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<td>Allen, Graham</td>
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Spilling the Beans: Teaching and Contract Law

Abstract: This paper explores contradictions within the Enlightenment account of pedagogy as expressed in Rousseau’s Émile. It does so by focusing on one specific narrated event in Rousseau’s text which concerns itself with questions of responsibility and the law.

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The law of teaching currently models itself on contract law. The student contracts into the university, the department and the individual module. The lecturer/teacher contracts with the student via the legal, judicial apparatus of the university, to deliver pre-announced, pre-advertised modules as part of a department’s syllabus. In this age of transparency and performativity, of modularization and quality-audit, a whole range of contractual obligations are set out for the signature of the student and the signature (implied by their employment status within the semi-judicial body of the university) of the teacher. Of course, the model of contract law immediately comes crashing up against the traditional university principle of academic freedom. A huge question about how academic freedom (which is supposed to be unconditional) relates to the contract law model of teaching and course delivery immediately threatens to generate a host of irresolvable problems. If the module elected by a student, for example, is one in English literature and states in its advertised course content that it will cover six novels by Charles Dickens, then has there been a breach in the contract if the lecturer responsible for delivering the module only covers four novels by Dickens? The answer is unquestionably yes. The students are unlikely to, but they could legitimately complain that a contract has been broken by the teacher in this instance.
What are the limits of this kind of contract? this legal imperative which makes us all, as teachers, figures of contract law? Say a module states that it will introduce students to the origins of literary theory and it is delivered by a lecturer who favours the deconstructive school of philosophy and literary theory and thus teaches that the very idea of origins is logocentric and irresolvably problematic and so must be placed under erasure, and so does not in this sense teach “the origins of literary theory” but in stead teaches that there are in fact no origins for literary theory. Has a contract been broken in this instance? or has the principle of academic freedom drawn invisible quotation marks around the word “origins” in the course description, thus allowing (juridically) for the kinds of ironies typically indulged in by teachers of a deconstructive bent? If our answer is the latter option, then where do these invisible, ironizing, liberating quotation marks end? When does academic freedom (the principle that the teacher can say, rationally, in reason, in the name of reason, anything about anything) meet the contract law model of module delivery (which states that the teacher is limited in what he or she can do within specific modules and syllabi)?

In the context of the apparent need to legislate over the creative work of faculty staff, we have recently been discussing the concept of contractual obligations in the Research Committee of the Faculty of Arts, University College Cork. I refer to the Faculty of Arts, although in the restructuring process University College Cork has entered into since 2004 the Faculty is, as I write, destined to become a College and to be renamed the College of Arts, Celtic Civilization and Social Sciences; significantly, this new College, replacing the traditional Faculty of Arts, is to be separated from the Law Faculty, with which it formerly enjoined a twinned Faculty status. Under the new College structure, already adopted in similar restructuring processes by many universities in other countries, the former Law Faculty is to be joined, in a College of Business and Law, with Commerce, Economics and Education. Law, apparently, is no longer cognate with the Arts and the Humanities, or even the Social Sciences, but is in fact, or apparently, most directly identifiable and, as they say, “bed-able” with Commerce, Economics and, this particular example of contemporary bed-ability is most striking, Education.

In our discussions in the Research Committee about creativity and contractual obligations one of my responsibilities, as a theorist, was to suggest to my colleagues that
the concept of “contractual obligations” with regard to research is a minefield. I think I succeeded, to a point. But the same goes for teaching, in the Humanities and the university generally. If Derrida is right and the university is unconditional, in both senses of the term, then how as it must, or rather as it will, does the university (considered as a judicial, legislative and executive body) specify, locate and enforce contractual obligations, the law of contract for teachers and researchers? Derrida states:

the modern university should be without condition. By “modern university,” let us understand the one whose European model, after a rich and complex medieval history, has become prevalent, which is to say “classic,” over the last two centuries in states of a democratic type. This university claims and ought to be granted in principle, besides what is called academic freedom, an unconditional freedom to question and to assert, or even, going still further, the right to say publicly all that is required by research, knowledge, and thought concerning the truth.1

This passage from Derrida is the basis upon which I would ask a question, or a set of questions about contractual obligations and the law of contract which today comes before teaching. I want to quote one other brief section of the Derrida essay I have been referring to:

Here then is what I will call the unconditional university or the university without condition: the principal right to say everything, whether it be under the heading of fiction and the experimentation of knowledge, and the right to say it publicly, to publish it. (26)

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1. Jacques Derrida, “The future of the profession or the university without condition (thanks to the ‘Humanities, what could take place tomorrow), Jacques Derrida and the Humanities: A Critical Reader, ed. Tom Cohen, Cambridge: Cambridge University Press, 2001: 24-57 (24). The other side of “unconditionality,” for Derrida, concerns the lack of any literal, permanent and reasonable foundation for the idea of the university itself. As he puts it: “if this unconditionality, in principle and de jure, makes for the invincible force of the university, it has never been in effect . . . . I also say ‘without condition’ to let one hear the connotation of ‘without power’ and ‘without defense.’ Because it is absolutely independent, the university is also an exposed, tendered citadel, to be taken, often destined to capitulate without condition, to surrender unconditionally. It gives itself up, it sometimes puts itself up for sale, it risks being simply something to occupy, take over, buy; it risks becoming a branch office of conglomerates and corporations. This is today, in the United States and throughout the world, a major political stake…. “ (27-8)
If a university is a place in which anything, in the name of reason, can, potentially, be said about anything, where people have a right to say “everything,” then where is the point, the border, the line at which contractual obligations, especially in teaching, locates itself? We tend, in a kind of extension and revision of the Kantian model, to locate that border, the point of contact and conflict, between “us” as academic men and women “of” the university and what Gregg Lambert, returning to the conflict of the faculties in the post-modern age, calls the “fifth” faculty, the new faculty of administrative and bureaucratic agency which now appears to run the institution. But one does not have to be an avid reader of Derrida’s work on the university to realise that a series of folds, of inversions perpetually undermine such a neat architectonics, such a clean topology. It may well be that the border-line, the point of contact, conflict, of force between the principle of academic freedom and the law of contractual obligation occurs much closer to home, within our own faculty, our own departments, our own teaching, within us.

My title is a reference to a rather characteristic episode in Rousseau’s Émile. It is a philosophical example and a literary one. Rousseau is discussing how we might inculcate an understanding of property in a pre-pubescent student. Rousseau’s teacher goes about this task by helping the child to plant beans in the family garden. This seems logical and unobjectionable. The child has observed the gardener working and obviously wants to copy him. Rousseau’s teacher wants to inculcate an understanding of property in the child and so he encourages Émile in the art of planting and patient nurturing. An eminently pedagogical scene, we might say. The only problem is that Rousseau’s teacher has made sure that they plant the beans in a patch of ground in which the gardener had already planted some rare Maltese melons. When the gardener sees that his work has

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3. The idea of belonging to a body and to a body with apperception (as in the faculty of sight or the faculty of reason) is, it would seem, currently being restructured out of the university’s own self-image and the university’s language about itself. Indeed, the entire Kantian “architectonics” which builds the modern idea of the university around a synecdochical “conflict of the faculties” seems destined (in the United Kingdom, in Ireland and no doubt elsewhere, one thinks here of the projection of a European Higher Educational Area by the year 2010 in which all differences are simultaneously eradicated and preserved) to be replaced by an educationally sensible and yet in many ways uninhabitable (because lacking a faculty to see, to speak and to think and thus, in that sense, in-sensible) collegiate system.
been destroyed he is furious and verbally attacks Émile. The teacher brokers a peace between the two, but the point is, of course, that the child has been taught something about “the principle of property.” The scene is typical of the teaching philosophy of Rousseau in Émile. Rousseau concludes the scene by summing up in this fashion:

“Young teacher, pray consider this example, and remember that your lessons should always be in deeds rather than words, for children soon forget what they say or what is said to them, but not what they have done and what has been done to them.” (75) The Rousseauvian teacher is a double, an ironic agent, a figure who says one thing while he does another. Rousseau’s teacher is someone who manipulates appearances and words in order to impress the student through experience first. As Rousseau states:

Let him [your pupil] always think he is master while you are really master. There is no subjection so complete as that which preserves the forms of freedom; it is thus that the will itself is taken captive. Is not this poor child, without knowledge, strength, or wisdom, entirely at your mercy? Are you not master of his whole environment so far as it affects him? Cannot you make of him what you please? His work and play, his pleasure and pain, are they not, unknown to him, under your control? No doubt he ought only to do what he wants, but he ought to want to do nothing but what you want him to do. He should never take a step you have not foreseen, nor utter a word you could not foretell. (100)

It is difficult to imagine how Rousseau, if he were living now, would square his philosophy of teaching with current demands for transparency under the model of contract law. A modern Rousseauvian first year module description is perhaps a rather ludicrous thing to imagine and script, and if only in that sense, then, worthwhile: You will be taught in an environment which gives you the impression that you are completely free to pursue your own inclinations, whilst in fact you will be manipulated at every turn by a teacher who appears to be simply your friend but in fact will be your master. Everything you believe you are learning will turn out merely to be the pretence for a programme of education never explicitly explained to you, or at least not until well after the event. You

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will be manipulated and even duped into learning in an excellent, quality-controlled fashion. It would never be allowed to come before Faculty (or, now, the College), never mind being submitted for approval to the Registrar or the Executive Dean. How could the university possibly audit for quality and excellence a teaching which methodically said one thing whilst it did another? How could you ever establish a pedagogical contract based on duplicity, deception, mastery disguised as friendship and freedom of choice? How could an institution legislate for a teaching practice which had built into it such a duplicitous, delayed unveiling of aims and objectives? such a refusal to enter into any contract, save for an unspecified, contentless contract to teach?

It could be argued, and in fact it has been argued many times before, that Rousseau’s philosophy of education is precisely pedagogical, a philosophy concerning the teaching of children, pre-pubescents, whereas what we are doing in universities is to teach adults, students who can legally vote, smoke, have sex, drive cars, purchase alcohol, vote in elections and referendums, and gamble on the stock-exchange. We can be transparent in our educational aims and objectives with our students in university settings, since they are adults not children, and we are educators not pedagogues. This objection to the Rousseauvian model is an historical objection: that is to say we can find it in numerous places, numerous texts. In fact it can be said to be part of an Enlightenment critique of pedagogical mastery and thus duplicity and irony which Rousseau’s seminal text did not originate but certainly ignited. This is a history which concerns questions about the limits and ends of childhood, the possibility of a faculty of reason outside of power structures and ideological formations, and questions concerning the very nature of teaching, or what we can call the figures of teaching: informing, conveyance, the inculcation of erziehung or bildung, the rendering of reason, vocational, technological and cultural instruction, enlightenment, remembering, animation, archival training, a certain burning of the archive, didactics, the institutional perpetuation of class distinctions through social reproduction, and so on.5

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5 I use the terms erziehung and bildung in the manner in which they feature in Friedrich Nietzsche’s On the Future of Our Educational Institutions, trans. Michael W. Grenke, Indiana: St. Augustine’s Press, 2004. Grenke writes: “Erziehung means most literally a ‘drawing out,’ and it is related to midwifing; in typical usage it applies to earlier education, and could be translated as ‘rearing.’ Bildung means most literally ‘formation,’ and it is connected to having an image [Bild] or form. Sorting out the different meanings of these terms is one of the major tasks that faces the reader of these lectures.” (viii)
One of the problems of legislating for teaching is that we are not at all clear what teaching is. In fact, we can go further and say that teaching is not and never has been identical to itself. There is a conflict over teaching which is far older than the modern university; as old, in fact, as philosophy itself. Derrida states in his “The Crisis in Teaching”: “the permanent, founding, instituting crisis of philosophy will always have been simultaneously a crisis of the pedagogical.”  

One could philosophically consider whether teaching can ever be what a certain strand of the Enlightenment desires it to be: that is singular, rational, understanding reason in terms of a direct, unswerving, non-tropological communication; a direct and successful rendering of reason, to employ the phrase of Leibniz discussed by Derrida in his essay on the pupils of the university. One could of course spend much time considering the manner in which a certain Enlightenment ideal of teaching, beyond the “magisterial voice,” coincides, in terms of an idea of transparency, with the modern, techno-scientific, performative culture of today’s third level educational institutions. One could also philosophically consider whether education, in its institutional settings, can ever escape from the kind of social reproduction of power and inequality analyzed in the work of Pierre Bourdieu. Bourdieu’s vision of education as social reproduction is the dark, rather humourless, pessimistic (or perhaps inverted), irony-free extreme of a tradition throughout the Enlightenment which would argue that rational education requires, eventually, or in some cases immediately, the disappearance of the teacher.

One could cite here Jacques Rancière, an opponent of Bourdieu’s, and his work on the nineteenth-century radical pedagogue, Joseph Jacotot. Joseph Jacotot became famous in the early decades of the nineteenth-century for developing a pedagogical practice in which he taught students subjects he knew nothing about. For Jacotot, all that was needed for education was verification: an illiterate peasant father could teach his son or daughter to read, simply by verifying that they had learnt something when they

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attempted to read. For Jacotot, as for Bourdieu, education in its institutional form is a kind of violent stultification and malforming (brutalization) of the young, since, at least for Rancière via Jacotot, it begins by insisting that people cannot learn on their own. It does this by establishing “a temporal structure of delay” into all teaching, by demanding that all students contract into the idea that they do not know what they need to know and that only the teacher can, slowly, give them what they need. Institutional education, with its insistence on explication, that is to say, creates the very ignorance it promises to annul. As Rancière puts it:

The revelation that came to Joseph Jacotot amounts to this: the logic of the explicative system had to be overturned. Explication is not necessary to remedy an incapacity to understand. On the contrary, that very incapacity provides the structuring fiction of the explicative conception of the world. It is the explicator who needs the incapable and not the other way around; it is he who constitutes the incapable as such. To explain something to someone is first of all to show him he cannot understand it by himself. Before being the act of the pedagogue, explication is the myth of pedagogy, the parable of a world divided into knowing minds and ignorant ones, ripe minds and immature ones, the capable and the incapable, the intelligent and the stupid. The explicator’s special trick consists of this double inaugural gesture. On the one hand, he decrees the absolute beginning: it is only now that the act of learning will begin. On the other, having thrown a veil of ignorance over everything that is to be learned, he appoints himself to the task of lifting it. (6-7)

Jacotot’s method of “universal emancipation” became hugely popular for a while in the early nineteenth century. Various institutions began to employ it as a method and thus to transform it into a professional teaching technique which, unsurprisingly, went directly against Jacotot’s own beliefs and practices. As an historical allegory the story of Jacotot’s method can speak to us, since, ironically, a certain modern version of the eradication of the educational delay could be said to emerge in the current contract model of teaching in our institutions of higher education. We are increasingly before the Law as
teachers. We teach in institutions which increasingly lay down the law of teaching. And that law demands that we deliver, before the scene of instruction begins, what we say we will deliver, during the scene of instruction. This juridical imperative threatens to flatten out teaching into a process purely concerned with a successful, direct, undeviating delivery, by which I mean it threatens to eradicate from teaching the temporal structure of delay. To get into a debate over a certain Enlightenment ideal of the disappearance of the teacher is beyond my powers in this essay. I will say, however, that only the teacher can make him- or herself disappear. You need teachers if the teacher is ever going to disappear. Which is perhaps equivalent to saying that you need the delay in educational practice if the delay is ever to be eradicated. Teaching is a practice which, if it occurs, involves a deconstructive process which can look very much like an identity crisis.

My title concerns the fact that it is increasingly difficult in transparent universities, universities which present themselves as see-through, as systematized and perpetually audited, to spill the beans about teaching’s perpetual identity crisis. It is increasingly difficult, nowadays, to speak about the irresolvable problems and aporias within the idea of teaching, now that teaching is so explicitly legislated for and so transparently contracted. Where, after all, would we nowadays spill the beans about teaching? A big part of the lesson over the beans and the melons concerns the fact that the young Émile did not know that people owned the land, did not know anything about the law of property. As the gardener explains: “there is no more waste ground. I dig what my father tilled; every one does the same, and all the land that you see has been occupied time out of mind.” (Émile: 75) The Rousseauvian preceptor then negotiates with the gardener in a kind of leasing contract, making an agreement that the boy will get a corner of the garden to sow his beans, if he gives away half the crop. The gardener’s reply is I think priceless: “You may have it free. But remember I shall dig up your beans if you...

10. The issue here, of course, returns to the institutional scene of teaching and how teachers position themselves within the inevitably double, divided, space of the university, the college (in its more traditional sense), the school. This point, about the divided, doubling nature of institutional spaces for the scene of teaching, is where Rancière’s liberatory, Enlightenment account of the “Jacotot method” circles round to meet the vastly more pessimistic, sociological vision of Bourdieu. What I am suggesting here, admittedly in far too broad strokes, is that the ultimate question for teachers working before the Law of Teaching today, may well lie somewhere between these two dialectically related positions (Rancière’s and Bourdieu’s), in a space, that is, that neither purely liberatory nor purely sociological perspectives can in themselves locate, describe or question. For an excellent reading of Rancière’s work on Jacotot, which takes a somewhat different line of approach than my own, see Forbes Morlock “The Story of the Ignorant Schoolmaster/The Adventures of Telemachus, For Example” in OLR, Knowledge, Learning and Migration, ed. Caroline Rooney, 19.1-2, 1997: 105-132.
touch my melons.” In today’s university it can often seem as if no similar negotiation is available to us. As teachers who would engage in the philosophy of education, where can we spill the beans about the non-identical dimensions of teaching, now that education exists before the law, now that our educational institutions have a philosophy of teaching modelled on, informed by, contract law? Teaching now, in the transparent university, is; teaching, now, will be. Contract law, the legal imperative of a successful delivery of pre-advertised outcomes, flattens teaching (or at least threatens to flatten teaching) into a mode of conveyance or delivery without delay. Spilling the beans about teaching, or, in other words, philosophically thinking and talking about teaching’s perpetual identity crisis, has become a very difficult thing to do nowadays, as I have suggested elsewhere, since teaching now is increasingly legislated for both in terms of contract law and the increasing influence (frequently enforced through legislative means) of “philosophies” of teaching which figure teaching in terms of service, reflexive self-auditing and a general ideology of accountable, systematized delivery.11 In such an environment any philosophy of teaching which spills the beans about teaching’s non-identical nature will necessarily appear as a delay in delivery, and thus an attack on transparent, accountable, quality teaching. In such contexts, the teacher who believes (for whatever reason – and there are many, and they are in perpetual conflict) that teaching involves some kind of delay, a process in which outcomes cannot be specified or even, for some, guaranteed, or, for some, even imagined, might come to the conclusion that teaching itself is under threat.

My title is also meant, as is evident from what I have just said, to alert us to the question of teaching itself, as opposed to its philosophy (and where the one ends and the other begins is a question I can only pose here). Despite Rancière’s retelling of the Jacotot story, teaching can be considered as a spilling of the beans, in the sense of planting, scattering, disseminating. A delayed process. A process which, because it is delayed, necessarily delayed, contains the possibility and perhaps even the inevitability of chance, of the incalculable and the unpredictable, within it. A process of delayed informing (or bildung), or drawing out (erziehung), which also, as our example from Rousseau has suggested, and as both Bourdieu and Rancière in their different ways would

confirm, involves within it a form, or perhaps forms, of violence or force (*gewalt*).\(^\text{12}\)

Teaching as spilling the beans, as a delayed process of drawing out or in-forming, a process which seems to open up the possibility of the incalculable, the random, a process lacking guarantee, and potentially involving violence and force, certainly duplicity, a doubleness within the teacher: can we do this any more? Can we teach in this sense, of spilling the beans, of drawing out and in-forming, of *erziehung* and *bildung*?

If we look at our own institution’s literature, its proliferating number of self-descriptions, then the answer comes back to us as a resounding yes. Sometimes positivity is less than reassuring, however. We might look, for example, at the Student Charter, distributed to each new student of University College Cork (but no doubt replicated in universities throughout the world) on their entrance into the university. The Student’s Charter is a document which presents itself as a contract between the university (as a collective) and each individual student (addressed as “you”). It also begins by explaining that it is not a legal document and has no legal status, gives no rights nor establishes any legal obligations. A strange speech-act, in fact. It can be read as an astonishingly clear example of the eradication of the temporal structure of delay in teaching. Students, according to the Charter can expect, for example, “Courses which produce high quality graduates.” There is no possibility, apparently, that this expectation will not be realised.

But who is performing the act of expectation here? the individual student who is being informed of a contract that is not legally binding? or the student-body as a whole to which the individual student belongs? You do not make contracts with collective student-bodies. And yet an institution cannot afford to contract anything specific about results, about satisfaction, about quality with individual students. Or rather, it has to be seen to do that, whilst knowing that it is impossible to do so. There is an aporia at the heart of this legally redundant document – and there are a proliferating number of similar documents in this and every other university – an aporia which goes to the heart of the uneasy relation between contract law and teaching, and indeed the uneasy relation teaching has with itself.

Teaching obviously depends upon a legal or non-legal contract to teach. A contract with each individual student. A contract which can only be realised by teaching a student body. There can be no teaching without an implied contract to teach. Without such a contract there would never be any students. And yet this contract seems to say to each and every student you will be taught, we promise to teach you, but in order to fulfil that contract, that promise, we cannot teach you, you as an individual. The contract to teach, the promise of quality teaching, must be addressed to each individual student (you cannot make a contract with a batch of students), and yet it is a contract, a promise, which in order to be made must include the possibility, for each individual student, of failure. It is a contract with an addressee who, if teaching does occur, will not be exactly the same addressee as the one who entered into the contract on registration. The university’s promise to teach is always addressed to an individual to whom the university cannot directly speak and cannot directly, individually, teach. Teaching, the drawing out and the drawing in of reason, technique, culture, formation, can only ever be an individual – teacher to student – process. Teaching, in educational institutions, can only ever be, as a contractual obligation, as a quality assured promise to teach, a delivery to a collective body addressed as if it were made up of individuals. The responsibility of educational institutions to teach is aporetic. We know this aporia of responsibility from Derrida; it is the aporia exemplified in “the paradox of Abraham” and the phrase “tout autre est tout autre (every other [one] is every [bit] other)”.

What I want to say is best said, here, in a series of statements. Teaching is and must be contractual; teaching, if it is to happen, must be a break with all contracts. Teaching must be and must not be legal, legislated for, before the Law. There must be and there must not be a law for teaching. Which is perhaps to say that teaching is, or is something like, deconstruction. Which is also perhaps to say something like the following: teaching is impossible, impossible and indispensable; impossible and a primary responsibility; impossibly possible, as Derrida would say. Or, to adapt what he says about translation: teaching is impossible and can happen every day.

Works Cited


