

Legal Education Seminar  
LAWG-625-001/009/010

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260903663

## **The Approach to Gender and Race issues in Canadian and Icelandic Legal Education**

*A comparative analysis of policies and course subject availability at the law faculties at McGill University and the University of Iceland*

Word count: 5997

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# 1 Introduction

Legal education is often considered one of the oldest subjects of traditional higher education in modern times. This is especially true in the civil law tradition. Legal education is sometimes regarded as one of the pillars of the university and lawyers play an integral part in maintaining the separation of powers. The judiciary and executive branch could not function without lawyers, but different criteria apply to the legislative branch. Lawyers are often considered representatives of the society that they live in. They bear a responsibility to maintain the democratic legal order in the society they serve. They play a vital role in protecting civilians' rights and entitlements.<sup>1</sup> For a long time there has been an elitist conception of the legal profession. Lawyers were white, male and preferably Christian. This, in turn, excluded people who did not fulfil those criteria from the profession.<sup>2</sup> In the latter part of the last century this started to change and more women and people of colour entered the profession. Many of them have since written about their experience of alienation, racism and sexism in the faculty and the profession. These writings sparked ongoing attempts at reform to make law students, and thus the legal profession, more representative of the society at large in North American law schools.<sup>3</sup>

There are several reasons for focusing on changes in the law school in order to create more diversity and inclusivity in the profession as a whole. Law school is often the point of entry into the profession and can provide guidance as to what life as a lawyer is or should be. The goal for reform is to create a lawyer's identity that any student can subscribe to, regardless of background or other matters. This is done by reorganizing legal reasoning, analysis, legal doctrine and practice. By recreating this identity law schools can have a lasting influence on the legal profession as a whole.<sup>4</sup> This is a tall order for most law schools, it does not matter whether it is in Canada or Iceland. Canada has a rich history of multiculturalism, whereas Iceland is only recently experiencing changes in that direction.<sup>5</sup> Both countries are considered peaceful and consistently rank high in the global gender gap reports.<sup>6</sup> It is, therefore, interesting to compare these two countries which are similar in many ways, but yet differ widely in others. This essay aims to compare the attempts made by both countries to tackle diversity and

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<sup>1</sup> Faisal Bhabha, "Towards a Pedagogy of Diversity in Legal Education" 2014 52:1 Osgoode Hall LJ 59 at 68-69.

<sup>2</sup> *Ibid* at 77.

<sup>3</sup> *Ibid* at 70-71.

<sup>4</sup> *Ibid* at. 95.

<sup>5</sup> "Immigrants and persons with foreign background 2019" 2 December 2019, online: *Statistics Iceland* <[statace.is/publications/news-archive/inhabitants/immigrants-and-persons-with-foreign-background-8903/](http://statace.is/publications/news-archive/inhabitants/immigrants-and-persons-with-foreign-background-8903/)>

<sup>6</sup> "Global Gender Gap Report 2020" 16 December 2019, at 9, online pdf: World Economic Forum <[www3.weforum.org/docs/WEF\\_GGGR\\_2020.pdf](http://www3.weforum.org/docs/WEF_GGGR_2020.pdf)>

inclusivity in their legal education system. I will then focus on the comparison of one university in each country, McGill University in Canada and the University of Iceland in Iceland. I will conclude by making recommendations for both universities that could be implemented in order to improve their legal education. This is done with the goal of making legal education more attractive to all groups of society and more inclusive to all those who decide to pursue a legal education and a career in law. If successful, this would hopefully create a more diverse legal profession with a broader understanding of the society as a whole.

## 2 Canada's approach

Canada has a rich history of multiculturalism. It is clear when moving to and living in the country, at least in Montreal, that multiculturalism is considered valuable. This is stated without ignoring the multifaceted difficulties every society can experience when facing these issues. When having discussions with Canadians it is clear that they are proud of their country and their heritage, they are aware of the country's general positive position on the international scale and they do not take it for granted. If there is a will that diversity should be promoted within the legal profession it makes sense to start with the law school. The law school is usually the first point of entry for most individuals interested in law and it is the gateway to the profession. Many of the first women and minority students to attend, or teach at a law school, have described their experiences of alienation in the classroom, in law books and even in the faculty. This shows how law school and legal education impacts individuals differently based in their background and experiences.<sup>7</sup> Therefore, the strongest way to increase diversity and inclusivity in the profession seems to be right at the start, at the law faculties.

Canadian legal education has undergone several transformations in the last century coinciding with societal changes. The Canadian Bar Association has also been prolific in spearheading research and policy work on different issues affecting Canadian legal education.<sup>8</sup> One does not need to go into deep research to realize that Canadian legal education is based on awareness of its role in forming the profession and the importance of striving for diversity and

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<sup>7</sup> Faisal Bhabha, "Towards a Pedagogy of Diversity in Legal Education" 2014 52:1 Osgoode Hall LJ 59 at 70-71. See also Debra Schleaf, "Thinking Like a Lawyer: Gender Differences in the Production of Professional Knowledge" 2001 19:2 Gender Issues 69 at 71; Brenna Bhandar, "Always on the Defense: The Myth of Universality and the Persistence of Privilege in Legal Education" 2002 14:2 CJWL 341 at 348; Carol Aylward, *Canadian Critical Race Theory: Racism and the Law*, (Halifax: Fernwood Publishing, 1999) 44-45.

<sup>8</sup> See eg. Bertha Wilson, *Touchstones for change: equality, diversity and accountability: report of the Canadian Bar Association Task Force on Gender Equality in the Legal Profession*, (Ottawa: Canadian Bar Association, 1993). Information on further projects that have been commissioned can be found here: "Equality at a Glance" online: *Canadian Bar Association* <[www.cba.org/Sections/Equality-Committee/Resources/Resources/Equality-at-a-Glance](http://www.cba.org/Sections/Equality-Committee/Resources/Resources/Equality-at-a-Glance)>.

inclusivity. This evolution did not, however, happen by chance but it has its own historical roots.

One of the most damning reports on Canadian legal education was the 1983 *Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada*, otherwise known as the Arthurs Report.<sup>9</sup> The Committee of Canadian Law Deans and the Canadian Association of Law Teachers, along with the Social Sciences and Humanities Research Council were the driving forces behind the formation of a consultative group. The group's conclusions were damning, to say the least. It expressed dissatisfaction with the legal teaching profession and an absence of scholarly discipline of the law in the whole country. Their findings were directed at all areas of the legal field, that is the professional, the judicial and the academic. Amongst other conclusions the group encouraged numerous changes to legal education and the legal scholarship environment. Although numerous issues are still prevalent within Canadian legal academia, it appears that Canadian legal educators took this report to heart as legal scholarship appears to have expanded and flourished in the years that have followed with an increase in the publishing of Canadian law books and a vast array of journals on various legal subjects such as *The Canadian Journal of Law and Society* and *The Canadian Journal of Women and the Law*.<sup>10</sup>

Another report which has influenced Canadian legal education, and still has the potential to do so even further, is the Report by the Canadian Truth and Reconciliation Commission on the history and legacy of Canada's residential school system. The Commission's purpose was to investigate Canada's residential school system for Aboriginal children, which was created for the purpose of separating Aboriginal children from their families in order to weaken family ties and cultural linkages. Its purpose was also to indoctrinate children into a new culture of the legally dominant Euro-Christian Canadian society. This residential school system lasted for more than 100 years. This part of Canadian history was, for the most part, hidden and it was only when survivors found the courage to speak up about the severe violence they experienced that the largest class-action lawsuit in Canada's history occurred.<sup>11</sup> This prompted discussions as to the creation of a commission. In the end, The Indian Residential Schools Settlement Agreement both settled the class-action

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<sup>9</sup> Consultative Group on Research and Education in Law, *Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada*, (Ottawa: The Council, 1983).

<sup>10</sup> Constance Backhouse, "Revisiting the Arthurs Report Twenty Years Later" (2003) 18:1 CJLS 33 at 36

<sup>11</sup> It is estimated that several thousand children died in the schools due to poor living conditions, see Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada (2015), at 92, online pdf: [National Centre for Truth and Reconciliation <nctr.ca/assets/reports/Final%20Reports/Executive\\_Summary\\_English\\_Web.pdf>](http://National Centre for Truth and Reconciliation <nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf>).

suit as well as creating the Canadian Truth and Reconciliation commission.<sup>12</sup> The findings by the Commission are perhaps an unlikely influence on the legal education in Canada for the outsider, however, Canada has a long and complicated relationship with their First Nations which, in many ways, is visible in their justice system. Therefore, the Commission published 94 calls to action for various branches of government as well as changes to legal education. Article 27 calls for the Federation of Law Societies of Canada to ensure that all lawyers receive cultural competency training, including training in the UN Declaration on the Rights of Indigenous Peoples, Indigenous law and aboriginal rights. This should require skills-based training in intercultural competency, conflict resolution, human rights and anti-racism. Article 28 also calls for law schools in Canada to require all law students to take a course in Aboriginal people and the law, including courses on the abovementioned treaties and rights, as well as the history and legacy of residential schools.<sup>13</sup> It is interesting to note here that the University of Victoria has recently founded the world's first four year Indigenous Law Program with an emphasis to help Indigenous People and Canada build enduring political and legal relationships.<sup>14</sup>

It is clear that Canada has a long and complicated history with First Nations and multiculturalism and there are numerous calls for improvement. How these improvements will take place in law schools and legal education will no doubt be varied as it is a large country with many different law schools as well as two distinct legal systems; common law and the civil code. In this essay we will take a closer look at how the law faculty at McGill University has attempted to implement changes and strive for diversity and further inclusion of all students.

## 2.1 McGill University

McGill University is one of the oldest universities in Canada, as well as having one of the largest student bodies.<sup>15</sup> The university houses around 40.000 students in several different faculties.<sup>16</sup> When walking around campus it is clear that there is a diverse student body with

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<sup>12</sup> *Ibid* at preface.

<sup>13</sup> Truth and Reconciliation of Canada: Calls to Action (2015), at 3, online pdf: *National Centre for Truth and Reconciliation* <nctr.ca/assets/reports/Calls\_to\_Action\_English2.pdf>

<sup>14</sup> "World's first Indigenous law program launches with historic and emotional ceremony" (22 October 2018), online: *University of Victoria. UVic News*: <www.uvic.ca/news/topics/2018+jid-program-launch+news>.

<sup>15</sup> "Canada's 10 biggest universities" (18 June 2013), online: *Maclean's* <www.macleans.ca/society/life/canadas-10-biggest-universities/> and "McGill University" (5 February 2012), online: *The Canadian Encyclopedia* <www.thecanadianencyclopedia.ca/en/article/mcgill-university>.

<sup>16</sup> "McGill University Enrolment Reports" (2019), online: *McGill Enrollment Services* www.mcgill.ca/es/registration-statistics.

many different needs and interests. How to accommodate them all is a question the university must ask itself.

It does not take much navigating around campus to notice the many different student offices and societies that McGill houses, such as the office for students with disabilities, McGill Family Care office, First Nations House and the Queer McGill office. These are only to name a few. It appears that McGill University has undertaken a similar approach to the country in general, that is attempting to represent as many minority groups as possible, portraying them to be welcome and encouraging inclusivity. That is not to say that everything has always worked smoothly, as groups and offices named earlier would perhaps not need to be set up if there are no difficulties, such is the nature of things.

That being said, when studying the McGill website it is clear that the university has taken decisive action in many policy matters on diversity and inclusion. The Office of the Provost has a specific equity team that is there in order to help campus efforts build relationships across differences. McGill defines diversity as appreciating our differences and interconnectedness while recognizing systemic and institutionalized discrimination as well as building connections across different fields with the aim of working to identify our commonalities and fostering pride and solidarity on campus.<sup>17</sup> McGill University has also laid out and agreed to several different policies on various issues such as accommodation for religious holy days, charter of student rights and employment equity. It has also published several reports such as the report from the ad hoc working group on systemic discrimination, the principal's task force on diversity, excellence and community engagement and the task force on indigenous studies and indigenous education.<sup>18</sup> The equity team at McGill has even developed an equity, diversity and inclusion action plan (EDI) that sets out guidelines for initiatives over the next five years. The plan is based on various policies and reports that have been undertaken in the past decade.<sup>19</sup> With all this information it is interesting to take a further look at what the law faculty at McGill has undertaken on these issues.

From walking the halls, it is clear that the McGill law faculty has a varied group of students, as well as a large group of international students. Its program boasts of being bilingual and of teaching both civil and common law, that is, students get a glimpse of both legal worlds at the same time. Upon graduation they receive two law degrees, a Juris Doctor and a Bachelor

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<sup>17</sup> "What is Our Commitment to Diversity?" (11 September 2019), online: *McGill, Equity at McGill* <[www.mcgill.ca/equity/article/what-our-commitment-diversity](http://www.mcgill.ca/equity/article/what-our-commitment-diversity)>.

<sup>18</sup> "Equity Related Policies & Reports", online: *McGill, Equity at McGill* <[www.mcgill.ca/equity/further-reading/policies-reports](http://www.mcgill.ca/equity/further-reading/policies-reports)>.

<sup>19</sup> "McGill University Equity, Diversity & Inclusion (EDI) Strategic Plan 2020-2025: Draft Consultation 17 February 2020", online pdf: *McGill University* <[www.mcgill.ca/equity/files/equity/edi\\_stragic\\_plan\\_draft\\_-\\_17\\_february\\_2020.pdf](http://www.mcgill.ca/equity/files/equity/edi_stragic_plan_draft_-_17_february_2020.pdf)>.

of Civil Law degree.<sup>20</sup> Undergraduate students can expect classes to take place in both French and English and can use either language in class and assignments, placing the responsibility of bilingualism on the teacher. According to their website McGill Law Faculty makes great efforts to attract talented applicants to their programs by way of various outreach programs, recruitment and admissions initiatives. The admissions process is said to include a policy on equity and diversity and that a holistic file review is conducted on every application with the aim of creating a class with diverse backgrounds and experiences. In order for this process to be effective every admissions committee member is encouraged to complete training from McGill's Social Equity and Diversity in Education Office. This training is set up to prepare Committee members to look at applications being mindful of equity and implicit bias. The faculty also works with the Black Law Students at McGill association on several outreach programs and has specific initiatives for indigenous students.<sup>21</sup>

It is clear that the university, as well as the law faculty, have numerous initiatives and programs in place in order to attract and support a diverse group of students. In other words, the law faculty would like to accept students from all walks of life. It is, therefore, interesting to study whether that is reflected in the available subjects and teaching the students are offered after they have been accepted.

Recently the faculty placed an advertisement for academic positions in law where it was explicitly encouraged that applicants whose "critical perspectives (for example, critical race theory, critical disability studies, gender and sexuality) engage with questions of diverse and intersecting identities" apply. The advertisement also stated that candidates were encouraged to include how their research and teaching engaged with equity and promoted inclusivity and how they could teach and supervise students from diverse cultures and backgrounds.<sup>22</sup> This is interesting when compared to the current courses listed as available on the McGill Law faculty website for the year 2019-2020. The list of required courses contains the 'standard' law courses that probably most law faculties in the world have as prerequisites for graduating, such as constitutional law, contractual obligations and property law.<sup>23</sup> There is not one required course that has critical race theory, gender or disability studies reflected in the name. When studying the course descriptions, it does, however, appear as though the course on constitutional law requires that students' study closely constitutional issues affecting First

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<sup>20</sup> "McGill's Unique BCL/JD Program", online: *McGill Faculty of Law* <<https://www.mcgill.ca/law/bcl-jd/program-description>>.

<sup>21</sup> "Equity Initiatives", online: *McGill Faculty of Law* <<https://www.mcgill.ca/law/bcl-jd/admissions-guide/equity-initiatives>>.

<sup>22</sup> "Employment opportunities", online: *McGill Faculty of Law* <[www.mcgill.ca/law/about/employment](http://www.mcgill.ca/law/about/employment)>.

<sup>23</sup> "Course Offerings 2019-2020", online: *McGill Faculty of Law* <[www.mcgill.ca/law-studies/courses/current](http://www.mcgill.ca/law-studies/courses/current)>.



Nations and minority linguistic communities. The course on criminal justice appears to also have an angle on race and gender issues within that context.<sup>24</sup> When further looking at the complementary courses there are a few relating to Aboriginal issues, social diversity and one on disability law. However, none included the words race, gender or feminist legal theory in name.<sup>25</sup>

In light of the many policies on diversity and equality at McGill it can be assumed that having a large and diverse student body is the ultimate goal of the university. Although one cannot reason that issues such as ‘race’ and ‘gender’ are never raised in class by the teacher or in a text the students have to read, a lot can be deduced from a name. It is interesting that issues concerning diversity and inclusion do not seem to be reflected in the required courses available to law students at McGill, in spite of the faculty’s open commitments to these issues. There are a certain number of complementary courses which touch upon the issues at stake but as they are not required it is relatively easy for students to never have to take a course on these subjects throughout their entire legal education at McGill. While there is a continuing debate as to whether issues such as ‘gender’ and ‘race’ should be taught in separate courses there is a growing discussion as to the effectiveness of it.<sup>26</sup> Rather, these issues and methods should be incorporated into traditional core courses which every law student must learn. This issue will be discussed later in this essay. That being said, it is clear from McGill’s course offerings that its own public policies and ambitions are not reflected in the required courses available to law students.

### **3 Iceland’s approach**

Iceland’s history is quite long and distinct from the other Nordic countries. It is by far the smallest, both geography and population wise while maintaining the oldest legislative assembly and parliament in the world.<sup>27</sup> With a population of around 364.000 it is interesting that the country has seven universities, three private and four public. Maybe this is not so remarkable though when put in an historical context. Iceland has a long history of literature and various written accounts, dating all the way back to the twelfth century.<sup>28</sup> Icelanders in general share a

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<sup>24</sup> To note, this is all based on the online course descriptions available at the abovementioned McGill website. Also, the ones in French were not studied.

<sup>25</sup> It should be noted that a course on critical race theory has been added to the complementary courses for the 2020-2021 academic year.

<sup>26</sup> Brenna Bhandar, “Always on the Defense: The Myth of Universality and the Persistence of Privilege in Legal Education” 2002 14:2 CJWL 341 at 349-351.

<sup>27</sup> David Arter, “The Nordic parliaments: Patterns of legislative influence” (1985) 8:1 West Eur. Polit. 55 at 56.

<sup>28</sup> Stefán Einarsson, *A History of Icelandic Literature*, (Baltimore, Maryland: John Hopkins University Press, 2019) at 1.

love of literature and proudly explain to anyone who wants to hear their traditions of ‘jólábókaflóð’<sup>29</sup> and how they have more Nobel Prize winners in literature per capita than anyone else in the world.<sup>30</sup>

The origins of legal education in Iceland can be traced back to the year 1908 with the founding of the Icelandic Law School.<sup>31</sup> Icelandic law has been in force in the country since 930 when a commonwealth was established in Iceland and parts of the first Icelandic lawbook were written down early in the twelfth century.<sup>32</sup> Iceland became at the end of the fourteenth century part of the Danish kingdom and after the establishment of the University of Copenhagen in 1479 Icelanders studied law there until 1908. Three years later the Law School merged with the Priest School and the Medical School to become the University of Iceland in 1911.<sup>33</sup> Late in the twentieth century more universities, both public and private, with law faculties were launched but the university of Iceland is by far the largest one. Higher education is, therefore, only a little over 100 years old in Iceland, still relatively young compared to that of Europe and North America. There are several reports to be found on various aspects regarding university education in Iceland, most of them being conducted by the Ministry of Education, Science and Culture.<sup>34</sup> However, little research and few reports have been published on the quality of legal education in Iceland. The few that have been commissioned have been requested by the state. One of them was done by the Icelandic National Audit Office on the cost, efficiency and quality of teaching in business, law and computer sciences.<sup>35</sup> Another one was done by the Ministry of Education, Science and Culture and was related to the evaluation of teaching and study of law in Icelandic higher education institutions.<sup>36</sup>

The report by the Icelandic National Audit Office was published in June 2007. The report sought to compare the cost of education, the academic standing of each department and

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<sup>29</sup> ‘Jólábókaflóð’ (e. Yule book flood) is an Icelandic Christmas traditions, which entails giving each other books for Christmas and then spending the rest of the holiday reading them under the cover. More information can be found here: Guinevere De La Mare, “Jolabokafloð: Meet Your Favorite New Holiday Tradition” (2018), online: *Read it Forward* <[www.readitforward.com/essay/article/jolabokafloð-meet-favorite-new-holiday-tradition/](http://www.readitforward.com/essay/article/jolabokafloð-meet-favorite-new-holiday-tradition/)>.

<sup>30</sup> We have one, Halldór Kiljan Laxness.

<sup>31</sup> “Lagakennsla á Íslandi í 100 ár” (17 October 2008), online: Stjórnarráð Íslands <[www.stjornarradid.is/gogn/raeda/2008/10/17/Lagakennsla-a-Islandi-i-100-ar/](http://www.stjornarradid.is/gogn/raeda/2008/10/17/Lagakennsla-a-Islandi-i-100-ar/)>.

<sup>32</sup> Gunnar Karlsson, “Inngangur” in Gunnar Karlsson, Kristján Sveinsson & Mörður Árnason, eds, Grágás, Lagasafn Íslenska Þjóðveldisins, (Reykjavík: Mál og menning, 1992) ix-xxxiii at ix, x and xii.

<sup>33</sup> “Saga”, online: *Háskóli Íslands* <[www.hi.is/haskolinn/saga](http://www.hi.is/haskolinn/saga)>. See also “Althingi” at 6, online pdf: Alþingi <[www.althingi.is/pdf/Althingi2018\\_enska.pdf](http://www.althingi.is/pdf/Althingi2018_enska.pdf)>.

<sup>34</sup> “Rit og skýrslur”, online: Stjórnarráð Íslands <[www.stjornarradid.is/gogn/rit-og-skырslur/\\$LisasticSearch/Search/?SearchQuery=&Ministries=Mennta-+og+menningsarm%C3%A1lar%C3%A1%C3%B0uneyti%C3%B0&Themes=&Year=&SortByDate=true](http://www.stjornarradid.is/gogn/rit-og-skырslur/$LisasticSearch/Search/?SearchQuery=&Ministries=Mennta-+og+menningsarm%C3%A1lar%C3%A1%C3%B0uneyti%C3%B0&Themes=&Year=&SortByDate=true)>.

<sup>35</sup> “Kostnaður, skilvirkni og gæði háskólakennslu: Viðskiptafræði, lögfræði, tölvunarfræði - skýrsla” (June 2007), online pdf: Ríkisendurskoðun <[rikisendurskodun.is/wp-content/uploads/2016/01/haskolakennsla\\_2007.pdf](http://rikisendurskodun.is/wp-content/uploads/2016/01/haskolakennsla_2007.pdf)>.

<sup>36</sup> “Evaluation of Teaching and Study of Law in Icelandic Higher Education Institutions: A Report Commissioned by the Ministry of Education, Science and Culture” (July 2011), online pdf: Stjórnarráð Íslands <[www.stjornarradid.is/media/menntamalaraduneyti-media/media/MRN-pdf/Uttektarskyrsla.pdf](http://www.stjornarradid.is/media/menntamalaraduneyti-media/media/MRN-pdf/Uttektarskyrsla.pdf)>.

the efficiency of teaching (how well the finances and staff were used). The Report asked three main questions. First, how has the cost and the number of university students developed since the private universities were founded and how has the government attempted to control these issues. Second, is there a difference between cost, efficiency and quality of teaching between the Icelandic universities and if so, what are the reasons for it? Third, is there a difference between the previously mentioned issues between Icelandic universities and comparable universities abroad? It is not surprising that the University of Iceland came out on top when a holistic review of the law faculties had taken place, since at the time it had about a 80 year lead on the other schools (they were founded in the 1980's and 1990's). The report is very cost-oriented and, therefore, gives little insight into the actual legal education taking place in the institutions. The second report, the evaluation of teaching and study of law in Icelandic higher education institutions, is slightly more informative.

In Iceland, a university institution must be granted recognition from the Ministry of Education, Science and Culture in order to be called a university. Receiving this recognition entails that the institution is considered to reach certain quality standards as well as fulfilling international requirements on university operations. An Icelandic university, therefore, cannot offer a subject or a degree without this recognition from the Ministry. The Ministry, in turn, also bears the responsibility of having to conduct a thorough investigation into the institution before granting each permit.

The report on the evaluation of teaching and study of law in Icelandic higher education institutions was published in October 2011 by the Ministry of Education, Science and Culture. The committee's role was to conduct an audit on the teaching of law in the Icelandic law faculties.<sup>37</sup> It is worth noting here that the committee's mandate was not to conduct an audit on the quality of the legal education students were receiving, but rather on the teaching that was being performed at the universities. The reason for this is not known. The committee's conclusions were that the quality of legal education in Iceland was good, on the whole. However, it made serious comments on the teachers' lack of academic qualifications (PhD's) and the large number of part-time faculty members. It also noted that the Ministry has accredited new law faculties to graduate lawyers without actually forming a general policy on the standards that lawyers have to meet in a working environment or setting guidelines for minimum standards to the content of a law degree.<sup>38</sup> This is a serious point to make as without

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<sup>37</sup> "Niðurstöður úttektar á kennslu í lögfræði" (28 October 2011), online: Stjórnarráð Íslands <[www.stjornarradid.is/efst-a-baugi/frettir/stok-frett/2011/10/28/Nidurstodur-uttekta-a-kennslu-i-logfraedi/](http://www.stjornarradid.is/efst-a-baugi/frettir/stok-frett/2011/10/28/Nidurstodur-uttekta-a-kennslu-i-logfraedi/)>.

<sup>38</sup> "Evaluation of Teaching and Study of Law in Icelandic Higher Education Institutions: A Report Commissioned by the Ministry of Education, Science and Culture" (July 2011), at 229, online pdf: Stjórnarráð Íslands <[www.stjornarradid.is/media/menntamalaraduneyti-media/media/MRN-pdf/Uttektarskyrsla.pdf](http://www.stjornarradid.is/media/menntamalaraduneyti-media/media/MRN-pdf/Uttektarskyrsla.pdf)>.

a general guideline from the governing body, that is the Ministry, there is no minimum level of quality that an Icelandic legal education must attain. Therefore, this burden is placed upon the educational institutions. This has the potential to create a divide between the different universities and making it more difficult for students to attain a guaranteed quality education. The report, however, does not address issues pertaining to the education itself that each institution provides and this is a shame as it could have provided an excellent platform to begin discussions on what a good legal education is or should be. As of today, no report on the quality of Icelandic legal education has been published, describing its development and what should be included in it.<sup>39</sup>

### 3. 1 The University of Iceland

The University of Iceland is the largest university in Iceland and, as previously stated, was founded in the year 1911. The university houses around 13.000 students in various different faculties.<sup>40</sup> The campus is smaller in size than at McGill university and the student body is not as varied. It is a public university and applications are free and open for everyone who has completed the matriculation exam (i. *stúdentsspróf*). Some faculties have extra criteria as well.

The university has a relatively large main campus, located close to the city centre. The university has various different student societies, although most of them are connected to a specific faculty and not to other common interests of the students.<sup>41</sup> The university of Iceland is perhaps a minor reflection of Icelandic society in general, most of the students appear not to visibly belong to a minority group (most of them are white, non-disabled etc.). Statistics show, however, that the immigrant population in Iceland is growing consistently and that around 10% of the student body during the academic year 2018-2019 were foreign students.<sup>42</sup>

In 2015 the University created a working group aimed at increasing knowledge, research and to support informed discussions on multiculturalism at the university and within

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<sup>39</sup> Reports on the quality of academic departments in Icelandic universities are now regularly published guided by The Quality Enhancement Handbook for Icelandic Higher Education. See “Quality Enhancement Handbook for Icelandic Higher Education” 2017, online: *Quality Board for Icelandic Higher Education* <[www.en.rannis.is/media/gaedarad/Final-for-publication-14-3-2017.pdf](http://www.en.rannis.is/media/gaedarad/Final-for-publication-14-3-2017.pdf)>. It should be noted also that the Law Department of the University of Iceland has recently published a report of a self-review See here: “University of Iceland, Faculty of Law, School of Social Sciences, Self-Review Report” (April 2020), online: University of Iceland, <[www.hi.is/sites/default/files/atli/pdf/skyrslur/fl\\_self\\_review\\_report\\_qef2\\_open.pdf](http://www.hi.is/sites/default/files/atli/pdf/skyrslur/fl_self_review_report_qef2_open.pdf)>.

<sup>40</sup> “Nemendur-skráning nemenda”, online: *Háskóli Íslands* <[www.hi.is/kynningarefni/nemendur](http://www.hi.is/kynningarefni/nemendur)>.

<sup>41</sup> “Nemendafélög”, online: *Háskóli Íslands* <[www.hi.is/nemendafelog](http://www.hi.is/nemendafelog)>.

<sup>42</sup> “Nemendur-erlendir nemendur”, online: *Háskóli Íslands* <[www.hi.is/kynningarefni/nemendur](http://www.hi.is/kynningarefni/nemendur)>. See also Immigrants and persons with foreign background 2019” 2 December 2019, online: *Statistics Iceland* <[statice.is/publications/news-archive/inhabitants/immigrants-and-persons-with-foreign-background-8903/](http://statice.is/publications/news-archive/inhabitants/immigrants-and-persons-with-foreign-background-8903/)>.

Icelandic society as a whole. Notwithstanding a conference that was held in 2016, it appears that the working group has not published their conclusions anywhere. It appears to be mostly a venue for an exchange of academic knowledge between participants in the group.<sup>43</sup> When studying the website of the University of Iceland it is clear that the university has placed a great emphasis on equality in all of its actions and policy making. The university has its own equality policy which in turn is based on the act on equal status and equal rights of women and men as well as the equality clause in the Icelandic constitution.<sup>44</sup> There are several equality committees within the university and an advisory committee on the rights of the disabled, as well as several research centres on these issues. The university has also published several reports on the status of these issues within the university, most of them regarding equality with an emphasis on gender equality.<sup>45</sup> In the most recent report on equality at the university a small part is spent on the status of students with foreign backgrounds and it is alarming that 41% of employees and 44% of students thought, when asked, that the working environment of the university discriminated against people based on origin or colour.<sup>46</sup> This is a number that should give rise to increased attention and research into this field. However, that has so far not been the case. It can be argued that this subject in Iceland is continuously growing and becoming increasingly pressing with more and more people with diverse immigrant backgrounds moving to the country. This report should prompt the University of Iceland to study the conclusions in it further in order to create a more inclusive environment for every student and employee, with the goal of creating a more diverse student body and, consequently, a more diverse graduating group of professionals ready to work in an increasingly globalized world.

The Strategy of the University of Iceland 2016-2021 states that the values of the University of Iceland are academic freedom, professionalism and equality.<sup>47</sup> The plan states that one of the goals of the university is to promote equality and diversity within the University. The measures used to achieve this goal will be to analyse the student body and apply intervention and promotions if systemic barriers are found to be in place or if underrepresented groups need support. There should be an assessment of a gender-based wage gap and a reform plan created as is deemed to be needed. There should also be support for administrators' knowledge of diversity and equal opportunities and the creation of an equality award will take

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<sup>43</sup> "Fræði og fjölmening", online: *Háskóli Íslands* <[www.hi.is/haskolinn/fraedi\\_og\\_fjolmenning](http://www.hi.is/haskolinn/fraedi_og_fjolmenning)>.

<sup>44</sup> "Jafnréttisáætlun Háskóla Íslands 2018-2020", at 1, online pdf: *Háskóli Íslands* <[www.hi.is/sites/default/files/atli/pdf/kynningar/baeklingar/jafnrettisaaetlun\\_hi\\_2018-2020.pdf](http://www.hi.is/sites/default/files/atli/pdf/kynningar/baeklingar/jafnrettisaaetlun_hi_2018-2020.pdf)>.

<sup>45</sup> "Jafnrétti í HÍ", online: *Háskóli Íslands* <[www.hi.is/haskolinn/jafnretti\\_i\\_hi](http://www.hi.is/haskolinn/jafnretti_i_hi)>.

<sup>46</sup> "Staða og þróun jafnréttismála við Háskóla Íslands árin 2012-2016", at 64, online pdf: *Háskóli Íslands* <[www.hi.is/sites/default/files/atli/pdf/skyrslur/stada\\_og\\_throun\\_jafnrettismala\\_2012-2016.pdf](http://www.hi.is/sites/default/files/atli/pdf/skyrslur/stada_og_throun_jafnrettismala_2012-2016.pdf)>.

<sup>47</sup> "Strategy of the University of Iceland 2016-2021", at 4, online pdf: *Háskóli Íslands* <[www.hi.is/sites/default/files/atli/pdf/kynningar/baeklingar/strategy\\_of\\_the\\_university\\_of\\_iceland\\_2016-2021.pdf](http://www.hi.is/sites/default/files/atli/pdf/kynningar/baeklingar/strategy_of_the_university_of_iceland_2016-2021.pdf)>.

place. The university's official language strategy will also be revised.<sup>48</sup> It is never mentioned in the plan that academic employees' knowledge of equality and diversity should also be supported or that it should be reflected in the academic teaching and course options.

The Law faculty also has, in many ways, a similar action plan for the years 2016-2021, although it only mentions briefly the term 'equality'.<sup>49</sup> It is clear that the university has ambitious goals when it comes to equality, especially with regard to gender equality. Information on the ambition and strategies regarding other kinds of equality is more undefined and harder to come by. It is, therefore, interesting to study whether that is reflected in the available subjects and teaching, which occur after a student has been accepted. According to the faculty's website the list of required courses contains the 'standard' law courses that probably most law faculties in the world have as prerequisites for graduating, such as constitutional law, contractual obligations and property law.<sup>50</sup> There is not one required course that has critical race theory, gender or disability studies either reflected in the name or the course description. When looking further at the complementary courses there is one regarding violent offences from the standpoint of women's rights and one on equality and the ban against discrimination. However, none included the words race, gender or feminist legal theory in their name.<sup>51</sup>

As is the situation at McGill it is not possible to deduce that these issues are never raised in class at the University of Iceland by the teachers or in a text the students have to read, however, a lot can be deduced from a name and a course description. All these issues concerning equality that the University of Iceland has emphasized do not seem to be reflected in the courses available to law students, in spite of the faculty's and the university's open commitments to these issues. According to the information available it appears that the University of Iceland has numerous effective policies on equality issues, especially when it comes to gender equality. It is, however, wholly lacking when it comes to the law faculty's subject availability on these issues. Especially when it comes to issues relating to race, sexual identity and other minority groups. There appears to be a gaping hole there. The concluding chapter will focus on a comparative analysis and possible suggestions for both universities to create a more diverse and inclusive experience for all law students at each respective institution, regardless of gender, race or sexual identity.

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<sup>48</sup> *Ibid* at 16

<sup>49</sup> "Stefna Lagadeildar 2016-2021", at 1, online pdf: *Háskóli Íslands* <[www.hi.is/sites/default/files/helgash/stefna\\_lagadeildar.pdf](http://www.hi.is/sites/default/files/helgash/stefna_lagadeildar.pdf)>.

<sup>50</sup> "Lögfræði, BA, 180 einingar", online: *Háskóli Íslands* <[https://ugla.hi.is/kennsluskra/index.php?tab=nam&chapter=namsleid&id=030000\\_20206&kennsluar=2020](https://ugla.hi.is/kennsluskra/index.php?tab=nam&chapter=namsleid&id=030000_20206&kennsluar=2020)>.

<sup>51</sup> "Lögfræði, mag. jur., 120 einingar", online: *Háskóli Íslands* <[ugla.hi.is/kennsluskra/index.php?tab=nam&chapter=namsleid&id=031000\\_20206&kennsluar=2020](http://ugla.hi.is/kennsluskra/index.php?tab=nam&chapter=namsleid&id=031000_20206&kennsluar=2020)>.

## 4 Conclusions

It is clear from the discussion above that both universities ought to consider improvements when it comes to including diversity and inclusivity in the actual legal education they offer. McGill university, being situated in Canada, has a long tradition of engaging with people from diverse backgrounds and different cultures but Iceland has for the most part been quite homogeneous until recent years. However, Iceland is not a populous country and the university campus is small on an international scale. Therefore, in many aspects implementing changes can often be done faster with more rapid advancements. These two countries and institutions could learn from each other, as their general values are the same even though their social landscape is vastly different. Both universities appear to claim to strive for a diverse student body, McGill perhaps more publicly than the University of Iceland, in order to create an inclusive group of legal professionals to serve each respective society.

There are opportunities in the two institutions discussed in this essay to change the way legal education is organized. There is an ongoing debate as to whether it is more effective to teach ‘critical’ course, such as critical race theory or critical feminist theory, as separate courses or implement their material into required courses which all students must take. Courses that focus on theoretical perspectives of members of marginalized communities are often referred to as ‘outsider courses’. When ‘outsider courses’ are not effectively incorporated into the core curriculum it is highly unlikely that students who do not identify with the relevant marginalized issues each time will choose to study them. If ‘outsider courses’ are taught separately it gives the teachers and students an opportunity to thoroughly examine the elements of each theory and how it appears in everyday life of individuals. However, if the theoretical thinking of critical theories, or ‘outsider course’, is implemented in the required core courses of a legal education it has the potential to reach every law student. This, in turn, will require each student to, at least at some point, possibly rethink his or her ways of legally rationalizing everyday issues. There appears to be a growing movement in the direction of implementing the second option.<sup>52</sup> One of the main arguments for this is that the social structures of society are constantly evolving and implementing the ‘outsider jurisprudence’ into the core of legal education is an effective way to better prepare today’s law students for tomorrow’s world. This will gradually influence the legal profession as a whole which must adapt in order to be able to thrive and serve each and every group in society.

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<sup>52</sup> Brenna Bhandar, “Always on the Defense: The Myth of Universality and the Persistence of Privilege in Legal Education” 2002 14:2 CJWL 341 at 348

Neither McGill University or the University of Iceland appear to have implemented the theoretical thinking of ‘outsider jurisprudence’ into their required course. There is a need for both institutions to analyse the actual teaching that is undertaken at each respective institution and the course subject contents in order to evaluate whether they are actually meeting both the students’ and society’s need of full representation and diversity. If done properly it could have a profoundly positive effect on the legal professions and legal interpretation in both countries.



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