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Values in Canadian legal education

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Summary

Whether legal education's purpose is to educate lawyers or citizens, many law faculties and law teachers aspire to transmit certain values to their students about professionalism, the role of law in society, and the responsibilities that come with the privileged status of lawyers in our society. Whether we think that legal education is a place where we should teach specific values or teach *about* values, the reality is that legal education is value laden. By looking at educational objectives, classroom observation and interview data, this paper brings some evidence that 'values-talk' is indeed included in Canadian legal education, but finds that it is mostly implicit. The paper explores some reasons why this is the case, and encourages legal academics to pay attention not only to *teaching* about values, but most importantly to *learning* about values.

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Introduction

The discussion on values in legal education has been well under way in recent years and more intensely since the publication of BurrIDGE and Webb's piece (2007) and the responses to it by Cownie, Pue, Bradney and others published in volume 42 of *The Law Teacher*. A group of legal academics met in Onati in the spring of 2009 to continue this conversation, at which point I was invited to join in. Not surprisingly, it is difficult to enter into an ongoing conversation; I hope that this article, which is more empirically based and discusses the Canadian situation, will contribute to this debate. By looking at educational objectives and classroom observation and interview data, this paper brings some evidence that "values-talk" is indeed included in Canadian legal education, much as Cownie (2008) describes it, but finds that it is mostly implicit. The paper explores some reasons why this is the case, and encourages legal academics to pay attention not only to *teaching* about values, but most importantly to *learning* about values.

Values in legal education- a brief review of the literature

In the literature mentioned above, the questions about values in legal education seem to be divided into three main types. First is the question of whether values are a part of legal education. First, there seems to be a consensus that legal education *should* include values (with the exception of Stanley Fish, who argues that education should NOT aim to teach values because there is the danger of indoctrinating students in specific values (Fish, 2008). As Bradney recognizes, law is value-laden, law teachers and law students are human beings with values; legal education thus cannot avoid questions of values (2008, p. 295). Cownie adds that values are impossible to avoid in legal education both in terms of the substantive content of the law and in the way that we teach (2008, p. 305).

On the question of whether values *are* a part of legal education, Pue points out that contemporary legal education is void of values, and that the "moral mission of educating 'total jurists', or

thoughtfully contemplating the ways in which legal education ('value neutral' or not) constitutes the human subject, has given way to other, less self-aware forms of training" (2005, p.220). He points out that this was not always the case and that pre-WWII common lawyers and legal educators paid much attention to educating "citizens" as well as lawyers (2005, p. 209-215). Cownie, on the other hand, tells us that because of the content of the law and in our pedagogy, values are "impossible to avoid" (2008, p.305). Even if legal educators can choose to ignore values, this does not change the fact that they are pervasive across legal education (Cownie 2008, p.305). As Petter points out, "[l]aw, after all, is a system of values; behind every judgment of the courts there has been some choice made among competing values. Indeed, it is the coincidence of legal values with societal norms which gives our legal system its legitimacy" (Petter 1982, p.94).

Cownie concludes from her interviews with legal academics that "values-talk" is occurring in most law school classrooms, even if discussion of values is done implicitly as discussion of "policy" (2008, p. 306). In this article, she revises her earlier position that moral values were absent from legal education because of "the pervasive influence of legal positivism" (2003, p. 159). For Menkel-Meadow, in an article that discusses legal ethics and professionalism in the American context, as teachers we embody lawyering and the conduct of legal professionals (1991, p.3). She argues that the traditional classroom fosters "adversariness, argumentativeness, and zealotry", that the case method used in common law classrooms encourages moral relativism by its focus on principles of doctrine "rather than principles of behavior", individualism and autonomy (p. 7). According to these authors, values therefore pervade legal education, through the substantive content, through our teaching and through the general law school environment (see Tanovich, 2009; Elman, 2007). However, the teaching of values is done largely implicitly. We can therefore say that values are a part of legal education, but are rarely an explicit part of the curriculum, whether in a course or in a programme.

The second question relating to values and legal education is whether legal education should be *about* values or *in* values. On this point, Burrige and Webb argue that at minimum, the mission of liberal legal education is to prepare "good citizens" or "better persons", and not just good lawyers (2007, p.264). Brownsword adheres to the liberal idea of legal education as producing "really good citizens", who participate in the "politico-legal life of the community", but who also have "a critical and reflective attitude towards the institutions of society" (1999, p. 29). According to Burrige and Webb, legal education should thus be an education *in* values, more specifically those values of progressive thinkers.

On the other hand, Bradney (2003, p. 43) defends a liberal education as not being an education *in* values but *about* values:

a liberal education does not determine which values a person must choose but it does determine the method by which those values are chosen and defended and, given the way in which those values must be defended, arguably it may delimit a range of values from which the individual can legitimately make their choice.

Similarly, Fiona Cownie, citing Martha Nussbaum (1997), argues for the importance of educating students as human beings, thus "cultivating humanity", and that "the aim of a liberal

legal education is to produce students who have the capacity for living what Socrates called ‘the examined life’, in which nothing is accepted merely because it is handed down by tradition, but everything is questioned...” (Cownie 2008, p. 303). Taking Nussbaum's vision of education, cultivating humanity also means for Cownie "learning how to be a human being capable of love and imagination" (Nussbaum 1997, p. 14; Cownie 2008, p. 304). This is as far as Cownie goes in defining specific values that should be part of legal education. Indeed, Cownie points out the inherent difficulties in teaching values in an age of value pluralism and moral relativism (2008, p.303; see also Pue, 2008, p. 286).

The third type of questions relating to values in legal education found in the literature concerns *which* values should be part of legal education. On this question, there are two main perspectives which are not necessarily mutually exclusive. The first, held mostly by legal academics in the context of English legal education, is that legal education should teach the values central to a liberal education such as the primacy of the intellect, the pursuit of truth and knowledge as an end in itself, that goal of education is to prepare students for life, not for work (Burridge & Webb 2007, p.74). Burridge and Webb also offer a list of educational values of a “genuinely” liberal education as including intellectual freedom and autonomy, emancipation (defined as an education that “enables students to develop a shared, deep, understanding of, and to engage in critical discourse about, the values and achievements of their (or any) society”), creativity, cultural literacy and the principle of moral neutrality (2008, p.78-79). The English Advisory Committee on Legal Education and Conduct (ACLEC)’s First Report on Legal Education and Training lists specific legal values: “commitment to the rule of law, justice, fairness and high ethical standards, commitment to acquiring and improving professional skills, commitment to representing clients without fear or favour, commitment to promoting equality of opportunity, and to provide legal services to those who cannot afford to pay for them” (1996, para. 2.4).

The second perspective, found mostly in the US but also in the Canadian literature, is that legal education should teach about legal ethics and professionalism, which seem to be considered as values in themselves. The focus is thus more vocationally oriented. Indeed, contrary to the rich literature we find in the UK about teaching values in legal education (see, for example Volume 42.3 of *The Law Teacher*, which includes articles by Burridge & Webb, Cownie, and Bradney; see also Cownie 2008 and Burridge & Webb 2007). Canadian and US legal academics have generally not had many conversations about teaching values in law school (the work of Pue and Petter are of course exceptions to this statement; see Pue 2005, 2008, Petter 1982; see also Binder 2009). However, there is an important and growing body of literature on legal ethics and professional responsibility in Canadian legal education (see for example Esau, 1987; Sossin, 2007; Devlin et al, 2007; Dodek, 2008; Downie, 1997; Elman, 2007).

The specific Canadian context might explain this different approach to values in legal education. The law degree in common law Canada constitutes a post-graduate degree in common law Canada. The situation is different in Québec, where the law degree can be obtained as a first degree, much like in England. In order to be admitted to a law faculty in Québec, students must hold a Diploma in Collegiate studies obtained in one of the Québec-specific CEGEPs (Collèges d’éducation générale et d’éducation professionnelle). McGill university differs somewhat as the majority of students who are admitted to the law programme do hold at least an undergraduate degree, and often even a graduate degree.

This means that contrary to legal education in the UK, Canadian legal education is considered and has historically been considered by many as a professional education (Pue 2008, p. 279). Historically and still today, Canadian legal education has thus been torn between its university setting and the legal profession. In common law Canada, the training for the practice of law began as an apprenticeship and remained under the tight control of the profession until the end of World War II. In Ontario, the apprenticeship model continued until the opening of the new Osgoode Hall Law School in 1889, although from the 1840s, the Law Society of Upper Canada used 'law clubs' as informal educational experiences composed of lectures, moots and essay competitions. McLaren argues that the Law Society of Upper Canada thus maintained a hold on legal education for a long time, although its model lost its prime position in the 1870s with the creation of university legal education in the US and England (McLaren, 1987). The 1960s marked another era in legal education. Osgoode Hall Law School moved to York University in 1968, symbolically marking a break from the control of the Law Society. Then began a period of proliferation of law faculties across the country and a growing body of full-time law professors (see Consultative Group on Research and Education in Law, 1983, at pp.12-14; Arthurs, 1998 at pp. 15-16; for a comprehensive account of the history of legal education in common law Canada, see McLaren, 1987).

The professional orientation of Canadian law programmes changed somewhat after the publication of the *Law and Learning Report* (Arthurs 1983). After doing a review of Canadian legal education, the Arthurs' Report concluded that in the 1960s, law faculties had launched a new kind of legal education comprised of three elements: learning legal rules, learning legal skills and developing a humane perspective on law and an understanding of the social context of law. The Arthurs Report referred to a "humane and professional legal education" rather than simply vocational education. Whereas "classical" legal education, previous to the 1960s and 1970s, had aimed at knowledge of doctrine and basic analytical skills, "humane professionalism", states the Report, aims "to explore the legal system from the perspectives of other disciplines or to question the assumptions underlying legal rules, reasoning or institutions." Despite these gains, however, the report concluded that Canadian legal education remained mostly professional. Harry Arthurs explained:

the internal political dynamic of Canadian law schools is often destabilized by the competing visions of legal education of its 'suzerains'.... But in the end, the two visions are different: at any given moment, they do not project equal power and influence, and whichever is ascendant in a particular law school will shape its teaching programme and intellectual ethos. (Arthurs 1998, p 23)

This dichotomy between a university and a professional education has influenced the teaching of values in Canadian legal education in many ways. First, generally, this dichotomy has hijacked most conversations about Canadian legal education, to the detriment (and ignorance) of other important conversations, such as conversations about teaching and learning, or about values in legal education. Secondly, conversations about the goals and objectives of Canadian legal education have also been framed in terms of this dichotomy, and this has meant that Canadian legal education has been trying to be everything to everyone, with both professionally oriented and more liberal objectives. As Pue argues, however, university legal education, because it is

most often about the preparation of students for professional work, is more about skills than it is about the values of liberal education (2008, p. 275). Third, and relevant to this article, the dichotomy between university and professional legal education has also largely limited conversations about values to conversations about legal ethics and professionalism, where professionalism is seen as a value in itself. Thus we can say that discussion of legal ethics necessarily implies certain values, but the scope of these values is limited.

The influence of the legal profession on Canadian legal education, and in the teaching of ethics in law schools is even more palpable today, after the Federation of Law Societies Task Force on the “approved law degree” published its final report (2009). This report introduces an accreditation procedure for Canadian law programmes somewhat similar to the process found in the United States. In its final report, the Task Force concludes that to be accredited, Canadian law programmes will have to offer a mandatory course on professional responsibility. Needless to say this initiative has stirred up controversy in Canadian legal academia about the opportunity of the Federation of Law Societies to dictate aspects of their curriculum to law faculties, but also about professional responsibility as a mandatory part of Canadian law programme curricula. All involved in these conversations¹ agree that what is meant by professional responsibility is not limited to knowing and applying rules of professional conduct, but more broadly to ideas of ethics and professionalism. However, what is meant by professionalism and the values that it entails is not discussed at length in the report, and the learning aspect of teaching values even less so.

The purpose of this article is therefore to broaden the conversations of Canadian legal academics in relation to the teaching of values by looking empirically at values in Canadian legal education. First, we will look at learning objectives and mission statements of law faculties in order to determine what values, if any, are institutionally and individually addressed in Canadian legal education. As we will see, most law faculties in Canada do take position, as BurrIDGE and Webb have encouraged, and address values, at least implicitly, in their mission statements and messages to incoming students. Secondly, following on Cownie's argument that values teaching should be the responsibility of individual law teachers and not an institutional responsibility, we will see if individual law professors have educational objectives relating to values, if “values talk” is present in the Canadian law classroom, and if so, what are those values. In conclusion, we will argue that despite the presence of values in much of legal education, little attention is paid to the *learning* of values.

¹ There is a consortium of professors across Canada who are involved on this issue: see *Submission to the Federation of Law Societies of Canada Task Force on Accreditation* (Ad Hoc Law Professors' Working Group on Law School Accreditation, April 2008), on file with the author. See also Rod Macdonald et al, *Response to the Consultation Paper of Federation of Law Societies Task Force on Accreditation*, CLSA/CALT, 2009, online: http://www.acds-clsa.org/en/news_article.cfm?news_id=6

Values in Canadian legal education

Methodology

The data analyzed in this article is based on an empirical study of Canadian legal education in the course of my doctoral work. In the course of this study, I examined the educational learning objectives (when they did exist), mission statements, strategic plans, and Deans' welcome messages or whatever information I could find on Canadian law faculty websites in order to determine the general goals and objectives of Canadian legal education. For this article, I looked specifically for learning objectives or information related to values. In the course of my doctoral work, I also conducted 50 classroom observations in nine different Canadian law faculties in four different regional locations (the west, the prairies, Ontario and Quebec; time constraints meant I was not able to visit the Maritime provinces). During those observations, I carefully noted the teaching methods used, the questions asked, what students were doing. In coding these observations,² I specifically looked for what Cownie names "values talk": discussions about values in law, such as justice, fairness, or policy discussions. Although my study did not specifically address values in legal education, I did ask professors in interviews about what they hoped to accomplish in their teaching, as well as what they thought the goals of legal education should be and as a result, "values talk" came up in many interviews.

Values in Canadian legal education objectives and aims

Much has been written on the goals of Canadian legal education, including whether legal education should aim to be vocational or liberal, or to foster a humane professionalism, and what knowledge and skills are required of students, but as we saw above, the discussion about what values should be part of a legal education has been somewhat limited to a discussion about professionalism and legal ethics. Because of its particular historical context, therefore, the dichotomous mission for most law schools in Canada has meant that the goals and objectives of Canadian legal education try to encompass both liberal and vocational orientations. For the purposes of this article, those goals and objectives include both professional values and broader, liberal values.

Looking first at the stated goals, mission statements or programme objectives of Canadian law faculties, we find that some attention is paid to values, although this does not go as far as stating learning objectives that relate specifically to values. Outside of Quebec, most Canadian common law faculties have not identified learning objectives for their programmes, or, if they have, they are not on their websites. Only the University of Calgary law faculty had specific programme objectives dealing with values:

To make students aware of the fact that law is based on different value systems that are often in competition with one another and that balancing them can be difficult (Calgary, 2010).

² The methodology used to analyse the data is based on grounded theory, using the Atlas.ti software. For more details on grounded theory, see Bryant & Charmaz (2007); Charmaz (2006); Strauss & Corbin (1998)

The apparent absence of learning objectives relating to values is unsurprising: Petter pointed out in 1982 that law schools are reluctant to take on the task of identifying learning objectives in Krathwohl's affective domain based, he argues, on a misconception of what these objectives are (Petter 1982, p. 93; Lebrun & Johnstone 1994; Krathwohl et al 1964).

When we look at mission statements, stated goals and programme objectives with a more critical eye, we can see that they do mention certain specific values drawn from the liberal legal education model as well as more professionally oriented values. For instance, *autonomy* was identified as being an important quality for a law graduates to possess, as we can see from one of the programme objectives from the law faculty at Université de Montréal: "Un juriste qui est autonome et apte à s'adapter aux changements et à devenir agent de sa propre formation juridique permanente" (Montreal, 2011).

Another value that can be read in law school documents is *citizenship*. Brownsword (1999, p.29) defines citizenship as "intelligent participation in the politico-legal life of the community". Burrige and Webb adopt Brownsword's definition (Burrige & Webb, 2007, p. 74). For example, the University of Calgary Faculty of Law had as a programme objective to "help instill in students a sense of obligation to be full contributing members of their communities." (Calgary,2010a). The University of Windsor Faculty of Law *Strategic Plan 2006-2012* states that the programme wants "to encourage students to contribute meaningfully to society and to participate creatively in the process of legal development and social change." (Windsor 2010)

Closely related to the idea of citizenship is thus the value of *community*, as is demonstrated by this example:

Embracing our proud tradition of community, collegiality and service to our society, we develop outstanding legal professionals with a global perspective... (Queen's 2010).

Some law faculties also promote what Burrige and Webb have named '*emancipation*' as a value, which is defined by these authors as an education that "enables students to develop a shared, deep, understanding of, and to engage in critical discourse about, the values and achievements of their (or any) society" (Burrige & Webb, 2007, at pp. 78-79) as we can see from this example:

Le développement chez l'étudiant d'une capacité d'analyse critique du droit. L'étudiant doit être capable de questionner les règles de droit, d'en percevoir les dimensions historiques, politiques et socio-économiques et d'en comprendre les fondements et les fonctions dans la société. (Montreal, 2010)

Many law faculties also acknowledge that lawyers play an important social role and many specifically state that they are training jurists who will care about, or at least appreciate, social and legal justice. A commitment to *social and legal justice* often finds its way into statements of objectives or Deans' messages. For example, Queen's Faculty of Law *Strategic Plan 2005-2010* states specifically as one of its values, "social justice and public service" (Queen's, 2010a, at p. 3; see also Toronto, 2002), University of Victoria's law faculty claims to have a "strong commitment to social justice" and the common law faculty at Ottawa states that it promote a

pedagogy that is “mindful of the privilege and power often accorded to lawyers in our society’ and that addresses ‘the spirit of the law and the ideal of justice” (Victoria, 2011; see also Windsor 2011). The Université du Québec à Montréal goes further to state that the purpose of its programme is to educate jurists that will not only be concerned with social justice issues but will contribute to the fight:

*Ce programme a pour objectif socio-économique la formation de juristes qui seront **préoccupés de justice sociale** et qui, à cette fin, pourront intervenir largement (recherche-action, enseignement, organisation, consultation, contentieux) à la défense et à la promotion des droits des personnes et des groupes (les organismes populaires et communautaires et les associations volontaires et autonomes, sans but lucratif, les syndicats, les comités de citoyens ou autres groupes apparentés qui poursuivent des objectifs de développement à caractère économique, social, culturel et communautaire) et ce, partout où le droit est en cause et particulièrement dans les domaines qui concernent les conditions de vie et de travail des personnes. (UQAM, 2011; see also Windsor, 2011a)*

Closely related to social justice are values of *equality* and *diversity*. These two values are frequently mentioned as important to law faculties’ missions.

Foster an inclusive and supportive learning and working environment that promotes equality, non-discrimination and diversity within a framework of respectful intellectual debate. (Queen’s 2010, p. 7)

In our view, it is the duty of the program to respect and promote the full range of diversity reflecting the multi-lingual, multi-cultural and multi-racial characteristics of the women and men in our programs and in Canadian society (Victoria, 2011; see also Western, 2006).

Another value institutionally encouraged by law faculties is *responsibility*. The University of Western claims that responsibility is one of its core values (Western, 2006). These examples illustrate the aim to educate jurists who are aware of the social, ethical and professional responsibilities of lawyers:

Juriste qui est conscient de ses responsabilités sociales, comme intellectuel et professionnel, respecte une éthique compatible avec celles-ci et est sensibilisé aux modes extrajudiciaires de solutions de conflits. (Montreal, 2010)

They understand and respect the role for the public interest, and how that interest permeates and informs law and legal institutions. They also understand the need for the lawyer to pursue and vindicate the highest ideals of the profession, including pro bono service (Toronto, 2002, p. 12).

This notion of privilege and responsibility also came up in some interviews, as in this comment by a socio-legal scholar and torts teacher:

I think a lot of it is about responsibility. That if they're going to go on to be participants in law whatever it is. If they're going to be lawyers or legislators or whatever, that there's a responsibility that comes with that.

The notion of responsibility is however mostly linked to *professional responsibility*. As could be expected, notions of professionalism, professional responsibility and ethics are found on the majority of faculty web sites (for a complete review of objectives related to professionalism and legal ethics, see Tanovich, 2009) Often these are held to be values in themselves, but often, these are related to some of the values we mentioned above, such as the role of lawyers in society. We can also find a few references to Arthurs' "humane professionalism" discussed above. Here are a few examples:

...we commit to the curriculum renewal process and to instruction that enhances the ability of our students to fulfill their career expectations in an ethical and professional manner, always mindful of the role law and legal actors should play in building social cohesion and civil society (Windsor, 2011b).

... Ensure that existing courses offer students critical perspectives on law and teach students to serve their clients in a competent and ethical manner (Windsor, 2011b).

While not every student who attends law school will go on to become a lawyer, the study of law nonetheless includes an appreciation of the ethical standards required of the profession. For students at Robson Hall this begins on the first day of law school as they reflect on the importance of integrity and service in the public interest as an integral part of their future careers (Manitoba, 2011).

*The College of Law at the University of Saskatchewan is committed to providing critical and reflective education so students have the best academic preparation for assuming **professional responsibilities** in the humane operation of the legal system and for all vocations in which an understanding of law is necessary or helpful (Saskatchewan, 2011).*

Objectives and mission statements also refer to creating supportive learning environments, as well as critical examination of the law and critical thinking, as we can see from the examples given above. Experiential learning, as is provided in clinical legal education or pro-bono programs are also referred to, although the link with values is not made directly. Tanovich also argues for the adoption of law student codes of conduct in order to contribute to what he names "the professionalization" of law students (2009).

Thus we can see that in theory, Canadian law faculties pay some attention to values in the education they provide students, although they do not always refer specifically to them as "values". Moreover, these statements are not usually translated into specific learning objectives. We do find some references as to how these values are to be encouraged, but nowhere do we refer to students *learning* about values.

What is missing from much of this debate therefore is how law faculties are to achieve these goals. The lack of *explicit* reflection about what values are present in legal education or about how students learn about values unfortunately means that not much is known about if and how students learn about values and value systems and what those value systems are. Even more so than for knowledge and skill related objectives of Canadian law programmes, then, we have no way of knowing whether our students actually learn about them.³ However, as we saw above, Cownie recognizes that at the individual law professor's level, there are a "number of law teachers who are teaching law in such a way as to make it more likely that they will engage in what she calls 'values-talk'." She seems to explain this newish concern with values in the classroom at least by the rise of socio-legal and critical scholars and approaches to law, who "have sought to uncover the values and power relationships that underlie traditional doctrinal materials", but she also points out that the same is true for typically doctrinal scholars, who do bring in contextual issues to their research and teaching. However, she also mentions that most likely, values-talk is done implicitly, "probably in terms of 'policy'" (2008, p. 305-306). Let us take a look now at what happens in individual law classrooms and what individual law teachers think about teaching values.

Teaching and learning about values in Canadian legal education

In my observations, I did find that there is indeed much of what Cownie calls "values-talk" going on in law classes, although most of it takes place in discussions of "policy", as Cownie suggests. There is also much discussion about the social context of law in classes.⁴ The social, historical, economic and political context of legal rules was mentioned quite frequently in class, although this was mostly done through lecturing. One feminist teacher noted that she tried to uncover hidden assumptions about the law:

...so that I try to connect what we're doing in the classroom to things that they already, know without realizing that they know. Ways in which, uh we make assumptions in society. The ways in which um, law, legal rules are tied to [pause] all kinds of political, economic, philosophical, sociological, anthropological, kind of, things, in, in the society that, in which we participate. And I don't stop and label these things, in terms of discipline. I don't stop and say, well today is the day that we're linking law to philosophy.

Seen in this way, "values-talk" is closely related to what many law professors referred to as "critical thinking". To some participants, critical thinking was the ability to think critically about the law from different perspectives and pointing out inconsistencies in the law. In English Canada, "perspectives" represented the views of marginalised groups (women, people of colour,

³ As Tanovich mentions in his article, recent and disturbing incidents involving law students, as well as practicing lawyers, indicate that perhaps law students do not hold the same values that are promoted by the institution they attend and that their value systems are not changed by their educational experience.

⁴ In fact, after coding most observations and a good number of interviews, the "context" category had four times the number of entries as the "values" category; this indicates to me that talking about values in law classrooms is done mostly through the discussion of the social context of law and thus implicitly as is suggested by Cownie. Moreover, in the majority of my observations, "context" discussion was done mostly through lecturing.

aboriginal peoples, queers, etc...), whereas for the francophone interviewees, “perspectives” was conceived more broadly (historical mostly).

Most of “values-talk” that I observed thus took the form of “modelling” with law teachers expressing their opinions about an issue. As Cownie suggests, law teachers act as role models, and through this role, they explicitly and implicitly transmit values (2003, p. 172). In my observations, I noted professors expressing their opinions about the law quite frequently. When I asked participants how they bring social context into the discussion of law, or how they get students to reflect on social context, interviewees hesitated then answered that they would themselves emphasize context and point out the relationship between the rules and society, as we can see from these quotations:

Yeah, good questions. Um, probably all of the above. I certainly talk about it more. I emphasize the material in, in the course book that I'm using, more. I emphasize that material more. I spend more time with it.

Euh je fais ça beaucoup plus dans la présentation, la façon de présenter les règles euh donc euh je, je me, ne me gêne pas non seulement pour expliquer les règles mais les critiquer. Hum aussi faire le lien avec euh bon l'évolution euh du Québec entre autres parce que ... tous les droits qui se rattachent vraiment aux personnes sont le reflet de, de la société du Québec. Donc euh je le, j'essaie tout le temps de leur soulever à quoi correspond cette réponse-là qu'est le droit à, à des besoins de la société euh en matière bon, dans, dans mon cas, en matière de succession, en matière de testament donc, se poser les questions pourquoi la règle est-elle de cette façon-là? O.k. Elle est rarement par pur caprice. La règle est comme ça parce que ça répond à un besoin, ça correspond à un besoin ou ça vient combler des lacunes. Donc, j'essaie toujours de leur faire la, cette corrélation entre la, l'État social pis l'évolution social du Québec. Et, ce qu'on peut retrouver comme règles de droit dans le Code. Et essayer de leur démontrer comment tout ça se tient et, et que c'est, bon c'est des règles théoriques mais qui ont, qui ont une source concrète [rires] qui ont une raison d'être en tous cas qui, qui est loin d'être théorique euh ou abstraite.

One interviewee answered that she taught critical thinking by modelling it, but also through her evaluation methods:

Well. [pause] [sigh] mostly by doing it myself. And then, there's always one part of the assessment in which is ask them to think critically about something. Like they do law reform piece or they do a case assignment. The orange paper that you're holding is a case assignment, in which I've taken, two, really kind of boring cases and said, connect these up to critical and contextual material we did at the beginning of the class. That's the assignment, is to write about the case in light of what I have said at the class about, [pause] political values, social values, economic values, the way the Canadian law is structured. What do these particular little [non-events?] in the federal court? How does it connect up to those things? So they have to do one piece of their assessment. It's about, thinking about ...law in a broader policy context. I always call it policy context. Others call it theoretical context.

“Values talk” also happens on the initiative of students who are disturbed by the outcome of certain cases or by certain legal rules. They will either ask a question, express an opinion, or engage in a discussion with other students and/or professor. I saw this happen in many of the classes I observed. In one example, a student pointed out the class and sex bias of certain family law provisions of the Civil Code of Québec.

Many law professors also engage in values-talk by asking difficult questions about fairness, justice, equality, or other values, or by asking the “why question”: what do you think are the policy reasons behind this provision? In one particular observation, students were asked what they would do if they were the counsels for an intervening party in a controversial case (gay pornography). Students were then invited to express their opinions, some of which were based on religious beliefs as they themselves characterized it.

Some law professors that I observed had however designed specific class activities to confront students with values. In one criminal law class about jury selection, students working in small groups were given pictures of different people and were asked to decide which of those people they would choose as jurors in a case about child pornography. Half the class acted as the defense lawyers, the other half as prosecutors. This exercise was designed to get students to reflect about gender and race stereotypes and generalizations. Another professor told me an interview that she would get the students to read a critical race article about one aspect of law and get students to react to it in a letter that they would then post in the classroom.

Values-talk is therefore mostly implicit. I would also add, as Pue notes, that this values-talk is superficial (2008, p.285). When asked in interviews about HOW they taught about values, most participants had to pause for a second before answering. In most of their responses (other than the few exceptions mentioned here), they indicated what I saw in observations, that it was mostly through course materials, lecturing and asking questions that they got students to think about values. This means that the methods used to teach about values are essentially the same as the methods used to teach legal rules.

Reasons for not paying close attention to teaching about values in legal education include value pluralism, the pressures of time and concerns about “coverage”, student tolerance and faculty knowledge, experience and comfort in dealing with these issues and difficulties in assessing whether students have learned about them. In one example observed, one student commented that the outcome of the case 'sucked' ; the teacher agreed and gave the students her opinion of the case, then moved on. She missed what seemed to me an opportunity to engage the students in issues of fairness and common sense. However, this might have been because as she later told me in an interview, there were a few difficult students (one in particular) in the class who challenged her opinions. She might have therefore avoided the issue in class in order to avoid conflict. Also mentioned in a few interviews is the “constant challenge” of students always wanting to get back to the rules:

I, I worry about the fact that, that they don't really believe me that all that stuff is just as important. They seem to do a lot of filtering.

I: They do?

Paring down to the rules....Um, as if, that's what she really wants us to know. And even, even though they might tell me that they really enjoy the whole, all of it. But they, seem driven. So that's a constant challenge about.

I: Why do you think they do that?

[pause] I am, I am uh, a whole range of reasons I think. One, preconceptions before they come in to legal education. Two, because that's, that feels solid. [pause] I honest, I think they are looking for a comfort zone and if they can convince themselves they've learned all those rules. Then they feel kind of like they've GOT it. And the other stuff is, [pause] less easy to hold on to.

... But I think that the real core factor has been the critical content stuff, which kind of upsets a considerable amount of the students in terms of they're not learning the real law.

Teaching in what they perceive to be a value-free way is thus much easier for both students and teachers, according to this participant:

So, like, it is SO much easier, to go into a classroom and teach uncritical content. It is SO much easier. Like, I can't. It's night and day. And uh, [pause] but, like I'm not gonna give up all the critical content, cause I think, for the reasons we were talking about, other things, it's really important.

This concern is more acute when the “critical” professors feel their “black letter” colleagues are influencing students’ expectations, as reflected by this comment from a young female and feminist professor:

It was in my first year very reflected in the course materials. Like putting critical content into [name of course], as um, when, the other teachers did not do it, was like, PROBLEMS, for students. And I think the reaction would have been different, let's say if one of the white senior men, who had, who were teaching [name of course] had also done it. Cause then it's not seen as advancing an agenda, or like, this is your own personal interest in things. Right, it would have been given some cloak of legitimacy and, diversity of thought.

Another reason that was raised by this young feminist professor for carefully choosing the ways in which she would carry on “values-talk” (through interactive individual or small group activities) was the desire to keep marginalized students safe in the classroom:

Um, so there is an example where I DON'T do full on discussions, like, “What do you think about this article?” Because I don't want. Because it's the conservative members of the class, who will, um, like kind of the more assertive, white men, who will raise their hands. And I'm not, I'm just uncertain what they're gonna say. And I don't want them to say something very resistant, which shuts down everything else. Um, [pause] so, and this has been, like an ongoing issue, just this year, about who is speaking in the classroom. And, uh, so, for something like that, I do it in a specific way.

Conclusions

From the above analysis, we can therefore conclude that "values-talk" is happening in Canadian law classrooms, even if much of it seems implicit. As Cownie mentions, making the teaching and learning about values explicit would be a difficult task to undertake for individual law teachers because they would arguably need to become familiar with moral philosophy and educational theory. (Cownie 2008, p. 303).

This might be the reason why BurrIDGE and Webb (2007, p.95), in their model of a "post-liberal" legal education, argue that the "responsibility to teach values is a collective one" and that law schools should institutionally aim for a learning environment described as follows:

In bringing these visions together we suggest that it is an environment which treats issues of role and relationship seriously and reflectively; it values and seeks to build a sense of community, through cultures of respect and collaboration. It takes the task of developing moral judgement (and the capacity for moral action) seriously, utilising 'contextually rich and emotionally engaged', problem-based and experiential learning techniques.

The authors therefore argue for constructivist methods that enable a "felt experience of, rather than a mere intellectual acquaintance with" values, such as intensive small group learning encouraging debates, mentoring, clinical legal education or community involvement. True, experiential learning and clinical education are indeed excellent ways of facilitating students' learning of values and moral development (BurrIDGE & Webb, 2007, p. 96), but they only reach those few students directly involved in those experiences. As Pue points out, extending this kind of learning experience to entire student bodies would be extremely resource and labour intensive (2008, p. 289).

However, if we take the perspective of facilitating learning, our role as teachers and institutions in the moral development of our students is to provide students with opportunities to learn about values. This can be done with relatively little resources and in a classroom setting, by using student-centered or learning-centered strategies such as debates, role-playing activities and simulations.⁵ As was mentioned by one of the participants in this study, however, we must carefully structure these activities and a safe classroom environment in order to ensure that marginalised students are not further marginalised. More importantly, as pointed out by Cownie and other educational theorists (see, for example, Cranton 2006; Schon, 1995) giving students opportunities for critical assessment and reflection on the values encountered in law and in law school and how they conflict (or not) with their own values is key to their moral development. (For an explanation of these conflicts in values, see Binder, 2009 and Krieger 2004-2005).

⁵ For experiential and transactional learning through online simulation pedagogical tools, see, for example, Paul Maharg and M. Owen, "Simulations, learning and the metaverse: changing cultures in legal education" (2007) *Journal of Information, Law, Technology*. Special Issue on law, education, technology, 1, online: http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2007_1/maharg_owen (accessed 16/02/2011); Karen Barton, Patricia McKellar, Paul Maharg, "Authentic fictions: simulation, professionalism and legal learning" (2007) 14:1 *Clinical Law Review* 143-93; Paul Maharg, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-first Century* (Ashgate Publishing, 2007)

Whatever teaching and learning strategies we choose to use to facilitate students' learning of values, the objective is to make it explicit.

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