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L&L projects budget deficit

According to information received by Obiter Dicta this week, the Legal and Literary Society’s 2013-14 budget includes an operating deficit of $22,825. Approved unanimously at a special September 12 meeting, the budget includes L&L’s major revenue and expense categories for the year.

Legal and Lit’s constitution requires publication of the budget on a yearly basis in the Obiter Dicta, which is an admirable provision, to be sure. However, the budget has been notably absent from these pages for at least the past two years. In fact, until just before the Obiter received the budget, there was some concern that there was no record of this year’s budget at all. Apparently, the Excel file containing the important information had gone missing from the L&L Dropbox. However, L&L Treasurer Waleed Malik tracked down the wayward spreadsheet and promptly provided it for publication.

The Obiter spoke with Malik about the budget’s content. When asked about the deficit, he notes the improvement on last year’s fiscal situation. Following the abolition of the Osgoode Health plan, L&L’s 2012-13 financial reports show a loss of over $100,000. Malik quickly points out that this number is misleading: “Over $70,000 of that deficit consisted of obligations connected to the health insurance plan. Only about $30,000 was the actual operating deficit.”

Over time, the health plan had, despite its inefficient cost to Osgoode students, accumulated a significant cash reserve in the L&L accounts. However, upon its termination, obligations to the provider wiped out a large portion of that reserve.

For those readers with sticker shock after seeing the $63,000 price tag on the annual Dean’s Formal event, you need not write angry letters to responsible 3L rep Weston Powell. Powell, who could not be reached for comment as he napped on the L&L couch, would probably note that ticket sales make up over 80% of the event’s cost, leaving L&L holding the bag for only $12,000.

Malik says the numbers are not as bad as they seem. “I budget conservatively;” he says, “I overestimate expenditures and underestimate revenues.” This could shrink the deficit significantly, though Malik was unable to say by how much. He is proud of the progress made over last year’s much larger deficit, and quips that “I can’t get rid of a $30,000 shortfall in one year.”

Furthermore, the numbers as shown may be out of date already. The plan was approved in principle in September, and with the fall semester ticking away, the situation may have changed.

» continued on page 4
Christmas is lame

MAYBE THAT’S an overstatement. There are lots of good things about Christmas, especially since I moved away from home six years ago. Free from the burdens of exam season, I return to my parents’ home and relax. Every year, it’s the first time in months that I’ve had nothing to do and nowhere to be. I spend the time preparing baked goods, reading books, watching movies, and, more recently, accompanying my father to the LCBO, where we spend ludicrous amounts of my parents’ money on impossible amounts of beer and liquor. This is usually about December 20th.

On the evening of the 21st, the better part of my local family and hometown friends careen wildly into the first night of a 10-day bender and wake on the 22nd to find more empty bottles than full ones. Having discovered that ludicrous just doesn’t cut it these days, we return to the LCBO that afternoon, the staff eye us warily, unsure how to assess the manner and timing of our return.

In fact, it was a red letter day when I realized, around the age of 17 or 18, that family Christmas gatherings suddenly made a lot more sense when I knew for certain what drunk people looked like. It certainly explained the disapproving look my Grandmother always had after Christmas dinner, anyway.

I suspect this has something to do with my family’s Scottish heritage. In Scotland, Hogmanay is a New Years’ celebration that can often stretch out for days. It consists primarily of the consumption of whiskey at various friends’ abodes and the accumulation of crowds of said friends as you proceed from one said abode to the next. It’s like a wintry and rollicking game of Snake, except the little dots are drams and you never lose, even long after you’ve started running into each other. The festival culminates in empty bottles, upturned kilts, and spoilt haggis. I am certain that my Great-Grandfather and his brothers attempted to import the custom but were thwarted by our puritanical liquor statutes. Curious, two of the brothers boarded the boat and returned home precious few years later. But I digress.

Apart from relaxation and overindulgence, there’s the food, the fellowship, and the presents (everyone knows receiving is better than giving). In less secular terms, Christmas is an important time of year for Christians. The Nativity is perhaps the most well-known Biblical yarn and, for me, the most inspiring. Not for religious reasons, but because, lifted out of context, the story of an unmwed couple struggling with an unexplained child cross-country is intriguing, to say the least.

Apparently they were going to pay their taxes. Their taxes. Bethlehem is over 150 kilometres from Nazareth; I looked it up. In a couple of years, once you, dear law student, exhaust your bottomless pit of tuition credits, let me know how you would feel, after incurring you for a combined 40% of your gross salary, the fine folks at the Canada Revenue Agency told you to walk from Toronto to Peterborough to deliver it, in cash.

Joking aside, the story as a whole has a mystical and surreal quality that undoubtedly has contributed to its position as a literary archetype over many centuries.

Nonetheless, even at its best, Christmas just seems to be missing out on a lot of stuff that’s going on this time of year, and not just Hog-manay. I first noticed this in 2010, when a friend of mine, born to a Jewish mother and French Canadian father, told me that he was looking forward to going home, as it was almost time to celebrate Christmukkah. Inspired, I decided to go looking for new and foreign traditions to incorporate into my holiday season.

In 2012, during my trip to the Czech Republic, I discovered a heavenly drink called Becherovka. You can get Becherovka at the LCBO, and for the less fortified among you, it mixes very well with plain or the seasonal cranberry Ginger Ale. A full-strength herbal liqueur made with a secret recipe of dozens...
A holiday survival guide

CITLALLY MACIEL
News Editor

AND THE countdown begins. A few days of classes remain. Then two weeks of sheer stress await. Of course, I am talking about exam-related stress, but only partially. There are the other kinds of stress, namely, Christmas-shopping stress. Naturally, as a busy law student, you will not have time to start until after exams are done. Panic will strike when you look at the list of people you have to get presents for. Then your heart will stop for a few seconds when you realize that the funds in your bank account have dissipated. You will find it hard to swallow when you realize that, in order to check everyone off that list, you may have to eat ramen noodles all next semester. This does not end here because you will then have to figure out what would be the perfect gift for each individual. Or even worse, you decide that you will just go to the mall and see what you can find. A move which, in the world of best shopping strategies, would be deadly.

Let's face it, going to a mall at this time of the year is a war and when you go to war, you need a strategy. People become vicious, especially if you leave your shopping for the afternoon on December 24th. After roaming the empty aisles of various stores, you will finally find one sad gift basket at some store which you will finally decide to get after you have examined it for ten minutes and you have visualized in your mind your mom's face when she opens the present and you have thought about the heartache that you will feel when she tries really hard to pretend that she loved your sad gift basket. You know, however, that it is either this basket, or the set of tea towels that you saw at the other store, so you decide to get it. You look around one last time hoping there will be something else and then bam! A frantic woman takes the sad gift basket and starts walking away with it towards the register. Your jaw drops because, although you were not holding the gift basket, your physical position conforms to accepted social norms regarding asserting possession of something! You then go up to her and politely try to explain that, well, basically, you saw it first. She will not listen and after you get into what is really a ridiculous and pathetic argument with her, you realize that it is almost closing time, this argument is going nowhere and the store with the tea towels will close in one minute.

Tough times lie ahead. My only comfort is to know that, after all this madness is over, pure bliss follows! I get to spend the entire time in my pajamas. Indeed, the best part of the holiday is almost sinsful but there are books that are so amazing that are almost life changing. After all, the holidays are also that time of the year when we make resolutions. I offer the following books as an inspiration.

First, A Thousand Splendid Suns by Khaled Hosseini. Over time, I have developed the rule of not reading more than one book by the same author. Unless we are speaking of a genius author, I find that most writers tend to gravitate around the same stories and their one good book becomes the template for the rest, just with a few changes. However, when it comes to Hosseini, I am glad I made an exception. I read The Kite Runner back in 2007 and I absolutely loved the book. Aside from the fascinating historical backdrop describing the period of the Soviet occupation of Afghanistan, the story is poignant. There is no way of reading this book without shedding a tear. A friend of mine then suggested that I read A Thousand Splendid Suns. I told her about my rule but she insisted that I just had to read this book. So I did. I believe that I have not read any other book as fast as I read this novel. Although the historical context of both novels is fairly similar, the stories are completely different. They are still poignant stories, but in very different ways. The book narrates the story of various Afghan women whose lives intertwine in one way or another. Their stories depict the hardships that females face and how these are further compounded by the social, economic, religious and ethnic forces that characterize Afghan society. This is the kind of book that will make you develop strong feelings of either compassion or hate for the characters. Just fantastic!

If you feel like you do not want to spend your holidays reading something too emotional and prefer a lighter read, then I recommend A Year in the Merde by Stephen Clarke. The book is hilarious. It narrates the story of an English man who moves to Paris for work for one year. A year which he spends struggling to understand Parisian society, not only because his French is rudimentary, but because he seems to find many aspects of French culture perplexing, unwelcoming, even idiotic. What is so funny about that, you ask? Well, first the book is simply witty. Second, he manages to ridicule what is generally considered to be the best, the finest, the extraordinary: French culture. Third, there is something funny about an Englishman mocking his own country.

For those who prefer non-fiction, I recommend The End of Food: How the Food Industry Is Destroying Our Food Supply—And What You Can Do About It by Thomas Pawlick. The book talks about the different farming techniques used by the industry to produce food in large quantities without regard for its quality. Disclaimer: after you read this book, you will not be able to see tomatoes the same way ever again.

Finally, for those who are thinking about making their new year's resolution to lose weight and take care of your health, I recommend you read Wheat Belly by William Davis, MD. It is not the most well-written book. In fact, I think that Dr. Davis could have done with half of the stuff he wrote but I guess he wanted to make a point. Now, how will this help you lose weight or take better care of your health? Well, read the book and you will know. Alternatively, you can read a very interesting article appearing in last year's eighth issue of Obiter Dicta titled "On New Year Resolutions". I hope you enjoy my book suggestions. Best of luck in your exams, enjoy the holidays, and remember, no settling for sad gift baskets!

THUMBS UP to...

Justice Simmons for her continued practical guidance and assistance to Osgoode's 2014 mooting teams!
The Osgoode Fine Arts Collective for sharing their talents with everyone in the JCR!
L&L: budget an improvement over last year

"continued from cover"

L&L started the fiscal year with a cash reserve inherited from the last executive, one large enough to cover the current year's shortfall. The exact size of the reserve is uncertain, since several transactions from the past year were still pending at the time of budget approval. According to Malik, this uncertainty is why the reserve does not appear in the budget document.

Orientation Week is one of L&L’s largest expenses each year, but it is also one of its largest revenue-generators. As of September 12, the $55 000 event had only missed the break-even point by $3 225. When presented with the budget, O-Week Committee Chair Adam del Gobbo confirms that it may not represent the current reality. “I don’t know what the final revenue tally was from the Week[,] but it was definitely more than that.”

L&L may also avoid exhausting its clubs budget for the year. VP External Allison Williams confirmed earlier this year that clubs policy had changed to prevent the disbursement of L&L funds for the distribution of free pizza at club meetings, which previously represented a majority of club expenditures.

Malik has also vowed to be diligent in his accounting practices, and warned clubs against submitting receipts for reimbursement that are “not up to financial accounting standards.” When probed further, he presented the Obiter with two receipts. One was scrawled in blue pen on a misshapen piece of corrugated cardboard, the other on an equally lopsided corner of fluorescent poster board. A terse e-mail exchange with the submitting club followed.

Time will tell whether Malik and the rest of L&L can slay the deficit before the end of the fiscal year. The preliminary results of their efforts should be known before the April exam season, but the final word will come when the 2014-15 executive conducts their audit.

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**THUMBS DOWN to…**

The **OPIR office**, Why do you require so many badly-formatted forms for such a simple matter?

The **banners in Gowlings Hall**, When is laundry day over?
Young judges take on corruption and inefficiency in European courts

PIERA SAVAGE
Contributor

DURING READING WEEK, I had the opportunity to travel to Prague to visit a good friend of mine, and of course, to do research for my Entertainment and Sports law seminar paper. I’d been to Prague a few months before, in late August, when it was still quite warm, and had fallen in love with the charming city. I welcomed the opportunity that reading week provided to return so soon.

One of the great things about Prague is the nightlife, which, after spending long days at different libraries—the National Library had a splendid reading room where I spent a few hours working on my paper—demanded exploration. One such evening at a bar called the Second Floor, I bumped into a lovely woman on the dance floor who I had met on my visit in August. She remembered I was a law student and was excited to invite me to a reception for a law conference that was taking place in a couple of days.

I have to admit I was a little nervous accompanying her to this reception. The conference, the Central and Eastern European Legal Institute’s (CEELI) Central & Eastern European Judicial Exchange Network Roundtable, brought together young judges who were interested in making a difference in their home country’s judicial system. It was focused on how to establish public confidence in the judiciary and how to find effective anti-corruption methods. CEELI, I would later discover by talking with the Executive Director of the institute, Quinn O’Keefe, is a not-for-profit organization whose aim is to foster an international community of reformers who are dedicated to making a difference in law. At the moment, according to their website, the CEELI Network of judges (one of many networks they facilitate) consists of 51 non-high court judges and court administrators from 18 different countries since launching in November 2012. They meet to talk about their personal experiences with corruption and inefficiency, and are advised by legal experts from the Netherlands and the U.S.

The event took place at the Villa Gröbovka, located in a large park of the same name and translates as “vineyard”. As we walked through the park, my friend explained to me that it is the oldest vineyard in Prague, established by Holy Roman Emperor Charles IV. Further research on the CEELI website led to the discovery that the villa was taken over by CEELI for a lease of 50 years, in exchange for restoring the building, which officially re-opened in 2008. The photo below was taken in the entrance stairs and really doesn’t do justice to how beautiful the actual room where the event was held.

The first guest I met, the Honourable Mark Wolf, a Chief Judge of a Federal District Court in Massachusetts, had been invited to the conference as an expert to sit on the panel, and to give encouragement to the young judges who were bold enough to try to change their judicial systems from the inside out. I should mention that Chief Judge Wolf has been recognized as being the one who got to the bottom of the James “Whitey” Bulger case with a 661 page opinion, and he was recently featured in a New York Times article, “The Judge who Cracked the Bulger Case”. He was a warm, friendly man who worked the room and though I was merely a second-year law student, went out of his way to introduce me to various guests.

There was one young man from Slovakia, Vladimir, who Chief Judge Wolf was particularly proud of, and introduced to nearly every guest who arrived. He was a very tall man who wore horn-rimmed glasses; bearded, he said, because he was in a transition period trying to decide whether he should get into teaching or become a judge. He told us his father and grandfather had been lawyers and it was never a question of whether or not he would get into law. Upon meeting Chief Judge Wolf, who spoke at his university a few years before, he had been inspired to consider a role in the judiciary and to take on a greater role in improving the system in Slovakia.

Much of the conversation with him was very serious, however, despite the fact that his English was almost perfect, he often said “true dat” when agreeing to something, which made me smile on the inside because it was said with such sincerity. In any case, it seemed that a combination of meeting so many young judges (the youngest I met was a Romanian woman with a blonde bob who was 32 years old) and the effusive praise by Chief Judge Wolf who introduced him as “a very special man” had convinced him that he did, in fact, want to become a judge. I imagined the next morning Vladimir would be shaving his beard.

A few other guests were a political officer who worked at the US Embassy in Bratislava, who was next going to move to Yemen; a Czech writer who published a political magazine, Tablet; and the founder of Radio Free, a station launched at the start of the Cold War that delivered uncensored news to people behind the Iron Curtain.

I felt almost as if it was fate that I had bumped into my friend. Just that week I had been questioning—as many law students do—everything. Should I really get into entertainment law? Will I be happy in that field long term? Maybe yes, and maybe no, I still am not sure. But what I walked away with was the importance of a mentor to a mentee in shaping a career; the importance of passion in a career—it really shines through—and of course, the importance of taking any opportunity to network, especially when the chance arises in a setting as lovely as in a villa in Prague.

PIERA VISITS THE VILLA GRÖBOVKA

Dean Sossin for hosting a transparent townhall session on tuition and other financial matters.

Dole and Penelope Pineapple for their recognition of Emergency Pineapple Appreciation Day - with free “beansies” for the organizers!
MANY OF YOU will have heard that the Federation of Law Societies has accredited Trinity Western University, a privately funded Christian university operating out of the Fraser Valley in British Columbia, to run a law school. Trinity teaches through a Christian lens and requires all of its students and faculty to sign a “Community Covenant Agreement” and abide by certain community standards, including abstaining from sexual relationships outside of marriage between a man and a woman, alcohol, gambling, viewing pornography, and the list goes on. The penalties for contravention of the “Community Covenant Agreement” include expulsion. Advocates on either side of the issue have contested the accreditation publicly.

Those that defend the Christian university’s discriminatory requirement that students agree to the “Community Covenant Agreement” cite that those who take issue with the covenant can go elsewhere to get their legal education. What a ridiculous defense. As a University of Toronto student opined in The Varsity in August, “If there is a single space in a Canadian law school, medical school, barber’s college, or restaurant which is not available to all people, regardless of identity, it is a national disgrace — it does not matter how many other spaces in other institutions are available to these people.”

The defence of the Christian school’s requirement to abstain from homosexuality relationships goes like this: you don’t like the morality clause? Just don’t go there. Trinity Western’s president Bob Kuhn states, “prospective students who do not agree with our religious views have in place policies that impose academic consequences for choices made by students in their private lives that do not speak to their integrity or professionalism.”

Jonathan Kay, in defending the school’s accreditation in the National Post, goes on to say that “TWU’s 60 first-year law-school slots would comprise less than two per cent of the country’s incoming law school cohort.” Statements like this entirely miss the point. Because there are far more applicants to law school than there are positions in law school (with most schools letting in about 10% of applicants each academic year), those willing to sign the “Community Covenant Agreement” have a wider application berth than those who are unwilling.

In this way, the school creates a comparative advantage for those students willing and able to abide by the “Community Covenant.” Having any spaces that restrict the eligibility of one group of people is discriminatory.

The reality is that Trinity Western is excluding spots in their law school to people not only on the basis of their sexual activity (which is ludicrous in itself) but based on their sexuality full stop. Equally troubling is how readily people have swept under the rug any controversy relating to allowing the accreditation of a private law school. In an era with skyrocketing tuition fees, any encroaching on the public education system by private actors undermines it. Private institutions allow for a greater amount of opportunity and choice for those who can afford it. Take Queen’s University’s commerce and engineering programs – two pseudo-private programs (they were some of the first to be allowed to deregulate and set their own tuition rates) that are top rated and more expensive than any other similar program offered. These programs also offer a greater breadth of opportunity on graduation because of their stellar reputation, which effectively gives an advantage to those students who can afford the brand.

This is not to suggest that Trinity will become that institution that confines a greater advantage to its students, it is merely to suggest that it opens the door to other private institutions to become accredited and potentially surpass the quality of the institutions that are publicly funded. Where law school tuition is already a run away freight train, private institutions could have the effect of driving our tuition costs even higher (though this is difficult to believe given the current trajectory of setting tuition costs as high as is legislatively allowed).

Lastly, I am sincerely and deeply concerned over the accreditation of a Christian law school that enables one moral viewpoint to have supremacy over others. A secular institution is less likely to suppress divergent views and where it has been found to do so, an open discussion can be facilitated. To allow one moral viewpoint to have priority over others, particularly in a legal education context, is not preferable to a system that arguably allows more space for divergent or minority opinions.

Ought law students and faculty to be protected from being exposed to viewpoints that might offend them? Trinity Western’s president explains that “like many churches, mosques, synagogues and temples, we have chosen not to bless same-sex marriage.” Because the University also states that their “founding legislation requires [them] to provide a university education from a worldview that is Christian” it is difficult to believe that the school will be interested in considering a progressive viewpoint on gay rights in Canada. And because they’ve conveniently excluded the LGBT community through the “Community Covenant Agreement”, there might not be anyone there to express that viewpoint anyhow.
Counterpoint: A gay, agnostic student’s surprising response to the TWU debate

NICHOLAS BANERD
Contributor

LAST WEEK, Robyn Schleihauf published an article in the Obiter, condemning Trinity Western University’s (TWU) highly politicized application for accreditation of what could become British Columbia’s fourth law school. She describes TWU’s Community Covenant as a “national disgrace,” proponents of which ignore “an underlying misconception: that requiring gay people to suppress their sexuality is not discriminatory.”

I’m gay, by the way, and I’ll definitely get push-back from my own community on this one. Not to worry, I’m used to it by now. I’m extremely pro-gay rights, pro-gay marriage, and all the rest of it. I have been “out of the closet” since eleventh grade, and coincidentally, grew up in Kelowna, a small BC town much like Langley, where TWU is situated. I’m also a fervent agnostic, somewhere on the borderline of atheism. I’ve often had impassioned, but respectful debates with religious individuals.

I agree with Ms. Schleihauf that the covenant is quite ridiculous. But I do question certain arguments she posits, and have arrived at a somewhat different conclusion. Here are a few of her key points, and my responses.

1. “Ought law students and faculty to be protected from being exposed to viewpoints that might offend them?”

I don’t think so. Social sciences and law revolves around accommodating and debating different viewpoints. Law students and faculty are quite intelligent, as we all know. I think most of us are able to decide things for ourselves, without the need for “intellectual protection.” Many of the professors I’ve admired most in my academic career have been those with completely divergent opinions than my own. As an undergrad in Political Science at UBC (yes, I escaped Kelowna as soon as I could), it was extremely enjoyable and thought-provoking to attend a class taught by a fervent Marxist, followed by a lecture from an ardent Neo-Dliberal.

I’m an agnostic, and I have a distaste for religious dogma. However, my distaste for censorship is equally strong. Progress in human history has been propelled by exposure to viewpoints that were, in their time considered radical. In my opinion, TWU’s covenant is blatantly discriminatory and antiquated. But there are those in this country who believe in such principles, as is their right. Are we sure we want to deny this community a forum for legal education?

2. “Private institutions allow for a greater amount of opportunity and choice for those who can afford it.”

Rock on. I don’t see how this is a bad thing. The world’s finest universities: Harvard, Yale, and others are private institutions; Harvard students whose family income is less than $60,000 pay no tuition at all. Of course, TWU is unlikely to become the Harvard of Canada; at least one would hope not. As for Yale, its shield still features the Bible, with Hebrew script, a testament to the school’s religious roots.

In a free society, opportunity and choice are considered virtues. Canada has a rather strange national trepidation for private alternatives to public services—a good example is the ruckus over two-tiered health care. We’re one of the only countries that tries to outlaw this apparently nefarious practice. In other developed countries with public health care schemes, however, it usually works just fine. There’s a market for private health care, and private hospitals are slowly popping out of the woodwork. Wealthy Canadians, including the former Premier of Newfoundland routinely escape to a US hospital for medical care. No laws or regulations can stamp out high demand for a product or service—consumers will find sources of supply somehow: legally or illegally.

3. “To allow one moral viewpoint to have priority over others, particularly in a legal education context, is not preferable.”

On this point, I agree. But a after a brief perusal of our school’s website, or a simple gaze around the halls, one realizes that Osgoode also adheres to a dominant moral viewpoint, endorsed by the school. I’ll call this viewpoint “secular social liberalism.” One tenet espoused by this doctrine is needs-based benefits, exemplified by Osgoode’s means-tested bursary program, which in essence denies funding to many older students. Second, applicants are meant to “personify the spirit of the Law School through their diversity” (from the Osgoode website). Thus, like most other schools, Osgoode has a distinct “aboriginal” applications category (in addition to other benefits for aboriginal students), and offers a waiver for many mature students who do not hold an undergraduate degree.

Not everyone would agree with some of these “preferable treatment” policies, which may deprive some equally meritorious candidates of an offer of acceptance. I am not condoning or condemning these policies here, but simply making the point that most Canadian law schools operate under this particular dominion.

» continued on page 15

THUMBS UP to…
L&L 3rd Year Rep Weston Powell
for helping an ESL visitor to our building write an important letter.

L&L Social Convenor Alex Payne
for coordinating the fall trivia tournament!

A number of Student Caucus and L&L Representatives for their work engaging their classmates on issues of concern and interest.
opinions

Legal dysfunctionalism

KAROLINA WISNIEWSKI
Editor-in-Chief

ALLOW ME to open this article with a rather trite statement: judges and courts play an important role in the development of the common law. Their interpretations have wide-reaching influence, from determining the approach of lower courts in the future, to affecting how lawyers advise their clients. This effect is amplified in the Supreme Court of Canada, where only a relatively small number of cases are heard each year.

Though their relevance is obvious to anyone with more than a week of law school behind them, we tend to give much less thought to the implications of the position and power common law courts hold. If we acknowledge that the decisions of the court have a direct effect on how the law functions, then one of the things we ought to consider is how judges are making those decisions.

To put it otherwise, we should look to the patterns of reasoning that emerge when we consider a broader range of cases, and ask ourselves whether that reasoning is the kind that facilitates a coherent, straightforward and fair development of law.

These are exactly the kind of concerns that underpin the legal functionalism/formalism debate. Legal functionalists abhor the separation of legal reasoning from policy considerations, a distinction that legal formalists cling to. Rather than relying on abstract principles, functionalists urge judges to undertake the process of decision-making by reference to social facts. Though certainly not the first to espouse functionalist ideas, Felix Cohen contributed what is perhaps the most colourful rejection of formalism, writing of “the heaven of legal concepts”, where lawyers could squeeze an infinity of meanings from a single statute and divide a hair into 999,999 equal parts.

One of the most significant American legal theorists of the twentieth century, reading Cohen’s biography is an exercise in humility. Earning his Bachelor’s degree (magna cum laude, of course) before he was nineteen, Cohen went on to earn an MA in Philosophy from Harvard by the time he was twenty-one. He began work on his PhD immediately after, and entered Columbia Law School to simultaneously pursue his LLB. While you were binge-watching Breaking Bad, he spent his midyear break at law school passing his PhD exams, earning his doctorate when he was twenty-two, and his law degree shortly after. His career accolades, logical reasoning, said Cohen, was endemic to the formalist approach and resulted in courts making incoherent, indefensible and plainly incorrect decisions.

Rather than working exclusively within the confines of legal theory, without reference to contemporaneous developments in other areas of research, Cohen saw himself as part of a broader movement, one which extended to the disciplines of mathematics, physics and philosophy. In the last of these, the sort of approach Cohen was advocating was embodied by the logical empiricist movement. This school of thought sought to regulate the practice of philosophy so that it mirrored the rigour of the scientific method. Pursuit of this goal was taken up slightly differently by different proponents of logical empiricism, but its most notorious embodiment was the verificationist school, which held that the meaning of a statement is only equivalent to its verification; statements were only meaningful if they could be verified via empirical observation. As a result, any and all areas of philosophy that did not take as their starting point empirical, verifiable observations were, quite simply, nonsensical. On this reasoning, many of the things debated in fields of aesthetics, ethics, philosophy of religion or any other discourse that took as its starting point anything less than testable premises were pseudo-problems. The idea was that if philosophers wanted philosophy to be taken seriously, it had to proceed in the same way that science did: on the assumption that everything is revisable, and that things we take for granted as universal “truths” can only be regarded as such until they are disproven. This sentiment was undoubtedly influenced by nearly-contemporaneous advances in physics, like the theory of relativity, which radically changed how we understood space and time.

Cohen’s ideas can be situated in that tradition. Rather than building legal arguments by making internal references to other legal fictions, we should look to the implications legal decisions will carry for social reality. Things like rights in rem or corporations only have meaning insofar as the law says they do, so to base a legal argument on one of those ideas is to make a circular argument. Instead, we need to conceive of legal reasoning as focusing on the relations between the decisions a court makes and the consequences they will carry. Once we do so, Cohen argues, we choose the deci-
The cost of talking about Rob Ford

SAM MICHAELS
Staff Writer

AFTER ANOTHER WEEK of ridicule and embarrassment, Rob Ford is, whether in practice or name only, still our mayor. His resilience is, if nothing else, interesting. A man who has managed to morally and politically divide the city of Toronto’s population through actions that have next to nothing to do with his actual policies or political decisions, Ford has put all of Toronto in a unique and uncomfortable position. Any day now, it is possible (though unlikely because of ongoing criminal investigations) that a video of Ford taking a puff from a crack pipe will be released. Such definitive proof would hopefully be followed by an arrest. This would mean the end of his tenure, but until then, Toronto seems left in a state of confusion and indecision.

What is important to remember, I believe, is that, for all intents and purposes, it’s business as usual in the city of Toronto. Ford’s future is now in the hands of the courts, and though we must remain vigilant and informed as citizens, our role in determining where and when his tenure ends is limited (not counting if he makes it to the next election). I understand that a story of this gravity and nature is bound to be talk-only serve to distract and deviate from the work our city should be doing.

At a certain point, and I believe we are at that point now, we must accept that the process must play itself out, and other than making sure that the process is followed ethically and equitably, there is little left to do. Obviously, the whole story casts enormous shame over the city, which justifiably explains the angry editorials and write-in rants filling the pages of the Star, Globe, and Post. However, now that we are at this crossroads, the focus can either turn to unity or bipartisanship.

On the one hand, we know it is extremely likely more evidence will come out. What has already been released indicates that the video first reported by Gawker is indeed real, and is in the possession of Toronto police. The police have also released video evidence showing Ford interacting with suspected drug dealer Alexander Lisi, several times in “suspicious” locations, and exhibiting suspicious behaviour. Lisi has been followed for some time now under Project Traveller, a criminal investigation, and much of what will come out about Ford stems from this investigation. In the case that definitive evidence comes out showing Ford to have been using drugs, council does not have any legislative power to impeach or dispose of him. It will be up to the people of Toronto to remove him through the next election, an extremely likely result if the crack story is proven true.

This is a scenario the city must be prepared for, Toronto seems left in a state of confusion and indecision. We are already reaping the repercussions of our obsession with the Ford fiasco. Last Monday, councillor Minnan-Wong grabbed opportunity by the horns, proudly trotting out a motion in a special meeting calling for Ford to resign and go to rehab. There are no pretenses to be made about Mr. Minnan-Wong’s intentions. The councillor had already declared himself a candidate for the next mayoral election, and took the whole Monday meeting, an event he knew would be televised thanks to Ford’s weekend antics, to parade his good name. A wholly inappropriate motion in the first place because it had no enforcement mechanism (and was even proclaimed as merely symbolic), what is worse than the show we all had to watch on the evening news was what was scrapped so it could go on.

The TTC is facing a 6 million dollar budget shortfall for the coming year, which was supposed to be discussed on Monday, and was put aside for the Ford Special Meeting. On Wednesday, the TTC, out of options, announced that token and Metropass prices will be going up in January. It is but one example of how the Ford show, as long as it goes on in our council, will only serve to distract and deviate from the work our city should be doing.

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Avant Garde - Vol 2: Kate Cash

MARIE PARK
Layout Editor

KATE CASH is one amazing second year student. As a fellow Section D buddy and having seen her perform, I wanted to write about her for the second edition of Avant Garde - but through the process, I learned that my talented friend can teach us about the importance of following your heart, but keeping your brain fed, too, throughout the journey.

Kate has been a musician and bartender for much of her pre-Osgoode days. During her early twenties, she and her boyfriend travelled across the country with a guitar, a tent, and an old Pontiac named Maggie. She tells me that though she was always more inclined towards the visual arts, decided to try out some busking while on the road.

“I started busking for change while I was on the road; wrote a few songs that didn’t suck too bad and realized I had a knack for it,” she says too modestly of her songwriting. So far, she has played in many venues in Toronto, such as the Local, the Cameron House, and 3030 Dundas. However, she says that despite these accomplishments, “like a lot of artists, I never feel like I’ve ‘made it’ - it’s always a struggle to get better, to work on my songwriting, stretch my range, condition my tone, work on my solo performance, work on my guitar playing.” One of her goals for the near future is to get together a band and play at the Dakota Tavern.

Kate’s academic history also follows an uncommon route. Though she dropped out of school several times in high school and once before in university, she decided to continue to pursue academic studies at 25. The reason, she comments; “figured I could use some solid instruction on technique instead of re-inventing the wheel. And I missed wrestling with political philosophy, which is something I’ve found pretty hard to do on my own. I need colleagues for that kind of thing.”

She was enrolled in the Emily Carr Institute in Vancouver just prior to moving back to Toronto. She was interested in the Fine Arts Studio program at the University of Toronto, but she did not follow through. “Half an art history class later, I said ‘fuck this noise’, dropped the class, and went back to my first love, political science. So I ended up with a Bachelor of Arts in that.”

As for applying to law school, she comically comments that brain damage was a contributor. Though admittedly it was partly by chance and whim, it was her curiosity about the field of law as well as her future plans to run for political office that led her to apply.

“I intend to run for political office someday, and if I ever have the privilege of being elected, I think legal training will be extremely helpful towards writing good policy.”

As an artist, Kate comments that she is able to approach her studies with a greater cognitive flexibility – a higher degree of plasticity of mind, to think more conceptually about the issues, rather than with the more structured, literal interpretation.

Kate had little to say about whether or not she would have done anything differently so far. She does, however, recommend to first-years and peers that taking on too many extra-curricular activities sometimes has the counter-intuitive effect of diminishing the law school experience. Not only did they distract from her studies, it took away time that could have been spent on her passion for music and the visual arts.

Looking forward, Kate jokingly comments: “assuming I manage to become a lawyer, I’ll likely be another one of those day-job folk singers, hungover and exhausted at the office on Friday morning from my ‘Thursday night gig.’”

Ideally, she would love to join a firm that recognizes her art and the value of artistic expression as a working professional. For instance, a career that can provide her the freedom to take off a couple of months in the summer to perform in festival tours.

“And geez, I haven’t picked up a pencil or a paintbrush in 6 years. I would dearly love to get my shit together and get back to that. Sketch my clients, maybe. Who knows?”

In hearing her story, I could only imagine how wild and colourful her past experiences were. In comparing to mine, I realize that I have many more years to go, and many more turns in the road, before I fully grasp what it is that drives me and moves me. One of the most important lessons I take away is that in reality, ‘failures’ and ‘accomplishments’ are only artificial constructs in our society. This culture too often draws fine lines between right and wrong to guide us, but we must realize that each individual should be the one to define their own standards. After all, no one knows you better than yourself.

Kate confirms this with these words of wisdom, too often said, but not too often understood. “Be brutally honest with yourself. Figure out what you’re really talented at and what you suck at; work your strengths and forget everything else.”

And in true Kate Cash fashion, she ends with this light-hearted message for us all - “relax a bit about this whole thing. In 50 years, your Crim exam probably isn’t going to matter at all. Do your best and then have a snack and go to bed.”

THUMBS DOWN to...

The MDC, for not offering "upper lockers" on request.

The Law Society of Upper Canada and Federation of Law Societies of Canada for failing to publicize the decision timeline or process on Trinity Western University’s accreditation.
Corruption: the greatest threat to global sports

ANDREW CYR
Sports Editor

WHAT IS the biggest issue facing sports today? Is it doping? Head injuries? If you ask investigative sports journalist and recent Osgoode guest Declan Hill, he would tell you that there is no bigger issue in sport than corruption and match-fixing. Match-fixing refers to the practice by which sports are played to a pre-determined result in order to earn a profit by betting on the match. One of the world’s foremost experts on match-fixing and corruption in international sports, Hill spoke at Osgoode on November 20, 2013, courtesy of the Entertainment and Sports Law Association.

According to Hill, corruption and match-fixing is as old as sport itself, dating back thousands of years to the ancient Olympics in Greece. However, a new form of corruption, fueled by organized crime and gambling rings worth tens of billions of dollars, threatens to destroy sports on a worldwide basis. Hill infiltrated such criminal organizations to give the world a glimpse into the shockingly corrupt world of international soccer (the subject of his book: The Fix: Soccer and Organized Crime).

When most North Americans think of sports gambling, they think of Las Vegas. However, Hill informed his audience that Vegas accounts for less than 1% of the sports gambling market. While the precise size is obviously difficult to determine, Hill estimates that 60-70% of the market is dominated by illegal Asian gambling outfits. Along with attracting gamblers with thinner margins, these operations are run by criminals who are willing to bribe and intimidate players, coaches, referees and other officials to influence the result of a match. Hill explained how this match-fixing practice has thoroughly corrupted professional sports in Asia, from sumo wrestling in Japan to baseball in Taiwan. Hill told his audience of the surprising tale of the president of the Football Association of Indonesia who was sentenced to two years in prison as a result of his corrupt practices – and maintained his position throughout his prison term.

As Hill explained, however, the problem is not constrained to Asia. Having thoroughly corrupted sports in their own countries, Asian match-fixers have been forced to look elsewhere for “honest bets” in order to attract and retain gamblers. European soccer has been hit hard by match-fixing allegations in recent years, with few countries spared from the controversy. Hill believes that the practice is not constrained to soccer, suggesting that ATP tennis may have been corrupted as well.

Most Canadians would like to see match-fixing as a strictly Asian and European problem. However, North American sports are far from immune. The Canadian Soccer League (CSL), a semi-professional soccer league based in Southern Ontario has been plagued by match-fixing controversies in recent years, leading the Canadian Soccer Association to withdraw its support from the league in January. The CSL has been dropped from many gambling websites due to the controversy.

Despite this, Hill believes there is an “absence of leadership and accountability” regarding match-fixing in Canada. Canadian authorities have been willing to turn a blind eye to an issue that is generally regarded as a foreign problem, largely constrained to soccer – a sport which is not as close to the hearts of Canadians as sports like hockey and football.

However, the match-fixers’ appetite for corruption cannot be satiated within the bounds of a particular sport or geography. It is only a matter of time, Hill warns, before the match-fixers begin targeting the NCAA and the “big 4” North American professional sports of baseball, football, basketball and hockey. The NCAA has been hit with corruption controversies in the past, and its model – elite athletes competing in high-stakes games for no compensation – is ripe for exploitation by the fixers. The big 4 are somewhat insulated by the exorbitant salaries that athletes receive in each of the leagues (for obvious reasons, match fixing is best-suited to situations where athletes receive little or no compensation). However, Hill believes that match-fixing has occurred before in the National Hockey League.

THUMBS UP to…
Everyone who participated in Osgoode OCIs. It was great to see so much support and encouragement in the “holding chamber” between interviews.

The Obiter Dicta

Monday, December 2, 2013
A Little Sheep Told Me: Our love for orcas is not really love

ANGIE SHEEP
Arts & Culture Editor

WHAT WILL YOU (or all of us) be doing the next couple of weeks? Exam prep, of course! It’s that stressful and tense time of the year again; can’t you just smell it in the air? But don’t forget to take periodic breaks. They will sustain you in the long run. Exams are a marathon, not a sprint. And when you take that much needed “me time”, I suggest you try watching Blackfish, a highly regarded and world-renowned movie about orcas.

Over the past few years, there have been many films and studies released about animals in captivity. The subject of animal welfare and abuse has always been at the forefront of my concerns and since these documentaries, I am even more convinced about the irreparable damage that is inflicted on the captured mammals. The issue of marine life first came to my attention through the Academy Award-winning movie, The Cove (2009), which highlights the capture and slaughter of dolphins in Japan. This work was controversial, graphic, heartbreaking, and profoundly inspiring; it is truly one of the “must-watch” films of our time. Since its release, there have been major steps taken by both policy makers and laypersons to quell further hunts by the country’s whaling industry.

Movies and documentaries are one of the most influential media; film has the unequivocal power to manipulate, inspire, and alter perceptions and behavior. Therefore, it was no surprise that the most recent critically acclaimed documentary, Blackfish (2013), caused a steep slide in SeaWorld’s stocks since its debut at this year’s Sundance film festival. I just viewed the film yesterday and although it did not have as much shock value as The Cove, it nonetheless touches the audience greatly. Blackfish revolves around the care of orcas in captivity and specifically centers on SeaWorld Florida’s Tilikum, the killer whale that was responsible for the death of his trainer, Dawn Brancheau. It was an incident that shocked the world and instigated a detailed investigation into the business’s practices by the US Occupational Safety and Health Administration.

Based on the inspection, the Secretary of Labor issued three violations to SeaWorld and required that its trainers be separated by a physical barrier or sufficient distance from the mammals during the shows. SeaWorld denies these citations and has engaged in a lawsuit since to combat the penalty (Secretary of Labor v SeaWorld Florida Inc). During the trial, the court questioned Ms. Flaherty Clark, the curator of trainers at SeaWorld’s Orlando, why it was so important that the trainers be without barrier and in such close proximity to the whales during the shows. She responded that this interaction is exactly what the people came to see and expect at Shamu Stadium. To me, this was simply a dressed-up way of saying “money”. Her words show little regard for the mental and physical well-being of the trainers and animals. Instead, it is a case of what the customer wants, the customer gets, regardless of the inherent risks of such interaction.

SeaWorld strongly stands by its training program. In court, Ms. Clark repeatedly attested to its efficacy and success and also stated that any deviations from the normal circumstances were entirely attributable to the fault of the trainers. Therefore, it was the victim Dawn Brancheau, the most experienced and senior employee at this particular establishment, who brought this upon herself. SeaWorld completely ignored its employees’ testimonies that Ms. Brancheau correctly followed all of the protocols during her interaction with Tilikum. The way that SeaWorld automatically assigns responsibility to everyone but itself provides more than enough reason for disgust and outrage. Judge Welsh fortunately saw through its assertions and decided that the training was insufficient in ensuring the safety of the park’s trainers. He stated that the company’s persistent reliance on the signals and training is unwarranted as they proved to be entirely futile during all captive orca attacks in the past. It is important to note here that there have been no known cases of whales killing humans in the wild; the Judge stated this fact time and time again in his ruling.

Orcas are inherently social; they live in long-term social groups, called pods, all their life. When they are captured, they encounter not only a severe reduction in swimming space but also isolation. Since his imprisonment, Tilikum has been entirely secluded in a small pool for two-thirds of his time. His situation is comparable to incarcerated individuals held in isolation cells, except in Tili’s case, he has done nothing to warrant this punishment; he has not been a danger to mankind and he certainly has not jeopardized our freedoms in any way. However, put him (or anyone) in an enclosed area and aggression and frustration are born. However, due to our still limited understanding of emotional and personal states of whales and dolphins, we cannot know for certain why the attacks occur in captivity; we can only speculate based on logic. But something obviously and irrevocably goes wrong when these mammals are captured.

During litigation, SeaWorld attempted to exonerate itself of the most significant charge by contending that working with killer whales presents no recognized hazard. The court rejected this argument. There were ample evidence, accounts, commentaries and manuals that conclusively demonstrated the inherent danger of interacting with these animals. Over the past few years, there have been over 80 accounts of killer whale injuries and “close calls”. Therefore, for SeaWorld to bluntly deny the existence of recognized hazards is an affront to the courts’ intelligence. It goes without saying that the litigation strategy adopted by SeaWorld has placed a bad taste in the mouths of civilians and the justice system.

Judge Welsh ultimately found that the measures implemented by the Secretary were reasonable and feasible in eliminating the hazards to trainers. The case was then brought to the U.S. Circuit Court of Appeals, which heard the matter on November 12. The company has retained Eugene Scalia, son of Supreme Court Justice Antonin Scalia, as its representation. They are still of the position that the SeaWorld training programs are sufficient and thus the extra limits placed by the Secretary are unwarranted. The judgment is due for release in 3 months.

But what now? What is the solution for whales in captivity? The Orca Project, one of the leading advocates for marine life conservation, states that a shutdown approach to SeaWorld is not the answer. SeaWorld has provided some benefit to the public and marine life; it is their business model that needs an overhaul. Its rescue and rehabilitation efforts should undoubtedly continue; however, the practice of breeding programs should be terminated. Tili-

» continued on next page
Goodbye sweet youth, I bid thee farewell

DEAR OBITER DICTA,

AS THE YEAR comes to an end, it’s time to reflect on past misgivings. Sadly, I had done nothing of importance to be considered for the Top 20 Under Twenty before I turned 20 myself. In response, I wrote this lamentation:

Due to the unfortunate condition that will be imposed on me in a moment’s time, and the utter urgency for me to perform some magnanimous action, I have decided to compose this short literary masterpiece. Although some people will consider this a futile exertion of mental substance, blatant empty rhetoric generated for awe and grandeur, it will hold for all that follow to be a brief analysis into societally preoccupations by way of satirical penetration through the veil. As I pass through my youth, with no great achievement yet on my life resume, I am forced into melancholic pensiveness.

Will I ever achieve true greatness?

My contemporaries are already being awarded for their contribution to the world while I bask in my education. They are being honoured and exemplified as if it is some outstanding achievement to be a human being. We all travel through the same life cycle: birth, growth, regression, death; and yet they are presented as the divine gifts of God for deciding to do something in that short span between birth and death, especially while so young at heart. Admired for overcoming the challenges of today’s world and balancing strenuous activities such as volunteering, part-time work, running a small business, sports, theatre, and education—just to name a few—my compassionate peers serve as a demonstration for making a difference.

The difficulties they face are so overbearing, yet so inconsequential and unimportant. There likely exists underprivileged and malnourished youth wishing they had meat on their chests rather than a shimmering medal. These children would love the chance to make it beyond their youth, with no great achievement yet on their life resume, I am forced into melancholic pensiveness.

How many friends do we have for the wrong reasons? How many of us have friends who appreciate us for how much we give to them rather than appreciating us for who we are in isolation? But in modern thought, benefit outweighs value, or value degenerates into benefit. Those deemed worthy by society are now open to the perquisites that play into this nobler state—the revelry, the connections, the discourse.

Meanwhile, the rest of us underachievers are left to squander our lives on petty occurrences, fighting the frustrations of daily living. We are forced to feel badly as society judges us with their whispers of contempt, thinking that mediocre creatures are immune to their hard glares. We are not. We too feel the joys and the pains of life. We too experience happiness and sadness, health and illness. Is it our fault that we have not been subjected to some great mistake, making us more compassionate people? Is it our fault our parents did not force us to become cultured? Is it really our fault that our decadent world has left us morally bankrupt? We are tossed into this salad of fragmented mythologies and expected to do something about it. We are made to feel guilty about forgetting the dressing. But have they not yet realized we prefer it raw? Unlike many, a few of us remain that have not forgotten beauty.

We perceive what others miss. We embrace the unmeaning we are presented with instead of clinging to the familiar. We go unappreciated but we do not complaint. We prefer being removed from societal construction, while enjoying life within it. We are luckily clever enough to see past the subtle subterfuge, to discern the underlying reason for awarding upcoming brilliance.

Simply, for the fading generations, the awards symbolize hope, the hope for fixing all the problems they ignored for their selfish indulgence. They award the youth to lull them into a false sense of appreciation, thereby encouraging them and others to continue with their ways of betterment. The young leaders are unwittingly forced into responsibility. They suspect that we will fall for this ploy, those wise deceivers.

However, we are united and will not be enchanted by the spell of glory. We are too strong-minded to sacrifice our lives for those of others. I refuse to become victim. I would rather remain deviant and criminal. For the recipients, awards represent satisfaction and offer an increased sense of meaning. But do such dynamic individuals need praise? I would assume that these freshly baked loaves would not go stale without preservatives. These awards preserve vocation, offering them reassurance from the elders that they are doing the right thing by remaining loyal to the clan.

But should reassurance that they are following in the right footsteps be given?

True greatness does not need encouragement from the rest of humankind. True greatness is a self-propelling wheel. True greatness is sure alone, forging its own path. True greatness does not remain a pupil but becomes a teacher of a new breed. That is why I would rather create a new disease than find the cure for the old. It is fruitless to fertilize an orchard that does not bear any fruit. It is better to plant new seeds.

Thus, I return back to my original question, the one I often ponder: “Will I ever achieve true greatness?” Yes, but to the world’s displeasure and misfortune, not before my twentieth birthday.

Signed,

ANONYMOUS

Orcas

» continued from last page

kum, unable to be perform due to his past and present tendencies, is now merely kept in his cage for breeding purposes. Numerous advocates are currently fighting for his release back into the wild, but it is unlikely that SeaWorld will concede as he has a value of millions. TILI no longer swims or plays; he simply stays afloat. His behaviour is akin to a mentally ill human being sitting in a chair and staring aimlessly at the walls all day.

Humans are also social animals, so I believe we can all appreciate the pain and frustration of forced isolation. Our work as lawyers demands constant interaction and most of us revel in this very fact. Blackfish clearly demonstrates the many ways in which we share similarities with some marine life. It is definitely worth a watch, especially when you need a break from that heavy studying!

THUMBS UP to . . .

The Canadian Council of Law Deans for revising their membership requirements to exclude deans of law schools that do not respect equality rights or anti-discrimination laws.

Mayor Rob Ford, because wrecking ball.
opinions

Legal dysfunctionalism

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sion that is most likely to carry the most desirable consequences. In order to determine what makes a consequence desirable however, courts will have to take sides on contentious social, economic and political issues. The discomfort they feel in the wake of having to do so is one of the things that pushes the judiciary, so says Cohen, towards formalism.

Although the ideas put forward by the logical empiricists sound attractive, many are quick to point out that problems do emerge. To name one of the many objections that have been made, it has been argued that logical empiricism fails to accurately mirror how science actually develops. If we take seriously the idea that everything is revisable, we might as well pull down the entire scientific framework each time we answer a question on a lab report. But of course, this is not how scientific theory plays out in practice: we don’t test Newton’s laws, but rather, we deploy them. If we build a bridge and it falls down, we don’t assume that something must be wrong with Newton’s laws, but rather we figure that we must have disobeyed them.

Could a similar argument be made in the context of legal functionalism? The sort of picture that Cohen proposes seems to leave little room for pretty foundational ideas, without which we would have to reformulate how we think about the common law itself, like that of stare decisis. If courts are to make legal decisions based on the consequences we expect them to have for social reality, and if courts are not to base their arguments on other, abstract legal concepts, then are we to abandon all deference to the decisions of higher courts? Is this really the most efficient way to build a legal system, that each time we are faced with a problem, we start at square one?

To be sure, the sort of legal functionalism that Cohen proposes has its strong points. But one might wonder whether, when taken to its logical conclusion, the way in which the functionalist method would play out in practice is not entirely unproblematic. The question, then, is how to find the balance between the sort of circular reasoning and appeal to transcendental nonsense exhibited by the formalists, and the perhaps impractical implications of a staunch adherence to functionalism.

Editorial: spruce up your holiday of choice

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of herbs and spices (take that, Col. Sanders), Czechs enjoy year-round, and especially at Christmas time. They make a game of trying to identify all the flavours, which is easier when you do it earlier in the evening. To Czechs, this drink tastes like Christmas (and not unlike a Christmas tree), and now the same goes for me.

For more holiday ideas, I turned to Hanukkah. Perhaps that’s just an Osgoode student feeling left out on Jewish holidays, but maybe not. I think my first exposure to the Festival of Light was Shari Lewis’ Hanukkah special featuring Emmy Award-winning TV juggernaut Lamb Chop. After explaining why Lamb Chop was not called Pork Chop, Shari taught the children of North America how to make latkes. I still have yet to master the art (I always use too much egg), and Caplansky’s Delicatessen on College Street makes such knock-down drag-out winners that I’ve just quit trying.

My second exposure to the 8-day Feast of Dedication was when Ross Geller, skunked for a Santa costume so close to Christmas, dresses up as the Holiday Armadillo and recounts the story of the Maccabees to his young son for the first time. After the success of Judah’s revolt against Greek King Antiochus IV, the Temple of Jerusalem was rededicated and Hanukkah declared for eight days. However, the vessel of oil for the flame that was to burn throughout the festival only held enough oil for one day. Miraculously, it burned for eight, making the Festival doubly important. Like the story of Christmas, it has the ethereal quality that comes with most ancient spiritual tales. Incidentally, Hanukkah falls between November 27 and December 5 this year. While I don’t envy those studying by the light of the menorah, I wish them all a Chappy Chanukah anyway.

In contrast to the holidays above, Kwanzaa is a relatively new winter celebration. It is so young, in fact, that its founder, Maulana Karenga, is still alive. Observed between December 26 and January 1, the first Kwanzaa took place in 1966. Karenga, born Ronald Everett, was an icon of the black nationalist movement in the United States.

Now celebrated throughout the pan-African diaspora, Kwanzaa celebrates seven virtues: umoja (unity), kujichagulia (self-determination), ujima (collective work and responsibility), ujamaa (cooperative economics), nia (purpose), kuumba (creativity), and imani (faith). The virtues are meant to fortify the cultural and social ties among African-Americans; to remind them of their heritage, and to re-energize their spirit despite how their people first came to North America and despite the troubles they continue to face.

For me, Christmas time tends to emphasize my immediate family ties, but I had never thought of it as a time to reflect upon my larger community: my ancestors from the British Isles and Germany, my fellow Canadians, and those insufferable folk I go to school with. It’s not a bad idea.

Let us turn now to Festivus. Originally a family tradition of one of Seinfeld’s writers, it entered the popular consciousness as the apparent brainchild of intellectual giant Frank Costanza. Celebrated on December 23 as a form of resistance to the commercialization of the holiday season, mundane events that take place during the day are labelled Festivus miracles. Traditionally, one erects a Festivus pole, and the celebrating group gathers for a Festivus dinner, which suspiciously resembles a Christmas one.

After dinner (and presumably a libation) comes the Airing of the Grievances, in which participants publicly declare ways in which the world and those present have caused them misery over the past year. This is followed by the Feats of Strength, in which the guests must force the Head of the Household to the floor and pin them. Until they are successful, Festivus continues indefinitely. In this way, it is rather like Hogmanay, but with wrestling.

Festivus is not for the faint of heart. I have heard tell of a law firm at which the employees celebrated Festivus each year, airing comical grievances in good jest. Then, one year, someone aired real grievances. Needless to say, the pole went into storage and Festivus was cancelled forevermore. Don’t be that guy. Especially not on Festivus.

All this to say that we should never hesitate to get tied up in our own traditions, be they gift giving, worship, nationalism, potato pancakes, intoxicants, or aluminum poles. Just remember that it may be worth stealing a few extra traditions. It could make your Christmas less lame.
for, especially given the amount of evidence yet to be released. However, until that time, this story will only serve to confuse and divide Toronto, if we let it. If Ford did, or did not, do crack, we must remember that it does not reflect on “capitalist elites” any more than it reflects on the “liberal media.” This is an important talking point that I believe has been sorely lacking from the conversation. This whole scandal is about the private actions of one man. If they are proven, our legal and political institutions should be equipped to handle it. If they cannot be proven, we have the mechanism of the next election to decide whether we believe Ford’s story, or wish to move on to another candidate.

Until then, this incident could foster the type of partisanship that divides far more than it conquers. As a city, we must ensure that this does not happen. What is paramount now is the accountability of our City Council, to make sure they continue, as best they can, to do the job we elected them for. Playing into the Ford show will only encourage our more keen politicians to cast themselves as the heroes, while leaving the far less media-friendly work to the side.

To defend even Lucifer in the name of his right to a fair trial.

I contend that the outrage and attention we’re all giving TWU is exaggerated. Most of us would agree that the Covenant is overbearing and discriminatory. Let it be known that I think TWU will win again in round 2 — after all, what’s the difference between a teacher and a lawyer? A lot, actually. Teachers shape the minds and attitudes of young, impressionable children—these are the students in need of intellectual protection! Their accreditation, to me, is more controversial than for lawyers, who are meant to silence their personal views, and defend even Lucifer in the name of his right to a fair trial.

I think the best way to approach this is to ignore the school, letting it fester in its obscurity and insignificance. Let it become a running joke—Canada’s legal equivalent to the University of Phoenix. But so long as my tax dollars aren’t used to fund it, I won’t be protesting in the streets.
This issue’s Sudoku

Last issue’s solution

The Davies summer experience?

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