

Reconsidering Legal Pedagogy: Assessing Trigger Warnings, Evaluative Instruments, and Articling Integration in Canada's Modern Law School Curricula

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ABSTRACT

Law schools are rethinking the form of instruction and the means of delivery, a discussion now at the fore of legal education. This pedagogical picture is not complete without understanding students' fidelity to the human and social experience of law school. To further understand student experiences, a voluntary online survey was distributed to 103 first-year law students. Our findings on the use of trigger warnings, the use of 100 percent final examinations, and the integration of articling and clinical-based skills in law school education present an opportunity for law teachers to reconsider curriculum reform and conventional legal education. Legal curricula ought to contextualize law in its social impacts

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and this includes recognizing student experiences of trauma and vulnerability in the law classroom. Further, this recognition develops and supports important clinical skills, including participation, group work and deployment of empathy in legal settings. By recognizing student sensitivity and by implementing multiple assessments and skills-based learning and training, we argue that educators and students can work together towards common goals which benefit both the teaching and the learning of law.

INTRODUCTION

A complete legal education requires students to confront and become acquainted with different facets of the law. This may include students having to step outside the realm of what they know and what is familiar and engage in discomforting discussions as legal studies deal with difficult topics on a routine basis. These conversations need to be had in the classroom setting for students to properly prepare themselves for the often-fraught realities awaiting them in the legal profession.

As educators, it is our responsibility to provide students with the substantive knowledge they will need to pass the institutional and professional barriers to academic and professional success. But in addition to such providence, we must also establish and maintain a legal curriculum that helps students cultivate a critical or transformative vision within law school. It is through progressive shifts in learning and in adapting to new developments in teaching law that educators and students together create a productive learning environment.

This paper begins by introducing the reader to shifts in law school education in Canada. Perennially, in our communities, there are calls for more rigour in legal analysis, an increase in practical training, experiential learning and innovative teaching methods. However, to reconsider how legal pedagogy has shifted in the teaching and learning of law we must consider the demands and experiences of the students who undertake a legal education. In a previous study, we found that law students supported in-person interaction and technology use in the classroom as a way in which to deliver legal curricula.¹ Drawing upon this prior study, this paper

¹ Richard Jochelson & David Ireland, "Law Students' Responses to Innovation: A Study of Perspectives in Respect of Digital Knowledge Transmission, Flipped

reflects upon the pedagogical issues of teaching and learning law for students and suggests potential ways in which to adjust legal curricula in response to the changing needs of law students. Specifically, we examine whether demands for trigger warnings are appropriate and whether, this in turn, suggests that online classes should be considered for the sake of student sensitivity. Following this, we examine student experiences of 100 percent exams, and we consider the use of multiple evaluative assessments as an alternative means of evaluating law students. We then examine students' support of the integration of practical skills into the law school setting; while this integration is welcomed, students still see a divide between articling and the academic study of law.

In this study, a voluntary online survey was distributed to 103 first-year law students dealing with digital teaching strategies, methods and evaluations. Our results, taken together with the results in our twin study, suggest that legal education may be effective when it allows educators and students to properly prepare for intense classroom discussion, while recognizing the needs, backgrounds and diversities that comprise the law student population. In the twin study to this one, we noted that while there has been an increasing growth in innovative teaching methods in the law classroom, this pedagogical picture is not complete without understanding students' fidelity to the human and social experience of law school; we found that even as students expect increased group work, discussion, flipped classrooms and video capsules, they overwhelmingly still stipulated that law school be an interactive, person to person, iterative experience.

In this study, we consider the microscopy of those desires. How does a digitally enhanced but interpersonal law school experience impact the learning of fraught and traumatic subject areas; how does the need for evolving legal education affect the students' capacity for alternate means of evaluation; and lastly, how deeply engrained do students wish practical and clinical learning to be embedded in the new law school curriculum? By recognizing student sensitivity and by implementing multiple assessments and skills-based learning and training, educators and students alike can work together towards common goals which benefit both the teaching and the learning of law. We believe the preferences and concerns

of law students should play an integral role in shaping the future of legal education in Canada.

We begin this paper by taking a broad look at legal education in Canada. We then outline three areas of inquiry that formed the basis of the survey instruments we provided to students. We discuss some recent literature and findings in each of these areas: the use of trigger warnings, the use of 100 percent final examinations, and the integration of articling and clinical-based skills in law school education.

SITUATING LAW SCHOOL EDUCATION

Legal education is undoubtedly changing, and a central theme running throughout law schools in Canada has been the implementation of innovative teaching methods. Ranging from substantive curricular innovation through to changing the means of instruction, the changes proposed in Canada's law schools push for experiential learning, increased clinical outcomes, and the use of new methods in teaching law curricula.² Robson Hall Law School at the University of Manitoba is an example of this, as it is too is engaged in its own curricular changes, moving towards enhanced clinical and experiential opportunities.³

While there is significant Canadian literature on legal education, Shariff and colleagues contend that the vast majority of commentary on legal education has an American focus. Such commentary is also "mired in

² Mary J Shariff et al, "Academic Innovation Committee on the Robson Hall J.D. Curriculum: Consultation Paper (2014)" (2016) 39:2 Man LJ 241; see also on the importance of experiential learning: Sarah Lugtig, "A Vision for Experiential Education at Robson Hall: Supporting Students' Transition to Practice" (2016) 39:2 Man LJ 397; Academic Affairs Committee, "Memo Regarding Academic Innovation Committee Consultation Paper" (2016) 39:2 Man LJ 453; and Law Faculty Council, "Excerpts from Law Faculty Council Minutes, Meeting on March 24, 2016" (2016) 39:2 Man LJ 473; see also generally the supplemental edition of Bryan P Schwartz & Darcy L MacPherson (editors), (2016) 39:2 Man LJ; for a diarized reflection on flipping the classroom in the Canadian law school context see "Bleaching Law" (last visited 2017 June 8), online (blog): Craig Forcese <web.archive.org/web/20170614034133/http://craigforcese.squarespace.com/bleaching-law/> [perma.cc/Z8DD-FMJL]; see also "Flipping a Law School Course" (last visited 8 June 2017), online: *Legal ED* <legaledweb.com/flipping-a-law-school-course/> [perma.cc/S8BV-ZE7U].

³ Shariff et al, *supra* note 2.

rhetoric and is woefully short on specifics” for meaningfully transforming legal education to meet present or future challenges.⁴ There are significant barriers to the fundamental reform of law school curricula, which include (but are not limited to) “resource limitations, faculty member experiential bias along with lack of knowledge and lack of skills in management and educational theory.”⁵ Taken together, reforms of legal curricula and its delivery have seemed to stagnate, resulting in the “reproduction rather than reinvention” of legal education.⁶

Interestingly, there is a growing body of scholarship on legal education that draws upon educational theory and research on adult learning in the legal, educational context.⁷ This body of literature dedicates a significant amount of focus upon appropriate objectives and outcomes of law school curricula, and specifically advocates for a continuing dialogue which further develops alternative visions for components of legal education, and an integrated combination of substantial law, skills, and market knowledge. As Stuckey and colleagues suggest, law schools “are or ought to be the primary source of the skills and knowledge requisite to the practice of law” because law schools have the “virtual monopoly” on preparing students to become lawyers.⁸ In effect, this scholarship contends that law schools should “broaden the range of lessons they teach, reducing doctrinal instruction that uses the Socratic method and the case method;

⁴ Sara K Rankin, “Tired of Talking: A Call for Clear Strategies for Legal Education Reform: Moving Beyond the Discussion of Good Ideas to the Real Transformation of Law Schools” (2011) 10:1 Seattle J for Soc Justice 11 at 16.

⁵ Shariff et al, *supra* note 2 at 308.

⁶ Mary Anne Bobinski, “Symbols and Substance in Curricular Reform In the United States and Canada” (12 April 2011) at 3, online (pdf): *International Association of Law Schools* <ialsnet.org/meetings/teaching/papers/Bobinski.pdf> [perma.cc/9Z36-28CW]; see also Marlene Le Brun & Richard Johnstone, *The quiet (r)evolution: improving student learning in law* (Sydney: Law Book Co, 1994).

⁷ See e.g. Roy Stuckey et al, “Best Practices for Legal Education: A Vision and A Road Map” (2007), online (pdf): *Clinical Legal Education Association* <cleaweb.org/Resources/Documents/best_practices-full.pdf> [perma.cc/LE9G-WGV3]; see also William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law*, Carnegie Foundation for the Advancement of Teaching (San Francisco: Jossey-Bass, 2007).

⁸ Stuckey et al, *supra* note 7 at 11-12, citing Frances Kahn Zemans & Victor G Rosenblum, *The Making of a Public Profession* (Chicago: American Bar Foundation, 1981).

integrate the teaching of knowledge, skills and values, and not treat them as separate subjects addressed in separate courses; and give much greater attention to instruction in professionalism” – in other words, the proper preparation of law students “for the practice of law as members of a client-centred public profession.”⁹

Indeed, pedagogical approaches in law schools have a storied history of contestation.¹⁰ The modern law school pedagogical approach emphasizes core courses that introduce students to systems of law and courses instructing students on how to engage in legal research and writing.¹¹ With most legal practice-based research being completed online through paid services or open-access legal databases, it is clear that the needs of practice, though, have begun experiencing unprecedented change and challenges. As we have previously noted: “Law firms and government agencies have established interconnected research networks for the purposes of sharing legal documents, and even court filings have begun to move towards electronic submission.”¹² The observation that law schools ought to provide students with more advanced technical training is well established in the literature.¹³ It is certainly the case that practitioners provide significant portions of instruction at law schools, and despite a move to modernize legal curricula, core doctrinal competency is still well established at Canada’s law schools.¹⁴

⁹ Shariff et al, *supra* note 2 at 309 citing Stuckey et al, *supra* note 7 at vi-vii.

¹⁰ Richard Jochelson, “Let Law be Law, and Let us Critique: Teaching Law to Undergraduate Students of Criminal Justice” (2014) 4 Annual Rev Interdisciplinary Justice Research 234 at 237; see also W Wesley Pue, “Common Law Legal Education in Canada’s Age of Light, Soap and Water” (1995) 23 Man LJ 654; Annie Rochette & W Wesley Pue, “‘Back to Basics?’ University Legal Education and 21st Century Professionalism” (2001) 20 Windsor YB Access Just 167.

¹¹ Jochelson, *ibid* at 237.

¹² Jochelson & Ireland, *supra* note 1 at 135.

¹³ Rochette & Pue, *supra* note 10 at 185-89.

¹⁴ Rochette & Pue, *supra* note 10; see also the curriculum advanced at the University of British Columbia, “Your First Year” (last visited 8 July 2020), online: Peter A Allard School of Law <allard.ubc.ca/programs/juris-doctor-jd-program/programs-and-courses/your-first-year> [perma.cc/6YDS-Z4N5]. More recently see Bryan P Schwartz, “The Next Great Transition in Canadian Legal Education” (2016) 39:1 Man LJ xxiii. For excellent reflections on the experiential turn in law schools, see DeLloyd J Guth, “Judge Shadowing at the University of Manitoba & Canada’s First Year Law Curriculum” (2013) 37:1 Man LJ 473; Bryan P Schwartz, “ACCLE Conference

Many of Canada's top law schools have continued to emphasize substantive courses such as constitutional law, contracts, criminal law, legal process, property and torts.¹⁵ At the same time, however, law schools continue to aim to provide more macroscopic assessments of the study of law, looking at law through social justice lenses.¹⁶ As we have previously noted elsewhere,¹⁷ a recent review of three large law school programs notes as follows:

[The University of Toronto] 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/>).¹⁸

Remarks – Integrating the Dimensions of Legal Education” (2013) 37:1 Man LJ 487; John Pozios, “Clinical Business Law Programs at Robson Hall” (2013) 37:1 Man LJ 497. Practice-based curriculums continue to be in vogue – see “The Calgary Curriculum” (last visited 8 July 2020), online: *University of Calgary* <law.ucalgary.ca/calgarycurriculum> [perma.cc/HW22-CE9A].

¹⁵ Jochelson, *supra* note 10 at 237. See e.g. “Program Requirements” (last visited 8 July 2020), online: *University of Toronto Faculty of Law* <[law.utoronto.ca/academic-programs/jd-program/program-requirements](http://www.utoronto.ca/academic-programs/jd-program/program-requirements)> [perma.cc/4M3D-RDB7]; “First Year” (last visited 8 July 2020), online: *Osgoode Hall Law School* <osgoode.yorku.ca/programs/juris-doctor/jd-program/first-year/> [perma.cc/WQN5-8QGR].

¹⁶ Jochelson, *ibid* at 237-42.

¹⁷ Jochelson, *ibid*.

¹⁸ *Ibid* at 239.

Everything old continues to be new; Canadian law school traditions famously evolved from United States legal pedagogy. For example, the University of Manitoba Faculty of Law in the early-1900s looked to America and began using the “case method” as pedagogy.¹⁹ Other innovations were also mirrored. Rather than teaching law through itinerant labour or through solely the use of practitioners, Canadian law schools adopted the American model of a legal academic – the conception of the full-time law professor was born.²⁰

Of course, teaching law students how to think like lawyers remains one of the “intellectual hallmarks” of legal education.²¹ Per Arthurs, while the practice of law is varied and dynamic due to pressures from globalizing and technological trends, law schools are still fundamental “knowledge communities” that teach their students how to learn and think about law.²² Through a reformed legal curriculum, contemporary legal education has the chance to progressively shift intellectual engagements with students while preparing them for varied and unpredictable futures.²³

Nevertheless, Canadian legal education has seen the battles waged on the debate between practical training and the development of rigorous legal analytical skills. This battle has been largely fought between professional bar associations and academic organizations like the Canadian Association of Law Teachers and the Canadian Law and Society Association.²⁴ Practice readiness versus analytical heft are often pitted one against the other in a falsely dichotomous strawperson battle. Those of us in the academy hear the critiques of the absence of clinical readiness, and many programs have shifted to meet the demands of an evolving practice community. Clinical opportunities at law school are on the rise.²⁵

¹⁹ Pue, *supra* note 10 at 672.

²⁰ *Ibid.*

²¹ John M Conley, “Can You Talk Like a Lawyer and Still Think Like a Human Being? Mertz’s *The Language of Law School*” (2009) 34:4 *Law & Soc Inquiry* 983 at 986.

²² HW Arthurs, “The Future of Law School: Three Visions and a Prediction” (2014) 51:4 *Alta L Rev* 705 at 710.

²³ *Ibid.*

²⁴ Richard Devlin et al, “Response to the Consultation Paper of the Task Force on the Canadian Common Law Degree of the Federation of Law Societies of Canada” (2009) *Can Leg Education Annual Rev* 151.

²⁵ Jochelson, *supra* note 10.

Simultaneously, it must be pointed out that rigorous education is not solely about dispassionate academic legal analysis. Many legal scholars and teachers demand an education of law to be apprised of empathetic understanding of society's social issues, including instruction on how to identify lack of justice, fairness, equality and power imbalances.²⁶ While legal curricula often contain upper-year perspectives courses in order to deploy and discuss such lessons, some reject this curricula structure, arguing that these sorts of curriculum tweaks merely ask students to hold at bay their personal beliefs and at best result in a temporary thought experiment as opposed to fundamental changes in student thinking.²⁷

On the other side of ledger, some United States scholars have advocated radical ways of bridging practice and education that do not simply require adding the clinical ingredients and stirring.²⁸ These scholars turn to the social sciences for analytical heft, arguing that socio-legal analyses may inform practice through providing context for critical legal skills, for example, in the context of legal ethics where enhanced study through such lenses might advance one's professional identity and simultaneously ground legal education in the social world.²⁹ Indeed, Thornton provides a significant critique of conventional legal education, in which she argues that when legal education favours certain forms of legal reasoning and analysis (such as the notion of law as a system solely consisting of technical rules to interpret and adjudicate) over others, conventional legal education reinforces the belief that law students can learn through the 'docile' immersion of case method, and encourages students to view law as neutral and unrelated to social context.³⁰

²⁶ Conley, *supra* note 21 at 1009; see also Patricia J Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (Cambridge: Harvard University Press, 1991); Elizabeth Mertz, "Recontextualization as Socialization: Text and Pragmatics in the Law School Classroom" in *Natural Histories of Discourse* (Chicago: University of Chicago Press, 1996).

²⁷ Conley, *ibid* at 1009.

²⁸ Elizabeth Mertz, "Social Science and the Intellectual Apprenticeship: Moving the Scholarly Mission of Law Schools Forward" (2011) 17 J Leg Writing Institute 427 at 434-35.

²⁹ *Ibid* at 436-37; Jochelson, *supra* note 10; See also Elizabeth Chambliss, "Professional Responsibility: Lawyers, a Case Study" (2000) 69:3 Fordham L Rev 817 at 822.

³⁰ Margaret Thornton, "Technocentrism in the Law School: Why the Gender and Colour of Law Remain the Same" (1998) 36:2 Osgoode Hall LJ 369.

Buhler has applied Thornton's critique in Canadian clinical legal education, arguing that there is an "anti-critical" rhetoric that tends to view clinical legal education as a vehicle for the transfer of a set of pre-determined lawyering skills to students.³¹ She argues that instead, clinical legal education should be viewed as "an opportunity for students to learn, through critical reflection upon experience, about the contested, contextual, and political nature of legal practice, and to begin to develop skills that reflect this critical understanding."³²

In contrast, others persuasively retort that legal education and law remain pedagogically conservative and that such a sociological turn would be akin to running a clinical trial on first-year law students: something most educators in a professional school environment would avoid at all costs.³³ Nonetheless, we see a clear shift in Canadian legal education: the turn towards clinical learning through, for example, an integrated articling program such as the intermeshed licensing and law degree in Lakehead's Bora Laskin Faculty of Law, and in credentialing centres such as Ryerson's law licensing program (delivered in lieu of articling placements).³⁴

TRIGGER WARNINGS: THE EMOTIVE EXPERIENCE OF LEARNING LAW

The clinical shift, coupled with the desire to place law sociologically in context, means that legal learning can be both practical and vivid. At the same time, however, the intellectual rigour can be matched by emotionally difficult subject matter. While we recognize that classroom interactions between educators and students are diverse, there has been an increasing student movement across North American university settings, raising awareness about students experiencing performance-related stress, embarrassment, and trauma from university course content.³⁵ For

³¹ Sarah Buhler, "Skills Training in Clinical Legal Education: a Critical Approach" (2011) 6 Can Leg Education Annual Rev 1 at 1; see also Shariff et al, *supra* note 2.

³² Buhler, *ibid* at 1.

³³ Conley, *supra* note 21 at 1012.

³⁴ See e.g. "The Curriculum" (last visited 9 July 2020), online: *Lakehead University* <lakeheadu.ca/programs/departments/law/curriculum> [perma.cc/RZE8-YA3F]; see also Jochelson, *supra* note 10.

³⁵ See e.g. Kim D Chanbonpin, "Crisis and Trigger Warnings: Reflections on Legal

example, such trauma can be heightened in a Criminal Law course, where the subject matter exposes students to graphic depictions of violent events, sexual or otherwise. In response, students across university campuses have begun advocating for advance content warnings (i.e. ‘trigger warnings’) to alert them to disturbing course content. Trigger warnings have been colloquially described in progressive circles as necessary and as not a threat to free expression. For example, Slade writes in *Everyday Feminism*:

Are trigger warnings part of a conspiracy to limit free speech? Not at all – but that’s what you might believe if you’ve been tuning into the debates on trigger warnings. Trigger warnings, also called content warnings, can help people who have experienced trauma, but some people are against them.³⁶

As educators, we sometimes try to elicit class discussion by making provocative – even outrageous – statements or by distributing challenging materials for students to analyze. Most often, students are eager to take the bait. However, there still exists a chance that discomfited students will not engage due to past traumatic experiences. Trigger warnings or content advisories are meant to recognize these potential classroom dynamics. They require educators to be respectful and moderate what is said in class in order to empower all learners.

Undoubtedly, the use of formalistic trigger warnings has set off a debate. The psychological research suggests that rote trigger warnings delivered in a boilerplate fashion may not be effective.³⁷ The term itself might wrongly suggest that the mentally delicate are prone to snapping when not advised of triggering content.³⁸ Professor Rob Whitley writes

Education and the Social Value of the Law” (2015) 90:2 Chicago-Kent L Rev 615 at 615-16; see also Susan P Robbins, “From the Editor – Sticks and Stones: Trigger Warnings, Microaggressions, and Political Correctness” (2016) 52:1 J Soc Work Education 1; Jack Halberstam, “Trigger Happy: From Content Warning to Censorship” (2017) 42:2 Signs: J Women in Culture and Soc 535.

³⁶ M Slade, “Here’s What Trigger Warnings Are – And What They’re Not” (7 November 2016), online: *Everyday Feminism* <everydayfeminism.com/2016/11/what-trigger-warnings-are/> [perma.cc/6FDF-QK6R]. Slade illustrates a graphic comic explaining the lived reality of trigger warnings.

³⁷ Rob Whitley, “Trigger Warnings and Mental Health: Where Is the Evidence?” (23 March 2017), online: *Psychology Today* <psychologytoday.com/blog/talking-about-mental/201703/trigger-warnings-and-mental-health-where-is-the-evidence> [perma.cc/P55E-R4NV].

³⁸ *Ibid.*

that there may be more nuanced means of preparing students for delicate content, using a teaching unit on suicide as an example:

I acknowledged to the class that the session may be disturbing. I told them that I had lost friends to suicide, using these tragedies as fuel to try and help address the problem. Finally, I stated that anyone who feels disturbed at the end of the class could join my assistant and I in a local café for chat, comfort and moral support. This approach may be more meaningful than a trite one-second trigger warning.³⁹

According to Chanbonpin, “the notion of providing advisory notices to alert audiences to potentially disturbing” or traumatic content is not a new occurrence. Warnings about such content have existed in a variety of settings, and are a “common feature of news and entertainment media.”⁴⁰ The warnings arose in feminist blogs and online forums to alert readers that the posted material contained content that might exacerbate or trigger post-traumatic stress disorder (PTSD) or other extreme emotional reactions that might be distressful to victims of sexual abuse.⁴¹ While the term ‘trigger warning’ is new, “trigger warnings are hardly *sui generis*.”⁴² However, what has become uniquely controversial has been the use of trigger warnings in higher education settings, as the implementation of these cautionary notes has led to “polemic debates about censorship, exposure, sensitivity, and the politics of discomfort.”⁴³

Many educators have thoughtfully voiced their opposition to the use of trigger warnings in the classroom, citing a threat to academic freedom.⁴⁴ Academic freedom means that the faculty member has considerable discretion to select and arrange course materials to meet certain learning

³⁹ *Ibid.*

⁴⁰ Chanbonpin, *supra* note 35 at 624.

⁴¹ Peter Schmidt, “Many Instructors Embrace Trigger Warnings, Despite Their Peers’ Misgivings” (16 June 2015), online: *The Chronicle of Higher Education* <chronicle.com/article/Many-Instructors-Embrace/230915> [perma.cc/4TD2-AM84]; see also Robbins, *supra* note 35; Katie Byron, “From Infantilizing to World Making: Safe Spaces and Trigger Warnings on Campus” (2017) 66:1 *Family Relations* 116.

⁴² Chanbonpin, *supra* note 35 at 624.

⁴³ Halberstam, *supra* note 35 at 535; see also Byron, *supra* note 41.

⁴⁴ Elizabeth Freeman et al, “Trigger Warnings Are Flawed” (29 May 2014), online: *Inside Higher Ed* <insidehighered.com/views/2014/05/29/essay-faculty-members-about-why-they-will-not-use-trigger-warnings> [perma.cc/SL9S-ARR4].

objectives, and any higher education policy which mandates the inclusion of prescribed language infringes on the educator's autonomy in the classroom.⁴⁵ When inappropriately implemented, such policies have the potential to restrict faculty members' ability to discuss controversial, challenging and sensitive topics and materials with their students or force faculty to eliminate certain assignments altogether.⁴⁶ Educators also raise concern for the "consumerist attitude and sense of entitlement that appear to drive student demands for these classroom concessions," a matter of particular concern to certain law professors.⁴⁷ Some critics and commentary against this student-led movement suggest that the blame should not only be laid solely at the feet of "maladjusted students who...required prophylactic measures to keep them safe on university campuses," but also on "helicopter parents" who have "sheltered" these students for much of their young lives.⁴⁸ Halberstam makes the point clear about the polemic debate surrounding trigger warnings:

The refuseniks cast diverse student populations as monochromatic groups of spoiled children who have been sheltered and pampered, protected and coddled. The trigger-happy folks, on the other hand, fail to account for vast discrepancies within and among student bodies, and they mark sexual violence in particular as the most damaging and the most common cause of trauma among students. Both sides ignore the differences between and among students, and all fail to account for the differences that race and class make to experiences with trauma, expectations around protection, and exposure to troubling materials.⁴⁹

Educators are also concerned that students who require trigger warnings to mediate their post-secondary educational experience will ultimately be poorly prepared for the harsh reality of the professional world upon

⁴⁵ Chanbonpin, *supra* note 35 at 625.

⁴⁶ Freeman et al, *supra* note 44.

⁴⁷ Chanbonpin, *supra* note 35 at 616; see also Marcie Bianco, "9 Feminist Arguments Against Using Trigger Warnings in Academia" (23 May 2014), online: mic.com/articles/87283/9-feminist-arguments-against-using-trigger-warnings-in-academia#.CWAGhJ0hq [perma.cc/85QR-S6NW]; Tressie McMillan Cottom, "The Trigger Warned Syllabus" (last visited 9 July 2020), online: tressiemc.com/2014/03/05/the-trigger-warned-syllabus/ [perma.cc/55QW-JAGT]; Sarah Roff, "Treatment, not trigger warnings" (26 May 2014), online: [World.edu <world.edu/treatment-not-trigger-warnings/>](http://world.edu/treatment-not-trigger-warnings/) [perma.cc/3NKU-54UL].

⁴⁸ Chanbonpin, *supra* note 35 at 624.

⁴⁹ Halberstam, *supra* note 35 at 539.

graduation; a world unfortunately filled with misogyny, systemic racism, and homophobia, for example.⁵⁰

Legal education is even riper for these discussions. In law school, traditional legal epistemology teaches students that rational, dispassionate analysis should have primacy over emotive reactions or responses. From the moment law students enter into legal education, they are instructed and trained to observe all sides of a legal issue – to ‘think like a lawyer’ – and to articulate in great detail both the strengths and the weaknesses of those varied positions. Traditional law school pedagogy is characterized by its valorization of dispassionate and impartial analysis, and every year each new first-year batch of students are especially susceptible to the lure of this analytical legal method. In contrast to this traditional pedagogy, “[t]rigger warnings upset the stability of the [law] classroom by demanding that individual and personal experiences with crime, law and social policy should be recognized as making significant contributions to the learning process.”⁵¹

While the dominant culture in law encourages students to create objective distance between self and subject matter, trigger warnings are for some “a means of making visible and apparent the hidden assaults on students waged by ‘objectivity.’”⁵² When legal epistemology emphasizes neutral argumentation and dispassionate analysis, it sets a standard of analysis for students to which they ought to aspire. Many women students and students of colour cannot easily divorce their lived experiences from the cases they may study in the law classroom.⁵³ “Studying law is an emotive experience,” and emotion needs to reside in educational spaces when topics which provoke strong emotional responses are likely to arise.⁵⁴ By indoctrinating the values of detached, objective analysis, traditional legal pedagogies have the potential to alienate students from themselves and each other.⁵⁵

⁵⁰ Cottom, *supra* note 47.

⁵¹ Chanbonpin, *supra* note 35 at 627.

⁵² *Ibid.*

⁵³ *Ibid* at 628.

⁵⁴ *Ibid.* See also Patricia Kostouros & Julia Wenzel, “Depictions of Suffering in the Postsecondary Classroom” (2017) 23:3 *Traumatology* 250.

⁵⁵ Chanbonpin, *supra* note 35; see also SpearIt, “Priorities of Pedagogy: Classroom Justice in the Law School Setting” (2012) 48:2 *Cal WL Rev* 467.

In effect, trigger warning demands by students might be alternatively read as a student critique of the traditional law school pedagogy as well as the increasing corporatization and bureaucratization of university settings. For instance, under neoliberal and austere university settings, vulnerability is a failure to demonstrate personal responsibility for academic success and should be dealt with by the student privately. However, this vulnerability, alternatively, also highlights a way in which the educational system fails people and by publicizing trauma, we turn victimization into a social phenomenon rather than a private struggle. Therefore, by publicly acknowledging trauma through advisory notices, “neoliberal ideals of individual responsibility are defied and reimagined as a kind of public, collective responsibility” within the law classroom.⁵⁶

On the other hand, some proponents of trigger warnings argue that they directly challenge myths of neutrality and objectivity within the law and the classroom, and such demands by students present “an opportunity for law teachers to begin dismantling the hierarchy of traditional legal education.”⁵⁷ Coupled with innovative teaching methods, trigger warnings have the potential to fundamentally alter the learning and teaching of law.⁵⁸ In refusing to keep trauma private and by allowing students to reclaim and rewrite power in the classroom, students become partners in the framing of vulnerability, responsibility, respect, and the production of knowledge.⁵⁹ Thus, despite the lack of evidence about the benefits of trigger warnings in the context of mental health, proponents of trigger warnings seem to suggest that they may aid in the amelioration or at least the recognition of intra-class power dynamics and may provide fertile ground for context-apprised conversations in a class environment tackling difficult material.

In sum, proponents of trigger warnings suggest that recognizing student sensitivity is to supplement their learning while providing a necessary ‘heads-up’ and an opportunity for those students requiring it to mentally prepare for a challenging classroom discussion. This is less a matter of acknowledging the link between triggers and mental health, and more about allowing triggers to situate and contextualize students in a

⁵⁶ Byron, *supra* note 41 at 122.

⁵⁷ Chanbonpin, *supra* note 35 at 626.

⁵⁸ *Ibid* at 616-17.

⁵⁹ Byron, *supra* note 41 at 118.

position of relative power in the context of emotionally difficult material. The warnings align with academic calls to ground legal education socio-legally and contextually in the classroom, and through such acknowledgement we might actually set the context for more efficacious clinical learning attuning the student to difficult client circumstances. Additionally, acknowledging student sensitivity allows students to decide for themselves how to participate in classroom discussions or whether to attend class. Through incremental and progressive reforms in legal curricula, educators could create opportunities that thoughtfully curate the classroom as a democratic and dialogical space for students. Advanced contextualizing of difficult classroom materials may thus contribute to such reforms. Nonetheless, the social science data to support the use of trigger warnings and the counter debates continue to hinge on polemical assertions, and no clear empirical support exists for dogmatically ascribing to either approach.

THE 100 PERCENT FINAL: PEDAGOGICAL SHIFTS TOWARDS MULTIPLE MODALITIES OF ASSESSMENT

For many years, the 100 percent final exam has lorded over the law school evaluative terrain. The exam is a traditional rite of passage in North American law schools. Often designed as an issue testing three-hour open book endurance contest, the mode is notorious enough that you will even find it referenced on websites that seek to prepare students for the LSAT and law school admission:

The biggest difference between the law school final and the undergrad final is the relative import of the exam. In undergrad, your final grade is determined by midterms, other exams, maybe some homework, and the majestic class participation (on top of that final). In law school, it's ride or die. That final sums up your entire semester in a class. If you have a bad day, you get a bad grade in the class...

...you will get several situations. They'll read like little stories where people are committing crimes, transferring property, and throwing bowling balls out the window (sometimes all three). In each story, several legal issues will be raised. You'll have to spot these issues, and then write about them. Sometimes, you'll be the lawyer for the defense; sometimes, for the prosecution. Sometimes you'll be advising a client of his rights; others, drafting a brief for a partner on what the relevant law is. Every time, though, you'll have to spot all of the relevant issues, cite the relevant legal standards and precedent, and determine the likely outcome of the case. No handholding here - you're responsible for figuring out the

questions (i.e. the issues) as well as the answers. If you're lucky, the law school professor will allow you to use your book. However, when the answer is buried somewhere in several thousand pages of case law, you better have a general idea going in or you'll be completely lost.⁶⁰

However, there has been a movement across Canada's law schools on providing different and varying degrees of evaluation in the law school classroom. For example, one study found that law professors questioned the pedagogical value of the final examination as the only or primary means of assessing competence.⁶¹ There is an increasing call for course evaluation to be linked to desired course outcomes rather than simply meeting law school tradition.⁶²

There may also be particular demands that millennial learners require that may select for alternative evaluative instruments. Some argue that millennial students do not process information the same way as past generations. As we have written elsewhere, some note that:

[These] students are too often disengaged; the rampant spread of digital media has rendered lectures and Socratic teaching obsolete and easy to ignore; students live through technology and should expect to learn on that same technology; and that the traditional modes of instruction are an inefficient means of knowledge mobilization and absorption.⁶³

As Halberstam argues, times have changed in the higher educational landscape:

[Students] take notes on smart pads or have note takers; they expect entertainment, and unless they are in the presence of an extremely charismatic lecturer, they do not want to sit for hours facing forward while the professor waxes lyrical.⁶⁴

These critiques have led to a variety of calls for change to the means and modalities of law teaching. In a sister study, we have shown that today's

⁶⁰ Matt Shinnors, "What are Law School Finals Like, Anyway?" (15 May 2012), online (blog): *Blueprint* <blog.blueprintprep.com/lsat/what-are-law-school-finals-like-anyway/> [perma.cc/VF6V-GL75].

⁶¹ Shariff et al, *supra* note 2 at 301.

⁶² *Ibid* at 313; Stuckey et al, *supra* note 7 at 175.

⁶³ Jochelson & Ireland, *supra* note 1 at 138, relying upon Peter Sankoff, "Taking the Instruction of Law Outside the Lecture Hall: How the Flipped Classroom Can Make Learning More Productive and Enjoyable (for Professors and Students)" (2014) 51:4 *Alta L Rev* 891 at 893.

⁶⁴ Halberstam, *supra* note 35 at 538.

law students are very much open to blended modalities of teaching through the flipped classroom and video capsules, so long as in-person contact is still a primary facet of law school teaching.⁶⁵ However, by implication, the same critiques above suggest that the means of evaluation in law school must be open to change as well.

Millennial learners are “[i]ntent on using technology as part of the learning process; [v]isual learners; [m]ulti-taskers; [l]earners with shorter attention spans; and [o]f the belief that learning should be both interactive and collaborative in nature.”⁶⁶ The 100 percent final does not interdigitate well with the needs of the millennial law school learner. We sought to understand whether the use of the exam as a primary source of evaluation was something of value to law students. Unsurprisingly, as discussed below, we found that students desire multiple evaluative instruments in the law classroom.

TOWARDS ARTICLING AND THE CLINICAL: SKILLS-BASED LEARNING AND TRAINING – RESOLVING ACADEMIC AND PRACTICE-READY TENSIONS?

Another major theme in the legal education literature that we sought to survey in our study was the extent to which legal curricula and teaching methods have been predominately focused upon the acquisition of doctrinal knowledge, analytical skills, and the case-study method.

Unfortunately, an overemphasis on these skills, some argue, concomitantly contributes to scant attention to practical skills and the

⁶⁵ Jochelson & Ireland, *supra* note 1 at 157.

⁶⁶ Sankoff, *supra* note 63 at 895, citing Eric A DeGroff & Kathleen A McKee, “Learning Like Lawyers: Addressing The Differences In Law Student Learning Styles” (2006) 2 *BYU Edu & LJ* 499; Joanne Ingram & Robin A Boyle, “Generation X in Law School: How These Law Students Are Different From Those Who Teach Them” (2006) 56:2 *J Leg Educ* 281; Benjamin V Madison III, “The Elephant in Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students” (2008) 85:3 *U Det Mercy L Rev* 293; Kristin B Gerdy, Jane H Wise & Alison Craig, “Expanding Our Classroom Walls: Enhancing Teaching and Learning Through Technology” (2005) 11:1 *J Leg Writing Institute* 263; Louise Bond-Fraser et al, “The Changing Face of Law Schools: The Impact of Generation Y” (2011) 14 *Perspectives* 3.

professional and ethical context of lawyering.⁶⁷ The two principle perspectives on legal education reform, theory-oriented and practice-oriented, are often perceived to be in conflict and have been described as a so-called “theory-practice divide.”⁶⁸ This perceived conflict “assumes that legal academics are concerned primarily with legal theory to the exclusion of legal practice,” while “legal practitioners are concerned primarily with legal practice to the exclusion of legal theory.”⁶⁹ However, Rhee states that this dichotomy between theory and practice is a false one, suggesting how legal practitioners unavoidably use legal theory every day to accomplish their tasks of legal problem-solving; it is through these tasks that practical lawmaking – a particular kind of legal practice – becomes “just another name for thinking, for deciding, for arguing and examining one’s own beliefs and principles as well as the beliefs and principles we have been taught” about legal practice at large.⁷⁰ Rhee offers a “better” way to describe the relationship of theory to practice, conceptualizing it as a relationship along a “micro-macro continuum.”⁷¹ While legal academics tend to specialize in macro law and legal practitioners tend to specialize in micro law, the distinction “between legal theory and legal practice is at most one of degree.”⁷²

Indeed, consultations with students detail a greater interest in skills-based learning and training in law schools.⁷³ Law schools, in contrast, have been known to show resistance to taking on practical training, raising concerns about the implications on their curriculum. As the Articling Task Force for the Law Society of Ontario (formerly known as the Law Society of Upper Canada) argues, “[p]ut bluntly, some of this resistance is from law schools, or faculty members, who see their role as to only teach

⁶⁷ See e.g. Keith A Findley, “Rediscovering the Lawyer School: Curriculum Reform in Wisconsin” (2006) 24 Wis Intl LJ 295; see also Sullivan et al, *supra* note 7.

⁶⁸ Judith Welch Wegner, “Reframing Legal Education’s ‘Wicked Problems’” (2009) 61:4 Rutgers L Rev 867 at 969.

⁶⁹ Will Rhee, “Law and Practice” (2012) 9 Leg Communication & Rhetoric: JALWD 273 at 276.

⁷⁰ *Ibid* at 276-78, citing Ruthann Robson, *Lesbian (Out)Law: Survival under the Rule of Law* (Ithaca: Firebrand Books, 1992).

⁷¹ Rhee, *supra* note 69 at 275.

⁷² *Ibid* at 277, citing Cass R Sunstein, “On Legal Theory and Legal Practice” (1995) 37 Nomos 267.

⁷³ Sullivan et al, *supra* note 7.

academic courses, and not to engage in any practical training.”⁷⁴ In effect, some argue that curriculum reforms within law school should increase opportunities for practical training as “[m]any students, after years and years of academic study, are clamouring for practical training in the latter half of a three-year law degree” only to find out that, in some jurisdictions, articling positions are very rare.⁷⁵ While the Task Force was split on whether to consider the abolishment of the articling process, the minority held that the elimination of the articling process and the growth in professional training within law schools is a timely discussion:

Abolishing articling may well cause law schools to put more emphasis on practical training. In the absence of articling, students may increase pressure for such opportunities in law schools. We might even consider whether our accreditation of schools should require an increased component of practical training. The majority’s recommendation [the preservation of articling]... simply [puts] off for years another discussion that needs to take place now.⁷⁶

Undoubtedly, practical skills, ethics and professionalism are relevant to legal practice, and if not given appropriate attention, legal education, according to some authors, has the potential to fail law students by not providing them opportunities to either reflect upon their educational experience in a comprehensive manner or to properly strategize for career and future professional growth.⁷⁷ The move from practice-based to university-based legal education in the 19th and early 20th century, coupled with the longevity of the case-study method and the growth of clinical education in the mid-20th century, has led to renewed calls for a focus on ‘practice-readiness’ and the integration of lawyering skills for law school graduates in recent years.⁷⁸ This call, as well as the reality of articling shortages, has caused Ontario schools (and indeed schools elsewhere in

⁷⁴ Articling Task Force, “Pathways to the Profession: A Roadmap for the Reform of Lawyer Licensing in Ontario” (25 October 2012) at 94, online (pdf): *Law Society of Ontario* <lawsocietyontario.azureedge.net > [perma.cc/FNV5-AK8T].

⁷⁵ *Ibid* at 95.

⁷⁶ *Ibid.*

⁷⁷ Findley, *supra* note 67 at 311; see also Ethan Bronner, “A Call for Drastic Changes in Educating New Lawyers” (10 February 2013), online: *The New York Times* <nytimes.com/2013/02/11/us/lawyers-call-for-drastic-change-in-educating-new-lawyers.html> [perma.cc/SYH4-LMQL].

⁷⁸ See e.g. Findley, *supra* note 67 at 309-12.

Canada) to provide integrated articling completion (in the case of Lakehead) and an advancement of clinical offering in virtually all other cases. Findley notes that there is a growing concern amongst legal educators that this renewed focus on practice suggests a transformative shift, one where the law school will become a ‘trade school,’ a fear which has the potential to marginalize the role that skills development and clinical learning can play in legal education.⁷⁹ Notwithstanding, Findley refutes this concern, and argues that “[e]xpanding legal education beyond case and doctrinal analysis...represents a move toward a more, not less, rigorous and demanding approach to the study of law” because it is rich in conceptual and practical elements.⁸⁰ We attempted to ascertain student thoughts on this transformation. Below, we outline our study and share the results from our survey.

METHOD AND METHODOLOGY⁸¹

We provided a strictly voluntary response survey to 103 students enrolled in first year at Robson Hall Law School, based at the University of Manitoba in Winnipeg, Canada. We received formal ethics approval to survey the students on the contingency that participation was not mandated and no identifying characteristics formed part of the survey. In effect, we were barred from surveying for demographic characteristics of the participants. Nevertheless, we are permitted to reveal the demographic traits of the entire first-year enrolled student group, as this is publicly available information. The students were enrolled in the Robson Hall first-year curriculum, which includes Legal Methods, Legal Systems, Torts and Compensation Systems, Contracts, Real Property, Criminal Law and Constitutional Law. At the time of the survey, students had experienced at least two months of classes and thus had experience as students at Robson Hall. As of September 1, 2016, the first-year group consisted of 50 males and 53 females. The age range of this group was 19-58, with the average age of 26 for the males whilst the average age of the females was 24.7 (the

⁷⁹ Findley, *supra* note 67.

⁸⁰ *Ibid* at 311.

⁸¹ See Jochelson & Ireland, *supra* note 1. This is the same method and methodology we deployed in the sister study, however the questions we asked in this study were different.

overall average age was 25.2). From a total of 103 students enrolled, 83 of the students were Manitoba residents, and 20 were out-of-province residents from British Columbia, Alberta, Ontario, Quebec, and Saskatchewan.

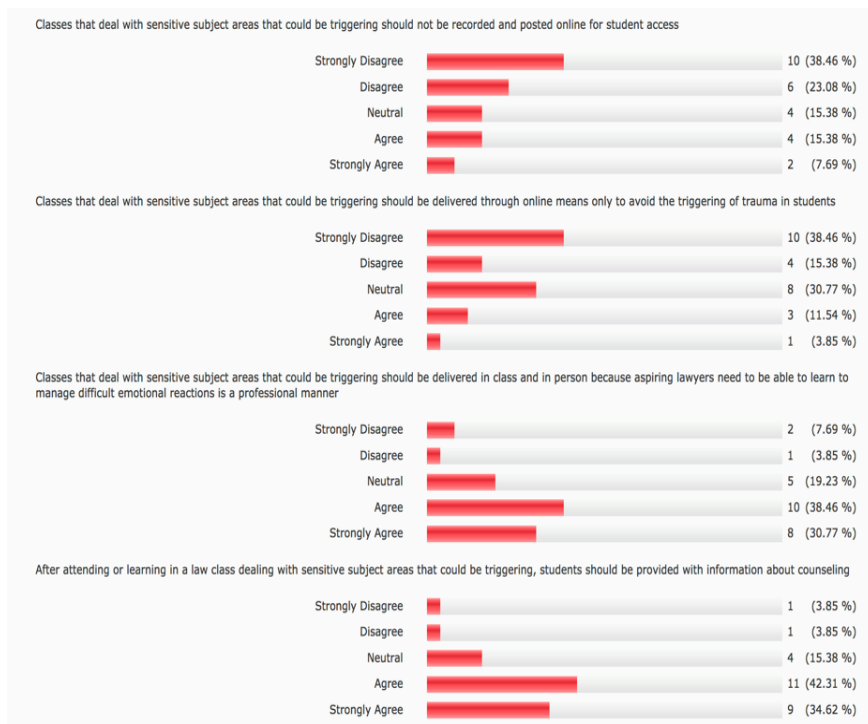
Our survey consisted of 70 questions and asked for student responses on a Likert scale where respondents would need to respond *disagree strongly*, *disagree*, *neutral*, *agree* or *strongly agree*. The survey was designed to be completed in under 45 minutes, and surveys were completed online through the UMLearn platform (a BrightSpace product). We received 26 student responses in total, which produces a snapshot of the respondents' opinions.

The survey was available for student participation for one month in 2016 (November 1st - November 23rd). In effect, our total first-year population is relatively small, and because our response rate was about 25 percent, running any advanced statistics would not provide any particular statistical advantages.⁸² The results are generalizable with moderate significance - the margin of error was +/- 14 percent with a confidence level of 90 percent - but this means less than is often the case in survey studies for two reasons. First, Likert-based answers do not translate well to standard deviation since the difference between *strongly agree* and *agree*, for example, is always an imprecise measurement; therefore, calculating deviations between the selected answers would amount to measuring inconsistent quantities. Second, much as is the case in consumer surveys, our responses are from actual, not hypothetical, students enrolled in the law program at Robson Hall. There is obvious importance in current students' responses and experiences. Arguably, even a sample size of one student can provide a significant amount of knowledge, information and perspective that enriches the learning and teaching of law.

The results may not be generalizable to other populations. They do, however provide focus group style results. Because we expect most of our readers are not trained in advanced statistics, we depict our results graphically, and we have chosen not to focus on advanced statistical

⁸² For a fulsome discussion, see Geoff Norman, "Likert scales, levels of measurement and the 'laws' of statistics" (2010) 15:5 *Advances in Health Sciences Education* 625; James Carifio & Rocca Perla, "Resolving the 50-year debate around using and misusing Likert scales" (2008) 42:12 *Medical Education* 1150; Susan Jamieson, "Likert scales: how to (ab)use them" (2004) 38:12 *Medical Education* 1217.

analysis. The 26 respondents were students that were comfortable completing online surveys, and so the caveats should apply about selection bias to our analysis – namely, these students are comfortable with sharing their thoughts and in using technology. The 26 respondents formed one-quarter of the graduating class of 2019. Their responses provide insight into the perspectives of this cohort.

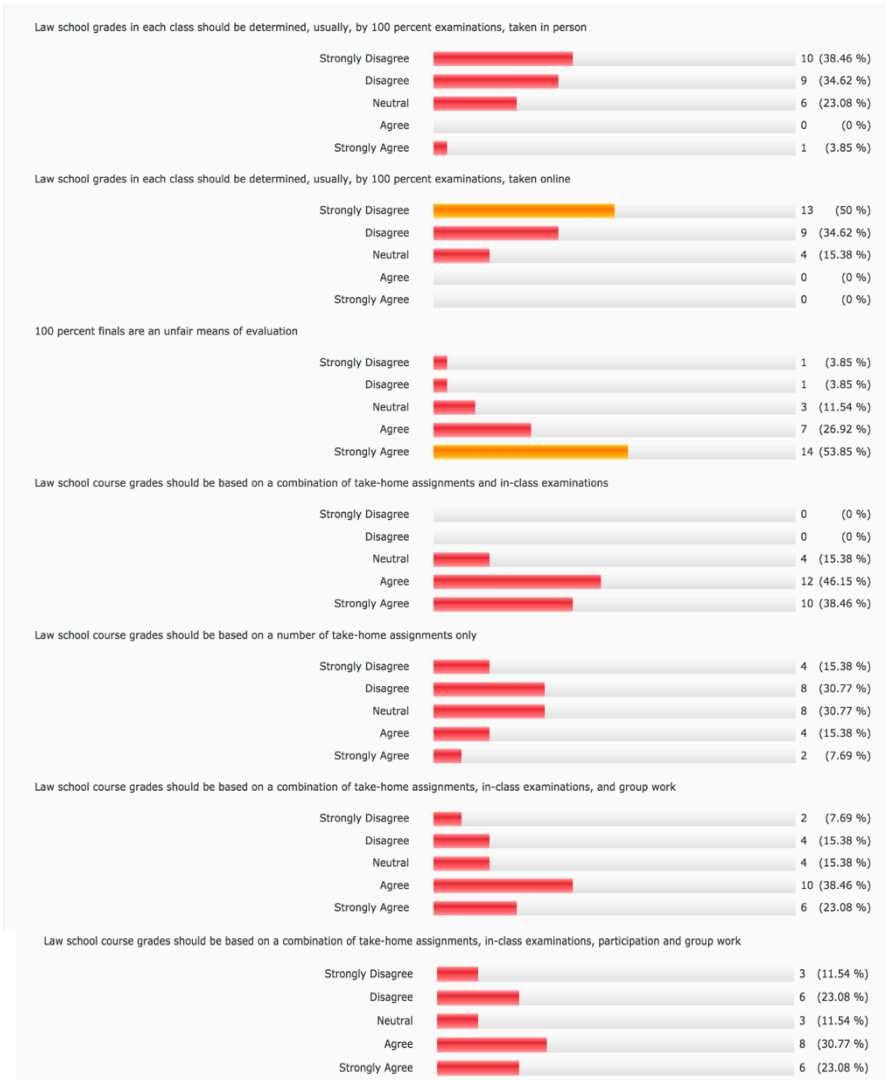


Graph 1: Student Sensitivity

Graph 1 shows a series of responses to questions related to course content which could potentially trigger trauma in students. Approximately 62 percent of law students surveyed disagreed or strongly disagreed with the statement that courses which dealt with potentially triggering information should not be recorded and posted online for student access. However, roughly 23 percent of respondents agreed with this statement, while approximately 15 percent remained neutral on the issue. When asked whether sensitive subject material which could potentially trigger should be delivered only online, roughly 53 percent of students indicated they did not want this sensitive course content available only online (compared to approximately 15 percent of students surveyed who would like such information delivered only through online means). Almost 70 percent agreed or strongly agreed that sensitive subject material should be delivered in class and in person, compared to the rough 10 percent of

students who disagreed or strongly disagreed (approximately 20 percent of respondents remained neutral on this issue). Finally, when asked whether students should be provided with information about counselling after learning potentially triggering information in a class, more than 75 percent of students agreed with this statement.

These findings suggest that as aspiring lawyers, these students do not want to shy away from sensitive subject material, especially if they are to progress in law school and become professionals in the legal field. These responses indicate that students would prefer to discuss these issues in person and in a classroom setting. This result is unsurprising, given that these students may be faced with sensitive subject areas in the professional world, and so it would be important to learn the strategies to manage or resolve these issues in any legal setting. While the sample wished to tackle these sensitive subject areas head-on, they were also mindful that there could be students in the class who have experienced prior trauma. In effect, the results may indicate that these students see that providing information about counselling services could benefit those potentially triggered students because of the sensitive subject material covered.

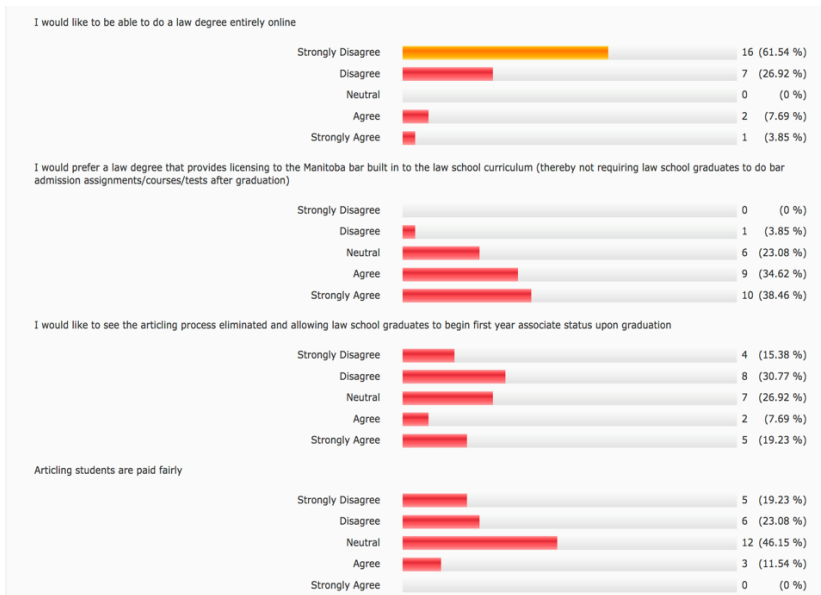


Graph 2: Multiple or Singular Assessment

Graph 2 shows a series of responses to questions relating to assessments of student learning in law school. Almost, if not all, of the student responses (approximately 96 percent and 100 percent, respectively) indicated that law school grades should not be determined solely upon in-

person or online exams worth 100 percent of their total grade. Furthermore, when asked whether such exams are unfair means of student evaluation, a strong majority indicated this was the case (roughly 80 percent). Multiple assessments were highly favourable in students' responses, suggesting that students considered a combination of take-home assignments and in-class examinations as an appropriate way to determine a law school grade (approximately 85 percent, compared to the remaining 15 percent, which remained neutral). While students were not as favourable to law course grades based solely on take-home assignments (roughly 46 percent, with approximately 31 percent remaining neutral while 23 percent agreed or strongly agreed with this assessment), students were more amenable to grades based on a combination of take-home assignments, in-class examinations and group work (approximately 61 percent, compared to an estimated 15 percent remaining neutral and 23 percent disagreeing or strongly disagreeing with this assessment) and similar results are also evidenced when participation is added to the mix.

Our findings suggest that students do not want their law school grades to reflect a one-time examination of their knowledge. Our sample was open to a combination of different assessments to evaluate student progress within the law classroom. Multiple assessments recognize the different ways in which students learn and understand law, and pedagogical approaches which centre on diverse student assessments permit students to potentially excel academically while they progress through their various law school experiences. A limitation of these findings might well be that most first-year students have limited experience with traditional law school evaluation, and repeating the survey with students exiting the program may provide additional clarity on this series of questions.



Graph 3: Skills-based Learning and Legal Practice

Graph 3 shows a series of responses to question relating to skills-based learning and the articling process. Almost all student responses suggest that surveyed students *do not* want to be able to do a law degree entirely online (roughly 88 percent), compared to the remaining 12 percent who would like this learning method as a viable option. Additionally, students indicated a preference for a law degree which provided licensing into the Manitoba Bar built into the law school curriculum, which would expedite the process for law graduates to join the Manitoba Bar without requiring students to do additional bar admission courses, assignments, or testing upon graduation (approximately 73 percent in favour, compared to the 3 percent who disagreed and the 23 percent who remained neutral). Interestingly, students were somewhat divided when asked whether they would prefer the articling process to be eliminated and allow law graduates to obtain first-year associate status upon graduation. For this statement, students’ responses indicated that more students did not want to eliminate articling than those that wanted the process eliminated (roughly 46 percent versus 27 percent, respectively), while an estimated 27 percent remained neutral. Finally, when asked if articling students are paid fairly,

nearly 42 percent of student responses disagreed or strongly disagreed (compared to approximately 11 percent of students who agreed these students are paid fairly), while nearly 47 percent remained neutral on this statement.

These results suggest that students value the in-person interaction a law classroom provides, as the classroom is arguably a significant factor for both the academic and skill-based learning of law. While students want more practice-based articling skills to be integrated into law school, they do not see law school as a mere barrier to be passed. They overwhelmingly rejected the conception of an entirely online law school, which suggested that they saw value in an in-person delivery system of knowledge. This is a system through which they clearly wanted to be apprised of more skill training. While students would prefer a more efficient process to join the Bar by having the law school provide some training towards the Bar, they were divided on whether the articling process itself should be eliminated. Students seemed to be neutral or in disagreement with eliminating the articling year, even seeming more willing than we expected to accept the lower pay for the articling year. This might suggest that even with clinical training embedded into the law school curriculum, students want a year of apprenticeship to further hone their clinical skills before taking on legal practice's joint privilege and liability.

ANALYSIS

Our goal was to survey our students at Robson Hall to help uncover how they felt about trigger warnings, modes of evaluation and clinical skills in the context of the push in recent years to innovate and integrate legal education with practice-based skills. This was a sister study to a separate study we conducted on the development of legal pedagogy in the digital world. We share the conclusions of our other study here, prior to augmenting those findings with our conclusions in respect of the current study:

Students seem to want interactive learning, with problem solving approaches at the core. Students seem to understand the importance of participation and the role of group work as an important clinical skill. Students seem to support video capsules as a means of augmenting learning experiences but certainly do not seem to want dogmatic flipping of the classroom in each instance of learning. Our respondents seem to want to maintain a human connection with each other and their instructors with incremental improvements in the technological

innovations that inform their learning environment. [They seem] open to technological evolution in the law school but do not seem to desire pedagogical revolution in terms of the means of instruction...

...The practice of law remains at its core a human, interactive and relational profession. The human aspect of the practice and its recruitment techniques inculcate the law school environment through clinical experiences... Students certainly desire fluency in technological innovation in order to penetrate the profession with the requisite skill set... but they also surely recognize [that] interactive, human to human skills, assist in landing work and sustaining a practice in a manner that the profession requires. It is not shocking that students would want to see these same parameters duplicated and reinforced in their learning environments...⁸³

The results of our first study provide some context for our students' responses in the current study. We draw the following cautious conclusions to reconsider reforms in legal curricula.

The results of our students' responses in terms of trigger warnings and advance information about sensitive subject matters suggest an interesting confluence between the world of practice and the academy. Students are eager to see legal knowledge founded in the social realities of trauma and lived experiences. This supports some in the academy's push for better socio-legal placement of legal learning. However, intriguingly, this sort of placement could be argued to be akin or integral to an important legal clinical skill. The understanding of sensitive legal materials as requiring advanced emotional preparation pertains to a law student's abilities to empathize, reduce risk for others, and thus provides a transferable skill of cautious forbearance to practice in terms of the ways nascent lawyers may interact with their own experiences and with the often difficult experiences of their clients. Advance warnings and their favour for our respondents indicate that our students recognize difficult subject matters, want these experiences placed, but also relish the opportunity to discuss these matters in person. Hence, there is an interesting symbiosis between the socio-legal contextualizing of difficult subject areas and clinical skills. The empathetic nature of these responses is buttressed by our respondents' willingness to provide opportunities and information about subsequent counselling when relevant. This empathetic tendency also translates well in the practice world, where clients experiencing difficulties will often need similar referrals. However, we must be cautious to not

⁸³ Jochelson & Ireland, *supra* note 1 at 158-59.

interpret these results as indicating that trigger warnings serve efficacious purposes or that they necessarily represent the gold standard of instruction techniques. Rather, the results merely indicate the respondents' levels of comfort with such warnings, which could be due to increased exposure to the practice of these warnings in recent years, as trigger warnings have proliferated through the academy.

Similarly, the socio-legal context also undergirds responses to questions pertaining to modes of evaluation. The preference of respondents for multiple modes of assessment, including take-home assignments and group work, suggests a desire for evaluative instruments that strengthen clinical learning. Group work and extended time for completion of assignments help replicate the dynamism of analysis that happens in a work setting. The preference of respondents for multiple modalities of assessments may stem from self-preservation but it also serves to foster enhanced clinical skills and is more likely to meet course learning objectives. Further, group work and participation also foster in-person, face-to-face, evaluative modalities that support our previous results, in which participants expressed preference for iterative, relational, person-to-person pedagogies. Combined with our discussion on one hundred percent examinations above, the preference for multiple modalities of learning may suggest that the time to retire the one hundred percent final may indeed be nigh.

Finally, the responses to articling and the interweaving of clinical articling benchmarks into law school learning, as well as a desire to preserve the articling year (not to mention the respondents' ambivalence about articling remuneration), suggest that the respondents saw law school and the articling process as integral. They appear to understand law school as supporting and instantiating clinical skills, but clearly see value in law school as an in-person relational space. Even where legal education is articling-integrated, the desire to preserve the articling year speaks to the respondents' fidelity to a system where law school and articling remain distinct, if interlinked, experiences.

We thus agree that the theory-practice divide is an ill-perceived oversimplification of larger pedagogical issues. Skills-based learning in law schools benefits students, and it provides them with opportunities for discussions and training in professional and legal practice. Legal academics and legal practitioners are two sides of the same coin; both have the potential to engage in micro and macro analyses of law along the micro-

macro continuum.⁸⁴ Both legal academics and practitioners are dedicated to their students and recognize that learning how to learn within the classroom creates a “community of learners” which fosters a richer environment for the learning of law beyond the classroom.⁸⁵ A community of learning approach also recognizes that group learning, participation and respect for difficult and sensitive learning materials comprise an important clinical function: the ability to analyze, discuss, and implement learning in a concretized fashion, apprised of important contexts. Furthermore, this reconsideration of the class as a community avoids pigeon-holing students into categories such as “academic, theoretician, practitioner or policy-maker.”⁸⁶ Bridging this theory-practice divide through skills-based learning has the potential to develop students’ capacities for legal problem-solving, professionalism, judgement, intellectual curiosity, and self-awareness.

CONCLUSION

Preparing law students to be competent and ethical lawyers is an important objective of legal education. Yet, in addition to preparing lawyers for practice, law faculties have other higher education objectives such as exposing students to interdisciplinary, philosophical and sociological dimensions of law: critical legal theory and methodology can further encourage students’ ability to think critically. It is clear that there remains ongoing tension between the varied objectives of preparing law students as lawyers and the objectives of higher education.

Nevertheless, our discussion presents an opportunity for law teachers to reconsider curriculum reform and conventional legal education. When students request trigger-warning accommodations, for example, might they be “informing educators about the importance of the nature of their experience and what they need to fully engage in an academic space”?⁸⁷ Or are they merely regurgitating their experiences of the latest practices of pedagogy they have been exposed to in the social sciences and humanities? There exists the potential for students to present educators with new ways

⁸⁴ Rhee, *supra* note 69 at 283.

⁸⁵ Shariff et al, *supra* note 2 at 327.

⁸⁶ Rosalie Jukier & Kate Glover, “Forgotten? The Role of Graduate Legal Education in the Future of the Law Faculty” (2014) 51:4 *Alta L Rev* 761 at 771.

⁸⁷ Byron, *supra* note 41 at 118.

of viewing legal education in the aftermath of trauma and vulnerability, and educators should be open to such perceptions when teaching law. Taking into account student sensitivity “need not be understood as a capitulation to the consumerist mentality promoted by neoliberal reforms.”⁸⁸ Instead, these pedagogical tools may benefit legal curricula reform and challenge the view that educators are catering to weak students unable to cope with the harsh realities of the social world. There is at least a case being made by some scholars that legal curricula ought to contextualize law in its social impacts, and this includes recognizing student experiences of trauma and vulnerability in the law classroom. This advocacy does not necessarily support the use of trigger warnings in the classroom so much as support the conception of contextualizing difficult materials, indicating that there remains a pressing concern for legal educators to place law in social contexts.

When students support multiple assessments and skills-based learning, they are potentially supporting incremental yet progressive shifts in legal pedagogy and its place within the higher educational landscape. Further, this recognition develops and supports important clinical skills, including participation, group work and deployment of empathy in legal settings.

In the shifting tides of legal education, law schools are undoubtedly rethinking the form of instruction and the means of delivery, a discussion now at the fore of legal education. These innovations received some warm acceptance from our respondents, but the picture is not complete without understanding our respondents’ fidelity to law school’s human and social experience. The classroom should be a space where all students from different backgrounds and levels of society “feel that they have the option to speak.”⁸⁹ In effect, our considerations of curricula reform nurture a space for dialogue in the law classroom by “focusing on what is happening *inside* the classroom.”⁹⁰

Legal education is a valuable experience, and law schools matter “because the law (still) matters.”⁹¹ Students are the heart of every law school, and we argue that when students are given a chance to voice their

⁸⁸ Chanbonpin, *supra* note 35 at 626; see also Kostouros & Wenzel, *supra* note 54; Robbins, *supra* note 35; Byron, *supra* note 41.

⁸⁹ Chanbonpin, *ibid* at 631.

⁹⁰ *Ibid* [emphasis added].

⁹¹ *Ibid* at 634.

experiences of the law classroom, they become free to share in ways they might not otherwise share. Based on the responses we saw, reforms in legal curricula should be delivered in such a way so as to augment the interpersonal and relational experience of legal learning. Pedagogical approaches should be reflexive enough to provide support to all students within the law classroom, and educators and students should work together towards common goals which benefit both the teaching and the learning of law.