

Introduction

Alexandra Popovici and Lionel Smith

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INTRODUCTION

*Alexandra Popovici and Lionel Smith**

Dire le droit à McGill aujourd’hui n’est pas chose facile. Dans les couloirs de cette Faculté transsystémique flottent des mots disparates — *governance*, patrimoine, *consideration*, victime, *jurisdiction*, intérêts — dont les sens et les connotations varient non seulement d’une tradition juridique à l’autre, d’une langue à l’autre, mais également d’un juriste à l’autre. Au quotidien, l’évidence de cette pluralité est frappante. Pourtant, dès qu’on essaie de la capturer, elle semble se volatiliser.

Our endeavour was to answer this inertia and find a project that would render this plurality a tangible reality. And so it was, on 20 December 2011, a group of scholars came together in the Paul-André Crépeau Centre for Private and Comparative Law to discuss a series of short essays that had been written in the preceding weeks.¹ “Land,” “*contrat relationnel*,” “custom,” “filiation,” “*nom*,” “security,” “unjust enrichment,” and “values” were the titles of these texts.

By then, transsystemic teaching had been a fact² of daily life at McGill’s Faculty of Law for over a decade. One ambition at the inception of the transsystemic program in 1999 was that professors would publish collaboratively written teaching materials to share with other scholars the Faculty’s pioneering approach to teaching and thinking about law. That ambition was never fulfilled. Visions of the enterprise were individual and variable, and as always at McGill, different professors taught the same course each in their own fashion. Moreover, the conditions under which the program had come into existence—in a bilingual and bijural faculty—were very particular. It was not easy to see how teaching mate-

* Alexandra Popovici, Professeure et directrice des programmes de common law et droit transnational, Faculté de droit, Université de Sherbrooke. Lionel Smith, Sir William C. Macdonald Professor of Law, Faculty of Law, McGill University; Visiting Professor, Faculty of Law, Oxford University.

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¹ On that date, the Centre was known by its original name, the Quebec Research Centre of Private and Comparative Law. It would be renamed during 2012 for its Founding Director.

² See René Provost, “Fact” (2020) 66:1 McGill LJ 67.

rials usable at McGill could be of use in other places. There was, however, an explosion of literature inspired by, and about, the transsystemic program, most but not all of it written by members of the Faculty.³

But the idea of a collaborative project that aimed to show what was special about the transsystemic program did not go away. Both of us were at the Centre in 2011, and it was the Centre that had been asked to coordinate a publication project that would showcase the transsystemic program. The Centre has, since its creation in 1975, produced bilingual dictionaries of Quebec private law, in which both of us had participated and still do; and one of us had recently contributed to *The New Oxford Companion to Law*,⁴ an alphabetically organized collection of short essays on a wide range of topics. And so, quite naturally, the idea was born of a *McGill Companion to Law*: short, individually-authored essays that would permit a reflection, from the perspective of transsystemic teaching and thinking, on some idea, concept, figure, thing. It would be a collaborative encyclopaedic dictionary of transsystemic legal thought, conceived as a way to reflect upon how the transsystemic program changed our way of thinking about law.

Bien que le projet s'appuyait sur la longue expérience du Centre en matière de terminologie et de dictionnaires juridiques, il ne s'agissait ni d'un dictionnaire ni d'une encyclopédie qu'un lecteur pourrait consulter pour obtenir des informations spécifiques sur un système juridique. Notre projet avait plutôt été conçu pour refléter la diversité et les manières d'être de chacun, chacune. Une brève liste de références était facultative. Les notes de bas de page étaient interdites. Les contributeurs et contributrices n'avaient droit qu'à 1 500–2 000 mots chacun et chacune. Les personnes invitées à participer devaient aussi garder en tête quelques questions directrices : comment votre compréhension du droit a-t-elle été modifiée par la façon dont le droit est enseigné à McGill? Comment l'expérience collective de la faculté peut-elle être utile à d'autres juristes, qu'ils ou elles soient ou non en mesure de mettre en œuvre un programme

³ For a partial bibliography, see Paul-André Crépeau Centre for Private and Comparative Law, "Selected Scholarly Writing About Transsystemic Legal Education" (last visited 30 March 2021), online: *McGill University* <www.mcgill.ca> [perma.cc/95B5-LRPX]. See also Yaëll Emerich & Marie-Andrée Plante, eds, *Repenser les paradigmes : approches transsystémiques du droit* (Montreal: Yvons Blais, 2018).

⁴ Peter Cane & Joanne Conaghan, eds, *The New Oxford Companion to Law* (Oxford: Oxford University Press, 2008). We are both also devotees of the equally extraordinary (and single-authored) David M Walker, *The Oxford Companion to Law* (Oxford: Clarendon Press, 1980).

d'enseignement juridique bijuridique et bilingue? Qu'a-t-on appris, dans le cadre de ce programme, qui puisse être utile à d'autres?

The idea was always that the project would grow organically. There was no direction from the editors regarding the subjects of the entries. On the contrary, they reflect the idiosyncrasies of their authors, and the plurality of their approaches to law. The editors had imagined that there would even be more than one entry with the same title. Each draft entry was first reviewed by the editors, the present authors, with comments sent to the author. The revised entry was then circulated among the participants in the project: those who had written entries, and those who had expressed interest in writing in the future. Most participants were professors in the Faculty, although some were colleagues from other universities who had taught in the transsystemic program. A group of entries was then discussed and debated at a meeting of the project, sometimes including invitees whom the editors knew had research interests related to the entries in question. Following further revisions by the authors, the entries were published on a dedicated website. In this way, over the next five years, the project grew until twenty-eight entries had been approved. At that time, the project unfortunately had to come to an end.

Pourtant, la richesse de ces textes et de leur assemblage ne pouvait rester sous silence. Leur publication était nécessaire : elle permettait de mettre un terme à notre entreprise tout en conservant à jamais ce projet d'*écriture doctrinale*⁵. Évidemment, tout comme la *propriété* moderne, le projet était imparfait⁶, mais sa pluralité et sa diversité avaient à elles seules une valeur et une portée : rassembler dans une même œuvre et autour d'une même table des juristes d'horizons différents (quant à leurs expertises, leurs perspectives), qui, malgré leur proximité physique et leur aventure commune (l'enseignement transsystème à McGill), n'avaient pas la chance de se lire et de se commenter. La forme brève, authentifiée et datée des textes permettait ce dialogue nécessaire et participait à la collégialité de la faculté. D'une certaine manière, assister aux réunions était comme participer à un moment transsystème « *on steroids* »⁷!

Le transsytémisme a son propre chronotope. Comme la coutume⁸, il nous habite sans que nous puissions réellement le définir. Comme le souligne le Professeur David Lametti au sujet de la *destination*⁹, le transsys-

⁵ Vincent Forray, « Écriture doctrinale » (2020) 66:1 RD McGill 59.

⁶ Pierre-Emmanuel Moysse, « Propriété » (2020) 66:1 RD McGill 145 à la p 147.

⁷ Andrea Bjorklund, « International Arbitration » (2020) 66:1 RD McGill 91 at 91.

⁸ Voir Jaye Ellis, « Custom » (2020) 66:1 RD McGill 41.

⁹ David Lametti, « Destination » (2020) 66:1 RD McGill 47.

témisme est mis en œuvre sans que nous sachions exactement de quoi il s'agit. Bien qu'indéfinissable, un constat demeure : c'est un lieu de dialogue, de friction, de tension. Comme l'iconographie de la *justice aveugle*¹⁰, rien n'y est net et simple, c'est un lieu de questions plutôt que de réponse, un lieu qui nous rappelle notre propre responsabilité¹¹ dans la construction d'un monde que nous croyons plus juste.

The Faculty has evolved. Its unique focus on transsystemic teaching has given way to a preoccupation with the language of transnational law, better-known and perhaps easier to explain to colleagues from other places.¹² The endeavour of publishing the *Companion* in a permanent form aims to preserve a record of an extraordinary period in the life of the Faculty. This has been possible due to the generous support of the *McGill Law Journal* and the willing participation of the authors.¹³

Nous sommes ravis de partager ce projet avec vous.

¹⁰ Voir Desmond Manderson, « Blind Justice » (2020) 66:1 RD McGill 5.

¹¹ Le thème de la responsabilité infuse plusieurs des entrées du *Companion*.

¹² See Daniel Jutras, “Pour en finir avec la Transsystème (*sic*)” in Emerich & Plante, *supra* note 3, 73.

¹³ The entries have been edited and lightly modified by their authors since the original versions were published online. In two cases—Roderick Macdonald and H. Patrick Glenn—publication here is with the consent of their heirs, respectively Ms. Shelley Freeman and Prof. Jane Matthews Glenn.