolation. As social beings, they observe the conduct of others and the occasions on which it is rewarded, disregarded, or punished'.[23] Similarly, for Vygotsky 'human learning presupposes a specific social nature and a process by which children grow into the intellectual life of those around them'.[24] He argues that:

> Learning awakens a variety of internal development processes that are able to operate only when the child is *interacting* with people in his environment and in *cooperation* with his peers. Once these processes are internalized, they become part of the child's independent development achievement.[25]

In social learning theory, the concept of '*cognitive scaffolding*' plays a critical role in supporting student achievement.[26] At its simplest, this requires that in addition to receiving new content, students should also be exposed to new ways in which that content is delivered and subsequently processed and understood in order to facilitate continued cognitive development and deep learning. Learners need opportunities to utilise and experiment with acquired knowledge, and incorporate feedback received into their schematic structures. The goal is to engage students in learning to develop 'mastery' or 'competency' in an area of knowledge

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21 Vincent Tinto, 'Classrooms as Communities: Exploring the Educational Character of Student Persistence' (1997) 68(6) *The Journal of Higher Education* 599, 601; Anne Hewitt, 'Producing Skilled Legal Graduates: Avoiding the Madness in Situational Learning Methodology' (2008) 17(1) *Griffith Law Review*, 87, 87; Ali Radloff, *Doing more for learning: enhancing engagement and outcomes: Australasian Survey of Student Engagement: Australasian Student Engagement Report* (Australian Council for Educational Research, 2010) 3. Available at <http://research.acer.edu.au/cgi/viewcontent.cgi?article=1011&context=ausse>; Gerald F Hess, 'Principle 3: Good Practice Encourages Active Learning' (1999) 49(3) *Journal of Legal Education* 401, 402; Elizabeth A Reilly, 'Deposing the 'Tyranny of Extroverts': Collaborative Learning in the Traditional Classroom Format' (2000) 50 *Journal of Legal Education* 593, 601; Mary Keyes and Kylie Burns, 'Group Learning in Law' (2008) 17 *Griffith Law Review* 357, 359.

22 See especially L S Vygotsky, *Mind in Society: The Development of Higher Psychological Processes* (Harvard University Press, 1978); Albert Bandura, *Social Learning Theory* (General Learning Press, 1971); Albert Bandura, *Social Foundations of Thought and Action: A Social Cognitive Theory* (Prentice-Hall, 1986). The work of Vygotsky is often referred to as 'social constructivist theory' and focuses more on the development of the underlying cognitive structures. The work of Bandura is often described as 'social cognitive theory' and in contrast to Vygotsky, seeks to understand how a person receives and internalises the messages that they receive from others. Their work is essentially complementary and can both be termed 'social learning theory'. On the 'social-constructivist'/'social cognitive theory' approach see also Michael H Schwartz, 'Teaching Law by Design: How Learning Theory and Instructional Design can Inform and Reform Law Teaching' (2001) 38 *San Diego Law Review* 347, 380; Kerri-Lee Krause and Hamish Coates, 'Students' engagement in first-year university' (2008) 33(5) *Assessment and Evaluation in Higher Education* 493, 493; Keyes and Burns, above n 21, 359.

23 Albert Bandura, 'Behaviour Theory and the Models of Man' (1974) 29 *American Psychologist* 859, 860. See also Kenneth A Bruffee, 'Collaborative Learning and the 'Conversation of Mankind' (1984) 46(7) *College English* 635, 638–40.

24 Vygotsky, above n 22, 88.

25 Ibid, 22 (emphasis added).

26 Senay Purzer, 'The Relationship Between Team Discourse, Self-Efficacy, and Individual Achievement. A Sequential Mixed-Methods Study' (2011) 100(4) *Journal of Engineering Education* 655, 656−7. While Purzer suggests that this is most closely associated with Vygotsky and a constructivist approach (i.e., without stimulation, cognitive structures will not develop), we suggest this principle is similarly applicable to Bandura, particularly in relation to developing 'mastery' and belief in one's capabilities (if you are unable to practise skills and at the same time adapt these to new and novel situations, your learning is hindered). On some key areas of social cognitive theory relevant to improving performance see, for example, Albert Bandura, 'Organisational Applications of Social Cognitive Theory' (2008) 13(2) *Australian Journal of Management* 175, 276.

application. This mastery has the effect of enhancing student self-efficacy and in turn catalyses learner motivation to tackle novel tasks and persist at them.[27]

IV. Seeking Terminological Clarity

There is a growing body of Australian research examining the benefits and challenges of introducing assessment activities constructed around 'group work' in Australian law schools.[28] However, the legal education literature reveals that less attention has been directed at attempting to identify and understand the different *types* of group work activities and their specific implications for law curriculum design and law student learning. This paper seeks to contribute to this discussion by situating the analysis more explicitly within the framework of social learning theory and *distinguishing* characteristics of the different types. An initial hurdle is that what is meant by 'group work' is not always clear to teachers or students. Terms such as group work, small group learning, learning groups, collaborative learning and cooperative learning are often used interchangeably, inconsistently and indiscriminately, and attempts at definitions can inadvertently ignore evidence demonstrating the existence of distinct theoretical approaches to 'group work'.[29] Elsewhere we explore in more detail the importance of clear typologies for assessment.[30]

Use of the term 'group work' as a general descriptor can serve to obscure the actual learning goals of an activity. It provides little clear information to the student (and others) about what type of learning is to take place, how that learning is to be encouraged, and what outcomes are expected. A haphazard approach to 'group work' runs the risk of frustrating deep learning aims if an activity is implemented without a clear nexus between content, assessment and the attainment of desired learning outcomes. By contrast, in order to leverage the learning benefits associated with 'group work', our conceptual starting point is engaging students in learning through introducing specific *active learning* strategies based upon activities that require them to work together in small groups, to achieve specific outcomes. These identified strategies

27 See, for example, Bandura, '*Organisational Applications*', above n 26, 276; Albert Bandura, 'Self Efficacy: Toward a Unifying Theory of Behavioural Change' (1977) 84 *Psychological Review* 191; Albert Bandura, 'Human Agency in Social Cognitive Theory' (1989) 44 *American Psychologist* 1175. On the 'paramount importance' of motivation see also Alan Jenkins, Rosanna Breen, Roger Lindsay and Angela Brew, *Reshaping Teaching in Higher Education: A Guide to Linking Teaching with Research* (Kogan Page, 2003) 32.

28 See, for example, Mark Israel, Elizabeth Handsley and Gary Davis, '"It's the vibe": Fostering Student Collaborative Learning in Constitutional Law in Australia' (2004) 38 (1) *The Law Teacher* 1; 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) 26:2 *The University of Tasmania Law Review* 120; Kate Lewins, 'The Groupwork Experience in Civil Procedure' (2006) 13(1) *E-Law (Murdoch University Electronic Journal of Law)* 225; Adiva Sifris and Elspeth McNeil, 'Small Group Learning in Real Property Law' (2002) 12 *Legal Education Review* 189; Reilly, above n 21; 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, South Australia, 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; Keyes and Burns, above n 21; 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(2) *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).

29 Keyes and Burns, above n 21, 358; 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' (2009-2010) 3 *John Marshall Law Journal* 135, 139; 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, 959 at n 5; L Dee Fink, 'Beyond Small Groups: Harnessing the Extraordinary Power of Learning Teams', 4, in Larry Michaelsen, Arletta Knight and Dee Fink (eds), *Team-Based Learning: A Transformative Use of Small Groups* (Stylus Publishing, 2004), available at <http://www.med.wright.edu/sites/default/files/aa/facdev/_Files/PDFfiles/BeyondSmallGroups.pdf>. Note that Fink does not see collaborative learning as a distinct category.

30 Alex Steel, 'Clarifying assessment: developing official typologies and instructions for forms of assessment in law' (2013) 5 (1 & 2) *Journal of the Australasian Law Teachers Association*.

include ad hoc or casual groups,[31] cooperative learning, collaborative learning and team based learning.

We argue that teachers' understanding of the different types of small group learning in law is important in terms of crystallising teachers' reasons for adopting a particular approach: this facilitates the teachers' provision to students of clear rationales for engaging with the selected approach.[32] If law students endorse the rationales behind small group learning, it is more likely that they will willingly engage with, and optimise, the social and academic learning opportunities arising from group work,[33] including taking responsibility for their learning.[34] Crucially, presenting the proposed activity within the framework of one of these types is one method by which students receive a signal of what is *valued* about learning and what is expected in terms of outcomes, helping them to stay connected to the learning process.[35]

We argue that the term 'group work' is inadequate as a descriptor when used in an educational setting.[36] As a term it lacks pedagogical nuance. It provides little indication of the type of learning that is to take place and how outcomes or attributes will be achieved. In education the focus of 'group work' activities for formative or summative assessment is on small groups, and we consider the term *small group learning* to be a superior descriptor.[37] For example, as Johnson and Johnson state, group work in education is essentially 'the instructional use of *small groups* so that students work together to maximise their own and each other's learning'.[38] Berry similarly uses the term 'group work' to 'refer to students working together in *small groups* with little or no tutor input'.[39] In these examples it seems reasonable to remove reference to 'group work' as an unnecessary label, which serves to obscure the focus on the type of learning that is occurring, and necessitates further qualification to identify a learning connection. We agree with Fink that the concept of 'small group learning' captures the 'essence'

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31 We note that another variant of informal group work is the study group, which students may form outside class to review class materials or prepare for examinations. This paper is concerned with 'group work' occurring in classes for either formative or summative purposes. Interestingly, in US law schools these external study groups are often compulsory.

32 Keyes and Burns argue that when introducing a group learning activity in a law classroom, teachers should begin by clearly articulating the reasons for including group learning in the curriculum: Keyes and Burns, above n 21, 365. Hiiyard, Gillespie and Littig similarly argue that '[u]nless instructors devote instructional time to teaching about group work, students are not aware of the empirical and theoretical research that supports group learning and are not privy to the reasons why their instructors choose one approach over another': Cinnamon Hiiyard, Diane Gillespie and Peter Littig, 'University Students' Attitudes about Learning in Small Groups after Frequent Participation' (2010) 11(1) *Active Learning in Higher Education* 9, 10. They add that '[s]tudents need clarity about the type and purpose of group work and to feel that their peers are competent and prepared' at 18.

33 Anna Huggins, 'Autonomy Supportive Curriculum Design: A Salient Factor in Promoting Law Students' Wellbeing (2012) 35(3) *The University of New South Wales Law Journal* 683, 705–6.

34 Cassandra Hill, 'The Elephant in the Law School Assessment Room: The Role of Student Responsibility and Motivating Our Students to Learn' (2013) 56 *Howard Law Journal*, 447, 450–1.

35 Maureen F Fitzgerald, 'Rite of Passage: The Impact of Teaching Methods on First Year Law Students' (2008) 42(1) *The Law Teacher* 60, 78.

36 Fink, above n 29, 15.

37 For clarity, we would contrast this with the use of tutorials and other 'large groups'. A tutorial is not a 'group work' assessment activity itself (although it has formative benefits). Furthermore, the deep learning benefits associated with small group learning are achieved optimally with around four members; research suggests that group dynamics change considerably in groups of more than six. See, for example, Marlene Le Brun and Richard Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Sydney: Law Book Co, 1994) 294. This does not mean that small group learning types, particularly ad-hoc or casual groups, cannot be used in a tutorial. Indeed, depending on the size of the tutorial group, and the subject matter, this may be desirable. Furthermore, and of interest to faculties which still employ the lecture as the dominant mode of knowledge transmission, there is evidence that suggests active learning strategies such as ad hoc and casual small group learning can be integrated into that format. See, for example, Michael Cavanagh, 'Students' Experiences of Active Engagement Through Cooperative Learning Activities in Lectures' (2011) 12(1) *Active Learning in Higher Education* 23. Note that Cavanagh seems to prefer the term 'co-operative learning' as a general descriptor and does not categorise the *type* of activity as we do below, which could appear confusing. Addressing this lack of terminological clarity is a motivation for this article.

38 David W Johnson and Roger T Johnson, *Cooperative Learning: Increasing College Faculty Instructional Productivity*, ASHE- ERIC Higher Education Report No. 4 (United States: Clearing House on Higher Education, 1991) 3 (emphasis added).

39 Elspeth Berry, 'Group Work and Assessment – Benefit or Burden?' (2007) 41(1) *The Law Teacher* 19, 19 (emphasis added).

of the different approaches to group work in an educational setting, and that it is an appropriate 'umbrella' under which the theoretical and casual approaches to group activity are collected in that context.[40]

Small group learning activities can encompass both individual and group goals. As social psychologist Albert Lott notes, 'a group is made up of two or more persons who recognise their interdependence in the pursuit of common or individual goals, who interact with one another in a group context, and who are cognizant of each other and of the fact that they form a social unit'.[41] The degree to which the different approaches to small group learning emphasise 'common or individual goals', is a crucial defining characteristic. Further characteristics of types of small group learning are the degree to which they are structured, and whether students will be assessed individually or collectively. Finally, while the learning benefits of all the types flow from the utilisation of the group dynamic, the nature of the interaction in each type is conceptually different.

V. Types of Small Group Learning

In this part we outline the three main types of small group learning identified in the literature, and introduce a further classification of ad hoc or casual groups.[42]

A. *Cooperative Learning*

Cooperative activities are 'group activities that are structured wholly or in part by the teacher ... [including] brainstorming sessions, peer review groups, student/teacher conferences, and small group and whole-class discussions'.[43] In cooperative learning, although the exercise entails individual students 'working together to accomplish a shared goal',[44] the 'end goal is individual mastery of skills or content material' and it is typically the *individual* that is assessed.[45] While cooperative learning contains aspects (albeit mediated) of traditional education such as hierarchy, competitiveness and individualism,[46] there is significantly more agreement in the literature about the benefits of cooperative learning (and small group learning generally) as a pedagogical tool than there is dissent.[47] It is argued that cooperative learning tends to result in 'higher achievement' when compared with competitive or individualistic learning environments,

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40 Fink, above n 29, 4, 15. There is disagreement on this. For example Millis and Cottell see 'cooperative learning as the 'umbrella concept'. Similarly, Reilly also subscribes to the notion of cooperative learning being a rubric under which distinct cooperative and collaborative learning models fall. See respectively Barbara J Millis and Phillip G Cottell, *Cooperative Learning for Higher Education Faculty* (Oryx Press, 1998) 7; Reilly, above n 21, 603. See also discussion by Zimmerman of the literature on this topic: Zimmerman, above n 29 at n 5. We argue that an identified type of small group learning (such as cooperative learning) is not a helpful conceptual umbrella, as it obscures the distinct nature of other types.

41 Quoted in Roark R Reed, 'Group Learning in Law School' (1984) 34 *Journal of Legal Education* 674, 685 .

42 For similar identification of the four types of small group learning activities, including the three types of structured activities, see, for example, Lucy Taylor, Susan McGrath-Champ and Henriika Clarkeburn, 'Supporting student self-study: The educational design of podcasts in a collaborative learning context' (2012) 13(1) *Active Learning in Higher Education* 77, 77. See also Thyfault and Fehrman, above n 29, 139–40; Elizabeth Monk-Turner and Brian Payne, 'Addressing Issues in Group Work in the Classroom' (2005) 16(1) *Journal of Criminal Justice Education* 166, 166. Note that disagreement exists as to the proper characterisation of the types. For example, Millis and Cottell see cooperative learning as being *more* structured than collaborative learning: Millis and Cottell, above n 40, 4, as do Thyfault and Fehrman. However, we prefer our categorisation, in which the key differentiator between the types is whether the focus is on individual mastery (as with cooperative learning) or on group mastery (as with collaborative learning). Nevertheless, there is some overlap between the strategies as they are sourced from the same empirical research.

43 Melanie L Schneider, 'Collaborative Learning: A Concept in Search of a Definition' (1990) 3 *Issues in Writing* 26, 32.

44 Morton Deutsch, 'A Theory of Co-operation and Competition', (1949) 2(2) *Human Relations* 129, 132.

45 Schneider, above n 43, 30; Elizabeth L Inglehart, Kathleen Dillon Narko and Clifford S Zimmerman, 'From Cooperative Learning to Collaborative Learning in the Legal Writing Classroom' (2003) 9 *The Journal of the Legal Writing Institute* 185, 188.

46 Zimmerman, above n 29, 987.

47 Paul Ramsden, *Learning to Teach in Higher Education*, (RoutledgeFalmer, 2nd ed, 2003) 98; Zimmerman, above n 29, 995.

especially when tasks 'become more complex'.[48] This is true for all levels of education, and specific studies on higher education bear this out.[49] For Zimmerman, '[i]n achieving higher levels of learning [cooperative learning] instils greater motivation to learn; particularly, the method instils intrinsic motivation, positive attitudes towards the learning experience and the instructors, greater self-esteem, and a higher desire to assist others in the learning process'.[50]

B. *Collaborative Learning*

Under a collaborative learning approach, students work together in a small team creating a piece of work that they have developed and planned together and for which they are generally assessed *collectively* as opposed to individually.[51] The assessment of a collective learning task often includes the *process* and not just the final product. Knight has been critical of traditional education's focus on individual assessment and what he terms its 'process-blindness' as students' 'scores and grades are silent about the learning processes involved'.[52] Small group learning activities can help to remedy this. As Schneider states, '[c]ollaborative learning … emphasizes the process of learning from peers, based on relatively complex learning tasks'.[53] In seeking to remove most of the competition in the learning space it places group success ahead of individual achievement.[54] Collaborative learning focuses on the teaching of judgment as the main benefit and on the intrinsic value in working with people rather than against them.[55]

Bruffee defines the goal of collaborative learning as being 'to provide a context in which students can practice and master the normal discourse exercised in established knowledge communities in the academic world and in business, government, and the profession'.[56] Central assumptions of collaborative learning are the ideas of 'shared authority'[57] (between students and teachers and between students and students), that 'knowledge is socially constructed, not received',[58] and that as a 'fundamental principle' the quality of student learning is enhanced through peer interaction.[59] A further common underlying assumption of both collaborative learning and cooperative learning identified by Reilly is that 'students can critically engage in learning without direct supervision when given open-ended tasks'.[60]

Both cooperative and collaborative learning emphasise a student-centred classroom in which the teacher's role changes to facilitator and students take more responsibility for their learning.[61] However, cooperative learning and collaborative learning do have different *aims*.[62] Cooperative learning focuses on '*individual* mastery of the subject' through the use of the group process dynamic, while 'collaborative learning focuses on group work toward a *unified* final project'.[63] Furthermore, cooperative learning retains some of the hierarchy and competitiveness of traditional education, while collaborative work aims for greater equality.[64]

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48 Zimmerman, above n 29, 994; Keyes and Burns, above n 21, 361.
49 See generally Johnson and Johnson, above n 38; Millis and Cottell, above n 40, 9–16.
50 Zimmerman, above n 29, 994.
51 Israel, Handsley and Davis, above n 28, 1; Inglehart, Dillon Narko and Zimmerman, above n 45, 188.
52 Peter T Knight, 'Summative assessment in higher education: Practices in disarray' (2002) 27(3) *Studies in Higher Education* 275, 282. Knight makes two points about this at 282. First, that if we are going to 'judge the robustness of an achievement [one] needs to know something about its circumstances'. Secondly, 'the processes involved in getting a degree are important because much learning comes with the quality of interactions in the communities to which students belong'. Susan Orr acknowledges Knight's emphasis on process but notes that 'process is an elusive concept' and that the literature is not always clear about what is meant by 'process' or how to assess it. See Susan Orr, 'Collaborating or fighting for the marks? Students' experiences of group work assessment in the creative arts' (2010) 35(3) *Assessment & Evaluation in Higher Education* 301, 302.
53 Schneider, above n 43, 32.
54 Zimmerman, above n 29, 987.
55 Ibid.
56 Bruffee, above n 23, 644.
57 Zimmerman, above n 29, 996.
58 Schneider, above n 43, 36.
59 Zimmerman, above n 29, 996.
60 Reilly, above n 21, 603.
61 Israel, Handsley and Davis, above n 28, 3−4; Keyes and Burns, above n 21, 359; Zimmerman, above n 29, 997.
62 Inglehart, Dillon Narko and Zimmerman, above n 45, 188.
63 Ibid (emphasis added).
64 Zimmerman, above n 29, 987.

C. *Team-Based Learning*

Team-based learning (TBL) has been extensively described in the literature.[65] Fink considers that TBL is an 'intense use of small groups' and argues that:

> The fundamental difference between the two approaches [cooperative (and we would also add collaborative) learning and team-based learning] lies in the relative time frame they are using and in the degree of integration they are striving for. Cooperative learning by and large views small groups as a teaching technique that is applied in a series of independent learning activities, each of which is aimed at accomplishing a specific set of learning objectives. In contrast, team-based learning views small groups as the basis of a semester-long instructional strategy in which a sequence of small group activities is designed and linked in such a way that they accomplish two purposes simultaneously: deepening student learning and enhancing team development.[66]

Dana provides a useful summary of how TBL operates:

> Under TBL a course is divided into four to seven units. Each unit follows the same basic organizational principle: individual students do the assigned reading, take a Readiness Assessment Test (RAT) on the reading, retake the test with their teammates, and complete a series of team application exercises that allow the students individually and as a team to explore the more subtle implications of the concepts. This process is repeated for each unit in the course. Students are graded on both their individual and team performance.[67]

TBL is often used in fields such as engineering and other technical areas. Of relevance to law schools, advocates of TBL suggest it allows for the seamless integration of skills and knowledge.[68] One issue with TBL is that a teacher cannot easily integrate TBL into an existing course; ideally, a course should be completely designed from the ground up around the TBL approach. Picking and choosing is also not recommended. As Dana states, 'TBL is a comprehensive learning strategy that works best if all elements of the strategy are implemented'.[69] Nonetheless, some of the principles may be adapted to the law classroom. For example, in the elective course Succession Law at the University of New South Wales Law School, students are organised into groups for the duration of the semester, with each of these groups representing a fictitious law firm. At the beginning of the semester a problem scenario is presented and each 'firm' is assigned a client from the problem scenario. New facts and issues are introduced throughout the course. During the semester students spend time in class and sometimes out of class, discussing and applying content received in relation to their client in the context of the wider problem. Note that there is no summative element – the group exists to provide students with opportunities to engage more deeply with course material by applying knowledge to a 'real world' scenario. The fact that the groups are stable for the entire semester also has potential socio-emotional benefits, and facilitates the creation of a more dynamic classroom environment.[70] Other forms of team-based learning that currently exist in law school curricula include competitive moots, journal editing and project-based clinical subjects.

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65   See, for example, Larry Michaelsen, Arletta Knight and Dee Fink (eds), *Team-Based Learning: A Transformative Use of Small Groups* (Stylus Publishing, 2004); Sophie M Sparrow and Margaret Sova McCabe, *Team-Based Learning in Law* (January 16, 2012), available at SSRN: <http://ssrn.com/abstract=1986230> or <http://dx.doi.org/10.2139/ssrn.1986230>; Taylor, McGrath-Champ and Clarkeburn, above n 42; Susan W Dana, 'Implementing Team-Based Learning in an Introduction to Law Course' (2007) 24(1) *Journal of Legal Studies Education* 59.

66   Fink, above n 29, 5, 15.

67   Dana, above n 65, 61.

68   Sparrow and McCabe, above n 65, 14.

69   Dana, above n 65, 64.

70   See Dominic Fitzsimmons, Prue Vines and Julian Laurens (forthcoming) '"The Authentic Lens". Employing Authentic Assessment Activities to Engage Law Students in Deep Learning: A Comparison of Using 'Narratives' in First Year Core and Final Year Elective Law Courses', in A Flood and K S Coleman (eds), *Disciplines: The Lenses of Learning* (Common Ground, Champaign, Illinois: Common Grounds Publishing LLC University Press, forthcoming).

D. *Ad Hoc Groups*

In addition to these increasingly *structured* small group learning assessment activities we would add ad hoc group work. Many teachers are familiar with the use of ad hoc or casual groups in class, such as when students are asked to work with the person next to them to discuss an issue or solve a problem as part of an in-class learning activity. This type of activity is often used as the basis for encouraging class participation in discussion,[71] and can be used throughout a program to encourage student engagement. There is usually no direct summative assessment[72] associated with the activity and it is characterised by being relatively 'unstructured'. We think it is important to recognise the value of these small group interactions both in introducing students to small group learning and in reinforcing group skills though the degree program. As a way of introducing small group learning, their short length and formative basis significantly reduces the risks of group involvement. Furthermore, combining such activities with a form of reflection on the quality of the small group learning interaction can assist with preparation for more formal group activities. Similarly, continual use of ad hoc groups throughout the curriculum gives students opportunities to become more adept at skills of group formation and task definition, which are key skills in workplace meeting settings.

VI. IMPLICATIONS

Choice of assessment task plays a critical role in student learning. Inappropriate assessment activities can encourage students to adopt surface approaches to learning as opposed to a desirable deep approach.[73] Identifying the different types of small group learning and situating them within the principles of social learning theory raises three related implications for program design and law student achievement.

First, the concept of *cognitive scaffolding* requires that in order for assessment activities to support the acquisition of 'high-order understandings and sophisticated abilities' in a whole-of-curriculum approach,[74] tasks must be selected which simultaneously challenge a student to think about received content in new ways and allow opportunities to practise and apply previous understandings and acquired skills to the problem.[75] Thus, the assessment structure throughout a program should be scaffolded to take account of and build upon students' prior knowledge, *and* to gradually introduce them to new and more complex scenarios.[76] We argue that the types of structured small group learning identified in this paper provide examples of a stepped approach to small group learning which can be scaffolded to effectively support student deep learning simultaneously with the attainment of explicit skills outcomes.[77] For example, in relation to the gradations between cooperative and collaborative learning, Reilly argues that:

> Cooperative learning is best for mastering 'foundational knowledge' – information about which there is widespread agreement as to its truth or accuracy. Collaborative learning is appropriate for older learners, and for addressing questions with 'dubious or ambiguous

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71 For a recent overview on the benefits of discussion in a law classroom see 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(1) *The University of New South Wales Law Journal* 30.

72 Ad hoc or casual small group learning can be closely associated with the benefits of formative assessment through peer learning and feedback. It also provides a method to encourage social interaction in the law classroom, assisting in the creation of a positive socio-emotional climate.

73 Gordon Joughin, 'The hidden curriculum revisited: a critical review of research into the influence of summative assessment on learning' (2010) 35(3) *Assessment & Evaluation in Higher Education* 335, 337–8.

74 Keyes and Burns, above n 21, 359.

75 As Sadler has noted, acquiring proficiency in a skill 'require[s] practice in a supportive environment which incorporates feedback loops. This usually includes a teacher who knows which skills are to be learned, and who can recognise and describe a fine performance, demonstrate a fine performance, and indicate how a poor performance can be improved: D Royce Sadler, 'Formative Assessment and Design of Instruction Systems' (1989) 18(2) *Instructional Science* 119, 120. Note that this is consistent with social learning theory particularly with respect to Vygotsky's emphasis on the need for a more knowledgeable 'other' to guide learning.

76 See, for example, Kift, '21st Century Climate for Change' above n 10, 13.

77 Elizabeth Handsley, Gary Davis and Mark Israel, 'Law School Lemonade: or Can You Turn External Pressures into Educational Advantages?' (2005) 14(1) *Griffith Law Review* 108, 126.

answers, that require well-developed judgment to arrive at'. Collaborative learning reforms students' concepts of knowledge and authority.[78]

Secondly, appropriate scaffolding of small group learning – for example by beginning with ad hoc or casual groups, then introducing cooperative learning, then collaborative learning and finally TBL as a capstone activity – may assist in reducing law students' negative perceptions of 'group work'[79] and facilitate the realisation of the putative benefits associated with small group learning. A reason suggested for law student resistance towards 'group work' is that they may lack the skills[80] or confidence[81] to adequately navigate the potential problems associated with group learning.[82] A related reason may be that even if students have the skills, and no predisposition to individualism, they have had negative group work experiences previously,[83] such as being placed in groups and then provided with little assistance in relation to how to make the groups functional.[84] We hypothesise that by introducing progressively more *structured* small group learning into a program supported by clear rationales and mapped to outcomes which extend the relevance of the task beyond mere assessment to encompass expectations of professional life, along with explicit instruction regarding how to navigate the group dynamic, student self-efficacy and motivation would improve as skills are developed and practiced. Identifying the wider relevance of the activity beyond the purely 'academic' can encourage a deep approach to learning, helping to obviate the risk of students adopting a surface approach when an assessment task is seen simply as a 'hoop to be jumped through'.[85]

We suggest that as different forms of small group learning emphasise different learning outcomes, students' engagement may be increased by explanation of these different outcomes, and how these learning outcomes and the choice of small group learning format form part of a deliberate development of skills across a degree program. Future research providing empirical evidence of the impacts of a stepped and structured approach to small group learning would be beneficial.

Finally, as has been alluded to in previous parts of this paper, law teachers may need to familiarise themselves with the types of small group learning and the theory and rationales underpinning them so that the appropriate type for specific learning contexts can be used. Keyes and Burns have noted that teachers are often uncertain about using small group learning

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78 Reilly, above n 21, 603.

79 Research indicates that law students are particularly prone to reacting in a negative manner when presented with small group learning tasks. For some Australian research see Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law. A Report Commissioned by the Australian University Teaching Committee* (Australian University Teaching Committee, 2003) 302, 372–3, available at <http://www.cald.asn.au/docs/AUTC_2003_Johnstone-Vignaendra.pdf>; Castles et al, above n 28, 143; Hardy, above n 28, 207; Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future', (2004) 26(4) *Sydney Law Review*, 537, 553. For a key US study see 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.

80 See, for example, Zimmerman, above n 29, 1007; Jane Burdett, 'Making Groups Work: University Students' Perceptions' (2003) 4(3) *International Education Journal* 177, 178–9; Castles et al, above n 28, 146; Maurice Phipps et al, 'University Students' Perceptions of Cooperative Learning: Implications for Administrators and Instructors' (2001) 24(1) *The Journal of Experiential Education* 14, 19.

81 Keyes and Burns, above n 21, 365.

82 For an empirical analysis of reasons for students' resistance to group work at law school, see Alex Steel, Anna Huggins and Julian Laurens, 'Group Work in Australian Legal Education: Do LLB and JD Students' Attitudes Differ?' (2014) *Sydney Law Review* (forthcoming).

83 Dana, above n 65, 85.

84 Phipps et al, above n 80, 20. Reilly argues that '[b]ecause law students left to their own devices are not trained in complex interaction and collaborative skills and tend to adopt parallel work strategies rather than truly collaborating, legal educators have a professional responsibility to teach collaborative learning skills': Reilly, above n 21, 604.

85 Chris Rust, 'The Impact of Assessment on Student Learning: How Can the Research Literature Practically Help to Inform the Development of Departmental Assessment Strategies and Learner-Centred Assessment Practices?' (2002) 3 *Active Learning in Higher Education* 145, 150. Of relevance to this article, Rust notes, at 147, that often a course unit may be rewritten with clearer learning outcomes. However, the assessment tasks often remain the same, with the result that the actual linkages between assessment and the learning outcomes are weak. In turn students are unable to determine what the linkages between outcomes and assessments are, frustrating deep learning aspirations. Similarly, Fitzgerald has argued that students can become disconnected from the learning process if they are unable to ascertain what the values of the curriculum are: Fitzgerald, above n 35, 78.

because of their own limited experience with it.[86] Reflecting upon introducing collaborative learning into a Constitutional Law subject, Reilly observed:

> As well as the project worked, I must admit that I went into it and designed it with no basis except my own experience with group learning and teaching. Only afterwards did I research the learning theory. This strikes me as a somewhat backward approach – one that others may prefer not to emulate. With a fuller understanding of the hows and whys of collaborative learning, theory, and practice, I have been able to analyse the success of my Constitutional Law project and improve the collaborative learning experiences for future classes.[87]

Sifris and McNeil's reflection on their introduction of small group learning to a Property Law class provides further insights:

> When the idea of small group learning was introduced to students, the information provided was sparing and in general terms [Sifris and McNeil also note that at this early stage they themselves were to some extent unaware of the potential benefits and difficulties]. With hindsight, and with the benefit of the insight provided by the case studies, it would have been preferable for additional and more specific information to be available to students to provide them with a firmer foundation ... and for better mental preparation for the tasks ahead.[88]

Moreover, as was foreshadowed in Part II, achieving congruence between the assessment and outcomes of individual subjects and the educational goals of the program as a whole necessarily involves commitment from a significant proportion of staff in the faculty.

VII. Conclusion

Keyes and Burns argue that there are important 'theoretical, practical and pragmatic reasons'[89] why small group learning should be part of legal curricula. In addition to its enhancement of the academic and social aspects of student learning, it has the potential to contemporaneously and efficiently develop law students' collaboration skills, which are desirable for the workplace.[90] In the current regulatory climate, there is increasing expectation that law schools will be able to demonstrate students' acquisition of collaboration skills, and we argue that this is best achieved through a stepped and structured whole-of-curriculum approach.

The type of assessment profoundly influences how and what students learn.[91] If we accept that a goal of education is to promote deep learning, pedagogical activities that support its achievement should be utilised.[92] By identifying four different types of small group learning, this paper seeks to assist Australian law teachers in developing appropriate activities that realise the well-recognised deep learning and skills development benefits associated with this type of active learning. Ad hoc, cooperative, collaborative and TBL approaches to small group learning vary in terms of their degree of structure and emphasis of assessment. The integration of these approaches in an incremental progression across legal curricula holds considerable promise for optimising students' acquisition of collaboration skills. In turn, this provides a solid basis for demonstration of students' learning pathways to the Threshold Learning Outcome of effective collaboration.

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86 Keyes and Burns, above n 21, 364, 379.

87 Reilly, above n 21, 601.

88 Sifris and McNeil, above n 28, 216.

89 Keyes and Burns, above n 21, 357.

90 See for example, Kift, '21st Century Climate for Change', above n 10, 6. See also Hewitt, 'Producing Skilled Legal Graduates', above n 21, 87–9.

91 Graham Gibbs, 'Using Assessment Strategically to Change the Way Students' Learn' in Sally Brown and Angela Glasner (eds) *Assessment Matters in Higher Education* (SRHE & Open University Press, 1999) 41; Penny Nightingale et al (eds), *Assessing Learning in Universities* (Professional Development Centre, University of New South Wales, 1996) 7; Joughin, above n 73, 340.

92 Chloe J Wallace, 'Using Oral Assessment in Law: Opportunities and Challenges' (2010) 44(3) *The Law Teacher* 200, 201; Ramsden, above n 47, 182.