

---

## *Preface*

# *Navigating the Transsystemic: A Course Syllabus*

---

Shauna Van Praagh\*

---

Naming this special issue of the *McGill Law Journal* was not easy. On the one hand, editors wanted to give the issue a substantive label, to suggest the content in a clear and informative way. On the other, they wanted to incorporate the dynamism and diversity of the authors' work in a way that no one term could capture. Caught in a dilemma that mirrored the one their own professors faced at McGill's Faculty of Law in 1999, the student editors could have gone the *sui generis* route. Just as the academic programme at the faculty—characterized as integrated, pluralist, and polyjural—is called simply “The McGill Programme”, this issue of the Law Journal might have been named simply “The McGill Issue”. After all, it is McGill students who have invited these authors and indeed the very faculty in which the Journal is housed into the reflective mode captured by this collection. It is McGill students, interested in and motivated by the substance and form of their legal education, who expressed real commitment to publishing an issue dedicated to what they know (and experience) as transsystemic thinking and pedagogy.

It is true that “The McGill Issue” would capture locus, tradition, concept, and practice in a celebratory and confident mode. But it would also seem limited, self-congratulatory, and, perhaps, exclusionary. Wary of giving the name “McGill” some set meaning, of infusing it with “la sacralité”, of foregoing engagement with messy “middle ground” in favour of a fixed destination, the student editors turned to the more generic and descriptive. In so doing, they have handed the authors the challenge of navigating the “transsystemic” and beyond. They have offered space for an ongoing conversation: a conversation with a remarkable range of contexts and directions and problems and voices, and yet a conversation in which the participants speak with each other and their readers. This special issue is an example of true bricolage; a project that reflects the work of all involved and a project that calls out for further participation.

I am honoured to write a brief introduction to this gingerly (and yet enthusiastically) named special issue of the *McGill Law Journal*. The student editors have entrusted me with the task of giving a glimpse of what lies ahead, of provoking curiosity, of providing a compass. They have asked me to offer the first word. As one of their professors, I do so in the mode I perhaps know best: a course syllabus.

---

\* Associate Professor, Faculty of Law and Institute of Comparative Law, McGill University.

© Shauna Van Praagh 2005

To be cited as: (2005) 50 McGill L.J. 701

Mode de référence : (2005) 50 R.D. McGill 701

## COURSE SYLLABUS

### Research Seminar: To the Transsystemic and Beyond

*Spring 2006*

#### Course Objectives

This seminar is organized around the writings of authors concerned with relations: relations among sources and norms in mixed legal jurisdictions; relations among law, culture, philosophical thought, and time; relations among juridical orders, legal traditions, theological approaches, and interpretive practices; and relations among individuals, aspirations, and social transformations. The authors we will encounter are teachers, scholars, and advocates. More significantly, they are explorers, travelers, and dreamers: they examine, they map, they offer critique, and they imagine. Taken together, their writings explicitly question the content and framework of classrooms, research projects, and reference points in law.

As a student in this seminar, you are given the opportunity to immerse yourself in the kinds of questions, projects, spheres of curiosity, and directions reflected in the work of these authors. You are encouraged to search for and articulate fresh links among research, pedagogy, philosophy, argument, and practice. In doing so, you are asked to move beyond the status of observer to that of active participant, and to reimagine, based on these readings, what it means to be(come) a jurist. In substance and form, this seminar interacts with—and poses challenges to—other courses and seminars you have taken or will take. By the end of the semester, you will be deeply familiar with a range of modes, registers, and sites in which law can be engaged beyond boundaries dictated by system, location, or moment. At the same time, you should be prepared to map your own research and practice directions within and beyond any formal legal education.

#### Participants

In the spirit of the substance of this seminar, participants are drawn from a diverse spectrum of backgrounds in terms of disciplinary tradition and language. Against this backdrop of multiple modes of formation, participants are expected to re-examine their “connaissances” in interaction with what might be labeled the sphere of the jural. At the same time, as reflected in the authors’ own diversity of references and realms, participants are encouraged to draw on their particular education and experience to share in a project of exploring the meaning(s) and world(s) of law.

#### Materials

The reading list for the course consists of the eleven articles that make up this special issue of the *McGill Law Journal*. You are asked to read the entire collection a first time before focusing on particular selections relevant to the themes set out in the course outline below. As you read, you are encouraged to create a personal lexicon of

terms along with contexts and examples, such that a common vocabulary (albeit marked by multiple and even conflicting definitions) will be developed within the seminar.

## Pedagogy and Participation

Participants in the seminar should expect to learn through multiple pedagogical approaches and formats. Sessions will be clustered according to substantive themes as articulated in the course outline below. While exploration of one theme might begin with an introduction by the professor to the work of the assigned authors, another might begin with an immediate in-depth exercise of imagining related projects in alternative contexts. Yet another theme might lend itself to a sustained focus on the pedagogical implications of the readings: participants might be asked to lead sessions by playing roles relevant to the exploration of teaching modes and responsibilities.

Throughout the seminar, students will be given the opportunity to interact with the material in plural and integrated ways. They will alternatively act as leaders and team players, performers and spokespeople, subjects and strategists, new teachers and experienced professors, mentors and supervisors, researchers and practitioners. Students will be expected to act as primary participants on one theme and secondary participants on another.

In addition to active and varied participation throughout the term, substantial formal reflection is demanded of all students. In their individual projects, students are expected to draw on course materials in order to explore the content and form of a concrete problem or challenge in legal thought, teaching, or practice. The final assignment in the course will ask students to work in groups to imagine and justify a reordering of the eleven articles included in the special issue. All work will be commented on by peers in addition to the professor; self-evaluation and external evaluation will be combined in a meaningful way (details to be announced).

## Course Outline: Organizing Themes

The seminar will develop four overlapping themes. For each theme, participants are invited to review the work of two or three principal authors and to make further reference to two or three supplemental authors. Every reading in the course materials is included once as a principal reference and once as a supplemental reference; participants are reminded that any reading in the collection could be relevant to any theme. Themes are accompanied by guiding questions and suggestions for discussion inspired by the selected works.

### A. *Bricolage*

*Principal References:* Le Roy, Macdonald and MacLean, Howes

*Supplemental References:* Arthurs, Jukier, Melissaris

For what purposes and in what ways can we imagine imbuing our conceptions, practices, and pedagogies of law with the “plural”? As we transform meaningful

exchange across juridical universes beyond mere comparison, how do we meet the challenge of “*traduction*” without “*trahison*”? A transsystemic approach insists that traditional borders between juridical orders or legal systems be transgressed whether through emphasis on analogy, problem-solving, or recognition of cultural context. We reach beyond the transsystemic when we shift our emphasis from borders (albeit broken down) to foundational problems and processes of human collaboration, interaction, ordering, and institution-building. In light of Howes’ call for cultural reflexivity in law, compare Le Roy’s anthropology-informed mode of examining concepts and models related to African property law(s), to Macdonald and MacLean’s framing of pedagogical inquiry invested in human agency and an infinite range of legal interpretive sites and sources. Ascribing meaning to the temporal aspects of law (Melissaris), rethinking the significance and consequences of loan and transplant of legal concepts (Jukier), and replacing conventional juralty with fundamental contextualization (Arthurs) are further examples of projects that emphasize the plural. Try to trace in the readings emerging directions for describing, understanding, and engaging in law and legality in ways that explode boundaries of jurisdiction, authority, and discipline. How can we characterize these works as “bricolage”: improvisational in nature, shaped by tools at hand, anchored in real life, responsive to the artisan’s imagination, and necessarily unfinished?

### B. Map-Making

*Principal References:* Drummond, Melissaris, Vanderlinden

*Supplemental References:* Berger, Janda

It may be possible to characterize all of these writings as projects in map-making. Why and how does cartography shape the study and practice of law? When we talk about map-making, can we replace the figurative with imagined maps in multiple dimensions—dimensions that include space, time, belief, and dialogue? Try to identify the features of the maps tentatively drawn by these authors, and explain why their projects represent not only alternative but bolder maps than we might traditionally imagine in the world of law. Note how Melissaris, Vanderlinden, and Drummond all navigate huge territories—namely, time, Catholicism, and the coexistence of Israel and Palestine—but do so through detailed exploration of concrete sites and sources. Vanderlinden reminds us of the multiple personality of canon law and, in so doing, illustrates the multiple perspectives (from inside out as well as from outside in) that help us see the shape(s) of the juridical; Melissaris illustrates, through selected examples, the normative incorporation of time into the very rhythm and constitution of the legal; and Drummond imagines flying a kite—removed yet anchored—to better view the messy middle space of law in the mixed reality of the Middle East. Why are these maps necessarily dynamic? Why is this map-making necessarily non-statist? And how are these cartographers part of their very landscape, rather than observers devoted to capturing fixed lines and shapes? The travels of Berger as student, advocate and activist, and Janda’s reflections on the fundamentally displacing and democratizing work of Derrida fill out the potential for human sites (and perhaps entire maps) of law creation. As “readers” of these various maps, how are we invited to live within them, to find our place as participants on the ground?

### C. *Crossing Boundaries*

*Principal References:* Glenn, Janda, Jukier

*Supplemental References:* Vanderlinden, Drummond, Le Roy

From the theme of dynamic map-making flows the theme of crossing boundaries, whether conceptual, territorial, or temporal. Indeed, we can find in these writings a reinvigorated emphasis on thinking and teaching across, through, and beyond classically defined systems. As Glenn turns our gaze to traditions, he illustrates their floating nature and the implications of that nature in terms of normativity, flexibility, and movement. In what ways are legal systems in decline, and in what contexts must we move away from stagnant systemic thinking by going in search of normative engagement and action? How does Jukier's transsystemic classroom discussion of specific performance in contract law allow us to better grasp the mentalities of legal traditions? What does it mean that this kind of teaching is more justifiable than legal education framed by system-grounded form and substance? How is it possible to find, as Janda does, meaningful sharing between law and philosophy reflected in efforts aimed at communication and exchange among traditions? That is, we are invited by these principal authors (as teachers) to cross, combine, and recultivate disciplines and doctrines; to dwell on tradition in order to effect transformation; to find words, sources, and frameworks that better allow us to grapple with normativity, obligation, and relationship. Other authors respond to that invitation. Thus, how does the tool of analogy, used by Le Roy, correspond to the search for the transsystemic in the classroom? How might Drummond teach her own students to contribute to a map that envisages the overlap of Rashi, land registry rules, and military intelligence as sources of law and fragments of legal tradition? And how does Vanderlinden's intersecting examination of theological and juridical approaches help us understand composite traditions and the relationship between the philosophical "why" and the juridical "what"?

### D. *Projects and Programmes*

*Principal References:* Arthurs, Berger

*Supplemental References:* Macdonald and MacLean, Glenn, Howes

This final theme invites us to connect spheres of intellectual and pedagogical curiosity to ambitious projects for revitalizing the ways in which we live and learn law. The principal authors listed under this theme of "projects and programmes"—Arthurs and Berger—are both individuals who have had great impact on law and, indeed, on all of us. Their narratives and preoccupations translate into huge challenges for their readers and listeners in our engagement as responsible citizens and community members, lifelong students and dedicated advocates. In what ways do both Arthurs and Berger encourage us to navigate in "all" directions through "one" direction: the direction of rejecting conventional assumptions, reimagining our institutions, and flourishing in the constant exhilaration of innovation and ideas? How would these two jurists-teachers-practitioners respond to the particular projects taken on by the spectrum of authors represented in this seminar? What contribution might Arthurs make to the challenge, identified by Macdonald and MacLean, of

encouraging new law teachers in their individual development of pluralist modes of inquiry? Might an emphasis on tradition (Glenn) and culture (Howes) in all their plurality respond to Arthurs' concern that legal education grounded in juralism might close itself off to important interdisciplinary possibilities? Finally, there is a recurring sense of the contemporary and even of the future in Arthurs, Macdonald and MacLean, Glenn, and Melissaris as these authors reflect on learning law today and tomorrow. Is it possible to trace in Berger's reflections on his past—his attention to real people and real life and real institutions—the elements that make up this collection's projects and programmes for the study and practice of law?

### *Suivi*

The nature of this seminar is such that, in some sense, it never ends. Whether we take this seminar as students already immersed in the transsystemic or as newcomers to the language and approach, the material covered and the knowledge acquired provoke further exploration. The course, then, is open-ended in much the same way that the articles themselves are open-ended. All of the authors invite their readers, whether implicitly or explicitly, into the discussion or practice reflected in their work. Thus we are invited to contribute to the bricolages, to try our own hand at map-making, to transform our learning and writing and teaching. We are invited to build new university programmes, to be innovative advocates for justice, to develop scholarship in ways not constrained by system or discipline. And we are invited to articulate constructive critique, to ask tough questions, and to interrupt and even redirect conversations. Navigating the transsystemic—and setting our sights over the horizon—continues past the last session of this seminar and past the last page of these assigned readings.

---