

HOW NOT TO THINK IN AN EMERGENCY

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« On dirait que l'épreuve épidémique dissout partout l'activité intrinsèque de la Raison... »

Alain Badiou, *Sur la situation épidémique* (Paris : Éditions Gallimard, 2020)

“Thinking and emergency action are deeply compatible.”

Elaine Scarry, in David. V. Johnson, “Thinking in an Emergency: An Interview with Elaine Scarry” (13 July 2011), *Boston Review*, online: <<http://bostonreview.net/elaine-scarry-thinking-in-an-emergency>>.

In February 2019, I attended the Harry Crowe Conference on Academic Freedom in Toronto. I was there on behalf of the faculty association that I represented at the time. It was a doubly dissonant experience. Surrounded by dedicated faculty association representatives from all over Canada, it was tempting to imagine that all was well in academe; it could hardly be otherwise, if these conference participants were at all representative. Yet each successive presentation painted a more alarming picture of academic governance than the last.

Peter McInnis, a labour historian at St. Francis Xavier University (SFXU) and Vice-President of the Canadian Association of University Teachers (CAUT) executive, delivered the conference's concluding remarks. I was particularly keen to hear what Professor McInnis would say. Professor McInnis taught at SFXU, where as an undergraduate I fell in love with anthropology and statistics and paleoecology and the study of Canadian colonialism and genetic algorithms and about twelve other subjects. But I had another, more pragmatic interest in Professor McInnis's closing thoughts. As this otherwise stimulating conference drew to a close, its

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whole remained less than the sum of its parts. Could Professor McInnis tie it all together?

Strike!

Successful faculty associations, like all successful unions throughout Canadian labour history, must be prepared to strike, Professor McInnis explained.

Academic freedom, he continued, isn't just an idea. Academic freedom is a way of being alive as a scholar and teacher.

Collegial governance, Professor McInnis concluded, must be *practiced*, not merely preached.

It had all come together, and I'd understood, I thought, something transformative. As it happens, I didn't understand, not really.

But I do now (I think).

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Nearing the end of March 2020, law faculties across Canada muddled through the process of transitioning and finishing up our courses online before turning our minds to the question, especially fraught in faculties of law during even the best of times, of how to grade our students, only this time during a global pandemic.

Only two months removed, I recollect the experience at the law faculty where I taught at the time as being frenzied, almost hysterical, and at the same time hollowed out, not only literally but also intellectually, ethically, culturally. It was an exceptional time, an emergency. We were all trying to do our best. But it was hard to think.

Our Dean appeared oddly preoccupied with the prospect of student protest; I say "oddly" only because, despite his preoccupation, the thought of consulting our students appears not to have occurred. Instead he presented faculty members with a choice ostensibly out of nowhere – a kind of *sui generis* Overton window – among three options: (1) the status quo ante; (2) universal Pass/Fail; or (3) a "hybrid" of the first two options,

what one of my first-year law students would later call the “worst of all worlds.”

The Dean exhorted faculty members to contact him individually – “please don’t reply-all” – to express our preferences. There was almost no support for the status quo ante, the Dean reported back. Neither was there unanimous support for a universal Pass/Fail approach. We would accordingly proceed with some version of the “hybrid” approach, he decided. No one thought to question whether the “hybrid” model attracted more or less support than universal Pass/Fail had. It was an emergency, and it was hard to think.

Up until that point, the grading question hadn’t really captured my complete attention. Pedagogically, I was preoccupied with completing my course and capping off my students’ learning experience. But the “hybrid” approach, no matter how exceptional our predicament, smacked of the worst kind of policy, the kind that issues, not from principle, but from the interest-group politics of appeasement. The “hybrid” approach was designed to offer something to everyone. My intuition was that it would please no one.

Moreover, I was concerned that the “hybrid” approach, whereby students would be able choose between receiving an alphanumeric grade or a Pass/Fail designation after completing and reflecting on each of their exams, risked eroding academic integrity, which as a Faculty we hadn’t yet abandoned, at least not expressly.

I decided to survey my students, who, after all, had the most to lose. I presented them with the three options that the Dean had presented to us – status quo ante, Pass/Fail for all, or some ex-post mix of the two – and invited them to reply with their preferences and their reasons. Among those who took me up on my offer (over 80% of my class of 64 students), a supermajority (68%) preferred Pass/Fail for all on both ex ante and ex post fairness grounds.

I shared this finding with my colleagues, including the Dean. No one responded.

Meanwhile, I was feeling increasingly uneasy about imposing a grading scheme on my students that lacked both fairness and integrity. I was also growing uneasy by how little discussion that we as a Faculty were having

about our options and our values. And I began to think – slowly, in fits and starts, uncertainly – that the decision about how to assess my students’ learning was ultimately my decision to make, as a matter of collegial comity and academic freedom.

To pursue this strangely shaky thought, I wrote a memo to my colleagues to express my concerns about the “hybrid” approach and the governance process by which it had been adopted, and I specifically asked the Dean to speak to his understanding of his administrative authority to impose a grading scheme on individual faculty members. My understanding of academic freedom, I explained, was that it extended to the assignment of grades as an integral part of teaching. I then cited the definition of academic freedom stipulated in our own institution’s Collective Agreement:

The common good of society depends upon freedom in the search for knowledge and in its exposition. Academic freedom in teaching, scholarship and research at the University is essential to society. Accordingly, all employees, whether tenured or not and regardless of prescribed doctrine, are entitled to the exercise of their rights as citizens and to freedom in carrying out research and in publishing its results, freedom of discussion, freedom to teach the subject assigned in classes, freedom to criticize the University and the Association without suffering censorship or discipline. Academic freedom does not require neutrality on the part of the individual, but makes commitment possible. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base teaching and research on an honest search for knowledge.

This is a broad and robust definition of academic freedom. It does not specifically discuss grading, I allowed, but neither does it exclude grading, either directly or indirectly, the way it indirectly excludes from academic freedom the freedom to choose which classes we university teachers will teach.

I also shared the CAUT’s policy guidance specifically on the assignment of student grades:

Academic Freedom in the Assignment of Student Grades – CAUT Policy Statement

The assigning of student grades is an element of academic freedom, which includes the academic staff member's right to autonomy in establishing a pedagogical approach and assessment of student work.

An essential element of this academic freedom is that the academic staff member has the sole authority to assign student grades, keeping in mind the official grade appeal policies and procedures of the institution.

It is a violation of academic freedom for any administrative official unilaterally, arbitrarily, or outside of official procedures to influence, attempt to influence, or intervene in, the grading or evaluation of student performance by the academic staff assigned evaluation responsibility for a course or part of a course.

It is a violation of academic freedom to impose a mandatory grading policy which constrains or prohibits an instructor from issuing grades which he/she deems and can defend as reasonable.

* * *

There's a line near the very end of Giorgio Agamben's almost impossibly ingenious book *States of Exception* that I return to often when I'm trying to think about how to make space for transformation in our collective lives. Agamben says that true political action "severs the nexus between violence and law."

What Agamben means, I think, is that transformational action can only occur in those spaces where we insist upon thinking for ourselves, and where we give our own reasons in response to one another.

I try to think universities and faculties of law can continue to be such spaces.

I received three responses to my memo on academic freedom and the assignment of student grades, each from a senior faculty colleague.

First:

As we all know, academic freedom is never unlimited and with respect to grading, in particular, is constrained by university policies and college regulations. I had understood this to be a consensus decision rather than one that was being imposed, and would hope that all colleagues would respect it as such even if it is not what they personally would have chosen. If need be, though, I expect we can pass a motion adopting whatever arrangement is worked out.

Second (received three minutes later):

I agree entirely.

Third (received 12 minutes later):

I also agree.

No further discussion followed. Separately, however, another senior colleague responded to me directly:

I can tell that you feel strongly about this, Jason. We are all doing our best, under a fair amount of strain and with limited channels for communication, to make good choices for ourselves and the students. The Dean has been gently trying to move this towards common ground, and most faculty have settled on the hybrid approach as one they can live with. As we move forward, I see it as very important that we figure out how to come together as a college, in every way we can. I'm really hoping we can do that, even though there will be times we are each uncomfortable.

Difficult times, I replied, were “all the more reason to exercise our ability to think clearly, to demand transparent and compelling arguments and evidence, and to resist groupthink”. I hoped we might now begin to think through these issues together.

Alas:

“There are a number of assumptions in your email, Jason - assumptions that I simply don't agree with. I'm guessing that pursuing this conversation isn't going to change your mind.”

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Describing her book *Thinking in an Emergency*, Elaine Scarry explained that she had devoted her career to studying the problems that arise when populations suspend their responsibility for self-governing actions. People are often seduced into giving up on collective action and mutual aid by declarations of emergency – times are difficult, time is of the essence, there's no time to deliberate, there's no time to think.

As I concluded this essay in early June 2020, the university where I then worked remained closed “until further notice.”

The same might be said of our collegium.

Reflecting on Professor McInnis's powerful remarks on the practice of collegial governance, his point, I think, was altogether subtler, and more radical, than I'd originally understood. The suspension – and the silencing – of academic freedom can be entirely self-imposed.

All it takes is an emergency.