

ACCOMMODATE US ALL PLEASE: A CASE AGAINST THE STATUS QUO

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Over the past six years, I have taught every subject in the mandatory or core 1L curriculum in the Canadian JD as well as upper year seminars. I am not on a tenure-track. I do have a PhD and some publications, lots of community involvement and a great smile. But I am not competitive for tenure-track postings. I have not published enough or received significant grant monies. The more years that pass between the completion of my doctorate and the present, the harder it becomes for me to get a permanent job in the academy. That is my reality and a reality shared by many others. Precarious faculty are now under even more pressure to add value. But, I refuse to go back to legal practice because I enjoy my work as a teacher, researcher and intellectual. My comments on the question of teaching law in the Covid19 environment are shaped by this background.

A pattern has established itself in my professional life: My teaching contracts have been renewed at the last minute and I have found myself preparing to teach at least one course that I have not taught in the dying weeks of the summer more than once. As all legal academics will know, summer is *the* time you are trying desperately to think, research and write. Bouncing from contract to contract in my mid-forties is not exactly what I envisioned when I completed my PhD a decade ago. But, I have formed an identity as a teacher and a law school instructor despite the precarity of my position in the academy and I am thankful for that.² I have also never given up on research and scholarly knowledge transmission.

During term time, I strive to be student centered. Everything else, including research and service, takes a backseat during the schoolyear to the hours I spend in the classroom, in my office and on the phone or in video calls with students, particularly 1Ls. Students are perennially in

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² My experience as a full-time teacher of every subject in the 1L has been smoothed by the support of certain special colleagues. At UBC's Allard Hall in my first two years of lecturing it was Graham Reynolds' generosity in Property Law and Joel Bakan's in Constitutional Law. Two years later, at Dalhousie, far away from my family and home, Naomi Metallic, Kim Brooks and others reached out to me with enormous kindness. Now at TRU I am indebted to Janna Promislow, Charis Kamphuis, Nicole Schabus and many others for similar support. I would not have the clarity or insight that I now have without these treasured colleagues.

crisis, many experiencing mental health problems or feeling marginalized because of disability, race, gender or sexuality. Students also come to me for career and personal advice or to talk about politics and public engagement in a meaningful way. I love this aspect of my job. Many of my students gain my respect and admiration. Occasionally, a few demoralize me. Particularly those more concerned about grades than learning. But, I remind myself of the pressure students are under in the market model of legal education, and I soften. I also think of the need for universal design and a deeper imagining of equity diversity and inclusion than the one which is normally permitted. From what I can tell, the end of classroom teaching corresponding with the Covid19 pandemic will move more of this activity online, however it is not clear to me that it will improve some of the suffering or anxiety law students were already experiencing as part of their legal education, particularly in the 1L.

Similarly, the competitive, market-driven model of legal education was already in crisis, well before the arrival of the public health pandemic of 2020. It is likely that the pandemic has the potential to continue to exacerbate and deepen existing inequities among students and faculty. Surely, now is not the time for a competitive or social Darwinist view of competition for scarce resources such as jobs and grades. Surely now is also not a time to add pressure to students whose families are experiencing job loss or who may have families of their own. A lot of folks have kids at home while they are trying to do intellectual labour. Caring and intellectual labour are combined for many of us now on a 24/7 basis. It requires accommodation.

Against this backdrop, I have little time outside of course prep and the pivot to online to do much else. So, my experience of the pandemic as a law school teacher is not unlike my entire teaching career to date. Precarious. What I recognize is that students can also be more or less precarious. Under the present circumstances more than ever, vulnerable students are precarious in terms of their financial situation and connection to their families.

This year, by the time Covid19 hit I had already established a rapport with my students in the classroom so the transition online was more of a technological bricolage than a complete remake of the time-space continuum. I recognize that in the fall I will have to radically revise, reconceive and reshape all of my course content for online delivery. It will

not suffice to simply turn my lectures into endless YouTube videos or use sheer force of personality to compel students to the narrative of the course. It will now be necessary to leverage technology to reinvent the course as something else altogether. This will bring me outside of my comfort zone and away from the reading, writing and scholarship normally undertaken over the precious few months offered to me by the summer. But I owe it to the students.

Did I mention that my office is currently off limits to the pandemic and that my partner also works full-time in postsecondary education from home? And, oh yeah, my kids are five and ten years old! I worry that wherever I lean in at work one of my children is languishing in the other room. That is not a great feeling. When I engage fully with my child I worry that I should be doing course prep, service, research or writing. I check my email constantly; I worry if my contract will be renewed. Covid19 just intensifies all this. I remind myself constantly that students, support staff and other colleagues and their loved ones may be in similar circumstances, or worse.

When I first began teaching, I was struck by the cult of PowerPoints in students' imagination. I graduated from McGill in 2004 and do not recall the hegemony of PowerPoints having taken hold yet. I am not sure when the first iteration of PowerPoint found its way in the law school classroom but there can be no question that they came to be of such fundamental importance to law students and perhaps the whole human race that it was an open secret that no pre-tenure prof could dare teach a 1L course without PowerPoints.

The problem with PowerPoints is that students think they contain the germ of truth which they require to achieve success. When they find no such germ or kernel they are bound to be frustrated with the slides. No matter how voluminous or text intensive a law school course may be, it is not just a lot of words than can properly be summarized into a few more limited words on a slide. We should freely admit that both to ourselves and our students. It would be quite liberating. Will the current Covid19 necessitated move from the bricks and mortar classroom to the virtual one be an opportunity to solidify or critique the hegemony of PowerPoints?

These are themes toward which my mind drifts. I often think about them alongside questions about law school teaching and its role in the persistence of legal formalism and legal positivism as ideologies of absolute privilege in the traditional 1L curriculum. Let us admit the truth of this. Why else would we have open book 100% final exams sat in 3-hour increments in April if this were not the case? I am tired of trying to explain and justify this system to students and I see no evidence that this form of legal education is beneficial to students, the profession or the academy. So, the need for curriculum reform as much as universal design, even before Covid19, was obvious to me.

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The deeper questions, both before and after Covid19, are about whether law is a vocation requiring an instrumental education or a craft requiring a more complete ethical formation. What is depressing to me though is that students seem to become convinced before they arrived in law school that legal education is exclusively a question of learning the positive law and instrumentalizing it for the benefit of clients, hypothetical and real. This view strikes me as transactional and neoliberal in the extreme. This is especially true in a deregulated tuition environment in which the price of legal education swells relative to the lower income which can be expected in the first few years of legal practice and creates heavy debt loads unmanageable for students. The mental health and substance abuse effects of this are also fairly predictable. The most astute students always recognize these structural problems and remark on them. In the context of Covid19 and the transition to an online 1L curriculum in the fall (and likely beyond) I fear these tendencies will be worsened rather than improved. The bricks and mortar communities with living breathing people in them are the law schools, without the bricks and mortar we are exiled in some ways. So, we grieve and hope for a fulsome return to our classrooms, offices and communities at the same time as we plan for a different sort of immediate future.

As the Covid19 pandemic was unfolding in my own law school and the debate around the wisdom of pass/fail or credit/no credit response was reaching its apex, it was obvious to me that the world was rapidly changing, for the worse, in unpredictable ways. Students were looking to the faculty for leadership and for a model of how to handle decision making under pressure. It seemed important to me to dispense with the regular way of marking and allocating prizes for academic performance. Many students were desperate to be with their families out of the city and

province. Many faculty colleagues had care giving obligations now competing with their capacity to mark voluminous 100% final exams. I anticipate this type of debate will intensify in the fall, particularly in the context of what is sure to be an ongoing economic crisis, if not a serious recession.

Jobs for law school graduates will not be as plentiful as they once were. Indeed, the entire legal profession and the courts are currently reinventing themselves along with the rest of civil society, including the university, to adapt to the new reality of uncertain length. This period will not be easy and students will be more worried about distinguishing themselves from their peers than ever. Unfortunately, law firm recruitment fosters a competitive tension among students which will now be less offset by the bonds normally created in person by physical and embodied attendance in class and at law school events. Do we, as legal educators, want to be part of that? Are we still going to cling to our 100% finals in the 1L and to our preference for hypothetical and fact patterns to essay and more critical or reflective questions? Is any residual suspicion of writing or speaking or activism or research projects in the 1L curriculum really merited anymore? Was it ever?

What about the enormously rich world of Educational Technology, are we going to be supported to become informed and trained in our usage of these technologies? Are we going to learn about alternatives to expensive textbooks and access codes in the world of open learning? Are we going to think about collaborating across courses to reinvent the curriculum altogether? What better time to do this than now? I often ask students to re-imagine the 1L curriculum. How would they design it? How would they teach it? We begin with the taxonomy of the 1L subjects. Why insist on the nineteenth century categories of legal education?

These questions are more pressing now than ever. Once we have acknowledged the loss of our bricks and mortar law schools for at least a period of time, we can begin our experiment with building community, knowledge and skills online for the fall. But our horizon must be a future in which rethink our old conventions around marking, exams and even our commitment to the standard curriculum itself. The current public health crisis presented by the Covid19 pandemic is the first time law schools have been physically shut down in Canada and many other

jurisdictions globally since their founding, it is a moment not only for grieving but also for reinvention.