LAW IN THE UNIVERSITY: COMMENTARY

R. Steven Turner*

The task of commenting on all three of the immensely stimulating presentations which we have heard today far exceeds my ability. I propose, therefore, to focus on some aspects of President Harry Arthurs's presentation from the previous evening.[1]

On that occasion Harry Arthurs organized his remarks around motifs drawn from classical mythology; while listening, however, I was struck rather my the underlying anthropological metaphor to which he had continual recourse. He presented us with an exploration into what anthropologist Clifford Geertz would have called the "ethnography" of the "local knowledge" of an academic discipline--in this case, law or the profession of law in its academic guise.[2] Under the intrepid and perceptive leadership of Professor Arthurs, those of us hitherto foreign to the folkways of Ludlow Hall were led into the very bowels of that closed and alien society and exposed to some of the central rites, rituals, and mythologies of "law school culture." Today we have observed still more closely some of the other natives at work and play, although, it would seem, a highly skewed sample of natives who have been corrupted from ethnographical purity by cross-cultural contacts and influences, or by moral and political agendas of largely foreign origin.

Moreover, Professor Arthurs gives the impression that we have reached this peculiar academic culture just in time. Far from being shown a static culture frozen hermetically in time, we have been presented with a culture on the brink of a radical transformation, and the forces of that transformation have been clearly demonstrated. Law school culture, according to Harry Arthurs, is a culture torn between the milieu of the profession on the one hand, and the model of other academic disciplines--other "local academic cultures"--on the other. The former represents the values of hierarchy, practicality, self-sufficiency, regulation, resistance to specialization, rationalism, and sometimes anti-intellectualism. The latter influence--what we might very inadequately call graduate school culture--represents self-reflexivity and mordant self-criticism, fragmentation and specialization, openness to transdisciplinary perspectives and--perhaps--greater receptivity to radical social agendas. These conflicting models might have produced a condition of equilibrium, save for the dynamic new expectations faced by legal education today. The law as the road to "empowerment," the university milieu itself, and changing career expectations of students, intense new social and ethical critiques--these forces are moving the traditional law school ever more toward the "graduate school model." It is fair to say that Harry Arthurs, and indeed all the speakers here today, consider that development desirable, necessary, and probably unavoidable.

---

*Department of History, University of New Brunswick, September 30, 1988.

[1]"Prometheus Unbound: Law in the University."

[2]Clifford Geertz, "The Way We Think Now: Toward an Ethnography of Modern Thought" in C. Geertz, ed., *Local Knowledge: Further Essays in Interpretive Anthropology* (New York, 1983), at 147-163.

Anthropological expeditions are stimulating, but at the end the boat always awaits to take the observer home, back to his own turf, his own self-interests, and sometimes the question of an immigration policy. If the transformation of the Canadian law school is at hand, then what is in it for the university? What is in it for those of us from other disciplines, other island-cultures which share the common waters of the sprawling university archipelago?

If we were speaking of the traditional law school, then the question, "what does the university get from the faculty of law" would be easy to answer. Law Schools were, and are, as Harry Arthurs has frequently stated, prestigious institutions for the universities which harbour them. They provide important and reassuring links to the legal, political, and bureaucratic elites upon whose good will the well-being of the university depends, and their very existence is a standing refutation of the slander of the university as an ivory tower. For scholars in history, political science, and sociology, admission to the faculty of law constituted a chief reward for academic achievement among our top students. Best of all, law schools provided these invaluable services cheaply. True, the salaries of law professors needed to exceed those of other academics and even then the turnover remained high. But this was more than offset by the fact that law schools traditionally required little support funding beyond a modest outlay for the library, and that alone among academic units law schools tolerated and even prided themselves on high student/teacher ratios and resisted internal differentiation by field.

Given these facts, the first thing which we outsiders may have to fear from the erosion of traditional law school culture and the emergence of the "graduate school model" is a competitor. Harry Arthurs has pointed out that the emergence of what he calls "clinical legal education" and a more open acceptance of internal specialization is likely to make law schools much more expensive than in the past. Faculties of Law may find themselves plunged more so than at present into the competitive hurly-burly of budget fights. The transformation of the law school may not only lead to tensions between the law school and the profession, but could also conceivably threaten the law school's prestigious and privileged position within the university itself.

But what of the *intellectual* exchange between the traditional law school and the rest of the university. Of this there is little to say, for that exchange was occasional and minimal at best, nonexistent and unsought at worst. It is on this front that those of us outside the faculty have most to expect from the transformation of the law school.

As the law school borrows from the academic cultures of other disciplines, so, too, will they borrow from it. The transformation of the law school will lead to closer and more intense interaction between legal scholars and those in other disciplines. This will occur in undergraduate teaching programmes, joint research projects, joint arrangement for supervision of students, mutual political initiatives within and beyond the university, and colloquiums like this one. It is certain that in this exchange both sides will benefit. Indeed, some of the very characteristics

of "law school culture" which Harry Arthurs portrayed as limitations may emerge as sources of real strength, goods of value in the cultural barter between law and its new and now-accessible neighbors.

In his address Harry Arthurs noted that law today "exhibits few of the signs of a distinct intellectual tradition; . . . it has no special way of understanding the world analogous to that of the physical or social sciences." With all respect, and without wishing to sound sophistical, I wonder if that very characteristic might not embody a significant and valuable epistemological tradition. What I have in mind is not exactly the practicality of law or legal thinking; lawyers have no monopoly on practicality. It is rather that outsiders to that culture tend to think of law, especially in its common law guise, as committed to an "epistemology of the particular." We might describe this commitment as a radical awareness that in the last analysis the cutting edge of human reasoning about social matters lies at the intersection of general principles with particular situations. It reflects a reverence for "the case,"--the notion of "case" now raised to the level of an epistemological concept, the locus of principle converted into action. Now I am not about to caricature all social science analysis as lost in the general, the theoretical, and the statistical. But I know from my own discipline of history--which after all used to pride itself for revering the particular as a distinct intellectual approach--that the temptation to fall back upon generalities and models before the bewildering complexities of the particular is ever-present. If legal studies can learn from other disciplines the importance of historical tradition, of self-criticism, of awareness of the larger social context of the law and its impact, then other disciplines can learn from law that ultimately there is no intellectual escape from the particular and its intersection with general principle, at the level of what the legal mind calls "the case."

Let me pursue these vague remarks a step further. Harry Arthurs also noted of the law that "while its academic culture is distinctive, it does not own an exclusive object of scrutiny." In the intellectual barter of the law with other disciplines, this also is a characteristic of value which the law has to offer. The very fact that the law has no special object of study or analysis makes it a powerful solvent to act upon the barriers which hold disciplines apart and prevent a common discourse among academic fields. The facile readiness of lawyers to make themselves instant experts on lower back pain, the financial affairs of trust companies, or the principles of automotive engineering certainly does not prepare them for surgery, financial management, or auto design. But, as Harry Arthurs suggests, it equips them ideally to facilitate negotiations between parties with few common interests and even limited grounds of common discourse.

Let me offer an example of what I mean, one drawn from my own special interests. One of the most momentous scientific developments of the last decade was the discovery of techniques for recombinant DNA research--gene splicing. With this discovery came considerable anxiety about potential biological hazards that might be accidentally created in the course of this research, and agitation from elements within the profession for regulation of research in the public interest. This agitation culminated in the prestigious Asilomar Conference of 1975, an elite international conference of molecular biologists and related specialists sponsored by the American National Institutes of Health.

Needless to say, the prospect that research might be regulated engendered intense opposition, and most observers agree that until the eleventh hour of the Asilomar Conference the opposition party held sway. One of the last sessions at Asilomar, however, was a panel of lawyers, who spoke at length on legal liability of scientists for accidents arising out of their research and how an over-blown appeal to academic freedom might provoke still greater restriction on inquiry than anything contemplated at Asilomar. All observers agree that one result of the panel was a transformation of the scientists' attitude. At the final session the next day, the assembled scientists voted almost unanimously to approve a schedule of restrictions and safety measures which, in much-modified form, have significantly controlled and regulated research in the field until very recently.[3]

How was this panel of lawyers so able to transform the thinking of these molecular biologists? At one level the answer is obvious: the lawyers and their talk of legal liability frightened the assembled super-scientists to their very bone marrow. But as the comments of the participants at Asilomar make clear, this interpretation partly trivializes the effect. What the panel of lawyers achieved was a breaking down of the walls of assumptions and attitudes behind which the scientists had fortified themselves. They managed to break out of the closed circle of values embodied in terms like "freedom of research" or bland abstractions such as "the social responsibility of scientist." They opened the question up to a broader range of discourse in which other values and other perspectives could be meaningfully represented. For those scientists, legal perspectives acted as an intermediary, making possible for the first time a real dialogue with individuals representing traditional perspectives of ethics, administration, and politics. One of these perspectives, it should be noted, was a truer appreciation of power relationships and the sanctions potentially available to governments, regulators, and litigants. The intrusion of law into the discussion not only changed the *actions* of the scientists, it also broadened their way of *thinking* about the question.

I suggest that legal perspectives might play a similar role in many of our future transdisciplinary exchanges within the university. The legal perspective on any object, properly understood, is a total perspective with a single language. It is a perspective to which all other disciplines, all partial perspectives as it were, are challenged to contribute, and to contribute in the common language of discourse determined by the legal perspective. Law does not have the option of becoming one discipline among others; it does have the option of facilitating the transdisciplinary discussion which has always been so sadly lacking in the modern university. That it will accept this role and play it effectively is what the university has *most* to hope and to expect from the transformation of the traditional law school.

I began these remarks by briefly citing anthropologist Clifford Geertz and his call for an "ethnography" of the forms of "local knowledge" embodied in academic disciplines and professional specializations. In conclusion I quote Geertz at length and in a more serious vein. The value of such an ethnography, Geertz

---

[3]Nicholas Wade, *The Ultimate Experiment* (New York: 1979), at 41-53.

writes, lies in the fact that "it will deepen even further our sense of the radical variousness of the way we think, because it will extend our perception of that variousness beyond the merely professional realms of subject matter, method, technique, scholarly tradition, and the like, to the larger framework of our moral existence . . . . The problem of the integration of our cultural life becomes one of making it possible for people inhabiting different worlds to have a genuine, and reciprocal, impact upon one another. . . . And for that, the first step is surely to accept the depth of the differences; the second to understand what these differences are; and the third to construct some sort of vocabulary in which they can be publicly formulated--one in which econometricians, epigraphers, cytochemists, and iconologists can give a credible account of themselves to one another."[4] Although we would wish to substitute economists, philosophers, historians, and social scientists for this list of disciplines, the central point is clear: in this high programme the law school of the future has a leading role to play, and today's seminar signals in part its willingness to take on that formidable responsibility.

[4]Geertz, *supra*, note 2 at 161.