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How Much “Law” in Legal Studies? Approaches to Teaching Legal Research and Doctrinal Analysis in a Legal Studies Program

Vincent Kazmierski*

Abstract

This article addresses the teaching of legal research methods and doctrinal analysis within a legal studies program. I argue that learning about legal research and doctrinal analysis is an important element of legal education outside professional law schools. I start by considering the ongoing debate concerning the role of legal education both inside and outside professional law schools. I then describe the way in which the research methods courses offered by the Department of Law and Legal Studies at Carleton University attempt to reconcile the tension between “law” and legal studies. In particular, I focus on how the second-year research methods course introduces students to “traditional” legal research and doctrinal analysis within a legal studies context by deploying a number of pedagogical strategies. In so doing, the course provides students with an important foundation that allows them to embrace the multiple roles of legal education outside professional law schools.

Keywords: teaching, pedagogy, doctrinal, undergraduate, theory

Résumé

Cet article examine le rôle de l'enseignement des méthodes de recherche juridique et de l'analyse des doctrines au sein d'un programme d'études juridiques. Je soutiens que la recherche juridique et l'analyse doctrinale représentent des éléments importants d'une formation juridique à l'extérieur des écoles professionnelles de droit. Premièrement, j'examine le débat en cours sur le rôle de l'éducation juridique à l'intérieur et à l'extérieur des écoles professionnelles de droit. Par la suite, je démontre comment les cours de recherche juridique offerts par le Département d'études juridiques de l'Université Carleton tentent de concilier la tension entre le « droit » et les études juridiques. En particulier, j'examine comment le cours de deuxième année sur les méthodes de recherche juridique présente aux élèves la recherche juridique « traditionnelle » ainsi que l'analyse doctrinale dans le cadre d'études juridiques en adoptant certaines stratégies pédagogiques. Le cours fournit ainsi une base importante permettant aux élèves de profiter

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des rôles multiples de l'éducation juridique à l'extérieur des écoles professionnelles de droit.

Mots clés : enseignement, pédagogie, doctrinal, premier cycle, théorie

I. Introduction

This article discusses both why and how learning about legal research and doctrinal analysis can be an important element of legal education outside professional law schools. I note at the outset that I am not advocating that legal studies programs should aspire to teach students “how to think like lawyers.” Rather, I am contending that it is legitimate and meaningful for a legal studies program to teach students to understand the technical methodologies of law and to engage them in “how lawyers (and judges and legislative drafters) think” or at least how they claim to think. It is my hope that this article will spur further academic discussion of the different approaches to teaching that may be engaged within legal studies programs.

I start by considering how the ongoing debate concerning the role of legal education both inside and outside professional law schools has framed the role of undergraduate legal studies programs and, in turn, has generated a particularly negative conception of the role of doctrinal analysis within those programs in some quarters. I argue that this negative conception is impoverished, as it fails to acknowledge that there can be multiple roles for legal studies programs. I identify two roles in particular, namely, creating an environment for critical interdisciplinary engagement with the law and the legal, and “demystifying the law” by educating students outside professional law schools about the law and how it works.

In the final section of the article, I describe the way in which the undergraduate research methods courses offered by the Department of Law and Legal Studies at Carleton University attempt to reconcile the tension between “law” and legal studies. In particular, I focus on how the second-year research methods course, which I teach together with my colleague Professor Brettel Dawson, introduces students to legal research and doctrinal analysis within a legal studies context by deploying a number of pedagogical strategies. In so doing, the course provides an important foundation for the department and its students to embrace the dual roles of education about law outside professional law schools.

II. Context—Legal Education Inside and Outside Professional Law Schools

My argument is made within the broader context of the ongoing debate about the role and structure of legal education both inside and outside professional law schools. In Canada, that debate was actively initiated in 1983 by the *Law and Learning* report issued by the Social Sciences and Humanities Research Council of Canada (SSHRC) Consultative Group on Research and Education in Law

(commonly known as the *Arthurs Report*).¹ The *Arthurs Report* decried the overwhelming focus on doctrinal analysis in teaching and research in Canadian law schools at the time. It issued a clarion call for greater focus on interdisciplinary research, employing social scientific research methods. In so doing, the *Arthurs Report* held out the possibility that programs engaged in teaching law outside professional law schools might provide a natural home for this type of research.

Twenty years later, in a dossier published in the *Canadian Journal of Law and Society*, professors Roderick Macdonald and Constance Backhouse both worried that not enough had changed in the professional law schools in the intervening two decades.² The professors in law schools, it seems, were still enthralled by doctrinal research and teaching. In 2006, in a further symposium on the *Arthurs Report* published in the *Osgoode Hall Law Journal*, Robert Gordon noted that "teaching doctrinal black-letter law . . . remains the dominant occupation of the law schools."³ While legal studies programs remained promising, they had not yet become as radically different from law schools as many would have hoped.⁴

It is worth pausing here to identify how legal studies programs have been imagined by the *Arthurs Report* and by many others both in Canada and in the United States.⁵ In my view, two major roles for non-professional legal studies programs have been identified. The first role is to create a space for critical, interdisciplinary engagement with law and the legal, not as an autonomous body of rules, claims, or knowledge, but as an integrated part of our larger political, social, economic, and cultural structures. The second role is to teach non-lawyers about the law—in other words, to demystify the law so as to allow students to participate more fully in the creation and critique of legal rules as part of their democratic engagement as citizens. Notably, the *Arthurs Report* specifically identified this general education function as one of the benefits of legal studies programs. In particular, the *Report* noted that teaching law in these programs

has many attractions. It relieves the subject of its professional training connotations, facilitates the integration of legal study and research with parallel activities in other disciplines, and recognizes that law ought to be understood by and subject to the critical scrutiny of as many citizens as possible.⁶

Notwithstanding the recognition of multiple roles for teaching about law outside law schools, the vision of undergraduate legal studies programs that is

¹ Social Sciences and Humanities Research Council of Canada, *Law and Learning/Le droit et le savoir: Report of the Consultative Group on Research and Education in Law* (Ottawa: SSHRC Council, 1983). [Hereafter: *Arthurs Report*]

² Roderick A Macdonald, "Still 'Law' and Still 'Learning'?/Quel 'droit' et quel 'savoir'?", *Canadian Journal of Law and Society* 18 (2003): 5–31; Constance Backhouse, "Revisiting the *Arthurs Report* Twenty Years Later," *Canadian Journal of Law and Society* 18 (2003): 33–44.

³ Robert Gordon, "The Law School, the Profession, and *Arthurs'* Humane Professionalism," *Osgoode Hall Law Journal* 44 (2006): 157.

⁴ Diana Majury, for instance, commented in her contribution to the *Canadian Journal of Law and Society* dossier: "Legal education outside law schools has not grown significantly in this time and I am not sure how different the perspective of those of us in legal studies programs is, at least for those of us trained in law . . ." Diana Majury, "Teaching is Part of Legal Education," *Canadian Journal of Law and Society* 18 (2003): 52. The most recent formal discussion on this general topic was held at the University of Alberta Faculty of Law Centenary Conference, "The Future of Law School," September 26–28, 2013.

⁵ See, for example, the authors identified in notes 7, 8, 10 and 11.

⁶ *Arthurs Report*, 158 (emphasis added).

often articulated in Canada and the United States is one that is cast in direct opposition to that of professional law schools. The dichotomy has been variously expressed in the following binary terms:

- Law schools “train” lawyers, while legal studies programs “educate” citizens⁷
- Law schools are “vocationalist,” while legal studies programs are “anti-vocationalist”⁸
- Law schools provide education *in* law, while legal studies programs provide education *about* law⁹
- Law schools transform students into “insiders,” while legal studies programs are for “outsiders”¹⁰

Within this dichotomy, a typical response to the role of teaching doctrinal analysis in a legal studies program is that there is no such role or, if there is one, that it should be minimized. Writing from a legal consciousness perspective, Professor Lesley Jacobs (then the director of York’s Law and Society Program) provided an eloquent articulation of this position, stating:

It follows that the principal teaching material in law and society programs in faculties of arts and sciences should be the meta-narratives of legal consciousness and the sites and situated contexts of race, class, gender, disability, and so on. Legal doctrine is the stuff of insiders. The extent to which legal doctrine as an interpretation of the scripts should be taught at all is merely to highlight the distinctive interpretations of scripts contained in the meta-narratives of legal consciousness. Teaching more legal doctrine would be in effect to adopt the pedagogical function of law schools to transform their students from outsiders to insiders.¹¹

There is much to be said for the role of legal studies programs in promoting meta-narratives that facilitate critical engagement with law. However, an approach that focuses on meta-narratives while minimizing the teaching of doctrinal analysis within non-professional law programs raises two significant concerns. First, this approach fails to appreciate that critical engagement with the law requires more than just a superficial understanding of its technical methodology. In my colleague Brettel Dawson’s words: “Anyone who wants to reliably and intelligently discuss this material must be able to locate it, update it, and know what kind of animal it is. Knowledge of this core of law material cannot be assumed or fudged by legal researchers/students.”¹²

⁷ Douglas J. Goodman and Susan S. Silbey, “Defending Liberal Education From the Law,” in *Law in the Liberal Arts*, ed. Austin Sarat (Ithaca: Cornell University Press, 2004), 17–40. See also, D. M. McRae, “The Law School and the University: A Law Course for Undergraduates,” *University of Toronto Law Journal* 21 (1971): 536.

⁸ Keith J. Bybee, “The Liberal Arts, Legal Scholarship, and the Democratic Critique of Judicial Power,” in Sarat, *Law in the Liberal Arts*, 42–43.

⁹ Peter D’Errico, Stephen Arons, and Janet Rifkin, “Humanistic Legal Studies at the University of Massachusetts at Amherst,” *Journal of Legal Education* 28 (1976–1977): 20.

¹⁰ Lesley A. Jacobs, “Legal Consciousness and Its Significance for Law and Society Teaching Outside Canadian Law Schools” *Canadian Journal of Law and Society* 18 (2003): 64.

¹¹ *Ibid.*, 65.

¹² T. Brettel Dawson, “Legal Research in a Social Science Setting: The Problem of Method,” *Dalhousie Law Journal* 4 (1992): 463.

Reading and studying cases (and other formal sources of law) remains an important key to understanding how formal legal rules are generated, shaped, and justified within a common law system. In her 1977 article outlining the structure and function of legal studies programs in the United States, Donna Arzt noted that, while legal studies professors may view the "case method" critically, "judicial decisions do serve a significant function in most legal studies courses."¹³ More recently, Austin Sarat provided one explanation for this phenomenon when he noted that judges sometimes provide a peek behind the judicial curtain and "openly display their own manipulation of legal language." He explained:

For the law teacher, these are precious moments. When the indeterminacy of legal language is thus exposed, students confront law as something more than a system of rules. They see it as a system of human choices and moral or political judgments shaped, constrained by, and constructed out of social institutions and practices.¹⁴

These "precious moments" can be multiplied by providing students with the analytical skills to appreciate the indeterminacy of legal language, even when judges (or lawyers, legislative drafters, or politicians) do not explicitly acknowledge it. In my view, this is best achieved by providing our students with a solid grounding in the methodology of legal research and doctrinal analysis within a critical legal studies framework. To go a step further, engaging law within, or as part of, an interdisciplinary framework requires a sufficient grounding in the discipline of law as a starting point.

The second concern with an approach that minimizes the role of doctrinal analysis is that such an approach risks ignoring the second role for teaching about law outside law school—namely, the role of allowing as many people as possible to understand the law and to thereby subject it to critical analysis. Several justifications for this second role have been advanced, but most focus on the fact that learning about the law prepares students to be better citizens. The first justification, and perhaps one of lesser importance, is that learning about how the law works allows students to appreciate the "importance" of law and legal institutions. The second is that learning about how the law works allows students to participate meaningfully in debates about particular laws or legal actions. The third justification is a variation on the second; it posits that learning about how the law works allows students to better position themselves in opposition to laws and legal institutions (or actors) that are unjust. The final justification is that learning about the law and legal process provides students with skills in critical analysis and moral reasoning.¹⁵ Each of these goals can be reinforced by ensuring that students develop legal research skills and a deeper understanding of the ways in which common law and legislative rules are crafted and justified by actors within the legal system.

¹³ Donna E. Arzt, "Too Important to Leave to the Lawyers': Undergraduate Legal Studies and Its Challenge to Professional Legal Education," *Nova Law Review* 13 (1988–1989): 142.

¹⁴ Austin Sarat, "Crossing Boundaries" in Sarat, *Law in the Liberal Arts*, 95.

¹⁵ Many authors identify a number of these justifications. See, for example, McRae, "The Law School and the University," 533–35; Arzt, "Too Important," 137; Bybee, "The Liberal Arts, Legal Scholarship, and the Democratic Critique of Judicial Power," in Sarat, *Law in the Liberal Arts*, 55–56; and Austin Sarat, "Situating Legal Scholarship in the Liberal Arts: An Introduction," in Sarat, *Law in the Liberal Arts*, 4–5.

In the third part of this article, I turn to a consideration of how the second-year research methods course that I teach with Professor Dawson at Carleton University endeavours to educate students about legal research and doctrinal analysis in a way that both captures how legal actors might engage in (or at least describe) these processes and also provides a foundation for a critical analysis of the processes themselves.

III. Reconciling “Law” with Legal Studies—Teaching Research Methods at Carleton University

Teaching students about approaches to research is always challenging. Students often resent the requirement to take courses focused on “methodology,” as opposed to substantive subjects, and many professors are reluctant to teach these courses. The task is perhaps even more challenging in interdisciplinary programs than it is in traditional disciplines due to the fact that the research methodologies applied, and viewed as legitimate, within interdisciplinary programs are often more diverse than those applied in traditional disciplines. At the same time, teaching students how to conduct research is at the heart of the academic project, and doing so presents an unparalleled opportunity to open their (and our) minds to a diversity of approaches to collecting information and producing new knowledge.

1) The Research Methods Requirements at Carleton’s Department of Law and Legal Studies

In recognition of the importance of providing students with a strong foundation in a wide range of research skills, the Department of Law and Legal Studies at Carleton University offers two stand-alone courses dedicated to teaching research methods (or approaches). The first course, Approaches in Legal Studies I, is offered in the second year and is required for students in both the general BA and the Honours BA programs. The course is designed to provide students with an appreciation of research involving legal sources within a legal studies context. It is described as follows:

LAWS 2908—Approaches in Legal Studies I

Introduction to interdisciplinary research and analysis in law and legal studies; finding and analyzing primary and secondary legal sources; introduction to the interrelationship between theory, practice and research. Students are strongly encouraged to take this course in the second year of their program.¹⁶

The second course, predictably named Approaches in Legal Studies II, is offered in the third year and, at this time, is required only for students in the Honours BA program. It is described as follows:

LAWS 3908—Approaches in Legal Studies II

¹⁶ Carleton University Undergraduate Calendar, 2013–2014: <http://calendar.carleton.ca/undergrad/courses/LAWS/>.

¹⁷ Ibid.

Advanced approaches to interdisciplinary research and analysis in law and legal studies. Emphasis on the important role of theory. Approaches considered will vary by section, and may include theoretical, quantitative, qualitative, literary, or historical approaches.¹⁷

LAWS 3908 is designed so that individual faculty members can take an issue area in which they are conducting research and use their own approach as a starting point for a discussion of several different approaches to considering the issue area within a legal studies context. While part of the mandate of LAWS 2908 is to provide students with an introduction to a number of approaches to research in legal studies, LAWS 3908 is meant to provide a more in-depth treatment of several of these approaches. It is also meant to divert students from the "curse of cases" that, according to Professor Macdonald, has reigned in law courses taught both outside law schools and within them.¹⁸ Indeed, my argument for the importance of teaching about legal research and doctrinal analysis is anchored in this broader approach, which also provides students with exposure to other methods of studying, analyzing, and understanding the meaning and roles of law and legal actors in a larger social, political, cultural, and economic context.

The approach taken at Carleton is just one example from a wide range of approaches taken in Canada to teaching research methods in undergraduate programs in legal studies or related fields.¹⁹ Some programs, for example, have only one required research methods course that is taught within the program.²⁰ Other programs require students to complete one research methods course among several that are taught by contributing departments.²¹ Still others do not require students to complete a stand-alone methods course as part of the degree, though they may offer optional research methods courses as part of the curriculum.²²

2) LAWS 2908—Approaches in Legal Studies I

The remainder of this article discusses the ways in which Professor Dawson and I have attempted to ensure that our second-year research course fits within the broader framework of our program (within the context of a second-year, large-lecture format).²³ In particular, I identify a number of the ways through which

¹⁸ Macdonald, "Still 'Law' and Still 'Learning,'" 8–9.

¹⁹ The University of Ontario Institute of Technology also requires students to complete two methods courses, including one course in legal research methods. See: https://shared.uoit.ca/shared/departments/registrar/current-students/documents/13-14_UOIT-Academic-Calendar-2013-2014_final_web.pdf (at 270–72). The Algoma University BA in Law and Justice also includes a course in legal research methods, but it is not a required course. See: http://www.algomau.ca/media/styleassets/pdf/academiccalendar2013/2013-14_academic_calendar_full.pdf#page=119 (at 120–125). In contrast, the University of Waterloo BA in Legal Studies requires completion of both a research methods course and a social statistics course, but not a legal research methods course. See: <http://ugradcalendar.uwaterloo.ca/page/ARTS-Four-Year-General-Legal-Studies>.

²⁰ See, for example, the Memorial University BA in Law and Society: <http://www.mun.ca/regoff/calendar/sectionNo=ARTS-2005#ARTS-4437>.

²¹ See, for example, the University of Calgary BA in Law and Society: <http://www.ucalgary.ca/pubs/calendar/current/arts-4-43-2.html>

²² See, for example the York University BA in Law and Society: http://www.yorku.ca/laps/sosc/laso/degree_options.html.

²³ In so doing, we have built on the strong foundation developed by Professor Dawson, who designed the first iteration of this course in 1988. See Dawson, "The Problem of Method," 445–72.

we have attempted to balance the importance of teaching students about legal research and doctrinal analysis with the need to avoid what Austin Sarat describes as “the challenge of preprofessionalism, of students who are already primed and eager to think like lawyers.”²⁴ Professor Dawson and I are also acutely aware of the way in which—to borrow the observation of our colleague Neil Sargent—the doctrinal tradition “colonizes the imagination of legal scholars.”²⁵

In order to navigate the admittedly slippery slope on which this project is situated, we have identified three things that the course should *not* do or become: (1) The course should not give students the mistaken impression that it will teach them how to think like lawyers (in other words, the course must be embedded within a broader legal studies framework); (2) The course should not give students the impression that the way that lawyers, judges, and legislative drafters describe “how they think” always reflects how they actually make decisions (the course must introduce students to critical theories of law and legal studies); and (3) The course should not end up privileging doctrinal analysis over other forms of inquiry about law and the legal (the course must provide students with examples of other forms of research approaches within legal studies).²⁶

Professor Dawson and I have described the learning objectives for our course as follows:

In essence, the goal of the course is to provide students with the skills necessary to identify viable research questions in the field of law and legal studies and to conduct research and critical analysis using these five categories of sources: secondary sources, cases (judicial decisions), legislation, government documents, and international sources.

In order to achieve these learning objectives while avoiding the pitfalls identified above, we have adopted a number of strategies and approaches. These include: a) structuring the course around a course theme; b) emphasizing the importance of defining an appropriate research question at the outset of the research process (and of the course); c) introducing the students to a variety of theoretical frameworks through which to approach the research question; d) providing the students

²⁴ Austin Sarat, “Crossing Boundaries: From Disciplinary Perspectives to an Integrated Conception of Legal Scholarship,” in Sarat, *Law in the Liberal Arts*, 90. In the Canadian context, D. M. McRae warned of the way in which the purposes of an undergraduate course in law would be undermined if it became “no more than a recruiting course for law school.” See McRae, “Law School and the University,” 537.

²⁵ Neil Sargent, “The Possibilities and Perils of Legal Studies” *Canadian Journal of Law and Society* 6 (1991): 4. Faculty members of the legal studies program at the University of Massachusetts at Amherst described the importance of separating the study of law from the “hidden curriculum of socialization into the profession...” See D’Errico, Arons, and Rifkin, “Humanistic Legal Studies,” 21.

²⁶ Professor Dawson described the pitfalls of such a course in pithier terms, stating: “In teaching research methods in legal studies, the aim must be to produce neither (positivist) legal scholars nor (legal) sociologists—and certainly not positivist legal sociologists!” Dawson, “The Problem of Method,” 451. D. M. McRae provided a similar, though less pithy, explanation, writing:

The task is not, as in the law school, to turn out skilled or at least reasonably competent legal craftsmen; rather it is to introduce and to provide insight into the rationale and techniques of a major social institution. Thus, for example, the close analysis of legal decisions associated with the case method of teaching may be useful in giving some ideas of the lawyer’s approach to legal problems and their solution, but it can hardly be justified as the sole method of instruction in an undergraduate law course.

McRae, “Law School and the University,” 540.

with firsthand accounts of how legal actors view their roles in the lawmaking process; and e) exposing the students to examples of different approaches to legal studies research that are engaged by members of our department.

a) Course Theme

The first strategy that we have employed is to design the course to follow a substantive theme. Thus, both lectures and tutorials, and all of the primary and secondary materials that the students are asked to find, analyze, and apply, are related to a specific issue. This allows us both to maintain coherence concerning the subject of research throughout the semester and to build a model of a research project in context rather than having the students learn research skills in isolation. The course theme for the current iteration of the course is “the role of the state in regulating marriage.” In particular, we have focused on the issue of same-sex marriage within our lectures and tutorials, although we rotate the focus of our assignments among issues related to same-sex marriage, the criminalization of polygamy, and the legal distinction between common law relationships and marriage in different semesters. I address the way in which the course theme is engaged throughout the course in more detail below.

b) Research Question

In order to ensure that our course does not devolve into one that teaches our students “how to think like lawyers,” we emphasize the importance of framing a research question within a legal studies context from the outset of the course. Having framed this question, we then proceed through the course to explore how different legal sources may help us to answer the question.

The general research question we use to frame our course asks: How have judicial decisions striking down the common law prohibition against same-sex marriage framed or influenced the changing attitudes of Canadian politicians and the broader public about same-sex marriage? This question allows us to consider the broader topic of the relationship between law and social change while also considering the broad array of legal sources we want to engage, which includes cases, legislation, parliamentary debates, government documents, and secondary sources. More specifically, by using this research question as a guide, we are able to consider the early cases upholding the common law definition of marriage, the appellate court decisions determining that the common law definition of marriage contravened the right to equality, the law reform reports recommending possible ways to address the legal recognition of same-sex relationships, the legal treatment afforded same-sex relationships in other jurisdictions, Canadian parliamentary debate about the *Civil Marriage Act*,²⁷ and changing social attitudes towards same-sex relationships.

c) Theoretical Frameworks

Another important component of our strategy for teaching about finding and analyzing legal sources rather than simply “how to think like lawyers” involves the

²⁷ *Civil Marriage Act*, SC 2005, c 33 (Can).

introduction of theory as a key component of the research process. In particular, we introduce students to the ways in which different theoretical frameworks and research methodologies may be applied to study the same issue or phenomenon. This is achieved primarily through the discussion of a number of secondary sources. For example, in lecture, I walk students through a Nicolas Bala article about changing trends in family law that preceded the introduction of the *Civil Marriage Act*.²⁸ The Bala article is presented as an example of a largely doctrinal analysis of existing judicial decisions, one that is based in a liberal legal theoretical framework.

In tutorials, students are then introduced to an article that critiques the consultation process leading up to the enactment of two important pieces of legislation: the *Modernization of Benefits and Obligations Act*²⁹ and the *Civil Marriage Act*.³⁰ The article, by Claire Young and Susan Boyd, provides a feminist critique of the movement towards same-sex marriage based on content analysis of contributions by individuals and advocacy groups to the parliamentary committee hearings concerning these two acts.³¹ In particular, Young and Boyd argue that the submissions to the committee hearings reflect how the debate operated to reinforce conservative and heteronormative discourses on marriage and family while “render[ing] invisible important feminist critiques of marriage, familial ideology and the domestication of lesbian and gay relationships.”³²

Finally, in their assignments, students are introduced to a third approach such as that taken by Nancy Nicol and Miriam Smith in their article, “Legal Struggles and Political Resistance: Same-Sex Marriage in Canada and the USA.”³³ Nicol and Smith consider the movement towards same-sex marriage from a legal consciousness theoretical framework, primarily by using interviews with individuals involved in the gay marriage movements in Canada and the United States. While acknowledging the role of litigation in the struggle over same-sex marriage, the authors focus “on the role of law not only as an instrument for the achievement of change, but also as a cultural and political resource for claims-making by same sex-couples.”³⁴ In this way, the cases become a backdrop for an analysis of how same-sex couples worked “with the law,” “before the law” and “against the law” to make claims about the legitimacy of their relationships. In the words of Nicol and Smith:

Building on the recent insights of scholars of “legal consciousness,” we show how same-sex couples in the USA and Canada create alternative forms of legality by getting married, even when it is not “legal” to do so in the eyes of the state, how same-sex couples deliberately challenge their exclusion from marriage by using civil disobedience, media strategies and religious

²⁸ Nicholas Bala, “Controversy Over Couples in Canada: The Evolution of Marriage and Other Adult Interdependent Relationships,” *Queen’s Law Journal* 29 (2003): 41–102.

²⁹ *Modernization of Benefits and Obligations Act*, SC 2000, c 12 (Can).

³⁰ *Civil Marriage Act*, SC 2005, c 33 (Can).

³¹ Claire Young and Susan Boyd, “Losing the Feminist Voice? Debates on the Legal Recognition of Same Sex Partnerships in Canada,” *Feminist Legal Studies* 14 (2006): 213–40.

³² *Ibid.*, 214.

³³ Nancy Nicol and Miriam Smith, “Legal Struggles and Political Resistance: Same-Sex Marriage in Canada and the USA,” *Sexualities* 11 (2008): 667–87.

³⁴ *Ibid.*, 668.

ceremonies to assert their right to marry, and how same-sex couples draw on the cultural power of law to make political claims about the equality and worth of their relationships.³⁵

These articles allow us to model for our students how the "legalization" of same-sex marriage was not simply about a change in the legal definition of marriage but also about significant policy choices, which were made within a broader social context and involved social movements and ongoing (albeit arguably marginalized) debates about the legitimacy of marriage itself. The articles also allow us to demonstrate how the "story" of the legalization of same-sex marriage can be studied, understood, or portrayed in different ways, depending on the methodological approach adopted (for example, doctrinal analysis of cases, content analysis of committee hearings, or qualitative interviews with individuals and legal actors) and on the theoretical framework within which the inquiry is undertaken (for example, legal liberalism, legal feminism, or legal consciousness). In short, introducing our students to three different approaches that can be used to consider the movement towards same-sex marriage allows us to illustrate that, while it is important to be able to determine how the common law definition of marriage was changed by the courts and to trace how, ultimately, a new statutory definition was created by the legislature, these formal changes provide only part of the story.

Our emphasis on theory as a foundation for critical engagement with the law extends to our treatment of each of the types of "sources" that we introduce to students in the course. Thus, when discussing the importance of judicial decisions in legal studies research, we go beyond the standard skills of identifying relevant facts, *ratio*, *orbiter* and dissent. To be sure, the importance of these skills is highlighted and they are developed and evaluated throughout the course. However, we also challenge students to account for the ways in which judges frame issues in order to advance particular agendas or arguments. For example, students are pointed to the ways in which the framing of same-sex cases differed in Canada and New Zealand.³⁶ Similarly, when examining the legislative process, students are encouraged to note the difference between the way in which the prime minister framed the introduction of Bill C-38, *The Civil Marriage Act*,³⁷ as a human rights issue that required a law recognizing same-sex marriages, and the way in which the leader of the opposition framed the issue as one that he claimed permitted other equally legitimate responses.³⁸

d) Interviews With Legal Actors

In addition to adopting what may be characterized as traditional academic strategies to achieve our pedagogical goals in this course, we have also adopted a few

³⁵ Ibid.

³⁶ We have found a lecture delivered by professor Marilyn Waring at the Auckland University of Technology to be particularly instructive for students in this regard. The lecture can be viewed online at: <http://www.aut.ac.nz/about-aut/old---do-not-link-to/news--and--information/lectures>.

³⁷ Bill C-38, *An Act Respecting Certain Aspects of Legal Capacity for Marriage for Civil Purposes*, 1st Sess, 38th Parl, 2005 (Received Royal Assent 20 July 2005).

³⁸ *House of Commons Debates*, 38th Parl, 1st Sess, No. 58 (16 February 2005) at 3574–3577 (Rt Hon Paul Martin) and 3578–3585 (Hon Stephen Harper).

less-traditional approaches. The first of these is to use taped interviews with legal actors in an effort to introduce students to the human face of legal actors. In particular, we conducted (and taped) interviews with a legislative drafter and two judges. The legal actors were asked to provide information about the process in which they engage in their respective roles drafting legislation and deciding cases. They were also asked a number of questions designed to illustrate how they conceive of their responsibilities and actions. We use excerpts of these interviews to let the students hear how the actors themselves view their roles in “making law” and what they think about throughout the decision-making process. These interviews highlight the fact that the rules that emanate from legal actors involve choices, which are the product of individuals with their own conceptions of their roles and actions.

e) Panels of Professors

A second less-traditional (but not entirely unusual) approach that we have adopted is to convene panels of professors in order to expose our students to the variety of research approaches engaged within the department. Thus, each semester, we host a panel of three or four professors from the department in one of the final three weeks of the term. Both the class and the professors review the same case. The professors are asked to provide brief introductions to their own research and then to discuss how they might engage the assigned case using their own methodology and theoretical framework. This is followed by a panel discussion contrasting and comparing the different research approaches and the ways in which they would engage the issues raised by the case (and potentially, though not necessarily, the case itself). The panel presentations and discussions allow us to reinforce the notion that particular legal issues, even particular legal sources, can be approached using a wide variety of theoretical frameworks and research methodologies. In addition, they allow us to showcase the diversity of frameworks and approaches that can be accessed by students through the faculty members in our department.

3) An Ongoing Project

It may come as no surprise to learn that our course, like many required research methods courses, is not universally loved by students. Thus, we continue to grapple with a number of issues in the course, many of which stem from some of the strategies that we have implemented to manage the large number (up to 240) of students that we teach each semester. I do not address those issues in this article. Other issues, however, arise directly from some of the pedagogical strategies that I have discussed in this article. I address a number of these issues briefly below.

a) Complaints About the Concept of a Course Theme

Some students state that they would prefer to have the freedom to research their own topics rather than be confined to subjects that fit within the course theme. Unfortunately, this type of freedom is not feasible with 240 students and, indeed, would probably not lead to a productive learning environment in light of the fact that many of the students who take the course arrive having completed only one or two other courses in legal studies. Thus, while we appreciate the independent spirit

evidenced by this complaint, we are unable to accommodate it within the course as currently structured.

b) Complaints About the Specific Course Theme Chosen

Some students complain about the specific course theme in our current iteration of the course. There are a number of aspects to this complaint. Some students state that they do not relate to the topic of marriage in general. Others suggest that "they aren't prejudiced but" do not enjoy spending an entire semester focusing on same-sex marriage. We view these complaints with some skepticism. First, it is unlikely that we could choose a course theme that would engage all of our students and still offer us the flexibility that our focus on the issue of state regulation of marriage has provided. For example, the broad topic of state regulation of marriage allows us to shift assignments between issues touching on criminal law (polygamy), family law (the legal distinctions between common law couples and married couples), and public law (the equality arguments associated with the same-sex marriage debate).

Second, the specific focus on the issue of the legalization of same-sex marriage in lectures and tutorials provides an excellent platform for tracing evolutions in the common law and legislation, while also tracking evolving attitudes of judges, legislators, civil servants, and individuals over time as reflected in judicial decisions, parliamentary debates, reports by government departments, agencies and civil society groups, and public opinion polls. In addition, as noted earlier, the literature in this area offers a wide range of theoretical frameworks and methodological approaches from which to draw. Thus, while some students may not "enjoy" spending a semester reading about the issue of same-sex marriage (for a variety of legitimate or illegitimate reasons), we are convinced that the choice of theme is pedagogically and strategically sound.

c) Complaints About the Workload

Finally, many students often complain that our course involves too much work. We have taken this complaint quite seriously, as we recognize that our course is very intensive. Students are required to complete some form of work product on an almost weekly basis. These work products include mini-assignments (either electronic quizzes or lecture preparation exercises) based on the readings and lectures, as well as workshop exercises in a number of tutorials. In addition, students submit two or three major assignments over the course of the semester. Part of the workload for this course is the result of our belief that it is imperative for students to complete work throughout the semester in order to model an ongoing research process. Nonetheless, we have recently reduced the number of major assignments from three to two per semester in an effort to make the workload more manageable for students.

In this section, I have presented a snapshot of our course and the pedagogical strategies we have employed. Our course, like our department more generally, continues to evolve. Just as importantly, future instructors may introduce different

visions for the course and may apply different strategies to achieve those visions. This diversity of visions and approaches is a reflection of the rich interdisciplinary spirit within the field of legal studies itself.

VI. Conclusion

While the *Arthurs Report* posited that the solution to the problem that it identified was to apply interdisciplinary approaches within the walls of the law school, my own prescription is to apply elements of the law school within the walls of the arts and social science faculties.³⁹ In particular, I argue that the teaching of legal research and doctrinal analysis has a meaningful role within a legal studies program.

As law societies exert greater pressure on professional law schools to focus their work on preparing students to become lawyers, the role of legal studies programs in offering an alternative path—an education, rather than simply training in law—takes on added importance. A clarion call for more (or even some) emphasis on legal research and doctrinal analysis in legal studies programs may, therefore, seem particularly ill timed. To be sure, teaching legal research and doctrinal analysis within a legal studies framework risks the colonizing effect of doctrinal approaches to law. However, in my view, this colonizing effect can be minimized through the deployment of pedagogical strategies such as those employed in the second-year research methods course taught in the Department of Law and Legal Studies at Carleton University. By deploying these and similar strategies, it is possible to provide students with a meaningful introduction to the ways in which legal actors think (or *say* they think) in order to establish both a foundation for understanding how law works (or claims to work) and a starting point for critically engaging with law and the legal in an interdisciplinary setting. In this way, we may continue to ensure a meaningful understanding of, and role for, law within legal studies.

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³⁹ *Arthurs Report*, 140. The *Arthurs Report* stated:

... [T]he scholarly enterprise of law can flourish neither divorced from the profession, nor in its close embrace, nor in hand-to-hand combat with it. Its best prospect for growth and development is therefore to take up a position within the law faculties as a distinct and separate endeavor, with its own goals, standards and basis of legitimacy. Only such a stance will at once stimulate energies, promote sensible interdisciplinary cooperation and provide a free and equal basis for exchange between scholars and practitioners.