Title:

*Comparing Legal Education Within Canada: New Tools to Go Beyond the Usual Distinctions*

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Abstract:

To date, the distinction between civil law and common law traditions has framed most of the analysis of legal education in Canada. The literature in the field, from historical studies to discussions of current practices, remains divided along the divide between the legal traditions. This is so although Canadian law faculties, regardless of their legal traditions, face common contemporary challenges. Suffice in this regard to cite pressures from professional regulators toward harmonization with a view of enabling greater mobility of jurists, or national objectives such as reconciliation with Indigenous Peoples. The analysis in silos fails to account for the occurrence of similar phenomena across the traditional boundary, and the diversity that exists within each sphere.

I therefore propose to leverage analytical tools coming from social sciences to remedy these shortcomings and engage more fully with the common trends as well as inherent diversity within Canadian legal education. Borrowing both from the sociology of organizations (e.g. focusing on “core, enduring, and distinctive” characteristics) and social anthropology (e.g. portraying “worlds of meanings”), the concept of “institutional cultures” is a promising tool for this purpose. While legal tradition is a significant force shaping legal education, so can other structuring elements such as language, institutional history including leadership and membership, socio-political environment, etc. Institutional cultures include legal traditions among multiple other relevant considerations.

Social sciences have not pondered on the adequacy of concepts such as culture any less than comparative lawyers on that of legal orders, legal cultures or legal traditions. From the robust epistemological debates within each discipline along these lines, we learnt to recognize the limitations embedded in such concepts. Modern social anthropologists no longer attempt to depict a culture as a monolithic, consensual, isolated world of meanings; organizational sociologists no longer pretend to explain the performance of economic actors on the basis of their organizational culture alone; comparatists no longer rely solely on functional equivalencies to make their claims. Institutional cultures, much like legal traditions, can therefore be leveraged as powerful analytical tools, embraced in their complexity and imperfection.

Applying the concept of institutional culture to select law faculties across Canada has enabled me to highlight a number of meaningful differences among them. In turn, such differences tell us something about how different groups approach law, the purpose they give to legal education and the manners in which they carry it out. The study of histories, socio-political environments, and changing leadership and membership in these institutions show that law faculties nurture distinct epistemological approaches to law. My research relied on three case studies (Département des Sciences Juridiques à l’UQAM, University of Alberta Faculty of Law, and Faculté de droit à l’université de Moncton), analyzed each thanks to interviews with faculty members, on-site observations and historical research. UAlberta purports to train competent generalist lawyers; UQAM focuses on educating social justice-oriented lawyers critical of the legal status quo; and UMoncton seeks to sustain the cultural development of a minority language community. Indeed, whether law means an empowering tool, a set of rules for social order, or a system of organized domination carries implications for why and how to educate future jurists.

Similar means are available to each law faculty to convey its legal and/or socio-political worldview into legal education: curricular requirements and offerings, admissions policies, organized research, labelling practices, structured relationships with other stakeholders, etc. While legal traditions certainly orient certain choices, other structural components of institutional cultures play a similar role. The unique set of factors constitutive of each law faculty in Canada leads to a tangible pluralism in legal education, even if its full potential has not fully realized to date.

This inquiry leads to reassess the too-often assumed incommensurability of between civil and common law education, and other preconceptions about legal education. Moreover, like any worthwhile comparative endeavor it teaches as much about others than about the legal education we give and receive ourselves. As we face contemporary challenges in our discipline and society more generally, gaining a fuller sense of where we are headed, why and how can only help us toward formulating responses reflective of our world’s complexity.