COUNTING OUTSIDERS: A CRITICAL EXPLORATION OF OUTSIDER COURSE ENROLLMENT IN CANADIAN LEGAL EDUCATION©

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In response to anecdotal concerns that student enrollment in "outsider" courses, and in particular feminist courses, is on the decline in Canadian law schools, the authors explore patterns of course enrollment at seven Canadian law schools. Articulating a definition of "outsider" that describes those who are members of groups historically lacking power in society, or traditionally outside the realms of fashioning, teaching, and adjudicating the law, the authors document the results of quantitative and qualitative surveys conducted at their respective schools to argue that outsider pedagogy remains a critical component of legal education. The article situates the numerical survey results against both a critical review of the literature on outsider legal pedagogy and detailed explanations of student decision-making in elective courses drawn from

En réaction à des anecdotes préoccupantes selon lesquelles le nombre d'inscriptions d'étudiants à des cours « marginaux », et en particulier à des cours sur la condition féminine, est en chute dans les facultés de droit canadiennes, les auteurs approfondissent les schémas d'inscription aux cours dans sept facultés de droit canadiennes. Les auteurs formulent une définition du terme « marginal », définition décrivant les membres de groupes qui, historiquement, manquent de pouvoir dans la société, ou qui, traditionnellement, se situent hors des domaines où se façonne, s'enseigne et s'applique le droit. Ensuite, les auteurs documentent les résultats de sondages quantitatifs et qualitatifs réalisés dans leurs facultés respectives, pour avancer que la pédagogie marginale demeure une composante critique de l'éducation juridique. L'article resitue les chiffres résultant du sondage autant par rapport à une

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student survey responses. Notwithstanding the diversity of the faculties surveyed, the authors conclude the article by highlighting some of the shared and significant findings of the research, paying attention to various identity-based, institutional, and external factors influencing critical course engagement in Canadian law schools today.

revue critique de la documentation sur la pédagogie juridique marginale, que par rapport aux explications détaillées des prises de décision des étudiants à des cours à option, tirées des réponses des étudiants au sondage. En dépit de la diversité des facultés analysées, les auteurs terminent l'article en attirant notre attention sur certaines constatations communes et éloquentes de la recherche, et en soulignant les divers facteurs basés sur l'identité, institutionnels et externes qui influencent aujourd'hui l'inscription à des cours critiques dans les facultés de droit canadiennes.

After a while, however, I began to realize that the quail's call … as in underground railroad days, was not the misty evocative symbol I was rhapsodizing about, but was a very particular thing: a real signal, a real sound. So I tried to remember what a quail's song sounds like. I'm not terribly familiar with birds, but if I recall correctly, a quail makes a sound that is quite loud and unattractive, that is alarming in fact. And I remarked on how that knowledge shifted my perspective: if I were to spend all my time looking for the poetry and beauty of freedom's break, I might not realize the alarming complicated sound of its actual moment.[1]

In the last twenty-five years, legal education in Canada has undergone moments of sustained critical review,[2] bringing attention to issues ranging from the place of law schools in the academy to increased tuition and higher student debt levels. This same period of time has produced important changes at Canadian law schools, including increased diversity in class composition,[3] particularly the heightened percentage of women entering legal education.[4] Yet, within this context, some legal educators have sensed the disappearance of students in courses that raise "outsider"[5] perspectives on law, most notably in the last few years. In doing so, they also raise questions about a possible link between course enrollment choices and pressures on legal education

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[1] The metaphor of the quail's call is drawn from Patricia Williams's response to Mari Matsuda's important work on multiple consciousness, and was used by William F. Kullman to appeal for a legal education that is more responsive to feminist jurisprudence. See Patricia Williams, "Response to Mari Matsuda" (1989) 11 Women's Rts. L. Rep. 11 at 11; William F. Kullman, "Feminist Methodologies in the Law School Classroom: Listening for a Change" (1994) 4 Temp. Pol. & Civ. Rts. L. Rev. 117 at n. 7; and Mari J. Matsuda, "When the First Quail Calls: Multiple Consciousness as Jurisprudential Method" (1989) 11 Women's Rts. L. Rep. 7 [Matsuda, "First Quail Calls"]. We use the quail's call metaphor here to illustrate that part of listening is remaining open to hearing something different than what you might otherwise expect to hear.

[2] See *e.g.* Harry Arthurs *et al*., *Law & Learning: Report of the Consultative Group on Research and Education in Law* (Ottawa: Social Sciences and Humanities Research Council of Canada, 1983) [the "Arthurs Report"]; Roderick A. Macdonald, "Curricular Development in the 1980s: A Perspective" (1982) 32 J. Legal Educ. 569; various papers presented at Legal Research Institute, University of Manitoba, *Excellence, Competition & Hierarchy: Workshop on the Future of Canadian Legal Education* (1999), online: <http://www.umanitoba.ca/faculties/law/LRI/Legal_education/> [*Excellence Workshop*]; Maureen Maloney & Jamie Cassels, "Critique in Canadian Legal Education: Paralysis with a Purpose" (1989) 4 Canadian Journal of Law and Society 99; and Annie Rochette & Wes Pue, "'Back to Basics'? University Legal Education and 21st Century Professionalism" (2001) 20 Windsor Y.B. Access Just. 167.

[3] Canadian Bar Association, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: Canadian Bar Association, 1993) at 23 [*Touchstones for Change*].

[4] *Ibid*.

[5] We define outsider courses as those that focus on the law as it applies to historically under-represented and/or marginalized groups such as women, racialized peoples, people with disabilities, Aboriginal peoples, and people who identify as queer. Examples of outsider courses are Women and the Law, Law and Disability, Race/Racism and the Law, and Sexuality and the Law. See Part I of this article for a more detailed delineation of outsider pedagogy and courses.

related to its "corporatization" and the "cult of consumerism."[6] The perceived decline in student enrollment in outsider courses, attended by particular concerns about feminist courses, has received little academic attention. Indeed, there have been no cross-university attempts to measure whether, in fact, students at Canadian law schools are taking fewer of such courses and to consider the reasons for any related changes in enrollment.[7]

Given these anecdotal concerns, the authors of this article, faculty members at seven law schools across the country—University of Victoria ("Victoria"), University of British Columbia ("UBC"), University of Calgary ("Calgary"), University of Manitoba ("Manitoba"), Osgoode Hall Law School at York University ("Osgoode"), University of Ottawa ("Ottawa"), and University of New Brunswick ("UNB")[8]—decided to explore patterns of student enrollment in outsider perspectives courses. This project poses two questions: first, has student enrollment in feminist and other outsider courses actually declined? Second, what explains any changes in student enrollment? To answer the first question, we catalogued student enrollment in outsider

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[6] See *e.g.* Constance Backhouse, "The Changing Landscape of Legal Education" and Sanda Rogers, "Legal Education: Is it in Crisis?" (papers presented at *Excellence Workshop*, *supra* note 2).

[7] One notable exception to the general lack of empirical research in this area is the study by Annie Rochette and Wes Pue of upper year course selection at the University of British Columbia Faculty of Law in the 1990s. See Rochette & Pue, *supra* note 2. Additionally, several surveys have been done at American law schools that address issues similar to those we seek to examine here. See *e.g.* Joan M. Krauskopf, "Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools" (1994) 44 J. Legal Educ. 311; Suzanne Homer & Lois Schwartz, "Admitted but not Accepted: Outsiders Take an Inside Look at Law School" (1989-1990) 5 Berkeley Women's L.J. 1; Scott N. Ihrig, "Sexual Orientation in Law School: Experiences of Gay, Lesbian, and Bisexual Law Students" (1995-1996) 14 Law & Inequality 555; and Adam Neufeld, "Costs of an Outdated Pedagogy: Study on Gender at Harvard Law School" (2005) 13 Am. U. J. Gender Soc. Pol'y & L. 511 at 546.

[8] This list includes approximately half the English language law schools in Canada, and is broadly representative of English language law schools across the country. It does not, however, include any schools from Quebec where the civil law tradition is studied and where reasons for student choices to take or not take certain courses may be quite different. English language schools not included are University of Alberta, University of Saskatchewan, Queen's University, University of Toronto, McGill University, University of Windsor, University of Western Ontario, and Dalhousie Law School. French language law schools are represented in this research only by the University of Ottawa, which offers both English and French, common and civil law programs. However, this study only examines the University of Ottawa's common law program in English and French. French language law schools not included in this study are: Université de Laval, Université de Moncton, Université de Montréal, Université du Québec à Montréal, and Université de Sherbrooke.

perspectives courses at our seven Canadian law schools. To answer the second question, we undertook an online survey of law students and faculty members who teach outsider courses.

Part I of this article outlines what we mean by outsider pedagogy and courses, distinguishing outsider from the more commonly used phrase "critical." This is followed in Part II by a literature review that addresses the significance of outsider pedagogy and student enrollment in such courses for legal education. Part III of the article explains general course enrollment trends with brief attention to school-specific trends in feminist and other outsider perspectives courses at the surveyed schools. Part IV describes the methodology and findings of our survey of faculty and students at our seven schools, including both quantitative and qualitative student and faculty responses. In Part V we conclude with reflections on the opportunity that this project provides for beginning a conversation about the current and future place of outsider pedagogy in Canadian law schools.

We hope that in addition to providing valuable empirical evidence, this project also serves to (re)invigorate the commitment to outsider pedagogy. As Roderick Macdonald asked more than twenty-five years ago, "can there be a higher mission for legal education … [than] … continual and creative rediscovery of ourselves?"[9]

I. WHAT IS OUTSIDER PEDAGOGY AND WHAT ARE OUTSIDER COURSES?

Asian-American critical legal scholar Mari Matsuda was one of the first to use the term "outsider jurisprudence" to refer, in particular, to the scholarly and teaching work of feminists and scholars of colour.[10] Matsuda deliberately uses the term "outsiders" instead of "minorities" because the latter term "belies the numerical significance of the constituencies typically excluded from jurisprudential discourse."[11] In Matsuda's view, an outsider's methodology rejects "presentist,

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[9] Macdonald, *supra* note 2 at 590.

[10] Mari J. Matsuda, "Public Response to Racist Speech: Considering the Victim's Story" (1989) 87 Mich. L. Rev. 2320 at 2323.

[11] *Ibid*., n. 15.

andocentric, Eurocentric, and false-universalist descriptions of social phenomena" and "offers a unique description of law."[12]

We use the term outsider to describe those who are members of groups that have historically lacked power in society or have traditionally been outside the realms of fashioning, teaching, and adjudicating the law. Outsider pedagogy denotes approaches to teaching by members of these groups, including critical race and post-colonial theorists, Aboriginal scholars,[13] feminists, those concerned with class oppression and subordination based on disability, and those broadly characterized as queer.[14] Importantly, we use outsider to describe not the identity of the teacher but, rather, his or her efforts to bring the experiences of outsiders to law into the law school classroom. One could, of course, teach a required course such as criminal or contract law from an outsider perspective. However, outsider courses are those in which the outsider orientation is critical to the very nature of the course itself. In this article, we also use the term outsider to describe the identity of law students from outsider groups.

It is important to recognize at the outset that outsiders are not a monolithic group with similar approaches, experiences, or needs in relation to legal pedagogy. Different concerns and considerations may arise between and within outsider groups, and of course there are intersections amongst the various outsider identities and perspectives.[15] As much as possible, we seek to be attentive to these differences in this project.

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[12] *Ibid*. at 2324.

[13] We use the term "Aboriginal" to connote persons who are First Nations (whether status or non-status), Inuit, and Métis. It is important to recognize that Aboriginal persons are not a homogenous group, and we refer to specific sub-groups of Aboriginal peoples where appropriate in this article (recognizing, of course, that there is also much diversity within those sub-groups).

[14] We use this term to include people who identify as gay, lesbian, bisexual, transgender, two-spirited, gender transgressive, or queer (collectively described here as "queer"). See Kim Brooks & Debra Parkes, "Queering Legal Education: A Project of Theoretical Discovery" (2004) 27 Harv. Women's L.J. 89 at n. 1.

[15] See *e.g.* Susan P. Sturm, "From Gladiators to Problem-Solvers: Connecting Conversations About Women, The Academy, and the Legal Profession" (1997) 4 Duke J. Gender L. & Pol'y 119 at 124, where she notes the "pressing need to reconceptualize race, gender and class in relation to each other and to the project of progressive institutional change." See also Francisco Valdes, "Barely at the Margins: Race and Ethnicity in Legal Education—A Curricular Study with LatCritical Commentary" (2002) 13 La Raza L.J. 119 [Valdes, "Barely at the Margins"] (critiquing the absence of Latinas/os from critical race theory courses in US law schools).

Perhaps the most difficult part of our project was creating a workable definition of outsider courses and deciding what courses fell within it. Some courses posed few problems. Others, such as equality/anti-discrimination law and animal law, were not easily categorized and quickly became a focus for debate. Some of these courses are clearly taught from a critical perspective, but are not necessarily aimed at centering the experiences of outsider groups. Conversely, courses that seem to fall squarely within our primary category (*e.g.*, "women and the law") may, at some schools, be taught from a relatively doctrinal perspective and may not share all the characteristics of outsider pedagogy discussed above.[16] We recognize, therefore, that there is subjectivity and perhaps imprecision in our choice of courses.[17] Ultimately, because we could design the survey instrument to capture student and faculty views on certain courses that press at the boundaries of outsider pedagogy, we have included in our survey a few of the courses about which we continue to disagree.[18]

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[16] Gerald P. López, "Training Future Lawyers to work with the Politically and Socially Subordinated: Anti-Generic Legal Education" (1988-89) 91 W. Va. L. Rev. 305 at 343 (referring to some courses that we included and some we did not, López writes that "[a] Law and Mental Health course and a Civil Rights course, to take two obvious examples, almost by necessity would seem to introduce human diversity into the study of and conversations about law and lawyering. So too, one imagines, would courses like Family Law and International Human Rights. But at most schools, these courses are not only preoccupied with doctrinal structure and detail but are also preoccupied in a way that diminishes the relevance of the particular identity and nature of the people and institutions involved."); see also Charles R. Lawrence, III, "The Word and the River: Pedagogy as Scholarship as Struggle" (1992) 65 S. Cal. L. Rev. 2231 at 2240-41 (describing how the author's course in race discrimination law started out as a "how-to course" for future civil rights lawyers and later evolved into a more radical pedagogy).

[17] One limitation of our study is that we did not systematically review the syllabi for the courses we included or excluded, and therefore made some general assumptions about the content of the courses. For a study that reviewed syllabi to investigate the presence of LatCrit theory in critical race theory courses in the United States, see Valdes, "Barely at the Margins," *supra* note 15.

[18] The following is the list of courses in our survey instrument for which we gathered enrollment data: (a) law and poverty; social welfare law; low-income community advocacy; Marxist or class theories of law; (b) women and the law; feminist legal studies/theory; law and gender; les femmes et le droit; cyberfeminism; women and the legal profession; women, law, and family; feminist advocacy; (c) Aboriginal peoples and the law; Aboriginal rights; problèmes choisis de droit autochtone; les autochtones et le droit; (d) law and sexuality; lesbian and gay legal issues; sexual orientation, gender identity and the law; (e) racism and the law; critical race theory; (f) mental health law; disabilities and the law; disability rights; (g) elder law; children and the law; droit de la protection de la jeunesse; (h) prisoners rights law; exonerating the wrongfully convicted; penal policy; (i) issues of equality and social justice; social justice law; théorie et pratique en droit et justice sociale; (j) les droit linguistiques; multicultural rights; religion and the law; Jewish law; and (k) animals, culture and the law; animals, values and law. For each list of courses we also included a

II. WHY DOES OUTSIDER PEDAGOGY AND STUDENT ENROLLMENT IN SUCH COURSES MATTER?

A. *Outsider Pedagogy Treats Outsider Groups as Important*

Most fundamentally, outsider pedagogy matters because it ensures that the relationship between law and marginalized groups is the focus of some attention in legal education.[19] Some scholars have been highly critical of the ways in which legal education tends to conceptualize people with legal problems as "generic," ignoring issues of identity and how they condition relations to law.[20] In addition, outsider pedagogy ensures that attention is focused on the perspectives that marginalized peoples bring to that relationship. As American feminist scholar Christine Littleton has written:

> Feminist method starts with the very radical act of taking women seriously, believing that what we say about ourselves and our experience is important and valid, even when (or perhaps especially when) it has little or no relationship to what has been or is being said *about* us.[21]

Outsider courses offer the very real possibility of creating environments in which otherwise silent voices have not only space, but credibility and perhaps even power.

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generic statement ("or a substantially similar course") in an attempt to capture unique courses that we may have inadvertently omitted from this longer list.

[19] This is not to deny the importance of other influences present in law school settings and their impact on students' (and others') law school experiences. Student groups, organizations and committees, orientation, law shows, and other extra-curricular events, career services, student newspapers, and the availability of part-time studies and child care may also play a role in creating an environment responsive (or not) to the needs of students, faculty and staff holding outsider perspectives. Christine Boyle calls these the "hidden curriculum" of law schools. See Christine Boyle, "Teaching Law as if Women Really Mattered, or, What About the Washrooms?" (1986-1988) 2 C.J.W.L. 96 at 101-02.

[20] See *e.g.* López, *supra* note 16 at 307, who argues that generic legal education "teaches law students to approach practice as if all people and all social life was homogeneous." See also Sara Osborne, "These Are Not Our Rules: A Public Interest and Women Oriented Law School to Improve the Lives of Women both Within and Outside the Legal Profession" (2002-2003) 46 How. L.J. 549.

[21] Christine Littleton, "Feminist Jurisprudence: The Difference Method Makes (Book Review)" (1989) 41 Stan. L. Rev. 751 at 764, cited in Angela P. Harris, "Race and Essentialism in Feminist Legal Theory" (1990) 42 Stan. L. Rev. 581 at 587 [emphasis in original]. In Canada, see Mary Jane Mossman, "'Otherness' and the Law School: A Comment on Teaching Gender Equality" (1985) 1 C.J.W.L. 213 (discussing the author's early work teaching gender equality at Osgoode Hall law school in the 1970s).

Many of the law's more inspirational stories have sprung from the legal struggles and triumphs of outsider groups, yet examining these narratives rarely forms a significant part of legal education.[22] Instead, many students are able to proceed through their entire legal education learning only that, as a lawyer, their primary focus will be to use relevant skill sets to solve their client's legal problems. The lawyer is not involved in any real or personal way in the substance of the dispute, nor is he or she responsible for its outcome, except as it affects the particular client. The distance, for example, between law students and the poor is highlighted in a discussion of the role of poverty law courses and clinical programs by Barbara Bezdek, an American law professor in a clinical program:

> [A]s evidenced in the standard law school curriculum, the legal profession is not particularly curious or concerned about the material conditions or life chances confronting poor people. Nor is it anxious to see its own complicity in powering the engines of the law that do the business of lawyers' paying clients.[23]

The ability of students to distance themselves altogether from the reality and effects of their work with outsider clients is disrupted when the experiences of those groups with the law becomes a focus of students' legal education. Some students' lack of familiarity with outsider groups can cause them to miss important legal arguments and mischaracterize legal issues, with negative consequences for their future clients.[24] For example, lawyer and scholar Cynthia Petersen has noted: "[s]ince the overwhelming majority of lawyers have been educated in

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[22] *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) is a classic example. In the Canadian context, see *e.g. R. v. Morgentaler*, [1988] 1 S.C.R. 30; *Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (1998), 39 O.R. (3d) 487 (Ont. Ct (Gen. Div.)); *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624; *Vriend v. Alberta (Attorney General)*, [1998] 1 S.C.R. 493. Some of these justice stories have garnered media attention and secured a place in popular culture, even while they have not figured prominently in legal education.

[23] Barbara Bezdek, "Reconstructing a Pedagogy of Responsibility" (1992) 43 Hastings L.J. 1159 at 1165. See similar comments in John Calmore, "A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty" (1999) 67 Fordham L. Rev. 1927 at 1955.

[24] See *e.g.* the risks identified in the context of domestic violence work by Sarah Buel, "The Pedagogy of Domestic Violence Law: Situating Domestic Violence Work in Law Schools, Adding the Lenses of Race and Class" (2003) 11 Am. U. J. Gender Soc. Pol'y & L. 309; see also López, *supra* note 16 at 346, who contrasts a relative lack of preparation for students "who plan to work with subordinated people in the fight for social change" as compared to those planning to practice business law.

courses devoid of lesbian content, most are not sufficiently skilled to provide adequate legal advice to lesbian clients."[25] Thus, Petersen's priorities have been to teach law with the "knowledge that lesbians exist and with the conviction that lesbians matter."[26]

The issues canvassed through outsider pedagogy may also provide the sole opportunity for students to try to see the law through the eyes of those subject to it.[27] After law school, the lens through which current students will most frequently encounter the law is as a lawyer or as an advocate for someone else. Thus, the vantage point through which students are exposed to the law is unique in the law school setting in that "the education students receive at the degree level is the only time that their education is focused towards them as a person rather than as a lawyer."[28]

B. *Outsider Pedagogy Raises the Profile and Influence of Outsiders in the Law School*

Law schools are public institutions presenting many of the same challenges for outsider students and faculty that are found in society as a whole. A vast literature[29] describes the ways in which outsider students

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[25] Cynthia Petersen, "Living Dangerously: Speaking Lesbian, Teaching Law" (1994) 7 C.J.W.L. 318 at 319.

[26] *Ibid*.

[27] We recognize that some law students have identities and experiences which we would class as outsider, so that some of them will have seen and experienced the law through their own eyes as subjects. However, once in law school, many of these students feel pressured to take a new approach, one which jettisons their previous experiences and knowledge, in order to "think like a lawyer."

[28] N.K. Sam Banks, "Pedagogy and Ideology: Teaching Law as if it Matters" (1999) 19 L.S. 445 at 451.

[29] See *e.g.* Jennifer Gerarda Brown, "'To Give Them Countenance:' The Case for a Women's Law School" (1999) 22 Harv. Women's L.J. 1; Valerie Fontaine, "Progress Report: Women and People of Color in Legal Education and the Legal Profession" (1995) 6 Hastings Women's L.J. 27; Tina Grillo, "Tenure and Minority Women Law Professors: Separating the Strands" (1996-1997) 31 U.S.F. L. Rev. 747; and Homer & Schwartz, *supra* note 7. In the Canadian context, the Canadian Bar Association issued two reports on equality in the legal profession in the 1990s, both of which contained sections on legal education. The reports detail the experiences of students and professors from outsider groups, and note the need for curriculum development on outsider issues, as well as the need to deal with teaching materials and practices which are sexist and racist. See *Touchstones for Change*, *supra* note 3 at 30-37; *Racial Equality in the Legal Profession* (Ottawa: Canadian Bar Association, 1999) at 8 [*Racial Equality*]. See also The Chilly Collective, eds., *Breaking Anonymity: The Chilly Climate for Women Faculty* (Waterloo: Wilfrid Laurier University Press, 1995), a collection of reports and essays on "chilly climate" issues facing faculty

and faculty experience marginalization. Often, these faculty members are overrepresented in "less important," less secure positions, or they lack the support that comes with critical mass.[30] Although outsider courses cannot, by themselves, remedy these inequities,[31] it is possible for law schools to build a reputation and greater opportunities for outsider scholars through such course offerings. Giving priority and attention to outsiders in the law school, in course offerings, in faculty appointments, and in recognition of methodological approaches, affirms and recognizes the expertise of outsider perspectives.[32]

Similarly, for students from outsider groups, or students who are interested in law and social change, the existence of a critical mass of outsider courses and outsider faculty can be a drawing card for the law

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and students within Canadian law schools. This phenomenon is not, of course, restricted to law faculties. For an article discussing the "chilly climate" in a western Canadian department of political science, see Dorothy Smith, "Textual Repressions: Hazards for Feminists in the Academy" (1997) 9 C.J.W.L. 269.

[30] In the US context, see *e.g.* Mariana Angel, "The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure" (2000) 50 J. Legal Educ. 1. Angel reviews the evidence that women make up a disproportionate, and increasing, number of short-term-contract workers in US law schools, particularly in clinical, legal writing, and librarianship positions. See also Herma Hill Kay, "The Future of Women Law Professors" (1991-1992) 77 Iowa L. Rev. 5 at 9, 15-18; Richard A. White, "The Gender and Minority Composition of New Law Teachers and AALS Faculty Appointments Register Candidates" (1994) 44 J. Legal Educ. 424; and Therese A. Huston, "Pedagogy and Social Justice: Race and Gender Bias in Higher Education: Could Faculty Course Evaluations Impede Further Progress Towards Parity?" (2005-2006) 4 Seattle J. Soc. Just. 591 at 593-98. While evidence of "underemployment" in the Canadian context is not available, John Borrows notes the importance of recruiting and retaining Aboriginal faculty to achieve critical mass. See John Borrows, "Guess Who's Coming to Dinner," paper presented at *Excellence Workshop*, *supra* note 2. See also *Racial Equality*, *ibid*. at 6, noting "the lack of role models and teachers who understand the experience of racism" in Canadian law schools.

[31] Joyce E. McConnell, "A Feminist's Perspective on Liberal Reform of Legal Education" (1991) 14 Harv. Women's L.J. 77. McConnell describes how even the best intentions to restructure legal education by prioritizing outsider perspectives may not disrupt persistent race and sex stereotypes. Focusing on the efforts of the City University of New York (CUNY) Law School to create a new, progressive model for legal education based on faculty and student diversity and the promotion of new pedagogies, McConnell concludes at 123 that "[t]he CUNY experience should teach us that the creation of non-traditional pedagogy is extraordinarily complex."

[32] For example, Loretta Kelly argues, "it is not sufficient just to include Indigenous legal issues in the curriculum of core and elective subjects; nor is it sufficient to appoint Indigenous lecturers to law schools. Indigenous law academics need to have opportunities available to teach and publish in areas where we have unique and valuable perspectives. This is not about giving us something. It is about recognizing expertise." Loretta Kelly, "A Personal Reflection on being an Indigenous Law Academic" (2005) 5 I.L.B. 6 at 19, online: <http://www.austlii.org/au/journals/ILB/2005/5.html>.

school.[33] For example, Ottawa's Social Justice program[34] attracts students from across the country.[35] Conversely, many students who are originally motivated to attend law school in order to serve society and marginalized groups can be frustrated when the curriculum fails to meet their expectations.[36]

C. *Outsider Pedagogy Ensures that Outsiders' Legal Issues are Somewhere on the Law School Agenda*

The 1983 Arthurs Report is often cited as a high-water mark of calls within the Canadian academy to diversify the law school curriculum.[37] Indeed, as revealed in the findings of our surveys below, it was at about this time that many law schools responded by introducing or increasing the number of outsider courses. In addition, conscious decisions have been made by many Canadian law faculties to introduce outsider materials into the first year program, either directly into the "substantive" first year courses or into a separate first year "perspectives" course.

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[33] Larry Chartrand *et al*., "Law Students, Law Schools and Their Graduates" (2001) 20 Windsor Y.B. Access Just. 211 at 246-47, 250 (discussing why students choose to attend a particular law school).

[34] The University of Ottawa, Faculty of Law, allows students to specialize in the area of social justice. LL.B. students who wish to receive formal recognition of an option in social justice must complete 18 credits in this field including one compulsory course (3 credits) and other optional courses (15 credits, which can include courses in English and French, moots, clinical programs and courses where the theoretical or doctrinal focus is on systemic discrimination or on redistributive regulatory regimes). For more information see University of Ottawa Common Law Section, *Law and Social Justice Option*, online: <http://www.commonlaw.uottawa.ca/index.php?option=com_content&task=view&id=521&Itemid=240&pid=161&lang=en>.

[35] One of the authors of this study is aware of several students who would otherwise have attended the regional law school in which she teaches, but who instead chose Ottawa because of the Social Justice program with its focus on outsider perspectives. However, it should be noted that there can also be a cost to a school which markets itself as "outsider-friendly": some students from non-outsider backgrounds may decide not to attend a law school that appears to them to be too radical, or may speak out against the inclusion of outsider material in the classroom, as our qualitative survey results show. That said, given the obligation incumbent on all involved in the legal profession to promote ideals of equality and anti-discrimination, we feel that such potential costs, though real in some cases, ought not to dissuade law schools from including outsider pedagogy in law school curricula.

[36] See Homer & Schwartz, *supra* note 7 at 36, who discuss the Boalt Hall study at University of California, Berkley and its results on motivations for attending law school by students with outsider perspectives on law.

[37] "Arthurs Report," *supra* note 2.

Nevertheless, anecdotal evidence suggests that perspectives courses may be endangered in some faculties.[38] Further, the "mainstreaming" of outsider perspectives is not complete, as the number of outsider courses from our surveys shows, and it is likely that no amount of mainstreaming could fully incorporate all the outsider perspectives reflected in the list of courses we surveyed.[39] Differences in degrees of mainstreaming amongst various outsider perspectives must also be considered.[40] In addition, some faculty members may continue to resist the idea of integrating outsider perspectives into their "core" courses.[41]

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[38] For example, in its curriculum review in 2006/2007, Calgary had a lively discussion over whether to retain Legal Perspectives in its first year program, deciding in the end to do so. Legal Perspectives is often seen as a difficult teaching assignment in light of student resistance to the course. See also the qualitative student responses to our questionnaire, below at Section IV.C, where some student respondents took the opportunity to critique legal perspectives courses, or to note that they had "been there, done that" with outsider courses via first year legal perspectives.

[39] Nor may it be advisable to completely mainstream outsider perspectives. As noted by Brenna Bhandar, "the prospect of the radical possibilities of legal critique being wholly tamed and domesticated within mainstream legal discourse is a potentially dangerous consequence of seeking inclusion within the parameters of 'black letter law.'" Brenna Bhandar, "Always on the Defence: The Myth of Universality and the Persistence of Privilege in Legal Education" (2002) 14 C.J.W.L. 341 at 349. See also Boyle, *supra* note 19 at 106-09, who argues that mainstreaming may "[reinforce] the legitimacy of the system."

[40] For example, feminist perspectives may have been mainstreamed to a greater degree than some other outsider perspectives, given the greater critical mass of feminist legal scholars and the presence of several feminist legal institutes across the country. While in some respects feminist perspectives seem to have the greatest institutional support and strength, the greatest anxieties about decreased enrollment nevertheless tend to come from feminist scholars. We explore some reasons for this in Part IV of the article.

[41] See *Touchstones for Change*, *supra* note 3 at 30 and 33 (noting the resistance of both faculty and students to the integration of "gender and minority issues,") and Brenna Bhandar, *supra* note 39 at 348 (noting the resistance to integrating critical perspectives into "core" courses). See also Sheila McIntyre, "Gender Bias Within the Law School: The 'Memo' and its Impact" (1986-88) 2 C.J.W.L. 362 at 367 (the author describes a lack of support from her colleagues in the face of anti-feminist hostility from students when she integrated feminist perspectives in her classes). Qualitative responses to our questionnaires, wherein faculty members are criticized for including outsider perspectives in non-outsider courses, also suggest that mainstreaming is not complete, as one would only expect students to complain if something was "different." See below at Section IV.C. For example, one student wrote:

> [T]he reason I came to law school was to learn law, and when I got here what I needed to learn was no surprise—the law. Much of first year is learning how to "do law." It was hard enough already, and it didn't help that we were force-fed sociology and political science and criminology. I would have been prepared later in my legal education to take something along the lines of what actually was taught, but in first-year it was too frustrating to try to learn law and all the different criticisms of it and commentaries on it at the same time.

Ensuring that outsider courses are offered in the upper year program allows students to elect these courses where they have had insufficient exposure to outsider perspectives in their first year. In particular, outsider electives may be beneficial for students who feel reluctant to be constantly raising issues related to their identities in their other courses for fear of being marked as the "gay student," the "feminist," *et cetra*.[42]

Although some outsider students (and faculty) may feel all too visible, "[i]nvisibility in law school curricula follows larger social invisibility."[43] As American law professor Jane Schacter notes, outsider courses can expand what people know: "[i]t is always easier to hate, or at least to fear, what you do not know—or, to be more precise, *what you do not know that you know*."[44] Because law schools are training tomorrow's legislative policy makers, politicians, lawyers, judges, and legal scholars, it is imperative that students be educated to think in rigorous and sophisticated ways about outsider communities and the law. In the process, outsider courses convey to students the message that, despite a world that remains hostile to outsiders, law schools "take their lives and struggles seriously enough to provide course coverage."[45] This is an issue that ultimately relates to the legitimacy of law schools, justice concerns, and the public interest.[46]

For a provocative argument that law teachers' curriculum choices are not above scrutiny, see Steve Cooper, "'If I Were a Carpenter and You Were a Lady': Power Relations Between Teacher and Student in Law School" (1995) 16 Whittier L. Rev. 845 at 852.

[42] In his survey of gay, lesbian, and bisexual students and their experiences in eighteen American law schools, Scott Ihrig noted that students often found the burden of speaking out on gay issues for a gay student to be particularly onerous, leading to distorted perceptions of the students' participation in class. See Ihrig, *supra* note 7 at 576-77. See also the experiences of Brian Owsley (both inside and outside of class) as described in his article, "Black Ivy: An African-American Perspective on Law School" (1997) 28 Colum. H.R.L. Rev. 501, and Section II.F, below.

[43] Jane S. Schacter, "Poised at the Threshold: Sexual Orientation, Law and the Law School Curriculum in the Nineties" (1993-1994) 92 Mich. L. Rev. 1910 at 1926-27.

[44] *Ibid*. at 1926 [emphasis in original].

[45] *Ibid*. at 1927.

[46] Susan P. Sturm argues that "legal education and the legal profession cannot claim legitimate moral stature if they systemically exclude, marginalize, or undervalue women and people of colour," in Sturm, *supra* note 15 at 123. William M. Tabb, "Reflections on Diversity" (2005) 55 J. Legal Educ. 28 at 34, ties diversity in law schools and legal education to service of the public interest. Leon Trakman argues that diversity in legal education is a matter of justice. See Leon Trakman, "Comments on the Changing Landscape of Legal Education," paper presented at *Excellence Workshop*, *supra* note 2.

D. *Recruiting Outsider Faculty May Have Important Ripple Effects for Law Schools*

Although there are many similarities between Canadian law schools, each law faculty has its own unique "feel" or culture. That feel can be created by the presence of a good many scholars in a particular substantive area, or a number of key people who hold particular beliefs about legal education. The focus or overall tenor at each school undoubtedly varies over time as well.

However, faculty composition can have an enormous, long-term impact on this overarching culture.[47] If schools hire a faculty member or members on the basis that they can teach upper year outsider perspectives courses, there is a good chance that those faculty members will influence other things, such as what is taught in the first year program (at least in their own courses), what issues are raised at faculty council, and what atmosphere is available for students interested in exploring the broader social implications of the law.[48] Natsu Saito Jenga, a third-generation Japanese American law professor, notes the substantive dimension Asian American law teachers add to legal discourse: "aided by the diversity within Asian American communities and by our 'outsider' status, we can present alternate ways to view not only conflicts within race- and class-based hierarchy, but the hierarchy itself."[49]

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[47] See Angela Mae Kupenda, "Making Traditional Courses More Inclusive: Confessions of an African American Female Professor Who Attempted to Crash all the Barriers at Once" (1996-1997) 31 U.S.F. L. Rev. 975 at 977-79, for a provocative personal reflection on the significance of the mere presence of a Black professor in the law school classroom. Of course, faculty composition alone is insufficient to explain entirely why a school moves in the direction it does—other members of the law school community, including the dean, staff, alumni, community groups, students, university administration, and governments, for example, also play an important role in affecting a faculty's commitments. Deans may be very influential at some schools and less so at others, depending on governance structures.

[48] A number of scholars have noted that their own identities and scholarly interests as outsiders have had a direct effect on the content they address in their courses, and on their interactions with students. See Janice L. Austin *et al*., "Results from a Survey: Gay, Lesbian, and Bisexual Student's Attitudes about Law School" (1998) 48 J. Legal Educ. 157 at 166. See also Stephanie M. Wildman, "The Question of Silence: Techniques to Ensure Full Class Participation" (1988) 38 J. Legal Educ. 147 who notes the role of women faculty in responding to the relative silence of female students in the classroom.

[49] Natsu Saito Jenga, "Finding Our Voices, Teaching Our Truth: Reflections on Legal Pedagogy and Asian American Identity" (1995) 3 UCLA Asian Pac. Am. L.J. 81 at 81.

At the same time, much of the scholarship on this subject poignantly recounts the difficulty, isolation, and alienation of being the sole representative on faculty of an outsider group (because of gender, race, sexual orientation, disability, or other outsider status).[50] One law professor remarks on being out as a lesbian to all of her students and co-workers: "I am acutely conscious of the fact that I live dangerously, that I take risks every day."[51] Unsurprisingly, therefore, it matters a good deal if hiring faculty to teach outsider pedagogy courses produces more than a "society of one."[52]

E. *Outsider Pedagogy Contextualizes Law and Challenges Its Claim to Neutrality*

One of the recognized aims of legal education, as part of a university education,[53] is to situate law in its broader context.[54] In one sense, of course, law cannot be grasped as anything other than "in context"—whether "context" is understood in the narrowest sense of legal practice (implying that education is meant to teach practice skills

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[50] See *e.g.* Barbara Bernier, "The Creed According to the Legal Academy: Nihilistic Musings on Pedagogy and Race Relations" (2000) 6 Wash. & Lee Race & Ethnic Ancestry L.J. 27; Daniel G. Solórzano & Tara J. Yosso, "Maintaining Social Justice Hopes Within Academic Realities: A Freirean Approach to Critical Race/LatCrit Pedagogy" (2000-2001) 78 Denv. U.L. Rev. 595 at 617. In the Canadian context, see Borrows, *supra* note 30 at 6, who recounts being the sole Aboriginal professor at Canada's largest law school, York, in the 1990s. The CBA's report on *Racial Equality in the Legal Profession* also notes that outsider faculty members may face a disproportionate burden to serve on faculty and university committees in order to represent particular interests (*supra* note 29 at 7).

[51] Petersen, *supra* note 25 at 347.

[52] This phrase is borrowed from Rachel Moran, "Commentary: The Implications of Being a Society of One" (1986) 20 U.S.F. L. Rev. 503 at 512.

[53] Of course, it is important to remember that legal education as part of *university* education is a relatively recent phenomenon. Legal education was delivered largely through self-education and professional apprenticeship to private law practitioners well into the mid-twentieth century: Wes Pue, *Law School: The Story of Legal Education in British Columbia* (Vancouver: University of British Columbia, 1995) at xxvii, cited in Susan Boyd, "Corporatism and Legal Education in Canada" (2005) 14 Soc. & Leg. Stud. 287 at n. 1 [Boyd, "Corporatism"].

[54] Such a goal has been made explicit, for example, in the new UBC Law first year curriculum which requires all students to take a course called "Law in Context," and at Victoria, where all students are required to take "Legal Process," a course which centres the question of the role of law in society. See a discussion of the relationship between contextual teaching and compassionate lawyering in Chris K. Iijima, "Separating Support from Betrayal: Examining the Intersections of Racialized Legal Pedagogy, Academic Support, and Subordination" (1999-2000) 33 Ind. L. Rev. 737 at 739-42.

like interviewing), or in the broader sense of the overall social, economic, and political contexts within which law operates.[55] Teaching in law faculties is often constrained by a number of factors, including traditional approaches to teaching and the relative lack of support or encouragement to innovate. Team teaching is rare, and faculty members have little sense of what peers are doing/teaching in other courses.[56] Despite faculty member's best intentions, the tendency in many law courses is to race through the "substantive" legal material in order to cover the "necessary" doctrines. Context often falls by the wayside.[57]

Although many faculty members hope to build critical thinking skills along the way, one suspects that too often, little time is allotted to critical and informed discussions about the overall legal regime under examination. Theoretically, any course can be redesigned to raise this inquiry, but outsider pedagogy courses lend themselves particularly well to it since, by definition, they require a critical examination of the broader social, political, and economic context. Further, these courses may also offer the possibility of multilayered analysis through the explicit rejection of essentialism.[58] In centering law in its multiplicity of contexts, outsider pedagogy advances a significant aspect of the law school's mission.[59]

In a related way, outsider pedagogy also challenges the neutrality of law. The view that law is objective and neutral has long been the subject of devastating critique[60] and today finds almost no

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[55] For a discussion of what might be part of "law's context" see Banks, *supra* note 28 at 449-53.

[56] Roger C. Cramton terms this the "Lone Ranger theory of legal education," describing "an implicit compact (some would call it a conspiracy) among faculty members: 'You do your thing in your courses as long as I am permitted to do my thing in mine.'" Roger C. Cramton, "The Current State of the Law Curriculum" (1982) 32 J. Legal Educ. 321 at 327-28.

[57] As noted by Bezdek, *supra* note 23 at 1160, "traditional legal education signals the irrelevance of social context, moral reasoning, care and connection among people (clients, lawyers, law students), and inward inquiry for intuitions about justice or for motivations of response to others in need, instructing students to lay these concerns aside."

[58] See discussion of multiple consciousness as feminist and jurisprudential method in Harris, *supra* note 21 at 608-09. See also Valdes, "Barely at the Margins," *supra* note 15.

[59] As stated by McConnell, *supra* note 31 at 121, "faculty diversity and new pedagogies that reflect values traditionally ignored or rejected by the profession are two essential goals of the liberal reform of legal education."

[60] Some would attribute the earliest such critique to Marx. See Marett Leiboff & Mark Thomas, *Legal Theories: In Principle* (Sydney: Lawbook Co., 2004) at 184-200. For other critiques

serious scholarly support.[61] Despite awareness in the academy, though, many students continue throughout their legal education under the misapprehension that law is intentionally neutral. Law teaching is vulnerable to criticism for the ways that it can "[obfuscate] what law 'is' and how that obfuscation exacerbates the alienation of students of color and women from the study of law itself."[62] Although other courses may disrupt this misperception, outsider pedagogy courses have it as their *focus* to do so.[63]

Thus, outsider courses may bring attention to what is missing from "traditional" legal analysis, explore the disproportionate impact of legal rules and regimes, highlight the differential experience of the law for those with outsider status, and expose the ways in which the law (and legal education) has supported the privilege of dominant groups.[64] Canadian feminist legal scholar Susan B. Boyd notes: "[a]s producers of legal knowledge, law schools hold a particular responsibility to ensure that students and those entering the legal profession understand that law is not simply a neutral set of norms, but rather, a site of struggle over social meanings."[65] Although Boyd was responding to student

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see Petersen, *supra* note 25 at 340-42; Mossman, *supra* note 21 at 216; Bhandar, *supra* note 39 at 350; Maloney and Cassels, *supra* note 2 at 115-20; and Ronald H. Silverman "Weak Law Teaching, Adam Smith and a New Model of Merit Pay" (2000) 9 Cornell J. L. & Pub. Pol'y 267 at 291-92.

[61] To be sure, faculty do not agree on *how* to incorporate such awareness into law teaching. The Critical Legal Studies school has come in for pointed criticism in this regard. For a famous example, see Paul D. Carrington, "Of Law and the River" (1984) 34. J. Legal Educ. 222. For one of the many replies, see Ted Finman, "Critical Legal Studies, Professionalism, and Academic Freedom: Exploring the Tributaries of Carrington's River" (1985) 35 J. Legal Educ. 180. Stanchi has suggested that legal writing pedagogy still requires students to assume the guise of objectivity by requiring the writer to approach the law through the lens of neutrality. Kathryn M. Stanchi, "Resistance is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices" (1998) 103 Dick. L. Rev. 7 at 35.

[62] Iijima, *supra* note 54 at 751. See also Deborah L. Rhode, "The 'No-Problem' Problem: Feminist Challenges and Cultural Change" (1990-1991) 100 Yale L.J. 1731 at 1751-52.

[63] For example, Kimberlé Crenshaw describes a "race-conscious pedagogy" as one that challenges the "norm of perspectivelessness" in legal education. See Kimberlé Williams Crenshaw, "Foreword: Toward a Race-Conscious Pedagogy in Legal Education" (1994) 4 S. Cal. Rev. L. & Women's Stud. 33 at 35 [Crenshaw, "Foreword"].

[64] Francisco Valdes, "Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education" (2003) 10 Asian L.J. 65 at 70 (discussing the ways in which legal education traditionally served to privilege "white-identified groups, persons and values").

[65] Susan B. Boyd, "Backlash and the Construction of Legal Knowledge: The Case of Child Custody Law" (2001) 20 Windsor Y.B. Access Just. 141 at 143 [Boyd, "Backlash"].

complaints about her use of social science material in a family law course, her comments describe one impetus for outsider pedagogy more generally.[66]

On a substantive level, outsider courses are also critical in providing an avenue for dialogue about what goes unrecognized and un(der)valued in law, and in assisting law students and legal scholars to develop critiques of law's current operation and impact. Writing about the alienation and exclusion of gay, lesbian, and bisexual students at law school, Scott Ihrig argues that "[t]he suppression of our unique perspective from outside the sexual mainstream excludes the insights we have to offer, thereby circumscribing the quality of everyone's legal education."[67] In the context of Aboriginal law, we see a similar loss to legal education in failing to challenge critical assumptions, such as the question of what counts as evidence.[68] In the absence of a dialogue that raises the importance and significance of culturally coded "evidence," courts are unlikely to accept arguments that attempt to expand law's reach beyond its traditional boundaries. Outsider perspectives courses thus serve a critical function in creating and broadening the conversation.[69]

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[66] For additional comments on the instability of law's "neutrality," see Kimberlé Williams Crenshaw, "Race, Reform and Retrenchment: Transformation and Legitimation in Anti-Discrimination Law" (1987-88) 101 Harv. L. Rev. 1331 at 1346, 1352.

[67] Ihrig, *supra* note 7 at 562.

[68] This question turned out to be critical, for example, in *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010; see Banks, *supra* note 28 at 458. Some Aboriginal perspectives on law may also challenge the tendency to think about law in a linear rather than holistic way, and challenge Euro Canadian understandings of property law, criminal law, and international law. See Tracey Lindberg, "What Do You Call an Indian Woman with a Law Degree? Nine Aboriginal Women at the University of Saskatchewan College of Law Speak Out" (1997) 9 C.J.W.L. 301 at 306, 317; and Patricia A. Monture, "Now that the Door is Open: First Nations and the Law School Experience" (1990) 15 Queen's L.J. 179 at 202-04.

[69] This view is open to fundamental critique, however, from scholars who question the ability of law and legal education to take into account outsider perspectives and values altogether. These scholars point to law's corrupting influence on outsiders who engage within its boundaries, arguing instead that outsiders should focus on disrupting the legal regime altogether, and not on the more modest project of expanding law's reach to include those voices. See *e.g.* Duncan Kennedy, "Legal Education and the Reproduction of Hierarchy" (1982) 32 J. Legal Educ. 591; Michael Mandel, *The Charter of Rights and the Legalization of Politics in Canada* (Toronto: Wall & Thompson, 1989); Monture, *ibid*.; Ruthann Robson, "Introduction: Assimilation or Resistance?" (2002-2003) 1 Seattle J. Soc. Just. 631; and Mary Ellen Turpel, "Aboriginal Peoples and the Canadian Charter: Interpretive Monopolies, Cultural Differences" (1989-1990) 6 Can. Hum. Rts. Y.B. 3. See also Bhandar, *supra* note 39 who argues that outsider courses may sometimes reinforce identity politics and the "othering" of racialized students in law schools, which in turn reinforces white privilege.

F. *Outsider Pedagogy Raises the Profile of Alternative Methods and Provides Opportunities for Active Learning and Participation*

In many law school courses, instructors do not see a need to explicitly consider their method of teaching. In contrast, in many outsider courses professors explicitly address methodology not only to distinguish their courses from non-outsider courses, but to defend the methods employed. For example, one of the driving questions in early feminist legal thought focused on whether there was something unique about feminist legal *methods*. This inquiry led to the groundbreaking article "Feminist Legal Methods" in 1990, where American legal feminist Katharine Bartlett concluded that "feminist practical reasoning" and consciousness-raising are (or were at that time) part of the method that feminists brought to their inquiries about law.[70] Although the universality of this claim and its continued application as definitive of feminist legal methods is contested,[71] what marks many of the outsider perspectives is that they lay claim to at least some alternative methodologies.

Outsider pedagogy invites experimentation in teaching[72] and in scholarship.[73] For example, the use of narrative methodology, both

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[70] Katharine Bartlett, "Feminist Legal Methods" (1990) 103 Harv. L. Rev. 829. For further examples of the now voluminous material on feminist methodology in law school teaching, see Ann Shalleck, "Feminist Theory and Feminist Method: Transforming the Experience of the Classroom" (1998-1999) 7 Am. U. J. Gender Soc. Pol'y & L. 229; Deborah L. Rhode, "Missing Questions: Feminist Perspectives on Legal Education" (1993) 45 Stan. L. Rev. 1547; Susan H. Williams, "Legal Education, Feminist Epistemology, and the Socratic Method" (1993) 45 Stan. L. Rev. 1571; Leonor Vain, "Integrating Gender into Legal Education: Obstacles and Challenges" (1998-1999) 7 Am. U. J. Gender Soc. Pol'y & L. 261; Morrison Torrey, Jackie Casey & Karin Olson, "Teaching Law in a Feminist Manner: A Commentary from Experience" (1990) 13 Harv. Women's L.J. 87; Julie Macfarlane, "A Feminist Perspective on Experience-Based Learning and Curriculum Change" (1994) 26 Ottawa L. Rev. 357; and Sturm, *supra* note 15 at 144-45.

[71] For example, Banu Ramachandran argues that feminist critiques of legal pedagogy tend to rely on essentialist accounts of what it is to be a woman that actually "rehabilitat[e] a femininity that has always belonged only to white women." Banu Ramachandran, "Re-Reading Difference: Feminist Critiques of the Law School Classroom and the Problem With Speaking from Experience" (1998) 98 Colum. L. Rev. 1757 at 1778.

[72] For an account of very specific strategies that can be used to promote an appreciation of diversity, see Okianer Christian Dark, "Incorporating Issues of Race, Gender, Class, Sexual Orientation and Disability into Law School Teaching" (1996) 32 Willamette L. Rev. 541.

[73] See Klein's article decrying the traditional pedagogy, stifling epistemology, and myopic standardization of her legal education through the use of poetry. Linda B. Klein, "The View from my Corner of the World: A Personal Comment on the Process of Becoming a Lawyer" (1988-1989) 22 Akron L. Rev. 471. For a Canadian example of innovative scholarship from a group of feminist

personal and fictional, tends to figure prominently in outsider pedagogy.[74] As practiced by some faculty, critical race pedagogy considers experiential knowledge as "legitimate, appropriate and critical to understanding, analyzing, and teaching about racial subordination," and "draws explicitly on the lived experience of People of Color by including such methods as storytelling, family histories, biographies, scenarios, parables, *cuentos*, chronicles and narratives."[75]

Kimberlé Crenshaw encourages collective work and makes it a goal to improve students' abilities to identify implicit premises and to discuss the descriptive and normative views that informed the cases and academic writing they read. She encourages students "to critique the texts in their own voices" as well as to learn ways of discussing cases "that [meet] the logic of the decisions" and respond to the arguments in them.[76] In general, she advocates using experience in a way that impresses upon students the partial nature of all histories and "explicitly deprivileg[es]" dominant perspectives in order to "demarginalize" the perspectives and experiences of women and people of colour.[77] Other scholars describe approaches similar in substance and in their rejection of traditional law school models of teaching and learning.[78] A respondent to our faculty questionnaire uses similar methods:

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law professors at Victoria and UBC see Elizabeth Adjin-Tettey *et al*., "Postcards from the Edge (of Empire)" Soc. and Leg. Stud. [forthcoming in 2008].

[74] See *e.g.* Ihrig, *supra* note 7 at 565-66, whose argument operates on the assumption that narratives do and should play an important role in teaching the law. See also Jenga, *supra* note 49 at 81.

[75] Solórzano & Yosso, *supra* note 50 at 598. For an example of the use of parable, see Robert A. Williams, "Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Colour" (1987-1988) 5 Law & Inequality 103, where the author relates an indigenous American parable to explore "the perils and promise of critical legal theory for peoples of color" (at 103).

[76] Crenshaw, "Foreword," *supra* note 63 at 50-51.

[77] *Ibid*. at 43.

[78] See *e.g.* Lawrence, *supra* note 16; Elizabeth MacKinlay, Kristy Thatcher & Camille Seldon, "Understanding Social and Legal Justice Issues for Aboriginal Women within the Context of an Indigenous Studies Australian Studies Classroom: a Problem-Based Learning Approach" (2004) 33 Austl. J. Indigenous Educ. 23 (suggesting problem-based learning, albeit in the context of an undergraduate course not aimed at law students); Michael Penn, "Feminist Pedagogy as Praxis," Book Review of *Changing the Education Landscape: Philosophy, Women and Curriculum* by Jane Roland Martin; *Teaching to Transgress: Education as the Practice of Freedom* by bell hooks; and *Engaging Feminism: Students Speak Up and Speak Out* by Jean O'Barr & Mary Wyer, eds., (1997) 4 Duke J. Gender L. & Pol'y 217 at 218-219 which describes, *inter alia*, collective effort in classrooms, the decentralization of authority in the classroom, and taking seriously student writing as an example of the voice of experience. In the Canadian context, see Doris Buss, "Feminism, Racism and Social Change in the Classroom" (2004) 16 C.J.W.L. 216, where the author describes her

> I … use interactive methodology to decenter dominant voices and perspectives. Examples include doing committee presentations to consider feminist critiques of the commodification of human body parts and screening a film to consider postcolonial critiques of Delgamuukw and Aboriginal title.

Ultimately, such approaches respond to and mitigate what Mohawk professor Patricia Monture describes as the "something missing feeling" in law school.[79]

Methodological innovations also characterize clinical programs. Some clinical programs are predicated on offering legal services to outsider groups, and also contribute to innovation in methodology. In Canada, for example, most (but not all) clinical programs are designed to assist low-income populations, criminalized populations, and Aboriginal populations.[80] The method for learning in most of these clinical programs is a combination of field work and reflection, a unique method in legal education generally.[81] This methodological diversity is a critical component of the law school curriculum, teaching

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experiences as a student in Marlee Kline's feminist theory seminar and the impact that Kline's methods had on Buss' own approach to teaching as an ethical practice.

[79] Monture, *supra* note 68 at 185.

[80] For articles on clinical legal education in Canada, see Jennie Abell, "Women, Violence, and the Criminal Law: 'It's the Fundamentals of Being a Lawyer that are at Stake Here'" (1992) 17 Queen's L.J. 147; James C. Hathaway, "Clinical Legal Education" (1987) 25 Osgoode Hall L.J. 239; Macfarlane, *supra* note 70; Janet E. Mosher, "Legal Education: Nemesis or Ally of Social Movements?" (1997) 35 Osgoode Hall L.J. 613; Rose Voyvodic, "Considerable Promise and Troublesome Aspects: Theory and Methodology of Clinical Legal Education" (2001) 20 Windsor Y.B. Access Just. 111; Lucie E. White, "The Transformative Potential of Clinical Legal Education" (1997) 35 Osgoode Hall L.J. 603; and Frederick H. Zemans, "The Dream is Still Alive: Twenty-five Years of Parkdale Community Legal Services and the Osgoode Hall Law School Intensive Program in Poverty Law" (1997) 35 Osgoode Hall L.J. 499. Although clinical legal education is often a means by which outsider perspectives are studied and acted upon, the scope of our survey did not permit examination of clinical courses. We determined that students might take clinical courses for the practical skills learned, and not necessarily because these courses examine law from an outsider perspective.

[81] Bezdek, *supra* note 23 at 1168, argues that through field work, students "begin to understand law as an operation, a network of relationships, dependent upon an array of complicated social facts scarcely conjured by words like 'poverty,' 'welfare,' 'tenant,' or unemployed.' … New knowledge is created, in part just by virtue of having to act in the world, and in part by the intellectual effort to meld these interpersonal and hands-on learning encounters with study materials … The method yields a qualitatively different way of knowing" [citations omitted]. See also Shin Imai, "A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering" (2002) 9 Clinical L. Rev. 195 at 195 (describing a "'counter-pedagogy' for teaching students three core skills for community lawyering: how to collaborate with members of the community; how to acknowledge personal identity, race and emotion; and how to take a community perspective on legal problems").

simultaneously client-centered lawyering, case theory, the importance of context, and social justice.[82]

Teaching methods associated with outsider pedagogy also have the advantage of being more active and participatory in a context where full and engaged class participation is a pressing issue. As American critical race feminist Okianer Christian Dark notes, "[t]eachers must convey the message that every student has access to the classroom."[83] There is ample evidence that active class participation facilitates learning, and that "for students to be engaged, a supportive atmosphere and the contributions of students from different socioeconomic and cultural backgrounds must be encouraged."[84] Yet, there is also significant empirical evidence that (white) male students tend to dominate class discussion[85] and may be more likely to meet with faculty members outside of the classroom.[86] The combination of these findings suggests that to the extent outsider students are silenced,[87]

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[82] For a discussion of the importance of critical theory in clinical program delivery, see Margaret E. Johnson, "An Experiment in Integrating Critical Theory and Clinical Education" (2005) 13 Am. U. J. Gender Soc. Pol'y & L. 161.

[83] Dark, *supra* note 72 at 565.

[84] See discussion at Iijima, *supra* note 54 at 755-59; see also Imai's discussion of experiencing collaboration, *supra* note 81 at 203-06.

[85] See *e.g.* Lani Guinier *et al*., *Becoming Gentlemen: Women*, *Law School*, *and Institutional Change* (Boston: Beacon Press, 1997); Homer & Schwartz, *supra* note 7 at 29, Catherine Weiss & Louise Melling, "The Legal Education of Twenty Women" (1987-1988) 40 Stan. L. Rev. 1299; Kullman, *supra* note 1 at 126; Taunya Lovell Banks, "Gender Bias in the Classroom" (1988) 38 J. Legal Educ. 137; Neufeld, *supra* note 7 at 531-37; and Wildman, *supra* note 48. Kupenda also notes how in her experience, white women and students of colour seemed to participate more in smaller settings than in the large standard first year classroom setting. See Kupenda, *supra* note 47 at 981. In the Canadian context, see *Touchstones for Change*, *supra* note 3 at 36, which notes an 18% difference in participation of male and female law students in class discussions, student organizations, and social events reported in a Saskatchewan survey. The report also cites a UNB law school survey where over half the female respondents "reported experiencing some pressure from other students not to be or not to act seriously concerned about women's issues and rights" (at 33, citing Ad Hoc Committee on Gender Related Policy of the Faculty of Law, University of New Brunswick, *Survey 1991 Report* (1991)). Lindberg, *supra* note 68 at 318-19, notes that many of the Aboriginal women she interviewed "only participate in seminar or limited-enrollment classes," where different perspectives are more often welcome. While most of the studies in this regard date from the late 1980s and early 1990s, the authors of this article continue to experience, at least to some degree, the phenomenon of white male students outnumbering women and students of colour in class discussions.

[86] See Neufeld, *ibid*. at 538.

[87] See Ihrig, *supra* note 7, for an article focusing on systemic questions of silencing, isolation, and alienation of gay, lesbian, and bisexual students in the law school environment. For a discussion of silence as a political and culturally marked phenomenon, see Margaret E. Montoya,

disempowered,[88] alienated,[89] or choose not to participate actively in classes,[90] their learning environment is less rich than that of their colleagues (and conversely their lack of participation may impoverish the learning environment for everyone).[91]

Crenshaw notes that the attempt by many instructors to "posi[t] an analytical stance that has no specific cultural, political or class characteristics" is not only impossible but troubling, particularly for students of colour who must participate in class discussions as though

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"Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse" (2000) 33 U. Mich. J.L. Ref. 263. See also Boyle, *supra* note 19 at 99, who articulates her own responsibility as a feminist law professor for such silencing: "[w]hat women have censored themselves because I have not tried … to create an atmosphere in which they felt their contribution would be welcomed?" and Weiss & Melling, *supra* note 85 at 1343 who describes pacts amongst first year women law students to end the silence.

[88] See Jaff's discussion of "frame-shifting" as an empowering legal methodology, a means of teaching law that examines how different levels of generality or frames of reference can lead to differing results in the same case, and as a means to counter the disempowerment of the Socratic method. Jennifer Jaff, "Frame-Shifting: An Empowering Methodology for Teaching and Learning Legal Reasoning" (1986) 36 J. Legal Educ. 249 at 258-67.

[89] According to Lindberg, *supra* note 68 at 307, the Aboriginal women law students she interviewed felt alienated in large part because of "perceptions of their race based on physical attributes." As one of Lindberg's interviewees eloquently stated, "I think there are probably all sorts of stereotypes and concerns that come with this brown skin. We are all affirmative action, we are all from reserves, we are all paid to come to school. I am an urban Indian who receives a scholarship, who had a great GPA. I feel proud of how I look but I am distressed at being a brown page in their … previously written book of experiences." See also *Touchstones for Change*, *supra* note 3 at 33, where women of colour reported similar experiences to the Task Force on Gender Equality in the Legal Profession, and see Bhandar, *supra* note 39 at 351. For a discussion of African American student alienation from faculty, see Judith G. Greenberg, "Erasing Race From Legal Education" (1994-1995) 28 U. Mich. J.L. Ref. 51 at 77-78, 111; see also Owsley, *supra* note 42.

[90] This is not to suggest that students who do not talk in class are not engaged in "active learning," but one suspects that their educational experience is less likely to be as rich as it is for those students who feel comfortable as active oral participants. Homer and Schwartz, in a 1988 US study of the ways in which women and men experienced law school differently, offered the view that silence may in fact be a tactic, that students with outsider perspectives "may not want or need to speak in response to an interrogation technique [the Socratic method] they find insulting to their privacy and dignity"[emphasis removed]. However, the authors hypothesize that this also translates into lower grades for women, particularly in the first year, tied at least in part to the inflexible nature of the grading process. They found that lower grades also had the disturbing result of solidifying women students' alienation from the institution and lowering employment expectations. See Homer & Schwartz, *supra* note 7 at 38-41. In contrast, for a study which found no significant differences between the law school experiences of women and men attending the University of New Mexico Law School, see Lee E. Teitelbaum, Antoinette Sedillo Lopez & Jeffrey Jenkins, "Gender, Legal Education, and Legal Careers" (1991) 41 J. Legal Educ. 443.

[91] See Solórzano & Yosso, *supra* note 50 at 618 on the value of diversity in law school classrooms.

they were "colorless legal analysts."[92] Many outsider pedagogy classes are taught to smaller groups,[93] and the class composition may include a greater proportion of outsider students, at least where students self-select.[94] Therefore, these courses provide students who might not otherwise be as actively engaged in their learning process with a forum to enhance their participation.[95]

Outsider courses may also permit outsider students to share the seemingly never-ending burden of educating their white, able-bodied, heterosexual, male peers regarding bias and systemic discrimination.[96] When issues of race, disability, poverty, gender, or sexual orientation happen to arise in the context of non-outsider courses, outsider students are often singled out to garner their opinions.[97] Outsider courses devoted exclusively to the study of legal issues concerning outsider groups, which emphasize the writings of outsider scholars, spread the burden of exploring such issues and put the onus on *all* students to consider, educate, and problem-solve around issues of subordination and oppression.

In conclusion, outsider pedagogy can inspire future work for both instructors and students, whether scholarly or in legal practice. For

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[92] Crenshaw, "Foreword," *supra* note 63 at 35-36. See also López, *supra* note 16.

[93] See Kristine Strachan, "Curricular Reform in the Second and Third Years: Structure, Progression and Integration" (1989) 39 J. Legal Educ. 523 at 529, who notes that "[l]owering the notoriously high student-faculty ratio of legal education is, in the opinion of virtually all informed observers, the linchpin of methodological innovation and increased teaching effectiveness."

[94] See Petersen, *supra* note 25 at 347. This is not to suggest that students with particular identities will necessarily select courses that "match" their identities; rather our suggestion is that students from marginalized groups will be more likely overall to take one or more outsider courses during law school. In our questionnaires, students were asked to self-identify with respect to their gender, race, sexuality, income levels, ability, etc. and, in some cases, we found significant relationships between identity groups and decisions to take outsider courses. See Section IV.C, below, where these results are discussed.

[95] Some academics report that introducing outsider perspectives into their "mainstream" classes has similar effects and results in students holding these perspectives becoming more active as participants. See, for example, Lucinda M. Finley, "A Break in the Silence: Including Women's Issues in a Torts Course" (1989) 1 Yale J.L. & Feminism 41 at 43: "[a]cknowledgment of gender issues in torts can help women feel less like outsiders to the enterprise of the law, and may encourage them to engage in open dialogue, to bring up their experiences, to scrutinize the exclusiveness or inclusiveness of various legal rules, and to raise previously unraised questions."

[96] Suellyn Scarnecchia, "Gender & Race Bias Against Lawyers: A Classroom Response" (1989-1990) 23 U. Mich. J. L. Ref. 319 at 322.

[97] *Ibid*. at 323. See also Lindberg, *supra* note 68 at 307, where one student stated: "I am to be an expert on all Aboriginal groups and all Aboriginal concerns."

all the litany of challenges facing professors who work within this model,[98] deep personal satisfaction at meeting moral or ethical commitments is a significant benefit.[99] The extent to which this kind of teaching challenges instructors on a variety of fronts is yet another reason that it should be both fostered and prioritized.

III. HAS ENROLLMENT IN OUTSIDER COURSES DECLINED?

As highlighted in the introduction, we began this project in part as a response to concerns expressed by some of our colleagues that enrollment in outsider pedagogy courses, and in particular feminist courses, has been declining at alarming rates in recent years. Therefore, the first part of our project involved attempting to determine whether this was the case.

Our findings on trends in course enrollment and course offerings in outsider pedagogy classes are set out in this part of the article. In terms of our method for tracking trends, we gathered information at each of our institutions about course offerings and enrollment in outsider pedagogy courses. We began tracking feminist courses at their inception, and commenced tracking all other outsider pedagogy courses in 1980 because it was simply too difficult to get reliable data on courses before that date. From the outset it was apparent that some of the differences in our schools—their sizes, cultures, histories, and enrollment restrictions—made drawing definitive conclusions from our results challenging. In the first section of this part, we provide a brief analysis of some of the key similarities and differences between the seven schools in our study. We have omitted a detailed description of each of our schools, our course offerings, and enrollment, particularly given that later in our analysis we do not disaggregate our quantitative

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[98] Buss, *supra* note 78, vividly recounts some of the challenges of teaching (and taking) an outsider course.

[99] See, for instance, Lawrence, *supra* note 16 at 2250: "[e]very new and important understanding or insight that I have reached and found a way to articulate in my writing has come from dialogue with my students and with teachers. The conversations that produce theory are those that identify and articulate dissonance between existing legal theory and our individual/collective feeling and experience." See also Macdonald, *supra* note 2 at 589 who argues that reflection on what we are doing is critical: "[t]he benefit to be derived is that each law teacher will gain a better understanding of why [s]he teaches as [s]he does by being compelled to offer genuine justifications for [her/]his activity".

or qualitative data by school. The second section in this part provides some aggregated data on outsider course offerings and enrollments.

The enrollment data as presented are inevitably incomplete and subject to some important caveats. Although we originally imagined that this exercise—identifying the outsider pedagogy courses our institutions offered, and obtaining the enrollment data for those courses—would be straightforward, data collection turned out to be difficult. There were challenges both in tracking courses and in tracking enrollments. For example, some outsider pedagogy courses are not or were not offered under obvious names, and instead were offered under titles such as "Topics in Jurisprudence," leaving us to assume that in at least some cases we have misidentified or missed courses.

Similarly, there were challenges in obtaining enrollment data, particularly from before the mid-1990s, at most institutions. For example, when we received enrollment data for some courses, the enrollment simply seemed unlikely. A particular course may have officially been listed as having, say, fifty students enrolled. Yet, our anecdotal sense was that the enrollment could not possibly have been that high. Upon checking with the instructor for the course, we might have found that only nine students were actually registered. Where possible, we have attempted to identify and correct inaccuracies in our data; however, given that the study spans thirty-five years, in some cases there are inevitably errors that we simply have not been able to catch. Therefore, unlike in Section IV, where we present our findings on the survey data, we make no claims to statistical significance in relation to the enrollment data. Here, we simply set out the information we have gathered, on the basis that it provides a general sense of the overall course offering and enrollment trends.

A. *School-Specific Trends*

The seven schools in our survey provide a relevant cross-section of English-language Canadian law schools when examined with attention to key differentiating factors, including the size of law schools.[100] The schools range in age from some of Canada's earliest law schools[101] to some of the more recently established schools.[102]

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[100] As discussed, *supra* note 8, the survey does not include any schools from Quebec where the civil law tradition is studied. The survey does, however, include Ottawa's common law program

The cultures of the schools, some of which are drawn anecdotally, also provided an interesting mix. Calgary, for example, has built its reputation as a skills-based school with a specialization in natural resources, energy, and environmental law. Victoria tends to attract students with public law interests, such as environmental law and Aboriginal law, and can support those students through clinical and other forms of unique programming, including the only common law co-op program at a Canadian law school.[103] Ottawa, the school with the largest number of outsider courses of the schools surveyed, offers a social justice concentration in the LL.B. program.[104] As Table 1 demonstrates, the schools show considerable range and diversity in terms of course offerings.

It is unfortunately beyond the scope of this project to provide a detailed discussion of the courses offered and surveyed at each of our respective schools. This is particularly so given that each school's offerings, histories, faculty, and culture have had a direct impact on both our quantitative and qualitative results. For example, Osgoode prides itself on a long history of offering courses focused on the possibility that law can respond to the experiences of subordinated groups. Clinical programs have been a significant part of this history, and continue to be taken up by students in large numbers. Osgoode is also the first school to have developed courses in poverty law (in the late 1960s) and one of the first to offer a course on gender, with Women and the Law appearing in course calendars in 1972-1973. Yet, it appears that as the

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offered in French. There is variation in size, ranging from small schools like Calgary with an incoming class of 75 and a faculty of 20, to large schools like Osgoode with an incoming class of 300 and a faculty of approximately 50 tenure-stream or tenured professors.

[101] Manitoba's law school was established in 1885, Osgoode Hall Law School in 1889, and UNB in 1892.

[102] Victoria's law school opened in 1975 and Calgary's in 1976.

[103] The course information on Victoria does not include the Akitsiraq Law School. This was a one-time program for Inuit students offered by the University of Victoria, Faculty of Law in partnership with Nunavut Arctic College and the Akitsiraq Law School Society, and delivered in Iqaluit, Nunavut. This program was established to address the specific need for Inuit lawyers by providing a unique opportunity for Inuit students to receive legal education in Nunavut. There was one intake class in the fall of 2001, with 11 students graduating with an LL.B. from Victoria in June 2005. Courses included standard law school compulsory courses, as well as several courses of specific relevance to the Inuit and the North. Inuit Traditional Law and Inuit Qaujimatuqangit were components of the first year curriculum.

[104] See *supra* note 34 for a further description of the social justice concentration at Ottawa.

number of outsider courses increased at Osgoode, enrollments in each course went down. Notwithstanding this trend, each year around four hundred students enrol in at least one of these courses, a not-insignificant percentage of an upper year class of around six hundred.

As a contrast, UNB has only offered outsider courses on a consistent basis since the late 1980s, in a course called Readings, with enrollments of between five and nine students. The first seminar offering called Feminist Legal Theory began in 1991-1992, with thirteen students. In UNB terms, enrollment in this course and its successor, Feminist Advocacy, was both stable and relatively robust through 1998-1999, with levels hovering around ten students. However, in only one year since then have more than five students enrolled in the course. At the same time, two new outsider perspectives courses emerged: Jewish Law starting in 2001-2002, and Animals, Values and Law in 2004-2005. Enrollment in both courses has been somewhat higher than in Feminist Advocacy, with both new courses attracting about a dozen or so students.

Ultimately, each of our schools showed trends that were unique when contextualized within the school's overall culture. With few exceptions, each was also consistent with the overall trends demonstrated in our quantitative survey results, when assessed cumulatively.[105] For the majority of our schools, enrollment statistics do not show significant discernible trends, fluctuating for such possible reasons as available faculty,

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[105] The smaller schools, such as Manitoba and University of New Brunswick, with less choice in upper year courses show some anomalous results in terms of enrollment. Manitoba, for example, has a course in Aboriginal Peoples and the Law (originally called Native Peoples and the Law) that has been offered since 1983-1984. Enrollment in that course has ranged from six to ten students in the 1980s, but increased to range from 6 to 22 students in the 1990s and 2000s, having an enrollment in most years in the high teens or low 20s. The number of outsider courses increased in the 1990s with the addition of courses on gender and children. Gender and the Law (formerly called Women and the Law) was first taught in 1991-1992, with an enrollment of three students. Since that time, enrollment has ranged from nine to eighteen students, maintaining an enrollment most years in the mid teens. (Enrollment in this course is capped at sixteen and in recent years it has been fully or over-subscribed.) Finally, Children and the Law, which has been offered since 1991-1992, has had an enrollment ranging from eight to twenty students, with most years being in the low teens. Beyond the obvious jump in enrollment in outsider courses occasioned by the addition of Gender and Law and Children and Law in 1991-1992, the only discernible trend is the relatively steady enrollment in all three courses through the 1990s and into this century. In a promising development, Manitoba will be offering a new course on Poverty Law, beginning in 2007-2008. Furthermore, as is the case with other schools in this study, there are other upper year courses that include critical perspectives but that do not fall within our criteria for outsider courses. As one example, for many years Manitoba offered a course called Limits of the Law. This course critically interrogated many aspects of law and legal regulation.

the hiring of specific faculty members, and conflicting course offerings.[106] Generally, however, two trends emerge. First, the speculation that there has been a decline in enrollment in feminist courses is supported, at least at some schools.[107] As well, it appears that as the number of outsider courses increased, so did total enrollment in outsider courses at our schools.[108] We examine both of these trends in the next part. Table 1 shows a brief comparison of the schools included in our study.

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[106] For example, at Victoria enrollment in specific courses does not show any discernible patterns or marked trends. Feminist Legal Theories has ranged from a low of five students in 2002-2003 to highs of nineteen students in 1995-1996 and 1997-1998. Similarly, Race, Ethnicity, Culture and the Law has also fluctuated from a high in 2000-2001 of nineteen students, to a low of six in 2004-2005. In contrast, the course Indian Rights, Lands, and Government is open to fifty students and had enrollment in 2002-2003 of forty-nine students, in 2004-2005 of twenty-five students, and in 2006-2007 of thirty-seven students. Overall, however, enrollment in outsider courses at Victoria has shown a fairly constant growth since the early 1980s, where the total average enrollment was thirty students in outsider courses, through the 1990s where it was closer to sixty students, through the 2000s where it is now closer to eighty students.

[107] For example, at Calgary enrollment in Feminist Legal Theory has ranged from a high of thirteen students in 2005-2006 to a low of five in 2006-2007. With the exception of an increase in 2005-2006, enrollment in the course has generally decreased over the years the course has been offered (from eight students in 1997-1998 to five students in 2006-2007). This is particularly so given that admissions to Calgary law school increased from seventy students per year when the course was first offered, to seventy-five students per year in 2006-2007. A similar decrease in feminist course enrollment can be seen at UNB. On the other hand, enrollment in the feminist course offered at Manitoba has remained strong during the same period.

[108] For example, at Ottawa, total student enrollment in outsider pedagogy courses has generally increased between 1975 and 2007, but with significant fluctuations from year to year. The early 1990s showed an increase in total enrollment in outsider courses, with the highest enrollment in 1993-1994 being ninety-two students. The mid to late-1990s demonstrated a decrease in total outsider enrollment with the lowest number of students enrolled, fifty-five, in 1999-2000. In 2000-2001 and 2001-2002, total enrollment increased to ninety-four students and then dropped to fifty in 2002-2003 when only four outsider courses were offered. From 2002 to 2007 there has been a steady increase in the total number of students taking all outsider courses combined. However, it is also important to note that there is a significant difference in the number and consistency of outsider courses offered by the English program versus the French program, which may be explained in part by the difference in size of the French program and its language objectives.

Table 1:

	Incoming Class Size[109]	Tuition 06/07[110]	F/T or Tenure stream Faculty (Approx)	Upper Year Required Courses	Outsider Courses: Recent Course offerings & trends
University of Victoria	108	$8,510	34 faculty, 40% women	Two required: Evidence and Civil Procedure.	Between five and ten outsider perspective courses (OPC) offered per year.
University of British Columbia	208	$9,364	37 faculty, 50% women	Five required, one each from the following lists: Public Regulation; Private Regulation; Procedure; Law and Society; Legal Research and Writing.	Nineteen OPC listed, eight to thirteen offered each year.
University of Calgary	75 (100 planned for 07/08)	$11,080	20 faculty, 50% women	Six required: Civil Evidence and Procedure; Interviewing, Negotiation and Counselling; Administrative Law; Advanced Legal Research; Trial Evidence and Procedure; and Trial Advocacy.	Two OPC listed in the calendar; both offered most years.
University of Manitoba	104	$8,500	22 faculty, 45% women[111]	Ten required: Introduction to Advocacy, Evidence, Corporations I, Civil Procedure, Negotiation, Administrative Law, Trusts, Family Law, Income Tax Law and Policy, and Legal Profession and Professional Responsibility.	Three OPC listed and offered in any given year.
Osgoode Hall (York University)	302	$13,996	50 faculty, 50% women	No required courses in the upper years.	Between eight and twelve OPC offered each year.
University of Ottawa	260 English and French Common Law only	$9,180	50 faculty, 50% women	Two required: Constitutional Law II and Civil Procedure.	Fifteen OPC offered in 2006-2007.
University of New Brunswick	89	$9,259	20 faculty, 30% women	Six compulsory courses; three compulsory areas.	Three OPC courses listed in the calendar.

[109] Data taken from individual school reports at Law School Admissions Council (LSAC), *Official Guide to Canadian Law Schools*, online: Law School Admissions Council <http://www.lsac.org/canadianCFC/Canadian_homepage.asp>.

[110] *Ibid*. Tuition fees have risen dramatically over the period covered by this study. See *infra* note 158 for further discussion of this development.

[111] However, three of the full-time faculty positions at Manitoba are not tenure-stream positions. All three of these positions are currently filled by women.

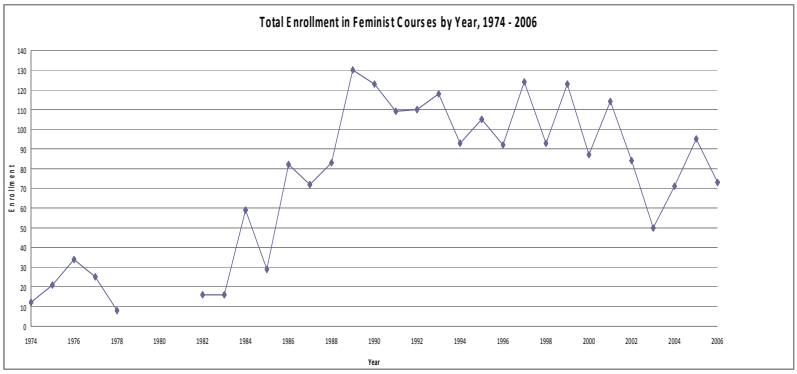
B. *General Enrollment Trends*

1. Trends in Enrollment in Feminist Courses

A number of our colleagues have anecdotally noted the decline in enrollment in feminist courses in particular; thus, we begin this section by discussing enrollment trends in feminist courses. Generally speaking, the number of students enrolled in feminist courses increased gradually from the mid-1970s until the early-1990s, as revealed in Figure 1 below. Most of this growth is explained simply by the addition of courses at each of the seven schools over time. Indeed, although the number of students enrolled in the course at any given school has varied over time, the variation has been inconsistent. Throughout the 1990s, the total numbers of students enrolled in feminist courses remained relatively constant as an average, although there were variations from year to year. However, in the early 2000s, total student enrollment in feminist courses across the seven schools began to decline.

Over the last fifteen years, a rough average of seventy-five students have taken a feminist course in any given year against a total enrollment in the seven schools of approximately three thousand students. Assuming that in most schools students only take one feminist course during their degree, approximately seven to eight per cent of students in the law schools we surveyed graduate having taken a feminist course in one of the final two years of their program. In presenting our enrollment data, we have not taken into account the general increase in total student population at each of our schools; it is possible therefore that as a percentage of total students enrolled at our institutions, even fewer students are choosing to take feminist courses.

Figure 1

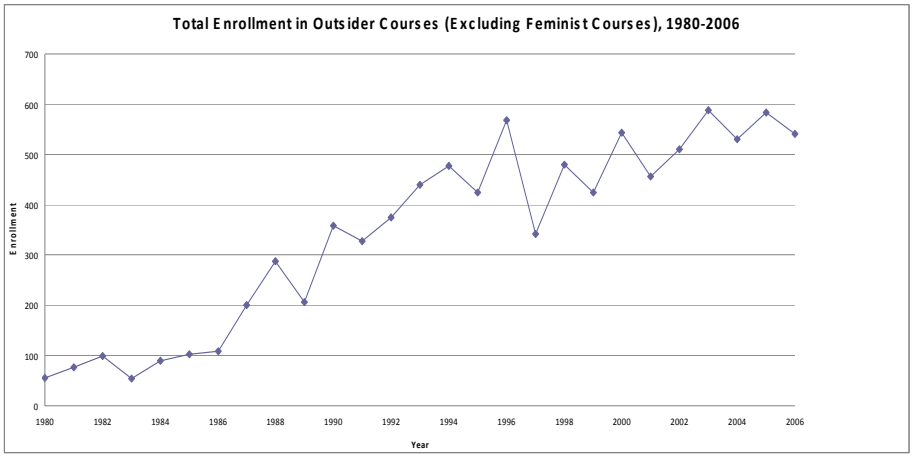


Note: A break in the chart reflects years where no feminist courses were offered at any of the schools.

2. Trends in Enrollment in Other Outsider Courses

Over the seven schools, outsider courses have grown both in number and in student enrollment over the period of our study. Most schools have at least two outsider courses in addition to feminist courses, and some of the larger schools have over ten courses offered in any given year. Figure 2 shows the overall enrollment in outsider courses (excluding feminist courses) between 1980-1981 and 2005-2006. Total enrollment appears to have remained stable, or perhaps grown a little since the mid-1990s. As above, assuming an average student body of three thousand students across the seven schools (and approximately two thousand of those students in second or third year), if every student were to take only one outsider course, approximately half of all students would be enrolled in an outsider course in any given upper year. Of course, the assumption that students who choose to take outsider courses would take only one is unlikely. Our data do not allow us to predict the percentage of students who take outsider courses, since presumably some students take several of such courses over second and third year.

Figure 2



We also looked at specific groupings of courses to see if we could discern any overall trends in enrollment for particular types of courses. Generally, we were unable to identify any trends with confidence. Course enrollment in mental health and disability law, for example, peaked and dipped throughout the period under examination. The only courses with distinct trends in enrollment were courses dealing

with Aboriginal law/rights, in which enrollment generally increased through the 1980s, in part due to the addition of courses at some schools, and levelled in the mid-1990s at roughly two hundred students a year, with a few years of higher enrollment, and poverty law and related courses, which appear to have peaked in enrollment in the late 1980s/early 1990s, and to have declined through the 1990s and into the present decade.

Finally, although the total number of outsider courses increased throughout the 1990s, it is worth noting that many important outsider courses are not offered at all at some schools, and are not offered regularly at others. For example, law and sexuality, racism and the law, and disability and the law all continue to be marginalized courses, infrequently offered and with relatively low enrollments.

To conclude this part of the article, our research suggests that anecdotal concerns about declines in student enrollment in feminist courses, at least through the last five years, may be accurate. One might not only question why enrollment in these courses may have declined, but also why, with at least some increase in total student enrollment at our seven institutions, an increase in the number of female faculty, and an increase in the relative number of female students,[112] the number of students enrolled in feminist courses has not increased over the last ten years. We explore these issues in the next section, which discusses our survey methodology and findings to provide some context for enrollment trends in these courses.

IV. WHY DO STUDENTS CHOOSE (OR AVOID) OUTSIDER COURSES?

A. *Student Survey*

A student survey, designed by the authors after a review of the literature, was finalized in early 2007. The goal of the student survey was to hear from current law students about their course enrollment choices, and as such, purposive sampling was used. In March 2007, an e-mail invitation was sent to all LL.B. students enrolled in the 2006-2007 year

[112] See Section IV.A.1, below, for a description of gender-based trends in admissions to the law schools.

at the seven law schools in the study.[113] Ethics approval was obtained from all participating universities. In March and April 2007, participants completed the online consent form and online survey in which they remained anonymous. From a total pool of 3,623 students, 1,164 students participated in the survey, for an overall response rate of 32.13%.[114] Students were asked whether they had taken any of the listed outsider[115] courses in each of a series of categories such as "racism and the law or critical race theory"[116] (or whether they would have taken such a course if it were offered at their school).[117] Students were also asked to identify their reasons for taking[118] or not taking[119] such

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[113] Although we only surveyed LL.B. students in terms of course choices, our enrollment data may also include some graduate students who took outsider courses. Graduate students may have very different reasons for taking or not taking outsider courses and very different issues with respect to legal education more broadly. For an article that recounts the experiences of a Métis woman as an outsider in a US graduate program, see Marilyn Poitras, "Through My Eyes: Lessons on Life in Law School" (2005) 17 C.J.W.L. 41.

[114] The following are the student survey response rates for all schools in the study, listed from highest to lowest: 42.8% (Calgary), 41.4% (Victoria), 40.6% (Manitoba), 35.3% (UBC), 32.1% (Ottawa—English Common Law), 25.8% (UNB), 25.0% (Osgoode), and 18.3% (Ottawa—French Common Law).

[115] This language was not used in the survey. However, we use it here to indicate that only those courses that we included in the outsider category were surveyed.

[116] The courses were divided into categories, using the actual course names at the seven law schools (with the proviso "or a substantially similar course" after each) and students were asked a separate question about each category of courses. See the listing of the courses, *supra* note 18.

[117] For some statistical inquiries, we aggregated the answers to all of these questions to create a group of students who said they had taken or would like to take at least one of the listed (outsider) courses.

[118] The following list of "positive reasons" was provided, with students invited to list as many as applied: (a) I believe that the material covered is relevant to today's world; (b) I believe that having this course will improve my chances of obtaining the kind of articling position I would like; (c) I believe that inequality remains a significant issue in the law school and society and this course will provide me with tools to analyze that inequality; (d) I believe this course will provide me with useful legal skills; (e) I believe this course will prepare me for the bar exam; (f) I had a taste of these kinds of subjects in my first year, and I wanted a more in-depth course; (g) I was advised by a faculty member to take this course; (h) I was advised by career services to take this course; (i) I was advised by a lawyer to take this course; (j) I was advised by other students to take this course; (k) I wanted to take a course that was participatory and/or evaluated by methods other than a 100% exam; (l) I took a course like this in my pre-law degree(s) and wanted to know what the perspectives might bring to law; (m) I liked the professors for this course; (n) I chose this course because it will satisfy my school's seminar/perspectives/paper requirement; (o) I was required to take this course as part of my law school program; (p) I believe this course is less work than other courses; (q) I wanted to take a course that was different from the black letter law courses; and (r) Other reason.

[119] The following list of "negative reasons" was provided, with students invited to list as many as applied: (a) Does not apply because I plan on or will take one or more of the above listed courses; (b) I believe that the material covered lacks relevance to today's world; (c) I believe these courses will

courses.[120] The survey included a number of open-ended questions which gave students an opportunity to provide qualitative answers about their perceptions of these courses and some of the factors that affect their decision-making. In an effort to consider whether there were any relationships between student course enrollment choices and identity, the survey included some demographic questions, which are discussed in the next section. Finally, chi-square tests for statistical significance (derived from contingency tables) were used to assess the bivariate relationship between various socio-demographic questions and participation in or plans to take outsider courses.[121]

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hurt my chances of obtaining the kind of articling position I would like; (d) I believe that the law school and society have become respectful of difference and largely equal, and these kinds of courses are no longer necessary; (e) I do not believe these courses will provide me with useful legal skills; (f) I do not believe these courses will prepare me for the bar exam; (g) My first year courses provided a good deal of the material that might otherwise be covered in these courses; (h) I was advised by a faculty member not to take these courses; (i) I was advised by career services not to take these courses; (j) I was advised by a lawyer not to take these courses; (k) I was advised by other students not to take these courses; (l) These courses are too much work because they require participation and/or are evaluated by a method other than a final exam; (m) I took my pre-law degree(s) in an area that gave me significant exposure to material that might be covered in these courses; (n) I did not want to take a course with any of the professors instructing these courses; (o) These courses were scheduled at inconvenient times and/or conflicted with other courses I wanted to take; (p) When I graduate from law school, my debt load will be too high to take a social justice position and therefore these courses are of less interest; (q) These classes are too small and I prefer to be anonymous; (r) I have insufficient room to include these courses because I am going on exchange and/or taking a substantial clinical course; (s) My school does not offer many of these courses; and (t) Other reason.

[120] We also asked students about their perceptions of the reasons other students did not take outsider courses (with the list of possible reasons being the same as the list of reasons for their own choices). However, given the abundance of data gathered on the questions about the students' own choices, and our primary interest in those reasons, we have not conducted any detailed quantitative analysis of the more speculative answers about other students' choices. Nevertheless, students' perceptions of others' reasons for taking or not taking these courses are highlighted in our discussion of the qualitative survey results, in Section III.B below.

[121] Chi-square is an inferential statistic test designed to find significant relationships between two variables organized in a bivariate (*i.e.*, cross-tabular) table. Chi-squares are useful for determining statistical significance because they test whether the observed sample of law school students differs from what would be expected in the population (*i.e.*, all law school students). Based on the principles of probability theory, a chi-square outcome is considered statistically significant when it is so large that it would rarely occur by chance alone (or sampling error). Statistical significance is determined by probability values (*i.e.*, p-values or p) and degrees of freedom (a simple formula based on the number of rows and columns within a bivariate table in order to determine the precision of a parameter estimate). When a probability value is less than .05, the relationship between two measures (for example, sexual orientation and participation in an outsider course) is thought to be statistically significant, meaning that the chances of obtaining the measured association between two variables as a result of sampling error is less than five in one hundred. See generally Andy Field, *Discovering Statistics Using SPSS* (Thousand Oaks, California: Sage, 2005).

Our study measured course enrollment over time (the results of which are described above), but did not attempt to provide possible explanations for that enrollment over time. Instead, the survey data open a limited window on the reasons students, enrolled at the seven law schools in 2006-2007, chose to enroll (or not) in the listed outsider courses.

1. Demographics[122]

Forty per cent of participants were male, while sixty per cent were female.[123] Although we were unable to determine the gender breakdown of the entire participant pool for this study, we know that women now regularly outnumber men in law school admissions at all Canadian law schools. For example, at the seven law schools in this study, the average percentage of women in first year was 56.5% in 2005 and 53.3% in 2006.[124] Of students who answered the question about racial background,[125] 80.1% were white, 3.5% were Aboriginal, and 15.6% were members of other racialized groups.[126] In terms of sexual orientation, 6.9% identified as gay or lesbian, 3.4% as bisexual, and 89.7% as heterosexual.[127] Just over 5% identified as having a disability.[128] More than a quarter of participants were under 25 years of age, just over half were aged 25-29, close to 18% were in their 30s, and the remaining nearly 5% were 40 or over.[129]

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[122] In an effort to convey our data analysis in an accessible manner, we have omitted the raw numbers for each inquiry. We have simply provided percentages which are drawn from the number of students who responded in a given way to the particular question. The total number of student participants was 1,164. Where relevant, we have provided the percentage of students who did not respond to the question, as well as the percentages corresponding to student responses.

[123] The balance of participants (161 people) either declined to answer the question or to specify a biological sex (*i.e.*, fewer than 5 participants identified as transgendered).

[124] LSAC, *supra* note 109: Note that only the previous year's data is available at any given time. There was a high of 66% women at Victoria in 2005 and a low of 43% women at Manitoba in 2006, the latter being the only instance where any school had less than 51% women in the first year class.

[125] Nearly 20% of participants declined to answer this question. Other demographic data, such as that on race or sexual orientation, are not available for law school admissions in Canada.

[126] For the racial background question, we utilized the Census Canada visible minority categories. Therefore, included in the "racialized" category are all students who identified as Chinese, South Asian, Black, Filipino, Latin American, Southeast Asian, Arab, West Asian, Korean, or Japanese.

[127] Nearly 15% of students declined to answer this question.

[128] 12.7% of participants did not answer this question and the remaining group indicated that they did not have a disability.

[129] 11.8% of participants declined to answer this question.

Students were also asked to identify their family background as "lower income" (14.4%), "middle income" (66.0%), or "higher income" (19.6%).[130] In terms of student debt, 15.5% said that they would have no student debt upon graduation, 51.2% estimated that they would have less than $50,000 of student debt, and 33.3% estimated their student debt to be more than $50,000.[131] Finally, students were invited to state their political views.[132] Just under 40% of students indicated that they would vote Liberal, 22.7% New Democrat, 17.2% Conservative, and 15.9% Green; 4.3% said that they would not vote.[133]

2. Findings

Before discussing our findings, we must urge caution in interpreting them. Instead of counting only those students who have enrolled in the courses, we have relied throughout on students' stated intention or desire to take the listed courses, including many which are not offered at certain law schools. As such, their answers do not "match" the reality of course availability or enrollment, but they may help us understand at least the level of interest in these courses and how that interest may or may not translate into student enrollment numbers, for a variety of reasons. Perhaps most tellingly in this regard, we found that students' stated intention to take at least one of the listed outsider courses decreased significantly from first to second to third year. Overall, 77.2% of students answered that they "had taken or planned to take" or "would take but this course is not offered at my school" for at least one of the outsider course categories. For first year students, the rate was 90.4%, while for second year students it dropped to 75.3%, and for third year students it was down to 69.1%.[134]

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[130] 14.3% of participants declined to answer this question.

[131] 10.8% of participants declined to answer this question.

[132] They were asked "If you had to vote for a federal party today, which party would you vote for?" and all major political parties were listed. Nearly a quarter of students (22.5%) declined to answer this question.

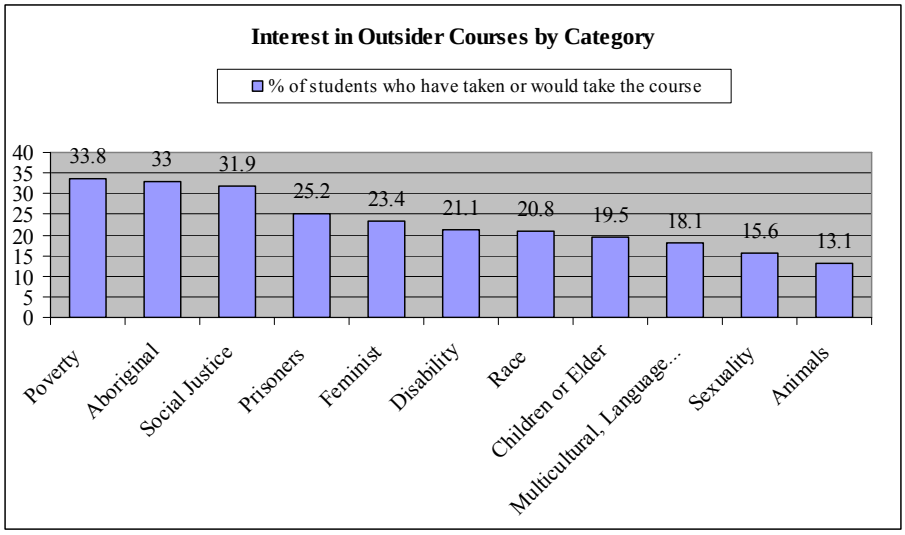
[133] The number of Bloc Québeçois voters was too small to be statistically valid.

[134] This finding is statistically significant ($\chi^2 = 42.2$, $p = .000$). The χ^2 represents the chi-square test for statistical significance discussed, *supra* note 121. The formula for making this comparison is:

$$X^2 = \sum \frac{(f_o - f_e)^2}{f_e}$$

The level of student interest in each of the categories of outsider courses varied. The highest level of interest was in poverty law, which was selected by 33.8% of respondents. Only two other course categories attracted student interest in excess of 30%, namely Aboriginal law and equality and social justice. Just over a quarter of students were interested in taking prisoners' rights, with feminist or women and the law courses close behind. Other courses attracting interest in the 20% range were disability and the law, race or racism and the law, and children or elder law. The courses which garnered the least amount of total student interest were multiculturalism, language rights or religion and the law, sexuality and the law, and animals and the law. See Figure 3 below.

Figure 3



This formula tells us to find the difference between each observed frequency (f_o) and its corresponding expected frequency (f_e); then square these differences; divide the result by expected frequency for that difference; and then add the results of these operations. The result gives the value of the chi-square. The p- value depicts the degree of probability of the result being due to chance. In general, a high χ^2 value will yield a low p-value. P-values which are less than .05 (the chance of being wrong about the perceived statistical relationship between two variables is less than five in one hundred) are considered statistically significant. In the data analysis that follows, we have omitted the χ^2 and p-values in an effort to make the text more accessible to a broad audience of law students, legal scholars, and other readers unfamiliar with statistical methodologies. All findings reported in this part are statistically significant unless indicated otherwise.

3. Identity and Interest in Outsider Courses

We found some statistically significant correlations between students' identities and their interest in taking outsider courses generally, as well as outsider courses that relate to their particular identity group (*e.g.*, women interested in taking feminist courses, Aboriginal students interested in taking Aboriginal law courses, *et cetra*). However, the results were different across demographic groups.

We found that women were more likely than men to have taken or to be planning to take at least one of the listed outsider courses (85.9% and 65.9%, respectively). More particularly, with respect to feminist courses, 36.2% of women, compared with 8.5% of men,[135] said they had taken or would take such a course.

Of those students who identified as white or racialized, there was no significant difference in their likelihood of taking or not taking at least one of the listed courses (77.2% and 78.8%, respectively). However, of the participants who identified as Aboriginal, 94% indicated that they had taken or would take at least one of the listed courses, which is statistically significant when compared with non-Aboriginal students. In addition, Aboriginal students were much more likely than non-Aboriginal students to take a course on Aboriginal peoples and the law (84.8% and 34.3% respectively).

Students who identified as gay, lesbian, or bisexual were statistically more likely than students who identified as heterosexual to have taken or be planning to take an outsider course (90.2% and 76.6%, respectively). When asked whether they had taken or would take a course specifically on sexuality and the law, 46.9% of gay, lesbian and bisexual students answered affirmatively, compared with 14.1% of heterosexual students.

With respect to disability, 96.5% of students who indicated that they had a disability said they had taken or would take at least one outsider course, compared with 76.4% of students without a disability. Students with a disability were also more likely than non-disabled

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[135] Even this level of interest by male students in feminist or "women and law" courses was perceived as quite high by the study authors. While statistics on the gender of students and course enrollment are not collected in any of the seven law schools, it is our perception that men still rarely enrol in feminist law courses.

students to take courses on disability and the law (41.1% and 21.6%, respectively).

There was no significant relationship between the age of students and their interest in taking outsider courses generally, or courses on elder law or children and the law in particular. This result is not surprising given the heterogeneous nature of this category (including courses about both children and the elderly), the fact that no children and very few elderly people attend law school, and the fact that its inclusion as an outsider category was contentious.[136]

In terms of income level, 86% of students who identified as lower income were interested in taking at least one outsider course, compared with 78% of middle income students and 68.7% of higher income students, a differential that was statistically significant. When it came to specific courses on poverty and the law, nearly half of students who identified as lower income said that they had taken or would like to take such a course (49.7%), while only 34.4% of middle and higher income students indicated their plans to take such a course.

An interesting finding of this study was that high levels of student debt did not seem to deter students from taking (or at least planning to take) outsider courses. In fact, students who estimated their student debt upon graduation as $50,000 or more were statistically *more* likely than students with lower levels of debt, or no debt at all, to take or plan to take at least one of these courses (82.4% for the $50,000+ debt group, 75.5% for those with debt less than $50,000, and 72.0% for those with no debt). This finding seems to contradict the commonly expressed perception that higher tuition and corresponding student debt levels are exerting pressure on students who might not otherwise pursue corporate law jobs to do so and to seek law school courses that they think will prepare them for such a career. However, these limited quantitative data must be interpreted in light of the qualitative data discussed later in this part, wherein the existence of high debt levels loomed large in many of the students' responses.

Finally, students' political views have a statistically significant bearing on their decisions and plans to take outsider courses. The

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[136] Both children and law and elder law were courses about which the authors did not agree in terms of their outsider status. See *supra*, text accompanying notes 17 to 19 for a discussion of the difficulties associated with defining and identifying outsider courses.

highest level of interest (89.3%) was shown by students who vote NDP, with Green a close second (85.3%), followed by Liberal (72.8%), those who did not vote (71.8%), and Conservative (66.5%).

4. Reasons for Taking Outsider Courses

As discussed above, the survey provided a list of seventeen possible reasons, plus an open-ended opportunity for students to explain, as to why they were interested in taking each category of outsider courses. Students were invited to select as many reasons as applied to their decisions. Some highlights of the students' responses are set out below. The number in parentheses indicates the weighted, average percentage across all outsider course categories of students who said that they have taken or would take a given course for the particular listed reason.

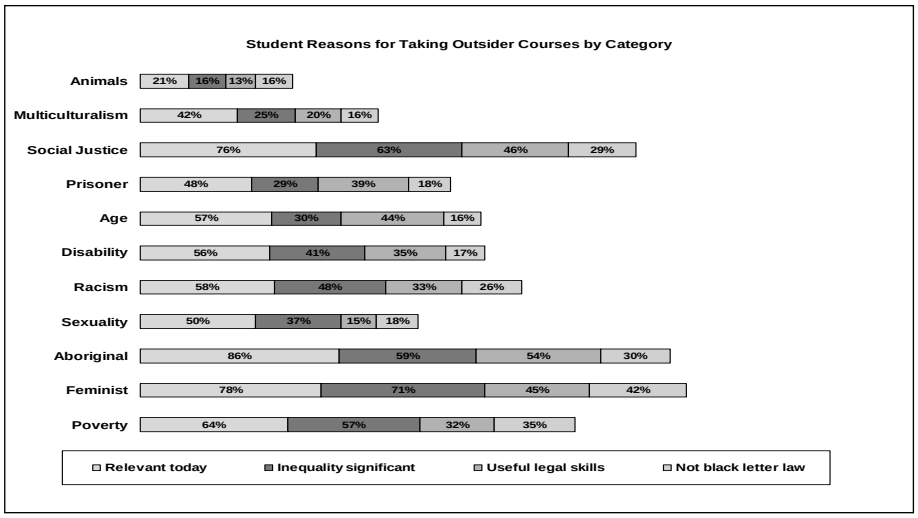
Four reasons for taking a particular outsider course emerged from the list as the most commonly cited reasons across course categories, using a weighted average.[137] They were, in order:

1) students believe that the material is relevant to today's world (61.7%);
2) students believe that inequality remains a significant issue in the law school and in society, and these courses provide students with tools to analyze that inequality (46.6%);
3) the courses provide students with useful legal skills (36.8%); and
4) students wanted to take courses that were different from black letter law courses (25.4%).

Figure 4 depicts the top four reasons cited by students for taking each of the categories of outsider courses, using a weighted average.

[137] There was a substantial gap between these four reasons, and the fifth and sixth ranked reasons: (5) they took courses like these in their pre-law degrees and wanted to know what those perspectives might bring to law; and (6) they got a taste of these topics in first year law and wanted to study further.

Figure 4



Across all course categories, the most common reason cited for taking the course was that the material is seen as relevant to today's world. Aboriginal law courses were cited as relevant to today's world more often than any other category of courses (86.2%), followed by feminist or women and law courses (77.9%), with equality and social justice courses next (75.5%). For all other categories of outsider courses, except animals and the law at 21.1%,[138] the number of students who stated that the material is relevant to today's world ranged from 41.7% for multiculturalism, language rights, and religion and law, to 64% for poverty and the law.

Relatively few students stated that they believed their job chances were improved by taking any of the outsider courses listed. Aboriginal law was the course most often associated with this reason (24.5%), with the only other course scoring over 20% in this regard being equality and social justice (21.0%), followed closely by prisoners' rights and exonerating the wrongfully convicted (19.5%).[139] In a similar

[138] Without questioning its value as an area of study, the authors disagreed about whether animals and the law should be considered an outsider course.

[139] The frequency of this response for the other courses was as follows: children or elder law (18.5%), disability and the law (15.9%), poverty and the law (11.7%), race or racism and the law (11.6%), feminist or women and the law (10.3%), multiculturalism, language rights or law and religion (9.5%), sexuality and the law (7.7%), and animals and the law (2.0%).

vein, more students responded that they were advised to take Aboriginal law than any other outsider course (4.9%).[140]

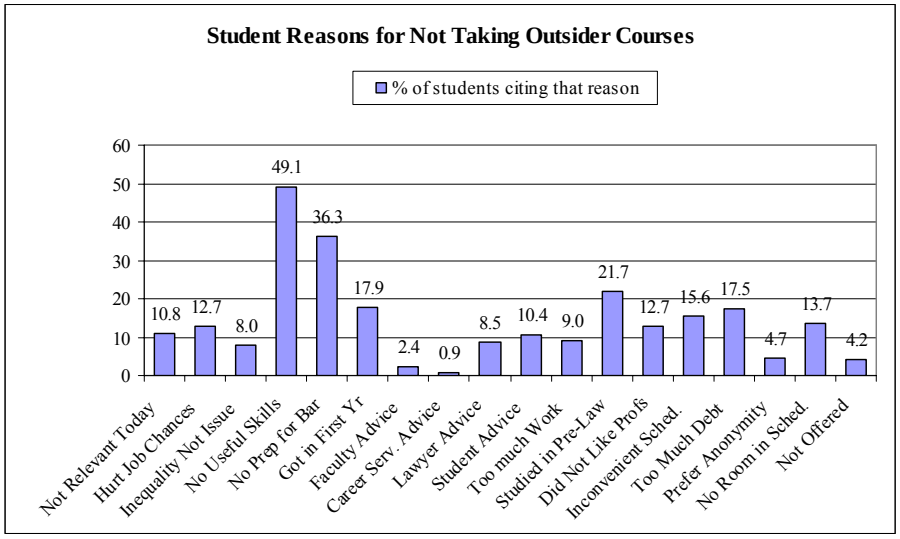
5. Reasons for Not Taking Outsider Courses

A total of 212 students (18.2% of student respondents) said that they have not taken and do not plan to take any of the listed outsider courses. This group of students also provided their reasons for not taking such courses. We should note that we do not have data on the broader group of students' reasons for not taking certain categories of outsider courses. Notably we have no "negative reasons" data from students who said they would take one category of courses but not others. Nevertheless, the existing data provide some interesting insights, particularly when read in light of the qualitative data discussed in the next section. The top four reasons for not taking any outsider courses were, in order:

1) students do not believe these courses will provide them with useful legal skills (49.1%);
2) students do not believe these courses will prepare them for the bar exam (36.3%);
3) students' pre-law degrees gave them significant exposure to material that might be covered in these courses (21.7%); and
4) their first year law courses provided a good deal of the material that might otherwise be covered in these courses (17.9%).

[140] This finding suggests that, at least at some law schools, Aboriginal law courses may be (or may be perceived to be) relatively more doctrinal than other outsider courses.

Figure 5



This group of students appeared to be focused on developing legal skills and passing the bar, and did not see taking outsider courses as relevant to those goals. However, it is interesting to note that a larger group of students cited the provision of useful legal skills as one of their reasons for taking at least one outsider course. As described in the previous section, this reason ranked third overall for students; for example, 207 students said that Aboriginal law provided them with useful legal skills, and 126 said the same for poverty law courses. Interestingly, a number of students said that they essentially had no need for outsider courses, given that they had studied these or related material in first year law or in their undergraduate studies.

B. *Faculty Survey*

We administered a similar survey to all faculty members at the seven schools whom we were able to identify as currently teaching or having taught outsider perspective courses. Thirty-nine of fifty-nine faculty members (66.1%) responded to the survey, rendering a relatively small amount of data for us to consider quantitatively.

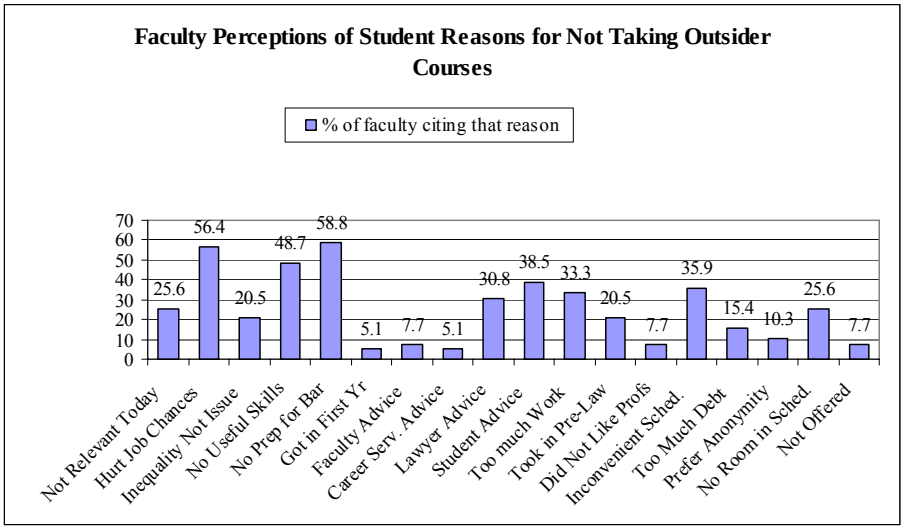
The top four reasons cited by faculty members for their perceptions of why students take outsider courses were similar to the students' top four reasons. The same top two reasons emerged in both the student and faculty surveys, namely that "the material is relevant to

today's world" and that "inequality remains a significant issue in the law school and in society and these courses provide them with tools to analyze that inequality." These two reasons tied for top spot in the faculty survey, at 79.5%. Next for faculty was the perception that students "wanted to take courses that were different from black letter law courses" (69.2%), followed by "they like the professors who teach these courses" (64.1%). Note, however, that "I liked the professor teaching this course" was well down the student list.

When predicting student reasons for not taking outsider courses, the faculty respondents perceived these as the top four reasons, in order:

1) students do not believe these courses will prepare them for the bar exam (58.8%);
2) students believe these courses will hurt their chances of obtaining the kind of articling position they would like (56.4%);
3) students do not believe these courses will provide them with useful legal skills (49.1%); and
4) students were advised by other students not to take these courses (38.5%).

Figure 6



Any comparisons between the existing student and faculty data should be made with caution, particularly in light of the fact that we only collected aggregate "negative reasons" from the group of 212 students who said that they would not take any outsider courses. Nevertheless, it

is interesting to note, for example, that faculty members perceive students as dissuading other students from taking outsider courses (38.5%). They also perceive lawyers as dissuading students from taking these courses (30.8%). However, only 10.5% of students cited other students' advice as a reason for not taking these courses.[141] Similarly, only 8.5% of students said that lawyers had advised them not to take these courses.

In their qualitative responses, a number of faculty members noted their perception of a general decline in enrollment in feminist courses, but the observations were not consistent. More generally, faculty members' qualitative responses tended to be much shorter than those provided by students and necessarily more speculative. For that reason, and because we believe that the students' own explanations are the heart of the qualitative survey, we have omitted detailed discussion of faculty members' qualitative responses and have focused on the qualitative data gathered from students.

C. *Explaining Student Choices: The Literature and Our Qualitative Data*

This section considers possible reasons for the enrollment levels described in Section III.B,[142] building on the quantitative data discussed in the previous section. At a purely practical level, of course, students have a limited number of credits to fill. The sheer number of outsider courses at some schools means that any individual student would be hard pressed to pick up all the available options. This proliferation may itself produce a reduction in enrollment in each individual course—there are only so many students to go around. There are also other instructor-based reasons for course choice, such as the reputation or

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[141] This number should be read in light of students' qualitative comments discussed below, in which a number of them cite pressure from the profession (sometimes in subtle ways) as significant in dissuading them from taking outsider courses.

[142] The three sections in this Part capture concerns and issues that may create disincentives to student enrollment in outsider perspectives courses particularly. However, outsider courses are also subject to the same pressures and conflicts that attach to any program which combines so-called "core" and "perspective" or seminar type courses. These include scheduling problems, lack of courses in the language of choice (mentioned by the students in the French common law program at Ottawa), and difficulty fitting outsider courses into a highly structured program (mentioned particularly by students at Manitoba and University of New Brunswick).

teaching style of a particular faculty member. However, these practical considerations provide only a piece of the puzzle.

A review of the literature on law school pedagogy offers several explanations for student decision making about elective courses. Combined with a number of practical considerations, these reasons informed our design of the questionnaire for this study. We have divided these reasons into three sets. The first set of reasons directly engages course content and perceptions about the relevance of that content in the legal job market. For instance, students may fear that certain courses disadvantage them in the job market or in bar admission courses. The second set of reasons engages the idea that there are aspects of outsider courses that some students particularly dislike. Some students may believe that they and their opinions are not wanted. They may reject the political premise of some of these courses or they may prefer certain forms of evaluation, workloads, and teaching methods. The third set of reasons considers the possibility that there are ways in which outsider courses are not meeting the needs of some students who *are* interested in critical outsider responses to law. They may prefer to take courses in which the ostensibly black letter subject matter is taught from a feminist, anti racist, or other critical perspective—an option which will only be available at some schools in some years. It is also possible that students find the content of courses we have described as outsider to be stale and unresponsive to the critical politics they already espouse. In the three sections that follow, we discuss some of the literature and the students' qualitative responses[143] to our questionnaire in relation to each of the three sets of reasons we have identified.

1. Pressure from the Profession: Perception and Reality

Student course choice is almost certainly influenced by the professional legal community. This influence might be understood either in terms of the extent to which outsider courses are (de)valued by members of the profession,[144] or more practically in terms of the

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[143] The students' responses are excerpted in verbatim format (in italics), with any identifying information, including the name of the law school, omitted to preserve anonymity.

[144] Rochette & Pue, *supra* note 2. See also Michael J. Saks, "Is There a Growing Gap Among Law, Law Practice, and Legal Scholarship?: A Systematic Comparison of Law Review Articles One Generation Apart" (1996) 30 Suffolk U.L. Rev. 353 at 354-55, citing a recent article by Judge Harry Edwards, a Black judge, expressing concern about what he sees as the infiltration of

preparation they are presumed to offer (or not) for formal bar admission requirements such as examinations.[145] Another important component of this influence is the extent to which students respond to *perceived* external pressure, versus the extent to which such pressure actually exists.

In some cases, attacks on outsider pedagogy, accompanied by a call for law schools to go "back to basics," have been overt.[146] For example, in 1999, the Law Society of British Columbia proposed to create pre-bar admission courses and perhaps a pre-articling examination, thus eliminating the assumption that graduating from law school provides basic legal knowledge and competence:

> [M]any law school graduates do not have the breadth and depth of knowledge that they did years ago. This is a result of the increasing number of law students who decide not to select those law school courses that might help them in the practice of law.[147]

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other disciplines into legal scholarship and the resulting shift away from doctrinal legal scholarship that this dilution brings. In particular, Judge Edwards is dubious about the relevance and importance of "law and" studies. See Harry T. Edwards, "The Growing Disjunction Between Legal Education and the Legal Profession" (1992) 91 Mich. L. Rev. 34 at 51-52. See also a response to Edwards: Derrick Bell & Erin Edmonds, "Students as Teachers; Teachers as Learners" (1993) 91 Mich. L. Rev. 2025 at 2027. Bell and Edmonds, who are proponents of critical race theory and pedagogy, suggest that such approaches are part of the solution, rather than the problems facing the legal profession.

[145] For instance, the Law Society of Upper Canada requires that two sets of examinations be passed, *inter alia*, before admission to the bar. The Barrister Examination assesses competencies in the following categories: ethical and professional responsibility, knowledge of the law (public law, criminal procedure, family law and civil litigation), and establishing and maintaining the barrister-client relationship. The Solicitor Examination assesses competencies in the following categories: ethical and professional responsibility, knowledge of the law (real estate, business law, wills, trusts, and estate administration and planning), and establishing and maintaining the solicitor-client relationship. See The Law Society of Upper Canada, *Licensing Examinations*, online: The Law Society of Upper Canada <http://rc.lsuc.on.ca/jsp/licensingprocess/exams.jsp>.

[146] In the American context, see John S. Elson, "Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia" (1997) 64 Tenn. L. Rev. 1135; William R. Trail & William D. Underwood, "The Decline of Professional Legal Training and a Proposal for its Revitalization in Professional Law Schools" (1996) 48 Baylor L. Rev. 201. See also Edwards and Bell & Edmonds, *supra* note 144.

[147] M.F. Fitzgerald, "Memorandum to the Credentials Committee" (Vancouver: Law Society of British Columbia, 28 October 1998), cited in Rochette & Pue, *supra* note 2 at 172. In 2002, the Law Society of BC issued a report which recommended, *inter alia*:

> Recommendation #2: The Law Society should inform law school students that it is fundamental to their success in the Admission Program that they be knowledgeable in the core areas of substantive law, practice and procedure on which they will be examined but on which they may receive little or no instruction during the Admission Program.

This serious indictment of young lawyers' skills appeared to rest on little more than anecdotal evidence.[148] Examining course selection decisions of UBC students in the 1990s, Rochette and Pue found that the perception that a majority of students took a host of "law and" or "perspectives" courses was mistaken. A substantial majority of students continued to opt for doctrinal or so-called "core" courses.[149] Indeed, Rochette and Pue were moved to conclude that "[d]isturbingly, our findings suggest Canadian law students have overwhelmingly internalized a narrow conception of legal learning, to the detriment of their professional lives and citizenship roles."[150]

Members of the profession may suspect that law students take too many of these courses, and students may avoid them because of that negative view. A number of students in our study made comments along these lines:

> What I have found, is that when you talk to lawyers they mock social justice courses as classes for bleeding hearts. Some have said much of what a lawyer does is contrary to values of social justice. They talk of the … "paid mercenary." I would take social justice courses, but I am not convinced that I would not be discriminated against by law firms when comparing me to other candidates with business law backgrounds from this law school and other law schools.
>
> I would say the largest factor pushing students away from the above type courses is the idea that those courses do not get jobs.
>
> [Les étudiants et étudiantes] accordent plus d'importance à des cours qui trait de la matière qui sera sur les examens de barreau ou qui sont plus attrayants pour des employeurs potentiels.
>
> [Students] are told that they should take courses that appeal to the firms, courses that aren't "fluff," course selection has become career oriented instead of for the sake of education, which is a shame.

> Recommendation #3: The Law Society should, at this time, neither require nor recommend individual law school courses.

Law Society of British Columbia, *Admission Program Reform*: *Final Report* (28 June 2002).

[148] Rochette & Pue, *ibid*.

[149] Rochette and Pue found that, despite nearly unlimited choice in 2nd and 3rd year, most students at UBC elected to take over 60% of their courses as "core" (*i.e*., doctrinal) courses and that the majority only took one "perspective" (*i.e*., "social context" or critical perspectives on law) course. *Ibid*. at 184.

[150] *Ibid*. at 189; for confirmatory anecdotal evidence from the American experience, see Reginald Leamon Robinson, "Teaching from the Margins: Race as a Pedagogical Sub-Text" (1997) 19 W. New Eng. L. Rev. 151 at 169, which describes how students complained vociferously about the method and substance of his teaching in Real Property, raising their concerns about passing the bar exam, and how these students were supported by the institution in their critiques.

> I have personally experienced the "eyebrow raising" of Bay Street firms when they see courses such as "family law" and "children and the law" on your transcript… .
>
> "Special interest" law is important but students don't recognize that or the value of those classes when they are constantly bombarded by the big firm sales pitch. If big firms were more vocal at law schools about the advantages of the less traditional courses in practice more students would also take them.

This does not necessarily hold true across all outsider courses and all regions. Consistent with our finding that some students are advised by lawyers to take Aboriginal law courses, students noted the following:

> I also think that … it is seen as a disadvantage to be labelled as a feminist, a socialist, or anyone interested in minority rights (besides aboriginal law but only because of its bearing on oil and gas interests).
>
> I'm from BC and [Aboriginal law] is highly relevant to practice and life there.

One student reported being encouraged by her future employers to take whatever she was interested in, but stated, "at this point I am trying to take courses in areas I have no knowledge of (ie. Business) … If I felt less pressure I would be more inclined to enrol in social justice classes." A slightly different response recognizes another concern about the job market: "frankly, there just aren't enough jobs out there in social justice for those of us who want them."And finally, some students may perceive pressure coming from sources other than firms:

> It is more that faculty and [career services] people say you must take other courses [*sic*] (eg for the bar exam) leaving no room for these.
>
> I have been told that the law firms want us to take practical courses. I have been told that social justice courses such as the above would not appeal to most law firms.

This pressure from the profession (real or perceived) is bolstered by contemporary political philosophies of neo-liberalism and economic rationalism. Writing in the Australian context, Margaret Thornton describes the "corporatization" of law schools and the result for outsider courses:

> The marginality of subjects such as 'Women and the Law,' 'Aborigines and the Law,' 'Sexuality and the Law,' 'Law and Literature,' and so on, is secured through their 'add-on' status. The message of optionality affirms the peripheral status of all critical and theoretical subjects to the calculus of the technical, which are dispensable at times of economic rationalization.[151]

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[151] Margaret Thornton, "Technocentrism in the Law School: Why the Gender & Colour of Law Remains the Same" (1998) 36 Osgoode Hall L.J. 369 at 393. See also Margaret Thornton, "The Impact of Changes in Higher Education Policy" (Paper presented to the Australian Lawyers

Picking up on this theme in the Canadian context, Susan B. Boyd has suggested that trends toward corporatization "are exacerbated as students worry about their debt loads—and thus their marketability—in the early stages of law school. As consumers paying a considerable premium for their education, they may seek credentials and courses with marketability rather than intellectual challenge in mind."[152] An additional argument that law school "has a destructive impact on public interest aspirations of law students" is linked to but not fully captured by questions about debt load.[153]

Although there is no comprehensive study of Canadian law students and their debt loads,[154] several studies in the Canadian context have addressed questions of accessibility and career choice amongst law students.[155] While these studies do not directly address the question of

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and Social Change Conference, Plenary 3: The Legal Profession, 24 September 2004), online: Australian National University College of Law <http://law.anu.edu.au/alsc/ThorntonPlenary.pdf>, where Thornton discusses the impact of privatization of higher education in Australia, including increased student focus on "credentialism" and "branding," and an increased need for students to do paid work during law school. Thornton argues that these trends have had an impact on students' willingness and opportunities to think critically, and that the voices of outsiders have been particularly affected.

[152] Boyd, "Corporatism," *supra* note 53 at 291. For an article exploring the impact of law school surveys on corporatism and the educational environment more broadly, see Margot Young, "Making and Breaking Rank: Some Thoughts on Recent Canadian Law School Surveys" (2001) 20 Windsor Y.B. Access Just. 311. Young critiques the surveys' failure to take diversity into account, or conversely, their focus "on diversity as an indicator of what is wrong with legal education" (at 325).

[153] Osborne, *supra* note 20 at 551.

[154] For a substantial report on the situation in the United States, see Lewis A. Kornhauser & Richard L Revesz, "Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt" (1995) 70 N.Y.U.L. Rev. 829 which concludes, *inter alia*, that loan forgiveness programs had a significant impact on the career choice of Latino and African American women even if data for the rest of the population in law schools was more equivocal.

[155] The main impetus for these studies was the imposition of higher tuition fees in law schools across the country in the early 2000s. The reports tend to discuss the possibility that debt load is "steering" career selection, without addressing the question of course choice. However, they may be a good starting place for inquiry. See *e.g.* Alan J.C. King, Wendy K. Warren & Sharon R. Miklas, "Study of Accessibility to Ontario Law Schools" (Social Program Evaluation Group, Queen's University, October 2004), online: Council of Canadian Law Deans <http://www.ccld-cdfdc.ca/StudyofAccessibility-Report.pdf> at 30, 36, reporting that "most students attempt to choose courses that relate to the area of law in which they hope to practise; consequently, course selection is likely to mirror a student's preferred area of specialization," and "[i]nterest in those specializations and articling/practice settings that provide the most employment opportunities and the highest salaries (*i.e.*, positions with mid- to large-sized private firms) tends to increase as a student nears graduation"; Shirley Neuman, "Provost's Study of Accessibility and Career Choices in the Faculty of Law" (Paper presented to the Committee on Academic Policy and Programs of the Governing Council of the University of Toronto, 24 February 2003), online: University of Toronto

course selection, they provide an important empirical backdrop. Students in our study reported a chain of causation which began at debt, led to anxiety about obtaining a (high paying) job, and resulted in the rejection of certain course options which they felt would not be desirable to larger law firms:

> I think that the cost of attending law school, creating a significant debt load for individuals who do not have other support[,] tends to encourage people to enter into areas of practice where there is more money to be made.
>
> I do not want to practice business law, but with over $80,000 of student debt, not securing a well paying job could mean bankruptcy for me. As such … I am compelled to take courses like Business Association and Trusts as opposed to Mental Health Law or Racism and the Law… .
>
> A high debt load coming out of school has funnelled me into a track where I believe I have almost no other choice but to work at a large law firm upon graduation. At this point, I am interested in many subjects and it is too bad that there is not room in my schedule to explore these interests further.
>
> I would like to think that many students choose to take courses based on interest and relevance to the world. Unfortunately because of the realities of student debt, I think there is a systemic bias against these courses. We all want to take courses that will get us jobs. It's sad.

The frequent mention of student debt and its impact on students' course choices is interesting and worthy of further investigation. This is particularly true in light of the tentative results from our quantitative study indicating that students with high levels of debt indicated more of an interest in taking outsider courses than students with lower or no debt.[156]

Boards and Committees <http://www.utoronto.ca/govcncl/bac/details/ap/2002-03/apa20030227-01i.pdf>, criticizing studies which have relied on self reporting from third year law students about changes in career plans, and finding, at 24, that "[a]lthough tuitions have risen much more rapidly at the University of Toronto Faculty of Law than at other Ontario schools, the data show no statistically significant differences in trends in choices of articling positions or practice circumstances when comparing the University of Toronto to other schools"; Jim Vanstone, "Legal Education Access Project Report, Submitted to the Dean of Law at the University of Victoria" (February 2005), online: University of Victoria Faculty of Law <http://www.law.uvic.ca/News/documents/LEAP_Report_Final.pdf> at 61 where the authors note that "[w]hen current UVic law students were asked about the impact of debt loads on career choice, 47% of them indicated that they either agreed or agreed strongly with the statement, "As a result of my debt load, my career intentions have changed during law school"; and Faculty of Law, University of British Columbia, "Legal Education Access Project Report, Faculty of Law, University of British Columbia" (February 2005), online: UBC Faculty of Law <http://www.law.ubc.ca/files/pdf/news/2005/feb/LeapReport.pdf> at 77-78 which addresses career choice, although not course selection.

[156] *Supra*, text accompanying notes 153 to 155.

2. Outsider Courses Include Experiences Students Do Not Want

In addition to concerns about their professional futures, students examine the extent to which any course meets their own interests and preferences. Courses offering critical perspectives on law might challenge their assumptions about the neutrality of law in uncomfortable ways.[157] As Susan B. Boyd writes,

> Many students expect that a law course will teach them 'the rules' and so they experience considerable frustration when they find—especially in an area of law such as family law that is riddled with discretion and indeterminacy—that the boundaries between law and society, law and morality, law and politics and law and other disciplines are not always discernible."[158]

Boyd suggests that this discomfort contributes to the development of a "backlash" against outsider pedagogy and critique:

> When law students encounter courses that attempt to introduce social context into as many areas as possible and that challenge the notion of law as a 'self-referential system' that is capable of producing 'right answers,' they feel that they are being asked to do work that is extraneous to the task of learning law as a system of rules. They have a sense that law as a discipline is being inappropriately expanded. Arguably, there is a growing sense of entitlement to resist such expansions—a backlash of sorts.[159]

A related discussion has arisen around the complex reasons why men generally do not enrol in gender and law or women and the law courses.[160] One explanation looks at the ways in which male heterosexual privilege "renders the terms of the privilege invisible,"[161] such that men do not consider themselves gendered beings. Such classes

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[157] In her critique of race and essentialism in feminist legal theory, Angela Harris also raises the issue of comfort, arguing that critical perspectives, particularly ones that challenge notions of essentialism, are unsettling. See Harris, *supra* note 21 at 606.

[158] Boyd, "Backlash," *supra* note 65 at 142.

[159] *Ibid*.

[160] For a thoughtful reflection by a man who enrolled in a gender and law seminar and found himself answering hostile or, at least, quizzical inquiries from both men and women about his reasons for taking the course, see Corey Rayburn, "Why are YOU taking Gender & the Law? Deconstructing the Norms that Keep Men out of the Law School's 'Pink Ghetto'" (2003) 14 Hastings Women's L.J. 71. See also K.C. Worden, "Overshooting the Target: A Feminist Deconstruction of Legal Education" (1985), 34 Am. U. L. Rev. 1141 at 1150, where the author argues that men sitting through a feminist legal theory component of a mandatory theory course had the opportunity to experience "otherness."

[161] Michael S. Kimmel, "Issues for Men in the 1990s," (1992) 46 U. Miami L. Rev. 671 at 675, cited in Rayburn, *ibid*. at 76.

are, therefore, irrelevant to them. Alternatively, men who are feminists or sympathetic to feminist thought may be discouraged from enrolling in such classes because of concerns expressed by women about the presence of men in the class, for example, that women's voices will be ignored or diminished "because they are seen as self-interested, and only validated by a man arguing against his privilege."[162]

Students might also have fears about enrolling in outsider courses when they are not members of the particular outsider group because they do not want their motivations and beliefs to be questioned. They may fear being held up as examples of the problem, or being made responsible for the subordination under discussion. Corey Rayburn, writing while a student at a US law school, concludes that, despite these challenges, "[f]inding ways to include gender-conscious men into the resistance must be a high-priority to stave off the renewed backlash against the movement."[163] We should ask, however, whether the dynamics that Rayburn and others refer to carry through in outsider courses other than those looking at gender/feminism. At many Canadian schools, for instance, non-Aboriginal students far outnumber Aboriginal students in courses on Aboriginal rights.[164] In sexuality and the law classes, the sexual orientation of many members of the class might be ambiguous or undeclared. Given the relatively low levels of racial diversity in many Canadian law schools, it would be unsafe to assume that most or all students in race related courses are students of colour. The enrollment of non-outsiders in outsider courses is not always governed by the same set of concerns.

Some students may perceive outsider courses as places where only certain opinions can be expressed. They fear being challenged, in much the same way that students attempting to foreground outsider perspectives in more mainstream classes are themselves challenged. A number of student responses to our questionnaire revealed the belief

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[162] Rayburn, *ibid*. at 81.

[163] *Ibid*. at 88; see also Osborne, *supra* note 20 at 565-66 who argues against a women-only law school and for a public interest and women-oriented law school that welcomes men in order to recognize "dedication to using a law degree to improve the lives of women" and to "create an unlikely ally."

[164] The evidence for this claim is (a) anecdotal and (b) based on enrollment numbers in these courses when compared to the number of Aboriginal students enrolled in any given school.

that these courses are simply best avoided by those who do not share a particular set of views:

> A lot of students who are more "conservative" than the rest simply wouldn't dream of taking the courses mentioned in this survey because they dread the (expected) one-sided rhetoric that is irrelevant to their own lives.
>
> First year perspectives was the most condescending, intolerant experience of my life and turned me off most "social justice" classes, assuming they would be more of the same.
>
> [B]ased on my experience [I] do not have any interest in being in any class with the types of people who tend to take those sort of classes. I am not in the business of being belittled by holier than thou NDP supporters… .
>
> Several of the courses discussed in this survey are not inclusive at my law school. If you don't think the same as the prof and the majority of the students, you are not going to feel welcome in the classroom. There is no room for discussion about different sides in many of these courses. I think that is the main reason why so many people may not take the courses, which is a shame because I feel that these courses can be extremely valuable when taught in the proper way.

In addition to the possibility that they represent a form of backlash, these responses may also reflect the tendency of some students to focus heavily on the identity of the instructor when deciding whether to take a course. Sometimes, this focus does not relate to systemic concerns, although it may still have an impact on enrollment. Other times, decisions which appear to be motivated by issues of personal compatibility do have systemic components. For example, it is possible that women, people of colour, people with disabilities, out lesbians or gay men are seen as more threatening in the classroom, or as biased.

Related in interesting ways to the discussion above about the unsettling nature of outsider pedagogy, outsider students may be reluctant to take courses from non-outsider faculty members offering perspectives outside their own personal identities and experiences. This reflects the reality that the faculties at Canadian law schools remain predominantly white, male, straight, able, Judaeo-Christian, and non-Aboriginal. It should be noted that none of the student responses directly referenced this point, although a few did question the wisdom of trying to incorporate an outsider perspective into legal study at all.[165] Nonetheless, as American professor Judy Isaksen writes in the context of integrating Critical Race Theory into composition studies, students and faculty may be critical of a white professor who is teaching a course

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[165] This point is addressed in the next section.

that asks questions about what it means to be black.[166] Here the importance of incorporating perspectives otherwise outside the law raises squarely the question of what interpretations of outsider perspectives may get privileged in the process.

The relationship between the position of the instructor, course content, and enrollment raises profoundly complicated questions, which students may approach very differently depending on their own views and identity. Although some students report having "no interest" in outsider subject areas, students who self-identify as conservative sometimes believe they will be singled out for silencing in such courses:

> The professors who teach these courses are too strong in their advocacy of their views. They play favorites in class and respond negatively when students question their conclusions … I am personally interested in taking these courses and learning about these perspectives, but because I am not 100% in support of their theories and positions, I am afraid I will be negatively treated and I will be forced to accept the Prof's opinion or do poorly in the course.

Conversely, the same courses may be perceived or experienced as essentialist by students whose experiences are informed by intersecting identities.[167] Such students may be reluctant to take courses that center the perspective of the marginalized, such as women, but may be seen still to posit a dominant viewpoint[168] or to "homogenize people of color."[169] In this respect, outsider courses may not be seen as offering "multiple consciousness as jurisprudential method"[170] or realistic models

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[166] See Isaksen's defence of her course offerings in Judy L. Isaksen, "From Critical Race Theory to Composition Studies: Pedagogy and Theory Building" (2000) 24 Legal Stud. F. 695 at 705-08; an interesting potential argument is raised by Nancy Levit "Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics" (2001) U. Kan. L. Rev. 775 at 804 which argues that sex segregation, and Levit's domestication hypothesis, may be reflected in, *inter alia*, the teaching of particular subjects by women.

[167] See discussion in Harris, *supra* note 21 at 601-05.

[168] See for example Harris' discussion of the work of Catharine MacKinnon & Robin West, *ibid*. at 603. See also Kline's similar discussion of essentialism in the Canadian academy in Marlee Kline, "Race, Racism and Feminist Legal Theory" (1989) 12 Harv. Women's L. J. 115.

[169] Randall L. Kennedy, "Racial Critiques of Academia" (1989) 102 Harv. L. Rev. 1745 at 1816.

[170] Matsuda, *supra* note 1 at 9, cited in Harris, *supra* note 21 at 615; Iijima, *supra* note 54 at 778-80. Multiple consciousness is a complex concept, requiring understandings of the place, function and skills of traditional legal analysis while simultaneously valuing and recognizing experience, emotion and oppression. For a critique of Matsuda's racial distinctiveness approach, see Kennedy, *ibid*. at 1778-87.

for responding to the diversity of issues and harms faced by outsiders.[171] Students who are "in the intersections" may be disappointed with rigid categorizations of outsider groups reflected in course titles and reading lists. Finally, students might question the value of an outsider course taught by an instructor not of the outsider group—or they might, if not outsiders themselves, find such a course a safer bet.

Another source of dislike of outsider courses is the method of evaluation. Arguably, methods other than the traditional final examination—such as research papers, active participation in classroom discussion, role playing, or weekly brief commentaries—require more work.[172] Smaller class sizes mean that a student's lack of preparation is obvious. Inability to rely on a final exam forces students to work more during the semester. Notwithstanding the stressful nature of final examinations, many students may prefer a brief period of "cramming" to an entire semester of sustained thought and discussion. The choice of evaluation and teaching method, as we have discussed earlier in this article, is closely linked to the core principles of teaching outsider perspectives. Certainly, some students reported shying away from outsider perspective courses for one or more of these reasons:[173]

> The main reason that I do not take seminar courses is because they require essays—I do not enjoy writing essays and my marks in essays are lower than exams, making the courses not attractive to take.
>
> I do find that I do better on exam courses then paper courses so I have picked courses that way.

However, other students reported that grading is less harsh but workloads are heavier in outsider perspective courses, with ambiguous

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[171] For example, for a critique of anti-racism and gay and lesbian discourses from a race-sexuality perspective, see Darren Lenard Hutchinson, "Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics" (1999) 47 Buff. L. Rev. 1 at 5 and generally; see also Osborne, *supra* note 20 at 567-68, where she argues that her concept of a public interest and women oriented law school would "…expand upon the intersectional identity of women that is necessary for an effective discussion about women and the law."

[172] It is important to recognize that the analysis of more and less work probably depends heavily on a student's preferences, strengths, and existing skills. For discussion of methods of evaluation and instruction in outsider courses see Section II.F, above. Outsider pedagogy raises the profile for alternative methods and challenges a common criticism of outsider faculty for using "non-legal methods" above.

[173] However, as discussed in the quantitative section above, the method of evaluation in outsider courses (*i.e.*, not a 100% final exam) was cited by a number of students as reasons *in favour* of taking these courses.

effects on a law school transcript. Students disagree about the impression this leaves with anyone evaluating a transcript:

> One thing about these courses that is GOOD for students is that one's marks tend to be higher which looks good on the transcript—but these courses are more time consuming than black letter courses.
>
> From some of the answer choices, you may be hypothesizing that students view social justice courses as "hard." In contrast, typical social justice courses are "paper courses" and are viewed as less rigourous and less work than the other mainline "exam" courses.

Linked to the method of evaluation, a number of students complained that outsider courses were not fairly credited for the work involved:

> These courses are undervalued by the administration. They receive 1.5 credits rather than 2.0, so a semester schedule of many of these would lead to the necessity of taking 5 courses a semester rather than 4, leading to way more work and stress.
>
> Many of these courses are 2 rather than 3 credits creating a high course load.

Finally, for a number of students the aversion to outsider perspective courses is ideological. These students expressed overt hostility to what they perceive to be the underlying purpose of outsider pedagogy:

> Parsing rights among "identifiable" groups is an offensive concept entirely in conflict with the supposed goal of equality propounded by these course's champions.
>
> This study seems to presuppose a dichotomy in the curriculum. The non-perspectives courses are "bad," "conservative," "old" and the perspectives courses are "good," "liberal," and "new." In my personal experience, substantive law, such as Property and Constitutional can be taught by progressive-minded professors who can provide contrasting examples of critical theory in addition to the core curriculum. It serves no purpose—no purpose—to train lawyers in how to analyze a problem along PoMo lines while they are trained as lawyers—not instead in separate class rooms with self-congratulatory handshakes. To create an exclusive club of progressive curriculum for our daughters and sons is just as obnoxious as the exclusive club of the law schools of our fathers.
>
> I have been putting up with this kind of left wing crap my entire adult life. I am sick and tired of being told that my demographic group is privileged, omnipotent, malevolent, and uniquely subject to collective guilt which would not be tolerated if applied to any other demographic group.

3. Outsider Courses Do Not Offer the Experiences that Students Are Seeking

The final set of reasons considers the possibility that students are indifferent, for a variety of reasons, to the things that outsider courses offer. Such indifference could be caused by a particular student's dedicated focus on a narrow substantive area. Likewise, if many outsider or non-outsider faculty members already incorporate

insights, readings, and a strong focus on the experience of outsiders into their "core" or "doctrinal" courses, students in such courses may feel satisfied that they have engaged in this "non-traditional" thinking about law already. It also may be that law faculties or individual professors are focusing on this mainstreaming process, rather than promoting specialized outsider courses.

> [A]t law school I have chosen courses taught by feminists and/or socialists … . The topic may be Admin law—a clear and critical analysis of the state comes through—at least for those of us who are listening.

Although the seven collaborators on this research project are all very interested in the fate of outsider perspectives courses, and see their value, few of us are actually teaching these courses. Instead, most of us teach courses that focus on an area of the law (for example, tax policy, constitutional law, or family law) in which we attempt to incorporate outsider perspectives into the curriculum in an integral way. This is not to suggest that we believe that "mainstreaming" is complete, but to note, perhaps, that the number of outsider scholars has increased and that the influence of outsider pedagogy is felt in other parts of the curriculum.

A number of students suggested that much outsider material would be more useful if integrated into "core" courses:

> While I support these type of "law and" courses, I think the best strategy is to integrate these perspectives into "black letter law" courses so these issues are seen as fundamental to the theory and practice of law, and not as periphery courses that do not need to be taken seriously. It should not just be "social justice" minded students who learn about these issues, but all students.
>
> In my opinion, creating limited enrollment perspectives courses undermines the study of these perspectives by insulating them from the rest of the curriculum. Students can "opt out" of critical perspectives, and professors, too, by creating little islands of perspective courses.
>
> I'm glad [my school] offers a wide variety of curriculum. As is likely evident, much of it isn't my cup of tea. However, I believe that this should not preclude us for [sic] being exposed to these lines of thought. More integration of some of these thoughts (where applicable, rather than crammed in to fit) would be great in introductory classes.

A final and intriguing possibility for why more students do not enrol in these courses is the extent to which the courses capture issues students find relevant. Admittedly, a number of students report "no interest" in such courses, period.[174] But for the remaining students,

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[174] Of those students who provided qualitative answers about their reasons for not taking outsider courses, 37.5% stated that they had "no interest" in such courses, or words to that effect.

many of whom (according to our results) still do not enrol in outsider courses, it may be that course outlines and descriptions seem stale and unresponsive to contemporary concerns. For instance, do courses on feminism reference current issues such as the digital revolution, the environment (climate change), the limits of religious "tolerance," and globalization? What seemed fresh and exciting in the late-1980s or early-1990s when many of these courses were developed can no longer be described as cutting-edge—despite the fact that many of our earlier preoccupations have not been resolved.

> I'm actually surprised that this questionnaire sees no connection between technology and social justice.
>
> One area I notice[d] wasn't mentioned was the environment … the environment is a very important issue that I personally place ahead of many other issues (i.e. women in society, etc). The environment is one that cannot be reversed and changed once damage[d]—women's position can be.

The teaching methods and evaluation requirements might also seem detached in ways that students find frustrating:

> The main problems that I find with the aforementioned courses is [sic] that they appear to be more of undergraduate type courses rather than law school courses. In essence, you don't learn how to be a lawyer (not that other courses really do a great job anyway). If these courses had a clinical aspect to them; i.e: we can actually HELP or start programs, instead of just discussing the topic and writing a paper, then the courses would be much more attractive.

Some students consider such courses ineffective and even counter-productive in the law school setting:

> I do not plan to take most of these courses because I do not believe the current legal education system is well equipped to make a difference in protecting the interests of the vulnerable groups. Vulnerable groups are disproportionately under-represented in student bodies. Most of the courses focus too much on the text book rather than the engagement of in-depth discussions or real projects.

Some students judge that the material is not presented in a sophisticated enough manner:

> [O]f the above courses that are offered at my school, many have the reputation of dealing with the material in a sub-par manner (or at least in a manner that may not do the issues justice in the opinion of students with appropriate academic backgrounds ...). I have taken the opportunity to speak with many students who both had liberal arts backgrounds and have taken numerous courses in topics that had to do with 'critical legal studies.' Many of these students, who have taken courses similar to those listed above, have indicated that the professors … use outdated materials, or that they are unnecessarily dumbing-down some of the relevant materials to get their own viewpoints across to the class … . As an individual with a relatively strong liberal arts background, I am afraid of signing up for some of these courses only to find myself bored with the way the material is covered.

> Law School is not well placed to teach these areas, so the courses simply are not very good. Many of these issues are not legal but social or philosophical and law profs do not necessarily have the ability to teach these very well. The first year smattering of these issues was much weaker than my undergrad and own personal knowledge and experience.

Some students are unclear about the purpose of outsider courses:

> My law school has never actually told me why the social justice courses are offered and why I should take them … I know why there are business law courses and advocacy courses (because they directly prepare us for being a practicing lawyer) but why the social justice courses … I don't disagree with them, but what is the institution's intention in providing them? And why should students participate in them? Without having an idea behind their purpose … , it is too easy for me to ignore them in favour of classes offering more practical knowledge and skills. All the social justice profs should get together and make a presentation to all first year law students about each social justice course offered, what they're about, and what we'd gain by taking them.

Finally, some students believe that many of the courses are overly specialized and narrow:

> I am not interested in taking an entire course on each of these issues. Why not offer a course that addresses the critical perspectives of each? Graduates will have a broader perspective but not have to take a course in each area in order to learn about it.

> I believe that a lot of the courses questioned about particular minority group[s] seem to be too focussed of [sic] a topic, and thus people who would generally be interested in them, decline, because they are so limited. I really don't see how an entire course can be taught on lesbian and gay issues, and I suspect that people will either not take it because they don't want to be identified in that group, or because they are gay and don't want to be type-cast because they are taking this course.

> I felt some of the courses were too specialised. I would have preferred a course that grouped two or three related topics into one course so that I could at least have an introduction to the subject matter. I would have been more likely to take one course dealing with say: poverty, social justice and for example, racial inequality and the law than I would have been to take a separate course on each of these topics.

These kinds of responses suggest that changing content and form—but not the central political focus or outsider orientation—of a course could attract a different and wider set of students to outsider courses. The suggestion is not, necessarily, that we should design courses to match student interests and concerns, but rather that we should consider those interests in updating our courses, choosing materials, and creating course descriptions.

V. LISTENING TO THE QUAIL'S CALL

Working on this project has strengthened our opinion that outsider pedagogy is a valuable and indeed critical part of legal education. Our view was confirmed by the cogent arguments found in

our literature review, the increasing number of outsider courses offered generally, as well as the positive responses of many students and faculty to our surveys. The fact that over three quarters of the 1,164 student respondents said that they had taken or would take at least one outsider course demonstrates a significant demand for these courses.

Our quantitative analysis of the student survey data revealed some results that we might have expected. In conclusion, we underline four. First, generally speaking, students who might be considered "outsider students" were more likely to express an interest in outsider courses. This fit with our sense, supported by the literature, that outsider courses are important because they treat outsiders and outsider perspectives as a valuable part of legal education.

Second, students who identified as coming from a lower income background were more likely to be interested in outsider courses, including poverty and the law courses, than students who identified as coming from a middle or higher income background. Similarly, women were more likely than men to be interested in outsider courses generally, as well as feminism and the law specifically. These results aligned with our suspicion that students who have experienced some form of outsider status might be more interested in courses that spoke in some way to that experience.

Third, it was also not surprising that students' political views have a statistically significant bearing on their plans to take outsider courses. This result aligned with our hypothesis, and with students' qualitative responses, that outsider courses generally are perceived to align with perspectives on the political left and with an understanding of law that is ideologically different from mainstream, doctrinal approaches.

Fourth, students who did not plan to take an outsider course cited as their primary rationale a perceived lack of any useful legal skills taught in such courses. While expected, this answer should provide instructors with a reminder of the importance of including in their teaching some explicit discussion of what constitutes a legal skill: not merely the drafting of a contract, but also the means of thinking deeply about difficult legal problems. Indeed, we suggest that outsider courses might be expected to provide students with a very good sense of how law works "on the ground" and how they might analytically respond to the real implications of law for people. Further on this point, many of the students who did plan to take outsider courses ranked very highly the rationale that those courses would provide them with useful legal skills.

On the other hand, our quantitative results yielded some surprises, and areas that would benefit from further research. In conclusion, we highlight two results. First, our study indicated that high levels of student debt did not deter students from planning to take outsider courses; in fact, students with high debt loads were more likely than debt-free or low-debt students to be interested in outsider courses. This result seems surprising given the literature and anecdotal evidence that student debt results in pressure on students to seek "Bay Street" or corporate law jobs at the expense of social justice aspirations and careers. Further study on the relationship between student debt and course and career choices would be useful. It is possible, for example, that there are important differences between students with high debt loads and students from low income backgrounds. For example, some students with high debt loads may come from middle or higher income families who will repay those debts when the students graduate, thereby relieving some of the pressure of the debt load. It is also possible that high debt load does not affect course choices, but does affect career choice. (We note that much of the discussion about student debt loads appears to focus on job choice, not on law school course choice, and in this project we were focused on latter.) It may also be the case that many students with high debt loads are also members of outsider groups, and that those experiences may overshadow the effect of debt load on their decisions to take law school courses. (Or, those students may have chosen *even more* outsider courses in the absence of the debt than they will/do with the high debt.) Regardless, more information about this finding is necessary before inferences about its meaning can be drawn with confidence. A second and somewhat surprising finding from our quantitative study was that, generally speaking, the most common reason given for students' plans to take outsider courses was that the material was seen to be relevant to today's world. We might have expected more specific, pragmatic reasons to dominate, but we are heartened by the idea that many students see feminism, poverty law, and Aboriginal law to be relevant to their world.

In light of the findings from our enrollment and survey data, the quail's call—the alarm bell—of this article is complicated and comes in several forms. First, we were discouraged by the decline in students taking feminist courses since 2000, particularly given the general increase in the number of female faculty and students at our seven institutions. However, we recognize that it may be too early to make a generalized statement of this nature and that our findings may only

reflect a short-term variation. Nevertheless, this study, including some of the students' qualitative responses, should raise some questions for instructors about the content of the courses we offer—are the ideas and perspectives we present reflective of the work undertaken in other disciplines, and are they relevant to the lives of our students? What can we do to make them more so?

Second, we noticed with concern the relative absence of outsider courses focused on issues other than feminism or Aboriginal law. Perhaps it is not surprising that most of the anecdotal concerns about enrollment decline we have heard have been expressed around the feminist courses in particular, but in many ways these courses appear to have been relatively well preserved at our schools and are regularly offered. By contrast, courses like disability and the law, racism and the law, and sexuality and the law are rarely offered at many of our institutions. As outsider instructors, we need to look critically at why we work so hard to preserve the feminist courses at our institutions while ignoring the relative absence of other important outsider courses.

Third, the students' qualitative responses underscore the value of resisting real or perceived pressure from the profession to limit such courses in the name of "getting back to basics" and promoting a view of law schools that is solely concerned with preparing students for the practice of law, while minimizing the role of broader critical inquiry in legal education. Perhaps this pressure is reflected in our result that students' stated interest in outsider courses was highest among first year students and lowest among those in third year. This real or perceived devaluation during the course of legal studies should also be explored at our own institutions. Factors such as the relationship of outsider courses to other parts of the curriculum, placement in the course schedule, and credit weight accorded to outsider courses send important, if implicit, messages to students about the value law faculties themselves place on the material taught in these courses.

The aim of this article was to highlight the importance of outsider pedagogy in Canadian legal education, to begin a conversation about the perceived decline in student enrollment in some such courses, and to offer some possible explanations for student choice in this area. Although it is difficult to test with any degree of accuracy the complex processes at play, in this exploratory study we sought to provide a forum for students and faculty to enrich this debate by sharing their views and experiences of taking or not taking and teaching outsider courses. It is no doubt true that our study did not capture all of the experiences and

perspectives shared by the students and faculty we surveyed. Furthermore, as a prescriptive matter, we suspect that there is no "one size fits all" approach to outsider courses and perspectives that will work at all law schools. For example, the number and range of outsider courses that may be optimal at the larger law schools will not likely be possible at the smaller law schools. Therefore, a range of models for incorporating outsider perspectives may be developed. We are heartened that this study, in draft form, has already generated interest and debate within Canadian law faculties and we hope that it will continue to provide a basis for fostering dialogue about the current and future place of outsider courses in Canadian law schools.