

# Bijuralism in Law's Empire and in Law's Cosmos

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A little more than two years ago, McGill University in Montreal—like Louisiana State University, a law faculty located in a mixed, primarily civil law jurisdiction—embarked on a bold experiment for teaching the common law and the civil law in an integrated or (in McGill parlance) “transsystemic” manner from the first day of the first year of law school.<sup>1</sup> Until that time the common law and the civil law had largely been taught in separate streams, a bit like law and equity in the English legal tradition, running in the same river bed with their waters never mingling. Before the advent of the new bijural program, students arrived at McGill branded as either common lawyers or civilians and generally studied areas of substantive private law twice, without any real occasion to synthesize or to compare the two grand Western legal traditions. The explicit focus for teaching was the law in force in either common law or civil law Canada, understood first as freestanding “systems” of law, on the plausible premise that two bodies of law could not apply to problems involving the same people in the same place at the same time. As a result, the concern to contemplate sameness or difference in any sustained way was, at best, a second-order one. The descriptive tag by which the curriculum came to be known—the National Program—fit these territorially defined ambitions perfectly, reflecting one conception of the way in which Canadian federalism formally organizes the application of the common law and the civil law. On this view, they are understood as two largely autonomous orders of private law that are either completely relevant to law students, or completely irrelevant to them, depending on where those students find themselves and what the legal problem at hand might be.

Bijuralism at McGill thus meant peaceful cohabitation rather than active dialog between the common law and the civil law (and their teachers), and this was generally thought to be just fine for the Quebecer who, given the demographics of Canadian legal life, might well fear being crowded out in

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1. On the ways and means of the McGill Program, see the foregoing article by Yves-Marie Morissette. Of special interest are his remarks concerning the conception of the transsystemic course in Evidence (Civil Matters), which, by reason of the different roles the law of evidence plays in the two traditions, is a model for this new genre.

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conversation with the common law. I am myself by taste and vocation a civilian, passionate about the study of law along the French Continental model, and devoted to an understanding of the civil law as an expression of “local knowledge” and, in particular, of Quebec legal culture. Turning my attentions to teaching in the bijural setting of McGill’s transsystemic program, can I do so with this sense of intellectual self intact? I don’t feel any particular kinship with transnational corporate forces that are said to be transforming our discipline and, as a partisan of cultural diversity for law, I fancy myself as something of a globalization skeptic, albeit an unschooled and decidedly unmilitant one. Given my civilian instincts and the fact that my own research interests are not immediately engaged by transnational law—it is hard to globalize the married woman’s usufruct on immovables—one might naturally have expected me to be standoffish about an initiative that would bring the common law and the civil law closer together at the expense, at least potentially, of the richness and distinctiveness of the civilian tradition in Quebec. I confess that some of my civil law colleagues at McGill expected more from me—or perhaps less—and voiced genteel surprise at my poorly contained enthusiasms for the integration of the two traditions in the proposed bijural program. Surely a true civilian—the language of truth and purity sometimes enters into these conversations—would see fit to resist, to defend, to ensure survival, rather than, well, to transgress transsystemically. Can the civil law teacher approach bijuralism in legal education with anything less than fear and loathing?

There are different ways to imagine the significance of the advent of transsystemic teaching of the common law and the civil law.<sup>2</sup> For some it reflects the borderlessness of law, for others it is an affront to law’s inherent diversity, for others still it is a mirror held up to the nature of a transnational market-oriented society.<sup>3</sup> My understanding of the bijural curriculum lies elsewhere. I see it as an opportunity to locate law more resolutely in the university, not as a matter of geography but of ideas, and to situate it there as an example of what might be called a foundational discipline. This stands in contrast with a long tradition of instrumentalizing legal education as a means to a professional end, defined in more or less narrow terms, which remains a dominant view of legal education in North America and, I daresay, a widely held view of the reformed program of undergraduate study at McGill.

While my Faculty rightly celebrates the international successes of its graduates, the tendency to see a bijural curriculum merely as a ticket to a globalized

2. The key novelty in McGill’s bijural program is arguably not so much the integrated teaching of the common law and the civil law, but rather the choice to strip students of their own juridical identity, from the first day of law school, as either civilians or common lawyers. The program encourages this sense that students don’t “belong” to a legal tradition through the deployment of course requirements and teaching methods designed with that objective in mind. Some of the foundations of the idea of multiple legal identities are explored in Daniel Jutras, *Énoncer l’indicible: le droit entre langues et traditions*, *Rev. int. dr. comp.* 781 (2000).
3. For a balanced view of the possible ways to justify a “cross-cultural legal education” from one of the prime movers in the advent of the McGill Program, see Daniel Jutras, *Two Arguments for Cross-Cultural Legal Education*, in *3 Different Legal Cultures—Convergence of Legal Reasoning: Grundlagen und Schwerpunkte des Privatrechts in europäischer Perspektive*, eds. H.-D. Assman et al., 75 (Baden-Baden, 2001).

career should be countered with a stronger message. The university should say in unequivocal terms that a legal education in which the common law and the civil law are in dialog is best understood as a liberal one. Like the study of literature, philosophy, religion, or art history, which are seen elsewhere in the university as foundational disciplines, law can be understood as providing a basis for a culture's intellectual heritage—and by extension part of an individual student's intellectual persona—as long as law teaching is imagined first as a knowledge-based enterprise. Whatever the merits of seeing a transsystemic legal education as an open door on the world—and it is at least that—this instrumentalized view somehow trivializes the study of law as an intellectual endeavor in that it detaches the discipline from its more natural place in the university among the social sciences and humanities.<sup>4</sup> Bijuralism is an invitation to students and scholars to think of law in a new way, in terms other than those of the jurisdictional or geographical representations of law that have dominated North American legal education in the past. Teaching comparatively provides this opportunity to teach in Law's cosmos rather than in Law's empire so that a bijural legal education can plainly and confidently ally itself with the great university tradition of prizing knowledge over information.

These two themes—teaching in Law's empire and teaching in Law's cosmos—offer alternate points of view for imagining the place of the civil law in a bijural curriculum. As law faculties like LSU and McGill look to justify a turn to bijuralism in the classroom, they will inevitably reach to these two ideas to explain the change to students, colleagues, alumni, and academics working in other law schools, where law is conceived and taught unisystemically. If we teach the civil law together with the common law, should we do so in Law's empire or Law's cosmos?

The preoccupation with law's proper reach—what is the applicable law in a given territory or jurisdiction, who makes the law there, what are its determining historical sources—these are the concerns of Law's empire. Teaching in Law's empire means teaching with a view to the identification of the law in force, both in time and space, such that a bijural curriculum becomes a necessity where two legal orders are simultaneously relevant to the practical ambitions of students. As a mixed jurisdiction where the law in force is a complex matrix of two legal traditions, Louisiana is a *place* in Law's empire where both the common law and the civil law are relevant to a lawyer's professional life. So too is Wall Street, we are told by the champions of globalization, where international practice is now said to require an understanding of law from outside New York and Delaware, given the increasingly transnational character of legal practice.

On the other hand, the preoccupation with law's essence—what explains law as a social phenomenon, what is the nature of legal knowledge, what does it mean to think like a lawyer, what it means to think like a citizen alive to law's symbolic and persuasive attributes—these are the concerns of Law's cosmos.

4. For an expression of the idea that law imagined transsystemically fits this humanistic worldview, see Jean-Guy Belley, *L'avenir du droit et des juristes: trois perspectives*, 30 *Rev. générale de droit* 501, 521 (1999/2000).

One teaches the civil law in Law's cosmos not so much as a professional qualification for a given jurisdiction or for a hoped-for transnational legal practice, but instead as a means of opening up the law school to the theoretical inquiry as to what constitutes law. On this view, the civil law is important not only for those destined to practice in Quebec, or with a French bank, or with a London-based mutual fund with investments in Latin America. The plural character of law is pursued as a defining feature of a law school's curriculum not because multiple legal orders are potentially relevant to a lawyer's work, but because the plurality of sources of law shapes the way in which law is properly imagined. In Law's cosmos, then, Louisiana is not a place but a *way of knowing*.

Certainly Law's empire has not been a congenial setting for teaching comparatively in the modern history of legal education in North America. Outside those exceptional places where the civil law lays claim, by whatever accident of history, to a place on the map of Law's empire, both the civil law and comparative law have generally been thought of as a luxury in the North American law schools' mandate. Teaching comparatively has been challenged by those who, mindful of jurisdictional borders, have seen civil law as foreign—in all senses of the word—to the law school's principal mission of training lawyers expert in the ways and means of Law's empire. Where comparative law generally and bijuralism in particular have flourished, as in Quebec and Louisiana, it has been on the basis of a perceived requirement of the empire. The taste of mixed-jurisdiction law schools for teaching comparatively and the corresponding distaste of unisystemic ones for the same material reflect, then, the same phenomenon: a means-ends calculation as to how the relevant law-in-force shapes choices as to what law must be learned.<sup>5</sup> Perhaps it should be of no surprise that openness to bijuralism be so instrumentalized. By reason of the ambitions that North American society cultivates in would-be lawyers, if not by reason of something more sinister, law students and their teachers often seem more naturally disposed to imperialism than cosmology.

Teaching comparatively might have found room out in the cosmos, but here too comparative law has not thrived, largely because it failed to take up its rightful place in legal education as a branch of legal theory and has contented itself, instead, with an unc cosmic self-understanding rooted in the technical aspects of someone else's law.<sup>6</sup> (The problem has sometimes been compounded by the fact that the comparative lawyers have often been no better at imperialism than at cosmology, thereby alienating everyone from the captains

5. Thus Law's empire dictates that bijuralism conferences are best convened in Quebec or Louisiana in order to hold professorial attention. Where North American comparative lawyers have located themselves elsewhere, they have typically spent their careers reaching beyond the empire to the cosmos (or to another empire) and have consolidated their place in the local law school with some more down-to-earth expertise. On the role of expatriates in the American comparative law tradition, see Pierre Legrand, John Henry Merryman and Comparative Legal Studies: A Dialogue, 47 *Am. J. Comp. L.* 3, 5–7 (1999).
6. For a refreshing criticism of the long-standing and ongoing failure to understand comparative law as a branch of legal theory, see Otto Pfersmann, *Le droit comparé comme interprétation et comme théorie du droit*, *Rev. int. dr. comp.* 275 (2000).

of the profession to the high priests of legal philosophy). The story of comparative law and the university has chiefly been told on the fringes of law teaching as an intellectual project. Until recently, drawing comparisons between legal traditions in the classroom has either not happened at all or has been relegated to the lost corners of the curriculum—"for further reading" in skipped portions of course outlines, or as a lone optional or perspective course (Introduction to Civil Law, or Comparative Civil Liability, or Current Issues in Soviet Law, the latter course still on the books at the Web site of one school I visited), often accompanied by the announcement "not offered this academic year" in the law school prospectus.

Historically, one might have expected matters to be different in Canada. Private law is set there in a political culture, formally bijural and bilingual and informally multilingual and polyjural, that prides itself on its cosmopolitanism. Yet the comparative method has never been an organizing principle for law teaching in Canada, largely because perceptions of Law's rightful empire have confined law teaching to concerns mostly geographical if not to say parochial. Each law school, having assumed a common law or civil law orientation on the basis of location alone, has been preoccupied with a jurisdictionally driven inquiry in which political boundaries and legal geography, above all things, shape the curriculum.<sup>7</sup> An overarching commitment to a conception of law as territorially based binding authority, flowing from local governing institutions, has fenced law teaching inside the confines of Law's Canadian empire (which may extend to the House of Lords or the *Daloz*, as the case may be, but certainly not as a matter of true comparison). Moreover a sense of first-duty to the profession—that law schools must train lawyers rather than educate citizens—has also conditioned attitudes to comparison. Naturally the profession, which is organized locally and monopolistically along the boundaries of Law's geographic empire, has traditionally seen comparison as marginal to legal education and has not been shy to say so. Even in the period after the advent of full-time scholars as law teachers, only two or three generations in most places in North America and less in many parts of Canada, legal education remains largely a means to a professional end, and while those ends are defined more eclectically today, few students see a legal education as a ticket out of Law's empire.

Have the real or imagined effects of "globalization" encouraged studying more than one legal tradition as an inherent part of a good legal education? Whatever one's views of the merits of globalization for law—and we know that opinions among legal educators are as divided here as elsewhere<sup>8</sup>—it seems fair to observe that the parameters of both Law's empire and Law's cosmos

7. This seems to be true as well for the two law faculties at which both civil law and common law degrees are offered at the same site, where the "imported" legal tradition has traditionally been taught as if it were an enclave or an embassy for Quebec civil law (at the University of Ottawa) or for Ontario common law (at McGill University). Recent curricular initiatives in both universities suggest this may be changing, as does an analagous development for teaching the common law at the University of Montreal.
8. For an exploration of the manner in which the anthropological idea of local knowledge for law stands in apparent opposition to the aspirations of a globalized law school program from a transsystemic law teacher, see Adelle Blackett, *Globalization and Its Ambiguities: Implications for Law School Curricular Reform*, 37 *Colum. J. Transnat'l L.* 57 (1998).

have been tested by the phenomenon. To what extent should these changes prompt a review about how law is taught? While state-centered positivism continues to provide the dominant ethic for legal education in North America, law as a exclusively state-made affair is in an appreciable if moderate decline, given the changing face of global markets and resulting changes in the demand for legal services. This has, to some extent, caused Law to reconfigure the empire: defining law for legal education is not so easy to situate territorially, at least not along the lines of national or state jurisdictions. Scholars have observed the importance of new sites of normativity alongside the national judge and the national legislature. Law is made in transnational contractual practice, a Paris-based arbitrator may shape legal rules relevant to Wall Street, international bodies (UNIDROIT is often cited as an example) seem to make or at least influence law notwithstanding a lack of obvious formal authority. To some extent the practice of law has also changed. While legal professions remain local monopolies, the advent of multijurisdictional firms, of a real international bar, and of transnational working tools for lawyers serves notice that Law's empire is, in some measure, transsystemic.

As the cartographers of Law's empire make room on their maps for sites of normativity not defined by political geography, bijural or polyjural educative practices are said to be newly mandated in order to show how applicable law can originate outside the domestic state and outside the institutional apparatus of state-made law generally. Law's empire has expanded to encompass law made by nonstate actors who participate in the international *lex mercatoria* on the same basis as legal pluralists have long argued that nonstate actors within a domestic legal order participate in making the law in force. (Law's empire sponsors an unholy alliance between transnational legal positivists and local-knowledge legal pluralists who have finally come to agree that the law in force comes from sources other than the national legislature and the national judge.) What should be stressed is that these changing views about law's sources and their reach have not displaced Law's empire as the model dictating the priorities of law teaching. Bijuralism or polyjuralism as the basis of a teaching ethic is invested with a new calling as a result of the "indigenisation of supranational law"<sup>9</sup> and even the expatriation of local law, but the call remains that of Law's empire.

Has this made the teaching of the civil law in a bijural mode newly urgent for North American law schools? Confronted with legal realities other than national law in Law's reconfigured empire, law schools are showing signs that they are slowly redefining curricular concerns to bring comparison closer to the center of legal education. There is an awakening to the "other"—inevitably in Law's empire it is the language of *them* and *us*—such that "foreign law" seems to be a less far-off teaching category, and even private international law is threatened, along with comparative law, as an autonomous teaching subject.<sup>10</sup> The civil law is one, but not the only, beneficiary of this new attitude,

9. Jutras, *supra* note 3, at 76.

10. For two perspectives on the phenomenon from scholars who have teaching experience in both the common law and the civil law, see Mathias Reimann, *The End of Comparative Law as an Autonomous Subject*, 11 *Tul. Eur. & Civ. L.F.* 49, 62–65 (1996); H. P. Glenn, *Vers un droit comparé intégré?* *Rev. int. dr. comp.* 841, 850 (1999).

although cynics have observed that a sort of hegemony of Anglo-American law has set in the world over—the empire strikes back—which imposes a global culture for law. While this is no doubt true in respect of some facets of legal practice—one scholar has pointed to the quiet conspiracy between the English language and Anglo-American law in this regard<sup>11</sup>—it is striking to note that a domestic Anglo-American model has not completely taken over law teaching as the norm.<sup>12</sup> Even in the United States, the “global law schools” seem bent on reaching out of the U.S. domestic sphere, often reaching to the civil law taught by imported scholars (the victor seems to take prisoners), in order to complete a transnational American legal education.

This said, the grip that Law's empire and professional instrumentalism have on legal education continue to limit, to some extent, the fortunes of the comparative teaching endeavor. True, the splendid isolationism that contributed to making the American law school a fireproof house for the teaching of American law is no longer a realistic model for all to follow. A cursory examination of how law schools describe themselves in their promotional materials signals a new interest in nonnational law, and this finds notable expression in an openness to the law of the European Union and the private law regimes of the different European states. But the approach to these new areas of law is still that of Law's empire: the focus of law teaching remains rule based, and while the national judge and the national legislature have lost some of their importance as oracles of the law to others, law schools continue their quest for the law in force. The substance of law teaching remains informationally driven; the civil law has merely become a body of rules newly relevant to legal education. All of this is reinforced by the multijurisdictional, professionalist orientation of legal education as it takes shape in Law's new empire. Increasingly North American law schools describe themselves as places for global legal training, as springboards for transnational legal careers in this spirit. So comparative law—and notably the civil law—is entering into the so-called global law school for a particularized, professionalized purpose. Comparative legal scholarship sometimes mimics this instrumentalism by adopting a self-consciously functionalist, problem-solving mode, properly adapted to the new profession and its ambitions to conquer Law's empire.

As the driving force behind curricular reform which, at McGill and elsewhere, brings bijuralism to the fore, the arrival of transnational demands and expectations for legal education is an incomplete justification for ushering comparative law and civil law into the mainstream curriculum. A complementary explanation for teaching comparatively, and in particular for devoting classroom time and energy to understanding the civil law tradition, is the

11. Alain Levasseur argues that the English language is a Trojan horse hiding the common law, therein representing a threat to Louisiana's civil law heritage. See *La guerre de Troie a toujours lieu . . . en Louisiane*, in *Droit civil, procédure, linguistique juridique: Écrits en hommage à Gérard Cornu*, 273 (Paris, 1994).
12. It has, however, been argued compellingly that legal education outside the United States is often forced into a posture of conforming to American curricular design and values. For common law Canada, see Harry Arthurs, *Poor Canadian Legal Education: So Near to Wall Street, So Far from God*, 38 *Osgoode Hall L.J.* 381, 389 (2000).

decision to situate legal traditions not just in Law's empire, but in Law's cosmos. Here the justification turns not on what law is perceived to be in force, or is understood to be useful to problem-solving in the practice of law, but what the law represents as an intellectual tradition, and what that tradition reveals of the nature of legal knowledge in a changing world. Fixing the fundamental orientation of comparative law in legal theory appears to stand in opposition to the more down-to-earth concerns of Law's new empire. While Law's imperialists typically place emphasis on a rule-based appreciation of law while teaching comparatively—what law is as an informational project—teaching in Law's cosmos aligns itself with an old tradition of learning about the culture of law as part of an effort to “think like a lawyer.”<sup>13</sup> In the same way, the pedagogical justifications for legal study rooted in functionalism or instrumentalism have always failed to capture the ambitions of jurisprudence, legal history, Roman law, legal sociology, and feminist jurisprudence, which also lay claim to a place in the law school as part of Law's cosmos.

Can bijuralism be understood as partaking of the same aspirations? The challenge of locating comparative law teaching in Law's cosmos is to see legal traditions as ways of knowing law rather than accounts of “the law” of some far-flung jurisdiction. The common law and the civil law have been usefully imagined from this perspective as “*mentalités*” (rather than systems of rules) which reflect particular epistemologies that tend to “mould the unconscious” of legal actors.<sup>14</sup> As a guide to law teaching, Law's cosmos has no single polar star. Indeed all legal traditions can provide the basis for confronting different ways to imagine law<sup>15</sup> and, as Michael McAuley pointed out at this meeting, the common law and the civil law have no special claim to preeminence in this regard. But when those two traditions have been singled out for teaching bijurally in this mode, the common law and the civil law are not understood as adversaries involved in some zero-sum game for law students' jurisdictional attention. On the contrary, when legal traditions are conceived as distinctive mindsets, each of them worthy of concern, the game is probably of the variable-sum variety. In Law's cosmos, there is an infinite territory for the common law and the civil law, as well as other supranational and infranational traditions, all of which contribute to defining a jurist's personal culture insofar as they signal different ways of knowing law. As the basis for a comparative law teaching program, then, the shift from Law's empire to Law's cosmos is the shift from major legal systems to legal traditions of the world and legal traditions of the neighborhood. Suddenly the civil law is relevant to everyone and to no one in particular, except as the vehicle for thinking about law differently.

13. For a very fine sketch as to why comparative law is important to legal education that fixes on this theme, see Geoffrey Samuel, *Comparative Law as a Core Subject*, 21 *Legal Stud.* 444 (2001).
14. For a leading expression of this view by a legal theorist who was trained and who teaches in the civil law and the common law, see Pierre Legrand, *Fragments on Law-as-Culture* 8 (Deventer, 1999).
15. For an openness to comparative legal studies nourished by an interest in African law and the law of native peoples of Canada by a law teacher versed in the common law and the civil law, see Jacques Vanderlinden, *Comparer les droits* (Brussels, 1995).



In Law's cosmos, the civil law should therefore be examined as harboring structures of legal knowledge that transcend written rules and give vent to what one Louisiana scholar aptly (and cosmologically) called the "soul" of the civil law.<sup>16</sup> Basic jurial conceptions, categories of legal thought, and, importantly, methods of establishing categories of thought should be the object of teaching the civil law because that is what all good lawyers need to know as part of a general culture in law. When this civilian mentality is thrown into comparison with the mindset of the common law, you have, I think, the finest kind of bijural pedagogy. The two traditions—not their rules or their lexicons but their essential ways of representing reality through distinctive structures of thought—should be set up in a dialog, an encounter in the world of ideas. What might this look like? What are some of the bright lights in the civil law's cosmos?

The civilian conception of the *droit commun* (in English depicted variously as general law, ordinary law, fundamental law, or, without reference to other connotations, common law or even *jus commune*) is one of these defining ideas.<sup>17</sup> The civilians' general law has a variety of characteristics: it is the law which applies in the absence of special rules; it is the supportive structure for special rules; it expresses, often as an organized series of abstract first principles, the grammar of the civil law; it very often takes shape in a rationalist enactment that civilians call "code"; it is a gold mine of transcendent values and principles, of vocabulary, of categories of thought, and of basic classifications that provide the cement for all private law; it is a symbolic form that shapes how all law is imagined by the jurists who come under its spell. Certainly the *droit commun* is part of the civil law's very essence, whether or not it is openly expressed in formal enactment. And it is revealed to be so in unequivocal terms when it is held up against the *droit commun* of the Anglo-American legal tradition—the unseen treasure of the common law, buried deep in the case reports, to be dredged up in the courtroom tomorrow and the next day, without the benefit of much of a map.

A second example, made famous by F. H. Lawson, is the civilian distinction between *droit objectif* and *droit subjectif*. By a trick of language in French, German, and Italian, these ideas stand together as *droit*, *Recht*, or *diritto* in the civil law but represent radically different categories (if they are categories at all) in English law as *law* and *right*.<sup>18</sup> Understanding how the civil law casts these ideas as "two species of a single genus" is most striking where confronted

16. Robert A. Pascal, *Louisiana Civil Law and Its Study*, 60 La. L. Rev 1, 3 (1999).

17. Interestingly, this cosmic force in civilian thinking receives less attention than one might expect from legal scholars, who often limit their expositions of the *droit commun* to its technical aspect or its historical sources. For a particularly fine presentation of the civilian idea of *droit commun*, see Jean-Maurice Brisson, *Le Code civil, droit commun?* in *Le nouveau Code civil : interprétation et application—Journées Maximilien Caron 1992*, ed. P.-A. Côté, 292, 296 (Montreal, 1993).

18. F. H. Lawson, "Das subjektive Recht" in the *English Law of Torts* [1959], *reprinted in* F. H. Lawson, *1 Many Laws: Selected Essays* 176 (Amsterdam, 1977). It is worth noting that in civil law parlance in English, the practice is to render *droit subjectif* as "legal right" and *droit objectif* as "law." For civil law vocabulary in English, see P.-A. Crépeau et al., eds, *Private Law Dictionary*, 2d ed. (Cowansville, Quebec, 1991).

with the fluid taxonomies of the common law in which, according to Lawson, the term *right* has none of the metaphysical qualities to be considered as a proper analog. Similarly, the pervasiveness of the concept of the *lien de droit* in the civilian tradition, which again has no obvious equivalent in the common law, is rightly thought of as partaking of the civil law's cosmos. As English scholar Geoffrey Samuel has so incisively observed, the civil law explains private law relations through a matrix of legal bonds whereby the links between persons (personal rights) are cousins to, yet radically different from, the links between persons and things (real rights).<sup>19</sup> Through these devices, the civil law organizes itself around two bodies of law—obligations and property—that come together in a manner quite unlike their namesakes in the common law tradition.<sup>20</sup> This is achieved through the good offices of the “patrimony,” another characteristically civilian idea. As the fundamental jural conception linking wealth to the holder of wealth, the patrimony has no obvious analog in common law culture, where its pale cousins, the estate and the fund, perform none of its essential functions. This legal construction, divined as if by magic by civilian scholars in the midnineteenth century, articulates among other things the moral postulates of the universal transmission of property at death and individual liability for debt which require a dozen separate constructions in the common law.<sup>21</sup>

There are of course many other examples not just of differences between the civil law and the common law, but of structures of thought or aspects of legal culture which, when presented to a common lawyer who has learned law without them, serve to expand his or her sense of what law is. The centrality of the person as a “subject of rights,” always imagined in opposition to property, the “object of rights,” is singled out by H. P. Glenn as an especially characteristic feature in his account of how the civil law tradition forms an “epistemological community.”<sup>22</sup> Certainly the manner and form of characterization is a cardinal feature of the civil law cosmos wherein it is appropriate to think of these divisions not just as rules but as structures of legal knowledge, thereby revealing an understanding of the role of law that works as much as an organizing instrument as a means of regulating behavior through rules of social conduct. Similarly, the exalted role of doctrine in the civil law is more than a nuance, in the theory of sources, between the Romano-Germanic

19. Samuel gave this as a characteristic feature of civilian epistemology which, when held up against English law's failure to articulate the idea in the same way, is revealing about the fundamental nature of legal knowledge. See *Law of Obligations and of Legal Remedies*, 2d ed., 1–4, 11–14 (London, 2001).

20. The organizing effects of the division between personal and real rights are felt throughout the civil law, and contribute to providing a unity to the law of obligations that is less manifest in the common law. On this latter theme, see Saúl Litvinoff, *Contracts, Delicts, Morals and the Law*, 45 *Loy. L. Rev.* 1, 54 (1999).

21. For a rich presentation drawing on Quebec, French, and German sources, see Roderick A. Macdonald, *Reconceiving the Symbols of Property: Universalities, Interests and Other Heresies*, 39 *McGill L.J.* 761, 7–16 (1994).

22. *Legal Traditions of the World* 129 (Oxford, Eng., 2000). It may be noted that this cosmic text has been used recently in law teaching at both McGill and LSU to introduce first-year law students to thinking about law from the perspective of its “foundations” rather than its territorial reach.

tradition and the common law, but reflects a tradition of scholarship and intellectualism that is part of the very fabric of what it is to be a civilian. In each of these and many other cases, the civilian character of the legal idea appears most plainly when it is discovered through a knowledge-based encounter with the common law. Where the comparison turns on the informational plane of rules and outcomes, bijuralism is reduced to the intellectual equivalent of comparing the Paris and London phone books. But where the comparative endeavor proceeds cosmologically so that the civil law is presented as one *mentalité* or epistemology for law, in conversation with another mindset, bijuralism takes up its natural place as an ideas-based study wherein the civil law is treated as an intellectual tradition rather than a compendium of rules contained or not in a code. Needless to say, this is a challenge in Law's cosmos—no fixed places mean no fact patterns—where much of earthly pedagogical concerns, including remodeled teaching materials, must be confronted by the law teacher.

What purpose does this bijural approach to the study of the civil law serve? In the immediate sense, absolutely none: it is not a training for the Paris bar or for partnership in Clifford Chance or even a good view from a corner office in the Louisiana legal establishment. Teaching civil law in this mode is conceived as intrinsically valuable. This has perhaps been said best by a former dean of the McGill Law Faculty and historian of the National Program who, in the heat of debate at Faculty Council over the merits and demerits of the proposed bijural curriculum in 1999, voiced his sense that “studying law is a way of being alive.”<sup>23</sup> This ideal, stated in aspirational terms, stands as a happy credo for teachers in Law's cosmos, where the intellectual pursuits of legal education are understood as a source of present enjoyment rather than a how-to training for a transwhatever future or a solemn initiation to a sixteen-ton heritage from the past. Teaching bijurally lines itself up on the model of a liberal education that seeks to provoke thinking about law in a way not tied irrevocably to a student's own time and place. Bijural teaching should provide a cosmopolitan citizenship<sup>24</sup> rather than multijurisdictional skill sets as the end point (there is no end point!) of an education in Law's cosmos. Bijuralism is first and foremost a means of gaining a personal culture—which, I think, is why the law schools are here to begin with.

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It is unusual for a civilian teaching in North America to be confident about the fortunes of his own (sic!) legal tradition. Given the career attractions of Anglo-American law, have civilians in the university taken up cosmology by necessity, simply because the prospects for their own empire seem so bleak? Not everywhere do civilians, who often adopt a garrison or outpost mentality

23. The happy turn of phrase is that of Roderick Macdonald. It might be said to be the central theme—although this might be my wishful reading—of his study of the history of bijural law teaching at McGill: *The National Programme at McGill: Origins, Establishment, Prospects*, 13 *Dalhousie L.J.* 211 (1990).

24. See generally Daniel Downes & Richard Janda, *Virtual Citizenship*, 13 *Can. J.L. & Soc'y* 27 (1998).

in North America,<sup>25</sup> seem so pessimistic. It may be observed that those who have traced the actual parameters of Law's empire are keen to point out the formidable territorial reach of the civil law across the world<sup>26</sup> although, in fairness, its inherent cultural diversity means that the civil law empire can only be thought of as the loosest kind of commonwealth. In Europe, in particular, law teachers are vaunting the civilian worldview, and notably the lessons of Roman law, as the basis for a new imperialism.<sup>27</sup> After all, while the idea of empire may not be Romanist in origin, it certainly attained one of its defining moments along the Roman model. But as law schools across Europe and, here and there, in the U.S. and Canada, embrace the civil law and the common law together, it appears they still do so for narrow instrumentalist reasons, which is probably, in the end, reductionistic. The view of the civil law as an intellectual tradition, rather than its grip on any one jurisdiction, is the real source of optimism, and whatever the fortunes of the civil law in Law's empire, its "survival" on that cosmological basis seems rather more secure.

Lawyers have always tended to conflate cosmos and empire, most strikingly in aboriginal and religious legal traditions, and both civilians and common lawyers have very often treated their own backyards as the universe in thinking that all law is their law.<sup>28</sup> There is a habit among the spiciest legal theorists to see their cosmos as territorially based, or at least as the best darn cosmology on earth. By the same token, the most rapacious legal imperialists often sound like revelationists as they look to the heavens to explain the inevitable triumph of their empire. To a large extent, the opposition between Law's empire and Law's cosmos is thus a false one for law teaching and perhaps even for law generally. The standoff, especially when considered from the perspective of the control exercised by the legal profession over the university curriculum, is just another way of depicting an old and unwinnable battle in North American law schools as to who, in the final analysis, controls the content of legal education. Ultimately, the imperialists need the cosmologists to make sense of their claims to territory and, as Peter Stein has noted for the teaching of Roman law,<sup>29</sup> the cosmos is best contemplated with two feet firmly planted on the ground of somebody's empire.

25. For an amusing use of this defensive language right for an empire perspective on the "vast common law territory," see Shael Herman, *Minor Risks and Major Rewards: Civilian Codification in North America on the Eve of the Twentieth Century*, 8 *Tul. Eur. & Comp. L.F.* 63 (1993).
26. See the remarkable map prepared by Nicola Marini & Graciela Fuentes, *World Legal Systems* at vi, 7-9 (Montreal, 2000). It is no small irony that the color pink, chosen by the authors to designate civil law countries in the world, is that same pink used in the great maps of the Victorian era for the British Empire.
27. Reinhard Zimmermann has argued that Roman law can be seen as providing the basis of a *jus commune* for European private law relevant to law teaching as well as to a possible European civil code. See *Roman Law, Contemporary Law, European Law: The Civilian Tradition Today* (Oxford, 2001).
28. For an explanation of why civilians fall into this trap, see Pierre Legrand, *Are Civilians Educable?* 18 *Legal Stud.* 216 (1998).
29. *Justinian's Compilation: Classical Legacy and Legal Sources*, 8 *Tul. Eur. & Comp. L.F.* 1, 14 (1993). Stein has argued that teaching of Roman law is most successful when it is made relevant to solving current problems.

In the final analysis, it may be that these two views of legal education are not so much in conflict but that somehow, through the healthy dialectic they engender, they are mutually supportive for law. In the comparative law teaching community, they certainly provide checks and balances against one another, and the presence of both understandings of law in the same faculty is no doubt nourishing for the discipline. Both perspectives on law remain influential in law teaching, and perhaps the better view is that the distinctive ambitions of empire and of the cosmos can be marshaled together to justify teaching in a bijural or even polyjural mode. It is not surprising that law schools in mixed jurisdictions such as Louisiana and Quebec—versed in the encounter between traditions if not in their dialog—sense a special responsibility in thinking about different pedagogical strategies for bijuralism.<sup>30</sup> Certainly they are better placed to see the cosmology of these traditions than the more recently minted global law schools racing to market. Whatever the fortunes of curricular initiatives involving bijural teaching, one consequence of the new interest in multiple legal traditions is to encourage comparative law teachers to disentangle, at least in their own minds, Law's empire and Law's cosmos.

30. Vernon Palmer has recently characterized as “psychological” the disposition of lawyers from mixed jurisdictions to think of law as having a dual character. Introduction to the Mixed Jurisdictions, in *Mixed Jurisdictions Worldwide: The Third Legal Family*, ed. V. V. Palmer, 3, 8 (New York, 2001).