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Globalisation and legal education: views from the outside-in

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In Nigeria we know what ‘globalisation’ means. It means ‘The White Man is coming again’. What does he want this time? (Chidi Oguamanam, Student comment, University of British Columbia, 2001).

Direct and to the point, this comment serves to focus our minds on aspects of globalisation and culture that are obscured in most western academic writings.¹

In considering issues related to globalisation and legal education—and hence “global legal education”—I have been struck by two stunningly divergent understandings of what the terms and concepts might connote. Crudely, two camps emerge: *the Optimists* see globalisation as the font of all that will become good about twenty-first century legal education; *the Pessimists* conversely tend to see it as the *causus causans* of all that is evil. More on this—and also on the “White Man’s” return—later in this article.

In part the divergence of opinion, hopes, fears and night terrors that legal educators feel about the development of “global legal education” reflect attitudes toward two great forces that have shaped western societies in recent years:

- the development of a global economy and all that implies,² on the one hand; and
- the blossoming of liberal strategies of inclusion, “diversity politics”, standpoint theory, postmodernism, and so on, on the other.

Though the course of each is well known,³ it is worth pausing briefly to recap some major features.

Diversity politics

“Diversity politics” is a sort of catch-all phrase embracing a number of ebbs and flows that have washed over social theory, humanities, social sciences and political

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life in most G8 countries and their nearest kin during the past two decades or so. The category is, in fact, too large to make sense at all in any rigorous taxonomy of thought that we might seek to develop. Originating in post-WWII liberal strategies of social inclusion, it now encompasses an array of perspectives or movements including the “green” movement, critical race theory, feminism, gay and lesbian pride, First Nations activism, “new social movements”, locality studies, cultural studies, post-colonialism and any number of local rebellions against “the great books” of literature or the “great men” of history.

One looks in vain within this inchoate category for either programme as such or for the sort of common features that permit easy categorisation. Most, however, slot into the political category of “post-liberal” or the cultural category of “post-modern”. We can date precisely when awareness of “diversity” in Canada derailed the dual liberal project of inclusion and obliteration of difference. Though we didn’t know what to call it at the time, post-modernism registered forcefully with the publication of Harold Cardinal’s 1969 book *The Unjust Society*.⁴ Cardinal treated *liberal* policies that sought to assimilate First Nations peoples into the larger Canadian as “a thinly disguised program of extermination”.⁵

This was stunning stuff. Assimilation, *the* cornerstone of liberal policy toward difference, had been deliberately pursued in post-World War II Canada. It was pursued as a matter of principle and quite deliberately chosen in preference to the more directly racist policies of the previous century. The shift was real, not cosmetic, working its way throughout Canadian society—generally for the good—from 1945 on. Consider for example the discussion between Dean and students in the Law Faculty when the University of British Columbia considered admitting a Japanese Canadian student in the aftermath of the Nazi War. “What in the name of all that is holy”, war veteran students asked, “had they fought the war for” if the University would not accept the young woman?⁶ There was nothing superficial or trivial about such principled commitments. UBC, of course, did the right thing. That “difference” could be damning, was something the generation that fought the Nazis knew all too well.

With the publication of *The Unjust Society* however “difference” was powerfully and positively asserted by the first inhabitants of the land. Their claims could not easily be denied. Nor could their obvious and specific rights enshrined, referenced, or protected in treaties, Royal Proclamations, case law, government practice and the numerous negotiations that had taken place over the centuries. There has followed in Canada three decades of angst about what to do with respect to First Nations policies at all levels of government. The task is all the harder precisely because such claims do not fit easily within any known western political philosophy.⁷ At about the same time, French Canadian nationalism in Quebec was taking on a new character and focus. The obvious “groupedness” and “distinctiveness” of both First Nations and Quebecois within Canada has spawned an outpouring of scholarship grappling with how to be liberally respectful of group claims—a task akin to squaring a circle.⁸

The same is often said of other manifestations of diversity politics. Friend and foe alike are inclined to assert that critical race theory or feminism⁹ or gay pride or the environmental movement or post-colonialism or all of them together stand in

fundamental opposition to the liberal tradition. Such assertions are frequently offered rather more glibly than they ought. This, of course, is true only on one—particularly constrained—interpretation of the liberal tradition. Roberto Unger some time ago reminded us of the possibility of developing a “super liberalism” transcending the bounds of mid-century conventions.¹⁰ The fundamental affinity between the liberal tradition and the justice-demands of diversity politics has been much developed by a wide array of scholars including James Tully, Will Kymlicka, John Ralston Saul, and Charles Taylor.¹¹ Indeed, US sociologist Alan Wolfe considers the attempt to account for difference within a liberal polity something of a Canadian disease!¹²

A recent symposium issue of the *International Journal of the Legal Profession* on the theme of “Lawyering for a Fragmented World” teased out some of the issues relating to diversity politics in the specific context of the legal profession.¹³ Though accurate generalisations are elusive, “diversity politics” at its core appeals to the “justice” urges of lawyers, judges, legal educators and students alike. The curricular result is development of courses in non-traditional areas engaging law and under-privilege, critical legal histories, social theory and law, and so on.¹⁴

Globalism

What, then, are we to make of “globalism”? A common starting point in many discussions of “globalisation” is found in a litany of economic, transportation and communications revolutions of the past 40 years. Adelle Blackett, for example, notes that “globalization is most often understood to mean the growth and interconnection in trade and financial markets across . . . national boundaries, which is facilitated by the increasing ability to use and disseminate technology rapidly and widely”.¹⁵ To similar effect, John B. Attanasio of St. Louis University, wrote:

The world has truly become a global economic village. Many factors have increased interdependencies. Communications and transportation technologies have shrunk what until very recently had been long distances into instant transmissions. Videoconferencing, e-mail, faxes, satellites, worldwide pagers, supersonic jets, computers, bullet trains, fiber optics, the Internet, and CNN are all relatively recent developments. Even jet airliners were unheard of four decades ago. All these developments have reshaped the world. . . . They have recast transnational corporate structures and international trade. Business has become global, and various international institutions reflect these developments: GATT, NAFTA, the EU, *et cetera*. Banking and financial transactions generally have taken on a new global character.¹⁶

If the core of diversity politics is a “justice” urge of some sort, the pressures of globalism on “diversity” concerns are not immediately apparent. “Globalisation” is taken by Kenneth M. Casebeer as a rough equivalent to “finance global capitalism”.¹⁷ Some see it as a code-word for new regimes of international governance brought into play by the World Trade Organisation (WTO), a system not viewed with equanimity on all fronts. So-called anti-globalisation activists consider “the WTO

Though the curricular outcomes globalisation implies for law schools might conceivably encompass many “diversity” urges, they do not *necessarily* do so.²² Not surprisingly, perhaps, many law faculties sport a list of courses related to international business law that is much more extensive than the array of upper year offerings reasonably classified under the “diversity” heading.²³

These points noted, let us turn now to consider what the Optimists and the Pessimists make of globalisation, global legal education and its consequences, if any, for the justice-urge, the “liberal education”, or the diversity-enhancing goals of legal education.

The Optimists: bringing viewpoints into conversation

The banner for the Optimists is carried most impressively by the New York University Law Faculty’s new “global law school”, enthusiastically promoted by Dean John Sexton, and by Professor Norman Dorsen, Chair of the Global Law School programme. Here is how the NYU website describes its “Global Law School” initiative:

The development of interdisciplinary legal studies manifests a recognition that the law does not exist in isolation—that it is formed by, and it affects, other areas of intellectual endeavor. But law does not exist in geographic or cultural isolation, either. As the social, political, and economic systems of different nations become ever more interconnected and interdependent, so too will their legal systems. Already, an increasing proportion of what most lawyers do brings them into contact with this transnational system. The globalization of law is already happening; and judges, lawyers, and legal academics must be prepared to deal with it.²⁴

“Global” legal education, in this iteration, emerges from the same urges that propel interdisciplinary legal studies. It is about transcending parochialisms. It is about understanding law in context. It is about law’s social roles, about politics, culture, and economics. The Global Law School aims to create a new kind of “intellectual community”. By “assimilating diverse perspectives”, it will simultaneously “challenge the most fundamental premises of America’s legal system and prepare NYU’s graduates for the global environment in which they will practice”.²⁵

There is more here than the usual sort of law faculty self-promotion too. NYU raised more than US\$75 million in donations to sustain the programme, employs more than 20 “global” faculty (regular visitors, mostly from the UK, Germany and Japan) and supports an affiliated research centre.²⁶ There can be little doubt as to the high-minded enthusiasm behind this initiative. Dean Sexton, for example, explained that:

So I think that the *experience* of legal education is going to be very different because of the reality of globalization. Not the least because students will be in classes where they’re hearing different viewpoints.

I think this is connected deeply, by the way, to the diversity agenda.

The educational ground on which the diversity case rests is one of broadening the spectrum of conversation and the voices that are heard, on bringing different viewpoints into the conversation. To the extent that one brings a more global view to each problem one studies at the core, even in the canon, it will have the same impact. . . .

And thus begins to surface the lacuna in the languages, the assumptions, the absence of words, the absence even of concepts as you move from one cultural motif to another, even within the narrow discipline of law. So, it's a whole different pedagogy that comes with this approach, because you're able to reveal to people, in ways they don't see very often, their basic assumptions.²⁷

This, it is said will be good for the learning of law students. It also, it seems, will be good for their souls for their encounters with difference will teach humility: "To be tossed on one's rear end intellectually by the revelation of a premise that you never knew drove your thinking is quite dramatic intellectually, and should instill humility and a reluctance to assume that there is a single right answer". From humility, in turn, moral learning can flow. The NYU programme is premised on the belief that a thorough consideration of the comparative global contexts of law raises "the fundamental questions of the ought of the law", something the best law faculties have always endeavoured to do. Focus on oughtness, on law's moral underpinnings is, Sexton says, "much easier through a globalized perspective".²⁸

Though clearly the leader of the pack, the NYU law school is not alone in "pitching" itself, to one degree or another, as a "global law school". Harvard Law School has tried to rise to the NYU challenge by "vigorously" pronouncing "the strength of its International and Comparative Legal Studies programs".²⁹ Fordham University Law School, along with a number of others, has similarly global pretensions, backed by other USA-based initiatives such as the "Central and Eastern European Law Initiative", the "African Law Initiative Sister School Program", linkages between USA and Latin American law schools, and so on. *And*, "In addition, the AALS has established special ties with law schools in the NAFTA countries, *especially Mexico*".³⁰ Beyond this, "summer abroad" programmes proliferate in USA law schools, providing tourism or global learning (depending on your perspective, I suppose) for over 2,900 students annually.³¹ The felt pressures of globalisation have produced radical proposals for an expansion of legal education's parameters in the USA. Gloria Sanchez has asserted that the "paradigm shift" globalisation has wrought on the legal profession "should be the impetus for a concomitant paradigm shift in legal education"³² including teaching the domestic law of other countries in the domestic language of those countries (especially Mexico).

Clearly, despite the fact that many of the most recent initiatives and almost all of the breathless enthusiasm in current legal literature comes from that country, global legal education is not exclusively the concern of US legal educators. In Canada, for example, McGill University's Faculty of Law has long conceived itself as something of a centre of comparative and international law training. Unlike most

competitors in North America or elsewhere, McGill provides a genuinely bi-lingual training for almost all students almost all the time. It is staffed with a fully bilingual faculty, and offers a full panoply of bi-juridical legal education of the most un-parochial sort.³³ McGill was global when global wasn't cool, and it hasn't wavered from that educational mission.

Although the urge was played out in different ways, the same might be said both of the Dalhousie University Faculty of Law and of my own faculty. The University of British Columbia has given pride of place to international law since its founding amidst the first wave of post-WWII internationalism.³⁴ More recently, the University of Toronto has attempted in various ways to position itself as an "international" centre of legal education. So too has York University's Osgoode Hall Law School.³⁵ The University of British Columbia is exceptionally proud of its large number of student exchange programmes. These bring some 50–60 visiting students to the faculty each year and allow a similar number of UBC students—up to 25% or more in any given cohort³⁶—to study elsewhere. They thus obtain direct experience, not just of exposure to visiting "global faculty", but of daily life and full-time education in another country. Like other Canadian law faculties, UBC takes pride in placing graduates directly on Wall Street and, following professional qualification in Canada, in "the City".

Global legal education, in this frame, is about human rights, inter-cultural respect, diversity. It is about breaking down parochialisms (even in the USA). It is about "preserving student choice, and encouraging diversity of student choice".³⁷ It is about making lawyers better *people*, not merely highly knowledgeable mechanics of law. In the NYU iteration, the template for global law schools remains solidly within the cultural ethos of higher education, exhibiting "the quality of breadth that we associate with a liberal arts education". Its emphasis remains solidly on the idea of the lawyer "as a professional who acts as a fiduciary for a sacred trust . . . the lawyer as priest of and keeper of the law".³⁸

Understood this way, "global" legal education develops from and extrapolates the best urges of the cultural movements which have promoted political liberalism, race equality, respect for cultural diversity, and so on.³⁹ In this guise, it looks and feels—and may actually be—"progressive", vaguely counter-culture, post-modern, even. As Adelle Blackett notes, "teaching law students to be effective actors in a 'globalized' environment may have at least as much to do with cross-cultural sensitivity and a knowledge of the world as with the way that 'the law' is taught".⁴⁰

The Pessimists: a new philistinism

There is on the other hand a rather more pessimistic crowd. This bunch doesn't have any institutional base (of course) and no one actually seems to wish to champion "parochial legal education" as an alternative to "global law schools". Despite signs of disquiet and considerable angst about the meaning of globalisation at large, no clear intellectual leadership of anti-global legal education has emerged.

The concerns expressed by the Pessimists are that globalised legal education becomes in practice something quite different than its promoters hope for, think, or

acknowledge. Pessimists fear there will be a “rejection of the values of education in favour of short-term mechanical skills that enhance pragmatics at the expense of ideals”.⁴¹ It will be “into the trashcan” with intellectual (as opposed to narrowly technical) legal education, as “law” follows economic interests, narrowly construed. So too for justice-based concerns about diversity, inclusion, difference, and citizenship, feminist legal studies, critical race theory, legal history. Most of the “law ands” (law and society, law and philosophy, law and history, etc.), they fear, along with all aspirations for a humane professionalism, will be discarded as students and faculties furiously pursue the narrow and anti-intellectual sort of education that they imagine major employers consider useful.⁴²

I am taking considerable liberty here, of course, in describing a generalised and still unformed sense of disquiet felt by a diverse array of legal educators. Nonetheless, some such sentiments can be found in the writings of eminent scholars such as Margaret Thornton, Harry Arthurs, Ian Duncanson, and John Flood. (Two Australians, one Canadian, one Brit: interestingly, few such scholars are from elite institutions in an important “global” country.) Here, for example, is what distinguished Australian scholar Margaret Thornton has to say:

... the imperative in favour of business-oriented legal knowledge, understood as technocratic and uncritical, has succeeded in delegitimizing socio-legal scholarship just when the latter was receiving a modicum of acceptance in the academy. The phenomenon is ... a corollary of the corporatisation of universities which has spread like a canker throughout the world. Corporatisation, involving the application of business practices to universities, has arisen from the technological and globalising tendencies of post-modernism ...⁴³

Though these comments arise from a discussion of recent developments in Australia, the point is offered as an observation of more general applicability. Flood fears that “ideals of economic development” will supplant “ideals of justice and community”.⁴⁴ To similar effect Harry Arthurs considers the consequences of contemporary “political economy” (read “globalisation”) to be quite dire. Students, he observes, attempt to “make themselves more marketable” by registering only in courses they imagine law firms will like. “As a corollary they are increasingly impatient, as a group, with ‘humane professionalism’, the ethos of Canadian law schools since the 1960s, and they increasingly exercise their right to avoid ‘purely academic’ offerings”.⁴⁵

Much has changed in the short time since Arthurs’ comments were published. In particular, there has been a stunning turn-around in lawyerly career prospects. Canadian law graduates have benefited from the hyperinflation of lawyers’ incomes that has also taken place in the United States of America and the United Kingdom in the past year or two.⁴⁶ Because they enjoy an unusual degree of personal mobility across the world’s “longest undefended border”, Canadians have been able to take up plum employment opportunities in New York. London too has become an open market for employable law graduates.

Paradoxically however the pressures Canadian law students feel with regard to

course selection probably have not changed much. It turns out that both the fear of unemployment *and* the promise of meteoric rise to undreamed-of wealth⁴⁷ militate equally toward a “consumers” insistence on “courses, syllabuses, and pedagogies which, in their perception, reinforce their survival skills”. The cost, of course, is a diminishment of interdisciplinary legal education, critical pedagogy, and the “diversity” or “social justice” curriculum. Canada remains, perhaps, “too close to Wall Street, too far from God”.⁴⁸

Curricular *laissez faire*, which leaves a wide-open course choice to students, produces overwhelming patterns of enrolment in those courses that tend to render law as a “dry, technocratic endeavour, cut off from intellectual currents in the rest of the academy”.⁴⁹ Adriane Howe perceives pressures in Australia where “intellectual restraints” are “assumed to be imposed by economic rationalism” resulting in a reduction of legal education to “narrowly defined technicist criteria”.⁵⁰ To similar effect, Ian Duncanson complains of a new philistinism. This, he says, is “the conviction that ‘to be useful, knowledge must be closely related to some commercial activity’ . . . Legal studies conceived ‘as a critical theoretical enterprise’ or as a local form of ‘critical, creative and curiosity-driven scholarship’ no longer has much of a future at a university where ‘corporately inspired vocationalism’ and ‘excessive technicality’ reign supreme”.⁵¹ This, of course, amounts to a repudiation of the citizen-formation objectives of legal education and of the legal profession itself.⁵²

Meanwhile, global law firms become increasingly homogenized “as they increasingly compete for a limited group of clients and lawyers.”⁵³ Echoing concerns that ‘globalisation’ stands for United Statesification, John Flood finds “imperial ambitions” within the NYU programme, envisioning “the role of the global law school” as being to “export American (sic.) legal ideas and concepts throughout the world, especially among the emerging markets”.⁵⁴

One might note too that no law school has succeeded in raising significant private funding in order to promote a vision of “global” legal education oriented around environmental protection, labour rights, conservation of resources, the international protection of human rights or the advancement of indigenous peoples’ claims.⁵⁵ The smart money is on education in service of global capital.

Of course it is.

Perspectives from outside-in

One of the most striking patterns apparent in writings on these matters is geographical. The most enthusiastic celebrations of globalisation and globalised legal education emerge from the keyboards of United States legal scholars. The most strongly critical or hesitant voices come from other countries.

Why does globalisation and global legal education seem so promising from New York or Missouri and so threatening from Toronto or Melbourne? It is striking that this divergence of perspective is apparent *despite* the fact that the proponents and critics seem to adhere to many of the same values: good global citizenship; the virtues of liberal legal education; commitment to diversity and inclusion; dedication to humane professionalism; critical education and challenging pedagogy.

We need to obtain some critical distance from our own locations if we are to resolve this riddle. A comparison with the globalisation processes of the nineteenth century is, perhaps, helpful in obtaining this distance. Nineteenth century “globalisation” took place by means of empire. The world’s most successful imperialists, the British, stood at the pinnacle of an Empire that spanned the world, the Empire on which the sun never set. Trade flourished, the Empire was powerful. The “home” British experienced their global era as mind-expanding, and culturally enriching. The English and other British peoples produced immense learning, sophisticated scholarship, and legal thought about all kinds of interesting people and places. Collectors brought back countless artefacts, monuments (Cleopatra’s needle or the Elgin Marbles, for example), jewels (e.g. the Kohinoor diamond), and even corpses (Egyptian mummies) from around the world for study, display and the edification of people at home. The British learned much. They contributed greatly to the world’s store of knowledge.

The processes that made such great learning possible in the centre were not, however, viewed with equanimity on all parts. To many colonised peoples British learning seemed voyeuristic, parasitic and often disrespectful. British teaching in the colonies could seem heavy-handed, directed at cultural genocide. “Collecting” was experienced as theft.

Given that twenty-first century globalisation is experienced by many as United Statesification,⁵⁶ it is not surprising that the effects of globalisation on legal education are felt and experienced differently in different places. In New York one tracks the success of global legal education in learning outcomes, broadening of outlook, increased multi-cultural sensitivity. The view from “outside” of the world’s centres however is different.

In Canada, for example, there is only one “gold standard” by which to evaluate educational success—and it feels rather different from a “broadening” of outlook. The key question for ambitious Canadian law faculties is not “how culturally enriched are your graduates” but rather “how many law graduates were placed on Wall Street this year”—a rather different sort of question.⁵⁷

Concluding thoughts—“capital city of the world”?

In short, it may be that whether one is an “Optimist” or a “Pessimist” has very much to do with where one is located. Though the term “globalisation” might usefully capture a number of processes that are indeed being simultaneously played-out around the world, the *effects* of those processes and the human *experience* of them are not identical in any two places. Whether embraced joyfully or viewed with dread will depend, in part, on whether one views the whole as an “insider” or from the “outside-in”.

Let us turn to Nigeria once more. Recall that for some “globalisation” means a welcome revolution wrought by communications technology, “videoconferencing, e-mail, faxes, satellites, worldwide pagers, supersonic jets, computers, bullet trains, fiber optics, the Internet, and CNN”.⁵⁸ But communications do not link all of the world equally. Recent figures reveal that there is one telephone (land line or mobile)

per 1.18 people in the USA, one per 1.45 in Canada, but only one per 297.19 in Nigeria. Moreover, the Nigerian telephone system is said to be “inadequate”, and poorly maintained.⁵⁹ Even by this simple criteria then, “globalisation” is not equally experienced by everyone on the globe. Nor is this a trite observation: the average Nigerian simply cannot aspire to be a citizen-participant in the global communications village. Canada, of course is not Nigeria. Nonetheless, though “well-connected” in most senses, it is not the United States either (nowhere is). Nor are the locations of London, Melbourne, Perth, Sherbrooke, Auckland, Addis Ababa, Cape Town, Kano, Bhopal and New York (the “capital city of the world”⁶⁰) interchangeable.

Recognising the difference that place makes—and the hugely divergent circumstances the peoples of the earth find themselves in—raises some profound questions, drawing inevitable comparisons with the Empires of old. The deepest and most important questions about “global legal education” are derivative of the “big” questions concerning globalisation:

Is globalization a new name for modernization with its imperialist connotations? Are we seeing domination through a particularly western mode of law discourse, a deterritorialization of law? Does globalization mean that the global and local coexist or are the tensions too great? Can ideas of economy and justice coexist or are they antagonistic to each other? Are the great international organizations promoting economic discourse at the expense of discourses on community, ethics and justice?⁶¹

We should pay attention then to the possibility that “globalisation” may indeed mean “the White Man is coming again”. It may be that “The White Man” is in fact usually of European descent. Possibly, too, he is more often male than female. The essence that lies behind this captivating metaphor is not, however, racial or gendered. Rather, it is political and economic. “The White Man” of past Empires came from another place, exhibited only transitory concern for local people or places, and sought to structure economic and political arrangements to his own advantage—often with dire consequences in the far flung local spaces of Empire. The “White Man” is distant power, unaccountable to local people. It should not come as a surprise then if global legal education is experienced differently in Ife, Toronto, and other provincial centres than it is in the “Capital City of the World”.

Canadians, for example, are the nearest ‘outsiders’ to the USA. We live within NAFTA and occupy a territory that includes huge resources of oil and fresh water. The United States needs both desperately. Both are clearly strategic natural resources of the first importance: both probably lie beyond the realm of any form of national policy protection that might have detrimental effect on the USA (as any “Canada first” and most “environment-first” policies certainly would). Beyond this, globalisation raises questions as to the future of publicly funded health-care, whether we can sustain our own currency and monetary policies, and so on. Indeed, the possibility of developing or sustaining transportation policies, tariffs, immigration laws, or energy, cultural or water policies, (amongst others) that are independent of either

USA interests or neo-liberal ideology, strikes many—for better or worse—as highly uncertain.⁶²

Tiny players in a huge continental economy, Canadians, like Nigerians, experience globalisation from the “outside”. It is an experience quite different from that of our nearest neighbours.

Is “the white man is coming again”? If so, what does he want this time? And where will this leave us?

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Notes

- [1] There are, of course, exceptions, some of which are touched upon in this article. Recognition of the sorts of relations Oguamanam invokes are, however, ‘niche’ concerns within the western academy.
- [2] The neo-liberal ideological bent of globalisation in its current form, and its implications for legal education, are well developed in the separate contributions of Harry Arthurs and Margaret Thornton to this volume.
- [3] See, for example, Jamie Cassels, *Legal education in British Columbia: trends and issues* (2001) 9 *The Advocate* 167-172. Dean Cassels of the University of Victoria Faculty of Law, addresses five forces affecting legal education: demographics; public finances; “Technological and social change”; “The globalization of everything”; and “Diversity and pluralism”.
- [4] Harold Cardinal, *The Unjust Society* (Vancouver, Douglas and McIntyre; Seattle, University of Washington Press, 1999) (originally published Edmonton, M.G. Hurtig Ltd, 1969).
- [5] *Ibid.*, p.1. A. Armitage, Comparing Aboriginal policies: the colonial legacy, in: J.H. Hylton (Ed.) *Aboriginal Self-Government in Canada: Current Trends and Issues*, 2nd edition (Saskatoon, Purich Publishing, 1999), p. 61, at 64-65 discusses this as the “integration” phase of Canadian policy toward First Nations peoples.
- [6] Dean George Curtis, as quoted in W. Wesley Pue, *Law School: The Story of Legal Education in British Columbia* (Vancouver, University of British Columbia Faculty of Law, 1995), p. 220. (Also published at <http://faculty.law.ubc.ca/Pue/historybook/index.htm>).
- [7] For an overview see Alan C. Cairns, *Citizen’s Plus: Aboriginal Peoples and the Canadian State* (Vancouver, University of British Columbia Press, 2000).
- [8] See, for example, Patrick Macklem, *Indigenous Difference and the Constitution of Canada* (Toronto, University of Toronto Press, 2001); Jeremy H. Webber, *Reimagining Canada: Language, Culture, Community and the Canadian Constitution* (Montreal, McGill-Queen’s University Press, 1994).
- [9] The Royal Commission on the Status of Women, set up in imitation of President Kennedy’s similar initiative in the USA, reported in 1970. See Canada. Status of Women Canada, *The Royal Commission on the Status of Women: An Overview 25 years later/Status of Women Canada* (Ottawa, Ontario, Status of Women Canada, 1995). Though commonly categorised within the post-liberal political ethos, feminism, more obviously divided between “liberal” and “group” orientations, is not as unequivocally placed as the claims of First Nations peoples or Quebecois. See Susan Boyd,

- E. Sheehy & J. Bouchard, Canadian feminist literature on law: an annotated bibliography (1988-99) (1999) 11(1&2) *Canadian Journal of Women and the Law*. Susan Boyd & E. Sheehy, *Canadian Feminist Perspectives on Law: An Annotated Bibliography of Interdisciplinary Writings* (Toronto, Resources for Feminist Research, 1989); S. Boyd, Feminism and the law in Canada: an overview, in: T. Caputo, M. Kennedy, C. Reasons & A. Brannigan (Eds) *Law and Society: A Critical Perspective* (Toronto, Harcourt, Brace, Jovanovich, 1989) (with E. Sheehy), pp. 168-183.
- [10] Roberto Mangabeira Unger, *The Critical Legal Studies Movement* (Cambridge, MA, Harvard University Press, 1986), p. 41.
- [11] See, for example, Charles Taylor, *The Malaise of Modernity* (Concord, Ontario, Anansi, 1991); Charles Taylor, *Multiculturalism and "The Politics of Recognition": An Essay*, edited by Amy Gutmann et al. (Princeton, NJ, Princeton University Press, c1992); James Tully (with the assistance of Daniel M. Weinstein), *Philosophy in an Age of Pluralism: the Philosophy of Charles Taylor in Question* (Cambridge, New York, Cambridge University Press, 1994); James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge, New York, Cambridge University Press, 1995); Will Kymlicka & Wayne Norman (Eds), *Citizenship in Diverse Societies* (New York, Oxford University Press, 2000); Ian Shapiro & Will Kymlicka (Eds), *Ethnicity and Group Rights* (New York, New York University Press, c1997); John Ralston Saul, *The Unconscious Civilization* (Concord, Ontario, House of Anansi Press, 1995); see also Linda Nicholson (Ed.), *Feminism/Postmodernism* (London, Routledge, 1989).
- [12] See Andrew Potter, Let's appease cultural minorities, *National Post*, 16 June 2001, B10, reviewing Will Kymlicka's *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship* (Oxford University Press, 2000): "In a recent article for *The New Republic* surveying new books on multiculturalism, American sociologist Alan Wolfe dismissed most of them as ill-conceived. For Wolfe, multi-culturalism is a weak-kneed, illiberal program of state-sanctioned balkanization that inevitably produces unequal classes of citizens with hyphenated identities and questionable political allegiances. He lamented the growing band of multi-culturalist political philosophers, noting with a sneer that 'a large proportion of them are from Canada'".
- [13] The issue was W.W. Pue (Ed.), *Lawyering for a fragmented world*, Symposium (1998) 5(2&3) *International Journal of the Legal Profession*. It included W.W. Pue, *Lawyering for a fragmented world: professionalism after God*, 125-140; David B. Wilkins, *Fragmenting professionalism: racial identity and the ideology of bleached out lawyering*, 141-173; Allan C. Hutchinson, *Legal ethics for a fragmented society: between professional and personal*, 175-192; Yoav Dotan, *Cause lawyers crossing the lines: patterns of fragmentation and cooperation between state and civil rights lawyers in Israel*, 193-208; Stuart Scheingold & Anne Bloom, *Transgressive cause lawyering: practice sites and the politicization of the professional*, 209-253; Anne McGillivray, "A moral vacuity in her which is difficult if not impossible to explain": law, psychiatry and the remaking of Karla Homolka, 255-288.
- [14] A number of specific course offerings at my own law faculty reflect these sorts of urges. The following examples come to mind: *Women, Law and Social Change*; *Topics in Philosophy of Law & Theories of Judging*; *Topics in Legal History Comparative Legal History*; *Cultural Property & Law*; *Topics in Constitutional Law Social and Economic Rights*; *Issues of Equality & Social Justice*; *First Nations & Canadian Law*; *Aboriginal & Treaty Rights*; *First Nations Self-Government*; *First Nations & Administration of Justice*; *Topics in First Nations Law Colonialism & the Law*; *Women, Law & Family* (source: <http://faculty.law.ubc.ca/registration/> July 2001).
- [15] See Adelle Blackett, *Globalization and its ambiguities: implications for law school curricular reform* (1998) 37 *Columbia Journal of Transnational Law* 57-79 at 60. Mary C. Daly, *The ethical implications of the globalization of the legal profession: a challenge to the teaching of professional responsibility in the twenty-first century* (1998) 21 *Fordham International Law Journal* 1239-1295, at 1240, note 1: "The most common explanation for its appearance ... is the simultaneous occurrence within a short period of time of unprecedented advances in telecommunications, transportation, and information retrieval systems, and political upheavals that replaced communist and socialist regimes with democratic systems of government and capitalist economic policies".
- [16] John B. Attanasio, *The globalization of the American law school* (1996) 46 *Journal of Legal Education* 311-312 at 311. Cf., Peter W. Martin, *Impermanent boundaries—imminent challenges*

- to professional identities and institutional competence, *Commentary* (2000) 2 *The Journal of Information, Law and Technology* (JILT) <http://elj.warwick.ac.uk/jilt/00-2/martin.html> 1.2.1, who sees globalisation as the outcome of inevitable economic forces, “the reality of a global economy and multi-national enterprises”.
- [17] Kenneth M. Casebeer, 2001: a global odyssey prompted by the Merritt-Cihon upper level curriculum report of the AALS (1999) 30 *University of Miami Inter-American Law Review* 415-432, at 430: “Finance global capitalism is here”.
- [18] Maude Barlow & Tony Clarke, *Global Showdown: How the New Activists are Fighting Global Corporate Rule* (Toronto, Stoddart Publishing Co., 2001), p. 26.
- [19] Cf. John Flood, who, in his important study of: Legal education, globalization, and the new imperialism, in: Fiona Cownie (Ed.) *The Law School—Global Issues, Local Questions* (Aldershot, Ashgate/Dartmouth, 1999), Ch. 6, pp. 127-158, took “international courses” as a rough indicator of ‘globalised’ legal education in his comparison of elite UK and USA Law faculties.
- [20] *Ibid.*, pp. 128-129.
- [21] Alberto Bernabe-Riefkohl, Tomorrow’s law schools: globalization and legal education (1995) 32 *San Diego Law Review* 137-162 at 149.
- [22] See Blackett, *op. cit.*, providing a fine discussion of the many meanings of globalisation and their possible implications for legal education.
- [23] For example, at the University of British Columbia the following courses are on offer: International Law; Marine Resources Law; International Law Problems; Conflict of Laws; International Commercial Disputes; Maritime Law; Introduction to Asian Legal Studies Asian Legal Systems; Chinese Law; Trade & Investment in the People’s Republic of China; Japanese Law; European Union Law; Topics in Comparative Law Korean Law; Topics in Comparative Law Problems in American Law; Topics in Comparative Law European Law and Integration; Topics in Public Law Regulatory Impact of Globalization; Topics in Natural Resources International Natural Resources; International Taxation; Topics in Private Law Workshop in Canada-Japan Contract; Topics in Commercial Law E-commerce (source: <http://faculty.law.ubc.ca/registration/> July 2001).
- [24] <http://www.law.nyu.edu/globalawschool/studies.html> (11 June 2001). See John Flood, The globalizing world (1995) 23 *International Law* 509, for a discussion of the effects of globalisation on the legal profession.
- [25] <http://www.law.nyu.edu/globalawschool/> (11 June 2001).
- [26] Flood (1999), *op. cit.*, at p. 143.
- [27] John Sexton, Dialogue: legal education, today & tomorrow (2000) 3(4) *Green Bag* 2nd series, 417-424 at 421.
- [28] *Ibid.*, at 422.
- [29] Daly, *op. cit.*, at 1243.
- [30] See: *Ibid.*, at 1243-1244. Emphasis added.
- [31] *Ibid.*, at 1245.
- [32] Gloria M. Sanchez, A paradigm shift in legal education: preparing law students for the twenty-first century: teaching foreign law, culture, and legal language of the major US American trading partners (1997) 34 *San Diego Law Review* 635 at 640.
- [33] See Blackett, *op. cit.*, at 76.
- [34] See Pue (1995), *op. cit.*
- [35] See www.yorku.ca/osgoode/streams/ and www.osgoode.yorku.ca/ICT-Law for information on the York University Law School’s highly innovative ‘International, Comparative and Transnational Law Program’.
- [36] Personal communication, Associate Dean Bob Paterson to W. Wesley Pue, 12 July 2001; personal communication, Associate Dean Liz Edinger, 12 July 2001.
- [37] Sexton, *op. cit.*, at 419.
- [38] *Ibid.*, at 418.
- [39] There are, however, striking similarities with earlier movements. In 1946 the US use of nuclear weapons against two Japanese cities and the beginning of the Nuremberg trials were recent events. Addressing official opening ceremonies for the University of British Columbia Law Faculty that year the Honorable Wendell Farris, Chief Justice of the Supreme Court of British Columbia,

reminded his audience that “the year 1946 ushers in the new rule of International Law, and with this Rule of Law inevitably must follow a real world democracy” [as quoted in Pue (1995), *op. cit.*, p. 155].

- [40] See Blackett, *op. cit.*, at 74-75. To similar effect see: Bernabe-Riefkohl, *op. cit.*, at 153, arguing that globalisation requires a legal education sensitive to “cultural, historical, economical, and political” forces shaping law, emphasising second language training, and interdisciplinary studies. In Europe the Socrates-Erasmus programme has allowed hundreds of thousands of students to study in countries other than their own and facilitated teaching and research partnerships across the EU. Whether this counts as ‘global legal education’ depends much on how one understands Europe and its developing role in the world. See: <http://europa.eu.int/comm/education/erasmus.html> (accessed 10 September 2001).
- [41] Flood (1999) at p. 149.
- [42] Cf. Annie Rochette & W. Wesley Pue, ‘Back to basics?’ University legal education and 21st century professionalism (forthcoming) 20 *Windsor Yearbook of Access to Justice*.
- [43] Margaret Thornton, Among the ruins: law in the neo-liberal academy (forthcoming) 20 *Windsor Yearbook of Access to Justice*.
- [44] Flood (1999), *op. cit.*, at pp. 128-129.
- [45] H.W. Arthurs, The political economy of Canadian legal education, in: Anthony Bradney & Fiona Cownie (Eds) *Transformative Visions of Legal Education* (Oxford, Blackwell Publishers, 1998), pp. 14-32 at 31. See also H.W. Arthurs, The state we’re in: legal education in Canada’s new political economy (forthcoming, 2001) XX *Windsor Yearbook Access to Justice*.
- [46] James Hoffner, US lawyer salary hikes intensify the pull south—Silicon Valley prosperity cited as main reason for new increases, *Ultra Vires*, (February 2000) (http://www.law.utoronto.ca/ultravires/feb00/news_01.htm) (accessed 23 July 2001).
- [47] Brendan Van Niejenhuis, Let’s play big-shot movie stars: summer associates in New York, *Ultra Vires*, (September 2000) (http://www.law.utoronto.ca/ultravires/Sept2000/editorial_02.htm) (accessed 23 July 2001).
- [48] Harry W. Arthurs, Poor Canadian Legal Education: So Near to Wall Street, So Far from God (2001) 38(3) *Osgoode Hall Law Journal* 381-408.
- [49] Denise G. Réaume, Rethinking the laissez-faire law curriculum: fostering pluralism and inter-disciplinarity (draft of spring 2001); see also Rochette & Pue, *op. cit.*
- [50] Adrian Howe, Law out of context (or who’s afraid of sex and violence in legal education) (2000) 25 *Alternative Law Journal* 274-278, at 274.
- [51] *Ibid.*, at 275.
- [52] See also Rochette & Pue, *op. cit.*
- [53] Carole Silver, Globalization and the US market in legal services—shifting identities (2000) 31 *Law and Policy in International Business* 1093-1150 at 1093. At 1147: “Most of the non-New York firms involved in the foreign office movement traditionally have enjoyed a broad client base, in which financial services clients occupied only a limited role. Internationalization is causing a reorientation of these non-New York firms towards financial service businesses ...”.
- [54] Flood (1999), *op. cit.*, at p. 143.
- [55] That global legal education might look like this is one conclusion that might be extrapolated from Stephen Sedley’s *Settlers v. natives*, *London Review of Books*, (8 March 2001), pp. 24-25 [reviewing Neil MacCormick, *Questioning Sovereignty: Law, State and Nation in the European Commonwealth* (Oxford, 1999) and F.M. Brookfield, *Waitangi and Indigenous Rights: Revolution, Law and Legitimation* (Auckland, 1999)]. While it is certainly true that no programme of legal education takes its overall direction from promotion of causes such as these, the New York University Global Law School Programme does now incorporate a ‘Global Public Service Law Project’ of characteristically impressive dimensions. See: www.law.nyu.edu/globallawschool/gpslp.html.
- [56] On globalisation as United Statesification cf. Michael Hardt & Antonio Negri, *Empire* (Cambridge, MA, Harvard University Press, 2000). Similarly, Avrom Sherr, *Globalization and the English Judiciary* (unpublished paper, August 2001) comments that “It is possible, therefore, to see globalisation as simply a new form of colonisation in which American (sic.) companies, American systems and American law begins to take over states, cultures and indigenous systems of law and

- regulation” (p. 2). (It is clear from the context that Professor Sherr means “United States of American” in referring to “American” influences here.)
- [57] An overview of the way in which Canadian legal education responds to Wall Street is found in Arthurs (2001), *op. cit.*
- [58] Attanasio, as quoted above, *op. cit.*, at 311.
- [59] Information taken from the CIA Factbook entries for each of the three countries <http://www.cia.gov/cia/publications/factbook/> (accessed 24 July 2001).
- [60] This banner headline appeared in the *New York Times*, Sunday 8 July 2001, p. 23, advertising vacation information in New York. This is not, however, mere advertising puff. Carole Silver points out that “New York’s position as the home to many global financial clients makes it crucial for law firms to have a substantial and credible New York office . . . As the financial center of the US and a global center of finance, New York is home to most of the major US commercial and investment banks, as well as the New York Stock Exchange and the Nasdaq” (Silver, *op. cit.*, at 1135).
- [61] Flood (1999), at 130. Flood’s further questioning of the character of the new international regime, characterised by a “new imperialism of the supranational bodies” that “is deficient in the benign paternalism of the old-style colonialism which at least pretended to have the welfare of communities at heart” (p. 134) is also relevant here. Wider questions relating to globalism and imperialism are well addressed in Ruth Buchanan & Sundhya Pahuja, *The Empire’s new clothes: legal imperialism, the World Bank and the South* (paper presented at the meetings of the Research Committee on the Sociology of Law and the USA Law and Society Association, 4-7 July 2001, Central University, Budapest).
- [62] Jeffrey Simpson, *How cozy should North Americans be?* *Globe and Mail*, Saturday 21 July 2001, A15; on USA water needs see Timothy Egan, *Near vast bodies of water, land lies parched*, *The New York Times*, Sunday 12 August 2001, p. 1. On Canada’s place in North America see Arthurs (2001), *op. cit.*; David Schneiderman, *NAFTAs takings rule: American constitutionalism comes to Canada* (1996) 46 *University of Toronto Law Journal* 499.