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Decentering Law through Public Legal Education

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Abstract

Public legal education (PLE) has received renewed attention in the context of deregulation and recent cuts to publicly funded legal assistance in the UK. However, while PLE practices can support access to justice and supplement provision, they also risk placing the burden of responsibility for coping with legal problems on those most in need of support. In this paper we will argue this tension plays on a false dichotomy between education and advice, one that we suggest arises partly as a consequence of the discourse of legal need, in which law can come to seem like the best or the only way of framing social relations. However PLE works an important *boundary of law*: the division between who can know, speak about and access the law, and who cannot. As such, we argue that it can critically *decenter* the law and expose law's political contingency.

Key words

Public legal education; access to justice; law and the political

Resumen

Si bien la práctica de la Educación Jurídica Pública (EJP) puede ayudar a acceder a la justicia y complementar sus servicios, también presenta el riesgo de cargar a los necesitados de ayuda con la responsabilidad de lidiar con los problemas legales. En este artículo, argumentaremos que esa tensión se alimenta de una falsa dicotomía entre educación y asistencia, dicotomía que, en nuestra opinión, surge en parte como consecuencia del discurso de la necesidad jurídica, en el cual el derecho viene a presentarse como la mejor o la única manera de enmarcar las relaciones sociales. Sin embargo, la EJP desempeña un papel importante en un *límite de la legalidad*: el que existe entre los que conocen, tratan y acceden al derecho, y aquellos que no. Así pues, argumentamos que puede *descentralizar* de forma crítica el derecho y exponer la contingencia política del derecho.

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Palabras clave

Educación jurídica pública; acceso a la justicia; derecho y política

Oñati Socio-legal Series, v. 7, n. 7 (2017), 1557-1580
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Table of contents

1. Introduction

Lack of knowledge about laws and legal systems is pervasive: when it comes to knowledge of the law, most people, most of the time, are at the margins (Pleasence *et al*. 2013, 2015, Hadfield and Heine 2016). In spite of the centrality of knowledge to the rule of law and its integral role in the history of legal codification and promulgation, the problem of legal complexity and growing gaps in legal knowledge haunt the legal profession and public alike. Law has become "ubiquitous in social life" and the ongoing juridification of increasing spheres of social life means not only that there are more and increasingly complicated laws to contend with, but also that law has come to be the dominant frame for many social relations (Twining 1994, p. 16; see also Sarat and Kearns 1993, Pleasence *et al.* 2015). In this context, public legal education (PLE) can serve to narrow the gap between subjection to law and knowledge of law, enabling more people to understand and make decisions about the growing number of law-related issues in their lives (Mackie 2015).[1] However, public legal education is intrinsic to the functioning of the legal system itself, while also being a critical tool of resistance for those whose experience of the legal system is either negative or oppressive. As such, public legal education is always potentially vexed.

The question of how to negotiate this tension has become particularly pressing in recent years. A renewed interest in public legal education has occurred alongside significant changes in the legal sector, including the retrenchment of legal aid, the development of online courts, and the liberalisation of laws to allow commercial enterprises to enter legal practice.[2] This has been coupled with a notable shift in emphasis to self-help for those who are unable to afford the assistance of a lawyer. In this configuration, public legal education is becoming a more formal part of justice reform strategies, in contrast to the movements of the 1960s and 70s.[3] In this context, public legal education can seem like a cheaper alternative to legal aid, and one that shifts responsibility onto those who are most in need of support. In this article we consider ways to navigate this tension, both in theory and in practice. We argue that it is both possible and necessary for public legal education to *decenter* the law.[4] On a theoretical level, we examine the relationship between legal need and juridification (or the proliferation of laws). The concept of legal need, while identifying the absence of knowledge and resources with which to deal with law-related issues, can also make the law seem natural or necessary, particularly as law becomes increasingly ubiquitous. When public legal education is situated as a response to legal need, it can reproduce this problem. Law provides one among a number of potential ways of framing a problem, yet it can come to seem like the best or perhaps even only way. In so doing it can obscure the value of other viable and important ways of understanding and addressing human conflicts and satisfying human needs (Menkel-Meadows 2004), as well as the fact

[1] Public legal education commonly describes a range of education and information activities focused on the public (in many cases vulnerable populations) as a means of improving access to justice. Associated names vary across jurisdictions but include community legal education, legal awareness raising, legal literacy, and law-related education. The term public legal education predominates in the Anglo-American context, development contexts refer more generally to Legal Empowerment initiatives whilst Australian practices define themselves as community legal education; civil law contexts also apply the term 'legal literacy' to the field.

[2] Legal Services Act 2007, (1) (g). The reduction of public funding occurred under the auspices of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012. The proposal for online courts is detailed in the Civil Courts Structure Review (Briggs 2016, p. 62), referencing the over-arching need for public legal education.

[3] For an overview of the history of PLE movements in the UK and US see page 16 below.

[4] On the prospect of decentering law more generally, and its inherently ambivalent and contentious character, we would acknowledge the influence of critical race theory. See particularly Williams (1991) and Crenshaw (1988). We have also been influenced by Fitzpatrick's (2008) emphasis on the aporetic character of law as both determinate and indeterminate.

Oñati Socio-legal Series, v. 7, n. 7 (2017), 1557-1580
ISSN: 2079-5971

that law is not an autonomous domain, but is itself a system constituted by social relations.

Our critique is rooted in our experience as public legal education practitioners as well as educators in the legal academy. The dissonance between the demands of teaching law to students for the purposes of professional practice and the challenge of teaching law to communities who bear the brunt of failed access to justice policy has led us to question the most effective ways of developing creative and critical curricula for informal education. In response we have begun to explore possibilities for PLE that can both serve the cause of access to justice, whether more or less formally, while also being a critical and transformative resource for communities. As we will argue, public legal education can foster a consideration of how to strategically engage with law, and one which does not presume that legal problems always require legal solutions. We situate our own work in public legal education in relation to this possibility. Through examples from our curricula and experience as public legal education practitioners we suggest how public legal education can develop an awareness of how law could be used as one among a range of ways of dealing with the increasing presence of law in everyday life. In so doing, we demonstrate the value of public legal education beyond meeting legal need, particularly to enable those who face increasing subjection to law to question its role and function in society.

We begin by elaborating recent trends and shifts in the legal sector in the United Kingdom and the ambiguous position of public legal education in this context. The article then turns to a critique of the relationship between juridification and legal need, highlighting the contingency of law as it both constitutes and is constituted by social relations. We then turn to our experiences in teaching public legal education and present specific examples of our approach that we suggest work to *decenter* law. We also identify shortcomings in this approach. In the final section, we argue that public legal education needs to foster a consideration of the political contingency of law in order to meaningfully decenter it. We situate some of these dilemmas created by the current changes in the legal sector in relation to the history of public legal education and its problematic proximity to the formal requirements of legal promulgation. We conclude with a reconsideration of the tensions produced in the current context.

2. The changing landscape of legal services

Public legal education encompasses a broad set of practices that aim to improve public knowledge of the law and the legal system. As Gander (1999) has noted, the potential meanings of public legal education are as varied as the individual terms involved. It commonly includes multidisciplinary and largely informal educational practices that exist at the margins of the legal academy and the legal profession (Wintersteiger 2015b). It is generally neither a form of vocational legal learning nor does it provide formal educational qualifications. As the Public Legal Education and Support (PLEAS) Task Force reporting in the UK in 2007 noted: “PLE has not yet found a natural *home* – whether in advice or legal services, education or elsewhere” (PLEAS Task Force 2007, p. 24). Nevertheless the field has come to be recognised in its own right, even if it seems to remain resolutely homeless. The motivations and goals of public legal education also vary considerably. A comparative analysis of public legal education across jurisdictions reveals a wide range of purposes. These include: increasing “awareness of legal procedures and approaches to problems”; it also “counteracts relations of dependency between lawyers and clients”; helps to “mobilise individuals and groups to pursue their rights”; “fosters self-help activities”; demystifies law and counteracts the “myth of rights”; and

supports the autonomy of groups to pursue other forms of political and social action (Garth 1980).[5]

In the United Kingdom, the renewed interest in public legal education has occurred alongside the deregulation of legal services. Deregulation works to both break down and realign the boundaries of law in a number of crucial ways that have important implications for the role and function of public knowledge about the legal system. The opening up of the market for legal services to alternative business structures (dubbed *Tesco law*) has allowed new businesses to enter the market sparking fundamental concerns about quality, accessibility and professionalism (Flood 2012, Sherr and Thompson 2013, Webley 2014, Snyder 2016).[6] Rules regulating professional practice involve less stringent and extensive legal educational qualification for entry into the marketplace,[7] which also occurs in the context of alternative business structures (non-legal ownership for example). The move to open the market thus loosens the hold of the monopoly of legal knowledge, with an explicit aim of also enabling better understanding of rights and duties of citizens by the public (Legal Services Act 2007 (1)(g)). Simultaneously, liberalisation encompasses a drive toward the *commoditisation* of legal assistance and the growing interest and investment in disruptive technologies that alter traditional provider models (Boon 2010, p. 38, Susskind and Susskind 2016). This is demonstrated in the contentious but growing area of *unbundling* legal assistance into limited and discrete elements of help, paid for by fixed fees (Briggs 2016, Hadfield and Rhodes 2016, Sefton *et al.* 2016, The Law Society 2016). Moreover, in a *digital by default system*, individuals will be expected to use online information and self-help guides alongside accessing limited specialist legal help.[8] The growing permeability between different actors in the legal field has been mirrored by the changing nature and constitution of the legal subject. Legal subjects, or citizens subject to legal rules have become legal *consumers* of commoditised justice services. Individuals who do not recognise they have legal issues and do not know where to seek help are potential or latent *consumers* in an emerging legal market (Maule 2014, Legal Services Board 2016). Alongside this consumerist paradigm the language of the juridical field is undergoing a fundamental transformation. The boundary between legal actors and lay people is dissolving, as lawyers are less relied upon as interpreters of technical legal jargon. Judges are to be trained to speak directly to litigants (The Judicial Working Group on Litigants in Person 2013, Asplin 2016), and civil procedure rules are to be crafted in plain English to enable litigants to read and access rules without the assistance of lawyers.[9]

Ostensibly the move to allow commercial enterprise to enter into legal practice would improve access to justice, particularly as reliance on highly trained legal

[5] Working at a remove from the mainstay of one-to-one casework and advice services, a notable and common emphasis for PLE activities has been to address specific barriers to gaining access to justice. Increasingly, community-based strategies target non-legal workers, including community leaders, youth workers, health workers, and social care providers as a means of reaching socially and economically disadvantaged people with legal problems (Coumarelos *et al.* 2012, Mackie 2013, Wilczynski *et al.* 2014).

[6] A similar crisis in access to justice in the US has led to calls to remove restrictions on corporate practice and legal protectionisms similarly highlighting the longstanding situation that most legal work is undertaken for business, governments and commercial actors but does not meet the needs of the wider public (Hadfield 2014, Hadfield and Rhode 2016, Robertson 2016).

[7] The Legal Services Act 2007 (1) (3) adopts an approach of reserving particular activities to those designated as "authorised persons" for example, the right of audience. For exceptions to the general rule see comments by Hickinbottom in *Graham v Eltham Conservative & Unionist Club and Ors [2013]*. One result of the regulatory regime has been the rise in the number of students opting for paralegal career paths (Boon 2010, p. 10).

[8] There are, in addition, plans to develop provision for "assisted digital support" for those unable to access the Internet with sufficient confidence to make or defend their claims [Ministry of Justice (MOJ) 2016, p. 3].

[9] Recent reforms have also oriented courts toward fee payment and online dispute resolution services modelled on the success of high volume ecommerce approaches (see JUSTICE 2015 and Online Dispute Resolution Advisory Group 2015, p. 9).

Oñati Socio-legal Series, v. 7, n. 7 (2017), 1557-1580
ISSN: 2079-5971

advice and representation is unaffordable to many (Flood 2012, Markovic 2016. However, this legislative move was shortly followed by deep cuts to publicly funded legal assistance enacted by the Legal Aid, Sentencing and Punishment of Offenders Act of 2012. These cuts have significantly reduced triage and advice services for the most marginalised (House of Commons Justice Committee 2015),[10] who are the least likely to understand the legal system and have the confidence to use it alone (JUSTICE 2015, Pleasence *et al.* 2015). The place of PLE in this dynamic is potentially uncertain. While public legal education may be key to filling the enormous gap in provision, it also potentially plays into a *responsibilisation* of those that suffer most from the absence of legal aid.[11] As public funding for legal help contracts, PLE risks being cast as a cheaper alternative to legal aid; it has also been criticised as seeking to promote a "surge of DIY lawyers" (Aldridge 2011). As Wintersteiger summarises,

> [o]n the one hand, PLE may become a panacea for the absence of urgently needed advice and representation in primary areas of law that affect people's ability to secure their rights and the basic services on which they rely. On the other, it risks falling into the narrative that if only people were more capable (legally speaking) they could resolve their own legal problems outside of the courts and pull themselves up by their own boot straps. (Wintersteiger 2015a, p. 70)

However, the apparent impasse between empowering individuals with legal knowledge and skills directly, rather than funding much needed specialist legal assistance presents a false dichotomy, one that seems to arise, at least partially, as a consequence of the idea of legal need and the way it is used to frame public legal education. We therefore begin by situating our critique in the underpinning assumptions of legal need and in turn the framework for public legal education it supports, which may take for granted the way in which its intended recipients could or should understand law. As we will suggest, a more nuanced reading of the history of PLE and the conceptual frameworks on which it is predicated can foster a more critical pedagogical reflection and expand the range of methods open to practitioners.

3. Juridification and legal need

Public legal education often responds to what is configured as *legal need:* the gap between the instance of problems with a legal dimension—for which some kind of legal remedy exists (*justiciable problems*)—and the frequency with which those experiencing problems access legal help (Genn 1999). Legal needs tend to be unevenly distributed across populations and have significant social, health and economic ramifications, as well as being linked to the availability of access to justice (Moorhead and Pleasence 2003, The Law Society 2010, Pleasence *et al.* 2014). Some groups experience multiple and severe legal problems which they also frequently fail to resolve, or even attempt to resolve (Pleasance *et al.* 2004a, 2004b, 2006, Balmer *et al.* 2010, Coumarelos *et al.* 2012). The most common areas include consumer issues, problems with neighbours, family, employment problems, issues involving tenure, eviction and property rights, as well as debt problems and personal injury. A final category that creates access to justice issues concern disputes with public bodies, such as conflicts about social security, migration problems or government permits (Barendrecht 2014, p. 26, Pleasence *et al.* 2014). Strong correlations exist between vulnerability to legal problems and the presence of disability, single-parenthood, welfare dependency, unemployment, and minority ethnic grouping (Coumarelos *et al* 2012, Pleasence *et al.* 2014). Legal

[10] Most of the cuts (£278m) fell in civil legal aid, including cuts to social welfare law relating to debt, employment, housing, non-asylum immigration cases and welfare benefits, as well as cuts to family law. (The Low Commission 2014, p. 5).

[11] We borrow the concept of *responsibilisation* largely from Rose (1992). Rose offers a critique, building on Foucault, of the notion of the self-enterprising and autonomous individual that, far being autonomous, is in fact bound to a particular form of advanced liberal democracy, and a mode of governance that deploys this rhetoric.

need thus describes a situation in which individuals who are particularly prone to experiencing legal problems because they are subject to a range of regulatory frameworks, in particular for those reliant on the welfare state, are also the least equipped to cope with those regulatory demands as they unfold in their lives.

The definition of *legal need* has not remained static, but rather has shifted and expanded over the years. It has moved away from an original focus on those actively seeking a resolution to a legal problem to consider the ways in which justiciable issues encompass events that raise legal issues that may never reach the formal justice system (Genn 1999).[12] Finding a lawyer and accessing the courts became one pole of a much wider spectrum of issues concerned with ensuring people could better understand the law, access alternative dispute resolution mechanisms and push for law reform (Macdonald 2005). This shift entailed an expansion of the concept of *need*, which recognised the many ways in which law affects everyday life. However, the institutional focus of early legal needs studies meant that less attention was given to the complex inter-relationships between individuals' knowledge and skills and the quotidian encounters in which law, knowledge, and power are played out (Engel 1998, Sandefur 2008, Coumarelos *et al.* 2012).[13] This has contributed to an ongoing law-centric focus in the concept of legal need, even as the concept has expanded.

This changing definition of legal need has occurred alongside processes of juridification, identified by Habermas (1987, p. 375) as "the tendency towards an increase in formal (or positive, written) law that can be observed in a modern society". The proliferation of law in modernity, with its ensuing legislative complexity and accelerated legislative activity entails a difficulty in knowing or keeping track of those laws as a more general problem, both for the judiciary and the legal profession, as well as the general public. The proliferation of law alongside widening gaps in knowledge of the law has repercussions in both civil and criminal realms. A 2008 decision in the Court of Appeal illustrates the difficulty faced by the courts in keeping track of regulatory amendments: "[i]t is a maxim that ignorance of the law is no excuse, but it is profoundly unsatisfactory if the law itself is not practically accessible. To a worryingly large extent, statutory law is not practically accessible today, even to the courts whose constitutional duty it is to interpret and enforce it" (*R v Chambers [2008]*, p. 64).[14] Linking the problem directly to legal needs studies, Pleasence *et al.* (2015) relate the extensive growth of legal rights in a number of new fields to the growing gaps in legal knowledge in the public sphere. An increasing range of legal rights, responsibilities and protections have come to apply to areas which have fallen out of the scope of public legal assistance, including housing, employment and welfare benefits (Pleasence *et al.* 2015).[15] Thus for individuals who rely on the state for the provision of basic income and shelter, the sense of being trapped by law and its agents can be significantly magnified (Sarat 1990, Cowan 2004).

The growth of legal need alongside the process of juridification suggests that there is an economy between them: the more law there is, the greater legal need will be. However, the concept of legal need obscures this economy: the very idea of *need* suggests that law is natural or necessary. This inadvertently and subtly reinforces the process of juridification, which is characterised by both the proliferation of laws

[12] The requirement of meeting legal needs has largely dictated institutional and legislative transformations to improve access to justice (Coumarelos *et al.* 2012, p.3).

[13] Some of the limitations associated with legal needs scholarship, as Engel (1998) points out, fostered the branching off into legal consciousness studies within the paradigm of law and society scholarship.

[14] The crux of the case was the failure of the court to be made aware of the amended rules under the Customs and Excise Management Act 1979 until the 11th hour, creating an embarrassing situation in which the rules only came to light as a consequence of a "fortunate accident" (Toulson, L.J. in *R. v Chambers [2008]*, at 10).

[15] The authors cite in particular the spheres of education, employment, children and families, health, housing, welfare benefits, consumer goods and services, and the environment (Pleasence *et al* 2015, p. 25).

Oñati Socio-legal Series, v. 7, n. 7 (2017), 1557-1580
ISSN: 2079-5971

and a greater penetration of law into everyday life, such that law becomes a "reified social fact" (Goodman and Silbey 2005, p. 21). Juridification tends to "empty out moral and communicative substance of personal relations", replacing them with law (Goodman and Silbey 2005, p. 32). However, legal need is a correlate of the presence of law itself (Lewis 1973). Only where there is law can there be legal need. This may be an obvious point, but one which can easily be overlooked. As Bourdieu (1987, p. 833) suggests,

> [n]othing is less 'natural' than the 'need for the law' or, to put it differently, than the impression of an injustice which leads someone to appeal to the services of a professional. Clearly the feeling of injustice or the ability to perceive an experience as unjust is not distributed in a uniform way; it depends closely upon the position one occupies in the social space. The conversion of an unperceived harm into one that is perceived, named and specifically attributed presupposes a labor of construction of social reality which falls largely to professionals.

Bourdieu's comments echo some of the concerns of the legal needs studies: the ability to frame a problem or experience as *unjust* tends to relate to social position, with those at the margins least able to articulate their problems in terms of law and least equipped to access legal resources for dealing with those problems. However, he also identifies that law is a highly professionalised and exclusive system and discourse—it is at least odd to imagine that people *need* something that is constructed in this way.

Working within a framework in which problems are always already justiciable can take juridification, as a contingent historical process, for granted.[16] This observation makes these problems no less real, but does suggest a degree of contingency that the concept of legal need obscures. One such area of ambiguity is the way in which a dispute or conflict is characterised, and the extent to which the characterisation can recognise the potential for legal recourse. For instance, a recent legal needs study found that nearly half of the people with a legal problem identified it as being "bad luck", while 40% identified it as "bureaucratic", or a "social" or "moral problem". Only 11% of people identified the problem as "legal" (Pleasence *et al.* 2015). The inability to identify or characterise a situation as having legal dimensions demonstrates a significant gap in legal knowledge and one which means that many people are not aware of or able to access support for problems that have a legal dimension, even if those services do exist.[17] When viewed from within the juridical field, the plurality of ways in which people might frame problems and events is construed as misrecognition of the legal nature of those events, and further, that law would ostensibly provide a suitable means of resolving the problem. However, these responses, considered from outside the juridical field demonstrate the possibility of multiple ways of framing and navigating (potentially antagonistic) social and political relationships. For example, in the event of a problem being characterised as bureaucratic, this might suggest a legitimate and more holistic understanding of the tortuous experience of many people in being unable to navigate the administrative gate-keeping of essential services. Equally, the characterisation of problems as *moral* opens space for a critique of legal frameworks, and how a sense of morality may undermine or enhance perceptions of what is a fair or just outcome, or a reasonable response to a situation. Similarly, while the framing of a problem as *bad luck* may deprive the person in question of adequate legal redress, it may also be an accurate reflection of the relative

[16] Juridification has happened in waves, with the fourth and most recent wave accompanying the decline of the welfare state. Pleasence *et al.* (2015, p. 25 fn. 20) who suggest that a fifth wave has commenced that consists in private law mechanisms taking the place of formerly state run and public areas.

[17] The way in which a problem is characterised has direct links to the resolution strategy that is adopted, "the conditions under which life problems are transformed in people's minds into being legal problems must surely link to people's advice seeking behaviour. If people fail to recognise or characterise problems as 'legal', this is likely to impact upon their choice of adviser, making legal advice less common regardless of problem type. Conversely, recognition of a problem as legal is surely likely to be a component of many decisions to seek legal advice" (Pleasence *et al.* 2011, p. 6).

weakness of existing rights. In housing law, not only is it increasingly difficult to access legal protections, the existing legal provisions themselves are often inadequate, with, for example, many tenants fearing retaliatory eviction should they ask for repairs.[18] In this circumstance, understanding a housing problem as *bad luck* may be apt. Or framing it, as many do, as a moral or a social problem, while downplaying the legal aspect, may open up alternative possibilities for dealing with the problem that are not offered by law as such.

In order to work toward a demystification of law that seeks to make law visible in some way to potential rights holders, there is also a need to ensure its place in the wider rubric of relations and social orders is neither reified nor romanticised. We would suggest that the plurality of conceptions and divergent views on social, moral and political encounters are all potent ideas aimed at contending with the relationship between justice and injustice, individual and state, consumer and service provider, rather than just expressions of legal need. As services and communities struggle under the weight of public sector cuts and stagnating wages, these broader perspectives become critical tools and also suggest a different role for public legal education, one which is concerned both with meeting legal need traditionally conceived, and one that is concerned with *decentering the law*, as we have put it. In responding to the framework created by the idea of legal need, public legal education can inadvertently adopt its positivist construction, which takes a particular and historically contingent understanding of law for granted, at the expense of other perspectives. In this context, it is easy to see how public legal education can seem opposed to legal advice: where advice provides a way of supporting people to navigate highly professionalised systems to which they are subject, education may appear to transfer that responsibility onto those who are worst affected by legal need. However, stepping outside of this immediate framework of legal need, it becomes clear that there are other functions for public legal education that are as much to do with meeting legal need as they are with creating a space for considering how law should function in society.

4. Public legal education in practice

We have been developing PLE programmes and curricula for the past several years, and in this discussion explore our approaches and some critical pedagogical practices we have deployed in our PLE work.[19] Our experience of developing programmes in public legal education has afforded us the opportunity to engage with these challenges and tensions in a direct way. If public legal education runs the risk of *responsibilising* those who are most affected by the law, nowhere is this more apparent than in the teaching context itself. Those we teach come from marginalised communities that are often the most likely to experience legal problems, while also being the least equipped to deal with them.[20] They have been some of the most severely affected by the contraction of legal aid and the reduction in advice services this has entailed. However, rather than suppress or ignore these tensions, our main strategy has been to give them a central place in our pedagogy. Our community-based practices have necessarily been informed by local contexts, and by the concrete lived experience of participants that have increasingly taken on a form of teaching that we describe as decentering law.

[18] For specific issues in housing law, see Cowan and Hitchings 2007.

[19] Law for Life: The Foundation for Education has commissioned a number of independent evaluations of PLE programmes. See Mackie 2013, p. 15, and 2015.

[20] We have engaged with a wide variety of communities, many of which experience the forms of marginalisation that exacerbate legal need. Teaching has largely been focused on those groups who both experience multiple legal problems, and often have the lowest levels of legal knowledge and skills to contend with them. They include refugees and migrants, disabled groups, women's groups, young people and low-income workers. Most often, our work has taken place though networks of community organisations, as these organisations tend to have the best knowledge of the issues facing local communities and a relationship of trust and familiarity that makes informal education possible. See also CLEO 2013 for a range of formats and delivery channels used in public legal education.

Oñati Socio-legal Series, v. 7, n. 7 (2017), 1557-1580
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For our students, the experience of subjection to law is often overwhelming. In the following discussion we will explain how and why, perhaps paradoxically, a form of teaching at a remove from what we might term as *hard law* has still been fruitful in empowering participants and securing access to justice. This entails an explicit deconstruction of the assumption that law is an unqualified good. As Meinkel-Meadows reminds us, it often "conflictual, indeterminate, and politically contested or manipulable, or so focused on the need for regulation of the aggregate that it cannot always do *Justice* in particular cases. Legal justice is not always actual justice" (2004, p. 9). The realities that participants in public legal education sessions have encountered—often insurmountable bureaucratic complexity, the confluence of economic and social pressures on individuals, and the interconnectedness of a number of specific legal problems (such as welfare benefit decisions and housing disrepair)—require immensely creative, collective and sometimes expedient solutions. The prospect of seeking recourse through the courts or tribunals is frequently unrealistic, since neither the time nor resources are available.

These complexities in turn require critical pedagogical methods that do not simply reproduce narratives of the effectiveness of law, which recognise the profound barriers that participants encounter, and the diverse and often oppressive experiences of law they bring to the teaching. Such methods must also draw on the collective knowledge and resources of participants to explore the limits of law and its opportunities. In its most orthodox frame, public legal education practices replicate traditional methodologies originating in law schools, where black letter law is taught through core legal instruments (Gander 1999).[21] While this may be effective for teaching key elements of legal knowledge, it is also largely decontextualised from wider social theory, critique, and the experience of law in everyday life, particularly for those who are marginalised or vulnerable. Indeed, knowing the law does not usually tell us very much about how it functions in society or in the lives of those we teach.

Our approach integrates a framework of legal capability (Collard *et al* 2010),[22] and presents a significant departure from the most common methods of teaching law. It focuses not only on legal knowledge, but the range of skills and abilities needed to deal with law-related issues, and places law in the contexts where it arises. Legal capability is organised into four key domains (*Ibid*.): making sense of the law; finding out about the law; dealing with law-related issues; and engaging and influencing.[23] Each of these addresses a key building block in being able to critically engage with law. For instance, as an aspect of teaching about *making sense of the law*, we consider whether someone can identify and communicate about a law-related problem. A core curriculum module works through the distinctions between the civil and criminal law, and contrasts the way in which different branches of law are ordered – and in some cases (such as rough sleeping) how the distinctions have changed and come to break down. Under *finding out*, the framework emphasises the range of research skills (both on and offline) that are needed to be able to find accessible and accurate information, while *dealing with* concerns the skills and confidence needed to take action around law-related issues.

Knowledge of law underpins but is not itself the focus of these domains of capability. Being able to understand basic frameworks of law, find and evaluate information, and then apply it to a real situation, are often the most important aspects of our approach to PLE. In practical terms, this may not always have very much to do with law at all. For instance, in dealing with social welfare issues, the

[21] As Gander (1999, p. 15 n. 11) notes, the method also has the effect of creating passive recipients of primary rules.
[22] Legal capability is a phrase that has been coined and conceptually mapped primarily in the UK, more recently adopted in Canada and Australia (CLEO 2016).
[23] The full table of legal capabilities can be found at Law for Life 2011.

main concerns are often to do with navigating a large bureaucracy, the power imbalances involved behind the different actors and knowing what to do when, as often happens, a document submitted has gone missing, or a telephone call to the DWP is cut off. In many instances, it is helpful to know the general scope of legal entitlements, and that they are frequently changing, but it is also important be prepared to keep copies of everything submitted, and to organise papers paying proper attention to deadlines. These often prove to be the most useful skills in practice. It also entails the ability to persevere, stay calm and communicate what has happened to a variety of actors. Given the complexity of welfare benefits regulations, the prospect of truly *knowing* them is impossible. Instead, knowing how to frame questions and research answers from reliable and accessible sources can help someone to deal with particular situations as they arise. Alongside this, having good communication skills and the confidence to ask questions can go a long way. These features also contribute to the preventative role ascribed to public legal education, helping to secure earlier resolution to disputes before they escalate.

The following three exercises offer up some examples of the critical pedagogical tools we have developed.[24] These exercises help to illustrate how we make experiences of the law central to our pedagogy by fostering discussion, focusing on multiple ways of dealing with law-related problems, and teaching legal concepts in a way that encourages critical reflection on the nature of law itself. In different ways, each of these exercises works to *decenter* law.

4.1. Legal imaginaries: 'Draw the Law'

Our courses often begin with an exercise called *Draw the Law* which is explicitly designed to draw out and encourage discussion of diverse experiences and perspectives on law. Working in small groups, participants are asked to draw a picture or series of pictures that would represent law. Instructions and explanations about the exercise are intentionally minimal, the only restriction being that they cannot use words. The results usually include references to justice, through drawings of scales or blindfolded statues. Alongside the image of justice, there is usually some reference to money (oftentimes both at once) with money weighing down one side of the scale. There is not just pessimism about law, but also a revealing paradox and tension in experiences of the law and the hope for justice: discussions often bring out the aspirations for law to offer just outcomes law, which it often does not, and the ability to attain justice frequently depends on having the financial resources to do so. Groups often also draw images of police in explicit reference to the violence of the law. Others draw religious symbols, signalling that the law of the state is not necessarily the only law, and the importance of the alternatives in religious communities for example are as important if not more important in their view. This kind of exercise, particularly as an introduction to a course or workshop, has the effect of problematising our object of study and rooting it in experience, as well as the plurality of normative frameworks that people have recourse to. The balance we attempt to strike between supporting access to justice and fostering a critical attitude toward law emerges from the experiences of participants and can thereafter frame and inform the topics we pursue.

4.2. Legal inefficacy and reframing disputes: Landlord and Tenant Role-plays

Housing is a common subject of study in the courses we offer. Most participants share difficult and sometimes painful experiences of poor housing conditions, limited security of tenure and housing costs that are more than their household income can sustain. It is a particularly challenging area for all those reasons, and has led to a more realistic and tactical mode of teaching which takes into account

[24] For more about our pedagogical approach see Mulqueen and Thorpe 2015b.

the severe limitations to securing redress when legal protections are scarce or impractical. Our participants are usually acutely aware of the shortcomings and limitations of law in this area. Our teaching, in turn, tends to focus on non-legal tactics and strategies for negotiating with landlords. Using a framework of a stop-and-go role-play, participants work together to strategise about how best to engage with a landlord who is reticent to carry out repairs that they are legally obliged to undertake, but for which enforcement is often difficult because of the risk of eviction.

Participants are given an initial scenario in which a conversation between a landlord and a tenant goes horribly wrong. The landlord is dismissive of the tenant's claims and unwilling to acknowledge and take responsibility for disrepair.[25] The tenant is alternately acquiescent and passive, then angry. At key points in the role-play, the whole group is invited to reflect on the actions of the landlord and tenant, to consider their motivations and the reasons for their reactions. At the end of the role-play, new volunteers are invited to act out alternatives. The strategies they suggest for dealing with the landlord often rely on normative frameworks that are quite separate from the law and engage other strategies and skills. For instance, groups have suggested offering the landlord a cup of tea when they enter the flat, in order to diffuse tension. Others have suggested presenting the landlord with reasons why carrying out the repairs would be beneficial to them as the owner of the property; while others still have turned to press a moral obligation, as a way of persuading the landlord. This role-play exercise is not devoid of legal learning and is underpinned by a basic understanding of the law and the obligations of landlords and tenants (much of which will have been taught through research-based exercises), but it allows us to move from an abstract legal assumption of law on the books to real situations in which the law can only do so much. As such, participants learn both important aspects of the law and how to navigate situations where the law may not be immediately useful, or where alternative methods of resolving disputes are more likely to secure positive outcomes.

4.3. Legal concepts and legal contingency: 'The Paisley Snail'

When we do teach directly about law, it is to develop key elements of legal knowledge that are useful and transferable to a variety of contexts. This conceptual work is grounded in the recognition that often similar problems can be avoided or at least ameliorated with a better grasp of how law regulates relationships and the room which these conceptual tools can create to bargain more effectively in the shadow if the law. In the legal capability modules oriented toward *making sense of the law* we often teach aspects of legal history, alongside key concepts such as contract and duty of care. For instance, one exercise is based around the case of *Donoghue v Stevenson [1932] UKHL*, dubbed *The Paisley Snail*.[26] We use the case to address a number of issues, including the development of a duty of care, which we present together with other foundational concepts that help participants to frame and ask questions about law-related situations. Participants are asked to read a short and accessible (plain English) description of the case, in which May Donoghue finds a snail in the Ginger Beer her friend ordered for her. We ask them to think about and underline what details might be *legally relevant.* This usually inspires a range of responses, from the date of the case, to the colour of the bottle. This step is particularly important as it encourages participants to start to *see* the scenario from a legal perspective. As this exercise follows on from an introductory session on contract, participants often recognise that what is needed is a mechanism by which someone outside the contract could also bring a claim against

[25] For an example of this exercise in the context of a wider module on housing see Mulqueen and Thorpe 2015a.

[26] This case is an important one in the UK for establishing the civil law tort of negligence. In effect the case established that manufacturers owe the final consumer of their product a duty of care; they need not have had a contractual relationship in order for the consumer to sue in negligence.

the person who sold the drink, we introduce the duty of care. Having established the concept, we move on to consider other potential scenarios in which such a duty could arise, making the concept more generally relevant. Alongside this we also consider the case as an example of how law can change. When presented with a problem outside of the scope of existing legal relations, the law could grow to encompass those relations and create new responsibilities. Our intention in highlighting this is not to paint an overly optimistic view of law, but to highlight that law can and does change under certain (often contingent) circumstances. This is particularly important to emphasise when many of those who participate in our courses would take the opposite view, often based on their experience, that legal change is not possible. We have found that this kind of attitude, while understandable, often prevents people from engaging with law at all, even when it can be useful. If the goal is to foster a critical approach to law, this involves seeing opportunities as well as limitations.

The three exercises described here are just a few examples of how we try to maintain the balance between promoting access to justice and fostering a critical attitude toward law.[27] While responding to gaps in specific legal knowledge of rights and entitlements, we also attempt to keep space open for reflection on the role of law in everyday life, its limits and possibilities, and where it fits with other forms of relation. By foregrounding the experience of those we teach and focusing on legal capability, our approach does not simply reproduce narratives of law's effectiveness or neutrality, but rather tries to use law in strategic relation to other domains and perspectives. Our goal is that when confronted with a law-related issue, those we teach should be able to identify it and from there have the resources and tools they need to make a decision about how best to proceed, whether by using the law or not. However, insofar as legal capability responds to the circumstances created by legal need and juridification, it still runs the risk of individualising and masking systemic problems. In our teaching, it is the fourth dimension of legal capability, *Engaging and Influencing*, that has typically received the least attention; yet it is arguably the most important for the purposes of *decentering* the law, as well as for public legal education more generally. This final domain of capability involves collective or strategic competencies aimed at effecting legal change such as using political influencers or local policy frameworks (including using MPs and Ombudsman services):

> In helping individuals or groups to become more legally capable, public legal education should aim to provide a new range of possibilities in terms of their abilities to take more control of their lives and so improve them. This transforming power is at the heart of our vision of legal capability. (Collard *et al.* 2010, p. 3)

Engaging and influencing would mean being able to take experiences of dealing with the law and translating them into movements for change. Yet we find we often are unable to escape the other three domains and developing the skills, however critically, to navigate the law. This, despite our efforts, remains a difficult boundary to cross. This difficulty speaks to some of the theoretical challenges that tend to bend public legal practices toward positivist or instrumental forms of education. It is to these underlying tensions to which we now turn.

5. Decentering the Law

In this final section, we would like to elaborate further on what we see as the shortcomings but also the potential of our own approach, as well as the broader relationship between public legal education and imaging the role that law might have in our lives. In our analysis of the relationship between legal need and juridification, we suggested that the framework of legal need obscures the fact that law is a socially constructed form of relation; that the need for law is only a correlate of the presence of law itself, which is neither necessary nor natural. It is

[27] More examples of the curricula we have developed are available at Law for Life 2016.

important to remember that law is at once constitutive and constituted: it actively creates the categories it deploys, but it is also itself the product of social relations. As Bourdieu (1987, p. 839) explains,

> The law is the quintessential form of 'active' discourse, able by its own operation to produce its effects. It would not be excessive to say that it creates the social world, but only if we remember that it is this world which first creates the law. It is important to ascertain the social conditions—and the limits—of the law's quasi-magical power, if we are not to fall into a radical nominalism (…) and posit that we produce the categories according to which we produce the social world and that these categories produce this world.

As law comes to frame forms of social relation, it does not do so neutrally, but in a way that maintains a certain kind of order. One dominated, as noted in the previous section, by a professional discourse of law and hierarchies of legal relations.

While law can seem to provide coherence or certainty to social relations, it can also have the effect of naturalising or regularising relationships of subordination. For instance, one of the main areas of juridification, which is particularly relevant for the contemporary PLE movement, has been the growth of new social and economic rights. As marginalised groups have won forms of recognition through the creation of new areas of law such as housing, employment and welfare benefits, these areas of law have also entrenched a relationship of subordination and contributed to the depoliticisation of struggles around these issues by framing them as justiciable problems. The creation of these new areas of law "legitimiz[e] victories over the dominated, which are thereby converted into accepted facts" (Bourdieu 1987, p. 817).[28] Simultaneously, while marginalised groups are made dependent on these areas of law for the assertion of rights, their access to legal services which would enable them to claim redress have declined. Juridification points to a double-edged sword that has come with the expansion of new social and economic rights, which have at the same time embedded a normative order that is both the product of and reproduces social antagonisms. In other words, law is not just a resource or tool for securing legal protection or entitlements but also forms and sustains the relationships that it regulates, making it difficult to know where law begins and ends, or indeed to see outside of it (Bourdieu 1987, Hunt 1993, McCann 1996).

Not only does law potentially entrench relationships of subordination and exclusion, but the naturalisation of law that occurs through juridification also obscures its inherently political nature. To this end, public legal education can serve to directly instrumentalise the given order of things without destabilising the structural association between law and the constitution of the political realm. The conflicted status of public legal education in this regard arises from its proximity to the promulgatory activities associated with lawmaking, and the centrality of knowledge of law within a rule of law framework. Promulgation, Blackstone (2016, p. 36) reminds us, is in the very nature of law itself. A law that is not disseminated or expressed "can never be properly a law". For Blackstone, it did not matter how this dissemination occurred, only that it had to be "in the most public and perspicacious manner" (Blackstone 2016). In the nineteenth century, Bentham argued that knowledge of the law was essential: "That which, for this purpose, we have need of (need we say it?) is a body of law, from the respective parts of which we may, each of us, by reading or by hearing them read, learn, and on each occasion know, what are his 'rights' and what are his 'duties'" (Bentham 1839, p. 547). The more contemporary discourse of the rule of law maintains this emphasis on legal knowledge: access to justice within a broad formulation of the rule of law implies being able to understand basic legal rights and obligations, and knowing the

[28] Alongside social welfare law, one of the exemplary fields of legal expansion has been in the field of industrial relations, suggesting the subsumption of antagonistic social and political relations is a common feature of juridification (Teubner 1987). A dialectical process thereby emerges in which the expansion of rights accompanies a smoothing out of social antagonism.

relevant courts or tribunals in which to seek redress. Legal knowledge is a concrete feature of the way in which the rule of law is brought to life (Bingham 2011). Moreover, the rule of law also implies that the constitution of a democracy is legitimated by virtue of the citizens' knowledge of and participation in legal constitutional frameworks.

While the boundary between promulgating law and educating the public about the law is always a porous one, the confluence of juridification and legal need can obscure it entirely by taking for granted the contingent and inherently political nature of law itself. Public legal education increasingly intervenes directly in the intersection between the formal demands of the rule of law, and the proliferation and growing complexity of law. A recent attempt to define *PLE* in the UK concluded that:

> Public legal education provides people with the awareness, knowledge and understanding of rights and legal issues, together with the confidence and skills they need to deal with disputes and gain access to justice. Equally importantly it helps people to recognise when they need support, what sort of advice they need and where to get it. (PLEAS Task Force 2007, p. 13)

This definition also places an emphasis on legal capability as the goal of public legal education interventions, and links legal capability to citizenship:

> Public Legal Education is the tool we need to achieve legal capability. It has a key role in helping citizens to understand the law and to use it more effectively in their daily lives, bringing many different individual and social benefits. PLE is the missing element in the creation of the legally-enabled citizen. (PLEAS Task Force 2007, p. 13)

The report points to the crucial link between legal knowledge and constitution of the state. A *legally-enabled citizen* is one who can not only gain redress through the courts but also describes the necessary capabilities involved in taking an active part in democratic life. However, recognising the integral relationship between public legal education and the constitution of the state does not necessarily suggest how to differentiate between PLE and the promulgatory function of lawmaking.

If public legal education is not sufficiently differentiated from the promulgatory function of lawmaking, it can come to function as its instrument. This dynamic, and the risk posed by instrumentalisation and depoliticisation, has played out in the history of the public legal education movement. The contemporary movement for public legal education can be traced to the War on Poverty in the USA and the post-war consensus in the UK. Particularly as it appeared in the middle of the twentieth century in North America, PLE was an idealistic and subversive strategy aimed at resisting legal and social hegemony, and breaking the cycle of poverty (Garth 1980, Gander 1999). *Poverty law* out of which public legal education grew, was itself an outgrowth of the civil rights movement; it was conceived as a direct challenge to the systemic inequalities that the law had come to entrench in the legal order.[29] Prior to the *War on Poverty* in the US, early precursors to public legal education amongst oppressed and disadvantaged groups involved information and awareness raising work, included pamphleteering activities by the New York Legal Aid Society as early as 1904 (Munger 2004). Community education and community organising flourished as a way of improving knowledge of legal rights and as an aspect of poverty prevention delivered via neighbourhood legal services. The more proactive and reform-oriented strategies were most commonly attributable to community based legal education championed by civil rights groups. However, alongside this growth in activist and reformist efforts toward PLE, came a rise in spending for legal assistance programmes by the state, which was soon followed by a concern with the overburdening of these services. As Wintersteiger (2015a, p. 69) explains, it

[29] For a concise overview of the various programmes that emerged in the US in the context of the *War on Poverty*, and poverty research in the era of civil rights see Munger 2004.

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was "precisely during this period of growth in provision for and spending on legal services, the overwhelming need and pressure on services was brought into sharp focus (…). Burdens on caseloads served to detract attention from legal education and legal campaigns by communities themselves". Neighbourhood law centres subsequently moved away from public legal education, toward a focus on one-to-one casework and advice (Garth 1980). In this context, the role of public legal education narrowed significantly. As Gander (1999, p. 15 n. 11) explains,

> In the context of legal services for the poor, the job of PLE became making sure that the poor knew the rules that applied in their situations. Confining PLE to primary rules and colluding in promoting the passive role of the public in the legal system while leaving the secondary rules to the active management of an elite had the effect of trivializing public legal education in the context of the neighbourhood law office.

Public legal education occupied a somewhat uneasy position in relation to the growth of new rights in the 1960s, the historical role of the legal profession and legal services, as well as the formulation of the rule of law in which the state is entrusted with the task of informing the public about its rights and duties. Even at its most politically radical, public legal education retained a degree of ambiguity, perhaps unavoidably, in its proximity to and support of (directly or indirectly), the promulgatory function of law-making. While the discourse of rule of law and access to justice added a different dimension, they also entailed the growth and proliferation of law.

This historical trajectory demonstrates the vulnerability of public legal education to depoliticisation, yet also suggests that this is not an inevitable outcome. In practice, public legal education, if well-resourced and delivered at arm's length to the state can challenge the tendency to become a reiteration of what the law is and says by emphasising a strategic approach to law. It also opens up critical inquiry within the space of law as such and how it relates to the constitution of the state. Public legal education that does more than service the status quo needs to be able to step back from law, create space for critique, and articulate a means of changing it. While this does not completely avoid the tensions produced by the proximity of PLE to promulgation, it does allow for a decentering of law and an opening to the potentially critical, democratic and emancipatory functions of increasing public knowledge of law.

6. Conclusion

The latest wave of interest in public legal education, occurring in the context of deregulation and dramatic reductions to publically funded legal aid, makes the question of how to navigate these tensions all the more pressing. The potential scale of legal need is enormous: only 4% of people with justiciable problems access advice services while 6% use a lawyer; most people rely on friends or family or simply try to cope with their problems alone (Pleasence *et al.* 2015). However, as PLE becomes a more formalised means of intervention, it risks placing ever greater responsibility for self-help onto those who are most in need of accessible legal services and neutralising critical engagement with the justice system, as well as being cast as a mechanism for creating efficiencies in public spending. Yet as we have shown, while these tensions have been exacerbated in the current context, they reflect a more fundamental ambiguity in public legal education itself. Recent proposals pertaining to public legal education suggest a predominantly state-controlled dissemination of public information about the law to help citizens navigate their legal lives. For instance, the proposal to establish online courts and a digitisation strategy places PLE in a more direct association with the process of applying for or defending legal claims, with a range of informational strategies, virtual hearings and online administration offering routes to judgement. Yet for many people who may be helped by the greater accessibility of law, and many of those for whom public legal education interventions are crucial to reduce systemic

inequalities and disadvantage, this must also mean having the ability to challenge the state and other powerful actors.

This begs the question of who should be responsible for delivering public legal education, and where the resources for major public education campaigns should be found. The reforms introduced by the Legal Services Act 2007 imply that the burden of informing citizens of their rights and duties should fall exclusively on the legal profession, in what at first glance appears to be a democratisation of law, insofar as these changes aim toward empowering legal consumers. The task of informing the public, in spite of the central role afforded to legal knowledge, both for the very functioning of law itself and for the rule of law, has often remained concentrated amongst a privileged group of professionals. Up until the twentieth century, efforts to educate the public about the law rarely exceeded the forms recommended by Blackstone (2016), such as notification "viva voce, by officers appointed for that purpose, as is done with regard to proclamations, and such acts of parliament as are appointed to be publicly read in churches and other assemblies". Legal knowledge is often highly technical, requiring specialist knowledge and expertise even for relatively simple matters. And as noted in *R v Chambers [2008] EWCA Crim 2467,* the law in its increasing complexity even at times surpasses the capacity of those who have been trained and appointed to adjudicate it. Yet in order for law to be distinguishable, and maintain its predominance as the mechanism for deciding and reproducing the legal order (and distinguishing it from other normative orders), it maintains a highly technical, specialist knowledge and expertise. There is therefore an established "social division between lay people and professionals" (Bourdieu 1987, p. 817). The very difficulty of the language and processes of law, in turn, is the lifeblood of the legal market: the professionals and services relied upon to understand the corpus of legal knowledge, and who have the skills to interpret legal texts and apply them to a given case. If legal need is a problem constructed on the basis of a gap between available law and access to justice, what can we expect to happen in the context of the deregulation of legal services, the simplification law and the apparent move away from dependence on professional lawyers from the system of legal interpretation and adjudication? If "the juridical field", as Bourdieu (1987, p. 817) suggests, is "the site of a competition for monopoly of the right to determine law", what happens if the field becomes dispersed? As the boundary of who can know, speak about and ultimately practise law shifts from the restricted and privileged sphere of professionals, does this present a democratisation of law?

That the legal market functions on the basis of a prior division between lay people and professionals suggests that even as this market is being liberalised, this will stop short of a genuine democratisation of legal knowledge. At the very least, there is a continued role for forms of public legal education that are not invested in maintaining such a divide. Moreover, we have attempted to demonstrate in this article that there is a tendency to naturalise law, attributing it to an inevitable and given order of things rather than a constructed and inherently political constitutive aspect of the body politic, which in turn evolves and distinguishes itself from the social and political relations (and antagonisms) it subsumes, as it seeks to manage (and contain) social conflicts. Historically, as we noted above, the creation of new rights, while extending law, also entrenched relationships of subordination. The economy of legal need and juridification thus points to the ambivalence at the heart of the idea that a guarantee of freedom simultaneously demands a deprivation of freedom (Teubner 1987, p. 4). This leads us to wonder what facts we may implicitly come to accept as these current changes take place: if it has already been difficult to discern the difference between what is law and what is not, deregulation may entail the further naturalisation of law, precisely and paradoxically by making it more accessible. This is not to suggest that law should not be more accessible: as we have shown, this is a central aim of public legal education. However, the goal of making the law more accessible needs to be pursued simultaneously with its

decentering if it is not to further entrench relationships of subordination and exclusion.

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