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## *Madly Off in One Direction: McGill's New Integrated, Polyjural, Transsystemic Law Programme*

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Harry Arthurs\*

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In 1994, the McGill Faculty of Law organized a two-day faculty retreat, seeking to lay the foundations of a new curriculum. This desire was in part a response to the contradictions inherent to the faculty, but also stemmed from a deep-seated preoccupation with “polyjurality”, non-state normativity, transnational legal systems, and legal theory—a preoccupation that dates back to its origins, over 150 years ago.

The author, while praising McGill’s efforts at reinventing itself, laments a certain reserve toward interdisciplinarity. He conjectures that at least some understand the teaching of polyjurality and transsystemic law as a project that is largely concerned with interactions amongst recognized legal systems, as opposed to a way of exploring the parallel normative universe that exists alongside such systems. Even though challenges of recovery, contextualization, and fundamental rethinking stand in the way of transsystemic teaching, the author believes that McGill’s Faculty of Law, with clearly defined objectives and a curriculum designed to meet these objectives, provides a laudable alternative.

En 1994, la Faculté de droit de McGill organisait une retraite de deux jours pour les membres du corps professoral, cherchant à jeter les bases d'un nouveau cursus. Ce désir était à la fois une réponse aux contradictions inhérentes à la faculté, mais était aussi issu d'une préoccupation profonde pour la “polyjuralité”, la normativité non étatique, les systèmes juridiques transnationaux et la théorie du droit — un souci datant de ses origines, il y a plus de 150 ans.

L'auteur, tout en saluant les efforts de McGill à se réinventer, dénote une certaine timidité envers l'interdisciplinarité. Il déplore que certains conçoivent l'enseignement de la polyjuralité et du droit transsystémique comme un projet qui se préoccupe avant tout des interactions entre les systèmes juridiques reconnus, plutôt que comme une manière d'explorer l'univers normatif parallèle qui existe au côté de ces systèmes. Bien que des défis de récupération, de mise en contexte et de reconceptualisation fondamentale fassent obstacle à l'enseignement transsystémique, l'auteur est d'avis que la Faculté de droit de McGill, avec des objectifs clairement définis et un cursus conçu pour atteindre ces objectifs, propose une alternative digne de louanges.

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## Introduction

In 1998, after several years of intense deliberation, extensive consultation, vigorous debate, and careful preparation, the McGill Faculty of Law launched one of the most unusual curriculum experiments in the annals of legal education. The underlying assumptions, practical details, and hoped-for results of that experiment are set out in the law school calendar,<sup>1</sup> have been described and dissected in publications by several faculty members,<sup>2</sup> and of course are the focus of this special issue of the *McGill Law Journal*. In summary, McGill's former "National Programme" enabled students to take a three-year degree in either civil or common law and then at their option to acquire the "other" degree after a further year of study. The new, integrated "McGill Programme" exposes all students to courses that integrate civil and common law, that encompass both public and private law themes, that consciously link domestic and international law, that offer theoretical perspectives on law's social, cultural and political context, that deploy a variety of pedagogic strategies and learning experiences, and—seemingly as an afterthought—that do all of this in Canada's two official languages. It almost seems anti-climactic to note that students normally spend a maximum of four years<sup>3</sup> pursuing this exhilarating (perhaps exhausting) new curriculum and, at the end, receive (merely) two degrees, a B.C.L. and an LL.B.

Stephen Leacock, a McGill polymath of an earlier generation, famously described how one of his fictional characters, Lord Ronald, "flung himself upon his horse and rode madly off in all directions."<sup>4</sup> His latter-day successors in the Faculty of Law have done him one better: they have flung their diverse and disputatious selves,<sup>5</sup> their intellectual baggage and political proclivities, and their engaged and ambitious students on this amazing curricular steed and ridden madly off in *one* direction. That one direction—as described in official documents and scholarly commentaries—is toward "integrated", "polyjural", or "transsystemic" legal education.

Galloping off in one direction is no mean feat for any academic unit—and near astonishing when it occurs in a law faculty. To ensure the appearance of coherence and unidirectionality, McGill has made a number of wise choices: it has given its new

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<sup>1</sup> See McGill University, Faculty of Law, online: <<http://www.law.mcgill.ca/index.htm>>.

<sup>2</sup> See e.g. Adelle Blackett, "Globalization and Its Ambiguities: Implications for Law School Curricular Reform" (1998) 37 *Colum. J. Transnat'l L.* 57; Julie Bédard, "Transsystemic Teaching of Law at McGill: 'Radical Changes, Old and New Hats'" (2001) 27 *Queen's L.J.* 237; Yves-Marie Morissette, "McGill's Integrated Civil and Common Law Programme" (2002) 52 *J. Legal Educ.* 12; Nicholas Kasirer, "Bijuralism in Law's Empire and in Law's Cosmos" (2002) 52 *J. Legal Educ.* 29 [Kasirer, "Bijuralism"]; H. Patrick Glenn, "Mixing it Up" (2003) 78 *Tul. L. Rev.* 79; Nicholas Kasirer, "Legal Education as *Métissage*" (2003) 78 *Tul. L. Rev.* 481.

<sup>3</sup> Most students earn the credits required for graduation in three or three-and-a-half years.

<sup>4</sup> Stephen Leacock, "Gertrude the Governess: or Simple Seventeen" in *Nonsense Novels* (New York: Dodd, Mead & Company, 1948) 71 at 73.

<sup>5</sup> Roderick A. Macdonald, "Office Politics" (1990) 40 *U.T.L.J.* 419.

programme a generic formal name—"the McGill Programme"—, unencumbered by descriptors such as "transsystemic", "integrated", or "polyjural"; it has conceptualized its curriculum at a very high level of abstraction—"a way of being alive", according to one faculty member;<sup>6</sup> it has embraced intellectual heterodoxy as its orthodoxy; and it has accepted that while encounters with *mixité* in individual courses is preferable, there is room for system-specific courses so long as they form part of an overall student experience that is polyjural. But McGill has gone well beyond appearances. It has taken practical steps to make good on the promise of the new programme: many courses and seminars are offered with appropriate transsystemic labels, descriptions and syllabi; they are taught by professors—some recruited for the purpose—whose scholarly writings attest to their commitment to the transsystemic ideal; and several institutional supports have been put in place to ensure that transsystemic or polyjural legal education remains an evolving concept rather than a shibboleth or slogan.<sup>7</sup>

How, then, does the new McGill Programme operate in practice? This critical question is difficult to answer for both evidentiary and conceptual reasons.

As to evidence, I have seen no documentation that suggests that McGill is tracking the actual experience of students, faculty members, and relevant others with its new curriculum, assessing professorial performance and student learning outcomes, evaluating whether the shift from sequential bijurality (the old National Programme) to integrated polyjurality (the new McGill Programme) has altered students' conceptions of law, or calibrating the law school's ability to attract good students and place its graduates in appropriate jobs. While insiders no doubt have their own informed opinions on such matters, bolstered by anecdotal evidence, it is difficult for an outsider to say whether the programme is a success or, indeed, whether or to what extent it actually exists.

Judgments about the operation of the programme run up against a fundamental conceptual problem as well. The architects of the McGill Programme approached curriculum reform as "a complex, interactive and evolutionary process, best described as one of adaptive learning."<sup>8</sup> Consequently, proponents, critics, and reviewers of the

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<sup>6</sup> Roderick A. Macdonald, quoted in Kasirer, "Bijuralism", *supra* note 2 at 39, n. 23.

<sup>7</sup> These include a dedicated online faculty publication, *The Transsystemic Bulletin*, which is designed to assist "implementation of [the new programme] by providing McGill professors, lecturers and students with a selective bibliography signaling some recent scholarly articles and books of interest for the transsystemic teaching and study of law." It encompasses "not only ... comparative and transnational analysis, but also ... approaches that are theoretical, interdisciplinary, critical, methodological and pedagogical. While featured topics may deal with any course offered within the fold of the new programme, special emphasis is given to texts pertinent to the teaching of mandatory courses." McGill University, Faculty of Law, "Publication", online: <<http://www.law.mcgill.ca/research/publications-en.htm#tb>>.

<sup>8</sup> Stephen Toope, *The Future of McGill's Faculty of Law—A Statement of Challenges and Aspirations* (September 1995) at 1, citing Henry Mintzberg, *The Rise and Fall of Strategic Planning*:

new programme must ask not simply “what was recommended and what was implemented?” but “has the programme continued to evolve?” and “have the various constituencies of the law school continued to adapt?”

In other words, the standard of judgment the programme has defined for itself is not how it functions at any given moment, but rather how it evolves over time. For the new curriculum to become a living reality in McGill’s classrooms, common rooms, and faculty offices, the professorate must radically revise many pedagogic practices—and then revise again; students must consciously opt to study under the new programme, and remain committed to its values even as those values manifest themselves in a changing array of courses, pedagogies, and learning environments; law faculty and university administrators must keep finding new funds and new people to implement it—a Sisyphean task; law firms and professional bodies must support it, or at least accept it, long before its premises are understood or its promises realized; and the rest of the legal academy must acknowledge the validity and importance of what McGill has undertaken even while other law faculties are redefining legal education quite differently through their own evolutionary or radical reforms.

### I. The Process of Curriculum Review

McGill’s characterization of curriculum review as an evolutionary project must be considered in light of Oscar Wilde’s aphorism that socialism would be wonderful, except that it involves too many committee meetings. If the design and implementation of the new curriculum did not involve too many meetings, it certainly required that the dean, members of faculty, and others devote a good deal of time to the exercise.

During 1994-95, the law faculty curriculum committee conducted extensive consultations, beginning with a two-day faculty retreat. This retreat was designed to avoid the incantation of clichés or the drafting of laundry lists of goals, values, and requirements—rituals that characterize so many such exercises. Instead, the faculty (and other groups consulted subsequently) were asked to respond to a series of questions “loosely structured to allow creative thinking to take place”—questions about the law faculty’s relationship with the profession and the university, about the social and political context within which it is located, about the optimal and actual composition of its student body, about McGill’s special educational “niche”, and about the distinctive intellectual ethos of the faculty.<sup>9</sup> Out of these discussions—which ultimately expanded to include students, judges and practitioners, non-academic staff, and colleagues in other law schools and adjacent academic

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*Reconceiving Roles for Planning, Plans, Planners* (New York: Free Press, 1994) [Toope, *Statement of Challenges and Aspirations*].

<sup>9</sup> These questions were: “Department of Law, Faculty of Law, School of Law?”; “McGill in Quebec”; “Diversity”; “A McGill Valedictorian”; and “Polyjurality”. See Toope, *Statement of Challenges and Aspirations*, *ibid.* at 2.

disciplines—emerged *lignes directrices* for the evolution of the faculty: “a statement of challenges and aspirations ... not a strategic plan ...; not the draughtsman’s drawing; but the architect’s ... conceptual drawing.”<sup>10</sup> Then, gradually, the law faculty administration and committees moved to the implementation phase, which involved issues of detailed curriculum design,<sup>11</sup> budgeting, faculty retooling and recruitment, advocacy of the new curriculum in professional and academic circles, and marketing to prospective students. Subject to Oscar Wilde’s caveat, then, McGill’s curriculum reform process was admirably thorough and, in that respect, stands as a model for other law schools.

However, process is not enough. Genuine curriculum reform must ultimately be driven by the power of ideas. One has the sense that McGill’s Faculty of Law is particularly fortunate in having a number of able and imaginative scholars who were not only prepared to participate in the project of curriculum reform, but willing to view that project as an extension of their individual and collective intellectual agendas. But why was McGill so fortunate? Perhaps because of its peculiar history and ever-precarious present.

## II. Necessity’s Child: McGill in Quebec, Canada, the World, and History

McGill’s Faculty of Law lives on an ongoing basis with a series of irreconcilable contradictions. It is a predominantly anglophone institution serving a declining anglophone population in an increasingly assertive francophone province. It has close affinities with legal education in common law North America, but is located in a jurisdiction one of whose defining characteristics is supposedly its civil law system. It has been associated historically with the economic and legal elite of Montreal in an era when populism animates much of higher education policy. And it aspires to provide a window through which Quebec and the rest of Canada can view each other’s legal cultures; but it is a window at which few faces appear, and legal culture in general is being reshaped by a quite different array of powerful influences—universal human rights discourse, globalization of the mind and of the economy, changing conceptions of the state’s role and character, and post-modernity, to name a few.

One might ask whether the new McGill Programme, like its predecessor the National Programme, was conceived as a necessary response to these contradictions? This would explain the programme’s focus on bi- or polyjurality, its insistence that students be able to function in both official languages, its recruitment of a high

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<sup>10</sup> *Ibid.*

<sup>11</sup> See *Final Report of the Ad Hoc Curriculum Review Committee* (11 April 1996) and *Report of the Ad Hoc Curriculum Implementation Committee* (15 March 1997).

proportion of out-of-province students,<sup>12</sup> its emphasis on despatching McGill graduates around the world, its announced commitment to social justice and diversity, its prioritizing of international and comparative programmes of teaching, graduate studies, and research. Indeed, there is confirming evidence in the *travaux préparatoires* surrounding the creation of the McGill Programme that these were important considerations.<sup>13</sup>

The McGill Programme is not, however, simply a necessary or expedient response to a threatening environment. Rather, as Rod Macdonald persuasively argues, the new programme was shaped by 150 years of intellectual development that were characterized by a recurring preoccupation, in differing ways, with polyjurality and non-state normativity, with transnational legal systems, and with legal theory.<sup>14</sup> Countervailing and localizing influences—at times quite strong—have included the professional claims of Quebec's bar and *notariat*, as well as formalist, functionalist (and occasionally instrumentalist and anti-intellectual) tendencies within the faculty. Nonetheless, what distinguishes today's McGill Programme from that of other North American law schools is, indeed, a contemporary manifestation of themes which began to emerge at McGill during the mid-nineteenth century. The necessities that brought forth the new programme were, therefore, not simply political or economic; they were also intellectual and institutional.

The central role of intellectual imperatives in shaping the McGill Programme raises a further question, however. Legal scholarship and education have been changing in many ways both within and beyond Canada's borders. To name but a few: law faculties are becoming both more like other university faculties and less like each other; legal scholarship is more prolific, intellectually ambitious and, to a lesser extent, methodologically diverse; admission to law faculties is more competitive and issues of diversity and equity in student recruitment have become inescapable; curricula have become less compulsory and more diffuse; new pedagogies have been

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<sup>12</sup> While out-of-province students pay higher fees, these fees are still considerably lower than fees at many Canadian law schools. Ontario law students, for example, would pay between two and three times as much if attending law school in their home province. In any event, the law faculty does not benefit directly from the additional fee revenue that it generates by attracting a large out-of-province contingent.

<sup>13</sup> For example, Dean Toope references “strategic positioning vis-à-vis the future of Quebec, Canada and international society” (*supra* note 8 at 3); The Ad Hoc Curriculum Implementation Committee highlights the fact that “international economic integration has promoted the harmonization and overlap of legal systems,” reminds the law school community that “the financial situation of the University means that the structures of our programme must be carefully assessed,” declares that “McGill must pay attention … to our location in Montreal,” and—no doubt influenced by the closeness of the secession referendum of the previous year—refers poignantly to the “current political uncertainty” which demands “that we pay attention to our role in the ever-shifting relations of Montreal, Quebec, Canada and the international societies” (*Report of the Ad Hoc Curriculum Implementation Committee, supra* note 11 at 1).

<sup>14</sup> Roderick A. Macdonald, “The National Law Programme at McGill: Origins, Establishment, Prospects” (1990) 13 Dal. L.J. 211 [Macdonald, “National Law Programme”].

introduced; law school graduates appear to be less committed than they used to be to entering the practice of law but, if they do, more willing to practice abroad; technology has become indispensable for research and is widely used for teaching; and, despite sharply rising student fees, law school budgets have become (with a few exceptions) less and less adequate to the task of responding to these new challenges.

Against this background, it is somewhat surprising that McGill's formidable effort to redefine itself does not seem to have been explicitly linked to broader developments in legal education and scholarship. Several committee reports note in passing that other faculties of law are engaged in similar exercises; and passages in those documents suggests that their authors are generally familiar with contemporary trends in legal education. However, in general, the *travaux préparatoires* neither reference recent literature on the subject nor suggest that any systematic effort was made to investigate what is actually happening at other law schools in Canada or around the world. Nor, somewhat surprisingly, do these documents offer much analysis of the new domestic and international political economy in which McGill graduates are likely to practice, and McGill scholars to preach. Nor, alas, do they appear to draw on social-scientific studies of what lawyers do, how they learn to do it, and what might make them do it and learn it differently and more effectively.

In short, the sophisticated intellectual debate around jurality that produced the McGill Programme has a somewhat introspective, even self-referential, character. In this, it resembles not only most discussions of law school curriculum reform, but much legal scholarship.<sup>15</sup> As the author of several unsuccessful attempts to approach curriculum reform from a different perspective,<sup>16</sup> I am well aware of the difficulties which may have led McGill to choose jurality as its unifying theme. Nonetheless, by choosing that route, McGill may have missed an opportunity to gallop madly off in more directions than the one it ultimately committed to.

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<sup>15</sup> See Consultative Group on Research and Education in Law, *Law and Learning* (Ottawa: Social Sciences and Humanities Research Council of Canada, 1983) [Arthurs Report]; Theresa Shanahan, *Legal Scholarship: An Analysis of Law Professors' Research Activities in Ontario's English-Speaking Common Law Schools* (Ph.D. Thesis, University of Toronto, 2002) [unpublished]. See generally the dossier on "The Arthurs Report on Law and Learning 1983-2003" in (2003) 18:1 C.J.L.S. and especially René Côté, "Dossier on the Arthurs Report on Law and Learning: A Reaction from the University of Quebec in Montreal (UQAM)" (2003) 18:2 C.J.L.S. 115.

<sup>16</sup> As principal author of *Law and Learning*, *ibid.*, I can affirm that it made little if any impression on Canadian law school curricula. My more recent, but equally unavailing, efforts include: H.W. Arthurs, "The Political Economy of Canadian Legal Education" (1998) 25 J.L. & Soc'y 14; H. Arthurs, "Why Canadian Law Schools Do Not Teach Legal Ethics" in Kim Economides, ed., *Ethical Challenges to Legal Education and Conduct* (Oxford: Hart Publishing, 1998) 105; Harry W. Arthurs, "Poor Canadian Legal Education: So Near to Wall Street, So Far from God" (2001) 38 Osgoode Hall L.J. 381; H. Arthurs, "The World Turned Upside Down: Are Changes in Political Economy and Legal Practice Transforming Legal Education and Scholarship, or Vice Versa?" (2001) 8 Int'l J. Legal Profession 11; Harry W. Arthurs, "The State We're In: Legal Education in Canada's New Political Economy" (2001) 20 Windsor Y.B. Access Just. 35.

### III. Interdisciplinarity: The Love that Dare Not—or Need Not?—Speak Its Name

Very few passages in the *travaux préparatoires*, which framed up the McGill Programme, speak to the question of interdisciplinarity. Only a few McGill law professors appear to hold graduate degrees in disciplines other than law, though a larger number are cross-appointed to other faculties or to interdisciplinary research institutes. Also, very few courses advertised in the new curriculum appear to be organized on explicitly interdisciplinary lines. This does not necessarily signal disrespect by the authors of the McGill Programme for the intellectual and professional value of engagement with economics or politics, philosophy or sociology. Nor does it ignore the fact that several members of the faculty are not only at home in the vernacular of the social sciences, but are in fact leading contributors to socio-legal studies in Canada and internationally. Nor does it suggest that McGill's courses on the legal dimensions of family relations, criminal law, or market regulation ignore the need to understand the social and economic context of legal rules and institutions. Indeed, the new programme provides students with two interdisciplinary options: a "minor" in a "related field of study", comprising about fifteen per cent of their overall course load, and a "major" involving "a trans-disciplinary approach to one of four areas of legal endeavour" culminating in the writing of a paper "demonstrating the consolidation of learning in law and non-law courses."<sup>17</sup>

That said, in the discourse surrounding the design and implementation of the McGill Programme, interdisciplinarity is the love that—unlike jurality—dared not speak its name. However, the few mentions of the topic are quite revealing. In Dean Toope's *Statement of Challenges and Aspirations*, he observes:

Faculty members might also explore ways of relating more effectively as teachers with colleagues and intellectual traditions in sister faculties at McGill. Although the rhetoric of "interdisciplinarity" has been employed widely over the last few years, few concrete connections have been established.<sup>18</sup>

He proposes that in certain courses, "it may well be that colleagues in other disciplines could serve as resource persons," that the law faculty might selectively cross-list courses in other faculties so that they could be taken by law students, and that "ad hoc arrangements" might be made for students to take courses in political science or philosophy.<sup>19</sup> These modest proposals were in fact overtaken by the much more ambitious "minor" and "major" options outlined above. Interdisciplinarity surfaces again briefly in a discussion of strategies that might provide financial support for "several faculty members ... now engaged in interdisciplinary research, empirical

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<sup>17</sup> See the booklet produced by McGill in 2003 and available online: <<http://www.law.mcgill.ca/viewbook/viewbook-en.pdf>> at 22. In November 2003, however, the faculty reduced the weight of non-law courses that students may take within the B.C.L./LL.B. from twelve credits to six.

<sup>18</sup> Toope, *Statement of Challenges and Aspirations*, *supra* note 8 at p. 7.

<sup>19</sup> *Ibid.* at 9.

research and archival research.”<sup>20</sup> But in general, the intellectual predicate of this crucial document—which defines the law school’s “vocation” and lays down *lignes directrices* to guide subsequent decision making—is very much a legal, a jural, predicate. Dean Toope’s charge to the faculty a year later—*The Task Ahead*—identifies interdisciplinarity neither as one of the influences that have provided the “impetus to curriculum reform” nor as one of the “key themes” that will inform further developments at McGill.<sup>21</sup>

The *Final Report of the Ad Hoc Curriculum Review Committee* likewise does not identify knowledge of social sciences or humanities as one of the elements that grounds “the excellence of the Faculty,” or as one of the aspects of knowledge with which all students should “arguably” graduate.<sup>22</sup> However, it does propose that by the end of second year, all students should possess, as one of ten “building blocks”, a “basic appreciation of the interactions of law and social context.”<sup>23</sup> That appreciation, apparently, is to be gained by reinforcing the Foundations course, which “as its name suggests ... introduces students to the ‘foundations’ of law in sociology, anthropology and history.”<sup>24</sup> However, as Dean Toope noted, “the subject focus of other first-year courses has left Foundations as the ‘odd man out’ in the curriculum.”<sup>25</sup> The McGill Programme in fact does attempt to bring Foundations back in: instead of three hours’ credit it now receives four (compared to five or six credits for substantive courses); and it is taught in small sections by several members of faculty with strong interdisciplinary credentials. Thus, in formal terms at least, interdisciplinarity in the first year of the McGill Programme remains pretty much sequestered in the Foundations course—a fate which it suffers in most law schools (except those that have ignored it altogether). While students may pursue “minor” or “major” options after first year, there is some risk that their almost total initial immersion in jurality will “set the mould” and make them disinclined to pursue interdisciplinary thereafter.

This diffidence towards interdisciplinarity at McGill (and other law schools) is somewhat surprising. Proponents of interdisciplinarity sometimes argue that the social sciences and humanities are useful, that they can help us to understand the psychology of witnesses, the operation of complex governance systems, or the origins of the ideas embodied in the *Charter*.<sup>26</sup> But these arguments stoop to conquer. The better argument is that interdisciplinary perspectives help to rescue legal education and research from the tyranny of conventional assumptions, from the banality of legal-professional discourse, from the embarrassment of solipsistic or circular

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<sup>20</sup> *Ibid.*

<sup>21</sup> Memorandum from Stephen J. Toope to the Ad Hoc Curriculum Review Committee, entitled “The Task Ahead” (25 March 1996).

<sup>22</sup> *Supra* note 11 at 3.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.* at 10.

<sup>25</sup> Toope, *Statement of Challenges and Aspirations*, *supra* note 8 at 6.

<sup>26</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

reasoning. And these, it would seem, are precisely the reasons why McGill has fastened on polyjurality as the organizing principle of its curriculum and as a major preoccupation of its scholars.

As Dean Kasirer argues in a thoughtful article, there is a temptation to use instrumental conceptions of polyjurality or transsystemic teaching to persuade law firms that McGill graduates are useful recruits or to persuade Quebec that legal education at McGill provides it with a much-needed “open door on the world.” Such arguments, he says, “[trivialize] the study of law as an intellectual endeavor in that [they detach] the discipline from its more natural place in the university among the social sciences and humanities.”<sup>27</sup>

For Dean Kasirer, the bold new McGill experiment in teaching transsystemic law is important not because it equips lawyers to function in what Yves-Marie Morissette ironically calls “Transsystemia”,<sup>28</sup> but because it gives primacy to questions about “what explains law as a social phenomenon, what is the nature of legal knowledge, what does it mean to think like a lawyer, what it means to think like a citizen alive to law’s symbolic and persuasive attributes.”<sup>29</sup>

These are questions that cannot be answered—perhaps cannot even be asked—from within “law’s empire” (Kasirer’s phrase). That is why many legal scholars, at McGill and elsewhere, choose to situate themselves on the periphery of that empire; that is why they use insights from other disciplines to challenge (but sometimes reinforce) legal-imperial verities and vanities; that is why they provoke (and sometimes alienate) students who wish to concentrate on “the law”. But for some reason, there is little acknowledgement of these practices in the discourse of curriculum reform at McGill in the mid 1990s. Happily, as the faculty moved from thinking about curriculum reform to actually doing it, interdisciplinarity did feature more prominently.

Of course it is important not to fetishize the social sciences and humanities, which have their own empires, their own verities, their own vanities. But it is odd that a theme that permeates so much of the literature on legal thought and legal education should have largely escaped explicit mention by McGill’s daring curriculum reformers, who were surely sensitive to its possibilities.

There are several possible explanations, none of them entirely persuasive. Perhaps interdisciplinarity in legal thought and pedagogy has become so commonplace that to make explicit reference to it would brand one as a latter-day *Bourgeois Gentilhomme* suddenly discovering that he has been “speaking prose” all along. Perhaps in McGill’s unique academic culture, dissolving the historic divisions between civil and common law is a transgressive act of such magnitude that there was

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<sup>27</sup> Kasirer, “Bijuralism”, *supra* note 2 at 31.

<sup>28</sup> Morissette, *supra* note 2 at 23.

<sup>29</sup> Kasirer, “Bijuralism”, *supra* note 2 at 31.

no appetite for an assault on other taboos.<sup>30</sup> Perhaps any project designed to describe the new vision of the McGill law faculty to its “relevant others”—present and prospective students and faculty members, the practising profession, the university administration, public and private funding agencies, the legal academy in general—properly focused on what it does best and what they would most easily understand: thinking about jurality.

Whatever the explanation for McGill’s choice of jurality, rather than interdisciplinarity, as the engine of curriculum reform, the choice seems somewhat odd to me. “Jurality” is a neologism. The Oxford English Dictionary does not recognize the word though it defines its close relation—the adjective “jural”—as “relating to law or its administration; legal; juristic.”<sup>31</sup> In fact, “jural” shares the Latin root *jus* with scores of adjacent entries in OED online, but looming up smack dab in the middle of all these law-words is “Jurassic”. “In the popular imagination,” OED online tells us, “the Jurassic is the period of great marine reptiles and flying dragons.”<sup>32</sup> Most people, many lawyers, even some McGill academics seem to view jurality in rather the same way: law—they imagine—has existed since “time immemorial”; it is the product of ineluctable natural processes; and its manifestations are awe-inspiring. Alas, it is the duty of legal academics, like geologists and archaeologists, to excavate mythologies, correct misconceptions, offer new hypotheses, test them against the evidence, and revise them if they do not accurately describe what we understand to be reality. My questions, then, are these: Can we understand law using a cosmology, an epistemology, a deontology that is exclusively or quintessentially jural? And since most of us know that is impossible, why not say so?

McGill’s failure to say so is especially puzzling because, as noted, some proponents argue in favour of a transsystemic or polyjural view of law precisely because it problematizes the assumptions of “law’s empire”, and raises questions about law as fundamental as those raised by, say, economics or sociology, history, or philosophy.

Legal pluralism might help to bridge the gap between interdisciplinarity and jurality. For the legal pluralists on the faculty,<sup>33</sup> the “jural” and the “systemic” may refer not simply to common or civil or international law systems established by states, but as well to non-state normative regimes that are indigenous to all sites of social interaction—to workplaces, business networks, neighbourhoods, public bureaucracies, and religious communities. But if this were the case, the curriculum

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<sup>30</sup> But as Roderick A. Macdonald shows, the struggle is more complicated than that. See Macdonald, “National Law Programme”, *supra* note 14.

<sup>31</sup> *Oxford English Dictionary*, 2d ed., s.v. “jural”, online: OED <<http://www.oed.com>>.

<sup>32</sup> *Ibid.*, citing to William J. Arkell, *Jurassic Geology of the World* (New York: Hafner, 1956) rather than to Stephen Spielberg’s famous movie, *Jurassic Park* (1993).

<sup>33</sup> Professors Blackett, Belley, Jutras, Kasirer, Macdonald, Manderson, and Van Praagh come immediately to mind; there may be others.

would be organized not around jural concepts—the Procrustean bed into which first year students are still firmly pressed—but rather around the varieties of social relationships that give rise to those concepts. Moreover, if these normative regimes were given curricular weight commensurate with their influence on social and legal behaviour and with the practical, intellectual, and ethical questions they raise, the criminal law syllabus would deal extensively with “the law of the courthouse”, labour law with “the law of the shop”, family law with “the law of the relationship”, and so on.

However, this is easier said than done. In the first place, like the indigenous legal traditions of First Nations, these normative regimes are often unwritten, sometimes non-verbal and sometimes invisible, imbricated in and indistinguishable from the very activity they purport to regulate. Thus, before one can teach this kind of law, one must first recover it; but recovery is arduous, because these regimes are evanescent. Second, even when easily recoverable—a collective agreement, a manual of standard procedures for departmental officials, a compendium of religious practices—, such bodies of law are only comprehensible in context; but context is hard to convey. Third, judges, lawyers, and many legal academics tend to be dismissive of these normative regimes, regarding them as less legitimate and powerful than *real* law; but to demonstrate the contrary requires a frontal assault on the foundational assumptions of legal culture, careers, and curricula. Finally, the absence of an explicit commitment to interdisciplinarity in the formal manifesto of the McGill Programme makes each of these challenges of recovery, contextualization, and fundamental rethinking more difficult.

For reasons indicated above, I lack evidence and can do no more than conjecture. However, it would not entirely surprise me if some McGill professors and perhaps most students understood the teaching of “polyjurality” and “transsystemic” law as a syncretic project, largely concerned with interactions amongst recognized systems of civil and common law, public and private law, international and domestic law. As a corollary, I suspect that relatively few accept the more radical legal pluralist view that the new curriculum is a way to cultivate an agnostic view of the claims of jurality itself and to explore the parallel normative universe that exists alongside law as it is conventionally understood by lawyers. If I am right, in this important respect, the new curriculum indeed does ride madly off in just one direction.

## Conclusion

When it launched its innovative National Programme in the late 1960s, McGill was one of several Canadian law schools to attempt dramatic curriculum reforms. Osgoode, the largest common law school, had optionalized its curriculum, appointed its first full-time social scientist, introduced clinical education and consciously promoted a social justice agenda; Calgary and Victoria, small new schools, were committed to significant experiments in pedagogy and course offerings; UQAM, McGill’s near neighbour, had launched a controversial programme, built on a clearly articulated social and political ideology, which was designed to attract a mixed clientele of prospective professionals and activists.

Within a decade, however, the impulse to radically restructure the curriculum had seemingly run its course. Instead, as *Law and Learning* observed in 1983, Canadian law schools had largely embraced “humane professionalism” as the organizing principle of legal education, and had implemented that principle via “an eclectic, optional curriculum” whose elements were “arranged in no fixed proportion or sequence.”<sup>34</sup> In principle, this unstructured curriculum offered students the opportunity to create their own blend of intellectual and professional subjects, reflecting their individual needs and interests; in practice, however, most students chose to take courses and seminars which they perceived (often wrongly) to be professionally negotiable; by contrast, theoretical and interdisciplinary studies attracted few enrolments and, in the words of *Law and Learning*, the “scholarly discipline of law” had languished.<sup>35</sup> As a result, the report concluded, Canadian legal education was “neither as effectively professional nor as broad and humane as it aspires to be.”<sup>36</sup>

The remedy, according to *Law and Learning*, was that “legal education must define its objectives explicitly, ... among those objectives, the promotion of a scholarly discipline of law must figure prominently, ... a variety of objectives requires a plurality of educational strategies, and ... appropriate resources must be made available to implement those strategies.”<sup>37</sup> Consequently, law faculties should substitute for their present eclectic curriculums a series of clearly defined alternatives based on intellectual insights, social goals, pedagogic approaches, or professional specialties.<sup>38</sup>

This recommendation attracted little overt support at the time, and little since. However, over the intervening years, a number of law schools have indeed defined their objectives more explicitly, restructured their curricula to accomplish those objectives, to take advantage of specific intellectual strengths or to serve identifiable student constituencies. McGill’s Faculty of Law has gone farther down this road than most and now offers a more “clearly defined alternative” than any other Canadian law school. In doing so it has adhered to its own intellectual traditions, and carried forward the logic of its own National Programme, both of which long antedated *Law and Learning*. Obviously, then, as a principal author of *Law and Learning*, I can claim no credit whatsoever. But I can—and do—applaud.

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<sup>34</sup> *Arthurs Report*, *supra* note 15 at 47.

<sup>35</sup> *Ibid.* at 133-34.

<sup>36</sup> *Ibid.* at 153.

<sup>37</sup> *Ibid.* at 154-55.

<sup>38</sup> *Ibid.* at 155.