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## Law Schools' Dirty Little Secret

**By:** Alice Woolley

Left-leaning social justice warriors have captured Canadian law schools. So goes recent commentary in the National Post (see, e.g. recent columns by [Barbara Kay](#), [Bruce Pardy](#) and [Christie Blatchford](#)). Law profs “espouse **and impose** a particular set of values or opinions and a way of thinking” (Blatchford, emphasis added).

I am not persuaded. As explained below, this commentary is unsupported by relevant evidence and inconsistent with core features of Canadian legal education. I do, however, accept one of its basic premises: law schools have a public interest mandate. They have duties to their students, to the system of laws and to the public more generally. I also agree with the columnists' impulse to question whether law schools in fact discharge those obligations, even if these columns are (to my mind) pretty lazy and unthoughtful. (I note in particular that Christie Blatchford interviewed one professor, Bruce Pardy, who had essentially written the same column she was now writing. That's not exactly investigative journalism.) This post identifies some systemic features of Canadian legal education that create the risk (and perhaps the reality) that law schools do not adequately serve the public interest. There isn't much evidence to support the theory that law schools indoctrinate their students in left-wing ideology, or even that professors try to do so. But there are reasons to question whether law schools do what they should to advance the fair and effective administration of justice.

In claiming law professors impose a particular set of values and way of thinking, commentators do not rely on evidence about what actually occurs in law school classrooms. They do not review law school syllabi or publicly available information such as podcasts used for teaching (both [Peter Sankoff](#) and [I](#) make ours publicly available, e.g.). They do not attend law school classes. They instead quote statements made by law school deans or professors about social values, and from that posit the conclusion that law schools have become incubators for social justice. The argument seems to be: some professors and law schools say and write left-leaning things => most professors and law schools believe left-leaning things => professors and law schools teach left-leaning things => professors and law schools indoctrinate students in left-leaning things. I largely concede the first two points (although as my economist sister Frances Woolley [points out](#), most educated people trend left; we have [limited](#) data about whether or how much professors skew left relative to educated people in general). It's the last two points about which I am skeptical.

My skepticism arises from a number of things including the columnists' lack of evidence or investigation, my own approach to teaching, my research and writing on legal education (both for [scholarship](#) and as chair of our curriculum reform committee), and what I see my colleagues at the U of C and in the legal ethics community doing for their students. But I will emphasize here one key fact to encourage others to be skeptical too: Canadian law schools overwhelmingly evaluate students in doctrinal courses through examinations where students apply the law to

hypothetical fact patterns. Based on practices at the University of Calgary and information received from faculty and students at other schools, law schools pervasively rely on in-class examinations as a material component of student evaluation in most doctrinal classes. Those exams—which resemble the ones I took in law school in the early 1990s, and probably resemble those used in the 1950s too—test legal knowledge and application. They do not—and cannot—effectively test anything beyond the critical thinking and reasoning skills essential for successful legal analysis. And as I learned from [Anthony Marini](#) in my university teaching course, if you want to know what a course is really about, look at its evaluation not at its syllabus. As long as we evaluate students based almost entirely on their knowledge of the law and their ability to apply it, there is minimal credibility to the claim that law school courses impose a particular political perspective. (This is subject to the qualification that some folks I’ve engaged with on twitter define pretty much all choices a professor makes as political. I think that’s an unduly broad definition, and I don’t think it’s the one the commentators are using. The commentators seem to mean political in a traditional left/right sense.)

Students evaluated on their knowledge of the law and the ability to apply it will spend their time and effort learning the law and how to use it; they will work to develop the core analytical skills necessary for successful legal analysis. If the professor teaches them political ideology but evaluates based on the law, students will abandon their professor for CANs, textbooks or other resources. They will stop coming to class. A professor who evaluates through a traditional law school exam simply isn’t committed to a project of political indoctrination, even if they were to claim to have one.

In saying this I do not intend to trivialize the concerns some have with the lack of political diversity in the academy, and in particular with the lack of tolerance for a range of political views that I have been told exists in some law schools. I also accept unequivocally that a professor who taught students a political perspective and tested them for compliance with it would be acting wrongfully. I am only saying that I have yet to see persuasive evidence to support the hypothesis that indoctrination as social justice warriors is a live issue in Canadian law schools, even if professors lean left and say social justice supporting things.

But I started by saying that I do think Canadian law schools have responsibilities to the fair and effective administration of justice, and that I worry about whether law schools adequately discharge those responsibilities.

That law schools have public responsibilities is easy to justify. Law schools receive significant public funds. They receive money not just to pay professors to teach students, but also to produce scholarship (most law professors are expected to spend at least 1/3 of their time on scholarship). Law schools have a monopoly for entry into the legal profession, except for the few foreign lawyers admitted through the National Committee on Accreditation. If lawyers ensure and safeguard the rule of law, the training that allows them to do so comes significantly from Canadian law schools. Law schools thus operate at the heart of the rule of law, and they do so exclusively, with public funds and a public mandate. It seems trite to suggest that such power creates public responsibilities.

Defining law schools' public responsibilities is difficult. It is certainly something about which professors would reasonably disagree. For my part I would suggest two core responsibilities: law schools must provide thoughtful and well-researched engagement with the sufficiency of the administration of justice in Canada, and must ensure that any graduate who goes into legal practice has been equipped with the core intellectual skills necessary to practice effectively.

The problem, though, is that law schools are not structured to ensure they accomplish these objectives. All law schools establish a core curriculum and courses that students must take. All law schools expect professors to engage in meaningful scholarship. But beyond that most law schools leave the content and evaluation of a course, and the subject of scholarship, to the judgment of the individual professor.

In terms of teaching, a property law professor can teach property law and focus purely on historical case law and issues, never reaching confederation. A professor can teach legal ethics and refuse to discuss the rules of professional conduct (although that is more difficult now that the Federation of Law Societies regulates the content of ethics courses). A first year torts professor can teach no intentional torts. Unless professors submit to institutional direction (which they usually do not have to do), law schools cannot ensure students receive reasonable coverage of the relevant substantive law. They also cannot regulate forms of evaluation to ensure that students learn a broader range of skills than can be taught through examinations. Canadian law graduates may be well prepared for the intellectual requirements of the practice of law, but there are systemic reasons to believe that that preparation is far less thorough and effective than it could be.

Law schools have even less ability to ensure that legal scholarship provides a thoughtful and well-researched engagement with the sufficiency of the administration of justice. If a professor writes things that are published in a peer reviewed (or US) journal, and if they receive funding, a law school will be satisfied. Whether the professor wrote about Canadian law, or even about an issue of importance to Canadian law, is not something law schools control or even consider.

All of this occurs, of course, in the name of academic freedom, the guarantee that professors will not be sanctioned for the substance of what they write and teach. I agree that academic freedom is really important; it ensures that scholarship and teaching are not limited to popular and accepted views. It is essential for ensuring a free and democratic society, as Michael Ignatieff recently [pointed out](#). Speaking personally, the University of Calgary has more than once stood up for my rights as a scholar in the face of critics' attacks. But we should also recognize that academic freedom comes at a price, and that price may be that Canadian law schools do not prepare their students as well as they could for the practice of law, and do not provide scholarship that engages sufficiently with the administration of justice.

On the last point consider data gathered by my colleague Deanne Sowter for research that she and I are doing on family law lawyers and practice. In a review of the profiles of 649 Canadian law professors (i.e., all law professors at English language schools), only 4% research issues related to family law. By contrast, 19% research issues related to constitutional law, and 22% research issues related to international law. I accept that constitutional law and international law are important. But family law is one of the most significant and troubled areas of Canadian law.

It affects Canadians pervasively. Many of the issues of access to justice, and in particular self-represented litigants, arise acutely in the family law context.

But law schools don't seem concerned. As this data shows, only a tiny fraction of law school scholarship engages with family law problems; far more focuses on matters that will rarely impact in any tangible way the lives of ordinary Canadians. A cursory review of advertisements for law schools will infrequently show a school looking for family law scholars. Family law courses tend to be taught by practitioners (this year will be the first year in my 14 years at the U of C that family law is not being taught by a practitioner). Law schools don't care about the limited attention being given to family law even though, five years ago (April 2013), the [Final Report](#) of the Family Justice Working Group of the Action Committee on Access to Justice in Civil and Family Matters, "Meaningful Change for Family Justice: Beyond Wise Words" urged Canadian law schools to hire and develop full-time professors with an interest in family law (at page 5).

I think it is worth questioning whether law schools need to be as they are, or whether it is possible to protect academic freedom while also working institutionally to accomplish the best possible education for students, and accepting some institutional responsibility to ensure that the school produces scholarship addressing pressing issues with the administration of justice. Law schools may not be able to control what professors write, but they certainly could choose to hire professors with interests that engage squarely with matters of central importance to the fair and effective administration of justice in Canada. And in particular they could hire faculty with an interest in family law. Having only 4% of Canadian law professors researching an area of such importance is disgraceful. We should do better.

*This post originally appeared on [Slaw](#).*

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