Let Them Eat Cases! Bridging the gap between school and degree level learning.

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To students who have failed their first university assignment, it is of little comfort to be told to 'present analysis' or to 'engage with the materials' for such feedback assumes students already possess an ability to read and absorb the materials. The trouble is that A-levels or equivalents do not require students to be independent learners, or to be able to engage in close, critical, scrutiny of lengthy and complex texts. Faced with reports that students are unable to cope with the volume or complexity of materials, a common temptation is to respond by shaving courses: cutting down reading lists or providing secondary avenues into core materials. While this can be popular with time-pressured students we advocate the opposite approach: re-thinking lectures, seminars, and curricular structure to tackle complex legal texts at the outset. In particular, we advocate the (re)introduction of primary sources to the classroom, guiding early stage law students in their use of the materials. Our evidence draws from three teaching interventions in which we made reading cases the core of the learning project. We begin by reporting on a residential widening participation programme which used *Miller v Secretary of State for Exiting the European Union* [2017] UKSC 5 as its foundation. The success of this programme led us to integrate the approach into a second widening participation scheme and to the teaching of a core first year module. These experiences have reinforced our initial impressions: the skills gap between high school and the degree does not require us to alter the level of our content. It requires us to redesign courses to help our students bridge the gap.

Keywords: Legal education; teaching methodology; skills gap; case law; analytical skills

'Let them eat ca[ses]'

Upon being informed that her subjects were starving as a result of bread shortages, Queen Marie Antoinette is said to have replied: "Qu'ils mangent de la brioche"—(loosely) "let them eat cake". Although there is no reliable record of the event,[1] the phrase was taken to illustrate the Queen's ignorance of famine conditions and the poverty of her subjects. In truth, the phrase was probably misattributed. It has been suggested that the phrase had been known a

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[1] Lady Antonia Fraser, *Marie Antoinette* (Weidenfeld & Nicolson 2001), 160. Fraser actually argues that Marie-Antoinette was extremely unlikely to have uttered the 'lethal phrase', given her commitment to the people and charitable spirit.

century earlier and could be attributed to the Spanish princess, Marie-Thérèse, in slightly different form: "if there was no bread, let the people eat the crust of the pâté".[2] Whatever the provenance, the phrase is frequently invoked to capture ignorance of, or obliviousness to, a problem.[3] This is how we adopt (and adapt) it here.

Those of us who have chosen to undertake a career in legal academia are often as ignorant of the plight of students new to the discipline as these European Royals were of the lives of their subjects. The very fact of our current employment suggests that we have a highly developed ability when it comes to reading and digesting complex legal texts and, presumably, have been able to do so for most of our education.[4] Given our comfort with the medium, we may find it difficult to empathise with the student who says that they find reading legal judgments counter-productive or impenetrable. It is easy to shrug off their concerns as ones that will remedy themselves; all these students need to do is read more, and read deeper. But to students who fail their first university assignment, it is little comfort to be told to "present analysis" or to "engage with the materials" for this assumes an ability to read and absorb the materials as a prior skill.[5]

This problem is not new. Chanock reported problems around students misinterpreting feedback comments at the turn of the millennium—particularly comments relating to analytical skill.[6] Most teachers now adopt the practice of supporting such comments with examples, but this is still premised on an expectation that students will be able to recognise and *do* analysis, once explained. Our experience in the classroom has led us to believe that secondary schools do not train students in these skills. Most first year law students that we speak to give us the impression that their A-levels (or equivalents) were mainly about memorising and rehearsing material. Other legal academics and secondary school teachers have reported the same.[7] A generous conclusion as to the reason behind this lack of preparedness could be that law is simply "qualitatively different from other A-level subjects".[8] But this assumes that A-level law students would have an innate advantage, a

[2] ibid.

[3] The phrase has long been invoked to highlight the impact of government decision over the poorest citizens in society. See eg 'Let Them Eat Cake' *New York Times* (5 October 1972), <https://www.nytimes.com/1972/10/05/archives/let-them-eat-cake.html> accessed 9 July 2019.

[4] John Biggs and Catherine Tang, *Teaching for Quality Learning at University* (4th end, McGraw-Hill Education 2011), 5: [some students] 'virtually teach themselves; they do not need much help from us. Academics like [these students]—indeed they were once [like these students] themselves—so they tend to assume that [they] represent how most students learn, and they teach accordingly.'

[5] Sally Kift, Karen Nelson and John Clarke, 'Transition Pedagogy: A Third Generation Approach to FYE' (2010) 1 International Journal of the First Year in Higher Education 1.

[6] Kate Chanock, 'Comments on Essays: Do Students Understand What Tutors Write?' (2000) 5(1) Teaching in Higher Education 95.

[7] Nicholas J McBride, *Letters to a Law Student* (Pearson 2017), 15: 'I am not sure how much schools do nowadays in helping their students to *think* – students I meet say that much more emphasis is placed on rote learning and regurgitating information' (original emphasis); Martin Stephen, 'UK Schools are failing on higher education preparation – so universities must help' Times Higher Education (London, 9 May 2019) <https://www.timeshighereducation.com/opinion/uk-schools-are-failing-higher-education-preparation-so-universities-must-help> accessed 10 May 2019.

[8] S I Strong, *How to Write Law Essays and Exams* (OUP 2018), 2.

belief that many lecturers delight in dispelling at the start of the new academic year.[9] In fact, the comparative superficiality of the A-level (GCE) law syllabus when compared to the LLB is evident from the government guidance, which explicitly weights the assessment objectives towards the students that "demonstrate *knowledge and understanding* of the English legal system and legal rules and principles" (emphasis added).[10] Instructions on an A-level Law exam paper correspondingly ask students to "explain", "outline", "describe" or (less frequently) "discuss" a topic.[11] The examiner's report confirms the expectation that students provide an "explanation" but nowhere requires any analytical content.[12] Indeed, while "explanation", "explain", "explained" or "explaining" are mentioned thirty times in the sampled report, neither "analysis" (in any variant) nor "critical" are mentioned at all. Similar conclusions can be reached when considering the requirements of marking schemes for other subjects commonly taken by those applying for degree level study in law, such as Government and Politics,[13] History[14] and English Literature.[15] This overview supports the conclusion that A-levels commonly sat by future law students do not require them to be able to engage in close, critical, scrutiny of lengthy and complex texts, still less to be independent learners.

This problem is compounded by the relatively new challenge of the "student consumer".[16] An unsurprising result of charging for higher education is that many students now understand their university education as "primarily a commodity they must possess to access a consumer life by obtaining a well-paid job".[17] Following interviews with full-time undergraduates, Nixon et al reported the depressing conclusion that "spoon-feeding is

[9] See eg Katie King, 'Should I Study A-level Law if I want to do a Law Degree?' (26 June 2017, *Legal Cheek*) <https://www.legalcheek.com/2017/06/should-i-study-a-level-law-if-i-want-to-do-a-law-degree/> accessed 16 April 2018.

[10] Ofqual, 'GCE Subject Level Conditions and Requirements for Law' (Ofqual/16/5982) 8 < <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/523072/gce-subject-level-conditions-and-requirements-for-law.pdf> accessed 16 April 2018.

[11] See eg AQA, AS Law 'Unit 1: Law Making and the Legal System', Tuesday 16 May 2017: <https://filestore.aqa.org.uk/sample-papers-and-mark-schemes/2017/june/AQA-LAW1-QP-JUN17.PDF> accessed 16 April 2018.

[12] AQA, AS Law 'Unit 1: Law Making and the Legal System. Report on examination' (2160 June 2017) <https://filestore.aqa.org.uk/sample-papers-and-mark-schemes/2017/june/AQA-LAW1-WRE-JUN17.PDF> accessed 16 April 2018.

[13] AQA, AS Government and Politics 'GOVP1 People, Politics and Participation. Mark Scheme.' (2150 June 2017) <https://filestore.aqa.org.uk/sample-papers-and-mark-schemes/2017/june/AQA-GOVP1-W-MS-JUN17.PDF> accessed 12 December 2018

[14] AQA, AS History 'The Age of the Crusades, c1071-1204, Component 1A: The Crusader States and Outremer, c1071-1149. Mark Scheme' (7041 June 2017) <https://filestore.aqa.org.uk/sample-papers-and-mark-schemes/2017/june/AQA-70411A-W-MS-JUN17.PDF> accessed 12 December 2018

[15] AQA, AS English Literature A 'Paper 1 Love through the ages: Shakespeare and poetry. Final Mark Scheme.' (7711/1 June 2017) <https://filestore.aqa.org.uk/sample-papers-and-mark-schemes/2017/june/AQA-77111-W-MS-JUN17.PDF> accessed 12 December 2018

[16] Elizabeth Nixon, Richard Scullion and Robert Hearn, 'Her majesty the student: marketized higher education and the narcissistic (dis)satisfactions of the student-consumer.' (2018) 43 (6) Studies in Higher Education 927; Mike Molesworth, Elizabeth Nixon, and Richard Scullion, 'Having, being and higher education: the marketization of the university and the transformation of the student into consumer' (2009) 14 (3) Teaching in Higher Education 277.

[17] ibid Nixon et al, 928.

expected and challenging tasks are unacceptable".[18] The hypothesis is stark: students are unprepared for university level work, and are apparently less willing to get themselves up to speed than legal academics expect them to be. Our findings contest this position but we agree that the new and growing pressures in higher education might tempt us into unhelpful teaching styles. For example, the modern higher education 'market' brings with it an obsession over student satisfaction—a new central imperative of the higher education institution.[19] Without experience of deep reading of complex texts,[20] first year students (and beyond) regularly report stress around the jump in standards and expectations.[21]

The simplest reaction (and one that might be attractive to a time-pressured law teacher[22]) is to ignore the problem altogether, denying that the perceived skills gap is a problem for tertiary education at all.[23] But that brings us back to Marie-Antoinette and Marie-Thérèse.[24] We do not suggest that many law teachers consciously adopt this position (indeed subscribers to a legal education journal are especially unlikely to do so) but some intermediary options may lead (unconsciously) to the same effect. For example, faced with reports that students are unable to cope with the jump in the volume or complexity of materials, one solution is to introduce foundation or entry level skill building courses. Such courses can be extremely valuable, but often sit alongside the core curriculum rather than being integrated within existing modules. By doing so, they risk being seen as of secondary or purely instrumental importance by students, rather than of value in their own right. Another temptation might be to shave courses by cutting down reading lists and/or providing secondary avenues into core materials.[25] Such an approach can be popular with time-pressured students,[26] and may even become incentivised by stronger student satisfaction

[18] ibid, 933.
[19] Nixon et al (n 16) 929; Hilary Sommerlad et al., *The Futures of Legal Education and the Legal Profession* (Hart Publishing 2015).
[20] Stephen (n 7)
[21] As long as a decade ago, it was reported that a combination of first year teaching and practices left law students feeling 'isolated, disorientated [and] disengaged': Maureen F Fitzgerald, 'Rite of Passage: The Impact of Teaching Methods on First Year Law Students' (2008) 42(1) The Law Teacher 60, 60.
[22] Zaynab Sabagh, Nathan C. Hall & Alenoush Saroyan, 'Antecedents, correlates and consequences of faculty burnout' (2018) 60 Educational Research 131. While not drawing an explicit correlation between stress and student satisfaction, at 146 Sabagh et al suggest that future studies should 'examine factors specific to the academic profession, such as pressure for publications or positive teaching evaluations (e.g. among pre-tenure faculty), as well as institutional policies, and teaching- and service-related demands.'
[23] One author (unfairly, we think) characterises university teachers as being unwilling or unable to bridge this skills gap: Strong (n 8) 2.
[24] As Biggs and Tang have argued, 'blame-the-student' theories of teaching are not an excuse for poor teaching—they represent a challenge for good teaching: John Biggs and Catherine Tang (n 4), 18.
[25] A recent Society of Legal Scholars newsletter includes an 'Undercover Academic' segment which admits that course material "tends to be of an ever-simplified nature … one often finds oneself simplifying assessments and carefully measuring out dollops of knowledge (with practical tips) to be employed in addressing the simplified assessment." 'The Undercover Legal Academic: A Spotlight On Our Students', (2019) 58 *The Reporter: The Newsletter of the Society of Legal Scholars* 4.
[26] See eg Leone Richmond, 'Student part-time work increases' (London, *Times Higher Education*, 2 September 2013) <https://www.timeshighereducation.com/news/student-part-time-work-increases/2006956.article> accessed 30 August 2018.

scores. But this is contrary to what most law teachers intuitively hold to be effective learning processes.

> Marketisation … increases the pressure to be seen to be responsive to student desires, wants and 'needs', despite the ancient insight that seeking the learner's satisfaction extinguishes more enduring intellectual development through challenge, struggle and problem-solving.[27]

Not only is course-shaving counter-intuitive based on law teachers' professional judgement, it also risks reducing the curriculum to a point where it no longer meets the requirements of the most recent QAA Benchmark Statement for Law.[28]

We argue that, instead of paring courses down, we need to re-think lectures, seminars, and the curricular structure as a whole; redesigning them around activities with the express purpose of building the skills necessary to tackle complex legal texts from the outset. In essence, this is 'constructive alignment'—asking students to engage in the learning activities required in the learning outcomes.[29] In particular, we advocate the reintroduction of primary sources to the core curriculum classroom (beyond intensive skill-building courses) and guiding early stage law students in their use.[30] We believe that demystifying primary sources in this way can increase student confidence, enabling students to take control of their learning.[31] In this way, we also equip students with skills that can address the analytical or evaluative shortfalls highlighted by assessment performance.

The remainder of this paper will report on a project aiming to bring cases back to the heart of the learning project. We argue that there are four main reasons why this method of study should again be seen as being of paramount importance when learning the law, relating to encouraging analytical thought, facilitating intertextual analysis, nurturing contextual awareness and, finally, the innate superiority of primary sources. We move on to consider how, from our experience, a curriculum based on seminars and lectures can be reimagined in a way that makes reading cases the core of the learning project. This rethinking will use as its basis our experimental approach at the 2017 Law strand of the PARTNERS Summer School, a residential widening participation programme hosted by Newcastle University, which used

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[27] Nixon et al (n 16) 929; David Kember and Kam-por Kwan 'Lectures' approaches to teaching and their relationship to conceptions of good teaching' (2000) 28 Instructional Science 469; Donna Kain, 'Teacher-centred versus student centred: Balancing constraint and theory in the composition classroom. (2003) 3(1) Pedagogy 104.

[28] Benchmark standards include an ability to, amongst other things, 'engage in critical analysis and evaluation', 'study in depth and context substantive areas of law' and to present 'a reasoned choice between alternative solutions and critical judgement of the merits of particular arguments'. We believe that shaving course material may have the unintended consequence of hampering graduates' ability to meet these benchmark requirements. QAA Subject Benchmark Statement for Law (July 2015) §2.4 <http://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/sbs-law-15.pdf?sfvrsn=ff99f781_10> accessed 12 December 2018

[29] ibid 11.

[30] An early effort to bridge the skills gap is important, given the impact of poor first year performance on student attainment: M Torenbeek, EPWA Jansen and WHA Hofman, 'Predicting first-year achievement by pedagogy and skill development in the first weeks at university' (2011) 16(6) Teaching in Higher Education 655.

[31] John Hattie, *Visible Learning: A Synthesis of over 800 Meta-analyses Relating to Achievement* (Routledge 2009).

the Supreme Court's recent decision in *Miller* as its foundation.[32] We believe that the project was a success, and have integrated the approach into other areas of our teaching. This paper will therefore move on to consider the success of the method in a second Widening Participation scheme overseen by Newcastle Law School and the transferability of the method to large cohorts of first year students in the lecture theatre.

Why require students to read cases?

Degree level *legal* education requires and relies on a significant amount of self-study involving synthesising knowledge through deep and critical engagement with multiple complex texts. Law students "not only have to learn law … [they] have to learn *how* to learn about law":[33] The student's mind "must from the first day of his studies be adjusted to the acceptance of authority, and at the same time it is the fundamental object of all academic studies to teach him how to question it."[34]

> If you are a lawyer advising a client who has a problem, you may look up a textbook and find that, according to the book, the law is against your client. But you don't just put the book back on the shelf and tell your client, sorry, the law is against you, there's nothing I can do. … Very often, if you look at the cases cited in the footnotes, you will find that the law is not as clear as the book suggested. Indeed, sometimes the judgments which I and my colleagues write require the textbooks to be substantially re-written. So, at the very least, if you research the point, you may find that there is a contrary argument which you can use in negotiating a solution on your client's behalf.[35]

This account, given by Lord Reed to students in Hong Kong, explains a clear (if instrumental) advantage of reading cases, but we identify some others. Some of the most obvious are as follows:

(1) Analytical support. Cases provide a demonstration of difficult legal issues and the possibility of disagreements in the interpretation of the law. Judgments can offer an incomparable insight into (a) the court's reasoning in the instant case; and (b) the likely direction of travel in future cases in the field. Students of Tort law, for example, should be aware that courts apply an incremental approach to the development of

[32] *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, [2018] AC 261.

[33] Lord Reed, Speech at Inauguration Ceremony of the Law Association (Hong Kong University, 15 March 2018) <www.hkcfa.hk/filemanager/speech/en/upload/1203/Lord%20Reed's%20Speech%20at%20Inauguration%20Ceremony%20of%20the%20Law%20Association%20HKU.pdf> accessed 25 August 2018.

[34] Otto Kahn-Freund, 'Reflections on Legal Education' (1966) 29 MLR 121, 124.

[35] Lord Reed (n 33). In similar vein but with a comparative approach, see John Henry Merryman, 'Legal Education There and Here; A Comparison' (1975) 27 Stanford Law Review 859, 873-874. For the original introduction of 'case method' see C.C.Langdell, *A Selection of Cases on the Law of Contracts* (Little, Brown & Co 1871) building on Langdell's case method see e.g. Russell L. Weaver, 'Some reflections on the case method' (1991) 11(2) Legal Studies 155; Todd D. Rakoff and Martha Minow, 'A Case for Another Case Method' (2007) 60(2) Vanderbilt Law Review 597.

certain areas, preferring to hug the coastline of previously decided cases.[36] If the facts of a given problem question engage such an area, it would be difficult to present a strong analysis without a clear understanding of prior judicial reasoning.

(2) Intertextual analysis. All too often, law students present arguments without reference to the leading authorities. Such a 'blind spot' in student work is symptomatic of narrowly consulting lecture notes and textbooks, ignoring the cases themselves. Inappropriate stylistic choices can also be explained in this way. Value laden positions in student work would give way to neutrality much sooner if the writer had greater exposure to the professional style.

(3) Contextual awareness. Law is neither made nor developed in a vacuum.[37] While some principles can be learned in isolation, lawyers must be aware of the wider socio-political context of legal developments. To take a recent example, the political dynamics surrounding the 2010 general election, the threats to the Human Rights Act from the political right, the Brighton Declaration and the prisoner voting saga may all have had an impact on judicial reasoning in human rights cases.[38] Thus, the extent to which a court might be likely to declare an incompatibility between domestic law and the European Convention on Human Rights may say as much about the socio-political pressures as it does about the nature of the declaratory power itself.[39] A narrow understanding of the facts and the outcome, gleaned from a textbook or lecture slides, is unlikely to furnish the student with this level of contextual understanding.

(4) A superior learning resource. By their nature, judgments are focused on a specific legal question. This means that they frequently do a better job of explaining underlying principles, defining legal terms or situating a case in the field than, say, a broadly pitched textbook. The principle of open justice has also contributed to clearer reasoning, since judges have become more aware of their responsibilities to make decisions intelligible to the wider public.[40] Consider, for example, the Supreme Court judgment in *Miller*,[41] which included lessons on: the UK's relationship with the European Union;[42] the constitutional background of the UK;[43] the relationship between prerogative powers and treaties;[44] and dualist theory.[45]

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[36] See eg: *An Informer v A Chief Constable* [2012] EWCA Civ 197 [57], where Toulson LJ explained that the claimant *'was not able to cite any case reasonably analogous to the facts of the present case in which a duty of care to prevent purely economic loss has been recognised'*.

[37] *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997.

[38] Helen Fenwick, 'An Appeasement Approach in the European Court of Human Rights?' UK Constitutional Law Blog (5 April 2012) <www.ukconstitutionallaw.org/2012/04/05/helen-fenwick-an-appeasement-approach-in-the-european-court-of-human-rights/> accessed 22 July 2017; Alan Paterson, *Final Judgment: The Last Law Lords and the Supreme Court* (Hart Publishing 2013) 232: 'Certainly Strasbourg has shown signs of being aware of the Tories' distaste for Strasbourg (eg over prisoners' voting rights, and the deportation of alleged terrorists).'

[39] See eg *R (Chester and McGeoch) v Secretary of State for Justice* [2013] UKSC 63; [2014] 1 AC 271.

[40] Lord Neuberger, 'No Judgment – No Justice', First annual BAILII Lecture (20 November 2012) <https://www.supremecourt.uk/docs/speech-121120.pdf> accessed 14 December 2018.

[41] *Miller* (n 32), [2].

[42] ibid [13]-[33].

Despite these advantages, it is not uncommon for students to admit that they do not read cases.[46] The cynical hypothesis would be to characterise students as lazy or under-motivated. An alternative might be to see the reluctance to read as an inevitable product of growing pressure on student time.[47] We take neither view. Instead, we suspect that a combination of factors, identified above,[48] leads to students simply underestimating the importance of reading for their course.[49] If they are aware of it, then we believe they do not possess the skills necessary to successfully do it. Both, if true, can be addressed.[50]

Re-thinking lectures, seminars and the curricular structure

Given their cost-effectiveness as a means of conveying information to large cohorts, lectures can dominate law school learning.[51] With some exceptions,[52] lectures also tend to be the first contact students have with a subject, so it is not surprising that they are used to outline the framework of a topic. Education is seen as a journey, progressing from the easier to more difficult. The progression is the job of the student, being required to fill in the detail through prescribed and non-prescribed further reading. The approach can work when students engage as 'deep learners' but works less well when students are inclined to take a 'surface' approach to learning.[53] It is now widely recognised that the 'sage on the stage' lecture style tends to encourage or reinforce passive learning and, by extension, the surface learning we seek to avoid. Learners' acquisition of knowledge in a lecture tends to be 'superficial', partly because lectures are "ephemeral affairs that have to be consumed immediately";[54] students therefore

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[43] ibid [40]-[46].
[44] ibid [47]-[59].
[45] ibid [55].
[46] See eg Alison Bone, 'The Twenty-first century law student' (2009) 43(3) The Law Teacher 222, 235 (figure 8): around half of the students questioned reported not reading the cases because they felt able to rely on textbooks for the same information.
[47] See eg National Union of Students Scotland 'Silently Stressed: A Survey into Student Mental Wellbeing' <https://www.nus.org.uk/en/news/silently-stressed-report-reveals-soaring-mental-ill-health-rates/> accessed 26 February 2018; In the US context: Jerome M. Organ, David B. Jaffe and Katherine M. Bender, 'Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns' (2016) 66 Journal of Legal Education 116.
[48] See, for example, Chanock (n 6) on opaque feedback; McBride (n 7) and A-Level syllabi (n10-15) on the lack of analytical skills required prior to commencement of the LLB; Nixon et al (n 16) on the marketisation of higher education and the subsequent financial pressures placed on students identified by Richmond (n 26)
[49] Simon A Lei et al, 'Resistance to Reading Compliance Among College Students: Instructors' Perspectives' (2010) 44(2) College Student Journal 219; Mary Margaret Kerr and Kristen M Frese, 'Reading to Learn or Learning to Read? Engaging College Students in Course Readings' (2017) 65(1) College Teaching 28.
[50] Our suggestion could also benefit the under-motivated or time pressured law student, since the focus is on emphasising the *value* of reading primary texts. A part of this suggestion is that it can actually be more efficient to go direct to the primary texts than to rely on textbook or lecture breakdowns.
[51] Anthony Bradney, 'Lectures' in Chris Ashford and Jessica Guth (eds), The Legal Academic's Handbook (Palgrave 2016), 9.
[52] On flipped learning generally, see Higher Education Academy, 'Flipped Learning' (18 May 2018) <https://www.heacademy.ac.uk/knowledge-hub/flipped-learning-0> accessed 30 August 2018.
[53] Ference Marton, and Roger Säljö, 'Approaches to learning' in Ference Marton, Dai Hounsell, and Noel Entwistle (eds.), *The Experience of Learning* (Scottish Academic Press 1984); John Biggs and Catherine Tang (n 4), 5-7.
[54] Bradney (n 51) 9.

passively receive rather than apply or engage with knowledge.[55] Fitzgerald's evidence of lecture impact is particularly familiar: interviewed students described the lecture method as "professor talking and students taking notes"—"useful at conveying information" but "not engaging".[56] Used in this way, lectures are unlikely to develop one of the law student's key skills: critical thinking.[57] It is not surprising that students are prone to seeing the law degree and legal knowledge as simply "a body of rules", the delivery of which is driven by "an epistemology of objectivism".[58]

The answer, we suggest, is buried in another of Fitzgerald's findings: "most students suggested that the law professors' role did not include giving students advice about … how to read cases…".[59] Unsurprisingly, then, "most students had very little idea about why they were reading the cases".[60] A vicious cycle is established: it was the "volume of materials and the difficulty in reading the cases" that led most students to rely on lectures to "find out what was important".[61] We decided to try to escape this cycle before it began, by introducing an intensive curriculum based around in-depth analysis of a single case to one of the Widening Participation programmes undertaken by Newcastle University.

The *New* Newcastle Summer-School Model

Our pilot group were students admitted through a widening participation route. The skills gap is often perceived as being especially acute among these students,[62] perhaps due to differences in social and cultural capital.[63] More importantly for us, though, was the fact that widening participation students were less likely to have been trained in the requisite skills and

[55] Rohan Havelock, 'Law studies and active learning: friends not foes?' (2013) 47(3) The Law Teacher 382, 383.

[56] Fitzgerald (n 21) 66.

[57] QAA, 'Subject Benchmark Statement, Law' para 2.4(i) <http://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/sbs-law-15.pdf?sfvrsn=ff99f781_10> accessed 26 February 2018: 'A graduate of law with honours has demonstrated … intellectual independence including ability to ask and answer cogent questions about law and legal systems, identify gaps in their own knowledge and acquire new knowledge, and engage in critical analysis and evaluation'; John O Mudd, 'Thinking Critically about Thinking Like a Lawyer' (1983) 33 Journal of Legal Education 704; Caroline Owen and Jessica Guth, 'Troubled Times Indeed: Critical Thinking in Law Schools.' (Society of Legal Scholars Conference, London, September 2018).

[58] Fitzgerald (n 21) 66.

[59] ibid 67.

[60] ibid 69.

[61] ibid.

[62] The success of widening participation programmes has also been to diversify the student body, changing the composition of the undergraduate population. See e.g. J Webb et al, 'Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales' (Legal Education and Training Review 2013), 234 <http://letr.org.uk/the-report/index.html> accessed 14 January 2015; Other explanations as to why the problem is more acute among widening participation students exist, e.g. Vik Loveday 'Working-class participation, middle-class aspiration? Value, upward mobility and symbolic indebtedness in higher education' (2015) 63(3) Sociological Review 570; Diane Reay, Gill Crozier and John Clayton (2010) '"Fitting in" or "standing out": working-class students in UK higher education' (2010) 36 British Educational Research Journal 107.

[63] See e.g. Diane Reay, Gill Crozier and John Clayton, '"Strangers in Paradise"? Working-class Students in Elite Universities' (2009) 43(6) Sociology 1103; Lucinda Ferguson, 'Complicating the "holy grail", simplifying the search: a critique of the conventional problematisation of social immobility in elite legal education and the profession' (2017) 51(4) The Law Teacher 377.

that the summer school group would be fresh from A-Level study. Thus the group presented the opportunity to test whether this approach to legal education could succeed amongst a cohort with no prior experience of degree level learning or of using the skills that were the focus of our teaching design. Our hope was that, if the method could succeed here, our pilot would demonstrate that students studying for pre-entry qualifications are capable of dealing with complex legal texts a standard above their educational levels. If our sample were found to be capable of performing at this level, then there would be no reason to believe that our method could not be equally successful amongst students who have already been admitted to the LLB. These students also provided us with a closed control group, allowing us to be more confident in attributing any variation in student performance to our new method. With this in mind, we radically redesigned the curriculum and teaching methods used in the PARTNERS widening participation summer school run by Newcastle Law School.

Background to the Summer School

The PARTNERS scheme has been running for several years, and is designed to give students from non-traditional university backgrounds a taster of what life would be like should they choose to study a particular subject at university.[64] If a student's attendance at the academic sessions and performance in the assessment prove to be satisfactory, they become eligible for a reduction of the standard A-Level entry offer. This is granted on the understanding that the summer school provides a means by which academics are able to accurately assess a student's potential for degree level study. By providing a learning environment that is unconstrained by the A-Level curriculum, we can reliably see whether students possess the inherent learning potential needed to successfully study the law. To this end, the programme is designed—so far as it is possible—to mirror the style of teaching typically used on the undergraduate law degree.

The two-week course begins with several lectures on the key material and concludes in small group seminars. As would be the case on the degree programme, summer school students are encouraged to use the seminar to answer some set questions and engage in discussion about the materials covered. This attempt to mirror the undergraduate experience is further built into the law strand of the summer school in the form of a written assessment, which participants must submit for marking within two weeks of the final teaching session. Being delivered as a two-week block of "intensive teaching",[65] the PARTNERS summer school is necessarily more condensed than a university lecture series. The accelerated learning schedule also means that we cannot rely on key skills developing with time and practice. This fact, combined with reports that first year students find dealing with cases and other complex legal texts difficult, led us to design a programme that would develop that skill at the outset.

[64] Eligibility criteria, including metrics for assessing whether a student can be classified as being from a non-traditional background, can be found on the website for the PARTNERS Academic Summer School, <http://www.ncl.ac.uk/schools/partners/summer-school/> accessed 26 February 2018.

[65] W Martin Davies, 'Intensive Teaching Formats: A Review' (2006) 16 Issues in Educational Research 1, cited in Ian Ramsay, 'Intensive Teaching in Law Subjects' (2011) 45(1) The Law Teacher 87, 90.

The 2017 Re-structure

Our redesigned programme was based entirely on one long and complex case: *Miller v Secretary of State for Exiting the European Union*,[66] chosen precisely because it was too recent to have been the subject of prior learning. It was also a case that we hoped the students would have had non-academic exposure to—and would have a preconceived opinion about. The true dispute in the case centred around whether the government was legally required to seek the approval of Parliament before being able to trigger Article 50 of the Lisbon Treaty, or whether it was able to do so unilaterally through the Royal Prerogative**.** Media speculation around the case had, however, somewhat eclipsed this narrow question of law and had spun the case into one in which unelected judges, acting as "Enemies of the People",[67] were using their inherent bias as members of the metropolitan elite to frustrate the will of the people as expressed in the referendum on the United Kingdom's continued membership of the European Union. By choosing this case, we were therefore able to engage with students on facts with which they may have believed themselves familiar, but which may have been significantly distorted by reporting which did not accurately reflect the nature of the case.

Since our primary aim was to increase student confidence in tackling cases, we gave each student a printed copy of the judgment. We wanted the students to work out the anatomy of the case for themselves, so we chose the neutral judgment. This excludes any headnotes or analysis added by law reporters. While we think it would be useful to work towards lessons in the use of these materials, we wanted students to focus on the primary source in the first instance. We integrated time into the lectures which was dedicated to the express purpose of reading entire paragraphs of the judgment. For example, a precursor to understanding the tensions in *Miller* is a basic understanding of the UK's (legal) relationship with the European Union. After a quick sketch of the EU and its membership, we went directly to the case and asked the students to read the first paragraph of the majority judgment:

> On 1 January 1973, the United Kingdom became a member of the European Economic Community ("the EEC") and certain other associated European organisations. On that date, EEC law took effect as part of the domestic law of the United Kingdom, in accordance with the European Communities Act 1972 which had been passed ten weeks earlier. Over the next 40 years, the EEC expanded from nine to 28 member states, extended its powers or "competences", merged with the associated organisations, and changed its name to the European Community in 1993 and to the European Union in 2009.

We focussed on this paragraph as our starting point to convey—immediately—two messages to the students. First, the students see themselves as learning basic points of law from a case

[66] *Miller* (n 32).

[67] James Slack, 'Enemies of the People' Daily Mail (London, 4 November 2017) <http://www.dailymail.co.uk/news/article-3903436/Enemies-people-Fury-touch-judges-defied-17-4m-Brexit-voters-trigger-constitutional-crisis.html> accessed 26 February 2018.

and they see themselves as engaging with the case for this purpose on day one. Second, the case is being used as a primary source of learning, rather than being referred to as 'further' reading, once the basics are in place. We did not ask the students to do any more reading of the case that night, although they were told that we would continue to refer to this case every remaining day.

We know in hindsight that some students did what we expected them to do: they tried to read more of the case that evening. A few reported this fact to us and said that they were not sure what it was really offering them or what the 'important' parts were. Fortunately, this is exactly as we had designed the process to work. This approach reflects Kolb's experiential learning cycle, (concrete experience, observation and reflection, the formation of abstract concepts and testing in new situations) and places particular weight on student observation and reflection.[68] Thus the first lecture of day two was an introduction to reading complex legal texts. The main outcome of the session was to introduce the 'complexity' that students would need to confront and to demystify these sources; students were aware from the previous day that cases contained this information, so the following session built on this liminal concept by demonstrating exactly how reported cases address and engage with their subject matter. To that end, we considered examples from other cases with more relatable facts, such as *Bebb v The Law Society*.[69] We also explicitly addressed the problem identified by Fitzgerald (above) in the sense that we included advice about *how* and *why* law students should read cases.[70] To achieve this, we worked through the framework of the case in the style of a workshop. Students were asked to look through the case and identify: what *court* it had been decided by; the number and names of the *judges*; the *legal issue*; the *legal outcome*; and where they would find the *legal reasoning*. This approach ensured students were taking the lead in identifying these relevant facts, and our answers were offered only after a period of investigation and discussion on their part. Unsurprisingly, the most difficult elements for students to work out proved to be the legal issue and the legal reasoning. We broke these down with them by directing them to certain paragraphs. Eventually, it was possible to crowd-produce a basic case summary.

With the basics in place, we were able to increase the intensity of the sessions. The following lectures were designed to flesh out the legal issue and the legal reasoning. We continued to use the case as the primary resource but here we provided some scaffolding in the shape of more traditional lecture content. This choice reflects the possibility that, for a student that is not used to working in this way, reading complex texts will be tiring. This also enabled us to probe into more difficult passages. For example, an overview of the theories of administrative law allowed us to tackle the difficulties surrounding the legalisation of political issues, as seemed to influence Lord Reed's dissenting judgment:

[68] D. A. Kolb, *The Learning Style Inventory: Technical Manual* (McBer & Co 1976).
[69] *Bebb v The Law Society* [1914] 1 Ch 286.
[70] Fitzgerald (n 21) 67.

> [C]ontrols over the exercise of ministerial powers under the British constitution are not solely, or even primarily, of a legal character, as Lord Carnwath JSC explains in his judgment. Courts should not overlook the constitutional importance of ministerial accountability to Parliament. Ministerial decisions in the exercise of prerogative powers, of greater importance than leaving the EU, have been taken without any possibility of judicial control: examples include the declarations of war in 1914 and 1939. For a court to proceed on the basis that if a prerogative power is capable of being exercised arbitrarily or perversely, it must necessarily be subject to judicial control, is to base legal doctrine on an assumption which is foreign to our constitutional traditions. It is important for courts to understand that the legalisation of political issues is not always constitutionally appropriate, and may be fraught with risk, not least for the judiciary.[71]

We asked the students to explain what Lord Reed was getting at in this paragraph, in laymen's terms. The students were initially daunted by the task but took it on after a little group discussion time. We repeated the exercise with a number of other important and seemingly complex passages. For example, to explain the arguments around the consequences of triggering Article 50, we referred to the transcript of oral argument in the High Court. The students seemed to find this fairly straightforward. Given the relative unfamiliarity that the students reported with this case at the start of our course, we were surprised by this progress. We had been prepared to simplify our final lectures to lower the intensity of the reading exercises but the results fortified us in our original approach. Accordingly, the central focus of the final lectures returned to the Supreme Court judgment and the nuances in the reasoning of the majority and minority judges. We continued to guide the reading exercises but were able to make significant advances in the level of discussion. We considered, for example, the arguments around the source of EU Law,[72] the political force of a referendum,[73] and the differences in the interpretation of statutory language.[74] Finally, we were able to dissect some of the differences in the reasoning of the majority and minority judges on these points.

Results and Reflections

The results were very encouraging. By making the case itself the primary resource, we were not only able to educate the students as to the nature of the legal dispute in *Miller*, but were also able to create an environment in which they were able to confront their own prior understanding of the topic, assess the extent to which it was legally accurate and allow them to amend their opinions. With the students armed with an intimate knowledge of the case, the seminar session gave way to more nuanced discussion that we would not ordinarily expect to

[71] *Miller* (n 32), [240].
[72] ibid [78].
[73] ibid [124].
[74] ibid [179].

see in the early stages of study, let alone in a student's first seminar. Almost all the students demonstrated a detailed knowledge of the arguments in the case and many were able to pick apart the different approaches taken by the majority and minority judges. All students reported that the newspaper editorial we had assigned them to read for the seminar was "easy", "basic", or "overlooked important details" about the reasoning.[75] An academic blog post was also considered to be fairly "straightforward".[76] A journal article was thought to be 'more difficult' to penetrate but a number of students demonstrated an ability to articulate the main arguments and offer an opinion on whether or not these were persuasive.[77] Thus even the most complex text assigned as seminar reading was thought to be comprehensible.

In addition to the ad-hoc feedback on the seminar experience, we collected anonymous impressions of student understanding. Figure 1 shows the results of a 'word cloud' exercise. On the first day of the summer school, students were asked to write down three words that they associated with the *Miller* case. Students were instructed to use 'pass' if they could not think of a word. The words were plugged into word cloud software, which produced an image associating word size with frequency of use. Thus, the first day word cloud showed that (in order of frequency) students associated the case name with 'Brexit', 'Pass', 'Article 50' and the 'Supreme Court'. When the word cloud exercise was repeated at the end of the course, the result was a rich tapestry of relevant legal vocabulary. The experience and results fortified us in our initial impressions. Even pre-entry level students are capable of digesting cases and other complex texts, if we first give them the tools.

Figure 1: Word cloud reflecting student vocabulary about *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 at the start (left) and end (right) of the 2017 Summer School.

[75] Editorial, 'The Guardian view on the supreme court: a cheer for the judges' *The Guardian* (London 24 January 2017) <https://www.theguardian.com/commentisfree/2017/jan/24/the-guardian-view-on-the-supreme-court-a-cheer-for-the-judges> accessed 30 June 2017

[76] Mark Elliott, 'Analysis / The Supreme Court's Judgment in Miller' (*Public Law for Everyone*, 25 January 2017) <https://publiclawforeveryone.com/2017/01/25/analysis-the-supreme-courts-judgment-in-miller/> accessed 30 June 2017.

[77] Sionaidh Douglas-Scott, 'Brexit, Article 50 and the Contested British Constitution' (2016) 79(6) MLR 1019–40' and Sionaidh Douglas-Scott, 'Brexit and the British Constitution: An Update' on [2017] MLR Forum 004 <http://www.modernlawreview.co.uk/brexit-british-constitution> accessed 30 June 2017.

Wider application of the Summer-School model

Encouraged by the success of the method in the PARTNERS programme, we were curious as to the extent to which similar improvements in student performance could be achieved by translating the model to other teaching environments. We were able to trial the in a second widening participation scheme undertaken by Newcastle Law School, before introducing it into a core first year model to see whether improvements in summative work were possible across our intake beyond the initial widening participation context.

Application in Schools: The Excelsior Programme

The Excelsior Programme links the Law School with the Excelsior Academy in the west of the city. This part of Newcastle has historically been considered one of its most deprived areas and the schools which serve it teach students who have little to no history of higher education within their families.[78] The Excelsior Programme is designed to demonstrate to these students that higher education is an option which is open to them, and to give them the information they need in order to come to an informed decision as to whether or not they would like to study law at university. Both the target students and the ultimate aim of the programme are, therefore, similar to those of the PARTNERS scheme—and it is for this reason that the same case-intensive method of teaching was adopted.

The delivery of the sessions is, however, different to PARTNERS. Rather than being led primarily by academic staff, the emphasis in the Excelsior Programme is on co-delivery of material between academics and mentors recruited from the current student body at Newcastle Law School. Teaching is split in each session; the first half is comprised of instruction from academic staff to the whole cohort, and the second half is led by student mentors. This split delivery is designed to encourage Newcastle student mentors to share their own experiences of studying law with their mentees. This requires a significantly smaller group size than that which existed for the PARTNERS scheme. The Excelsior programme runs with four Newcastle mentors, each of whom has two mentees to guide for the duration of the programme. Sessions last for an hour and a half in total, and take place once a week over the course of eight weeks. Owing to the age of the participants, contact between mentors and mentees outside these sessions has been prohibited. Any advancement of participants' skills must therefore take place within these timetabled sessions. By introducing the method to this teaching environment, we hoped to assess the extent to which it could have an impact on students' analytical skills beyond the intensive and sustained environment provided by the initial trial.

As with PARTNERS, the academic sessions were focussed around a single case which was analysed in depth and which formed the basis of a written assessment to be submitted after the seventh of eight sessions. The case which formed the backbone of this programme was of lower profile to that used in PARTNERS—*R (Conway) v Secretary of*

[78] Public Accounts Committee, *Widening Participation in Higher Education (fourth report)* (2008-09, HC 226) 10: '…young people living in London are 50% more likely to enter higher education than those in the North East.'

State for Justice.[79] This High Court judgment was, at the time of the programme, the latest in a series of cases concerning whether or not the law should be changed in order to allow for medically assisted dying;[80] it was therefore chosen as, despite not receiving as much media attention as the *Miller* judgment, it nonetheless addresses a subject which is socially controversial and about which it was hoped the participants would be able to quickly express a 'gut feeling'. At the end of the taught sessions students were set a piece of written work on whether or not the law should be reformed so as to permit assisted dying. While the question was chosen to test their comprehension of the legal and ethical issues raised by the case, participants were encouraged to incorporate their own independent research into their arguments. They were given three weeks to complete the assignment, to encourage deeper exploration of the issues.

Although the students participating in both PARTNERS and the Excelsior Programme are drawn from similar backgrounds, the mode of delivery and nature of the academic sessions differ significantly. A corollary of this is that simply transplanting in-depth analysis of a particular case into any given programme of study was not guaranteed to be an unequivocal success. Despite this, the following observations can be made. Firstly, although unfamiliar with the litigation, the subject matter was one with which participants were all more than capable of engaging. They were confident in formulating their own opinions, and, having been allowed access to the University Library in their free time, demonstrated a high level of research building on the issues brought up by the case. Secondly, the mentees also stated that they benefited from speaking to mentors who were also unfamiliar with the case. Seeing students who were currently undertaking degree level legal study agonising over the minutiae of the judgment demonstrated to the school students that reading the law is not a skill which can be instantly perfected. Much like learning how to ride a bicycle or to play the piano, it is a skill which is honed and improved incrementally with practice. Students who were initially less confident seemed to blossom once this realisation settled in.

Lastly, there was a concern that in-depth scrutiny of a case may have been more suited to the PARTNERS timetable of delivery, which benefitted from running concurrently and without a long gap between the deliveries of material. However, this concern was not borne out when it came to assessing the quality of the written work submitted, all of which would have achieved passing marks or better on the LLB marking criteria. Our feeling is that the dedication of a significant part of the beginning of each session to 'warming up' the students (getting their heads back into the judgment) worked to overcome the more protracted delivery timetable.

The success of the Excelsior Programme suggests that the method is therefore transferrable beyond a model of intense teaching over one week, to one which is based around shorter sessions over several weeks. It can also be successfully applied to classrooms

[79] *R (Conway) v Secretary of State for Justice* [2017] EWHC 2447 (Admin) 54.
[80] *R (Conway) v Secretary of State for Justice* [2018] EWCA Civ 1431 was handed down after this programme of study, in June 2018.

which are more interactive, and do not revolve around a single lead 'tutor' – but rather have several co-leads at different stages of their academic careers.

Application in Undergraduate Lectures: the Public Law Module

The success of the reimagined PARTNERS programme fed into the restructuring of some undergraduate lectures. After all, this is where the problem had been identified and it was in respect of this student group that we were hoping to find a solution.

The target lectures represented a section of the first year 'public law' course, relating to judicial review. Students often report that the topic is difficult or daunting. Feedback for students' coursework questions on this topic commonly report that an answer 'suffers from key omissions', 'lacks analytical depth' or 'does not fully appreciate the application of a given legal principle or rule'. The feedback also tended to include the familiar advice to 'read more deeply (or widely)' or to 'engage with the cases' in more detail. If the students had not had *how* to go about this explained to them, here was a good example of telling them to 'eat cake'.

The restructured lectures followed a similar logic to the PARTNERS programme. The main difference was that the students could be assumed to have some prior understanding of the key constitutional principles, given that the topic was timetabled for delivery late in the second semester. The other crucial difference was that, instead of working through one case, a number of cases would be relevant to study. This move from whole cases to extracts reflects the object of study; while the learning objective in the PARTNERS Summer School and in the Excelsior programme was to introduce students to reading full cases, the study of judicial review provides an opportunity to develop the analytical skill required to make sense of a volume of judgments within a theme. The challenge then became selecting the best cases for the illustration of a principle or rule, and using those as the framework for the relevant lecture. This required some time investment, since it relied on the lecturer reading back through the cases and identifying which best articulated the point at issue. The leading cases were not always the answer.

Once the cases were identified, only those pages that were going to be read were printed, along with a passage explaining the facts and outcome. The passages that students would be required to read were annotated.[81] Primarily, this was to improve the efficiency of the exercise in class, as students would not need to spend a lot of time identifying the passage to which they had been directed. This also made it possible to demonstrate case reading techniques, in that it provided a type of 'walkthrough' to identifying relevant legal analysis within a large body of text. These extracts were also provided to each student, electronically and in hard copy. In order for delivery to occur in a way which is compatible with the diversity of learning needs present within the student body, it was important that these materials were released in advance of the lecture. In the lectures themselves, the reading exercises were divided across the scheduled session, with no more than two or three cases in each hour of teaching. It was hoped that the ability to preview lecture materials in advance,

[81] A copy of the materials can be requested from the authors.

combined with pauses in the lecture delivery, would provide respite for those students that find extended periods of concentration difficult; lectures in this style vary the pace of the session, engaging the students' attention when it may otherwise start slipping.[82]

The reading segments were chosen for their assistance in the illustration of legal rules or of how courts approach different factors in the application of those rules. For example, the question of whether a body is amenable to judicial review relies on establishing that it is performing "public functions".[83] Some bodies clearly satisfy this test (a Secretary of State, for example) while others cause more difficulty for the courts. The best way of illustrating how the courts go about the analysis is to look at a case in which the judges explain the problem and their reasoning process. Thus the students were directed to engage with this directly, by reference to paragraphs of a relevant case.[84] Where possible, a preference was exercised in relation to cases and passages containing references to other cases that the students had been directed to read in the same or previous session. The intention behind this choice was to demonstrate the advantages of reinforcement and intertextual analysis.[85]

Again, the initial reports were very positive; a number of students took the trouble to write and provide feedback on the unusual lecture style at the time of the lectures. One student wrote:

> Reading the cases in lectures is helping me to understand cases better, not just for public law but also for my other modules. This method has also made it easier in understanding the reading and concepts for this topic. … I am encouraged … to become better at reading law.

Another student reported that the method had assisted him in absorbing the material and, more importantly, had provided an insight into the justifications for particular legal developments. A number of students took the opportunity to comment on the style of lectures for this topic in the end of year (anonymous) feedback survey.[86] It is noteworthy that there was no negative feedback about this lecture style. A sample of comments making explicit reference to the technique follows:

— [E]xceptional teaching strategy… incorporated reading bits of the judgements[87] in cases that were in relation to the different aspects being taught. This helped me, not only in Public Law but also in [other modules].

— [H]andouts made learning more interactive, but also more encouraging to actually research and do more work outside of lectures.

— The interactive approach of engaging in reading is definitely a good addition. Although time is of the essence, the pace at which the lecture has

[82] Karen Wilson and James H Korn, 'Attention During Lectures: Beyond Ten Minutes' (2007) 34 Teaching of Psychology 85.
[83] Civil Procedure Rules 1998, Part 54.1.
[84] *R v Panel on Take-overs and Mergers, ex p Datafin plc* [1987] 1 QB 815 (CA) 826 and 845.
[85] Above, text after n36.
[86] Response rate 49% of 231 students in cohort.
[87] We have chosen to retain the original text of the feedback comments, which reveals that we still have some work to do in order to embed the legal spelling of 'judgment'.

been going is quite fast. But, nonetheless, engages the students to go for further independent research.

— Really liked the idea of reading extracts in the lecture. It made it easier to apply the skill of finding the key parts of the judgement in other modules as well, it also made the lecture much more engaging.

— The case reading exercises are helpful in independent learning.

— [U]seful … incorporating the cases into the hand out where we will read in the lecture. This helped with getting used to reading cases, being able to understand it and then applying it.

— Especially liked the reference to cases during lectures as it improves your ability to scan read and work on the spot.

Aside from student feedback, the clearest indicators of success were given by assessment results. The judicial review segment is assessed by way of a single problem question. The facts change each year but the assessment tests the same skills and the credit value of the assessment remains constant. Figure 2 compares the results of the same assessment exercise for the 2016-2017 cohort (traditional lecture delivery) and the 2017-18 and 2018-19 (both case intensive lecture delivery). While acknowledging the limitations of a relatively small data sample, these results at least indicated a clear increase in the proportion of students achieving results in the higher grade boundaries than for the same segment in earlier year, with a significant reduction in the proportion of fails and the preponderance of marks moving up to the 2(i) classification in 2017-18 and 2018-19. Thus the results indicate that we were able to improve the results across the spectrum, picking up the trailing edge as well as seeing improvements at the upper end.

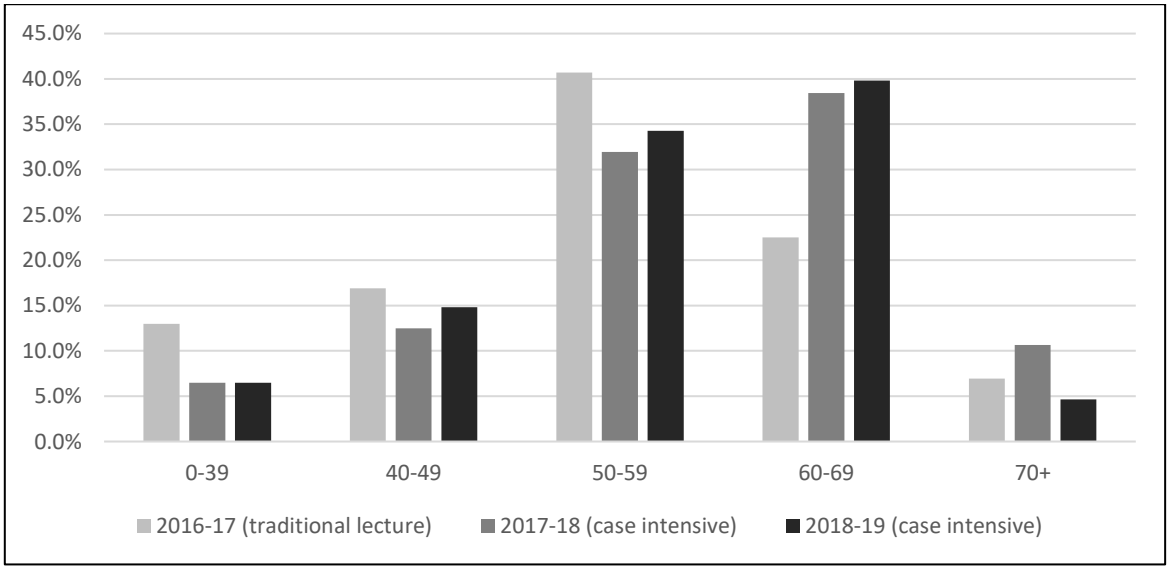

Figure 2: Percentage of students scoring in each grade category, in the 2016-17, 2017-18 and 2018-19 cohorts.

This experience suggests that our method can work in large undergraduate lectures and we would encourage our peers to consider experimenting along these lines in their own course. We caveat this by recognising that engaging students in different lecture methods can be challenging. Asking students to move outside their comfort zone and to try different

learning techniques in lectures may well prove to be unpopular.[88] This is inevitable if students do not understand *why* the method has been adopted.[89] Thus we emphasise the importance of a lecturer explaining their choice of teaching method, particularly if it is different to what has gone before.

Conclusions

Degree level legal education requires and relies on students to engage with multiple complex texts. Reading primary texts, in particular, is likely to encourage analytical thought, facilitate intertextual analysis, nurture contextual awareness and very often provides the clearer possible explanation a rule or principle. Aware of these benefits, law teachers might be tempted to suspect that reluctance to engage with reading materials is a product of indolence on the part of the student. Given the breadth of the problem in any given year group, and the commonality of feedback reflecting shortfalls in reading effort or ability, we were persuaded to take a more sympathetic view. It is not that students do not want to read legal texts; it is that they do not know how to do it, or why they are doing it. Accordingly, our idea was to rethink lectures, seminars, and curricular structure to tackle complex legal texts at the outset. In particular, we experimented with the reintroduction of primary sources to the classroom, guiding early stage law students in their use of the materials. This was the basis of our 2017 PARTNERS Summer School programme, where we placed the Supreme Court judgment in *Miller* at the core of the learning process. Aware as we are that correlation is not necessarily the same as causation, the apparent success of that project led us to repeat the approach in a second Widening Participation scheme (the Newcastle Law School Excelsior Programme), as well as in first year undergraduate lectures. While both should be seen as 'in development', the initial results have fortified us in our initial impressions that our method is a successful way of encouraging engagement with cases. By using the knowledge that students already possess as a conduit by which legal texts can be introduced, we found that students were more than willing to persevere with further complex legal texts. We do not believe that even the 'student-consumer' is indolent or apathetic, students may simply not arrive in the legal academy with the relevant prior skills. But the skills gap between high school and the degree does not require us to alter the level of our content; we must simply design our courses to bridge the gap. For it is only once we have *taught* students how to work with these materials that we can legitimately expect them to 'eat' them.

Declaration of Interests

No potential conflicts of interest are reported by the authors.

[88] Fitzgerald (n 21) 68: 'In one large group setting, a professor asked students to form small groups of two or three students and discuss a particular issue. One student described this method of teaching as avoidance of their teaching job.' At the same time, a few of Fitzgerald's interviewed students did recognise that 'more engaging teaching methods could result in better learning.'

[89] This much has been recognised for near enough 40 years. See e.g. William Ray Heitzmann, 'Encouraging Students to Read "Suggested Readings"' (1976) 24(3) Learners and Learning 166: 'The materials should be introduced and their value explained.'