Unsafe Spaces:
An Essay on the Future of Legal Education

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Silent, and soft, and slow
Descends the snow.

Even as our cloudy fancies take
Suddenly shape in some divine expression,
Even as the troubled heart doth make
In the white countenance confession,
The troubled sky reveals
The grief it feels.[1]

INTRODUCTION

I first heard the conjunction of the words 'safe' and 'space' at a theatrical play rehearsal, many years ago when I still could not — even in my wildest dreams — fathom the *absurd* idea of ever wanting to become a law student, let alone a practising lawyer. "What is a *safe space*?", I asked the stage director as she had said, a split-second earlier, that we were *in* one. "It is a space in which all of you can express yourselves without the fear of getting hurt or being judged by your peers" was her reply. My original impulse probably went along the lines of: "Wow…what a *great* concept." Little did I know. Little did I know that this seemingly sensible safe space paradigm would later turn on its head to make me feel so *unsafe*. I learned the hard way that here at McGill, the *political* is *personal*.[2]

As an exiled artist — i.e. a creative *outcast*, rebelled spirit — peer pressure and the inherent human need to conform to the morally normative ambient normality was not my cup of tea. I, quite simply, do not find despotic group thinking palatable. Words unspoken fester in the mouth. Stories untold leave a bitter, unsweetened aftertaste of 'on second thoughts'. I *should* have. I should *have* dared. I should have *spoken*. Although in retrospect, I perhaps should *not*

[1] Henry Wadsworth Longfellow, *Snow Flakes* (poem).
[2] 'The personal is political' (the order of the words is flipped on purpose above) was the compelling slogan adopted by early feminists, to denounce the professed radicalism of social movements that failed to address the routine subjugation of women at home or work. See Raymond Wacks, *Philosophy of Law: A Very Short Introduction* (Oxford: Oxford University Press, 2006) at 101 [Wacks, *Philosophy of Law*]; Joanna Williams, "Teaching Students to Censor: How Academics Betrayed Free Speech" in Tom Slater, *Unsafe Space: The Crisis of Free Speech on Campus* (London: Palgrave Macmillan, 2016) 47 at 51 [Williams, "Teaching Students to Censor"]. On how this famous sentence has been creatively recycled in legal scholarship, see e.g. Shauna Van Praagh, "Stories in Law School: An Essay on Language, Participation, and the Power of Legal Education" (1992) 2:1 Colum J Gender & L 111 [Van Praagh, "Stories in Law School"].

have spoken my mind as often as I did. Had I not, I surely would have saved myself a lot of trouble.

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I wish to propose here an antidote to the epidemic fear of academic freedom of expression.[3] This essay is meant to be read as a sort of *softcore* manifesto, towards an idealized re-glorification of the epistemic aims of legal education. The visceral need to write these lines is based in empathy for, and self-identification with the experiences of liberal 'snowflakes' in law school.[4] I hereby refer to those ideologically marginalized as 'liberal' members of a predominantly left radical student body, and as a caution, it should be articulated that the generic use of this label proceeds as a reduction of the existing variety in political affiliations.

My own personal story of time spent in faculty is woven in the fabric of this piece, along with other selected student narratives.[5] In an effort to bring *life* to *meaning*, and to anchor the foregoing analytical mode of reasoning within situated empirical knowledge, the transcripts of ten McGill law students' testimonies are joint, *verbatim*, as an annex. The reader is invited to discover their accounts of events, in due course, following indications in footnotes. The sampled data's limited scope (if disputed) can serve my claim: within the faculty's prevalent postmodern orthodoxy, liberal students are outnumbered and well marginalized.

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[3] Frank Furedi, "Academic Freedom: The Threat from Within" in Tom Slater, *Unsafe Space: The Crisis of Free Speech on Campus* (London: Palgrave Macmillan, 2016) 118 at 127 [Furedi, "Academic Freedom"]; AAUP, *Subcommittee on Academic Freedom and Tenure*, "On Trigger Warnings" (August 2014), online: <https://www.aaup.org/report/trigger-warnings>.

[4] The word 'snowflake' (*slang*) is "a political insult for someone who is perceived as too sensitive, often used for millennials and liberals" [emphasis added], see *Dictionary.com*, *sub verbo* 'snowflake', online: <https://www.dictionary.com/e/slang/snowflake/>. When preceded with a hashtag (#snowflake), it is conflated with 'white fragility', see *Urban Dictionary*, *sub verbo* '#snowflake', online: <https://www.urbandictionary.com/define.php?term=white+fragility&defid=13268333>. For a complete etymological history of the insult, see "No, 'Snowflake' as a Slang Term Did Not Begin with 'Fight Club': The Lost History of 'Snowflake', *Merriam Webster* (blog), online: <https://www.merriam-webster.com/words-at-play/the-less-lovely-side-of-snowflake>.

[5] Van Praagh, "Stories in Law School", *supra* note 2; James R Elkins, "Rites de Passage: Law Students 'Telling Their Lives'" (1985) 35 J Legal Educ 27.

Fellow classmates and friends have duly warned me of the dire personal and professional consequences of producing an article engaged with controversial issues such as safe spaces, free speech, subliminal persuasive instruction, and much else falling in the repertoire of what is going on under the law school curriculum radar. But I am far more worried about the future of legal education than my own, which is why I have chosen to write this, hit or miss.

I. EXCLUSIVE INCLUSION & UNIFORM DIVERSITY

> Exclusion is always dangerous. Inclusion is the only safety if we are to have a peaceful world. (Pearl S Buck)

Following discussions on demographic changes, campuses are now held accountable on their obligation to provide a *safe* learning environment, by and for an increasingly diversified body of students.[6] In the wake of 'woke' culture,[7] a transitional shift, from the edifice of liberal education (freedom) to an emphasis on diversity and *inclusion* (substantive equality), has been set in motion. According to the *Oxford Dictionary*, the contemporary definition of 'inclusion' — "the action or state of including or of being included within a group or structure" — may trace back its origins to the Latin noun *inclusio*, which is, in turn, derived from the verb *includere*, which means to "shut in".[8] To put it shortly, the concept of *inclusion*, as an applied theory of education, becomes *exclusive* in practice. In the name of *diversity*, students are encouraged to barricade themselves in with the likeminded.[9] Theory is here tragically mismatched to the conditions of practice.

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[6] Erwin Chemerinsky & Howard Gilman, *Free Speech on Campus* (New Haven & London: Yale University Press, 2017) at xix [Erwin & Gilman, *Free Speech on Campus*]; Jennifer Nedelsky, "Embodied Diversity and the Challenges to Law" (1997) 42 McGill LJ 91; Sigal R Ben-Porath, *Free Speech on Campus* (Philadelphia: University of Pennsylvania Press, 2017) at 32 [Ben-Porah, *Free Speech on Campus*]; University of Ottawa, Civil Law Section, *Collectif droit et diversité* (blog), online: <https://www.droitetdiversite.com>.

[7] 'Woke' (*slang*) means being conscious of racial discrimination in society and other forms of oppression and injustice. See *Dictionary.com*, *sub verbo* "woke", online: <https://www.dictionary.com/e/slang/woke/>.

[8] *English Oxford Living Dictionaries*, "inclusion", online: <https://en.oxforddictionaries.com/definition/inclusion>.

[9] Tom Slater, "Conclusion: How to Make Your University an Unsafe Space" in *Unsafe Space: The Crisis of Free Speech on Campus* (London: Palgrave Macmillan, 2016) 129 [Slater, "Conclusion"].

II. AN IDEOLOGY OF SAFETY

Safety brings first aid to the uninjured.
(James Mercer Langston Hughes)

When listening to the tales told in some students' rhetoric, it sounds like we are now living in a dystopian world, where the legal training terrain has turned into an anti-personal minefield.[10] Looming reports on the mental health condition of law students are multiplying.[11] In this context, it shan't come as a surprise, were we to find the faculty overrun with 'eggshell plaintiffs'.[12] Not that this is a joke: the welfare of vulnerable students is, unquestionably, important.[13] Yet, as a matter of principle, it should be reminded that individual rights and freedoms are frequently infringed upon when safety concerns — real or fabricated — arise.[14]

1. A Network of Safety Nets: Layers of Caution

The educational cautious scheme's manifestation is manifold. In its most *extreme* or *radical* form, it makes an appearance under the label of 'no-platform'. In its *intermediate* exhibition, it

[10] Darel E Paul, "Listening at the Great Awokening" (17 April 2019) *Aero* (blog), online: <https://areomagazine.com/2019/04/17/listening-at-the-great-awokening/>. For the opposite analogy of legal education as a playfield, which served as inspiration, *Cf* Shauna Van Praagh, "Serious Play: Creativity and the Transsystemic Classroom" in Yaëll Emerich & Marie-Andrée Plante, *Repenser les paradigmes: Approches transsystémiques du droit* (Montréal: Yvon Blais, 2018) 31.

[11] Diane Poupeau, "Ils s'engagent pour la santé mentale des juristes" (25 April 2019) *Droit-Inc* (blog), online: <http://www.droit-inc.com/article24589-Ils-s-engagent-pour-la-sante-mentale-des-juristes?fbclid=IwAR0VQl_m8fLSw4wXlOezS13Ou7vznII1IeA92uXnjU3VKi0oncirFtN5r1k>; Margaret Bruna, "Mental Health is Health: Reframing the Conversation on Campus" (5 February 2019) *The McGill Daily* (blog), online: <https://www.mcgilldaily.com/2019/02/mental-health-is-health/>; Amanda H Chan, Amanda M Lee & Adam P Savitt, "Wellness at the the Law School: Promises to Keep and Miles to Go Before We Sleep" (29 March 2018) *The Harvard Crimson* (blog), online: <https://www.thecrimson.com/article/2018/3/29/lee-chan-savitt-wellness-at-law-school/>.

[12] Heather MacDonald, "The Microaggression Farce", *City Journal* (Autumn 2014), online: <https://www.city-journal.org/html/microaggression-farce-13679.html>; Patricia I Coburn, Deborah A Connolly & Ronald Rosech, "Cyberbullying: Is Federal Criminal Legislation the Solution" (2015) 57 Canadian J Criminology & Crim Just 566; William E Copeland et al, "Adult Psychiatric Outcomes of Bullying and Being Bullied by Peers in Childhood and Adolescence" (2013) 70:4 JAMA Psychiatry 419; Samuel J Abrams, "The Bullying and Silencing of Students" (28 March 2019) *Minding the Campus* (blog), online: <https://www.mindingthecampus.org/2019/03/28/the-bullying-and-silencing-of-students/?platform=hootsuite>.

[13] Iris Marion Young, "Five Faces of Oppression" in *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990) 39.

[14] And as a legal matter, see Denis Smith, "War Measures Act", in *The Canadian Encyclopedia*, online: <https://www.thecanadianencyclopedia.ca/en/article/war-measures-act>; *Emergencies Act*, RSC, 1985, c 22 (4th Supp), preamble.

materializes in the shape of 'trigger warnings'. Lastly, its *softer* or *diffused* expression lies in the all-encompassing concept we call 'safe space'.[15]

A) No-Platforming: 'I Regret, Your Name is No Longer on the Guestlist'

'No-platform'[16] (or 'no-platforming') can best be defined as an attempt to "prevent a person — holding views regarded as unacceptable or offensive — from contributing to a public debate or meeting, especially one at which they had originally been invited to speak."[17] The 'disinvitation' phenomenon — where notorious controversial personas are relieved of their speaking duties following student protests — has hit American colleges many times over, but has yet to become a *thing* at home.[18] In Canada, while a few faculty events have stirred pupils' passions, none were successfully cancelled as a result.[19]

B) Trigger Warnings: Willful Blindness & Blissful Ignorance[20]

Where the practice of no-platforming is concerned with the substance of public speaking events hosted in-faculty, the demand for trigger warnings stresses on class content and the reliance on 'threatening' learning materials.[21] In linguistic terms, 'trigger warning' speaks for itself. A

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[15] Brendan O'Neil, "From No Platform to Safe Space: A Crisis of Enlightenment" in Tom Slater, ed, *Unsafe Space: The Crisis of Free Speech on Campus* (London: Palgrave Macmillan, 2016) 5 [O'Neil, "From No Platform to Safe Space"].

[16] *Ibid*. As a movement, No-Platform originated in the UK as early as in the 1970s, see Dr Evan Smith, "A Policy Widely Abused: The Origins of the "No Platform" Policy of the National Union of Students" (23 March 2016) *History & Policy* (blog), online: <http://www.historyandpolicy.org/opinion-articles/articles/a-policy-widely-abused>.

[17] *The Oxford English Dictionary*, *sub verbo* "no-platform", online: <https://en.oxforddictionaries.com/definition/no-platform>.

[18] For an exhaustive list of cancelled public speaking appearances on American campuses, see FIRE, *Disinvitation Database*, online: <https://www.thefire.org/resources/disinvitation-database/>.

[19] On similar events in Canada which, however, did not lead to cancellations, see, e.g. Sarina Grewal, "Jordan Peterson Lecture Continues Despite Disruptions by Protesters" (6 March 2018) *Queen's University Journal* (blog), online: <https://www.queensjournal.ca/story/2018-03-06/news/jordan-peterson-lecture-continues-despite-disruptions-by-protesters/>; Mark Blinch, "Upcoming speech by Jian Ghomeshi's lawyer sparks debate" (22 November 2016) *The Toronto Star* (blog), online: <https://www.thestar.com/news/canada/2016/11/22/speech-scheduled-for-ghomeshis-lawyer-sparks-debate.html>.

[20] In consumer behaviour studies, the 'blissful ignorance effect' is when people who have good information about a product are not expected to be as happy with the product as people who have less information about it. Authors have asked the question whether it is possible that this effect applies not only to product choices, but to worldview choices as well. See Brian Thomas, PHD, "Worldviews and the Blissful Ignorance Effect" (22 September 2008) *Institute for Creation Research* (blog), online: <https://www.icr.org/article/worldviews-blissful-ignorance-effect/>.

[21] Jennifer Medina, "Warning: The Literary Canon Could Make Students Squirm" (17 May 2014) *The New York Post*, online: <https://www.nytimes.com/2014/05/18/us/warning-the-literary-canon-could-make-students-

safety notice is issued prior to the exposition of students to some topic or object of knowledge that is potentially upsetting (at best) or trauma-inducing (at worst).[22] Trigger warnings — in the outside world — are generally used as a tool for helping people who suffer from posttraumatic stress disorder (PTSD).[23] While survivors of sexual assault (e.g.) certainly have experienced the type of emotional shock that fits the criteria, many other complainants cannot be put into the same category. It is crucial, at this point, to note how the definition of safety has been conscientiously watered down on campus; to the extent of being superimposed with meanings of *comfort* and *well-being*.[24]

Yet, some students are plausibly truly at risk, and the position in favour of the phenomenon holds great emotional appeal to the vast majority of us, who do not want to harm those already hurt.[25] Proponents of trigger warnings argue that safeguarding the mental equilibrium of fragile youth is well worth any potential costs. Yet, trigger warnings might just be missing the mark, as they reinforce avoidance, at the cost of seeking serious psychological help.[26] As a matter of fact, studies in clinical psychology conducted on participants with a history of trauma, have found that the absence, or presence of trigger warnings made practically no difference to any of their symptoms.[27] As per the 'well worth potential costs', trigger warnings are a threat to legal education, and here is why.

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squirm.html>; Greg Lukianoff, "Trigger Warnings: A Gun to the Head of Academia" in Tom Slater, *Unsafe Space: The Crisis of Free Speech on Campus* (London: Palgrave Macmillan, 2016) 58 [Lukianoff, "Trigger Warnings"].

[22] For a more accurate definition of the term, see *Urban Dictionary*, *sub verbo* 'trigger warning', online: <https://www.urbandictionary.com/define.php?term=Trigger%20warning>: "A warning before showing something that could cause a PTSD reaction"; O'Neil, "From No Platform to Safe Space", *supra* note 15 at 5.

[23] PTSD is a serious psychiatric condition. *Cf* American Psychiatric Association, "What is Posttraumatic Stress Disorder?", *Diagnostic and Statistical Manual of Mental Disorders, DSM-5* (January 2017), online: <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd>.

[24] Lukianoff, "Trigger Warnings", *supra* note 21 at 58-60.

[25] *Ibid* at 63.

[26] Seven Humanities Professors, "Trigger Warnings Are Flawed" (29 May 2014) *Inside Higher Ed* (blog), online: <https://www.insidehighered.com/views/2014/05/29/essay-faculty-members-about-why-they-will-not-use-trigger-warnings>; Sarah Roff, "Treatment, Not Trigger Warnings" (23 May 2014) *The Chronicle of Higher Education* (blog), online: <https://www.chronicle.com/blogs/conversation/2014/05/23/treatment-not-trigger-warnings/>; Lukianoff, "Trigger Warnings", *supra* note 21 at 63.

[27] Mevagh Sanson, Deryn Strange & Maryanne Garry, "Trigger Warnings Are Trivially Helpful at Reducing Negative Affect, Intrusive Thoughts, and Avoidance" (4 March 2019) *Clinical Psychological Science* (blog), online: <https://journals.sagepub.com/doi/full/10.1177/2167702619827018> in Olga Khazan, "The Real Problem

Not only are trigger warnings conceivably counterproductive in their endeavour to heal, they are also a learning impediment for the mentally stable student. Discomfort is a necessary part of education, especially in legal training.[28] In this courteous and puritanical context, broaching the law of sexual assault may seem particularly risky, and this is only one example among many.[29] Considering that law schools owe a duty to society in their task of crafting learned attorneys, the likelihood of quickly brushing over key aspects of the legal curriculum suggests a somber prognostic.[30]

Moreover, the proselytization of the trigger warning practice imposes heavy restrictions on teachers' room for maneuver. Academic freedom endows all members of a university with the right to express their views freely,[31] and is widely acknowledged as being essential to the pursuit of knowledge.[32] Under its umbrella, academics are entitled to teach — and produce research on — whatever they deem appropriate and fit.[33] Sometime in the not-so-distant future,

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With Trigger Warnings" (28 March 2019) *The Atlantic* (blog), online: < https://www.theatlantic.com/health/archive/2019/03/do-trigger-warnings-work/585871/>.

[28] Joanna Baron, "Courtrooms Are Not Safe Spaces" (26 April 2016) *The Walrus*, online: <https://thewalrus.ca/courtrooms-are-not-safe-spaces/?fbclid=IwAR365qhym_RJ2MpK0dCcliPqUuEKm3xdOGTMMzM5YEVpeEgz-KXuCs9B1jo>; Lukianoff, "Trigger Warnings", *supra* note 21 at 60.

[29] *Ibid* at 62.

[30] "[t]he social side of a law teaching career has a further extra-mural element. Universities exist in society. There is no greater abdication of responsibility than to claim that one is only concerned with the law as such, and not with how it affects people": Roderick Macdonald, "Academic Questions" (Annual Conference of the Australasian Law Teachers' Association delivered at the Faculty of Law, University of Western Australia, 13 July 1991), (1992) 3:1 Leg Ed Rev 61 at 68; Harry Arthurs, "The Future of Legal Education: Three Visions and a Prediction" (Keynote address, The Future of Law School Conference delivered at the Faculty of Law, University of Alberta, 27 September 2013), (2013) 49 Osgoode Hall LJ 1 [Arthurs, "The Future of Legal Education"]; Elizabeth Mertz, *The Language of Law School: Learning to "Think Like a Lawyer"* (Oxford: Oxford University Press, 2007) 43 [Mertz, *The Language of Law School*]; Robin Barrow & Ronald Woods, "Knowledge and the Curriculum" in *An Introduction to Philosophy of Education*, 4th ed (London & New York: Routledge, 2006) 38 [Barrow & Woods, "Knowledge and the Curriculum"].

[31] Academic freedom gives professors broad discretion over expressions and interactions in the classroom, see Ben-Porah, *Free Speech on Campus*, *supra* note 6 at 86.

[32] As an abstract ideal, academic freedom continues to enjoy significant cultural validation. UNESCO has gone so far as to declare that it is "not simply a fundamental value" but also "a means by which higher education fulfills its mission", adding that "[s]ince the accumulation of knowledge through enquiry is a condition of human progress and advance, academic freedom is a condition of that progress": UNESCO, *International Association of Universities (IAU)*, "Autonomy, Social Responsibility and Academic Freedom" (Paris, August 1998) at 9 &13, online: <http://www.unesco.org/education/educprog/wche/principal/freedom.html>.

[33] Alan Charles Kors & Harvey A Silverglate, "What is Academic Freedom?" in *The Shadow University: The Betrayal of Liberty on America's Campuses* (New York: HarperPerennial, 1999) at 50-67; Furedi, "Academic Freedom", *supra* note 33 at 120.

professors may well be punished for omitting to issue a notice ahead of discussing some class material labeled as objectionable, *a posteriori*. In this foreseeable scenario, imposing an added duty on professors to anticipate and dodge sensitivities may easily create new rationales for students or administrators seeking to punish provocative instructors.[34] An unfortunate truth of human nature is that if we are given a cudgel that may be wielded at the heads of those we oppose, some of us will gladly swing it.

C) Safe Spaces: The Censorious Sensorium

The fortification of the academy — against offensive, insulting, harmful or simply *different* manners of thinking — is all encapsulated within 'safe space' ideology; the trigger warning and no-platforming phenomena simply manifesting themselves as two of its axiomatic symptoms.[35] But *what is* a safe space? If you recall the stage manager from earlier, we could say she actually came quite close to its exact definition. Following the *Merriam Webster Dictionary*'s etymological description, a safe space is "a place — as on a college campus — intended to be free of bias, conflict, criticism, or potentially threatening actions, ideas, or conversations."[36] As a matter of logical deduction, it could be argued that, to turn the university into an emotional and intellectual safe space, students are actually seeking and pursuing an ideal of freedom *from* speech.[37] But from what kind of speech?

III. MANNERS OF SPEAKING

> Censorship is certainly not the answer to controversial material and is inconsistent with our most basic constitutional values. (Kimberle Williams Crenshaw)

If one goal of legal education is to foster an environment that is conducive to learning (a utilitarian tautology), it should be made clear that unthoughtful remarks and intimidating

[34] Lukianoff, "Trigger Warnings", *ibid* at 62-63.
[35] O'Neil, "From No Platform to Safe Space", *supra* note 15 at 6.
[36] *Merriam Webster Dictionary*, "safe space", online: <https://www.merriam-webster.com/dictionary/safe%20space>.
[37] Williams, "Teaching Students to Censor", *supra* note 2.

comments are not allowed within the classroom walls.[38] Words *can* wound, and heinous discourse can inflict severe psychological damage.[39] In this regard, instructors should devote some thought to the ways in which dissent, harm, and other forms of expression can present themselves in the classroom and how they might productively respond to free speech challenges.[40] On the legal side of things, freedom of expression is a fundamental right[41] on which there are internal[42] and external limitations (e.g. hate propaganda,[43] defamation[44] and intimidation)[45], in terms of manner and content. Interestingly, the right to free expression also protects the right not to express oneself.[46]

The postmodern message has become mainstream, and so the original connotation of words — now *altered* in the common consciousness — was somehow forgotten. The intended meaning of idioms such as 'taking offense' or 'being offended', as I recall, had to do with a postured, slightly-exaggerated and laughable reaction, to a minor incident. Here, a *martyred* reinterpretation of 'easily offended' is acting as a self-prophecy. It is quite bizarre how today, words like 'threatening', 'harmful' and 'trauma-inducing' are associated with others like 'offensive' and 'inappropriate', or how, *seriously*, it could ever make sense, for such a horrible thing as an 'aggression' to be qualified as 'microscopic'.

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[38] Ben-Porah, *Free Speech on Campus*, *supra* note 6 at 86-95.
[39] See Mari J Matsuda et al, *Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (New York: Routledge, 1993) [Matsuda et al, *Words that Wound*], in which Richard Delgado argues that hateful words can cause feelings of humiliation, isolation and self-hatred, and even result in mental illness and psychosomatic disease, as referenced in O'Neil, "From No Platform to Safe Space", *supra* note 15 at 14.
[40] Ben-Porah, *Free Speech on Campus*, *supra* note 6 at 86-95.
[41] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 2(b); *Quebec Charter of Rights and Freedoms*, RSQ c 12, s 3.
[42] Canada, Department of Justice, "Section 2(b) — Freedom of Expression", *Charterpedia*, online: < https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art2b.html>. Expression in the form of violence is not protected by the Charter (*Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927; *R v Keegstra*, [1990] 3 SCR 697). Threats of violence also fall outside the scope of the section 2(b) protection (*Suresh v Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 3).
[43] *Criminal Code*, RSC, 1985, c C-46, ss 318-319.
[44] ss 297-300 Cr c; *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130; *Bou Malhab v Diffusion Métromédia CMR inc*, 2011 SCC 9; s 1457 CcQ.
[45] s 423 Cr c.
[46] *Slaight Communications Inc v Davidson*, [1989] 1 SCR 1038 at 1080 ("Silence is in itself a form of expression which in some circumstances can express something more clearly than words could do").

In an attempt to evaluate the dangerousness of a certain dialectical activity, the major obstacle lies in this simple truth: harm is a *feeling*. Since emotions are inherently subjective, the entire analysis rests on the receiving end of words, i.e. the 'signified' (Derrida).[47] Legally speaking, this shift in emphasis (from the defender to the plaintiff) and reduction in analysis (from a reasonable person standard to a 'potentially offended' one) makes no sense. And in a university where identity is considered so fragile a construction, and personal expression a source of microaggression,[48] such an arbitrary assessment formula is a slippery slope; virtually any serious clash of views may become a 'punishable offence' (remember the cudgel metaphor).[49]

From a practical reasoning standpoint, it would make better sense, I suggest, to evaluate any given expression — apart from hate speech which is already dealt with — using criteria related to intent. This solution would, both: (1) avoid potentially unfair or arbitrary consequences to be imposed on the speaker; (2) develop an incremental body of administrative precedents, fostering social stability, and predictability.[50] The reason why it matters how we qualify expression, is because of how a majority of campuses speech codes fail to do so, or at least fail to do so *clearly*. It goes without saying: absent clear guidelines, restrictions on speech are a recipe for disaster.

1. Political Correctness (PC)

> Law school is or can be this sort of conversation, as well.[51] (Sherman J Clark)

[47] Wacks, *Philosophy of Law*, *supra* note 2 at 99.
[48] Williams, "Teaching Students to Censor", *supra* note 2 at 51.
[49] Fran Furedi, "Academic Freedom", *supra* note 33 at 122.
[50] Oliver Wendell Holmes, "The Path of the Law" (1897) 10:8 Harv Law Rev 457 at 458-461.
[51] Sherman J Clark, "Law School as Liberal Education" (2013) 63:2 Journal of Legal Education 235 at 240, online: <https://jle.aals.org/cgi/viewcontent.cgi?article=1064&context=home> [Clark, "Law School as Liberal Education"].

While most American colleges have institutionalised stricter speech codes,[52] Canadian academic policies of governance are still fairly liberal.[53] Absent official restrictions, qualifications on the exercise of academic freedom are invariably communicated through the narrative of hints and asides.[54] In this context, the mechanics of speech policing are engineered by a subtler set of social unofficial guidelines. Informal rules of conduct are communicated to students through example, peer-group pressure and comments from lecturers.[55]

Many members of the academy insist that the entire phenomenon labeled 'political correctness'[56] is a mythical fabrication of the minds of opponents to progressive social change.[57] While this may be partly accurate (PC *is* often used as a derogatory term)[58], assertions like these, however, *do* sound strange to students who happen to dissent from prevailing campus orthodoxies. For them, the ideological consensus is acting as a sub-systemic, coercive and repressive force of alienation.[59] Political correctness has created an internal schism that threatens the legal academy with collective irrationality.[60] Legitimized in the source of popular

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[52] For an overview of the strictest speech policies on American campuses, see Alan Charles Kors & Harvey A Silverglate, "The Assault on Faculty Speech" in *The Shadow University: The Betrayal of Liberty on America's Campuses* (New York: HarperPerennial, 1999) at 113-147; Harvey A Silvergate, David French & Gref Lukianoff, *Fire's Guide to Free Speech on Campus* (Philadelphia: Foundation for Individual Rights in Education, 2005) at 80-100; Tom Slater, *Unsafe Space: The Crisis of Free Speech on Campus* (London: Palgrave Macmillan, 2016).

[53] *Cf* McGill University, "Freedom of Opinion, Expression and Peaceful Assembly: Handbook of Student Rights and Responsibilities", online: <https://www.mcgill.ca/students/srr/personalrights/opinion>; Campus Freedom Index, "McGill University", online: <http://campusfreedomindex.ca/campus/mcgill-university/>.

[54] Furedi, "Academic Freedom", *supra* note 33 at 120.

[55] Williams, "Teaching Students to Censor", *supra* note 2 at 53.

[56] The wording 'political correctness' (PC) "is used to refer to language that seems intended to give the least amount of offense, especially when describing groups identified by external markers such as race, gender, culture, or sexual orientation". As defined in Cynthia Roper, "Political Correctness" in *Encyclopaedia Britannica*, online: <https://www.britannica.com/topic/political-correctness>.

[57] Cynthia Roper, "Political Correctness" in *Encyclopaedia Britannica*, online: <https://www.britannica.com/topic/political-correctness> (Political Correctness is a "term used to refer to language that seems intended to give the least amount of offense, especially when describing groups identified by external markers such as race, gender, culture, or sexual orientation."); Alan Charles Kors & Harvey A Silverglate, *The Shadow University: The Betrayal of Liberty on America's Campuses* (New York: HarperPerennial, 1999) at 97; Norman Fairclough, "'Political Correctness': The Politics of Culture and Language" (2003) 4:1 Discourse & Society 17.

[58] For a historical overlook on the literary, politically charged or simple day-to-day social usage of PC, see Jesse Walker, "What the Hell Does 'Politically Correct' Mean?: A Short History" (1 January 2015) *reason* (blog), online: <https://reason.com/2015/01/30/what-the-hell-does-politically-correct-m>.

[59] Alan Charles Kors & Harvey A Silverglate, *The Shadow University: The Betrayal of Liberty on America's Campuses* (New York: HarperPerennial, 1999) at 97.

[60] On PC creating a schism within the academy, see Dan Moller, "Dilemmas of Political Correctness", *Journal of Practical Ethics* (blog), online: <http://www.jpe.ox.ac.uk/papers/dilemmas-of-political-correctness/> [Moller,

opinion and held as a supra-normative standard of conduct, its arsenal of punishment includes shaming,[61] labeling,[62] blaming[63] and black-listing,[64] as well as subtler shades of self-righteous disdain. PC is positive morality;[65] it is a form of social control outside the law.[66] Where the 'safe space' is a *moral fiction* embodied in a concrete, or abstract spatial location, PC is the safe space *in action*, i.e. the expressive activity allowed — or not — within.

This being said, PC can be seen as an important attempt to advance the legitimate interests of certain groups in the public sphere, all the while generating costs that mustn't be neglected in the form of conflict with other values we hold dear. In short, the subversiveness of political correctness might be just this: its goal is to create safety for all, while its means of implementation create more conflict.[67]

"Dilemmas of Political Correctness"]. See also, on the idea of a 'generational chasm': Michelle Goldberg, "The Laura Kipnis Melodrama" (16 March 2015) *The Nation* (blog), online: < https://www.thenation.com/article/laura-kipnis-melodrama/>.

[61] Solange V Manche, "I feel deeply ashamed that someone from my university, and scholarship cohort, spreads incorrect information regarding the university's decision to rescind Peterson's offer to the Divinity School. They revoked his offer after finding out about the photograph in which he poses with a man wearing an overtly Islamophobic t-shirt — as many will remember. Framing the university's decision as resulting from students' pressure only fuels the Right's strategies to appeal to the dumbest of freedom of expression arguments." [emphasis added] (22 April 2019 at 2:38pm), online: Twitter <https://twitter.com/MancheSolange/status/1120441764253450241>, commenting on Rob Henderson, "What Jordan Peterson Did for Me", Opinion, *The New York Times* (22 April 2019), online: <https://www.nytimes.com/2019/04/22/opinion/jordan-peterson-cambridge.html?fbclid=IwAR07KF_S-cD8EOzKF49QWVGpdHaRjyeAk70bjTa_aMI8k6NfVAUpHW3mInA>.

[62] Look to the testimonies of "Student Numer 2", "Student Number 6" & "Student Number 9" in the Annex, *infra*.

[63] *Cf* Students from the Philadelphia University of the Arts have blamed academic Camille Paglia for an interview they did not like, and subsequently asked her replacement by either a woman of colour or a gender queer person. However, the university's dean has not granted their requests, a rare occurrence in these times. See Claire Lehmann, "A College President Stands Up for Academic Freedom" (16 April 2019) *Quillette* (blog), online: <https://quillette.com/2019/04/16/a-college-president-makes-a-stand-for-academic-freedom/>.

[64] Katja Thieme, "YES. If you're an academic and you publish in Quillette, we see you. We fucking see you. And we are looking right at you." (16 March 2019 at 5:47pm), online: Twitter <https://twitter.com/katja_thieme/status/1107080968316379137?lang=en>.

[65] The 'positive morality' locution was coined as sub-set of extra-legal social rules by John Austin, "The Province of Jurisprudence Determined" in Lord Lloyd of Hampstead & MDA Freeman, *Lloyd's Introduction to Jurisprudence*, 5th ed (Toronto: Carswell, 1985) 295 at

[66] Critical Legal Studies challenge the reasons to regard the law as a decisive factor in social behaviour. This is described as the principle of *marginality*. And if law is marginal, social life must be controlled by norms exterior to the law. See Wacks, *Philosophy of Law*, *supra* note 2 at 96.

[67] Dan Moller, "Dilemmas of Political Correctness" (2019) Journal of Practical Ethics 2051, online: <http://www.jpe.ox.ac.uk/papers/dilemmas-of-political-correctness/>.

Some scholars have gone so far as to characterize academic freedom as a "liberal shibboleth"[68]. The innate hypocrisy of such statements, expressed by *virtue* of the very thing they despise — this 'liberal shibboleth' — is baffling, to say the least. Remembering the McCarthy (or Duplessis) past obscurantist epoch,[69] it should be reminded that, in disputing the merits of a right, you need to argue from a position of principle.[70] Meanwhile, the right of academics to freedom of expression — for those who are *honest* about their will to exercise it — competes with the right of students not to be offended.[71]

2. The Sound of Silence

> People talking without speaking
> People hearing without listening
> People writing songs that voices never share
> And no one dared
> Disturb the sound of silence. (Simon & Garfunkel)

In considering the above, a fallacious conclusion could easily be reached in stating that some students' expression is *censored*.[72] Yet, students are *not* censored, and they aren't for the simplest reason: as a matter of fact, it is quite possible for dissenters to puncture the consensus created by the promotion of so-called 'progressive' values within the academy. However, a number of factors, taken altogether, make such challenges quite onerous.

Consider, for example, the following elements. If a lecturer teaches nothing but her own politics of predilection, while her personal views assume authoritative moral high ground *and*

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[68] Robin Marie, "Thinking Critically About Academic Freedom: The Case of Salaita" (4 June 2015) *S-USIH* (blog), online: <https://s-usih.org/2015/06/thinking-critically-about-academic-freedom-the-case-of-salaita/>. *Cf* Sebastien Cesario, "Shibboleths That Exclude in the Name of Inclusion" (25 June 2018) *Quillette* (blog), online: <https://quillette.com/2018/06/25/shibboleths-that-exclude-in-the-name-of-inclusion/>.

[69] Joanna Williams, "Teaching Students to Censor: How Academics Betrayed Free Speech" in Tom Slater, *Unsafe Space: The Crisis of Free Speech on Campus* (London: Palgrave Macmillan, 2016) 47 at 53.

[70] "What power can be given to the magistrate for the suppression of an idolatrous Church, which may not in time and place be made use of to the ruin of an orthodox one?": John Locke, *A Letter Concerning Toleration*, translated by William Popple (1689). Tom Slater, "Conclusion: How to Make Your University an Unsafe Space" in *Unsafe Space: The Crisis of Free Speech on Campus* (London: Palgrave Macmillan, 2016) 129 at 130; O'Neil, "From No Platform to Safe Space", *supra* note 15 at 11.

[71] Furedi, "Academic Freedom", *supra* note 33 at 124.

[72] As opposed to erroneously held beliefs, censorship, or rather infringements on one's liberty of expression, are also included in Quebec's private law, see: Maxime St-Hilaire, "Il n'a jamais été question de censure, mais de critique! La censure ne peut venir que de l'État. Vraiment?" (12 April 2019) *À qui de droit* (blog), online: <https://blogueaquidedroit.wordpress.com/author/maximesthilaire/>; *Quebec Charter of Rights and Freedoms*, RSQ c 12, s 3.

appear to make class consensus, it surely takes a fairly brave student to challenge this concord.[73] Likewise, if an assessed mark is explicitly contingent on an exact transcription of the professed political standpoint, only a 'GPA-suicidal' student could question the status quo.[74] At any rate, when rarely presented with knowledge running counter to the dominant theoretical current, the decision to frame an intellectually convincing critique may prove unfeasible or, at the very least, more demanding (in terms of research and self-learning).[75]

There is something to be said, too, about the existentialist call to challenge that situates itself in light of classroom consensus. While questioning one's own assumptions is a worthy intellectual exercise, there comes a crossing at which point this escalating insecurity results in an infringement on freedom of thought.[76] Yet, once again, students are not *truly* censored, as they may always choose to think their thoughts and express their opinions (with the afferent costs). If they are prevented from doing so in any way, it might be that liberal students are firmly established within a spiral of silence,[77] stemming from their own self-censorship and pretense at conforming with the prevailing opinion. Their fifth sense is telling them that, to fit in, holding their tongue is the smart thing to do. After all, no none (in their right mind) *loves* to be disliked.

IV. SHIFTING CATEGORIES & SWITCHING PERSONAS

> When the sufferers learn to think, then the thinkers will learn to suffer. (Karl Marx)

[73] Look to the testimony of *Student Number 2* in the Annex, *infra*.
[74] Look to the testimony of *Student number 5* in the Annex, *infra*; University of North Carolina business professor Michael Jacobs polled 40 Republican students at his school and found that all but two believed they would be penalized for not expressing the professor's politics in a test answer. See Stone Washington, "UNC Prof Slams 'Indoctrination', 'Progressive Police'" (8 January 2019) *Campus Reform* (blog), online: <https://www.campusreform.org/?ID=11718>.
[75] Joanna Williams, "Teaching Students to Censor: How Academics Betrayed Free Speech" in Tom Slater, *Unsafe Space: The Crisis of Free Speech on Campus* (London: Palgrave Macmillan, 2016) 47 at 55.
[76] *Canadian charter*, s 2(b); *Quebec charter*, s 3.
[77] 'Spiral of silence', in the study of human communication and public opinion, is a theory developed by Elisabeth Noelle-Neumann, according to which people's willingness to express their opinions on controversial public issues is affected by their largely unconscious perception of those opinions as being either popular or unpopular. Specifically, the perception that one's opinion is unpopular tends to inhibit or discourage one's expression of it, while the perception that it is popular tends to have the opposite effect. See Thomas Petersen, "Spiral of Silence" in *Encyclopaedia Britanica*, online: <https://www.britannica.com/topic/spiral-of-silence>.

To name those who find themselves silenced while others can speak, I have chosen the expression: 'victims of ideological discrimination'[78] as forming an astute categorization. If one were to look for the root causes of this totalitarian atmosphere, she could easily and lazily be tempted to jump to the 'angry mob thinking' conclusion. But this would provide only a *partial* response. In reality, this whole 'who can speak' mantra is embedded in a laudable egalitarian concern. In an attempt at reaching some prototype version of social justice, it is argued that the speech of some (the *privileged*) needs to be curtailed to defend the speech rights of others; i.e. the marginalized members of historically disadvantaged groups (the *oppressed*).[79]

"A piece of the oppressor…may be planted deep within each of us."[80] Bringing Patricia Hill Collins's theory to its logical completion: if all of us can be oppressors, then all of us can — even if only a little — be oppressed too. In the act of qualifying interpersonal relations of dominance and subservience, ridding ourselves of a dichotomous schematization means that we are left with an excess ability for modelling a vision, whereby each individual may simultaneously be inhabited by both positions: oppressor *and* oppressed.[81]

Many scholars critical of liberal ideologies[82] call upon a 'cultural Marxist' template of white patriarchal oppression,[83] and try to force the interplay of legal theories into this model, a force-fit facilitated by the argument that *internalized* liberal ideology, most particularly 'legal positivism', is merely an effect or symptom of societal indoctrination.[84] This view holds that

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[78] Harvey A Silverglate, David French & Greg Lukianoff, *Fire's Guide to Free Speech on Campus* (Philadelphia: Foundation for Individual Rights in Education, 2005) at 107; *Canadian Charter*, s 15; *Quebec Charter*, s 10.
[79] Joanna Williams, "Teaching Students to Censor: How Academics Betrayed Free Speech" in Tom Slater, *Unsafe Space: The Crisis of Free Speech on Campus* (London: Palgrave Macmillan, 2016) 47 at 54.
[80] Patricia Hill Collins, "Toward a New Vision: Race, Class, and Gender as Categories of Analysis and Connection" (1993) 1:1 Race, Sex & Class 25 at 26-28.
[81] Patricia Hill Collins, "Toward a New Vision: Race, Class, and Gender as Categories of Analysis and Connection" (1993) 1:1 Race, Sex & Class 25 at 26-28.
[82] The expression 'liberal ideologies', plural, is a voluntary lexical choice as there is no single, unambiguous thing called liberalism. See Michael Freeden, "A House of Many Mansions", in *Liberalism: A Very Short Introduction* (Oxford: Oxford University Press, 2015) 1.
[83] Debra Schleef, "Thinking Like a Lawyer: Gender Differences in the Production of Professional Knowledge" (2001) 19:2 Gender Issues 69.
[84] "Education is indoctrination if you're white, subjugation if you're black": James Baldwin, *BrainyQuote* (blog), online: <https://www.brainyquote.com/quotes/james_baldwin_108191>.

no one truly *awoken* to ideals of justice and equality could advance a *legalistic* agenda (Dworkin),[85] were they not formerly egoistically biased or brain-washed.[86]

Similarly, as many people seem unable or unwilling to recognize that there may be different forms of dominance and submission, not all of which are founded in systemic oppression — or that there may be instances where dominance and/or submission play only a minor role in people's lives and relationships — their criticisms of 'white fragility' remain focused on forms and appearances, as they insist on picturing the law school diaspora in reference to cultural codes and stereotypes.[87] On a side note, and in an endeavor to avoid that which I am criticizing, inferring that liberally-inclined students are necessarily *white* — or white *men*, for that matter — makes for quite the stereotype too.[88]

I hypothesize that some students are denied the possibility of (self) representation. While liberal students abide by society's standard doctrine, within faculty, they hold the minority worldview. Law students spend innumerable hours perfecting their discipline, so much so that in this sense, their faculty is their home.[89] Law school is a microcosm that is turned in on itself: it is stagnant. And for students who are bold enough to voice unpopular opinions, what little air is left to breathe, becomes rarefied. By equating all forms of dominance and submission in subsuming them under an 'identity politics' model of classification,[90] students who do not buy into the postmodern agenda are covertly set aside, under collective sightlessness.

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[85] Wacks, *Philosophy of Law*, *supra* note 2.
[86] According to proponents of critical legal theory, "the law's formal constructs reflect the reality of a privileged, elite, male, white majority. It is this culture, way of life, attitude and normative behaviour that combine to form the prevailing 'neutrality' of the law." See Wacks, *Philosophy of Law*, *supra* note 2 at 106-107.
[87] Terry Hoople, "Conflicting Visions: SM, Feminism, and the Law. A Problem of Representation" (1996) 11:1 CJLS 177 at 197.
[88] ZUBY, "One thing I like about conservatives is they don't tend to assume my social/political views based on my skin colour. Many liberals assume I will agree with them just because I'm black. It's legitimately offensive…" (19 April 2019 at 12:13am), online: Twitter <https://twitter.com/ZubyMusic/status/1119136962630180865>.
[89] Philip C Kissam, *The Discipline of Law Schools: The Making of Modern Lawyers* (Durham, NC: Carolina Academic Press, 2003) ch 2 at 81-85; Eric E Johnson, "A Populist Manifesto for Learning the Law" (2010) 60:1 J Leg Educ 41 at 42.
[90] Terry Hoople, "Conflicting Visions: SM, Feminism, and the Law. A Problem of Representation" (1996) 11:1 CJLS 177 at 195.

In some instances, it so happens that students who judge certain views as offensive — leaving aside the question of whether or not they arguably *are* offensive — will also judge the identity of the 'viewer'. And following this fact pattern, it is assumed that if someone is making 'socially problematic' statements, that person is, more or less, heartless. As such, he or she cannot be hurt. Or if they can, the societal benefits of flagging or 'signalling' their issues is well worth the costs on their feelings.[91]

V. CRITICAL LEGAL STUDIES AS APPLIED THEORY

> Basically, it's been a tyranny in the humanities, because the professors who are now my age — who are the baby boomer professors, who made their careers on the back of Foucault and so on — are determined that that survive. So you have a kind of vampirism going on. (Camille Paglia)

Contemporary chaos theory posits micro-variations at the inception of chaotic behaviour. What initially seems like a small doctrinal variation — seen as ingenious, interesting and benign at the time of its formulation — multiplied many times over in effect by other causal factors in jurisprudential development, may have substantive implications over time. The snowball effect is realized only later, sometimes so much so that it can even be decried by its creator.[92]

Law students are oftentimes young, and sometimes gullible.[93] Because they massively believe what they are told — explicitly and implicitly — students behave in ways that fulfill their lecturers' professed prophecies on the world, and how they 'fit' in. Legal discipline thus produces disciples: in the end, students act affirmatively, within the channels of thought already cut out for them, giving their persuasion a semblance of consent, and weaving complicity into everyone else's story but their own.[94]

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[91] Look to "Author's Testimony" in Annex, *infra*.
[92] H Patrick Glenn, *Legal Traditions of the World*, 5th ed (Oxford: Oxford University Press, 2014) at 16 [Glenn, *Legal Traditions*].
[93] Bertram R Forer, "The Fallacy of Personal Validation: A Classroom Demonstration of Gullibility" (1949) 44:1 Journal of Abnormal and Social Psychology 118.
[94] Duncan Kennedy, "Legal Education as Training for Hierarchy" in David Kairys, *The Politics of Law: A Progressive Critique* (New York: Pantheon Books, 1998) 38.

It has been speculated that this 'safetyism' dogma is the generational product of a spoiled, single child, coddled cohort of students. Putting aside the fact that I am an only child *myself* — and that calling young people by names is certainly not helping anyone — there is an additional reason why the 'generational gap' argument remains contentious. Pinning the problem on millennials themselves, for deficiencies in their education, is perverse. It is also unfair, because, well…*who* raised them? I would rather suggest that today's undergraduates are truly *exemplary* students, in that they are going so far as to put into practice what they learned in their readings.[95] It is that simple: the safe space *is* postmodernism, materialized.

VI. THE EPISTEMIC AIMS OF LEGAL EDUCATION

I was enlightened to the potential risks incurred by mass indoctrination of the youth at a fairly young age: in high school. Raymond Maurice (an all-time favourite teacher of mine) had provoked a dispute between the competing merits of communism *versus* capitalism — I was a hardcore Marxist at the time, a testament to how views and values are not fixated for life[96] — for his 'Continental History of Politics' class to debate. At one point in time, as some contentious argument or another was put to the test, I raised my hand and asked Mister Maurice: "Well what do you think?" To which he replied: "What I think is unimportant. What matters is what you think." This truly was an awakening.

To carry it along in later analysis, the story requires a clarification. It is practically unfeasible, where higher education is concerned, for one lecturer or another's legal opinions to be kept a secret. University professors are the beneficiaries of academic freedom, which endows them with a liberty to produce original written work. So it is quite easy to make a quick internet

[95] Joanna Williams, "Teaching Students to Censor: How Academics Betrayed Free Speech" in Tom Slater, *Unsafe Space: The Crisis of Free Speech on Campus* (London: Palgrave Macmillan, 2016) 47.

[96] My short-lived Marxist phase was propelled with a proper 'Workers of the world, unite!' literary revelation: Karl Marx & Friedrich Engels, *Manifesto of the Communist Party* (Oxford: Oxford University Press, 2008), soon-to-be defeated by the satirical tale of revolutionary pigs on a farm: George Orwell, *Animal Farm* (South Australia: The University of Adelaide Library, 2016), online: <https://ebooks.adelaide.edu.au/o/orwell/george/o79a/complete.html>.

search, and find out what your teacher's stance is on some contentious legal matter or another. This situation notwithstanding, there is no inherent difficulty in favoring education over indoctrination, as it is all a question of teaching method, rather than of the identity of the teacher.

1. Indoctrination is not Education

> I cannot teach anybody anything. I can only make them think. (Socrates)

Indoctrination is a term pregnant with hefty emotional meaning and, for most people, it is a condemnatory term. If *prima facie* it seems that teachers ought not to indoctrinate, it becomes rather important for them to know what indoctrinating is.[97] There is something beyond argument — beyond logic reasoning — about indoctrination, which is why it is the *anathema* of education. Other apathetic items are different from, and other antipathetic things are incompatible with education, but indoctrination is education *inverted*.[98] The explanatory power of a concept is seriously affected by its degree of generality.[99] In the process of studying the antithesis of education, the focus naturally sharpens on the contrasts between the twin concepts (education *vs* indoctrination).[100] Additionally, I said earlier that 'indoctrination' is, for most people, condemnatory. I shall, hereunder, probe further into why there is much (dark) truth to this claim.

But what is its descriptive meaning? Indoctrination is "the process of *teaching* a person or group to accept a set of beliefs uncritically."[101] It is a pernicious thing, oftentimes taking place without anyone involved in the operation even noticing. However that may be, it is clear that whether it is a matter of logical necessity or contingent fact, it is in respect of doctrine that indoctrination is usually to be feared. For convenience, then, we may take indoctrination to

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[97] Robin Barrow & Ronald Woods, "Indoctrination" in *An Introduction to Philosophy of Education*, 4th ed (London & New York, Routledge, 2006) 70 at 71 [Barrow & Woods, "Indoctrination"].
[98] *Ibid*.
[99] Robin Barrow & Ronald Woods, "Curriculum Theory" in *An Introduction to Philosophy of Education*, 4th ed (London & New York, Routledge, 2006) 58 at 61 [Barrow & Woods, "Curriculum Theory"].
[100] Barrow & Woods, "Indoctrination", *supra* note 97 at 80.
[101] *English Oxford Living Dictionaries*, *sub verbo* "indoctrination", online: <https://en.oxforddictionaries.com/definition/indoctrination>.

involve the imparting of doctrinal beliefs. Doctrinal propositions are those which, by their nature, are neither verifiable nor falsifiable, and rather serve as guiding principles for interpreting the world. It will be seen from this that all political, religious, and moral systems of belief are doctrinal, at least in so far as it is agreed that the fundamental political, religious, and moral axioms constitute propositions, the truth or falsity of which there are no generally agreed criteria for establishing. Yet, given the basic assumptions of a specific doctrinal system, it is quite possible for an adherent of that doctrine to behave, argue, and generally proceed in an entirely rational manner. The crucial difference between the believer of a doctrine and the indoctrinated lies with the ability (or lack thereof) to exercise some form of self-consciousness.[102]

When does legal education become political indoctrination? The most famous hallmark of the indoctrinated person is that she has a particular viewpoint and she will not seriously open her mind to the possibility that said viewpoint might be mistaken. If to be indoctrinated is to have a closed mind then, it logically follows that indoctrinating must involve causing someone to have an unshakable commitment to the 'truth' of the beliefs in question.[103]

We may raise the question as to why education is preferred to indoctrination at all. A first element of response is that indoctrination involves denial of the value of rationality,[104] a second is that it undermines self-determination.[105] In the name of their cause, indoctrinators violate the sanctity of autonomous thinking, in that they essentially treat their audience as a means to an end,[106] whereby in conscientious instruction, the student, rather than the means, is

[102] Barrow & Woods, "Indoctrination", *supra* note 97 at 74-5.
[103] *Ibid*.
[104] Robin Barrow & Ronald Woods, "Rationality" in *An Introduction to Philosophy of Education*, 4th ed (London & New York, Routledge, 2006) 84.
[105] Robin Barrow & Ronald Woods, "Self-determination" in *An Introduction to Philosophy of Education*, 4th ed (London & New York, Routledge, 2006) 98.
[106] Paulo Freire, "Pedagogy of the Oppressed" in Steven M Cahn, *Classic and Contemporary Readings in the Philosophy of Education* (Oxford: Oxford University Press, 2011) 379 at 386.

the end.[107] Not only does it fail to rate as education, but I claim that indoctrination is morally unacceptable, and ought not to be indulged in.[108] Professors carry a duty of care towards their pupils,[109] a strenuous commitment tied to their privileged position of power — being *in* authority[110] (over students) and oftentimes considered *an* authority[111] (in their field) — so in this way, they are ethically constrained to act with due diligence. A professor should always be mindful of her influence on class content, and of the context in which it is used.[112]

Indoctrination is a very real thing.[113] And in an era where the art of rhetorical nuance is increasingly standing watch at the gates of the academy,[114] today's educators have a consequential choice to make: between fulfilling what their title entails, or acting as indoctrinators.[115] Of course, this ought to be a false dilemma. That it should be raised at all involves disturbing under dealings in academic freedom, and the production of legal knowledge. Chief among them: everything in the academy, from hiring, promotion and tenure, conceivably depends on adherence to the accepted criteria of scholarship.

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[107] *Cf* Immanuel Kant, *Anthropology, History and Education* (excerpt), translated by Robert B Loudon, in Steven M Cahn, *Classic and Contemporary Readings in the Philosophy of Education*, 2nd ed (Oxford: Oxford University Press, 2011) 153.

[108] Barrow & Woods, "Indoctrination", *supra* note 97 at 81.

[109] "All teaching is pupil-centered in the sense that its object is not merely to expound a subject but to help somebody to learn something…" See John Passmore, "The Concept of Teaching" in Steven M Cahn, ed, *Classic and Contemporary Readings in the Philosophy of Education*, 2nd ed (Oxford: Oxford University Press, 2011) 362 at 365. See also Hunter McEwan, "Narrative Reflection in the Philosophy of Teaching: Genealogies and Portraits" (2011) 45:1 Journal of Philosophy of Education 125.

[110] Paulo Freire, "Pedagogy of the Oppressed" in Steven M Cahn, *Classic and Contemporary Readings in the Philosophy of Education*, 2nd ed (Oxford: Oxford University Press, 2012) 379.

[111] "Conventional instruction is based on a hierarchical model in which those who know teach those who do not know." See K Patricia Cross, "What do we Know About Students' Learning and How do we Know It?" (Paper delivered at the AAHE National Conference on Higher Education, Atlanta, Georgia, 24 March 1998), (2005) Research & Occasional Paper Series CSHE.7.05 U of Cali Berkeley 1 at 5 [Cross, "What do we Know"].

[112] *Cf* Michael A Peters, "Editorial: A Teaching Philosophy or Philosophy of Teaching?" (2009) 41:2 Educational Philosophy and Theory 111; Barrow & Woods, "Knowledge and the Curriculum", *supra* note 30; Barrow & Woods, "Curriculum Theory", *supra* note 99.

[113] Barrow & Woods, "Indoctrination", *supra* note 97.

[114] Sebastien Cesario, "Shibboleths That Exclude in the Name of Inclusion" (25 June 2018) *Quillette* (blog), online: <https://quillette.com/2018/06/25/shibboleths-that-exclude-in-the-name-of-inclusion/>

[115] Barrow & Woods, "Indoctrination", *supra* note 97 at 76-80; Steven M Cahn, "The Concept of Teaching" in *Classic and Contemporary Readings in the Philosophy of Education*, 2nd ed (Oxford, Oxford University, 2012) 362.

From this, a bigger picture is forming: (1) Law students, by requiring safe spaces, are not the ones doing the proselytizing, as it was rather their lecturers who formed them in the teachings of critical legal theory; (2) Lecturers are not entirely free, where scholarship and academic tenure are concerned, to deviate from consensus orthodoxy; (3) *Who* then, or *what*, is expanding the movement? As ludicrous as it may sound, the movement might be expanding on its own.

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There is indeed a major question of the extent to which a doctrine can simply educate, rather than assert its truth claims with hubris and engage in proselytizing indoctrination.[116] When today's legal fashionable discourse first emerged as *outsider* jurisprudence, it yelled, cried and called positivist legal education, and its foundational classical liberal political philosophy, an oppressive and alienating device of hegemonic consciousness. Proponents of critical legal studies, right from their inception, accused liberalism of engaging in mass indoctrination, and still do so today. I, for one, rather posit that today, indoctrination is taking place, in the law faculty, by way of critical legal theory. Such a claim is supported by the implicit argument of this text, to be developed by linking pieces of the analysis, from above, with the reality of law school as experienced in the student testimonies, herein attached.[117] Endorsing both competing statements is not a contradiction in terms.

2. Education is not Indoctrination

> Education is an art, the practice of which must be perfected over the course of many generations.[118] (Steven M Cahn)

Education, by essence, is the supervised activity of learning powerful and distinctive bodies of thought.[119] The question now becomes one of principled application. An *easy* way to avoid

[116] Glenn, *Legal Traditions*, *supra* note 92 at 12.
[117] Annex, *infra*.
[118] Steven M Cahn, "Immanuel Kant: Lectures on Pedagogy" in Classic and Contemporary Readings in the Philosophy of Education, 2d ed (Oxford: Oxford University Press, 2012) 153 at 155.
[119] Robin Barrow & Ronald Woods, "The Postmodern Challenge" in *An Introduction to Philosophy of Education*, 4th ed (London & New York, Routledge, 2006) 109 [Barrow & Woods, "The Postmodern Challenge"].

indoctrination is to situate academic knowledge in context, and to take legal theories for what they are; i.e. *one-sided* approaches to the interpretation and definition of the law. An *even better* way to avoid indoctrination is to include variety in the legal curriculum, by filling class syllabuses with a display of disparate pieces of written legal doctrine. A pluralistic manner of teaching — by examining an object of study from multiple angles of analysis — has better chances of resulting in a nuanced and finessed comprehension of the subject matter. All of this, in turn, creates opportunities for students to engage in challenging debates and complex conversations, grounded in well-rounded rhetorical arguments. The goal is to create sharp and independent thinkers; a cohort of erudite social scientists, and innovative philosophers of the law.

Going back to the *nemesis* of Socrates' wisdom and method of teaching (as opposed to its *Langdellian* interpretation as the Harvard case method)[120] provides a heuristic model on how to avoid doctrinaire instruction; that is by asking questions. In short, Socratic knowledge is built from the following precepts: knowing about (not) knowing; questioning the question; and learning to learn.[121]

Can you be sure? The sceptic would like you to reconsider. When you start to get self-conscious about what you know, even the simplest fact can seem like something you don't really know. Evidence that you would usually take for granted suddenly seem dubious, and you may start to feel like certainty is evasive. Academic Scepticism is the name for the institution it sprang from: the Academy in Athens, originally founded by Plato.[122]

Plato's Apology tells how Socrates was condemned by the Athenian citizenry for corrupting the morals of the young and doubting the Gods. There was some truth to that

[120] Robert Stevens, "Harvard Decrees the Structure and Content" in *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill & London: The University of Chicago Press, 1983) 35.
[121] Thomas C Brickhouse & Nicholas D Smith, "Socratic Teaching and Socratic Method" in Harvey Siegel, ed, *The Oxford Handbook of Philosophy of Education* (Oxford: Oxford University Press, 2009) 177.
[122] Jennifer Nagel, *Knowledge: A Very Short Introduction* (Oxford: Oxford University Press, 2014) at 12-13 [Nagel, *Knowledge*].

complaint. Socrates called conventional wisdom into question. He subjected long-standing beliefs to rational scrutiny and speculated about concerns that projected beyond the existing order. Philosophy has evidenced a subversive element from its inception. As far-fetched as it seems, what became known as 'critical theory' was built upon this legacy.[123]

VII. RELATIVE TRUTHS

> The challenge for society in the 21st century is to advance beyond the stages of development that result in the authoritarian search for right answers or the egalitarian notion that all ideas are equally valid.[124] (K Patricia Cross)

Teaching both critical legal theory and legal positivism, in a comparative format or transsystemically, invokes a head-on encounter over scholarship's role in law. It is the Empire's demand for analysis vs the Outsider's reliance on empathy and subjectivity; the rational discourse vs the unique voice of women and minorities; the linear style of the conventional doctrine article versus the narrative storytelling; neutral discussion versus proselytizing.[125]

On this basis, epistemology and the sociology of knowledge are presented as antithetical.[126] Broadly stated, empiricism favors perceiving over thinking, while rationalism privileges thinking over perceiving.[127] Yet, in defending a metaphysical idea of truth and knowledge, there is no need to ignore some of the truth that is embedded in the arguments of those who would deny its universal existence. Certainly, these are distinctions, such that different degrees of certainty are appropriate to different subject matters.[128] The sceptical and relativist conclusions of postmodernism — and the pursuant nihilism, regarding its possibilities of knowledge — follow only from the attribution of absolutist criteria to science and reason.[129]

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[123] Thomas C Brickhouse & Nicholas D Smith, "Socratic Teaching and Socratic Method" in Harvey Siegel, ed, *The Oxford Handbook of Philosophy of Education* (Oxford: Oxford University Press, 2009) 177; Stephen Eric Bronner, *Critical Theory: A Very Short Introduction*, 2nd ed (Oxford: Oxford University Press, 2017) at 1 [Bronner, *Critical Theory*].
[124] Cross, "What do we Know", *supra* note 115 at 9.
[125] Bronner, *Critical Theory*, *supra* note 127 at 10.
[126] *Ibid* at 191
[127] Edward Craig, *Philosophy: A Very Short Introduction* (Oxford: Oxford University Press, 2002) at 67.
[128] Barrow & Woods, "Curriculum Theory", *supra* note 99 at 113.
[129] *Ibid* at 198.

Protagoras held that knowledge is always of the true, but also that different things could be true for different people. In short, he understood truth as relative to a subject, a theory (relative truths) which has had many more sophisticated defenders since.[130] Knowledge, in the sense that matters here, is a link between a person and a fact.[131]

Knowing one's own theoretical standpoint is partly knowing others. Comparative reasoning thus permits and facilitates judgment.[132] Proponents of a legal approach will argue in its terms; the opponents must reject those terms and give reasons for doing so. The information base of the legal current of knowledge remains pertinent in this way, even to its most radical opponents.[133] It is indeed quite ironic to note that postmodern critical legal theories' account only will hold for as long as legal positivism stands, as the rule of law is their 'Other'; the orthodoxy, the condition upon which can strive their heterodoxy.[134]

And in this regard, our competing theoretical interpretations of the law come into play, along with the need to choose between them, or else: to compose our own mixed legal thought system.[135] The essential point of education is to provide individuals with the understanding to make their own rational judgement as to what is known and what is not.[136] Justice, in any event, is far from being a simple concept,[137] and social justice is a hollow promise.

CONCLUSION

> If law schools don't do these things, no one will, and their graduates will be worse lawyers, worse citizens and worse people as a result.[138] (Harry Arthurs)

[130] Nagel, *Knowledge, supra* note 126 at 10-11.
[131] *Ibid*at 4-5.
[132] Glenn, *Legal Traditions, supra* note 92 at 47.
[133] *Ibid* at 19.
[134] Rob Moore & Johan Muller, "The Discourse of 'Voice' and the Problem of Knowledge and Identity in the Sociology of Education" (1999) 20:2 British Journal of Sociology of Education 189 at 198.
[135] Nagel, *Knowledge*, *supra* note 127 at 121.
[136] Barrow & Woods, "Curriculum Theory", *supra* note 123 at 114.
[137] Wacks, *Philosophy of Law*, *supra* note 2 at 59-61.
[138] Arthurs, "The Future of Legal Education", *supra* note 30.

Meaning is important. Social exclusion, ostracism, and loneliness all lead to feelings of meaninglessness. Identity is a current preoccupation in the world, and concern with identity arises from external contact; identity is then constructed by explicit or implicit opposition. The other becomes essential in the process of self-understanding. At the same time, the other is an ongoing menace to internal cohesion. And it has been said that even violent debate contains within it the possibility of toleration, since by implication the other is worth arguing with.[139] Intellectual and scientific progress require a culture that is disposed to open debate and to the spirit of experimentation.[140] I argue that safe spaces are excluding rather than promoting diversity, and are a threat to the exchange of ideas necessary for an evolving thinking process to take place. A university that turns into a safe space destroys itself.[141]

It would be a mistake to reduce the aim of this opinion paper as solely taking a stance against critical studies, and the observable trend towards social justice, within the law faculty. Much to the contrary, the goal was to provide a theoretical learning framework that is workable in an abstract sense, and that focuses on the epistemic aims of legal education, regardless of what today's or tomorrow's fashions in legal theory might be. The purpose is to present a variety of points of view in legal education, so that students can make up their own minds, and perhaps even use opposite opinions and divergent views learned in class to their advantage — e.g. by learning the broader context of their field, questioning their assumptions and nuance their writing, or more efficiently counter cross-arguments. To me, that is what thinking like a lawyer,[142] or being a future legal scholar, entails.

Having been force-taught in critical legal studies, I believe that my own growth as an apprentice legal scholar is a testament to the truth of this claim. I have learned inestimable skills, here at McGill. And to be fair, I believe this university to be a fine learning establishment,

[139] Glenn, *Legal Traditions*, *supra* note 92 at 34.
[140] Furedi, "Academic Freedom", *supra* note 33 at 119.
[141] Slater, "Conclusion", *supra* note 9.
[142] Mertz, *The Language of Law School*, *supra* note 30.

where much of its teaching staff is careful not to fall within the abyss of what has hereby been critiqued.

* * *

> These things might have been explained more largely and more advantageously, but it is enough to have hinted at them thus briefly to a person of your parts. (John Locke)

The ideology of safety generates indoctrination, which makes a mockery of learning. Legal indoctrination is a parody of what it purports itself to be. Legal education, if it is to be what *education* is, cannot be *undercover* indoctrination. Legal indoctrination, *passing* for education, is *still* indoctrination. It is still not education. A faculty of social justice *only*, is no longer a faculty of law. Legal education is a multipurpose enterprise. It is premised upon producing legal practitioners and academics. Optionally and/or ideally, it can *also* aspire to create social justice activists. A functioning society needs two, a just society needs all three. When we are envisioning the future of legal education, we are shaping our collective future.

* * *

I started by saying that I had been warned before, about the risks of writing an essay that could generate an array of critiques. About the risks of creating a *conversation*. I assume the risks. My critics are welcome to join in on the conversation. We need to talk about the future of legal education.

Because that future is unsafe.

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ANNEX: STUDENT TESTIMONIES

> No testimony is sufficient to establish a miracle, unless the testimony be of such a kind, that its falsehood would be more miraculous than the fact which it endeavors to establish. (David Hume)

Student Number 1

Being admitted to Law School was first exciting, as I expected an environment fostering debates, deep reflections and constant intellectual challenge. Considering McGill Law's marketing expressing its pride in the diversity of its student body, I felt and still feel that these expectations were justified on my part. Yet, after only a couple of weeks spent at the faculty, I quickly understood that it would not be this way on the short term, and finally accepted that it wouldn't be this way for my legal education in this institution, ever.

Once, a professor asked a group of 60 students whether a German woman who had denounced her husband for speaking against the Nazi regime should be punished after the fall of said regime. Only one student, out of sixty, raised a hand to say no. It is not that he was alone in thinking that that was a respectable or right answer; other students actually told him later about how relieved they were that someone had broken the ranks and spoken up on this legal positivist perspective. The problem is that there is no place for rational discussions, and no time to let them grow into a collegial disagreement between reasonable people. Rather, McGill seems to me to be an environment where a portion of students feel urged to expose their moral virtues, while others aren't comfortable at expressing more nuanced positions that would easily attract name-calling on them (by using labels referring to undesirable politics and ideologies).

The real disappointment, concerning this learning institution, is that I have rarely felt that there were instances where a Professor would challenge the politically convenient position, try to foster an intellectually honest debate or, at least, challenge the students who were so sure, convinced and entrenched in their positions. I must say I felt the hegemony so present that I

would never have asked a constitutional law professor if she would perhaps consider Justice Bastarache's dissent in *Amselem* to be a preferable approach than the majority's decision.

It is all very fascinating to me, as I am still trying to understand how an institution that is: supposedly bilingual; presenting three different legal traditions; recruiting many of the best candidates in the country, all of whom carry different living experiences along; can come out, in reality, as being an institution in which you feel like only one kind of ideas are welcome, whether it be in class discussions, questions, or exam answers.

Student Number 2

I am a McGill law student, and I routinely self-censor. My stance on many controversial issues, including gun control, immigration, environmental policy and abortion are admittedly right-wing, and are undoubtedly unpopular among the vast majority of my peers. The social costs of expressing my thoughts on those matters, and many others, simply outweigh the benefits in my eyes. Law is a professional program, and my colleagues here at the Faculty will be an important professional network in the years to come. Being labelled racist, sexist, or homophobic for expressing my opinions is a risk I am not willing to take. I wish I had more courage.

Student Number 3

One professor at McGill celebrated a decision wherein the court had upheld the right of equality in favour of women of a particular religion. The decision sought to end discrimination by using a liberal interpretation of the law. Being a practicing lawyer from a common law country, I realized that the decision could be used as a precedent in a wrong way for other cases to come. In my view, the expansion of one right was being done by derogating from another. As I raised this view in class, I was not met with any encouragement. The same has happened in earlier occasions when I felt that taking a stand on an issue that was different from the prof's own personal one, would not be appreciated. With some professors here at McGill, I felt like voicing concerns or raising opinions which were not consistently in line with their own might be met

with bad grades. Such a kind of thinking has led me to choose 'safer' or 'non-controversial' topics to write about, which is a not a very good indicator for a reputed graduate school, and what it supposedly stands for.

Student Number 4

This was my first year of law school, and I remember that the purpose of this 'elective course' I had taken was to discover and get a feel of different approaches to law. While the syllabus was more than welcoming to different points of view and experiences, the course itself wasn't, at all. The professor seemed to have one thing in mind… his own perspective. While the class was supposed to be interactive and students were encouraged to participate, the exchange of ideas was circular. Everyone agreed with the professor and every student that would raise their hand would speak to confirm, in their own words, what the professor had just said. Not only did this create frustration among students, it actually divided the class quite radically. Students who genuinely agreed with the prof versus those who pretended to agree because they didn't really care, plus a minority daring enough to have original and unique views on the topics of discussion, but were blatantly ignored. More than anything, this whole situation just made the class boring. Nobody really wanted to take part in the discussion anymore — at that stage, honestly, like what was the point of even having an opinion, if it wasn't even going to be considered?

Student Number 5

I have purposefully included, in an exam response, an unjustifiable thesis in which I did not believe so that I would get an A. I am a law student with a very high GPA, and I know for a fact that this would not be the case, had I not made a habit of regurgitating my professors' personal opinions in all my exams and dissertations. [Translated by the author from French]

Student Number 6

While I was in my first year of legal studies, a student called me homophobic, in front of the whole class, because I had stated my disagreement with the Supreme Court's unanimous ruling in the *Whatcott* case. I instantly replied: "Well actually, I'm gay." There was a long silence. As if the legal reasoning could not be analyzed separately from the result. I, of course, indicated that I profoundly disagreed with Mr. Whatcott's views on homosexuality, but I believed in his right to freely express these views in a democratic society. In that sense, I expressed a legal view similar to the one expounded in the dissenting opinion in *Keegstra*. However, according to my colleague, it seemed gays weren't allowed to think for themselves. [Translated by the author from French]

Student Number 7

I consider myself as libertarian leaning, conservative on some issues and progressive on others. While I understand and use some of the postmodernism methods, an epistemological movement that permeates all legal education (and conversation) at McGill, I do not subscribe to its teachings. Considering my personality type, I cannot say that I have ever been scared of speaking in class. However, it is true that many times over, I asked myself: is it really necessary to engage in yet another meaningless debate with a mass of students who will surely come running for my head? Every single time I was about to raise my hand, the thought crossed my mind.

I have participated a lot in my first year, but after the Ghomeshi trial, things got really tense for me. The Runnymede Society was created shortly afterwards, and its contribution considerably smoothed public speaking at the faculty. It is true that I have often chosen to abstain from commenting on certain issues in class, especially when I found myself disagreeing with a radical leftist viewpoint that obviously made consensus. As a matter of fact, critical legal studies and social justice activism always seems quite prevalent among the student body, in addition to being shared by lecturers. I know this because of what I can read on the Facebook

group and in the Quid (a student law journal), and also because of what pieces are exposed as art, in a very posturalist manner. The same thing has been happening in almost all the classes I took, from second year until the end.

I will speak on the most recent example that comes to mind, but you should take this event and multiply it by a thousand, to have an accurate picture of my time at McGill as a law student. I was taking a Labour Law class, with a lecturer whom I must say is a great person and a fine prof. I participated a lot in her class, at first, and happily commented on issues. But the sheer amount of debates in which I had to fight to defend myself proved exhausting, because the mob never rests. We had many in-class conversations on the despicable conditions of poor workers (while especially focusing on issues of gender and race) and on how those people were systemically marginalized under capitalism. We also spoke to how unions were the greatest world invention, while capitalism was an evil creation. We read many Marxist texts that stated just the same — I am not even sure the prof knew that the readings were Marxist, but you could tell by the terminology employed. Every single time, my friend and I refrained from participating in class conversations, because they never end in a rational discussion, but rather with a character evaluation of how a person is morally positioned within said discussion. And if you dare defend the rich capitalist over the poor woman of color, your perceived morality is quite low. So I just let it go, because I wanted to stay sane and avoid further attacks, but also because of the reputational toll. So people just kept confirming their bias in believing an ahistorical version of what unions are and came to be.

Student Number 8

I feel like the criminal justice class in the first year of law is a perfect example of what can go wrong in legal education. That is, when you feel like you have to write down something you disagree with so that the teacher will give you a good grade. In this class, we are very critical of the criminal justice system, but often fail to look at the flip side of critiques. Sometimes what

seems fine in a classroom (like learning one side of the story) might not work out so well in the professional field (defend cases). This year, I have often felt like we took many critiques for granted, while I am still unsure as to why they should be so obviously accurate.

Student Number 9

In my Foundations of Law class, I often felt like it was impossible to have a major disagreement with the theories that were put forward in the readings or by the teacher. While the course was officially meant to be "critical", it often seemed like everyone involved ended up sharing similar perspectives. Moreover, the prof apparently felt quite free to express his own visions and opinions, a philosophy of teaching which I had never encountered before, having previously been used to teachers who diligently kept their personal opinions to themselves. Those teachers privileged the expression of their students' visions over their own. My Philosophy teacher in CEGEP, for example, always made a point of rigorously defending the reasoning of the author he was talking about, after which he systematically opened the class discussion, so that students could either critique or defend the author's perspective. I feel like we would learn much better if we could develop our independent thinking by arguing counter propositions in class, instead of absorbing whatever the teacher (or the readings he picked) have to say.

Here is a specific example: we had a discussion on whether or not the Faculty should be allowed to accept students who are "openly antifeminist" in its ranks. The class unanimously answered no. While I disagreed, and had a more nuanced proposition to make on the issue, I was too stressed and didn't dare express it. I knew that my beliefs could have been interpreted by some students as being hurtful, and I didn't want to deal with more drama. However, I think it would be important for students to be exposed to opinions that they don't share. It would help them develop their arguments and keep an open mind about others who don't share their views. Unfortunately, I don't feel that this can happen in this Faculty, where students have really different backgrounds, but not opinions.

In the Foundations final exam, one of my friends wrote something which she knew the teacher was against. It took her a lot of courage to do so. I don't think that I would be able to do the same: teachers have a lot of power on our grades, and consequently on our future.
In an environment that has expanded the meaning of words like racism, feminism, xenophobia or homophobia, it has become increasingly difficult to express ideas that fall on the margin of politically correct opinions without being labeled as a racist, antifeminist, xenophobe or homophobe.

As a consequence of the safe space environment that is privileged by the faculty, I feel that the burden of proof that is required from the students to support their theories is very low: everything is or should be based on feelings. As a result, I assisted to a presentation in a class where a student advanced without evidence that Quebec government was discriminating refugees in a way that was inexistent in the rest of Canada. This student could have found proofs to support what he had advanced or to reverse his hypothesis, but he apparently did little to do so. I also felt that it was impossible to challenge his view or the intellectual honesty of his approach because I was white and francophone and he was a visible minority, as if my questions where linked with it. He was using his homework as a way to promote his ideas on the CAQ's government that was legitimated by the fact that he was opposed to it. My feeling is that the classroom would not have let him express his idea with so little evidence if he had been defending the opposite position. Students are less severe with people that defend the ideas that they agree with, and that are generally popular.

Student Number 10

I was very surprised when a majority of female students in the class expressed concern and having felt outraged, offended or even deeply hurt by some comments made by a guest expert on polygraph testing in class. From what I recall, the 'problematic' words spoken by said expert had to do with naming parts of the female anatomy while speaking to sexual assault cases. I

mean, it is an advanced criminal law class….how can you expect not to hear gruesome details? Moreover, since when is a part — any part — of the female body considered to be an unsafe field of vocabulary? You can't keep "trigger warning" the things you have to know in law. You just can't, it's dangerous for the field of practice.