

Legal Education as *Métissage*

Nicholas Kasirer*

This Article examines whether the mixed legal system presents a model for law teaching. The author observes that in most mixed legal systems, legal education does not focus attention on the encounter between legal traditions that is inherent in the idea of the law's inherent mixedness. He argues that legal education might better be imagined as including a cross-cultural dialogue in law rather than as training for experts in a particular place or set of places. By imagining the mixed legal system more as an experience in encounter than a jurisdiction, legal education might be reoriented around ideals of nomadic and dialogic jurisprudence in place of jurisdictionally based concerns. The author invokes the concept of métissage advanced by scholars in other disciplines as a basis for arguing that legal education should ally itself with the encounter between different legal traditions as an organizing theme in law teaching. Instead of seeking a double or even multiple-tradition expertise, law teachers and their students would aspire to no allegiance at all before law's nomadic identities and traditions.

I. THE "MIX" SHOULD TRUMP THE "SYSTEM" IN LEGAL EDUCATION

After twenty-odd years studying and teaching law in Quebec, I have come to the view that the mixed legal system, as it is traditionally construed, must be rethought if it is to be of use as an organizing framework for legal education, whether that education is pursued inside or outside a formally mixed jurisdiction. This may sound ungrateful coming from a teacher whose interests are so closely allied with Quebec legal culture as an expression of local knowledge, and for whom the encounter between the common law and the civil law that is part of everyday legal life in Quebec has been so formative. Like many others teaching at universities in what have come to be called mixed jurisdictions, I am drawn to the values of tolerance and pluralism inherent in the legal ideal of the mix where I teach and see my vantage point as a privileged one for understanding the relationship between the Western world's most talked about legal traditions.¹

* Dean, Faculty of Law, McGill University; James McGill Professor of Law, McGill University, 1989-Present. Director, Quebec Research Centre of Private and Comparative Law, 1996-2003. Former law clerk to Justice Jean Beetz of the Supreme Court of Canada. Graduate of the University of Toronto, McGill University, and the Université de Paris I.

1. The venerable idea that experience in a mixed jurisdiction is a source of understanding for the relationship between the common law and the civil law was explained by a Roman-Dutch and English legal expert who was, at the time, a Quebec law teacher. See R.W. Lee, *The Civil Law and the Common Law—A World Survey*, 14 MICH. L. REV. 89, 90 (1915). It may be observed that Lee offered the prediction that "we are at the end of the time

Indeed, it is on the strength of this ideal that Canadians sometimes give in to the vanity of thinking that if everyone would do just like us, charting the course between universalism and particularity in respect of the so-called globalization of law would proceed on the highest moral ground.²

But over time, a kind of disenchantment set in as I found that the mixed legal system left little opportunity to experience the difficult and enlivening intellectual shift from one legal tradition to another in the classroom. Teaching law in a mixed legal jurisdiction eventually led me to the view that it is not enough to open the curriculum to multiple sites of legal normativity, however welcoming one is to diversity in law, if the study of those sites remains separate from one another. This is, as it turns out, the dominant educational approach to bijuralism and, more broadly, to legal pluralism in Canada. At the same time, the focus on the mixed legal jurisdiction as a coherent whole, based on a view of sources blended systemically to form an autonomous legal order, seems unsatisfactory in that it sets to one side the opportunity to study the dynamics of law's inherent mixedness. This is the dominant educational approach to the mixed legal system in Quebec.

II. WHERE IS THE ENCOUNTER IN MIXED LEGAL EDUCATION?

It is the encounter between legal traditions, I think, that represents a pressing concern in legal education, perhaps even an ethical concern.³ Encounter, as the object of study, has become more pressing still with the decline of the state as the exclusive archetype for law's curriculum. The traditional ways and means of law teaching in mixed legal systems have largely left this encounter aside, treating it as a far-off, historically determined legal given. As the mixed legal system in Quebec has been understood to mature over the last fifty years, law teaching has increasingly taken the complex matrix of the sources of

in which it is still possible to contemplate the Civil Law and the Common Law as separate and self-contained entities." *Id.* at 100.

2. It is hardly surprising that jurists working in mixed jurisdictions are often the first to offer their own territorial experience as a model for others (and their territories). For a recent Canadian example, see DEP'T OF JUSTICE (CANADA) BIJURALISM: OF NATIONAL INTEREST AND GLOBAL REACH/LE BIJURISME: D'INTÉRÊT NATIONAL, DE PORTÉE GLOBALE 8 (2002) (offering up the Canadian model in a chapter entitled "Understanding Our World").

3. This may be taken as a suggestion from James Boyd White's description of the ethical dimension of legal education as "training in the respect due to others." JAMES BOYD WHITE, FROM EXPECTATION TO EXPERIENCE: ESSAYS ON LAW AND LEGAL EDUCATION 49 (1999).

the law-in-force as a “national law” destined to be the primary object of study. Viewed as an arrested body of knowledge associated with a defined spatial reality, the mixed legal system is imagined first and foremost along these lines as a free-standing jurisdiction.⁴ At the same time, the noble preoccupation with sorting out applicable law in mixed jurisdictions has deflected attention away from the experience of exchange as a focus for the educational project.⁵ If career law teachers in a mixed legal setting have generally been sensitive to the limits of professionalism and narrow jurisdictional concerns, this sensibility has not always manifested itself in the classroom.⁶

The flux of legal orders that has always characterized law has come to be a live concern for law teaching as it is reimagined by educators who, with or without enthusiasm, take up a “global” perspective on law and its sources. The experience of contact between legal traditions should be actively courted in legal education on the strength of what one scholar has aptly described as the “transversal” setting for legal normativity, rooted in the interdependence of formal and informal legal orders across the world.⁷ This presents an opportunity to see legal education as involving a cross-cultural dialogue in law rather than merely as training for experts in a particular place or set of places. To that end, I sense that some room should be made for the study of legal traditions examined in contact with one another in the classroom, without primary regard to whether or not they form, together or separately, the applicable law in any formal, state-sponsored jurisdiction. Just as law students and law teachers themselves pursue the experience of cross-cultural exchange as part of their ordinary lives, so, too, does their discipline. It seems odd that this fundamental reality should not be actively explored in legal education.

4. For a classical presentation, regarding the law of Quebec, of the view that the “history of the law . . . make[s] it clear in what respects that province possesses a legal system peculiarly its own,” see F.P. Walton, *The Legal System of Quebec*, 13 COLUM. L. REV. 213, 213 (1913).

5. It may be noted, however, that this model for legal education has not always dominated Quebec law teaching, where, for example, a more open attitude to sources and their interaction has prevailed during certain periods, particularly at the end of the nineteenth century. For an influential account, see David Howes, *The Origin and Demise of Legal Education in Quebec (or Hercules Bound)*, 38 U. N.B. L.J. 127 (1989).

6. *But see* R.W. Lee, *Legal Education, Old and New*, (pt. 3), 36 CANADIAN L. TIMES 109, 115 (1916) (presenting a high-minded injunction against the temptations of professionalism and in favor of the “scientific study of law, in which the Civil Law and the Common Law would be studied side by side”).

7. *See* M. MAHMOUD MOHAMED SALAH, LES CONTRADICTIONS DU DROIT MONDIALISÉ paras. 137-48 (2002).

As a means of understanding the “hybridization”⁸ that scholars in other disciplines see as a constant force in the reconfiguration of culture and identity, one might well argue that the stranger legal orders are in respect of one another, as a matter of applicable law, the more important it is that they be taught in contact with one another. In other words, the “mix” should, at least in the classroom, occasionally take precedence over the “system.”

If my experience in Canada is any measure, the dynamic of the mix generally goes untaught and under-theorized, even where it is a formal part of the local legal culture, leaving teachers and students with an unexplored sense of “paradoxes” and “ambiguities” in mixed legal education.⁹ As a project designed to identify and separate legal sources into their rightful domains of applicable positive law, teaching in the mixed system generally fails to provide students with much more than an introduction to the experience of comparison. Instead, teaching fixes on the project of constructing, out of the mix, the semblance of a pure or mature legal order.¹⁰ Yet by challenging the territorially based orientation of legal education, one might nevertheless see in mixed legal systems a foundation (but “foundation” is a grounded, territorial, static term!) for an intellectual approach to teaching about differences in law. This entails imagining the mixed legal system as much as an experience as a jurisdiction, thereby moving the emphasis for teaching to the meeting point between the legal traditions it engages. Ordinarily latent in the idea of mix, this notion of exchange is important to understanding the interactive chaos between legal orders that, globalization or not, law has always reflected. The mixed legal system may indeed be a model for others, as was once famously said,¹¹ but its greatest virtue in education may lie

8. This term is used by translation theorist Sherry Simon to describe phenomena of cultural contact and exchange which ground (and de-territorialize!) experiences of mixed identity. See SHERRY SIMON, *HYBRIDITÉ CULTURELLE* 27-36 (1999).

9. The “paradox” of a North American legal culture, in which French civilian sources and attitudes to law nevertheless prevail, has shaped Quebec legal education to a greater or lesser extent over its modern history. For the perspective of a former Quebec law dean and comparative law scholar, see J.E.C. Brierley, *Quebec Legal Education Since 1945: Cultural Paradoxes and Traditional Ambiguities*, 10 DALHOUSIE L.J. 5, 43-44 (1986).

10. This may well be a feature of legal education in other mixed legal systems, at least judging by the findings of one very original study. See Karen Hogarty, *Legal Education in Scotland and Quebec* 85 (1991) (unpublished LL.M. Thesis, McGill University).

11. Henri Lévy-Ullmann, *The Law of Scotland*, 37 JURID. REV. 370, 390 (1925). This reference is a special favorite for Quebecers given that, in addition to originating with a French civilian, it was translated by Quebec law teacher (and Scots lawyer) F.P. Walton. But Lévy-Ullmann’s project for law reform was based on a “méthode universaliste” that some, including some experts of mixed legal systems, later saw as somewhat fantastical following

in its openness to the encounters that result from law's inherent diversity everywhere.

III. NOT JUST HISTORICALLY "MIXED," NOT JUST FORMALLY "LEGAL," NOT JUST TERRITORIALY "SYSTEMIC"

This view of the potential of the mixed legal system as a pedagogical model requires a shift in the way in which the "third" legal family is generally described. It might be argued that each of the terms "mixed," "legal," and "system," as they are most often encountered in the legal lexicon, conspire to move law teaching away from cross-cultural exchange. Rather than seeing law as exclusively connected to discretely territorial systems of law, one might want to stress an understanding of law as *nomadic* jurisprudence. Instead of fixing on an understanding of formally "legal" institutions, one might stress the *dialogical* character of legal knowledge to highlight the exchange between legal orders. And instead of fixing on historically determined sources as the organizing structures of legal education, one might choose the ongoing *métissage* between and among legal orders to accent mixed process over mixed product in the classroom.

IV. A MIXED LEGAL SYSTEM IS NOT SO MUCH A PLACE AS A NOMADIC WAY OF KNOWING LAW

The term "system" indeed limits the scope of encounters between legal orders by anchoring the mixed legal system in a territorial conception of law. Using a jurisdictional model of the law-in-force, teaching law as a territorially based enterprise downplays the study of law as a pursuit that is not beholden to one place or jurisdiction for the immense range of its ideas and ambitions.

It has often been said that a "mixed legal system" is to be valued as a "laboratory" for law given its formally polyjural character, and lawyers tend to literalize the image. As a physically bounded and scientifically oriented space for observing, cataloguing, and validating forms of legal normativity, the laboratory is no doubt a useful image for the mixed legal system as a reflection of state-centered legal positivism. Even out of the lab, the mixed legal system is generally viewed in this same territorial fashion when spoken of in less scientific terms. It can be an "intellectual battleground" or even some sort of

the collapse of League of Nations thinking. For an overview, see R.W. Lee, *Lévy-Ullmann*, in *L'ŒUVRE JURIDIQUE DE LÉVY-ULLMANN* 26 (L. Julliot de la Morandière & M. Ancel eds., 1955).

“juridical paradise,”¹² but territoriality remains the organizing idea for study, in keeping with the traditional view of the legal scholar’s mission to account for the law-in-force in a given place.¹³ “Mixed legal system,” read as a synonym for mixed jurisdiction, is thus generally chosen to reflect a place in law’s empire rather than a way of knowing or experiencing law in the cosmos.¹⁴

Certainly there is no reason for the expression “mixed legal systems” to carry an exclusively territorial meaning. As an ideas-based phenomenon, a system—even a legal system—need not necessarily be anchored in space or even time. Comparative legal scholars are quick to point to the fact that political boundaries do not play a defining role for all legal traditions.¹⁵ Lately cultural geographers have rocked their discipline and our own by demonstrating the ambiguous relationship that law has with geography when the latter is shown to be as much a social construction as the former.¹⁶ Globalization in law has spawned new attitudes to jurisdictional borders, including a fine sense that their “legitimation” is a selective process.¹⁷ In the classroom, the questioning attitude in respect of law’s borders may, of course, be allied with the long-standing antiprofessional preoccupation of career law teachers who sometimes, as a means of freeing the curriculum from the grips of

12. The expressions “intellectual battleground” and “laboratory” are taken from the benchmark account of mixed legal systems in the introductory essay of *Mixed Jurisdictions: The Third Legal Family*. See Vernon Valentine Palmer, *Introduction to the Mixed Jurisdictions*, in MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY 1, 31 (Vernon Valentine Palmer ed., 2001).

13. The tendency may be reinforced by the conventional view that only those legal systems in which the mix is a product of formal legal sources qualify as “mixed legal systems.” Thus the coexistence of multiple informal legal orders is not enough to be included in the category (perhaps because all systems would thereby be mixed, which seems sensible enough). For a presentation of the classical position, see Robert Garron, *Le droit mixte: notion et fonction*, in LA FORMATION DU DROIT NATIONAL DANS LES PAYS DE DROIT MIXTE 11 (1989).

14. See generally Nicholas Kasirer, *Bijuralism in Law’s Empire and in Law’s Cosmos*, 52 J. LEGAL EDUC. 29 (2002) (sketching the cohabitation of the common law and the civil law in legal education, viewed from the twin perspectives of “law’s empire” and “law’s cosmos”).

15. For a compelling study of legal traditions as “information” that take shape without any necessary relationship with territory, as well as a presentation of the state as a potential “place of overlapping traditions,” see H. PATRICK GLENN, LEGAL TRADITIONS OF THE WORLD: SUSTAINABLE DIVERSITY IN LAW 12-13, 53 (2000).

16. See Nicholas Blomley et al., *Where Is Law?*, in THE LEGAL GEOGRAPHIES READER: LAW, POWER AND SPACE, at xiii (Nicholas Blomley et al. eds., Blackwell 2001).

17. See Susan Bibler Coutin et al., *In the Mirror: The Legitimation Work of Globalization*, 27 LAW & SOC. INQUIRY 801 (2002) (detailing the phenomenon of legitimation of some borders and the elimination of others).

lawyers' boundaries, have turned to topics in legal theory and international law as nonterritorial or less-territorial settings for law teaching.¹⁸ There is some indication, in the work of scholars of legal education in mixed jurisdictions, that their setting is particularly conducive to a "universalist' polyjural vision" as part of an approach to law that embraces as many different systems of jurisprudence as possible.¹⁹ All of this encourages us to detach systems from jurisdictions. Perhaps it is right to think of mixed legal systems as epistemic rather than localized or even transnational political communities, and to begin the project of making room for the contact between legal traditions as a relevant theme for the legal curriculum.

V. MIXED LEGAL SOURCES IN DIALOGUE

The term "legal" in the expression "mixed legal system" also limits the opportunity for encounter. "Legal" is typically understood to refer to the formal sources of state-made law that, because of their diverse origins, are enough to provide the "jurisdiction" with its claim to inclusion in the category of mixed legal system. But as the basis of organizing a legal curriculum, formal legal sources taught alone fail to account for the law as it originates in sites of normativity other than the state.²⁰ This pluralist approach to law, rarely proposed as an overarching value for legal education,²¹ would place individuals rather than institutions at the center of things, viewing them as subjects of law called upon to negotiate for themselves between and among the multiple legal orders that compete for their attention. To reduce Louisiana or Quebec law to the cohabitation of the state-sponsored

18. See, e.g., NOEL LYON, *INSIDE LAW SCHOOL: TWO DIALOGUES ABOUT LEGAL EDUCATION* 200 (1999) (giving the perspective of a Canadian law professor, where international law was proposed as an obligatory course as a means of "collective escape from the narrow world defined by legal doctrine and [into] the larger world defined by interdependence").

19. Roderick A. Macdonald, *The National Law Programme at McGill: Origins, Establishment, Prospects*, 13 *DALHOUSIE L.J.* 211, 215 (1990). A McGill scholar and former law dean, Macdonald sketched the history of law teaching in Quebec in the tradition of the history of ideas in this important article. Keenly anticipating the language of *métissage*, Macdonald observed that this "universalist polyjuralism" approach to law teaching, by no means dominant at McGill, reflects a "nomadic intellectual disposition." *Id.*

20. Invoking comparative law and legal pluralism as cousin methodologies, one Quebec comparative law scholar has argued that macro and micro legal orders should be incorporated into a nonterritorial, nonformalized view of everyday law. See Daniel Jutras, *The Legal Dimensions of Everyday Life*, 16 *CANADIAN J.L. & SOC'Y* 45, 55 (2001).

21. But see SOC. SCIENCES & HUMANITIES RESEARCH COUNCIL OF CAN., *LAW AND LEARNING* 56 (Harry Arthurs ed., 1983) (detailing a bold and ultimately unsuccessful recommendation for an approach to Canadian legal education rooted in legal pluralism).

rules of common law and civil law origin, at the expense of the vibrant dialogue among informal legal orders also at work inside and beyond those places, reduces opportunity to study law in contact in legal education. Given the proximity of the common law and civil law traditions as expressions of Western culture, it also trivializes the encounter by limiting the scope of the more varied “cosmopolitan dialogue” that legal pluralists see at work in law.²² Mixed legal systems are not univocal or even bivocal. In place of a fixed, mixed model, one might propose a model animated by the flux of “dialogical jurisprudence,”²³ where the process of interaction of sources, indeed the experience of confrontation of legal cultures, moves to the heart of the intellectual inquiry.

VI. THE MIXED LEGAL SYSTEM AS *MÉTISSAGE*

Finally, the term “mixed” often has the perverse effect of pointing the mixed legal system away from the ideal of encounter as a structure of legal knowledge. As most often used, “mixed” describes a historical reality relating to the sources of law that have been received or imposed upon the legal order, thereby losing some of its inherently fluid quality that is so suggestive of the ongoing flux between legal orders.²⁴

Notwithstanding the promise of encounter implicit in the word, “mix” typically does not focus attention on a dynamic exchange between legal cultures, but to a static product or consequence of some distant encounter, be it real or imagined, that is seen as constitutive of the mixed legal jurisdiction’s governing legal sources. The mix is generally studied in one of two ways. The mix may be *de-mixed* by the erudite teacher who, with his or her double legal identity, sorts out

22. Boaventura de Sousa Santos’s observation serves as an admonition of the tendency to work only with the two dominant Western legal traditions: “[T]he cross-cultural dialogue must start from the assumption that cultures have always been cross-cultural; but also with the understanding that exchanges and interpenetrations have always been very unequal and inherently hostile to the cosmopolitan dialogue that is here being argued for.” BOAVENTURA DE SOUSA SANTOS, *TOWARD A NEW COMMON SENSE: LAW, SCIENCE AND POLITICS IN THE PARADIGMATIC TRANSITION* 346 (1995).

23. See David Howes, *Dialogical Jurisprudence*, in *CANADIAN PERSPECTIVES ON LAW AND SOCIETY: ISSUES IN LEGAL HISTORY* 71 (W. Wesley Pue & Barry Wright eds., 1988). Howes, a Quebec legal historian and legal anthropologist, invoked the work of Mikhail Bakhtine to present the interplay of legal sources in late nineteenth-century Quebec legal culture as a legal dialogue. *Id.*

24. For a refreshing challenge to the vocabulary of “transplant” and “borrowing” of legal ideas and institutions as failing to capture the ways in which legal ideas move through legal systems, see Esin Öricü, *Law as Transposition*, 51 *INT’L & COMP. L.Q.* 205, 206 (2002).

the sources that, when considered as a whole, constitute the whole. Or, alternatively, the mix may be *super-mixed* by the erudite teacher who, technically expert in the systemic whole, sees the mixed law as the irrevocably blended product of once historically separate sources. Legal theorists and cultural anthropologists have independently proposed to move metaphorically from the laboratory to the kitchen to explain these competing views. If the mixed legal system is thus imagined as a soup, it is either studied as: (1) so many correctly measured amounts of vegetables separated into a package of soup mix (just add constitutional water) or (2) as a cream of vegetable soup (heat and serve as law-in-force). The mixed legal system is not typically imagined as minestrone on the stovetop.²⁵ It is this latter idea of the mixed legal system, predicated on the ongoing, dynamic interaction of the component parts of the whole, that has been most underestimated as a model for legal education.

Most important for our purposes, and indeed most difficult to explain, is the tendency to discount the fundamental epistemological premise that justifies embracing the mixed legal ideal as a model for law teaching associated with the contact and interpenetration of legal cultures. Drawing on the concept of *métissage* developed in two important books published in France by anthropologist François Laplantine and literary theorist Alexis Nouss, it may be argued that law teaching should ally itself not just with the plural reality of the peaceful or organized coexistence of multiple legal orders in a single setting, as the term “mixed legal system” is generally understood to suggest. Legal education should include the experience of contact between legal orders as an organizing theme for training lawyers as cross-cultural actors. This is legal education as *métissage*.

The concept of *métissage*, which originated in the biological sciences and has been tentatively extended from there to linguistics, religious studies, anthropology, and, of late, to cultural studies, provides one theoretical basis for studying the role of contact between legal traditions as experience. As advanced by Laplantine and Nouss,

25. The analogy, adapted for law, is taken from MÉTISSAGES DE ARCIMBOLDO À ZOMBI 532-33 (François Laplantine & Alexis Nouss, eds., 2001) (offering “soupe” as a representation of the anthropological concept of *métissage*: “[c]ar elle est respectueuse de ses composantes qu’elle laisse intactes dans un bouillon sobre et tolérant. Le potage, lui, broie, mélange, passe, bref il fusionne, visant à l’homogène”). Compare the culinary metaphor for understanding mixed legal systems in Esin Öricü, *Mixed and Mixing Systems: A Conceptual Search*, in STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING 335, 343 (Esin Öricü et al. eds., 1996). I am grateful to Ralf Michaels for drawing this coincidence to my attention.

métissage, and more generally what they describe as a *pensée métisse*, is predicated on contact, confrontation, and dialogue between cultures and cultural forms rather than the product of what that contact may produce.²⁶ At arm's length from the idea of mixed-blood ordinarily associated with the term in French, *métissage* is not the combination of two notionally pure cultural expressions that produce an impure one, but is instead understood as an experience of "abandonment" of the self through the experience of encounter with a different cultural form. This abandonment allows and even encourages a recognition of difference in the self that would not otherwise be possible.²⁷

Just as it stands against the rhetoric of the pure, the closed, the distinctive, and the bordered, *métissage* as conceived by Laplantine and Nouss offers a counterpoint to the idea of the merely plural. Indeed, their dynamic idea of contact is somehow the step beyond multiculturalism, itself presented as socially therapeutic diversity rather than engaged pluralism. This is because multiculturalism invites passive coexistence, with cultural communities living separately and apart, without any need to interact.²⁸ *Métissage* is anything but a passive state; it is exchange, described as often painful and transformative, that represents a "third way" for cultural practices, including legal ones, between a universalist *fusion totalisante* and a particularized *fragmentation différentialiste*.²⁹ Indeed, *métissage* as a mode of thought denies the homogenous/heterogenous polarity that characterizes debates on the effects of globalization, including those carried on in legal literature.

VII. MÉTIS LEGAL EDUCATION AS DIALOGIC, NOMADIC LAW TEACHING

Organizing the teaching of traditions around the dialogic ideal of *métissage* moves legal education away from the jurisdictions of lawyerly expertise and into the realm of a more nomadic jurisprudence. Jurisprudence may be thought of as nomadic when it actively wanders from the habitual perspective of territory so dominant in nation-state legal culture. "[N]omadism," writes one scholar,

26. See FRANÇOIS LAPLANTINE & ALEXIS NOUSS, *Jalons théoriques, in LES MÉTISSAGES* (2001).

27. MÉTISSAGES DE ARCIBOLDO À ZOMBI, *supra* note 25, at 7.

28. LAPLANTINE & NOUSS, *supra* note 26, at 75.

29. On the third way as an experience of *métissage*, which leaves to one side the universalist/particularist opposition, see Alexis Nouss, *La Tour et la Muraille: De la frontière et du métissage*, RUE DESCARTES/CORPUS 8, at 15-16 (2002).

“dispenses altogether with the idea of a fixed home or center.”³⁰ When nomadism is applied to law teaching, the formal structures of territorially bounded sources no longer dictate pedagogical strategies or course content. The shift away from the law-in-force as a spatial idea in favor of law that displaces itself may seem counterintuitive to the lawyer who has relied, at least through the latter part of the twentieth century, on the state as a point of reference in legal education.

Nomadic jurisprudence is different from the usual approach to the circulation of legal ideas as mediated by institutions of the state legal order in that it emphasizes often random movement and informal contact between traditions rather than the institutional migration or transplant of systems themselves.³¹ *Métissage* places emphasis on the individual rather than institutional exchange. Nomadism in law does not focus on reconstructing the applicable law in the recipient legal system through, say, the export of the common law trust to the civil law. Nor is it concerned with teaching nomadic students, however important this project might be.³² Instead, nomadic legal thought interests itself, to draw from one recent account, in the “social remittances” of normative practices received by immigrants in their new host setting as a result of their wandering social interaction in the “transnational village.”³³ Just as its perspective is not radically localized, nomadic jurisprudence is neither universalist nor cosmopolitan in ambition. It has none of the rootedness of local legal knowledge, nor does it have the moral pretensions of legal universalism or the brash confidence of cosmopolitan law that sees itself as at home in any setting. In a sense, nomadic jurisprudence

30. John Durham Peters, *Exile, Nomadism, and Diaspora: The Stakes of Mobility in the Western Canon*, in HOME, EXILE, HOMELAND: FILM, MEDIA, AND THE POLITICS OF PLACE 17, 20 (Hamid Naficy ed., 1999).

31. Compare Esin Örüçü, *A Theoretical Framework for Transfrontier Mobility of Law*, in TRANSFRONTIER MOBILITY OF LAW 5 (R. Jagtenberg et al. eds., 1995), with René Rodière, *Approche d'un phénomène: les migrations des systèmes juridiques*, in MÉLANGES DÉDIÉS À GABRIEL MARTY 947, 947-54 (1978) (providing scholarly accounts that emphasize migration as movement and migration as historical fact, respectively).

32. See Xavier Blanc-Jouvan, *L'enseignement du droit national aux étudiants étrangers*, 45 REVUE INTERNATIONALE DE DROIT COMPARÉ [R.I.D.C.] 9 (1993) (giving an overview of the proceedings of an important colloquium held in France in 1992 bearing on this different concern).

33. Peggy Levitt has defined social remittances as “ideas, behaviors, identities, and social capital that flow from host- to sending-country communities” as a result of immigration patterns. PEGGY LEVITT, TRANSNATIONAL VILLAGERS 54 (2000).

prefers the refugee³⁴ or the *gitano*³⁵ to both the local sage and the citizen of the world as emblematic figures for legal education. If it has a claim to fixity at all, it takes the diaspora as much as the state or the world parliament as the emblematic locus of legal ordering.³⁶

Where the mixed legal system is taken to be a way of knowing law rather than a geo-jurisprudential place, the relationship between the legal traditions becomes an organizing theme for the curriculum.³⁷ Where contact between the common law and the civil law is seen as an experience—we are back in the laboratory!—rather than a product or outcome, the dynamic of the contact becomes itself the structure of legal knowledge under study. Where law teaching engages itself in the project of working simultaneously with different legal orders in a dialogic mode, it fixes, for lack of a better word, not just on the plurality of sites of normativity but on the nomadic interaction between them that should be at the root of what is happening in the classroom. Certainly there is a tendency to cast the mixed legal system in the role of pedagogical go-between, poised to overcome the shortcomings often identified with teaching as practiced in the common law and the civil law.³⁸ But when allied with *métissage*, mixed law teaching is more than a bridge, it is the encounter itself. The contact between traditions of law is thus to be moved to the center of the legal curriculum whereby “contending” with difference,

34. For one such perspective, see Rebecca Redwood French, *The Crossings of Benpa Topgyal: The Changing Legal Identity of a Tibetan Refugee*, in CROSSING BOUNDARIES: TRADITIONS AND TRANSFORMATIONS IN LAW AND SOCIETY RESEARCH 180-81 (Austin Sarat et al. eds., 1998).

35. See this theme as portrayed in the important thesis of Susan Drummond, *Legal Itineraries Through Spanish Gitano Family Law: A Comparative Law Ethnology* 195 (2001) (unpublished doctoral thesis in law, McGill University).

36. See Kim D. Butler, *Defining Diaspora, Redefining a Discourse*, 10 DIASPORA 189, 194 (2001) (introducing this use of the “transnationalist” idea of diaspora, not as an ethnic group, but as a “framework for the study of a specific process of community formation” which does not adhere to nation-state borders).

37. Of course sometimes geography and experience intersect. It might be argued, for example, that Montrealers live a radically different kind of mix in law than do Quebecers generally, given the interaction between various conceptions of social ordering in a place shaped by wildly changing patterns of immigrant settlement. For those who know Montreal, the trans- (as opposed to just multi-) cultural neighborhood of Mile-End stands as the best example of *métissage*. “la notion de multiculturalisme est loin d’être adéquate pour rendre compte de toutes les formes de mixité [. . .] du Mile-End. Alors que le multiculturalisme est un modèle de coexistence culturelle, l’hybridité suggère un mode de circulation, d’interaction et de fusion imprévisible des traits culturels.” S. Simon, *Mile-End*, in MÉTISSAGES DE ARCIMBOLDO À ZOMBI, *supra* note 25, at 425.

38. See HENRY W. EHRMANN, *COMPARATIVE LEGAL CULTURES* 68 (Joseph la Polombara ed., 1976) (describing these “shortcomings” as excesses of formalism and abstract rationality for the civil law and of legal realism for common law teaching methods).

experiencing dialogue, and even living conflict between traditions are identified as scholarly preoccupations.³⁹

It is in the phenomenon of the “mix,” reconfigured as *métissage*, that the cement—again wrong word!—of the epistemic community of law teachers is to be found. Along these lines, some scholars have signaled the importance of contact between legal traditions as a living process⁴⁰ and, on occasion, this is referred to as a knowledge-based endeavor inviting the development of a “transsystemic” world view.⁴¹ Instead of securing law’s jurisdictional boundaries by depicting them as lines of separation or dividers, law teachers might see them as moments of contact, as has been written recently of the encounter between English and Continental legal cultures in Europe’s emerging mixed legal system.⁴²

VIII. TEACHING IN THE MIXED LEGAL JURISDICTIONS AS ANTI-MÉTISSAGE

That said, moving from law’s empire to law’s cosmos will always meet resistance in light of a strong tendency, in Quebec and elsewhere, to see mixed legal systems as static bodies of knowledge involving determined sources of law that coexist in an orderly fashion, rather than floundering in a living, dialogic state of flux. Law teaching, imagined in its usual jurisdictional terms, stands opposed to the dialogical and nomadic values as a sort of anti-*métissage*.⁴³ The legal system, including the mixed system, is usually seen as consonant with

39. See, for example, the remarks of William Tetley on confronting and managing differences as a teacher in a mixed legal system in William Tetley, *Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified)*, 60 LA. L. REV. 677 (2000).

40. If the term “mixed” in the expression “mixed legal systems” has generally been confined to historically determined sources of law, some scholars have pointed to a less static understanding of mixedness. For example, Jacques Vanderlinden described the mixed character of these systems as resting in a *constante dynamique interne*. J. VANDERLINDEN, *COMPARER LES DROITS* 382 (1995).

41. See, e.g., Rodolfo Sacco, *Non, oui, peut-être*, in 1 MÉLANGES CHRISTIAN MOULY 163, 168 (1998) (including a plea by the leading Italian comparative lawyer Rodolfo Sacco for a transsystemic legal dictionary, based on what he called “*la connaissance croisée des systèmes conceptuels*”).

42. See EVE DARIAN-SMITH, *BRIDGING DIVIDES: THE CHANNEL TUNNEL AND ENGLISH LEGAL IDENTITY IN THE NEW EUROPE I* (1999) (depicting the Channel tunnel as a symbolic form for legal identities forged through interaction and, in the spirit of *métissage*, alerting her readers to “more subtle and less well articulated frontiers of cultural conflict operating through and between people and places inside (and outside) geopolitical lines”).

43. See François Laplantine, *Antimétissage*, in MÉTISSAGES DE ARCIMBOLDO À ZOMBI, *supra* note 25, at 83, 83 (characterizing anti-*métissage* by values of fixed identity, stability, temporal priority, origin, bounded thought, and order, which of course might be understood as the foundations of jurisdictionally organized law teaching).

coherence and a kind of distilled purity anchored in an orderly presentation of once diverse legal sources and ideas. The disorder, the incoherence, and the absence of rigor that is part of all law tends to be sidestepped in legal education as just so many *obiter dicta*, dissenting opinions, *ultra vires* voices or expressions of nonlaw that are cast aside as irrelevant to the lawyers' expertise. On the other hand, these rogue legal voices move closer to the center of education guided by the more random encounters of *métissage*. In the mixed legal system, the educational norm is connected with the systemic aspiration for reconciliation of difference in a stabilized whole. Where *métissage* provides the model, legal education emphasizes the uncertainty that is part of every encounter with difference.

Métissage is perhaps even more destabilizing for law teaching than it is for other intellectual pursuits in that the uncertainty that comes with that encounter threatens these pillars of order and coherence upon which legal systems are traditionally seen to rest. In some measure, *métissage* sounds as if it would upset the values upon which law faculties are founded. Laplantine and Nouss write:

If a métis epistemology may be said to exist, it can be nothing less than an epistemology of abandonment, a way of knowing that jettisons classification as an exclusive mode of thought, rejecting in particular the ideal of a system of logic that creates and organizes categories and places everything in its rightful place⁴⁴

Law teaching predicated on instilling uncertainty obviously sets the subject on a new plane that teachers will find as difficult to confront as their students. It is fair to suspect that *métissage* will be particularly hard to introduce against the traditional ideal as to how law teaching should be organized.

The professional orientation of legal education represents one sure hindrance, as values linked to the mastering of the law-in-force leave little room for *métissage*. The practice of law is, oddly enough, rarely associated with this dialogic and nomadic conception of law, even if this is how many lawyers spend much of their time as they translate and reconfigure ideas across legal traditions and between formal and informal legal orders. Yet the model of legal education as a training in formal law, represented as having a delimited spatial and temporal scope, remains the curricular rule. Even when the "conflict of civilizations" makes its way into the law faculty, it generally does so under the sway of the categories established by the state-centered legal

44. LAPLANTINE & NOUSS, *supra* note 25, at 10 (translation provided by author).

system.⁴⁵ Interestingly enough, even those arguing for the concurrent teaching of two or more legal traditions typically justify their position on a sense of law's expanding geojurisprudential empire rather than a changed conception of what law and law teaching are all about. Viewed from this perspective, legal traditions remain separable bodies of knowledge to be taught as distinct fields of expertise for newly configured, transnational, mixed jurisdictions. *Métissage* is not preoccupied with law's jurisdictional boundaries, and its principal temporal mode is, to invoke the useful turn of phrase of one fellow traveler, the "transnational moment."⁴⁶ Certainly cousin to thinking on legal pluralism, *métissage* is, in a sense, post-pluralist for law in that it represents an attempt to confront exchange rather than to simply catalogue difference and to explore that exchange as a subjective experience.⁴⁷

One might expect lawyers to see transsystemic or dialogic teaching as a threat to expertise that can lead to confusion or lack of rigor in the identification of applicable law. For the established law faculty, *métissage* carries the full force of its negative connotations: the dilution of the pureness of law imagined first as a body of coherent rules and a threat to the fixity of legal knowledge anchored in abstract rationality. Critics will rightly say that *métissage* stands for the study of law without a jurisdiction or tribe. But lawyers' own disciplinary tribalism may push them from there to argue less fairly that, in its impure bloodlines, *métissage* stands for something short of law altogether. As a perceived source of pollution or watering down of a notional original, *métissage* will be characterized as undermining applicable law through the loss of coherence and positivity that is generally seen as law's value as a mode of social control. In one of the rare instances in which the term has been used by lawyers in a setting relating to the contact of legal cultures, the *Conseil d'État* in France recently invoked the idea as the source of antilegal mischief to explain

45. As in the case of some of the imaginative work being done on conflicts of civilizations in private international law. See, e.g., Ma Del Pilar Diago Diago, *La dot islamique à l'épreuve du conflit de civilisations, sous l'angle du droit international privé espagnol*, 61 ANNALES DE DROIT LOUVAIN 407 (2001).

46. Khachig Tölölyan, *Rethinking Diaspora(s): Stateless Power in the Transnational Moment*, 5 DIASPORA 3 (1996).

47. One echo of this in the legal literature may be found in the "radical legal pluralism" of Roderick A. Macdonald, including his *L'hypothèse du pluralisme juridique dans les sociétés démocratiques avancées*, 33 REVUE DE DROIT UNIVERSITÉ DE SHERBROOKE 134 (2002). There, the person is evoked as inherently bearing multiple identities, acting as a locus for exchange between plural legal orders through negotiation between and among his or her multiple selves. *Id.*

how contact with Anglo-American law represents a threat to the integrity and influence of French legal culture. The notion of “‘métissage’ juridique suscite des inquiétudes qu’on ne peut ignorer” said the *Conseil* in a remarkable study paper on the influence of French law in the age of globalization, in connection with what it called the “hybridation des droits nationaux.”⁴⁸ One can well imagine a struggle to have *métissage* recognized as a legitimate practice for legal education coming from those, be they inside or outside the profession, with a stake in propping up the state legal order as the basis for work in the classroom.

IX. TRANSLATION AS A STRATEGY FOR LEGAL EDUCATION

What might a *métis* legal education look like? Certainly some of the conventional icons of legal education—the case, the statute, the fact pattern, the traditional categories and structures of legal knowledge—will seem out of step with the temporal and spatial assumptions of dialogic and nomadic jurisprudence. It is probably necessary to look to corners of the university outside of the “national law school,” imagined as it is as a sort of ministry of legal information, to build a curriculum inflected by *métissage*. Beyond the plain lessons associated with “intercultural education” drawn from anthropology,⁴⁹ one model for the introduction of *métissage* into the law curriculum can be found in departments of translation, where this discipline is taught as an intercultural and interpretative activity that transcends its linguistic applications. Drawing on postcolonial scholarship, Alexis Nouss presents the translator as an actor with multiple identities in his account of *métissage*, living between and among the texts and their cultural references, “never on one side or the other,” such that translation becomes the archetype of the *métis* experience.⁵⁰ It seems natural to see the turn to translation as the mode upon which the encounter between legal traditions can be taught, by placing the classroom between two traditions, in neither the common law nor the civil law (to take those examples) and yet in both at once. Translation theory would push legal education to eschew the legal transplant as a symbolic form for thinking about comparison: applied to law, the transplant image is too closely wrapped up in two separable geo-

48. *Id.*

49. *See, e.g.*, MARTINE ABDALLAH-PRETCEILLE, L'ÉDUCATION INTERCULTURELLE (1999).

50. *See* Alexis Nouss, *Traduction*, in MÉTISSAGES DE ARCIMBOLDO À ZOMBI, *supra* note 25, at 560.

jurisprudential realities and too dismissive of the third space between them.

Not surprisingly, some legal scholars and jurilinguists have identified translation as a site of cross-cultural exchange,⁵¹ linking it with the hermeneutic motion common to both disciplines.⁵² Transposed from translation, *métissage* points to the recognition of difference as a common responsibility for the translator and the lawyer, working as they both do on the cusp of cultural traditions. It seems natural to ally this view of translation with comparative legal studies, connecting the two disciplines to this ethical stand that often gets buried in both.⁵³ Assuming lawyers can be convinced that translation has a cross-cultural dimension that legal translators themselves sometimes seem to underestimate, one can well imagine a process-oriented mode of teaching whereby students are invited to transpose ideas across legal traditions as a means of confronting difference in law.⁵⁴ Embraced as *métissage*, both translation and legal education take exception to the homogeneity of a legal Esperanto and the incommensurability of notionally untranslatable legal words and ideas. By emphasizing process over product and the movement between traditions over their ultimate separability, translation offers a rich model for rethinking cross-cultural studies for lawyers. While it is not the only such model—mediation presents another rich field for educational experiment⁵⁵—it has the advantage of a natural connection with comparative legal studies that may make it a congenial point of entry to *métissage* for law teachers.

51. On the necessity that the legal translator adopt an appreciation of his or her work as cross-cultural exchange, see Malcolm Harvey, *What's So Special About Legal Translation?*, 47 *META* 177, 180 (2002); Jean-Claude Gémar, *Texte juridique, culture et traduction*, 3 *CAHIERS DE L'INSTITUT DES LANGUES ET CULTURES D'EUROPE ET D'AMÉRIQUE [ILCEA]* 11, 14-15 (2001).

52. See Susan Šarčević, *Legal Translation and Translation Theory: A Receiver-Oriented Approach*, in *LEGAL TRANSLATIONS: HISTORY, THEORY/IES AND PRACTICE* 329, 329-30 (2000).

53. The connection between ethics in translation and ethics in law, as they both concern relationships with developing countries, is made compellingly by Salah Basalamah in *The Thorn of Translation in the Side of the Law*, 7 *TRANSLATOR* 155, 164-65 (2001). The ethic of difference is a central theme in Pierre Legrand's work, including his important discussion of translation. See PIERRE LEGRAND, *LE DROIT COMPARÉ* 23-27 (1999). Both Basalamah and Legrand are academic jurists and translation theorists.

54. On how legal translation has a low-brow reputation because of its perception in the Canadian legal community as a mechanical operation, see Judith Lavoie, *Le discours sur la traduction juridique au Canada*, 47 *META* 198, 202 (2002).

55. On the potential of mediation in law as a means of managing the encounter with otherness, see Carole Younes, *Médiation, subjectivation de la norme et décentrage du sujet*, in *MÉDIATION ET DIVERSITÉ CULTURELLE* 51, 61 (C. Younes & E. le Roy eds., 2002).

X. EMPHASIZING THE “TRANS” RATHER THAN THE “SYSTEMIC” IN
TRANSSYSTEMIC LEGAL EDUCATION

There is a new enthusiasm in Canada for teaching the common law and the civil law in the same undergraduate curriculum. This has prompted the universities of Montreal, Ottawa, and Sherbrooke to embark upon bijural programmes of study that provide new energy for a mixed legal education.⁵⁶ In an educational experiment set in place several years ago, McGill University’s faculty of law shifted from a model of sequential teaching of the common law and the civil to “integrated” or “transsystemic” law teaching where the two traditions are examined together in chosen fields, in the same classroom and by the same teacher, from the first day of law school.⁵⁷ This stands well apart from the conventional mode of teaching in Quebec wherein the mixed character of the jurisdiction has not brought with it a sustained tradition of comparative teaching.⁵⁸

At McGill, where the mixed character of the jurisdiction is highlighted in faculty announcements and self-descriptions alongside its claim to transsystemic ambitions, does legal education now align itself with the *pensée métisse*? The aspirations of the transsystemic programme at McGill are not to teach the law of Quebec or Canada as a system, mixed or otherwise. However, the “highly specific and situated set of circumstances” associated with law teaching in a bilingual, bijural North American urban setting do explain, in part, the genesis and ambitions of the “McGill Programme.”⁵⁹ Certainly a

56. While each of these programmes have their own ambitions, it may be observed that they all lay claim to globalization of law and to Canada’s mixed legal heritage as motivating forces. See, e.g., Louis Perret, *De la coexistence des systèmes de droit civil et de la common law dans les contrats internationaux*, 32 REVUE GÉNÉRALE DE DROIT [R.G.D.] 37, 38 (2002).

57. See generally Julie Bédard, *Transsystemic Teaching of Law at McGill: “Radical Changes, Old and New Hats,”* 27 QUEEN’S L.J. 237 (2001) (providing a detailed study of the particulars of the McGill Programme).

58. See generally Catherine Valcke, *Legal Education in a “Mixed Jurisdiction”: The Quebec Experience*, 10 TUL. EUR. & CIV. L.F. 61 (1995) (providing a critical reading of modern Quebec law teaching that stresses professionalism and positivism as twin ordering concepts at the expense of a truly comparative or theoretical orientation). Even at McGill where the common law and the civil law had been taught in the same faculty since 1968, Québécois have never chosen to teach very vigorously around the moment of the encounter of legal traditions.

59. The “McGill Programme” has already stimulated a considerable literature. For an example from a transsystemic teacher trained primarily in the ways of Quebec as a mixed jurisdiction, see Yves-Marie Morissette, *McGill’s Integrated Civil and Common Law Program*, 52 J. LEGAL EDUC. 12, 15 (2002). Professor Morissette, it may be noted, used the term *métissage*, albeit in another sense, to designate the special character of bijuralism in Canada. *Id.*

model for legal education that chooses not to identify students as common law lawyers or civilians exclusively or in the first instance might be thought of as consonant with a cross-cultural or dialogic perspective insofar as it consciously encourages a *métis* identity.⁶⁰ McGill is poised, I think, to take teaching in this nomadic direction.

There are, of course, different ways to educate students and their teachers to be truly common law lawyers and civilians at once. One of these is certainly to adopt a dialogic approach to learning about different legal traditions as opposed to treating them as entirely separable from one another. Emphasis might be placed on the “trans” rather than the “systemic” quality of integrated teaching of the common law and the civil law or any other legal traditions in order to stress the encounter between cultures as the central component of a truly mixed legal education.⁶¹ The danger is that, at McGill and elsewhere, teachers and their students will give in to the temptations of law’s empire and retrench into a geo-jurisdictionally “systemic” or “total information” teaching mode that is exclusively organized, as it once was, around the law-in-force. Already the danger is there when, for good practical reasons, McGill teachers use Canadian jurisdictions as their principal prototypes. In theory, *métissage* mandates examples taken from further afield to heighten the sense of the strangeness of the encounter. What place, moreover, will aboriginal law take up in the McGill Programme? Religious law? Informal law in dialogue with formal law? There is a danger, too, that law at McGill will be reduced to a lowest legal common denominator or a deceptively uniform appearance for law through emphasis on an easy-to-teach but artificial common core.

By denying students the opportunity to verse themselves fully in the particularities of civilian or common law cultures, the McGill Programme will always be open to the criticism that it courts confusion among students who are unable to appreciate the essential features of the two legal traditions that get lost in the mix. Others will

60. See generally Daniel Jutras, *Énoncer l’indicible: le droit entre langues et traditions*, 52 R.I.D.C. 781 (2000) (explaining how law stripping oneself of a single legal identity can facilitate the adoption of multiple identities in law that, in turn, encourages dialogue between traditions as a means of self-understanding).

61. This can be undertaken using traditional legal categories to organize the teaching of basic private law across traditions (*pace* Foucault!) assuming that, to give an example, the transsystemic obligations teacher does not seek merely to double the informational content of the course and spends some time deconstructing categories. For some early methodological optimism in respect to transsystemic “torts” as taught at Tulane Law School in the 1940s, see Ferdinand Fairfax Stone, *On the Teaching of Law Comparatively*, 22 TUL. L. REV. 158, 165 (1947).

no doubt feel that the curriculum fosters an artificial sense of unified universalism that suits a narrow understanding of globalized law. But by orienting itself around the ethic and the practice of nomadic jurisprudence and the project described by Laplantine and Nous as *métissage*, the experience of hybridization of culture in the McGill classroom would stave off some of the tendencies towards both false universalism and radical particularization that might otherwise be present in bijural or polyjural legal education. At the same time, student and teacher would reach as much for an educational “third space” as for membership in a third legal family.⁶²

* * *

The mixed legal system is rightly connected with an unimpeachable ethic of tolerance as well as the promotion of scholarly interest in multiple cultural identities and pluralism that should find the fullest expression in law teaching. Yet it also carries with it a message of counterpoint. As a symbolic form for law, the mixed legal system often stands as a representation that contradicts the dynamism and disorder of cultural exchange in law when it is too closely associated with a stabilized mix of applicable law in a designated territorial jurisdiction. The mixed legal system is sometimes depicted as embodying the reconciliation of difference, in an imagined whole, both coherent and static, in which the experience of encounter is absent or forgotten or past or digested or pre-determined. In law teaching, at least where I come from, the mix is too often presented as a product of some reality that has little to do with the people who live in law's flux. Inevitably, this serves to deemphasize the dialogic character of law in which encounter is seen as an important legal phenomenon. *Métissage* as an alternative for the law-in-force as an organizing principle for law teaching would place the encounter between legal traditions at the center of legal education. Law teachers would not aspire to a double expertise, or even to a double allegiance, but to no allegiance at all before law's nomadic identities and traditions.

If mixed legal systems do bear the message of *métissage*, the key to change seems to be highlighting the “mixing” rather than the “mix,”⁶³ which might explain why the French term *mixité* seems to feel

62. On the ideas of hybridity and third space as cultural experience, see HOMI K. BHABHA, *THE LOCATION OF CULTURE* 37 (1994).

63. See Örüci, *supra* note 25, at 335.

so right in this setting.⁶⁴ The “mix” is often seen as a step towards something pure and coherent in the development of the mixed legal system; *métissage* is a step away from purity and coherence in name of a dynamic and ongoing *mixité*. If the term *métissage* exists in English, it stands as a neologism, the very word announcing, by its self-consciously awkward sound, the experience of cultural contact that it seeks to express. Freed from its italics and yet bearing the full weight of its accent, *métissage* is thus tentatively offered up here, *faute de mieux*, as a stand in for *mixité* in law and, just as tentatively, as a terrain—wrong word again!—for experimentation in law teaching for mixed jurisdictions and beyond.

64. For the use of the French term, in connection with a lively and nonstatic presentation of the idea of the mixed legal system that might apply beyond formally mixed jurisdictions, see GLENN, *supra* note 15, at 35.



THE HONORABLE MARTIN L.C. FELDMAN

The Board of Editors of the Tulane Law Review dedicate this issue to the Honorable Martin L.C. Feldman in recognition of twenty years of distinguished service as a United States District Court Judge for the Eastern District of Louisiana.
