

ANALYZING THE EFFECTS OF COVID-19 ON LEGAL PEDAGOGY AND SCHOLARSHIP: A HURLY-BURLY IN FIVE- AND-A-HALF PARTS (A COLLAGE WITHIN A COLLAGE?)

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Part I - Introduction and trigger warning

I appreciate all of my colleagues in the legal academy, even when I disagree with you on everything. I hope you can read my work in the same spirit even when it is provocative or unconventional in substance and/or rhetorical form.

Part II - Not a question but a comment consisting of three sub-vignettes

In what appears to be an unusual act, I spoke today with a dozen law students from across the country about the impact of COVID-19 on legal education. They told me repeatedly of decisions about the path forward having been decided in highly centralized ways, of well-intentioned professors doing things that caused them enormous stress, and generally of real disconnects between law faculties and students over the response to present circumstances. Govern yourself accordingly.

In what is an expected act, I attended over the last two weeks some remotely delivered sessions about remote teaching offered by my university's teaching and learning centre. A consistent message was the preferability of asynchronous learning. That message was delivered through sessions presented synchronously, with the synchronous format presumably chosen for some reason by the instructors and/or the centre.

In what is a mandatory act, I have been sitting at home toiling here for months. I sit here barred from my office and access to the physical books located in my campus office or in the libraries. The latter long declined to offer any means of accessing their collections for research purposes during the same period when most businesses more nimbly began offering curbside pickup.

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Part III - The locked storehouses of knowledge

Locked libraries are a physical phenomenon. Locked minds may face more powerful padlocks.

Contemporary legal scholarship has had surprisingly little to say about the pandemic. Or perhaps that is not surprising. It may instead manifest more profound ironies.

The contemporary has been always on the search for what is new. The ironic institutional inertia of graduate legal education in Canada is not that it has held students to traditional subject matters but that it has impelled an ever-increasing proportion of students to the study of “law AND” and/or of the international transnational interdimensional X.

Those trained in interdisciplinary methods have had little to say when an emergency has leaders asking about the parameters of power in deciding on policies to deal with a pandemic. Some constitutional scholars last read the *Charter's* mobility rights clause in 1982, though they recall fondly that year that time began. Writing on freedom of assembly has been panned as a peculiar niche. Studying the principles of parliamentary democracies has been for old-fashioned anglophiliacs best embalmed in museums.

There are old books that say things about the exercise of power in emergencies. They are locked up in libraries. Modern minds of the legal academy have long been locked against any ongoing study of such silliness.

Part IV - Resilience from the beforetimes

Sam and Sally felt stressed about exams. The thought of writing short comments in semi-literate form to reflect what should have been months of learning made their nights filled with images of dragons.

The law school was courageously ready to slay the dragons. High-priced consultants were hired. An answer emerged.

A bill was sent. The law school put a puppy in the student lounge. Joy returned to all the realm. Sam and Sally rejoiced.

Next semester, Sam and Sally were stressed when asked questions in class. The thought of engaging in discussion on cases that should have been the object of hours of study made their days filled with worry.

The law school was ready to save them yet again. It found a law professor working on other things and told the professor to stop studying law and to study how to make Sam and Sally less worried. Grant applications were submitted. The money would flow. The academy would rejoice.

An answer emerged. A conference presentation happened. The advice went out to all the land.

Now Sam and Sally went to class, each equipped with an assortment of coloured security blankets so as to be able to signal different moods on different days. They went to class in a round classroom without frightening linearities. (The furniture fit awkwardly, but no matter.)

The first month of classes became a set of puppet shows to demonstrate the cases so that nobody would be scared of them. Sam and Sally took their notes by making sculptures with playdough. Instead of a legal writing assignment that would involve inherent stresses, they submitted an alleged artwork. Instead of old-style numerical grading, the artwork was passed around the faculty's boardroom—even as contractors carried out measurements to try to carve off all the corners and make the room into a proper spherical shape so that meetings need not be so stressful—and leading scholars felt the texture of the papier-mâché.

Finally, stress was gone and resilience achieved. Reports were filed. Awards were won.

Then came coronavirus...

Part V - Selected entries from my CV from the first week of #WFH While Shakespeare Was Writing King Lear and Isaac Newton Was Discovering Gravity

Braised eggs with leeks and za'atar (co-authored with Ottolenghi; indeterminate % contribution – he wrote a recipe and I applied it to the facts of my pantry, drawing some necessary distinctions from the prior *ratio*) (Condominium: Kitchen Productions, 2020).

Sourdough starter, rated 4A (commenced well until Reviewer 2 identified mold on a corner of the starter), not consumed but encouraged to reapply.

Salmon bisque from canned salmon (Condominium: Kitchen Productions, 2020 reproduced from prior production in Iqaluit: Visiting faculty kitchen 2020).

Part V-and-a-Half. Reflection Journal

The response of the Canadian legal academy to COVID-19 will be complex and also constrained by various institutional realities. It has implications related to institutional decision-making and student issues, to research and fields of scholarship, and to the possibly remarkable value of very traditional modes of pedagogy.

First, the normal sort of decentralized decision-making processes present in law faculties are not necessarily well geared for quick and nimble decisions. As a result, the initial phases of COVID-19 saw some highly centralized decision-making in many institutions combined with a relative lack of transparency on those decision-making processes. Many decisions have taken more account of innovative theories and less account of student realities than might have been intended.

For example, while a shift to pass/fail grading at many institutions was meant as a means of providing relief to students amid highly unsettled circumstances, a significant difficulty with pass/fail grading is that it actually works significantly against social mobility. Pass/fail grades on a law school transcript will have different implications for a well-connected student with a business degree than for a student from an unconventional background who was ready to demonstrate particular ability at law through a transcript.

Similarly, the adoption of a range of additional assignments to promote student engagement in the context of online learning may well have unintended negative consequences on students. While it may promote engagement, it may actually promote the expenditure of excessive amounts of time into particular assignments in ways that cause added stress, especially once each student is loaded up with assignments from each of five classes at a time.

The shift to the online classroom—itself questioned by some students who see it as being driven by administrative convenience more than definite medical needs if it is in place at the same time that many other establishments are open—must provoke a range of thinking. Some pedagogical theorists will argue for the use of predominantly asynchronous teaching. They may even argue for this on the basis of equality between students with variable opportunities to participate in synchronous learning online. However, to do so is to argue for a sort of levelling down. That everyone must give up synchronous learning due to the situation of some does not make sense. At the same time, there are balances to be struck so as to attempt to reach all students as effectively as possible.

Those thinking about various policies and pedagogical techniques would actually do well to do something rather uninnovative (even if innovative relative to current practices): speak with a range of real students. There may be surprises in what students say.

Second, and considering some impacts on research, I would note a concern in reactions that sent an apparent message that research—or, at least, library-based research—was optional. While great efforts were made to continue classes, few efforts were made to keep libraries functioning. Students working on research papers have had to work around this. Graduate students and faculty have had to do so for an increasingly extended length of time. Aspects of research projects were no doubt subject to being postponed but researchers may also have been too accommodating and given impressions that we did not need library collections. Such an impression in the hands of some administrators could have negative long-term effects.

A larger concern that could arise is how many ideas are locked up in libraries because they are not the subject of ongoing discussion. The situation has highlighted the need for ongoing attention to issues of law that are not necessarily always considered trendy. It is important to have scholars working on a balance of different issues, including on issues that may not seem as contemporary but that could always become important again. While this reaction will likely not be shared by some professors working in the trendier areas, there is an element of current circumstances that actually makes me think we need to return to more traditional scholarly fields.

Third, there may also be reasons to return to more traditional approaches in pedagogy as well. Perhaps surprisingly, some very traditional pedagogical approaches may be suited to the most contemporary times. However, some of these approaches have worked across a wide range of circumstances in the past. The use of a Socratic method, so long as done in a way that is more respectful of students than was sometimes the case, can support strong student engagement. Oxford-style tutorials are resource-intensive but they are what is enabling Oxford to plan to continue teaching this fall with relatively few changes. While Canadian schools do not have the resources for large numbers of two-student tutorial groups, the idea of asking students to engage with written material and then come to discuss what they have then written could actually be surprisingly well-suited to current circumstances. Reading deeply is a great form of asynchronous learning. For some reason, there have been trends to turn away from various methods on account of alleged stresses from them when these methods may actually be remarkably suitable and effective both now and in the future.

I will sum up with what will no doubt be both a controversial statement and controversial way of putting it. Perhaps we have innovated too much and current circumstances offer a real opportunity to return to what works better than is sometimes acknowledged.