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## **Playing Games with Law**

Suzanne Bouclin, Gillian Calder and Sharon Cowan

### **Abstract**

This collaborative work explores the experiences of three friends, in three law schools, who use the same non-textual pedagogical classroom exercise. A card game is played in which participants cannot speak or use other forms of verbal or written communication. One of its objectives is to allow students to learn in a performative way by doing and feeling instead of reading and interpreting. A second is to foster classroom conditions in which students experience social and legal rules as context-specific and expressed through interactions. A third is to invite students to recognise that these experiences are complicated by their individual commitments as well as broader and more entrenched group norms and practices. We reflect upon the challenges of teaching with this non-textual tool in law schools. We are optimistic that students are eager to confront and develop their own learning techniques. Teaching law through such alternative pedagogies, we have found, encourages students to approach legal questions with empathy and attention to ‘outsider’ lived experiences.

## **Playing Games with Law**

Suzanne Bouclin, Gillian Calder and Sharon Cowan<sup>1</sup>

### **Shuffling the Deck**

Traditional legal education may actually impair the ability to effectively solve complex problems, particularly those freighted with issues of personal values (Lerner, 2004, 644).<sup>2</sup>

Law is embodied and is organized around embodied concepts. ‘Everyday,’ ‘raw,’ or ‘lived’ law is performed through the body’s movements in social interactions; it is felt in ways that indicate fluid, competing, always emerging, and multiple selves (Grabham, Cooper, Krishnadas and Herman 2008, Holstein and Gubrium 2000, MacDonald 2003: 143-4, MacCormick 1994, Lassonde 2006). Our selves-in-process, rather than written texts, are the irreducible sites of law.

Feminist scholars have pointed to the troubled relationship between outsider voices and the dominant racist, classist and gendered conventions surrounding academic practice, including the valorisation of text over non-text (Lillis 1997, Feminist Geography Reading Group 2000, Adjin-Tettey et al. 2008, Calder and Cowan 2008). Feminists across disciplines have also critiqued the tendency to favour mind over body, reason over emotion,

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<sup>1</sup>We are grateful to the editors for their comments on our chapter, and appreciative to every audience in which we have tried to play the Card Game.

<sup>2</sup> We acknowledge with great sadness Alan Lerner’s recent untimely death. Alan was an enthusiastic and passionate participant in the ‘Beyond Text’ project, and his skills, humour and integrity will be much missed.

objectivity over subjectivity, because, as with many dichotomies, the ‘weaker’ term is associated with ‘femaleness’ rather than ‘maleness’ (Harding 1991, MacKinnon 1989, Shiva 1989). We argue that traditional legal pedagogy reinforces such tendencies; it does not aid us to confront how we embody performances of raced, classed, gendered, and othered selves. Rarely do we ask students (or colleagues) to step outside traditional learning techniques, to put their bodies into learning, or to attend to the power dynamics of embodying law. When we do, it is done with trepidation and often without the support of our colleagues or institutions.

With attention to these shortcomings in legal pedagogy, Suzanne, Gillian and Sharon have embraced a particular form of non-textual legal pedagogy – ‘the Card Game.’<sup>3</sup> In the fall of 2007, after training in the techniques of *Theatre of the Oppressed* with Victoria’s Puente Theatre, Gillian worked with the University of Victoria’s Faculty of Law to include a Forum Theatre session as part of its orientation curriculum (Calder 2009). It was anticipated that this non-conventional teaching in an orientation context would elicit a range of reactions from students. It was also assumed that some faculty would be apprehensive about such initiatives within a law school. It became clear that for students and faculty to feel comfortable with this approach, a broader range of performative pedagogies would also be required. Of these, the ‘Card Game’ - which is the centrepiece of this chapter - is now performed as part of the first day of classes for all first year students.

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<sup>3</sup>The Card Game is (sometimes loosely, sometimes quite explicitly) inspired by a game entitled Barnga (see <http://www.thiaga.com/barnga/>). Thank you to Lina de Guevara of Puente Theatre and Chris Downing of Victoria’s Multiracial Families Project for introducing us to this important pedagogical tool.

Gillian has since used the game with wider audiences. On seeing and feeling the richness of the game as participants, Suzanne and Sharon also decided to introduce it in their classes (in Quebec and Scotland respectively). This chapter focuses on using the Card Game in law classrooms. We have used it at four different schools, in common law and civil law jurisdictions, with undergraduate and graduate students. We have, however, also played the Card Game at academic conferences.

This chapter is intended for educators who are interested in thinking about how we teach and learn law, and suggests alternative methodologies for conveying law's multiple and often contradictory messages. First, we describe the Card Game, and where and to what ends we have used it. In so doing, we collaboratively reflect on our individual and collective experiences with the exercise. Second, we show the potential of non-textual exercises to foster classroom conditions in which students experience social and legal rules as context-specific. We have found that students come to realize that their experiences of legal rules are complicated by their own normative commitments – commitments that may not be reconcilable with broader and more entrenched group norms and practices. Third, we suggest that this pedagogy is feminist in form and in content. It challenges participants to reflect upon law's hegemonic tendencies (e.g. law's reinforcement of colonialism and imperialism) as well as law's irreducible pluralism. While traditional legal pedagogy often reduces law to authoritative texts, interpreted by authoritative decision makers, the Card Game allows students to see and feel the power of law in an embodied way. We conclude that the game can guide different and more meaningful empathic responses to law's regulatory power and effects. We hope to leave our readers with the sense that the game is a

‘performative utterance’ (Austin 1980: 57): that is, the game itself enacts embodied law rather than simply describing it.

Although the Card Game has clear rules and goals, it works best if participants are unaware of its ‘real’ objectives.<sup>4</sup> If you are a potential participant and do not want to have this experienced spoiled, stop reading and pick up this chapter after you play the game. Alternatively, if you are looking for a classroom exercise that is primarily non-textual and will allow students to confront their own assumptions about law, rules, oppression and, being ‘outsiders’ to law’s power then what follows is a brief explanation of what the Card Game entails. Appended to this article is a set of materials that describe the playing of the game in more detail, including questions to aid the debrief, and a set of rules that can be used if you want to try this exercise yourselves.

If you are absolutely sure that you want to know... the rules of the game are, briefly, as follows. The facilitator should set up the room so that it is a series of tables with four or five chairs at each table. The Card Game works best for a group of 20-25 people around five tables.<sup>5</sup> It also works well to have the room rearranged when using the Card Game from either the layout to which the students have become accustomed, or to the regular set up of the room. On each table there should be a set of rules (face down), a deck of cards (28 cards, ace through sevens only, the rest removed and discarded) and a number (the tables should be numbered one, two, three, four, five, etc.). When the students sit

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<sup>4</sup>As Suzanne’s experiences show, however, the Card Game can be so rich that even audiences who already know ‘the reveal’ learn about how they embody and re-embody law.

<sup>5</sup>Ideally there are at least three tables, but we have played the Card Game with as few as two and as many as six.

down they should be advised to put all their materials away so that only the rules, the cards and the number are on the table.

The facilitator then will tell all the participants that they are playing a game, one that may be familiar to some, but not to all. When the game begins, they will have five minutes to turn the rules over and learn them collectively. The facilitator will then tell them that ‘the big twist’ of this game is that when the five minutes expire, the rules will be taken from each table and the participants will no longer be able to communicate with verbal or written language. If they experience any conflict or confusion they will have to find some non-textual means for resolving the dispute. The goal of the game, they are reminded, is ‘to get to table five’ (or whatever is the highest numbered table).

The game then begins, and the players play a few hands without talking. Once the first round ends, the participants, following the rules, will either move up a table if they have won the most hands, move down a table if they have won the fewest, or stay put. Once the movement has settled, the students will then begin another round. What the players do not know is that although they are all playing the same game, each table has learned a slightly different set of rules – for example, at some tables Aces are high, at other tables Aces are low. This means that when they switch tables, or when someone new comes to join them, players at each table will have different understandings of the rules that should apply at that table. The more rounds that are played, and the more players that move, the more confusion there will be as to which set of rules are applicable to their table. Although some will realize what has taken place, others will not, and the intrigue of the game becomes how the students negotiate their confusion and conflict by non-verbal means.

## **Putting our Cards on the Table**

Gillian first played the game as part of an anti-racist workshop designed to offer insights into oppressive, colonialist, and culturally contingent assumptions and behaviours. Her experience was visceral, a lived moment of how law and the body are connected, and in particular the ways in which her privilege manifested itself in the choices she made in how to play. Feeling that the game was the perfect metaphor for law, she pioneered the game with law students. In her first endeavour in a law school class, she was amazed by students' honesty and self-reflection, and the ways in which the game offered them a theoretically rich introduction to law's contingent nature. She has used the game in three different contexts. Since 2007, it has been an optional exercise as part of the Legal Process curriculum in the University of Victoria's orientation program. It has also been played by upper-level (second and third year) law students in a seminar entitled 'Civil Liberties and the *Charter*' as part of a three hour session on race and the *Canadian Charter of Rights and Freedoms*. Gillian has also used the card game at two conferences. The first (facilitated with Suzanne) was at Carleton University in 2008. Building on the conference theme 'Pedagogical Encounters,' the game was sprung unexpectedly on the participants returning from a break. The second (facilitated with Sharon) was at a socio-legal feminist meeting in Barbados in 2010; for this conference, the card game was explicitly on the agenda.

Both Sharon and Suzanne have also been puzzled about law students' attachment to conventional textual ways of learning and a general reticence towards exercises and practices that de-centre the text. Locating those tendencies within a broader critique of disembodied legal pedagogy, Suzanne helped Gillian facilitate the Card Game in 2008. She realized immediately that this would be an invaluable teaching tool. She has,

consequently, played the game three years in a row at McGill University. She used the game in a seminar of undergraduate and graduate students during a class entitled ‘Where are Race, Gender and Class?’ The first attempt in 2008 went smoothly; students loved the exercise which yielded memorable and critical conversations on race, ethnicity, culture and law. In 2009, the reveal was inadvertently leaked when some students (six out of twenty) reviewed course materials before class shifting the dynamic between the students, the facilitator and the rules. In 2010, Suzanne furthered reflection on the game’s potential by delivering it in the same class twice. Used on the first day of class, it generated lines of enquiry into why McGill had a pedagogy course, on the relationship between learning styles, pedagogy and law, and in terms of what students expect (or should expect) from professors. When played again mid-semester, with a reconfigured class, new dynamics arose with respect to the reveal, and new allegiance strategies offered more ways to talk about law and its contingencies.

Encouraged by Gillian’s success, Sharon tried the game in 2008 with a group of 25 Scottish law students. She used the game in an optional upper-level seminar (third and fourth year students) entitled *Criminal Law* and has used it every year since. The game is played in the first class of the term to introduce questions about law, particularly criminal law. It is also a powerful ‘icebreaker’ for students who do not all know each other. It tends to prompt discussions on the ways similar behaviours are variously labelled ‘normal’, ‘unconventional’ or ‘criminal’, depending on context. In 2010, Sharon asked students to fill out a short, anonymous questionnaire about their experiences with the game, and to comment especially on its potential as a pedagogical tool for thinking about law. She also asked what embodied learning meant to students and what were some of the benefits and

drawbacks of using such exercises in legal education. In answering, students processed their immediate experiences of the game and some reflected on how they respond to different pedagogical practices in law. Usually one or two students knew about the game and had played it. None of her students, however, has ever exposed the ‘reveal’ to the rest of the class.

In each of these contexts, we have relied on similar questions in the debriefing discussions. We tend to begin by asking participants ‘easy’ questions, to share how the game made them feel, allowing them space to articulate that it makes them feel frustrated, angry, isolated or powerful. We then ask them directly about their negotiation strategies. The Card Game is revealed as a metaphor for law when students make connections between their strategies for winning (getting to a particular table) and the rules by which they abide (or transgress) in order to achieve that end. We sometimes ask students to juxtapose ‘correct’ rules with their ‘own’ rules. These questions usually provide insight into the ways in which we all work within and outside the law, but also reveal the importance of emotion and values to legal learning.

Every law student is unique. How students respond to the game is in part dependent upon their own levels of receptivity and what they believe is appropriate learning in a law faculty. In the next section, we discuss how the use of alternative teaching formats such as this game allows us to look afresh at something we take for granted: text-based, content-centred teaching rather than embodied, learning-centred pedagogy.

### **Play Begins**

As described above, participants are divided into groups and are asked to play a simple card game. Many experience the game as fun, an icebreaker and a novel

introduction to the substantive topics of the course or seminar. During the Card Game, participants are positioned in ways that invite identification with people from different social, economic and cultural backgrounds.<sup>6</sup> They gain insight into the dynamics of cross-cultural encounters where people (especially those from more ‘dominant’ groups) believe they share general norms and rules only to discover that one’s perception of those norms and rules is contingent upon their social and cultural location. The game also allows students to understand how individual subjective interpretations of rules differ and that there is usually more than one set of rules or customs in play in any interaction. It operates as a way for students to experience legal pluralism (the commingling of multiple normative spaces, sites and forms) without an explicit discussion of that concept.

Conflicts occur as participants move from group to group. They arise primarily because participants are not forewarned that each table is playing by different rules. They are heightened because spoken and written communication is prohibited. Consequently, these conflicts are expressed through the body – facial responses and gestures. Participants struggle to understand why others are not playing ‘correctly’ (according to the rules they know); they also (re)evaluate their own understanding of the rules. To this end, the game embodies the legal pluralist assumption that in any interaction there are multiple normative structures at play that may confirm one another, but they may also conflict and collide.

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<sup>6</sup>There are risks to the game. Educators should plan in advance for an accessible classroom given the obvious challenges faced by students with visual or mobility impairments, or who have learning difficulties. For some students, playing cards is not acceptable in their culture or religion because it is associated with gambling. Notwithstanding, the game can be adapted to suit most student audiences, and can prompt a rich discussion on how we approach issues of accessibility and diversity in all of our educational contexts.

Participants demonstrate, to varying degrees, the ability to appraise and adapt to these multiple normative structures during their interactions with other players. Ultimately they behave in ways that confirm or deny what they believe are their, what Nedelsky calls, ‘own laws,’ or the capacity to develop and sustain relationships that will further autonomy (Nedelsky 1989: 7). In short, each ‘plays games with law’ according to different rules but within a broader relational context that requires them to be able to reassess those rules in moments of interaction with others. Players learn that they must understand and reconcile these differences if they want to function effectively in their varying and often shifting socio-cultural groups.

### **Showing our Hands**

Legal pedagogues should pay attention to the ‘education of affect’ in the classroom and in scholarship (Nedelsky 1997). Each of us is concerned about how students respond to the game and what they think about alternative pedagogies. We have solicited student feedback in various ways but we note the impact of structural and contextual factors upon our findings. In British Columbia and Quebec, for instance, law is a graduate degree. In the United Kingdom it is a first degree. Canadian students tend to be older with more ‘lived’ experience than Scottish students who are, in the main, just out of high-school. Edinburgh law students are mainly white, middle class and from the U.K. Sharon’s classroom may, as a consequence, be less diverse than Gillian’s (with a strong indigenous contingent) or Suzanne’s (with many international students, at a bi-juridical, bi-lingual school, committed to legal pluralism). Suzanne’s students are upper-year or graduate level and have chosen to take a course explicitly about legal pedagogy. Sharon’s are trained in orthodox legal reasoning and problem-solving; evaluations at her school tend to be exam-

based and rote-learning is emphasized. Gillian's faculty is known for its innovative approach to legal learning. With these structural differences in mind, we discuss three main findings from using the exercise.

*(Resisting) Legal Power and Privilege*

Across our game experiences we have found that students emphasize how it enables them to examine the relationship between formal rule-governed behaviour (for example, actions that are regulated through legal sanctions) and informal rule-governed behaviour (for example social norms) and to ask new questions about social power. At McGill, this included students relating the ways in which racialized students and new Canadians experience discrimination in law faculties, and how these students' lived experiences are underrepresented in materials taught at law school.<sup>7</sup> Students specifically pointed out that within law schools' current configurations, these kinds of ('race conscious') pedagogies remain marginal and marginalized. The exercise worked here on multiple levels: on the one hand students found that the game highlighted law's fluidity and contingency, exposing the assumption that there is 'one correct rule' to be applied to every situation; on the other, the

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<sup>7</sup>The students whose views are cited in this paragraph identified, respectively, in the following ways: 'female of Asian heritage living in an Anglo-Saxan [sic] country, and thus as a member of the 'unprivileged' group, of adapting to those norms set by the privileged' (2009); 'a Muslim man and a new father' (2010); 'a male law student' (2010).

exercise pushed them to self-reflexively consider whether ‘passive’ acceptance of rules can be attributed to traditional legal education.<sup>8</sup>

When used in a seminar session focused specifically on the question of formal law’s utility in addressing systemic racism, unlike any other pedagogical tool that Gillian has used, the Card Game enables certain students to reflect on their class and race privilege. Used alongside text-based materials, the game invites explicit connections between negotiating difference and the embodied impacts of racism. For a predominately non-racialized group of students, this is an important set of reflections, shared openly and respectfully with their classmates who have more immediate experiences of being ‘other’ at law school.

Several participants accepted that ‘outsiders’ to any system or institution, including a law faculty, may have difficulty comprehending or obeying (dominant) rules, or adapting to life under those rules. When Canadian students are asked to draw parallels between the game and ‘real-life,’ they often raise issues of immigration, colonialism and imperialism, or suggest that moving tables reminds them of class privilege. Some talk about how the game reproduces their feelings on the first day of law school: ‘landing’ into a whole new world with special rules that seem obtuse and inaccessible; not knowing how to go about learning those rules and sensing that the rules are tied to privilege.

In questionnaires completed after having played the game, several Edinburgh students expressed that they wanted more openness to, and respect for, the rules and

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<sup>8</sup>By her own account, this student, who had given a trick over to another player, felt that she had ‘passively accepted a rule which [she] was sure was incorrect.’ She reflected further: ‘Could I even attribute such submissive behaviour as resonating with my identity as an Australian in a foreign territory?’

customs of those whose worldviews do not mirror those of the majority. Majority, to them, meant the ‘powerful’ law makers during the game rather than the numerical majority of those at their table who agreed about the rules. Others noted how sometimes one individual could dominate or ‘overthrow’ all the other players at his or her table. Students were constantly surprised by their own reactions to the game, amazed to find that they embodied more passive or more dominant ways of playing than expected. Some noted the importance of ‘speaking out’ against rule-breaking behaviour, while others came to see how people may passively acquiesce to externally-imposed rules. As one student put it: ‘Now I can understand why people in other countries do not object to laws or customs I do not understand.’ Several acknowledged that they attempted to impose in a new environment (at a new table) a set of rules that they have learned elsewhere (at another table) - one student said that next time they would ‘fight harder to persuade others of my rules.’

Some of the richest moments occurred when participants felt, saw, and learned that these externally imposed rules can be exposed, challenged, re-interpreted, and ultimately rejected when they do not meet the exigencies of ‘othered’ participants. While preliminary conversations often focus on the colonialism metaphor – the effect of outsider rules imposed on an existing table with its own rules – often the conversation is pushed to another level. For example, one UVic student recognised that a table’s rules might be problematic – i.e., bad environmental practice – shifting how we might experience a ‘dominant’ outsider coming in with new, ‘better’ rules. Working with student responses and motivating them to reflect on the relationship between the game and systems of law they have seen or studied, helps them to process power relationships between insiders and outsiders.

*(Unsettling) The Assumed Importance of Law as Rules*

The exercise is perhaps most deeply felt when we ask questions that prompt reflection on the relation between law and rules. These interrogations push students to explore their own assumptions about the relationship between what it means to learn, how to learn law, and, importantly, what they assume law to be. What seems especially clear is that law's contextuality and its contingency are felt more powerfully for being bodily experienced rather than conveyed through words on paper. To say, there is no 'right set of rules' for this game is not the same things as to 'feel' that to some students the rules are inaccessible, incomprehensible or arbitrary. Like any other law, the rules for the game are imagined, evaluated, given strength or dismissed by the people who practice, challenge or defer to them.

Students seem aware that they have internalized a desire for consistent rules and that this desire informs the way they play game – regardless of which table they play at. They are also acutely aware of the conflict and confusion that arises when rules are interpreted differently by different people. The game helps them reflect on the importance of expressing their views when trying to resolve disagreements; it also highlights the range of social mechanisms available for dealing with confusion and 'rule-breaking behaviour.' Finding appropriate ways to deal with rule-conflict becomes all the more significant when comparing those who seem to sit back and allow others to resolve the confusion with people who try to 'control' the game or particular players. One Edinburgh student applauded the exercise for foregrounding our eagerness to follow rules, and thereby the central role of legal rules in maintaining social cohesion. Another rejected the need for

rigid rules, suggesting that the game showed the law to be flexible, porous and ‘plastic,’ stating that ‘it can be difficult to stick to one set of rules when you experienced many different sets of rules.’ Others still felt that it is too complicated to establish one set of clear rules for everyone to follow. Indeed, one Edinburgh student despaired that ‘the world will never unite in its views and laws.’

The contingency of ‘the rules’ was perhaps most transparent in Suzanne’s 2009 seminar when a group of students discovered the ‘reveal’ in advance of the class. On one level, the ‘aha!’ moment – when students confront the reality that they are playing by different rules – was somewhat stifled. On another, students used their advantage and knowledge in ways that were surprising and offered much scope for critical reflection during debrief. One group of students took over table one for the entire game because they preferred to play cards together than to deal with conflict and competition. Another student ‘jumped the queue,’ going directly from table two to five and staying there throughout the game. On another level still, the reveal dynamic shifted as Suzanne was the one who was not ‘in’ on the game’s ‘twist.’ She only found out at the end of the exercise that some people had accessed the explanatory documents before class. It was momentarily destabilizing for her and in many ways simulated in her the very response she was trying to get from students.

The Card Game can therefore also be used to reflect on the importance of trust between rule-makers and participants, and the place of resistance. In one iteration of the game a participant was overtly resistant. At the start of each hand she would lay out her cards face-up for all to see and let others play her cards, while she sat back and watched, not playing as the others or the rules dictated. While some of the participants struggled

with the discomfort of what seemed like a challenge to the facilitators, for us this kind of response is a gift, allowing us to explore explicitly how much agency our students employ in their encounters with law. Why, within an exercise that was pushing boundaries of acceptable behaviour, do students not more frequently draw on pure active resistance as a strategy? It was not lost on us that there is a huge privilege in being able to withdraw from a card game with little to no consequence. The same cannot be of the ‘real’ legal system. This is perhaps most obvious in the comment from a Canadian student who suggested that the game is not analogous with law because the game ‘does not carry penalties for those who break the rules.’

#### *Alternative Pedagogies Matter*

Legal education should not focus ‘with laser-like singularity of purpose, on the students’ cognitive powers’ if the result is to exclude ‘their values and emotional systems’ (Lerner and Talati 2006: 97). Our experiences with the Card Game have reinforced our beliefs that unconventional forms of pedagogy are ethically meaningful in the legal classroom (Calder 2010, Lerner and Talati 2006). When students discuss the role these exercises should have in legal education, some welcomed such pedagogy (though often combined with traditional learning). One Edinburgh student stated that ‘alternate methods of teaching keep learning interesting and probably make it more effective.’ Another reinforced the value of any teaching that avoids the ‘tedious’ tendency of having students ‘just listening.’ Others see such exercises as having a ‘minor’ or ‘slight’ role (in an introductory, scene setting, team-building or ice-breaking capacity) either because they do not invite reflection of ‘complex legal ideas,’ according to one Edinburgh student, or because, they are simply ‘too much fun,’ according to a McGill student. Students

nonetheless appreciated how the exercise facilitates discussion and the opportunity to challenge their conceptions of self as law-students but also as people leading their everyday lives.

One of the effects of the Card Game is that it gets law students ‘out of their heads’ and ‘into their bodies.’ The main skills they have learned to value are those considered intellectual in the strictest sense. Consequently, knowledge that comes from experiential learning and embodied experience is lost or devalued. When asked what they consider ‘learning law in an embodied way’ to mean, few Edinburgh students understood the term. Nevertheless, their answers exhibited an awareness of, and openness to, learning law more ‘reflectively’, ‘comparatively’, ‘contextually’, ‘practically’, ‘fully’ or ‘conceptually.’ The Card Game, as a result, also invites students to feel ‘reflectively’, ‘conceptually’, etc. about law.

Students do not expect to use their bodies to learn law. While some participants have embraced the idea of using more physical, embodied and experiential learning techniques, it is clear that few students understand the importance of feeling in your body what it means to be a subject of law, within and outwith the classroom. A few Edinburgh students did highlight the importance of experiential learning – that they could better understand law not just through text but also by actually ‘experiencing and seeing it.’ Even though many of them were open about their feelings of discomfort in playing the game, particularly around moments of recognition of power imbalance and their own reactions to that, students did not translate this experience across to examine the power dynamics that they experience when actually learning law in the classroom or when they go out to practice law in the ‘real’ world. When taken alongside responses suggesting that the role of

such exercises in legal education is introductory or marginal, it seems that students who have been taught by Socratic method and mainly through text, are either not aware of, not open to, or judge as peripheral, alternative forms of teaching that try to shift the legal privileging of mind over body, or reason over emotion.

Many students struggle to accept formal law's inability to deal with issues of systemic racism, sexism, ableism and homophobia; teaching them about the unevenness of law's power is a complex task. It is also difficult to reach a generation of students whose technologically advanced styles of learning differ so greatly from those we were exposed to in the 1980s and 1990s. But it is the role of today's legal educator to cross unfamiliar terrain and find new and engaging ways to communicate with our students. If some of our students' responses indicate a lack of understanding or acceptance of alternative pedagogies, or the importance of non-textual methods of learning, we as law teachers have only ourselves to blame. Using the Card Game that is *in itself* a 'performative utterance' can help to move us towards a more transformative approach to legal learning.

It is challenging to teach students that law's intrusion into one's life can be messy and uncomfortable. Demonstrating that law's moments and sites of tension and discomfort require creativity, imagination and empathy is even more demanding. The most common downside to the game, as reported by students, was feeling confused and frustrated throughout the exercise. The inability to communicate orally requires that they find new or somewhat atrophied ways of expressing their bewilderment, their dissent, their outrage, or their desire for clarification. To some, this frustration led to apathy, submission and a sense that they had to 'go along with other people's rules.' Students in all three jurisdiction in which the game has been played have felt disappointment or inadequacy when they did

not understand what was going on or thought that they were ‘losing’ the game, or when they realised afterwards that the rules were different at each table. The Card Game is therefore a unique opportunity to experience discomfort in a (relatively!) safe classroom environment, and then learn from one’s own strategies and the strategies of others.

### **The Cards are Reshuffled, Ready for Another Hand...**

In truth, a session of Theatre of the Oppressed has no end, because everything which happens in it must extend into life. Theatre shall have no end! Theatre of the Oppressed is located precisely on the frontier between fiction and reality – and the border must be crossed. If the show starts in fiction, its objective is to become integrated into reality, into life. (Boal 2002: 276)

Law is ‘beyond text.’ It is the messy stuff of human existence. It inherently involves the exercise of power. The Card Game brings these features of law into the foreground as players become aware of their expectation of (and desire for) fundamental rules and principles that can settle all disputes. When participants experience the incompatibility of conflicting rules and norms, they are better positioned to feel, and consequently to understand, that to avoid oppression, law’s authoritative power must be mediated through dialogue, negotiation and empathy.

Notwithstanding the Card Game’s initial reliance on textual ‘rules’ as part of an approach to pedagogy that pushes students to experience the power of law using experiential, non-textual learning, the Card Game is an excellent tool. It also provides an opportunity to remind ourselves, as Lerner and Talati (2006) write, how infrequently we bring to the surface questions of the value and emotional systems of our students. The game

allows for an engaging way to think differently about law, but it does not work for everyone, thus illustrating a critical point: neither does law when instantiated in rigid rules.

Creating space within the exercise for self-reflection and criticism of the tool itself opens up opportunities for even more enlightenment. Ensuring space within the debrief for reflection on the Card Game as legal pedagogy also reinforces the complex and continual interaction and negotiation of power, participation, communication and compassion. Our shared experiences have showed that many students appreciate the opportunity to come to law, and legal education, through embodied experience rather than text. The Card Game de-centres text. In the process, it offers participants the chance to approach key questions of power, control and decision-making in a more open, empathic and sensitive way.

These empirical assessments of classroom experiences with unorthodox non-textual performances are part of an ongoing conversation about the practice of embodied legal pedagogy. Our understanding of embodied legal practices is in turn grounded in the theoretical heritage of feminist theories, post- and anti-colonial theory, and critical race theory. These frameworks help us dismantle the myth that learning law is fundamentally about learning texts. We believe that what the Card Game shows is how law engages our full range of perceptual, sensory and imaginative human experiences. It helps us and our students think about how law is experienced intersensorily. Consequently, the game helps us get at how different bodies 'live and feel through' law (Goodrich 1990: 259).

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