Let Law be Law, and Let us Critique: Teaching Law to Undergraduate Students of Criminal Justice

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Abstract:

Pedagogy at law school in Canada typically follows a regimented structure. Apart from core courses, students are introduced to the mechanics of how to read, write and interpret law. Course offerings are said to equip the student with legal literacy, preparing the first year law student to engage in the various fundamentals of the first year core curriculum. Undergraduate teaching of law outside of the law school context does not provide the same rudimentary preparation. The most pressing issue in undergraduate teaching is usually the legal illiteracy of most undergraduate students whom are new to the field of law. An introductory criminal law course in a liberal arts university could never provide the kind of introduction to legal literacy that formal legal education mandates. The challenge then is for the instructor to provide a lens of analysis for the undergraduate student in order to make law valuable outside of the context of the goals of the legal profession. This essay examines strategies that undergraduate law teachers (outside of law school) can use to make meaningful the study of the criminal law for students who may never be bound for law school. In some ways the undergraduate law teacher is advantaged over the law professor in that she does not need to be bound by a positivistic faith in law's ability to solve problems. This ability to move outside of the self-contained nature of law allows for the potential of a civics education that is informed, critical and inherently analytical. These skills allow the teacher to find a new purpose for the teaching of law, which has ramifications for the manner in which one teaches and conducts research.

From 'Law in Law', to 'Law in Justice'

Before I began my career as a teacher of law in an undergraduate criminal justice program at the University of Winnipeg, I taught law school at one of Canada's leading law schools. I taught constitutional law to a class of 100 students, while also running weekly small tutorials of 8-10 people. Abiding by the traditions of common law teaching, I used casebooks and adhered to the case method of legal study. I accepted and taught the supremacy of our Constitutional documents. I mined the legal boundaries of the terrain that acceptably forms the substance of Canada's formal legal education system. Interaction with students was often Socratic, and always focused on the development of precedent and the relevance of the lectures to practice. Discussions with students outside of class during office hours consisted of questions about what would be on the final exam, how applicable that content was to the non-academic world, and discussions about how the materials would impact upon the student's integration into the "real world" of practice. Constitutional law was complex. And as a young teacher, staying on top of the legal analysis was a challenge in those early years. Students needed to know what the law was and how to think about it so that they could pass the exam, and, in some utopian fantasy I had created, use what I taught in practice. In reality, few students would use what I taught in their work. Most were not bound for careers as litigators, and those that were would most likely have a civil practice. Constitutional arguments must have seemed highly abstract to the majority of the students whom would move on to corporate/commercial practice of some sort. I had taught, intensively, the doctrine of Canadian constitutional strictures, and maybe (if I was fortunate) I had taught students about how to think about applying the Constitution. Our discussions were rarely critical. On reflection, had they been so more often, I would have found myself on the end of more than just the usual young professor inspired, student led coup – a rite of passage for many young law school instructors.

When I assumed my post in Winnipeg, a new terror overcame me. I was required to teach criminal law to non-law students. Typically our students were young, as young as 18. Most of them were not interested in law (though some aspired to law school, and a good amount aspired to work as non-legal practitioners of criminal justice). The students usually present as having completed the typical university survey style courses. In a half-year course I was expected to deliver not just a criminal law education, but some insight into the workings of the entire common law system. A panic set in. There was no way to equip these students with the tools to undertake a cohesive and comprehensive doctrinal analysis of law. How could I teach doctrinal analysis when the students did not recognize what a case was, what a statute was, and worse, what precedent was? Hindsight is 20/20 as the adage goes. I was focused on the wrong anxieties (anxiety being a necessary precondition of early career tenure track appointment).

Traditional law schools were beginning to question the formalism of their curriculum. Surely in the context of a non-law teacher in a liberal arts university, I had the freedom to develop an alternative curriculum – a way of thinking about law that respected doctrine but which did not get bogged down in its minutiae and complexities (the same features that require mastery in practice). I could let law school be law school. It was in my sophomore year that I had this epiphany, and I found inspiration approaching legal teaching from my colleagues in the Department, who were steeped in social science and humanities training. Let law be law, and let us critique. It seemed simple (almost like a paper title), but it was much the mantra that drove me towards the pedagogy I would employ in the law courses I taught. This essay is about the path I traveled (or was drawn down, depending on whether you believe in free will – clearly a discussion for another paper). Legal education itself was undergoing an existential crisis, and as an instructor in a criminal justice department, so was I.

In the coming pages I discuss the basics of legal education in Canada, some of its recent developments, and how those developments can provide non-law school instructors of law permission to engage in a different way of thinking about law. I then describe one method of thought that inspired me in developing a pedagogy of law in criminal justice and criminology, inspired by the theoretical work of Golder and Fitzpatrick (2009). I would never suggest that I am espousing some sort of orthodox approach to the study of law outside of doctrinal analysis. However, I do espouse that law is worth thinking about in terms other than doctrinal. I find utility in thinking about law as media – as a refraction and reflection of the social world (Jochelson and Kramar 2011). If one takes this leap, the study of law is opened up to tremendous inter-disciplinary scrutiny (or as we in the academy call it – "fun").

Legal Education in Canada – A Primer

Core legal education at the Canadian law school has historically been hotly contested and remains a subject of heated conversation in the law school context (Pue 1996; Rochette and Pue 2001). Nonetheless, and despite some incremental changes in recent history, curriculum at law school in Canada typically follows a regimented structure (Rochette and Pue 2001). Apart from core courses such as criminal law, torts, contracts and real property, students are introduced to the mechanics of how to read, write and interpret law. It is not unusual for students to be exposed to courses on 1) the relationship between law, administration and policy in Canada; 2) theoretical legal foundations; 3) approaches to legal writing; 4) approaches to legal advocacy; and 5) approaches to legal research. In tandem such offerings are said to equip the student with legal literacy; this training prepares the first year law student to engage in the various fundamentals of the first year core curriculum. Undergraduate teaching of law outside of the law school context does not provide any of this rudimentary preparation. The most pressing issue in undergraduate teaching is usually the legal illiteracy of most undergraduate students whom are new to the field of law. An

introductory criminal law course in a liberal arts university could never provide the kind of introduction to legal literacy that formal legal education mandates. The challenge then is for the instructor to provide a lens of analysis for the undergraduate student to make law valuable outside of the context of the goals of the legal profession. In some ways the undergraduate law teacher is advantaged over the law professor in that she does not need to be bound by a positivistic faith in law's ability to solve problems. This ability to move outside of the self-contained nature of law allows for the potential of a civics education that is informed, critical and analytical. These skills allow the teacher to find a new purpose for the teaching of law, which has ramifications for the manner in which one teaches and conducts research.

Ironically, accredited law school programs have been criticized as not providing students with enough rigorous technical legal training and as being deficient in core curricula (Rochette and Pue 2001). Despite these critiques of traditional legal education, a study at British Columbia Law School found that law students do not avoid "core" legal curriculum, and that indeed law students are exposed to instruction from practitioners for about 30 percent of their course load (Rochette and Pue 2001, 191). This is a particularly interesting finding at UBC Law School because it has endeavoured to modernize its curriculum to bring it into "the 21st century" with a more "global" approach to studying law (http://www.law.ubc.ca/). Included in this modernization is an expansion in course offerings, less reliance on 100 percent final examinations, more diversity in evaluation methods, more direct contact hours with instructors and a greater emphasis on legal research and writing skills development (http://www.law.ubc.ca/).

For the uninitiated reader it is instructive to consider what a first year legal curriculum at a Canadian law school looks like. There is of course considerable diversity across Canada, but a review of three large law schools – University of Toronto, Osgoode Hall and UBC reveals some striking similarities

in the "core curriculum". For example, University of Toronto provides preparatory courses in the form of legal methods, legal research and writing and requires that six substantive law course be covered (constitutional law, contracts, criminal law, legal process, property and torts); the program is designed to assemble a "wide range of views and diversity of perspectives on law and legal reasoning" (http://www.law.utoronto.ca/). Osgoode Hall also requires fulfillment of torts, contracts, criminal law and property law but it also requires students to complete Legal Process and State and Citizen: Canadian Public and Constitutional Law. While the former focuses on civil disputes, it is described as a skills-based course that provides intensive instruction in legal research and writing. The latter course teaches the student about the complex legal relationships between the state, individual and communities, rule of law, the role of the judiciary, statutory interpretation, the Charter, the division of legislative powers, as well as relationships between law and indigenous Canadians (http://www.osgoode.yorku.ca/). The program also now requires the completion of Ethical Lawyering in a Global Community which integrates the ethics training of the legal profession and places the study in a transnational context. The UBC law curriculum is quite similar, though it adds Transnational Law as a required course, as well as requiring completion of The Regulatory State which focuses on legal research and writing skills as well as providing the student with statutory interpretation training (http://www.law.ubc.ca/). Law in Context provides the student with legal history education, legal and political theory exposure and critical approaches to the law (http://www.law.ubc.ca/).

Despite recent changes in legal curriculum at law schools, the approach to legal education still adheres to values of lawyerly thinking that borrow heavily from United States traditions. Wes Pue writes of how Manitoba took early leadership of the development of legal curricula for budding lawyers, in the early to mid-1900s; despite the early failures, the initiative would ultimately became the national model for legal curriculum in Canada:

> Despite the law school's modest resources and humble start, the early board of trustees sought to put Manitoba at the forefront of North American legal education. Their professional vision incorporated all that was thought to be state-of-the-art amongst élite U.S.A. lawyers at the time: wholesale endorsement of the case method, a desire to make attendance at law school the necessary and sufficient method of qualification for the legal profession, an ambition to create a full-time staff of professional law teachers, and a pedagogical vision which encompassed "cultural" legal education imbricated within "practical" training. There were also early indications of a desire to raise admission standards, perhaps to the point of requiring that all law students hold university degrees prior to admission (Pue 1996, para 46)

The basic tenets of formal legal education of course remain in place today - the case method of study, a formal law school residency period of three years, a legal professorate that holds the practice in due regard, high entrance standards, and the preference for undergraduate education prior to admission. While the current tensions in legal education largely stem from law society dissatisfaction with practice readiness, there are eminent legal scholars who question whether current legal education is "narrower and more constrained than it should" be (Rochette and Pue 2001 at 190) and whether "The teaching of transient managerial and technological skills is edging out the basics of learning" (Rochette and Pue 2001, 190 citing Saul 1995, 15).

One of the central goals of first year law school learning is to educate law students to think like lawyers; references to this goal are readily found on law school webpages. The goal is cited as an "intellectual hallmark", and "a logical rigour that stands in stark contrast to the sloppy emotionalism of the nonlegal world" (Conley 2009, 1009). The goal is often seen as an inoculation to "prelegal", and "inferior" reasoning skills of non-law students (Conley 2009, 1009). Calls in Canada by the

Federation of Law Societies to further align law school training with the needs of the profession have met with resistance from professional associations of law teaching, and law and society. Yet even in the context of these spirited debates, organizations like the Canadian Association of Law Teachers and the Canadian Law and Society Association admit that the vast majority of students in law school are looking for practice based employment; the Associations seek a slower, deliberate and more thorough debate in respect of curricular change (Devlin *et al.* 2009).

The goal of training students to "think like a lawyer" also has its detractors. The goal has been problematized as not being value neutral at all and may "undermine empathy for people and their problems" and support "unjust power structures" (Conley 2009, 1009; Kennedy 1983; Williams 1991; Mertz 1996). The addition of legal perspectives courses (often ethics, professionalism, law and society, etc), or upper year courses involving advocacy, skills education training, and critical perspectives of law are often cited as attempts by law schools to ensure that the "suspension of personal values" as a law student is a "temporary heuristic exercise, not a permanent personality change" (Conley 2009, 1009).

Calls for change in the way law school education is deployed are growing more commonplace in the United States in seeking a "new integrated legal pedagogy" (Mertz 2011, 435). Mertz argues that "social science" is the "key bridge between linking theory and law practice" (Mertz 2011, 435) which could invoke more "ethical and practical training into the core" (435). Mertz notes that "sociological understandings of different practice settings can help the students understand where, when, and how model rules governing professional conduct might be more or less applicable to actual practice" (437; Chambliss 2000). The project Mertz advocates seeks to integrate "doctrinal, theoretical, practical and ethical knowledge while improving incipient lawyers' training into a new professional identity and practice" (437). This, Mertz argues, must be deployed "carefully and sensitively translated into

terms that make sense to practicing lawyer" (440). Despite the calls for change in legal curricula, even radical voices note that it is important that conceptions of the changing role of education on practice be employed cautiously since ultimately law is a profession that must be practiced. This has motivated scholars such as Conley to express a certain ill-ease in radically altering legal education:

> unless we who teach first-year [law] students are willing to use them as subjects in an epic experiment in change – and I am not willing to do that – then first-year legal education will remain substantially the same unless and until the law itself changes fundamentally" (Conley 2009, 1012).

It is apparent that legal education at law schools, even legal education that may be undergoing change, is geared towards the creation of 'better' practitioners. Mertz's relatively radical call for a social science shift in law school is advocated as fashioned sensitively and in a manner so as to not disrupt the professional orientation of legal education.

Legal Education Outside of Law School – A Reflection

In this context, the challenges facing legal education outside of the law school context are even more acute. It is virtually impossible in the criminology or criminal justice context to equip students with the background preparation necessary to understand the scope and complexity of law. Students of criminology and criminal justice will have little exposure to the vastness of law in other practice areas such as torts, contracts and the constitution. These students will not have any education in legal methods or writing. Their ability to research a legal problem will be unformed and they will have no training in writing legal memoranda, briefs, appellate advocacy documents or other documents of the legal practice. They will not be versed in basic legal writing conventions such as the order of operations of legal argument (often and variously described as ILAC or IRAC - Issues, Law/Rules, Analysis, Conclusion). These students will be

hindered by their limited understandings of organization of the courts and legal citations. Further shortcomings include that the undergraduate non-law student who seeks education in criminal law usually emerges in the classroom having been exposed to survey style courses in the main and having not be trained to engage, in depth, in analysis of law.

Each of these deficiencies could be cured through the creation of expansive law courses in criminology and criminal justice programs, but to what end? Students bound for law school will ultimately receive this training, and those who are not bound for law school (the vast majority of our students) will have no use for extended legal knowledge and advanced legal skills. The absence of the core law school training in the criminology and criminal justice educational context is, in short, not necessarily burdened by the positivist boundaries of legal practice nor by the constraints of legal education as a tightly defined pedagogical pursuit of law school. These boundaries are demarcations of analytical reasoning suited to legal practice.

However, these same limitations provide some interesting opportunities for students and teachers outside of the law school context. At the University of Winnipeg Criminal Justice Program students learn in a university that is situated in an urban environment. This has implications for the ways in which the student perceives the learning world. Students are exposed to the patrols of security guards, the gaze of the extensive security system, and the University's expansive attempts to keep the campus secure. They are acutely aware through the social world they inhabit (friends, family, University posters and public education blitzes about security, and media) that downtown Winnipeg is 'unsafe' and 'crime ridden'. These are common experiences for the University of Winnipeg Criminal Justice student. Indeed recent research suggests that Canadian post-secondary students are in general relatively fearful of violent crime relative to their American compatriots (Kohm *et al.* 2012). In a sense, the student enters the UW CJ program attuned to the environment in

which they study. However misinformed a student may be as to the extent and actuality of the situation of criminality in urban Winnipeg, they enter our program with knowledge that the University is seated in a 'high crime' neighbourhood, and they enter the Criminal Justice program open to further information. In the case of the University of Winnipeg, students begin justice studies for a number of reasons, but a proportion of them are destined for work in policing, border security, social work, institutional and community corrections, and a variety of social services; these are students whom are, for the most part, sensitive (if naive) to the conditions of the criminal justice system. In short, undergraduates entering a criminal justice or criminology program are interested about crime in a way that most law students (other than prospective defence counsel or prosecution) may not be.

The education of an undergraduate non-law school population also has the advantage of providing some basic legal education to a population that might otherwise not gain the knowledge. It is well established that legal literacy and access to justice are significant barriers faced by many Canadians, and have formed the basis of a number of legal education programs across the nation (Action Committee on Access to Justice, 2013; http://www.cba.org/CBA/Access/main/project.aspx). Winnipeg's Legal Help Centre is an example of one such program. According to the Centre its mission is partner with the community, increasing access to legal and social services for the disadvantaged by providing referrals, legal advice, education and information (http://legalhelpcentre.ca/). Such programs have been attempted in other jurisdictions. For example Quebec's Maison de Justice de Québec was a pilot project that sought to improve access to justice for community members who suffered gaps in legal knowledge and access (http://justicedeproximite.qc.ca/). In 2011, Quebec opened the Centres de Justice de Proximité as a means of providing information to citizens to navigate the complex web of the justice system (http://justicedeproximite.qc.ca/). Notably, this latest iteration of legal access measures in Quebec is being driven by the provincial government. These in-

itiatives are suggestive of major gaps in legal knowledge and access for Canadians. One could passionately make a case for basic legal education as mandatory in schools. Instead, I suggest that educating criminal justice or criminology majors in law improves legal literacy for these students and dovetails with the clarion calls of those who call for access to justice. This a particular benefit when our students move on to justice related work.

Pedagogical Reflections on Teaching Law in Criminal Justice and Criminology

The preformed knowledge that our students enter the program possessing also provides other pedagogical advantages. Many of my students are skeptical of the machinations of law. Many approach each class with critical questions designed to trouble the legal concepts that I teach. Since I am not preparing students to practice law, this provides me with an opportunity to not only equip students with legal knowledge but to welcome them to critically engage with the social problems that may inure from legislative and adjudicative decisions. We are given the freedom to pursue legal decision making not only with conceptions of precedent in mind, but with critiques founded in social justice, philosophy, political thought, history, and sociology. This freedom provides a unique learning environment in which to explore critical studies of law. As educators and students of criminal justice and criminology, not being bound by the positivistic machinations of how law must prepare one (i.e. law students) for the field, allows a tremendous opportunity for intellectual growth.

This freedom then permits legal education in criminal justice and criminology departments to move beyond the doctrinal approach taught at most law schools. Broadly, a doctrinal approach to the study of law is concerned with the disposition effects of law, or who has won the case and on what issues? Second, the doctrinist is concerned with the effect of legal decision making on precedent, and thus predictions can be formulated while advocacy based opportunities are

developed for future legal contests. The doctrinal approach is positivistic in that it limits responses to legal problems by providing state based solutions to those problems - it never fully considers how a person ends up being involved in the justice system. The development of new precedent resolves the tensions that persist in doctrinal analysis, and resolution of tension is only ever one new case away. The doctrinal approach in this way supports the institutions of law, and the players inside the justice system (i.e. lawyers, judges, Crowns, police, corrections) by suggesting that new outcomes resolve problems of justice; if law internally provides resolution, we never question the institutions of justice, which may be apprised of a multitude of inequalities and biases. (for more discussions on this point see Cotterrell 1992, 39 and 2006; Hunt 1993, 224; Unger 1983, 617).

An approach that I have adopted in moving beyond doctrinal assessments of law in the non-law school classroom adopts Mertz's calls for social science to inculcate the teaching of law. The method I utilize is inspired by Golder and Fitzpatrick's work from 2009, *Foucault's Law.* At this point in the essay, the reader is likely shocked to see the F word emerge in a discussion of law. My pedagogical approach in using Golder and Fitzpatrick does not involve educating students in the basics of Foucauldian analysis (I am happy to leave that to our theory instructors). Rather, I draw on Golder and Fitzpatrick's description of law, and attempt to implement its approach to thinking about law. The discussion of whether the study of law can be justified from a Foucauldian perspective is one that is dealt with appropriately in other, more storied sources (Hunt and Wickham 1994, Pavlich 2011, Golder and Fitzpatrick 2009, Rose, O'Malley and Valverde 2006). Yet, some of Golder and Fitzpatrick's claims provide powerful pedagogical approaches to thinking about law, which can be translated into the classroom environment.

For the purposes of this essay, I would describe the pedagogy as a "law as" method. That is, rather than merely thinking about what a case achieves doctrinally, we can find other

values in case law by thinking of law through different lenses. There are four principles that Golder and Fitzpatrick espouse in their development of legal studies that provide important opportunities for all students of law to consider.

First, Golder and Fitzpatrick describe that "law is essential both to the making of 'knowledge claims' that serve to legitimize discipline and to the exercising of power on recalcitrant subjects" (Golder and Fitzpatrick 2009, 35). This allows us to think of cases differently than as mere precedent. Law legitimizes the use of state coercion, and provides foundation for the so-called truths that underwrite state action. Because power is deployed under this 'truth' it is unsurprising that citizens endure legal repercussions, using mainly positivistic means of resistance (such as legal appeals). Law then can be viewed as a kind of rebooting system of social control, whose tyranny emerges not from the fact that it is a sovereign emanation, but because it creates its own truths and limits responses to those truths to very bounded (if flexible) delineations; that is, law polices its own boundaries by making them clear and malleable at the same time – they can only be changed by law itself, and a resetting of its limits will be at the behest of a legal institution, player or decision.

Golder and Fitzpatrick also suggest that law is one important aspect of our "late modern administered world" (Golder and Fitzpatrick 2009, 35). This is a point that is controversial in discussing criminal law, but it is also incredibly useful. Criminal law is not simply the deployment of set statutory rules. Criminal law has become an increasingly administered matter. This administration is evident in the way courts adjudicate for example. Reasonable person tests abound, and guilt may be determined by community standards tests whereby a court determines guilt on the basis of what reasonable members of society would believe. For example, whether an assault is sexual in nature, is adjudicated by courts in Canada on the basis of whether a reasonable person would have thought that the encounter was sexual. This abstracted test of the reasonable person creates a conceptual delegation

of legal decision-making. This delegation is administrative in nature in that it seeks to determine limits of behaviour not on the basis of some extant (i.e. preexisting) and natural (as opposed to constructed) conception of right and wrong. Rather legal standards are developed through a divination of what the standards of right and wrong ought to be. Ultimately the difference between defined limits and abstracted future delineation of limits is the difference between punishment for wrongs and harm prevention (and concomitant punishment) on the basis of a standard that has yet to be developed (for example, the standard will only reveal itself when the court has performed the reasonable person test). This future limit demonstrates the blurred lines between state-based public criminal law and administrative decision making – the former being retrospective in vision, and the latter being prospective and preventative. The central point here is that the notion of guilt itself is administered rather than adjudicated – the reasonable person test acts as a precautionary logic that seeks to minimize harm but which, when crystallized, also acts as a punishment to an accused before a court. Administrative logic becomes adjudicative of guilt (guilt becomes abstracted as opposed to proven) in a very real sense, and this administrative logic is only one of the administrative tendencies of the criminal justice system. The administrative ends of criminal law are not simply limited to the manner in which judges adjudicate. The assembly of the criminal justice system itself has become administered and administrative in nature as well. Numerous boards and tribunals occupy the system in terms of prisoner's rights, mental health outcomes, specialized courts, parole and probation decisions, and police malfeasance hearings. In these material ways, criminal law can be re-conceptualized as inherently administrative.

Golder and Fitzpatrick also discuss the sociality of law - the conception of law as central to our current social order because it iteratively "determines the security of limits" and responds to the "disruption of those limits and their reformation" (125). Law is in constant contact with the social word. Criminal law marks some course state limits of behav-

iours that are considered appropriately necessary for security, but law is inherently pliable. It can shore up limits in cases of social anxiety, and it can bend and warp in response to push back from society. Law is thus changing and constant at the same time - it responds to force but it also attempts to demarcate the field. Gaps created by resistance to law will reform in new ways to further contain future behaviours. Law is elastic in that it covers past criminal behaviour and also anticipates future behaviour by maintaining formal validity for abstractions as adjudicative constructs (such as the reasonable person test). Thinking of law in this way allows one to respect doctrine for its utility, but also to understand that the force of law is its tremendous breadth and depth. As metaphor (a tired one to be sure), law is tanker ship and disrupting its momentum by troubling smaller segments of the vessel is unlikely to slow the general navigation pattern. Unlike the vessel, law organically repairs incursions upon its structures and is repurposed in often unpredictable ways. But its inherent goals of security and preventative logic are never disrupted, even when the substance of particular crimes could well change and be challenged.

Last, Golder and Fitzpatrick describe how the law's truth is a "mobile and contingent" feature of the "social ties" that bind (125). This statement is useful in studying criminal law. Law's coercive nature is its truth, but the exact content of that truth is continuously mobile. For example our approach towards equality before and after the Canadian Charter of Rights and Freedoms reveal different conceptions of what being treated equally might mean in a Canadian society, but the inherent fact that law reforms, reacts and contains, has not changed. The changes in conceptions of equality may well refract social changes that Canada has moved through in the post Charter era. The support of same sex marriage, for example, represents a substantive change in conceptions of equality that correlate with society's changing attitudes towards relationships and gender. Altered social attitudes do not change the binding and coercive nature of law. Rather social change supports the strength of the law by suggesting to the popu-

lace that society drives legal change: when society seemed to accept same sex marriage, law altered itself to accept the social change. This elasticity encourages the citizen's belief that populist will connects to law, and further gives law, as a conception, legitimacy. The relationship of law and the social is complex. Society informs law and law informs society. Neither do so in linear ways. Yet these interactions reveal that law is inherently tied to the social. This ligature makes law inherently transitory and contingent even as it binds the citizen. This dynamism, is described by Golder and Fitzpatrick as law's "alterity;" law has an ability to be other than what it was (i.e. to change), while still retaining its capacity of coercion and manipulation (Golder and Fitzpatrick 2009).

These four observations about law allow one to teach law, outside of the law school environment in profoundly different ways. Approaching law this way allows us to study criminal law and the prose of court decisions as discourses that can transform into new forms of social knowledge. This method can allow us to ask how it is that a citizen is governed and governable. This approach allows us to complicate the assertion that law is monolithic. Rather, it has many meanings, many effects, and many interconnected social precursors and outcomes.

Turning these statements into tangible pedagogy remains a challenge for the instructor though. One is faced with a daunting task in this respect. One exercise I conduct with students demonstrates a simplified way of operationalizating thinking about law dynamically. In the exercise, I ask the student to read a Supreme Court of Canada case, and I ask them to use the usual legal method of "briefing the case" to summarize its holdings. Then, after they have demonstrated this basic legal knowledge, I ask them to debrief/rebrief the case with an eye towards conducting four separate analyses. First, I ask if the student can identify the rationalities underpinning the case - what adjudicative interests are driving the decision? Second, I ask if the student can identify any of the logics of governance that seem to underpin the legal ques-

tion at stake - i.e. what are the governance based goals of the issues being addressed in the case? Third, I ask the student to link the logics identified to any paralleling social anxieties that seem to persist in broader society (here a student can be compelled to use common sense and its modern iteration, Google). Last, I ask the student to reflect on how the decision may permit other citizens of various identities/communities/interests to reflect and alter behaviour; we repeat the question in terms of how state actors will react, as well as how corporations or other organizations may react. This admittedly crude exercise forces the student to confront legal knowledge and then to assess social effects and influences in law. This is a way of thinking about law that can foster critical thinking and move beyond doctrinal studies in a material sense. Importantly, basic doctrinal competence is likely necessary (or at least beneficial) for appreciation of a social analysis of law. Outside of law school, this competence can be a skill that is often ignored by both student and non-law school teacher. Thus, when I encourage the student to understand law through its alterity, I do not mean that the student should ignore the doctrinal building blocks of legal knowledge – the student should have a fluency in doctrine in order to critique it. Doctrinal fluency does not mandate that a student have technical proficiency in the procedural details of legal minutiae. Doctrinal fluency merely requires that a student be able to read and understand the importance of law in a positivist sense. Once that fluency is established, external conceptual critique is usually more nuanced and enriched.

Law As, not Law Is

In conclusion then, teaching law to criminal justice and criminology students suffers from structural limitations inherent to the non-law school environment, but also provides tremendous opportunity in fostering critical thinking about justice. Non law school teaching has the advantage of disrupting the survey course routine of many undergraduate students and may breed familiarity with the basics of law by developing some legal literacy in the student. The develop-

ment of a "law as" approach encourages analytical thinking beyond the law's disciplinary boundaries and also provides some sober inoculation against the positivism and, perhaps, the elitism, of the law. Studying law as socially dynamic complicates the old adage that 'law is' the mere software of the justice system. Law should be reconsidered as organic, connected, mobile, reactive, resilient, social and coercive. Our advantage as non-law school instructors is that we can be charged with educating students on law's dynamism, and thus its power, coercive and ethereal. We can provide students with the abilities to read and place law, but rather than practicing it (as professional training, and its instruction of minutae requires), we can encourage our students to spend their intellectual lives critiquing it.

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