

## The Last Word

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### INTRODUCTION

When I was asked to speak, I was told that I would have 'the last word'. A long-serving director's retirement might tempt us to think that the Centre for Socio-Legal Studies had accomplished its mission. However, the last word at this conference is not the last word about socio-legal studies. We must remember how relieved Gertrude Stein was when she discovered that she never would read all the books in the Oakland Public Library. We too can be relieved: we will never read all the books to be written in socio-legal studies, no matter how long we continue to work in the field. Just as a favour to the field of socio-legal studies, the powers that be fashioned the European Community and the North American Free Trade Area (NAFTA). This alone will spawn enough law and society questions to keep generations of researchers occupied. Of course, not everyone in power will want to read their reports. But, as they say, what else is new? In short, the last word is: there is not one. It is impossible to foresee the future, but let me briefly sketch one possible direction for our field.

### GLOBALIZATION COMPETES WITH LOCALIZATION

We face a paradoxical expansion of globalization, but, at the same time, we witness increasing withdrawal into localization. We all know that there is an increasing internationalization of culture: as we travel around the world, we cannot hide from McDonalds, Levi jeans, CNN and the BBC, Schweppes tonic water, Japanese cars and cameras as well as miniature toiletries cloned in miniature factories and provided in hotels that look the same in Dakar and London. Music is international. Rock and roll is played wherever young people can plug in instruments. Also, I recently bought a recording of music written by a Hungarian, played by a young Japanese violinist appearing with a German orchestra conducted by an Indian.<sup>1</sup>

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And we cannot hide from each other. Indeed, one of my Japanese colleagues told me that we can all rest easy because all the great sites/sights in Europe are guarded by large groups of Japanese tourists armed with Canons. They will have pictures of anyone who might try to steal or deface these treasures! They are buttressed by other armies of Germans, Americans, and even citizens of the United Kingdom roaming the world armed with Nikons and Minoltas. Business has long been international, but more and more we are seeing business conducted by major corporations that exist beyond the structures of any one nation. These are truly global companies that do business where they see opportunities and staff their organizations with talented citizens of many nations. Such corporations are a potent force for the globalization of culture.

The globalization of law has followed this spread of Western and Japanese culture. At the outset, we must recall that we are in the second wave of this phenomenon. India has long had both its versions of the English language and the common law; countries as diverse as Japan and Chile have adaptations of the German legal tradition. This first wave was the result of colonialism, both economic and intellectual. Today other processes are also at work.

International groups are working to create supranational law dealing with such things as contracts and human rights through the United Nations, the European Community, and other international organizations. There also are more subtle forces. For example, nations that offer major market opportunities for international corporations often have their own regulations dealing with such things as safety, environmental protection, the quality of food, and the like. Those selling in these markets must cope with the law they meet there. One strategy is to comply with the most restrictive regulation. They hope that when they do this, they will also comply with the regulations of less restrictive markets. For example, United States regulation of automobile design influences how cars are built around the world. Its regulations about passenger aircraft design apply to any plane that serves the United States of America. Few manufacturers would design a plane that could not serve this vast market. They modify their designs to please United States regulatory officials. In other situations, manufacturers must meet multiple sets of overlapping if not conflicting standards. Even a small producer of automobiles such as SAAB, must modify some of its cars to meet the special regulations of the state of California and other cars to satisfy conflicting Canadian demands.

International corporations have created a transnational law that governs their operations through standardized contracts that all of those in a given trade use. Even with standardized norms, there are disputes. Most are settled, but some require dispute resolution. Several countries, including the United Kingdom, have long sold judicial services to multinational ventures, and many kinds of private arbitration structures exist as well. Multinationals not only create their own structures for dealings with other multinationals, they also make contracts with governments. The governments in these trans-

actions do not act as sovereigns. They are just another contracting party, and they may not be as powerful as a multinational corporation.

This multinational environment has characteristics that stem from the spread of American culture since the end of the Second World War. Students from around the world have been studying at United States law schools, and they have been returning home with their interpretation of United States law and United States legal culture. Volkmar Gessner points out:

[T]he world market dominated by the English language, American capital and common law reasoning is a home-match for American lawyers who in addition are organized much more in the entrepreneurial form needed for worldwide activities.<sup>2</sup>

Bryant Garth notes that transnational lawyers preach an ideology of free market and stability that may sound apolitical but undercuts the power of a nation to protect workers, consumers or its environment.<sup>3</sup>

We now have not only supranational private legal systems, but multinational governments such as the European Community and NAFTA. Moreover, there are still other transnational institutions that we might call legal. Maureen Cain has asked, 'Are the Olympic Games an international state form, or the European Court of Human Rights, or UNESCO, or Interpol, or the IMF, or the Red Cross . . . ?'<sup>4</sup> However we categorize these structures, such institutions increasingly affect human behaviour. There are even more complex examples of the interplay of public and private governments on the world stage. Alison Brysk has detailed the tangled mixture of public-and-private as well as national-and-international actors involved in the Argentinean human rights crisis.<sup>5</sup> Multinational legal pluralism has come to characterize the institutions that govern more and more of our lives. As always, legal pluralism presents the potential for inconsistent, overlapping, and conflicting rules, procedures, and practices.

At the same time, there is an increasing pressure for particularism, usually well mixed with nationalism or regionalism. Smaller and smaller units demand their own language, flag and, perhaps, law. We can look to Northern Ireland, the former Yugoslavia as well as to the former Soviet Union for case studies of this phenomenon. Even in nations that seem historically stable, we can see this counter-trend. We must remember demonstrations by French farmers against rulings of the European Community, and the campaign against NAFTA by the Ralph Nader organization. These examples remind us that there will be many instances of resistance to the brave new world of globalization.

## WHAT HAS THIS TENSION DONE, AND WHAT WILL IT DO, TO LAW?

On the symbolic level, we can expect pressure for one world and the globalization of law and legal institutions in the name of order and harmony. We

will see private and supranational entities that govern larger and large spaces. The information highway will extend the span of control. It may be harder for organizations to hide without leaving an electronic trail. Evasion may require greater skill. However, powerful multinational organizations too will be able to use transnational law as a tool to fight regulation.<sup>6</sup> Local authorities may face the threat of defending their actions before the legal bodies of the European Community, NAFTA or other similar organizations.

International capital may seek to cut transaction costs and rationalize regulation in the name of minimizing the competitive advantage of nations that impose little effective governance. Privatization and deregulation are songs still being sung to admiring audiences throughout the world although Prime Minister Thatcher and President Reagan have left office.<sup>7</sup> Socio-legal scholars should remember that the law-and-economics movement preaches that everything has costs. After more than a decade of market-oriented policies, it might be profitable to assess the costs of law and economics teaching which was put in place by governments around the world.

We may find new opportunities for particularism in many forms. We must ask how the new transnational law will affect the law in action, how people will cope with the absence of familiar legal rules or with the presence of unwanted regulation, and how street level bureaucrats will respond to the demands of individuals and the commands coming down from above. Those officials who must apply the rules and policies of the larger units to those who are the targets of regulation may be caught in a web of conflicting reward and punishment systems. Inevitably there will be a counter-movement, advocating decentralization and delegation to regional and local units. Local officials will justifiably claim to know local conditions and to command the knowledge needed to make necessary adjustments at the local level. The experiences of the planned economies of the old Soviet Union and the nations of eastern Europe will be held up as examples to be avoided. Then, as effective control is delegated downward, planners at the transnational level will tend to lose control and exert only influence.

Moreover, an important principle of the sociology of law is that people cope; they are not puppets controlled from above. People will fashion ways to use a mixture of multinational and local law in unanticipated ways to further their own ends rather than those of the distant law-givers. We should expect what Doreen McBarnet has called 'creative compliance' as well as out-and-out evasion. As she notes, those who can afford to hire lawyers can use law against law. All such people need is a plausible argument so that the burden of taking legal action falls on those who would implement the transnational law. Often, knocking down plausible arguments will not be worth the cost.

We can expect, moreover, that the costs of the transition to a global market will affect different regions and different industries unevenly. We can expect local political officials to focus parochial discontent on the faceless bureaucrats in Brussels, the United Nations or other agencies of

globalization. The result often may be symbolic transnational law with a reality of local patterned evasion.

We can expect, then, less than 100 per cent compliance with the brave new globalized legal system. We can also expect the resulting mixture of multinational and local law plus patterns of creative compliance and evasion to produce something very different from we would have found ten to twenty years ago.

## CHALLENGES AND OPPORTUNITIES

The new patterns that will be provoked by the countervailing pressures for globalization and localism will open an opportunity for a truly comparative study of the law-in-action. Donald Black had a vision, perhaps utopian, of scientific laws about law that hold true everywhere.<sup>8</sup> My proposal is more modest. We must seek a payoff from comparative empirical work as the world system changes. Today we know something about the reality of legal systems in the United States of America, the United Kingdom, western Europe and even Japan. We are beginning to look elsewhere, particularly in Asia. Perhaps in ten or twenty years we may conclude that the more things change, the more they stay the same. However, this is not what I expect. As we read studies of, say, how authorities in Northern Spain deal with Basque reactions to the directives of the European Community, we should look for patterns that may be found in similar situations elsewhere.

For example, about twenty-five years ago I spent a year and a half in Chile. I was surprised to discover that outside Santiago few legal officials had up-to-date accurate copies of much of the Chilean law. Large Santiago law firms viewed their copies of the law as a major asset, and lawyers in smaller cities had to make major efforts to stay current. Chile lacked all the competing law book publishers that we take for granted in the United States and the United Kingdom.

However, when I returned to Madison, I started asking what legal materials were, as a practical matter, available to Wisconsin lawyers outside the two largest cities in the state.<sup>9</sup> Once I thought to ask, the answer was not surprising. A lawyer in Racine, Wisconsin has no greater access to all legal materials than a Chilean lawyer in Antofagasta. Much as classical pianists, lawyers around the world have repertoires of things they play constantly, and most of the time they have sufficient sheet music – the statutes, administrative regulations and cases – to practice. However, if they meet a problem out of their repertoire, they are likely to lack the legal resources to cope with it. Perhaps I could have recognized that legal materials were not uniformly available to lawyers throughout the state without spending time abroad, but my experience in another legal system made me sensitive to the point. Comparative law at its best will help us see what we have long failed to notice about our own legal systems.

## IN CLOSING

The Centre for Socio-Legal Studies has solid achievements and world-wide fame. All of us from around the world can say 'well done' to Donald Harris and his colleagues. Not only have they done memorable work, but they have kept an institution alive in the face of budget cuts and the opinions of those who did not see the impact of law as problematic. Nonetheless, I am sure that Don Harris would be the first to say there is still important work to be done. The legal world is changing. This means that the challenges for the law and society community have changed too. Just as the social structures of the cold war seem to be dead or dying, the optimistic world of progressive reform through law seems a bit of history. Perhaps the eras of Thatcher and Reagan also are passing into history. If globalization matched by nationalistic or religious localization is what comes next, we can expect the functioning legal systems of the world to change as well. Charting and challenging that change should keep us busy. Those of us in the United States law and society community are eager to continue our long and valued association with those at the Oxford Centre. Again, there is not a last word; only new challenges. Would we have it any other way?

## NOTES AND REFERENCES

- 1 The compact disk features Midori with Zubin Mehta conducting the Berlin Philharmonic playing Bartok's Violin Concertos 1 and 2 (Sony SK 45941).
- 2 Personal communication from the author.
- 3 B.G. Garth, 'Transnational Legal Practice and Professional Ideology' (1985) 7 *Issues of Transnational Legal Practice* 3.
- 4 M. Cain, 'Introduction: Towards an Understanding of the International State' (1983) 11 *International J. of the Sociology of Law* 1.
- 5 A. Brysk, 'From Above and Below: Social Movements, the International System, and Human Rights in Argentina' (1993) 26 *Comparative Political Studies* 259.
- 6 R. Rawlings, 'The Eurolaw Game: Some Deductions from a Saga' (1993) 20 *J. of Law and Society* 309.
- 7 See, for example, H. De Soto, *The Other Path* (1989).
- 8 D. Black, 'The Boundaries of Legal Sociology' (1972) 81 *Yale Law J.* 1086.
- 9 See S. Macaulay, 'Lawyers and Consumer Protection Laws' (1979) 14 *Law and Society Rev.* 115.