"Community Without Propinquity" — Teaching Legal History Intercontinentally

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INTRODUCTION

Legal education has always responded to, perhaps even been driven by, available technologies of information dissemination. Before printing and then mechanical and eventually electronic copying were readily available and cost-effective, some mixture of manual form copying, apprenticeship, recitations, keeping of "commonplace books", and mooting dominated legal education. The emergence of textbooks and casebooks followed rapid, multiple transformations in publishing technology and administration in the 19th century. "Socratic" instruction supplanted lectures in many universities once the implications of readily available, relatively cheap textbooks and casebooks became apparent to law teachers and students alike.[1]

THE "VIRTUAL CLASSROOM": DREAM AND NIGHTMARE

At the cusp of the twenty-first century, law teachers find themselves in another unprecedented period of technological change: available means of presenting and distributing information are daily transforming. The "information age" seems, genuinely, to

be upon us. The present is difficult to comprehend and the future is beyond our imagination. What is clear, however, is that computer technologies and telecommunications have changed our world forever. Future transformations, whatever they may be, will be immense. Legal scholarship and legal publishing will change,[2] and the implications for the development of different modes of legal education are potentially profound.[3] Just as printed books made the practices of "commonplacing" less useful, and just as reduced printing costs made lecturing redundant,[4] so too the current explosion of new communication technologies threatens to destabilize the "Socratic" or discussional classroom in a number of positive or negative ways.

Newly developing communication technology (hereafter "DCT")[5] collapses both time and space.[6] It holds forth the promise of liberating researchers, teachers and students from the normal constraints of our materiality. DCT offers the hope of developing both inter-institutional and intercontinental teaching exchanges, and of fostering student community across huge spaces, cultural differences, and, perhaps eventually, languages. Huge resources of pent-up pedagogical creativity might be unleashed when we transcend the constraints of the printed page and the bricks and mortar of the our classrooms.

The advent of the "Virtual Classroom" and "Virtual Campus" may also produce a significant education-equity benefit. If higher education can be delivered without the physical presence of students being required on university campuses, the costs of that education to both students and institutions ought to diminish.[7] Imaginative use of DCT might make legal education possible for those who otherwise could not afford it. Students would no longer need to uproot themselves from Coober Pedy or Iqaluit or Timaru to be educated in Canberra, Ottawa or Wellington.[8] Furthermore, the anonymity of the virtual community offers protection for those whose shyness or physical markers as "Other" — whether because of gender, sexual orientation, disability, ethnicity or cultural background — may make higher education otherwise unthinkable.[9] The opportunity to create an educational community for those for whom it previously was impossible is no less attractive than the substantive pedagogical benefits of employing DCT in legal education. Genuine equality of opportunity (or something closer to it than we have seen before) might become possible.

All dreams cast a dark shadow. There is a danger that DCT may not merely fail to attain its potential but might actually be subversive of both the scholarly community and of quality, imaginative education. As Jack Goldring has perceptively warned, "Technology is an aid to or instrument of education. It is not education itself. Law teachers should not be mesmerised by it".[10] The outlines of this corrupted dream can be dimly perceived: the high (even prohibitive) cost of using technology creatively; the spectre of corporate control of the internet (and hence the means of producing and disseminating scholarly knowledge); the danger that teachers become caught-up in an intense downward spiral of ever more time-consuming tasks associated with DCT for ever-diminishing educational returns.

There is indeed something about DCT, at least as we experience it in 1999, which threatens to consume our lives with the relatively pointless work of adding "bells and whistles" to that which we already do through traditional, and arguably equally effective, educational methods.[11] Moreover, the possibility of reducing all higher education to neatly pre-packaged modules of information, presented and evaluated in uniform ways, foretells an undesirable bureaucratization or routinization of the educational process, as well as a "proletarianization" of the professoriat.[12] Not surprisingly then, legal educators, even those most committed to the creative use of DCT, remain educational conservatives. It does seem that the most valuable education is self-learned; that time spent on the old-fashioned tasks of reading, thinking, and writing with care is more productive than time spent clicking mouse buttons or staring at flashing images on a screen. The intense, face-to-face, intellectual exchange possible in real as opposed to virtual communities has a quality about it which is impossible to replicate, even in endless hours spent pecking at a keyboard, firing meaning-packed electrons into the void. DCT is not human communication. Many of us have been "flamed", spammed, or subjected to other DCT indignities. What is more, there seems to be something about communicating in these ways which can bring out the worst, not the best, in us as human beings. The Australian National University "netiquette" guide on appropriate email conduct makes the point well:

Remember the human

…

When you communicate electronically, all you see is a computer screen. You don't have the opportunity to use facial expressions, gestures, and tone of voice to communicate your meaning; words — lonely written words — are all you've got. And that goes for your correspondent as well.

When you're holding a conversation online — whether it's an email exchange or a response to a discussion group posting — it's easy to misinterpret your correspondent's meaning. And it's frighteningly easy to forget that your correspondent is a person with feelings more or less like your own.

It's ironic, really. Computer networks bring people together who'd otherwise never meet. But the impersonality of the medium changes that meeting to something less — well, less personal. Humans exchanging email often behave the way some people behind the wheel of a car do: They curse at other drivers, make obscene gestures, and generally behave like savages. Most of them would never act that way at work or at home. But the interposition of the machine seems to make it acceptable.

The message of Netiquette is that it's not acceptable. Yes, use your network connections to express yourself freely, explore strange new worlds, and boldly go where you've never gone before. But remember the Prime Directive of Netiquette: Those are real people out there.[13]

Yet even taking full account of the possible dangers and leaving aside possible pedagogical advantages, there are compelling reasons to explore the use of DCT in law teaching. The first is simply that, in an era of "globalization", aspiring lawyers should have some exposure to the global legal community during the course of their university training. DCT can make this a basic part of legal education much more fully and routinely than even the best educational exchange programs, summer schools or comparative seminars. Secondly, in an era of shrinking faculty resources, DCT opens opportunities to draw on a vast, yet disperse, pool of expertise to provide outstanding instruction in an array of fields that no faculty could on its own provide.

Given these opportunities, it is surprising that few law teachers have taken advantage of the full potential DCT seems to offer. Though course web-sites are now relatively common,[14] it remains rare for law teachers to co-operate in the development of courses of instruction which use DCT to link students and teachers in more

than one country — seemingly the area with most to gain.[15]

OZCAN — AN INTRODUCTION

This paper outlines the creation of an intercontinental course in legal history developed by Faculty members and student research/teaching assistants at The Australian National University in Canberra ("ANU") and British Columbia's University of Victoria in Victoria ("U Vic") and the University of British Columbia in Vancouver ("UBC") during 1997. Surprisingly, perhaps, the course was developed by legal historians at each of the three institutions, no one of whom had any particularly strong affection for computers, modern communication technologies, computer assisted legal education or "law and technology".[16] The impetus for the course was less the appeal of technology than the urge to collaborate, to share ideas, and to teach well. Ours is the only such law course of which we are aware.

The course was developed during the first months of 1997 and offered to students during the second semester of Australia's 1997 academic year, mid-August to November, and the first semester of the Canadian 1997–1998 year, early September to the end of November.[17] The significant difficulties that would have been encountered in shepherding a single course through the bureaucracies of three universities, were avoided by each Faculty offering its own course on comparative legal history to its own students. From an internal administrative perspective, three distinct courses were being offered, each following the rules and procedures of its home institution. However, the course content and, to a lesser extent, evaluation, were similar for students at each institution. Students in all three courses received web-based instruction and were required to participate in web-based discussions. The resulting course was unique in several ways:

1. Four faculty members and a graduate teaching assistant at three institutions separated by many thousands of kilometres created the course;
2. Collaboration produced an innovative course, the first we are aware of which explores comparative legal history between two former British Dominions, that would have been unlikely or impossible without the spur of collaborative teaching;
3. The three classes were linked through the internet, and students

from each institution participated in the learning process as a single group;

4. The trans-Pacific seminar enabled students to learn about each other's countries on the basis of shared course material and, most importantly, through inter-continental discussion between themselves in the virtual classroom.

This paper reflects upon the conception, creation and delivery of the course, with particular attention to the possibilities and limitations of DCT in physical and virtual classrooms.

THE IDEA OF THE COURSE

The course originated as an attempt to reintroduce legal history into the curriculum at ANU. In Australia, like Canada,[18] the study of legal history in universities had sharply declined in the late 1960s and early 1970s. Unlike Canada, however, where legal history enjoyed a remarkable revival as part of the maturing of Canadian legal scholarship during the late 1970s and early 1980s,[19] the subject still suffers the taint of unfashionability in Australia. Before the 1960s, a decidedly English legal history was a compulsory part of most law school curricula in both Australia and Canada.[20] This disappeared with emerging Australian and Canadian intellectual and academic nationalisms that dismissed the English focus as an anachronistic, if quaint, hold-over from an earlier colonial era. In some quarters, in fact, the feeling was actually rather stronger. Teaching (English) legal history, it was argued, perpetuated a Whiggish/Diceyan view of the world, reproducing cultural stereotypes that were thought harmful. But rather than replace English history in the law curriculum with a distinctly Australian or Canadian counterpart, it disappeared entirely from curricula. History did not seem to offer "relevance" of the sort the 1960's reforms of higher education sought to produce.[21] Few legal history courses were offered anywhere in either country by the mid-1970s.[22]

In Canada the 1980s marked something of a renaissance in Canadian legal history, spurred by the work of a diverse group of scholars both inside and outside law schools. By the mid 1990s an antipodean re-birth of legal history was under way. Legal history was in bloom at several universities, nurtured by a few key individuals: the University of Adelaide (Wilf Prest in history and

Alex Castles in law), Macquarie University (Bruce Kercher), La Trobe University (Ian Duncanson, Rob McQueen and, earlier, Chris Tomlins), Griffith University (Mark Finnane), and Flinders University (Suzanne Corcoran). In several Australian universities, most notably the ANU,[23] Macquarie University and the University of Melbourne,[24] Australian legal history is now taught as part of the compulsory first-year program.

Yet despite encouraging signs such as these, a new legal history course at ANU seemed doubtful in the mid-1990s, particularly in light of funding cuts and an on-going program of "rationalization" in the elective program. But the initiative received an important boost by award of a grant by Canadian Department of Foreign Affairs as part of the Faculty Enrichment Program ("FEP"). As part of a program designed to encourage the development of comparative studies outside Canada, this funding provided important moral and material support, in particular the expansion of ANU's library collection of Canadian writers. It also reinforced the move toward a comparative approach to legal history. As Comparative Law had not been offered at ANU since the 1970s, a comparative course in Australian/Canadian legal history offered to plug two gaps in the curriculum simultaneously.

There were also strong pedagogical and scholarly reasons for seeking to integrate Australian and Canadian legal history in a teaching programme. Comparing the experience and cultures of two British "settler" colonies allows exploration of similarity and difference along several historical and socio-legal trajectories. If one mission of historical study is to "render the past familiar and the present strange"[25], then the task of comparative legal history, particularly between similarly situated colonies of the same Imperial and legal metropolis, is doubly worthwhile. Notwithstanding the inheritance of a legal tradition from a colonial power, continued fealty to English case authority, subordination to the Privy Council[26] and other mechanisms of metropolitan"policing" of law in empire,[27] the legal cultures of the colonies were refracted, rather than reflected, through the prism of local needs and conditions. Settlers may have sought to emulate the practices at "home", but the law and its institutions were challenged by situations and contexts that had no parallel in British experiences, and on which British authority was either lacking or inappropriate.[28]

Furthermore, the study of British law's transformations in colonial contexts directs attention to the complexity and diversity of formal and informal law within the United Kingdom, raising questions about which of many possible "British" influences were felt in which colony and at what time.[29] A comparative examination of the choices made by the various colonial authorities reveals the natures, values and power structures of those societies; not only as they existed in the past, but also as they became and, hence, as we experience them now. As a study of the application of law in particular local settings, comparative colonial legal history necessarily becomes a study in legal pluralism,[30] usefully conducted from within the framework of understandings developed by post- colonial scholars. Since Edward Said's powerful application of Michel Foucault's knowledge/power link to the colonial experience,[31] the cultural constructions of "self" and "other" have become the focus of a diverse group of scholars, loosely collected under the post-colonial banner. This body of work attempts to trace the lines of power in colonial settings that flow into and out of cultural constructions of sameness and difference. It is, at its root, a comparative analysis. Although the preponderance of this work, particularly that which involves analysis of metropolitan and indigenous legal forms in colonial settings, is focused on Africa, India and other parts of Asia,[32] the analysis applies equally well to other British settler colonies including part of Canada and Australia.[33] Undertaken at many different levels — self/other, metropolis/colony, Australia/Canada — comparative study can only enhance an understanding of the particular.

From this comparative base, we built an approach to law that we believe both central to the understanding of legal history in colonial contexts and a necessary reference to understanding modern law and contemporary reactions to it. Law was deeply implicated in the expansion of imperial control, from an initial assertion of sovereignty against other European princes, through mercantile trade monopolies and the assertion of juridical authority over original inhabitants,[34] to the regulation of the lives of all inhabitants within the sovereign's territory.[35] The processes by which law became concerned with reconstituting the subjectivities of its subjects so as to render them capable of (liberal) self-governance,[36] accordingly, became a central focus of the course as it developed.

Much of this became fully apparent to the course authors, however, only once preliminary thinking about what such a course might involve gave way to concrete planning. Course development began in earnest with ANU's approval of the course in 1997. Simon Bronitt and Ian Holloway's discussion with North American colleagues[37] led to the idea of using DCT to link students on both continents. From that point, the project transformed significantly, aiming now to develop an Australian/Canadian legal history course, taught in ways which would facilitate communication between students in Australia and Canada. As it happened, this technological "add-on", which was intended to connect distant classrooms, presented opportunities and challenges that had not been entirely anticipated by any of the course authors.

CONSTRUCTING THE COURSE

Though the course "authors" were inspired by the substantive content and pedagogical possibilities, all five were novices with distance education technology and its applications. The course would not have been possible without the technical support provided by U Vic's Learning Technologies Group ("LTG") and funding through a U Vic Innovative Teaching Fund Grant and a UBC Distance Education Fund Grant. These funds which permitted the hiring of a research assistant (Pamela Cyr) in Victoria, while Doug Harris was engaged first as a research assistant and then as a teaching assistant at the University of British Columbia. Course development between the collaborators at three universities in three cities on two continents and sixteen time zones apart[38] was facilitated by e-mail and through a simple list server. Despite this, the course could not have been developed without a series of face-to-face meetings between the faculty members involved, supplemented by occasional conference calls.

From these electronic and personal discussions, a course outline and ideas about how to use the available technology emerged in tandem. Several general decisions were made early on. Regarding course content, we decided the course ought to connect legal history scholarship with other sources of cultural understanding, be they literary, artistic or even musical. We hoped that the course would demonstrate both the connections between legal developments and political, social, economic and intellectual

influences, and the necessity of engaging with theoretical scholarship.[39] We also agreed that the course needed to provide students with a basic understanding of the law and legal cultures in Australia and Canada, and with an opportunity to consider several discrete areas in greater depth, allowing critical reflection of historical research on those topics.

As far as technology was concerned, our initial intent was to provide some method for students at the three universities to communicate. Initially, a simple e-mail discussion list seemed attractive. But as the technological possibilities became apparent to us, this somewhat modest goal was transformed. What emerged at the end of the day was a web page containing all the course material including text, pictures, maps, links, and the course readings in various formats. Throughout the process, and on the advice of distance education experts at each of our universities, we attempted to use the lowest possible level of technology necessary for any particular teaching purpose. Rather than replacing teachers, classrooms and books, we hoped that the internet would provide a unique medium to inform and engage students, not only through teacher-led instruction, but also through student to student communication.[40]

COURSE CONTENT

Once the project of actually "writing" the course began, John McLaren (aided by research assistant, Pamela Cyr) produced a series of contextual modules intended to provide students with a background in comparative legal history. The modules took their orientation from a theoretical framework derived from critical human geography[41] and critical legal histories, weaving together an analysis of the cultural construction of space and law. Drawing together literature, maps, photographs and other visual material, the first two modules examined the legal construction and appropriation of space by European settlers in the two countries. The settlers' cultural assumptions about the original inhabitants of Australia and Canada were then contrasted with the understandings of land and resources held by indigenous peoples themselves.[42] One underlying message carried through the early modules was the centrality of land in colonial societies, as a mark of economic and social status, as an asset for exploitation, and as a base for

commodification of resources on or under the land, or, as in the case of livestock, sustained by it.

Using a similar blend of sources, the next three modules examined in sequence, British imperial policy and law and colonization with emphasis on both its pragmatic and reactive dimensions,[43] the state of English law and its culture at the end of the 18th century[44] and, the process by which English immigrants and their notions of the rule of law penetrated these vast land masses, with stress upon the agency of governors and colonial bureaucrats, judges and the magistracy, lawyers and police.[45] All three modules, emphasized that colonists themselves were the standard bearers of competing notions of British constitutionalism and English law and that they carried their standard into lands which were already occupied by other peoples, settled by other immigrants, and subject to competing claims. In some cases the British themselves resisted narrow interpretations of constitutional rights and the rule of law, and the centralizing forces of the colonial state.[46] The final two contextual modules related these themes to the colonial experience in two pairs of Australian and Canadian colonies: New South Wales and Upper Canada,[47] and South Australia and British Columbia.[48]

John McLaren designed the contextual modules with a view to encouraging students to think critically about what they were viewing and, in particular, to evaluate the cultural and theoretical significance of the particular matters they were studying. A mixture of downloadable text, photographs, maps, drawings, excerpted readings and questions which could not be replicated in print media was designed to stimulate critical thought. All members of the academic and technical planning group provided comment and reaction. This was essential on the academic side in order to match Canadian sources with similar Australian sources and, on the technical side, in order to ensure that an attractive, user-friendly web site would (and could) eventually emerge. The LTG at U Vic undertook to develop a useful website design and also to ensure that what they developed did not exceed the technology in place at each of the partner universities.[49] The process of "writing" the course made apparent that this would be a significant limitation in a cooperative endeavour like this: while U Vic and ANU had new and upgraded student computer facilities, UBC students, on the other hand, were working with aging hardware. Whatever the

intellectual or technological merits of the course, it had to be accessible to all students from their home university's computer labs.

These contextual modules provided students with a rich multi-media exposure to a substantive knowledge base. They represented the bulk of intellectual labour involved in developing the course, and a necessary baseline from which a productive a trans-pacific interactive seminar could build. The core of the course, however, was the development of a "virtual seminar" focussed on specific problems or issues in comparative legal history. All of us are of the view that the "value-added" by this means of instruction lies in the emergence of deep and thoughtful inter-continental student discussions of a quality which permits instructors to fall into a background role.

The task of developing "interactive modules" was undertaken by the University of British Columbia partners (Wes Pue and Douglas Harris). These modules were designed to facilitate interaction between students and faculty at the three universities and, in many ways, such modules are the core of any web-based instruction programme. It is this part of the course that most clearly distinguishes teaching through DCT from more conventional methods of instruction. The "multi-media" potential of internet-based instruction is impressive, but, apart from the ability to link in a moment to many different potential sites of knowledge, it remains essentially similar to what creative instructors have done without DCT: blackboard drawings, slide presentations, overhead transparencies, video showings, audio clips, and dramatizations are all conventionally used to enhance the classroom experience and internet-based education adds little to these. Indeed, any well-designed textbook (of which there are, admittedly, precious few in law) makes use of creative juxtaposition of images, text, half-screened quotations, provocative questions, recommended reading lists, and so on in order to communicate ideas in complex ways. Magazine and newspaper editors know this. So do the producers of high school textbooks. One of us had even tried to imitate these forms in a book on the history of legal education.[50]

The interactive modules presented a focused analysis of themes in legal history. Assigned readings were kept deliberately "light", instructors' text (the web equivalent of lectures) was sparse and provocative. The modules developed four areas of historical and

theoretical writing that seemed both well enough studied (in both countries) and intrinsically interesting enough to sustain student discussion. The four themes were (i) Aboriginal-settler relations (the "aboriginal other"); (ii) Ethnicity, immigration & citizenship; (iii) Crime/ sex; (iv) Labour, class & industrial relations. Each of these topics has also generated a literature that fit within general themes relating to the legal technologies of governance during the late nineteenth and early twentieth centuries (often experienced as increasing state intervention in the lives of individuals). Law was thoroughly immersed in the project of "making good" citizens,[51] sometimes out of difficult material. Crudely, the project each of these modules addressed was the attempt to remake rough subjects into citizens capable of self-governance: i.e., conforming as closely as possible to the standards of the Victorian Christian, respectable middle class, modelled on a patriarchal, heterosexual family.

Each contextual module contained three readings: one historical study from each country and one reading of a more explicitly theoretical nature. Our intent, always, was to select closely matched readings which would form a focused discussion. Readings on the "aboriginal other", for example, focused on the residential school experience and the attempt to assimilate indigenous people through the removal and education of aboriginal children in state and church run institutions. The race module dealt with the treatment of Chinese immigrants in British Columbia and Melanesians in Queensland. The module dealing with gender focused on the criminalization of prostitution and, more generally, regulation of women's bodies. Finally, the module on class compared the Winnipeg General Strike of 1919 and the Australian Seaman's strike of the same year in order to provide an introduction to the construction of class and the role of law.

A short, deliberately provocative, commentary, peppered with questions, accompanied the readings in each interactive module. Designed to initiate a critical analysis of the assigned texts, a somewhat irreverent approach was developed in a deliberate attempt to ensure that these "provocations" could not confused for a conventional lecturers' "authoritative summary". Links to other web sites were also used as a means of encouraging students to think creatively and critically about the material and to draw connections between many sources.

INTEGRATING CONTENT AND TECHNOLOGY

Selecting from the wide range of available (and rapidly changing) technologies proved challenging. The early decision to use a web-site as a means of distributing course material and readings resulted in a more elaborate and developed undertaking than any of us had originally contemplated. The final version of the course web-site contained contextual and interactive modules, all required readings, illustrations, hot-links and a discussion forum. The "OZCAN website" became our noticeboard, casebook, blackboard and classroom.

The second, rather more difficult, decision was how best to facilitate student discussion. The objective of enabling students to respond quickly and easily to the readings and to each other could have easily been met with a simple e-mail discussion list. We also wanted, however, to ensure that discussion proceeded in a focused manner and that students engaged in a discussion on one topic would not be distracted by irrelevant interjections relating to other topics of class discussion. "Threaded" discussion list software enabled us to structure discussion by designating broad "topics" or "conferences" under which students could post messages. Other students could respond to a previous message, thereby creating a genealogy of discussion – a so-called "thread" – within a conference. Alternatively, they could post a new message creating another "thread". Each required reading within the interactive modules was designated as a conference on the discussion list website, which was accessible from within the OZCAN website. Once students were in an interactive module on the OZCAN website, they could read the instructors' introduction and provocation, read or download required readings, and post their thoughts to the relevant conference.

To some extent, however, the language we used to describe our pedagogical objectives ("creating an intercontinental seminar") misled us. Whatever our hopes and whatever the promise of DCT, there is a world of difference between a seminar involving people you might chat with informally after class and the type of exchange that existing affordable DCT allows. Due to financial constraints, we were unable to incorporate video-conferencing in our teaching strategy. Intellectual exchange is, after all, human interaction, and the human dimension is diminished when only electrons

communicate. The "seminar" analogy led us astray in other ways as well. Seminars organized around student commentaries or critiques of assigned readings, followed by class discussion of the readings themselves and the formal student commentaries seemed, at first, to be a good model to follow. As we originally conceived it, Australian and Canadian student critiques of each week's readings would inform both the physical classroom discussions at each institution *and* the virtual seminar discussion. Students would be required to respond to the readings and the commentaries in class, but also on the threaded discussion list. However, we realized that this apparently straightforward modification of an ordinary seminar would not work so smoothly when we counted student numbers. Though each class was relatively small (approximately 15 at UBC and U Vic, and 49 at ANU) the total class size of 80 students was far too large for a seminar, whether in the physical or virtual classrooms.

Several things, however, were clear from the start. First, our objective of facilitating lateral (student-to-student) rather than "top-down" (staff-to-student) education in the interactive modules required that assigned readings be shorter and more focused than in the "contextual" portions (which were more closely analogous to lecture courses than seminars). Secondly, if student exchanges were to develop with any degree of liveliness or immediacy the substantive focus of the readings had to be both engaging and provocative. Thirdly, our job as teachers was to move ourselves to the background. Like good Socratic instructors, our task in this portion of the course was to say enough to provoke student thoughtfulness and creativity, but not so much as either to dominate the discussion or to tell students what they should think.

TEACHING THE COURSE

Although students at the three schools worked from the same course materials on the OZCAN website, the authors of the course needed to accommodate several major and potentially disabling differences between the three institutions. Accordingly, there were differences in approach and evaluation between the partner universities. One significant constraint was that the Australian term began in early August, almost a month before the Canadian autumn term started, and finished a month earlier. We assumed that

Canadian students would need the month of September to get "up to speed" on the necessary background (i.e., the contextual modules); this narrowed the window of opportunity for trans-continental interaction to the month of October. There were also fairly significant differences in the educational backgrounds of students at the three faculties. The Canadian law degree, while designated as the LLB, or Bachelor of Laws, is in fact taught as a graduate degree at the same level as the American professional law degree (the "JD" or Juris Doctor). The Canadian students were generally further along in their studies than the Australian students who, for the most part, study law as a first degree after high school. Finally the variation in class size also required very different courses.

These dimensions of student difference were known ahead of time. Once student registrations began, however, it became apparent that the three classes diverged even more than we had anticipated. In 1997, UBC had common law Canada's largest graduate program in law and this produced an interesting student body in the Comparative Legal History Course: of 13 students registered, 9 were pursuing LLM degrees, one held a previous law degree from England and was taking the course as part of a second professional law degree, one was an Australian exchange student, three others were from Australia, one from New Zealand, and two were "ordinary" (though that is hardly the word for them) LLB students. By accident of registration, UBC's class was itself effectively transformed into both a graduate seminar with an "intercontinental" student body.

In light of their large class size, ANU's instructors taught their course as an exercise in group-centered learning. Each week, a group of students was responsible for introducing the assigned module and for initiating a discussion. The introductions took vastly different forms, ranging from role-playing (where students re-enacted a summary trial, including a mandatory flogging with cat o' nine tails!) to convential lecture presentations. Those students who presented were also responsible for initiating student discussion by posting their thoughts to the discussion list and preparing a portfolio of material that would placed in the library for other students to access. Students were graded on their class presentations and on a research project. The students were encouraged to be imaginative in devising their project: several

integrated multimedia into their project, one student created a website, while another produced a video documentary.

Given smaller classes, the courses at U Vic and UBC assumed a somewhat more traditional seminar approach, with varying degrees of reliance on the classroom or virtual seminar. At U Vic the emphasis lay in the "virtual seminar" conducted only in part in a traditional classroom setting. For the greater part of the course, the students met in the law school's computer lab, during which time they had an opportunity to work with the course material, communicate by e-mail or in person. A separate, shorter seminar outside the computer lab was used to discuss outstanding questions arising from the materials and discussions. Each student was graded on their posted critical comment on an interactive module and on a major research paper which required work with primary materials. Several students elected to do papers on the comparative historical experience with law in the two countries, including work on aboriginal rights; gold field regulation; and land tenure.

At UBC, the focus remained in the physical classroom and, disproving the adage that students are the only group of consumers always to wish to receive less than they pay for, the students themselves strongly resisted the suggestion of abandoning classroom discussion during the "interactive" phase of the seminar. The class met once a week for two hours of discuss focussed on assigned readings and the ideas broached on the discussion list. In addition, the computer lab was reserved for two, one hour sessions each week, but attendance was not required and most students chose to make their discussion list contributions outside class time or from home. Students at UBC were evaluated on their participation, both in the classroom and on the discussion list, and by a major research paper. Most students determined that a comparative research essay would be too daunting a task given the time constraints, and elected to use historical and legal material from either Canada or Australia.

EVALUATING THE COURSE

Each university conducted its standard end-of-course evaluations of teachers, course content, and methods of instruction. At ANU, the standard student questionnaire developed by the Centre for Educational Development and Methods was tailored to

included specific questions about the use of technology in the learning process. The instructors at UBC and U Vic conducted separate, informal surveys to learn what students thought about the technology.

Quite predictably, student response to the course was as varied as the students enrolled in the course. Given the different approaches to teaching and different methods of evaluating student response, the results of student surveys from the three institutions cannot be compared with any precision. Overall, however, the course was *very* favourably assessed by students, particularly for its content, but also for its innovative use of available technology.[52] Student comments focused on four areas: course content, technology, teaching styles and evaluation. Although both are central to the student experience, the latter two were particular to each instructor and, accordingly, will receive less attention in the following discussion. Course content and technology however were the same at each university and student responses on these aspects of the course bear comparison.

Although student perceptions on course content varied considerably, some strong themes emerge. Many students enjoyed the comparative aspect, particularly the exposure to the histories and legal systems of another country, and the light that exposure cast on their understanding of the legal systems and histories with which they were more familiar. "There is so much potential", wrote one Australian student, "for gaining a better understanding of law from a comparative and a historical perspective". As the comment suggests, this student and others responded well to an approach to legal education that moved beyond simple analysis of legal doctrine to situate law and legal institutions within a larger social and historical context. Another Australian student wrote that the course "made sense of the law to me (probably for the first time!)". There are, of course, many approaches to "making sense of the law", and this course explicitly offered two — historical and comparative approaches. Comments like this, however, underline the importance and relevance in professional legal education of courses which provide a broad contextual perspective on the operation of law in the communities of which it is a part.

Students at all three universities remarked on the positive learning climate, their interest in the material, and the encouragement to evaluate critically the required readings. The

course faired less well on the relevance of instructional materials, and least well in course planning and organization. One of the course's great strengths was that it combined the energy and intellectual ability of four faculty members and one post-graduate teaching assistant with diverse research interests and areas of expertise. The combination of creative talents produced a course that none of the instructors could have created alone, but it also resulted in a somewhat less focused course than any one of us might have developed alone. Some students commented on this lack of focus that was, perhaps, the inevitable result of a first attempt by five cooks working with new and unproved ingredients. However, the collaborative nature of the course enabled students to access that broad array of expertise. Having five instructors, as one Australian student observed, provided more opportunity for student/faculty interaction "than could be achieved by a lone lecturer".

A course that combines the physical and virtual classroom is a much different creature than either a traditional seminar or a course taught entirely through DCT. Integrating physical and virtual classrooms was not an easy task, and the surveys indicate that none of the law schools was entirely successful. The physical classroom tended to remain the focus of the course for students, particularly at ANU. This was a function, in part, of the course delivery at ANU (group-led classroom discussion) and of technological growing pains that were particularly severe for the Australian students who met first thing each week, ahead of their Canadian counterparts. Furthermore, they reported insufficient technical support, something that is still required in these early stages of DCT. For a few students at each university, the course presented a first opportunity for intensive use of the internet. Those who participated, however, did so with enthusiasm. "Interaction on the web discussion", commented one ANU student, "was exceptionally rewarding — it promoted sophisticated discussion of concepts in a structured and easily accessible manner". Another student wrote, "I found the interaction with the Canadians to be an exciting experience".

Other students thought the participation rate on the discussion list should have been higher. This led to some frustration for the students at UBC, but particularly at U Vic, where the virtual classroom was the principal focus of the course. Participation was

uneven, and although some students from U Vic and UBC contributed frequently to the discussion list, general participation was not as extensive as it might have been. This pointed to another, more general, difficulty involved in creating a coherent seminar from students with very different backgrounds, at three universities, at various stages of their university careers, and involved in three courses that, although using the same course material, were using it very differently. While some students at the Canadian institutions were disappointed by the relative lack of interaction with Australian students, several ANU students commented that the Canadians seemed to make more use of the assigned readings in their postings, leading one to speculate that, "the Canadians invested more time in their class discussions and as a consequence their internet contributions were more sophisticated and coherent". Undoubtedly, the uneven participation in email discussion by ANU student may be due simply to the fact this was not a compulsory (ie assessable) component of the course.

That said, it was not clear that we were in reality properly prepared for heavy student participation. If each of the seventy students taking these courses had contributed only a few sentences each week (some contributed much more), very large volumes of additional reading would have resulted. As it was, students noted that the reading load we had designed was excessive and probably minimized their discussion list participation as one strategy to keep their workload manageable. Not surprisingly there were logistical difficulties in the early weeks that probably discouraged student participation in electronic discussions somewhat. The challenge of structuring student participation so to enable spontaneous and informed, yet manageable, discussion is a difficult one.

Nonetheless, the opportunity to communicate with students and faculty through a discussion list added considerably to the class. The regular contributors to the list were not necessarily the same as those who spoke most frequently in the physical classroom. Even those most comfortable speaking in person found this other forum useful. Most weeks, profitable discussion could have long outlasted the assigned class time, and one UBC student appreciated the discussion list for permitting conversation about the topics to continue even "if you don't have a chance to make points in the phys[ical]. seminar". Discussion lists, however, are not a complete foil for shyness or other sources of reticence to speak in class.

Discussion lists also offer a valuable record of discussion and a useful reference tool for those who want to review earlier contributions. But as useful as this is, it is precisely the creation of a record that is off-putting to some students. In response to a survey question one UBC student wrote, "Record of discussion. Installed in me the sense of surveillance technology which eventually led to self-surveillance, self-disciplining, self-governing that has destroyed my life!" This comment, presumably offered partly as a Foucauldian jest, does raise some important issues about the effects of technology on students. The use of discussion lists creates a formal record for the life of the course (maybe longer) of what would otherwise be free and relaxed classroom discussion. In order to provide students with a sense of security, the discussion list was password protected, allowing only those who were participating in the course to read and contribute to the discussion. Nonetheless, the instructors' gaze remained, as did that of other students who, but for the web page interaction, were strangers. There is no doubt that DCT creates a new range of communication possibilities, but it also creates dangers that must be considered carefully.

Many students appreciated the access to course readings through the web site, in part because it saved them the cost of a casebook. The readings could be viewed on the site, downloaded to be viewed on another computer, or printed. Many students chose the later option, preferring not to read large quantities of text on a computer screen. At UBC a hard copy of the web site and required readings was placed in the reference section at the library. Even though readings could be downloaded, the web site itself contained extensive text, particularly in the contextual modules, that had to be read from the screen or printed, but could not be downloaded directly. Added to the many students contributions to the discussion list, many students commented negatively about an excessively heavy reading load, much of it having to be done from eye-straining computer screens.

LESSONS LEARNED

The experience of teaching the course has provided an opportunity to reflect on the utility of distance education technology in relation to legal education. Three "lessons" have been learned through developing and offering this particular course

and the experience opens the space for some modest reflection as to the possible impacts of this technology on legal education in the longer term. Beginning with specifics, a first run-through of the course has lead to conclusions about "flaming", contextual modules, appropriate faculty (and student) workload and interactive teaching strategies.

"Flaming" is, perhaps, the easiest of these to address. Fortunately, we were spared any difficulties in this respect during the first offering of the course. Nonetheless, we are intensely aware of the danger not only of flaming but of serious and hurtful misunderstandings developing more innocently as widely dispersed students communicate through e-mail, list-serves, and related media. Consideration and respect for the views of others must be emphasized in courses involving use of DCT. Internet communication brings a new ease and informality to communications with strangers but, again, one of DCT's great advantages is simultaneously a source for potential problems. The danger of vigorous exchanges going "off the rails" as they are conducted, with relative anonymity, through electronic media are real. Anyone who has ever been in a university classroom knows that communications offered earnestly and in good faith can sometimes, accidentally, be extremely hurtful. The possibility that ideas might be misconstrued grows exponentially when the personal context is removed. Ironic tone can be missed, self-deprecation mis-read, humour missed, and ambiguous phrasing misconstrued with frightful ease. Teachers need to take care to explain and, quite undemocratically, insist on compliance with generally accepted principles of "Netiquette".

As with all new academic ventures, there were design flaws in the course. These were, no doubt, partly a product, of the tight time-lines within which the team worked, partly a result of five cooks stirring the broth, and partly the inevitable result of novices encountering new instructional media for the first time. Some of the contextual modules looked and read too much like lecture notes with only occasional forays into other forms of communication. When this happened we failed to take advantage of the uniqueness of the web teaching environment. Our contextual modules were at their best where there had been a conscious effort to blend short, often provocative and sometimes conflicting quotations of theoretical import, compact expository paragraphs, and dramatic,

thought-provoking visuals such as art work, photographs, documents or maps. The modules were less engaging where the expository paragraphs lengthened, and when the visuals were purely illustrative. Interestingly, a web site one student constructed as his research project on the potlatch and Canadian attempts to suppress it provided the most successful model of the value of web site-based instruction.[53] This was achieved by a skilful juxtaposition of short descriptive passages and a wealth of visuals and documentary material available from banks of material connected to the site.

This lesson about the need to construct a web site so as to balance the need to communicate information with an immediacy of intellectual challenge so as to draw students into active engagement with the material presented has been taken to heart by the contextual module designer (John McLaren). Work has been underway to reduce the length of the expository sections. At the same time the site is being enriched by the use of a wider range of demonstrative material, including artwork, photos, sketches and portraits, literary allusions, maps and audio clips of interviews, folk songs, and ballads. Greater efforts are being made to encourage students to access some of this material by links with other web sites as other relevant resources become available.[54] In addition to an existing map bank, a bank of documents is being developed to accommodate a wider range of original legal instruments, correspondence and newspaper reports. A link has also been provided to a web site of early judgments of the Supreme Court of New South Wales under development by Macquarie University's Bruce Kercher.[55] Finally, this course, like any other needs on-going review of secondary literatures from many disciplines in order both to keep current and to add greater richness to both the contextual and interactive modules.[56]

With respect to workload issues, it is important to note that the creation a course of this sort is labour intensive, involving significant investments of time by both academics and technical support personnel. Once the web site is built, technical assistance is required to ensure its ongoing proper functioning and students require technical instruction on the use of the site and communications software. Moreover, e-mail communication creates the possibility of extending discussion beyond the spatial and temporal boundaries of the classroom. Students can post

messages and respond on their own time. The greatest single advantage of the technology, this is, however, one of its greatest hazards. What was once neatly confined to a three-hour seminar in a classroom has the potential to become all-consuming, both for students and instructors.

A number of strategies might be employed to make better use of the interactive component of the course, even within the constraints of a seminar with seventy participants. Though formal structuring of discussion groups in advance of the interactive phase of the course would detract from the spontaneity of discussion, it might improve the intensity of exchange without overwhelming the limits of the medium. One possibility would be to construct groups including students from each of the partner schools, each of which would have the assigned task of focussing on one specific historical themes. Each group, using a "chat-room", would develop a virtual seminar in which the theme and the readings would be discussed, reflections and questions posted for consideration, and response by the other students in the course sought. The quality and inclusiveness of small group discussion might be assisted by having a mentor (a faculty member or a graduate student with expertise in the field) to excite discussion and bring structure to the exchanges. The University of Guelph's Gilbert Stetler has used this sort of approach in teaching Urban History, linking students directly to experts from various parts of the globe. Beyond this, the sense of intimacy and immediacy could be enhanced considerably by creating video links. The devil is in the details however. Where Australia and Canada are involved, the efficacy of either chat groups or video-links requires careful syncronization of time-tables and computer access if the sixteen hour time difference is to be overcome. DCT may collapse space and time but it does not obliterate time zones.

CONCLUDING THOUGHTS: DCT AND THE FUTURE OF UNIVERSITY LEGAL EDUCATION

It would be naive to think that DCT holds forth the potential of liberating ideas and education from all of the constraints of materiality. Though web-sites and discussion lists can be opened to the entire world if that seems desirable, the numbers of students involved in this project at the three sponsoring schools make it

difficult to contemplate adding any significant number of further partners without some fairly significant reassessment of the course's pedagogical objectives. A concomitant and equally fundamental redesign of the instructional environment would also be required. Modestly, a course of similar design, taking advantage of many but not all of the www's multi-media advantages, might be made available to other institutions by "burning" all or part of the existing course materials on to CD Roms for the use of instructors elsewhere. A half-way point between a book and a web-site, this newish technology holds forth promise of greater educational collaboration between institutions, as well as economic distribution of educational materials.

Although our course was not designed to probe the limits of legal education in any fundamental way, a widened horizon of legal education is nonetheless discernible from our new perspective "on the other side" of distance education, as it were. Each of us, to varying degrees, is an educational conservative. We believe deeply in the value of the physical classroom and think that something immensely worthwhile will be lost if the personal, human-to-human, contact traditionally associated with academic communities is replaced by something colder, more mechanical and bureaucratic. Nonetheless, there is no reason to think that the communication of information, intellectual challenge, and rigorous evaluation requires the residential campus or full-time education. Moreover, unlike correspondence courses and older techniques of distance education, contemporary DCT permits an interactive learning environment and one in which lateral as well as vertical education is possible. A law school without walls and even a law school without a "place" is not unthinkable.

To some extent it may be desirable. If professional degree courses can be provided without requiring that students attend classes, a more diverse body of students will be able to take advantage of legal education and the career benefits it has to offer. This matter is of no small importance for legal education and for the future of the legal profession. It could make part-time legal education a meaningful option for individuals who cannot take time off work to attend law school classes scheduled without their needs in mind.

DCT promises too to enhance the quality and experience of graduate education in law through a pooling of resources. To take

one example, agreements are presently in place between most of Canada's major universities allowing students to take graduate courses at any of the linked universities for credit in their own programme.57 In practice of course these arrangements mean very little if a student in Edmonton has to fly to Vancouver on a weekly basis to sit in a UBC class, or a Vancouver student has to commute to Montreal (five hours away by air) to take a three credit-hour course. Because it obliterates distance, DCT can make quality specialist seminars available to a small number of advanced students effectively, efficiently, and at reasonable cost. Graduate programmes at the LLM, MA and PhD levels could all benefit immensely from this and to the mutual advantage of all partner institutions.

At the other end of the educational spectrum, DCT can also provide means of teaching undergraduate courses to classes of almost limitless size and in more effective ways than the continuous play video-taped lectures of urban myth ever could. The analogy here is not the seminar room but the large lecture theatre, the undergraduate class taught to 300 or 500 students at a time. DCT conveys an immediacy and sense of involvement to class participants that video- taped or televised lectures, and even than the overcrowded lecture theatre itself cannot emulate. A well-designed web teaching environment draws students in whereas other, "colder" media leave them outside looking in — distanced from their own education, alienated from their own learning. Web-CT, a web "course tools" package developed by the University of British Columbia's Continuing Studies department, provides a series of tools which facilitates all aspects of distance education from delivery of materials through to student evaluation. An appropriately structured course of considerable rigour and intellectual integrity could be taught intra-university, inter-city or internationally to 500, 1,000, or 5,000 students. If qualified teaching assistants were employed and tutorials offered (most likely through "chat- room" utilities) to groups of 20 to 30 students at a time, the course would surpass in almost all respects the over-large lecture courses which characterizes undergraduate education at most North American and Australian universities.

Some big questions remain and, obviously, we cannot know clearly where trends are heading until such time as we know more about both the future of the legal profession and emergent

technology. An unbounded university education does seem to be on the horizon though. Whether it is a "nightmare" which offends against all the values of a liberal education, or a "noble dream" which fulfills the promises of liberal education, depends on what we make of it.

ENDNOTE:

Should readers want any further information on the OZCAN project, or the various comparative legal history courses, they should feel free to contact any one of the authors. Among the things available are a fuller discussion of the relationship of the interactive modules to the contextual modules, and sample instructions on how to approach the interactive seminars.

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1 For some suggestive writings addressing these topics see: D Lemmings, Blackstone and Law Reform by Education: Preparation for the Bar and Lawyerly Culture in Eighteenth-Century England (1998) 16 *Law and History Rev* 211; W P LaPiana, *Logic & Experience: The Origin of Modern American Legal Education* (NY: Oxford University Press, 1994); D Sugarman, A Hatred of Disorder: Legal Science, Liberalism, and Imperialism, in Peter Fitzpatrick ed, *Dangerous Supplements* (London: Pluto, 1991), 34-67; R Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill: University of North Carolina Press, 1983); D Howes, The Origin and Demise of Legal Education in Quebec (1989) 38 *University of New Brunswick LJ* 127-156; D Daintree, The Legal Periodical: A Study in the Communication of Information (Unpublished, MA Thesis in Librarianship, University of Sheffield 1975).

2 The insights of Bernard Hibbits are particularly noteworthy. See B Hibbits, Yesterday Once More: Sceptics, Scribes and the Demise of Law Reviews (1996) 30 *Akron L Rev* 277-320; Last Writes? Re-assessing the Law Review in the Age of Cyberspace (1996) 71 *NYU L Rev* 615-688; Making Sense of Metaphors: Visuality, Aurality and the Reconfiguration of American Legal Discourse (1994) 16 *Cardozo L Rev* 229-356; E-Journals, Archives and Knowledge Networks: A Reply to Archie Zariski's Defense of Electronic Law Journals, *First Monday: Peer-Reviewed Journal on the Internet* (July 1997); Now Hear This! Thoughts on Law and the New Digital Orality, *Intellectual Property: The Magazine of Law and Policy for High Technology* (December 1996, at 7); and B Hibbits & Dr R LaPorte, Rights, Wrongs and Journals in the Age of Cyberspace (1996) 313 *British Medical J* 1609. For further references and discussions of law in cyberspace, see Bernard Hibbits at URL: http://jurist.law.pitt.edu/ index.html.

3 MA Geist, Where Can You Go Today?: The Computerization of Legal Education from Workbooks to the Web (1997) 11 *Harv JL & Tech* 141; J Goldring, Coping with the Virtual Campus*:* Some Hints and Opportunities for

Legal Education (1995) 6(1) *LER* 91.

4 The traditional law lecture has long been criticised as an ineffective mode of legal education. CR Smith noted in 1935 that lectures tended "to degenerate into dictation of notes by the lecturer, written down at breakneck speed by the students..." and concluded, that even at its best, "the formal lecture ... does very little to develop the power of analysis and gives little practice in expression and argument": CR Smith, Legal Education: A Manitoba View (1935) *Can Bar Rev* 404, 408.

5 The term is used to include both new existing and yet-to-be-developed means of publishing, discussing, displaying and communicating.

6 Writing served a similar function. See DF McKenzie, The Sociology of a Text: Oral Culture, Literacy & Print in Early New Zealand in P Burke & R Porter eds, *The Social History of Language* (Cambridge University Press, 1987).

7 This is a standard argument in favour of traditional distance education programs such as Athabasca University in Alberta, and the Open University in Britain. See, for example, W Perry, *Open University* (Milton Keynes, Open University, 1976). DCT however dramatically extends the opportunity for improving the *quality* of distance education and creatively destabilizes the environment in which teaching to in-residence students takes place.

8 Costs of dislocation in legal education was a theme addressed in a series of papers presented at the Canadian Law and Society Association's meetings in 1998 on Canada's First Inuit Legal Studies Programme. Chaired by Professor Constance Backhouse, the papers presented at this session were: S Inutiq, Participating as a Student in the First Inuit Legal Studies Program; B Dawson, The Carleton Connection: Accommodating Inuit Studies in a Southern Canadian University; K Gallagher- Mackay, Nunavut — Affirmative Action and Self-Government: The Case of Legal Education, and C Backhouse, Teaching in the First Inuit Legal Studies Program, and What the Future Holds — a Circumpolar Law School? URL: www.juris.uqam.ca/rcds/prog.html.

9 See, for example, D Tong, Gatekeeping in Canadian Law Schools: A History of Exclusion, the Rule of "Merit", and a Challenge to Contemporary Practices, (UBC LLM thesis, 1996, URL: http://www.law.ubc.ca/handbook/ gradstudies/list3.html); J Brockman, Identifying the Issues: A Survey of the Active Members of the Law Society of Alberta (A Report Prepared for the Joint Committee on Women and the Legal Profession: March 1992); and Leaving the Practice of Law: The Wherefores and the Whys (1994) 32 *Alberta L Rev* 116-180; M Thornton, Hegemonic Masculinity and the Academy (1989) 17 *IJSL* 115; S Ramshaw & W Pue, Feminism Unqualified: Margaret Thornton's Dissonance and Distrust: Women in the Legal Profession (1997) 15 *Law in Context*, 166–178.

10 J Goldring, supra n 3, at 99.

11 "Much new technology is expensive to develop and use, at least in the initial stages, and may not be as cost-effective as traditional educational methods which are equally educational effective", Goldring, ibid at 97.

12 The Law Consortium Project, funded by the British Government, developed standardised "courseware" for compulsory LLB units. As Goldring observed (ibid), the Consortium's use of financial incentives amounted to a form of compulsion which forced some academics to make compromises so as to ensure a consistent product. On "proletarianization" in general, see: E Nakano Glenn & R L Feldberg, Degraded and Deskilled: the Proletarianization of Clerical Work (1977) 25 *Social Problems* 52; A Baron, Proletarianization of Legal Work: Directions and Implications of Recent Changes in Lawyering *American Sociological Association Paper*, 1984; J Smyth, A Policy Analysis of Higher Education Reforms in Australia in the Context of Globalisation (1994) *Melbourne Studies in Education* 39.

13 See URL: http://www.in.on.ca/tutorial/netiquette2.html

14 As evidenced in *The Jurist* (URL: http://jurist.law.pitt.edu/), *The Jurist Canada* (URL: http://jurist.law.pitt.edu/jur-can.htm) and *The Jurist Australia* (URL:

http://law.anu.edu.au/jurist/jur-aus.htm).

15 See AL Johnson, Distance Learning and Technology in Legal Education: A 21st Century Experiment (1997) 7 *Alberta LJ Sci & Tech* 213.

16 It is one of the ironies of developments in this area that legal historians, perhaps in reaction to too many years eating the dust of archives, seem to be particularly engaged in work relating to DCT and law. Each of the main *Jurist* websites in Canada, the USA and Australia, supra, is maintained by a legal historian. The Canadian site is maintained by Bruce Ryder of York University; the American site by Bernard Hibbitts, a Canadian legal historian teaching at the University of Pittsburgh; the Australian site by Macquarie University's Bruce Kercher.

17 It was next offered in its full form in the second half of 1999.

18 G Parker, The Masochism of the Legal Historian (1974) 24 *University of Toronto L J* 279; RCB Risk, A Prospectus for Canadian Legal History (1973) 1 *Dalhousie L J* 227.

19 See, for example, D Bell, The Birth of Canadian Legal History (1984) 33 *University of New Brunswick LJ* 312; D Flaherty, Writing Canadian Legal History: An Introduction, in Flaherty ed, *Essays in the History of Canadian Law, Vol 1* (Toronto: University of Toronto Press, 1981) 3-42; G Marquis, Doing Justice to "British Justice": Law, Ideology and Canadian Historiography, in W Pue & B Wright eds, *Canadian Perspectives on Law and Society: Issues in Legal History* (Ottawa: Carleton University Press, 1988), B Wright, Towards a New Canadian Legal History (1984) *Osgoode Hall LJ*, 349; B Wright, An Introduction to Canadian Law and History, in W Pue & B Wright eds, id, 7; J McLaren, Meeting the Challenges of Canadian Legal History: The Alberta Contribution (1994) 32 *Alberta L Rev* 423; J McLaren, The Legal Historian, Masochist or Missionary? A Canadian's Reflections (1994) 5 *LER*, 67; J Phillips, Recent Publicatons in Canadian Legal History (1997) 78 *Canadian Historical Review*, 236; J Phillips & G Blaine Baker eds, *Essays in the History of Canadian Law: In Honour of RCB Risk* (Toronto: Osgoode Society, 1999).

20 As an illustration of this, the sole Australian legal history text prior to the 1960s was Sir Victor Windeyer's *Lectures on Legal Hi*story (Sydney: Law Book Co, 2nd revised ed, 1958). While it was (and remains) a work of the highest quality, it is significant that of the 37 chapters, only one — the very last — deals with the law in Australia. As regards the teaching of legal history, it is instructive to note that "History of Law" was dropped from the ANU curriculum in 1974. In Canada there is some evidence as to curriculum at Canadian law schools in: W Pue, *Law School: The Story of Legal Education in British Columbia* (Vancouver: Continuing Legal Education Society of British Columbia and Faculty of Law, University of British Columbia, 1995), 80-83 (see also URL: http://www.law.ubc.ca/handbook/history/school.html); W Pue, "The Disquisitions of Learned Judges": Making Manitoba Lawyers, 1885-1931, in J Phillips & G Blaine Baker eds, *Essays in the History of Canadian Law: In Honour of RCB Risk* (Toronto: Osgoode Society, 1999).

21 The narrow notion of relevance that came into play was protested at the time by EP Thompson, Doug Hay, Sol Picciotto and others in EP Thompson ed, *Warwick University Ltd Industry, Management and the Universities* (Middlesex: Penguin Education Specials, 1970) 163-164: "It is sad to see even the scholars themselves hesitate in their work and wonder about the use of what they are doing. Even they begin to feel, defensively, that a salesman or an advertising executive is perhaps a more important and productive human being than an actor, or a designer, or a teacher of English. Able and perhaps eminent men in their own disciplines, they capitulate without a struggle before the intellectually specious proposal that a university can train young men and women, who have no industrial experience, in a "managerial science" in which they master no single academic skill — whether as economists or engineers or sociologists — but which will miraculously equip them to "manage" the affairs of the skilled workers and technicians of Britain. Step by step the defensive scholar resigns his wider allegiances — to a national or international discourse of ideas — and

retreats within the limited area of manoeuvre allotted to him within the managerial structure. Step by step he resigns his responsibility, not only to listen selectively for social demands, but to insert into society the demand for priorities which it is his own first duty to make; that man exists and progresses, not only by productive technology, but also by the strength of his ideas and by the artefacts of his culture. In his submission to a subordinate role in a managerial system, he is re-enacting the meaning, for Britain in the 1970's, of the trahison des clercs".

[22] Notable exceptions include the University of Adelaide, where Professor Alex Castles, for many years, taught and researched actively in the field of legal history and La Trobe University. Ian Duncanson and Chris Tomlins, two faculty members at La Trobe University's Department of Legal Studies (as it then was), together with Wilf Prest of the University of Adelaide, launched The Law in History Conference Series in 1982, out of which the Australian and New Zealand Law and History Society has grown. In Canada, legal history has continuous presence as a substantial component of law school curriculum only at the University of Manitoba where teaching and research agendas were pursued by several faculty members during Canada's 1960s-1970s "dark ages", most notably Dale Gibson and Cameron Harvey. See, for example: D Gibson & L Gibson, *Substantial Justice: Law and Lawyers in Manitoba, 1670-1970* (Winnipeg: Peguis Publishers Limited, 1972); C Harvey ed, *The Law Society of Manitoba, 1877-1977* (Winnipeg: Peguis Publishers Limited, 1977).

[23] As part of a unit called "Foundations of Australian Law".

[24] As part of a unit called "History and Philosophy of Law" introduced in 1991.

[25] Borrowing here the words used by Carolyn Strange during her February 1995 panel discussion on "Doing" Legal History Right: Problems, Perils and Prospects of Interdisciplinarity (Green College, University of British Columbia).

[26] On this see generally I Holloway, A Fragment on Reception (1998) 4 *Aust J Legal History* 79.

[27] See for example, JJ Eddy, *Britain and the Australian Colonies 1818-1831: The Techniques of Government* (Oxford: Clarendon Press, 1969); D Neal, *The Rule of Law in a Penal Colony* (Cambridge: Cambridge University Press, 1991); A Atknison, *The History of Europeans in Australia, Vol. 1* (Oxford: Oxford University Press, 1997); M Finnane, *Punishment in Australian* Society (Melbourne: Oxford University Press).

[28] On the demands of special purposes colonies, see J Manning Ward, *Colonial Self-Government: The British Experience 1759-1856* (Toronto: University of Toronto Press, 1976), Chapter 5, Anomalous Societies: Newfoundland and New South Wales. There are a number of areas of comparative colonial legal history in which there were no British or English precedents and in which there is evidence of borrowing between colonies, and between the colonies and American jurisdictions. Examples would include the regulation of gold mining: see D Fetherling, *The Gold Crusades: Social History of Gold Rushes, 1849-1929* (Toronto: MacMillan of Canada, 1988); D Goodman, *Gold Seeking: Victoria and California in the 1850s* (Stanford: Stanford University Press, 1994), and legal discrimination against Asians, see, CA Price, *The* Great White Walls are Built: Restrictive Immigration to North America and Australasia (Canberra: Australian National University Press, 1974); R Huttenback, *Racism and Empire: White Settlers and Coloured Immigrants in the British Self-Governing Colonies* (Ithaca, NY: Cornell University Press, 1976).

[29] See H Kearney, *The British Isles: A History of Four Nations* (Cambridge, Cambridge University Press, 1989); D Hackett Fischer, *Albion's Seed Four British Folkways in America* (New York: Oxford University Press, 1989). Ian Duncanson exhibits a critical awareness of the diversity of Britain and its implications for the colonising process in Close Your Eyes and Think of England (1997) 3 *Canberra L Rev*, 123; John Finnis and the Politics of Natural Law (1990) *UWA Law Rev* 239; Finding a History for the Common Law (1996) *Aust J Legal History* 1; The Politics of Common Law in History and Theory (1989)

27 *Osgoode Hall L J* 687; Legal Education and the Possibility of Critique (1993) 8 *Can J Law and Society* 82.

30 For general surveys see, J Griffith, What is Legal Pluralism? (1986) 24 *J Legal Pluralism and Unofficial Law* 1; S Engle Merry, Legal Pluralism (1988) 22 *Law & Society Rev* 869. For recent Canadian scholarship see Le Pluralisme juridique/Legal Pluralism (1997) *Can J and Society* (Special Issue) 12; J Fiske, From Customary Law to Oral Traditions: Discursive Formation of Plural Legalisms in Northern British Columbia, 1857-1993 (1997/98) 115/116 *BC Studies* 267; D G Bell, A Perspective on Legal Pluralism in 19th-century New Brunswick (1988) 37 *U of New* Brunswick *LJ* 86.

31 E Said, *Orientalism* (New York: Vintage Books, 1993).

32 For example, P Fitzpatrick, *Law and State in Papua New Guinea* (London: Academic Press, 1980); F G Snyder, Colonialism and Legal Form: The Creation of Customary Law in Senegal (1981) 19 *J Legal Pluralism* 49; M Channock, *Custom, Law and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge: Cambridge University Press, 1985).

33 D Harris, *The Legal Capture of British Columbia's Fisheries: A Study of Law and Colonialism* (LLM Thesis, University of British Columbia, 1998).

34 H Foster, Long-Distance Justice: The Criminal Jurisdiction of Canadian Courts West of the Canadas, 1763-1859 (1990) 34 *Am J Leg Hist* 1.

35 These themes are traced in W Pue, Revolution by Legal Means, in P Glenn ed, *Contemporary Law 1994 Droit contemporain* (Montreal: Editions Yvons Blais, 1994) 1, and developed in C Strange & T Loo, *Law and Moral Regulation in Canada, 1867-1939* (Toronto: University of Toronto Press, 1997).

36 These themes are canvassed in relation to the work of Foucauldian scholars in particular in: D Hannigan, *From Aboriginality to Governmentality: The Meaning of Section 35(1) and the Power of Legal Discourse* (LLM thesis, University of British Columbia, 1998). See also, W Pue, The Case Method & the Colonization of Canadian Space, 1900-1930, in *Misplaced Traditions: The Legal Profession and the British Empire* (special issue of *Law in Context*, forthcoming, autumn, 1998, guest edited by Robert McQueen & W Pue).

37 Including Philip Girard (Dalhousie), Margaret McCallum (UNB), Jim Phillips (Toronto), Carolyn Strange (Toronto), Tina Loo (Simon Fraser), Bernard Hibbitts (Pittsburgh) and Thomas G Barnes (Berkeley).

38 The 16 hour time difference is a significant barrier. 8:00 am in Vancouver is 12:00 midnight in Canberra and 5:00 pm in Vancouver is 9:00 am in Canberra, with the result that the working days barely overlap. Add the International date line and only the mid-week working days in British Columbia overlap at all with the Eastern Australia work week.

39 Our intellectual debts to the likes of Willard Hurst, Robert Gordon, David Sugarman, Constance Backhouse, Ian Duncanson, Hamar Foster, Doug Hay, Chris Tomlins, Alan Hunt, R.C.B. Risk, David Howes, Blaine Baker, Barry Wright, John Beattie, Patrick Parkinson and David Flaherty, amongst others, bears note in this regard.

40 Our ideas about course content and the appropriate use of technology developed simultaneously — one did not proceed the other. For this reason, it is somewhat artificial to separate "medium" from "message", as we have done in developing this narrative.

41 N Blomley, *Law Space and the Geographies of Power* (New York: The Guilford Press, 1994); W Pue, Wrestling with Law: (Geographical) Specificity vs (Legal) Abstraction (1990) 11 *Urban Geography* 566; Paul Carter, *The Road To Botany Bay: An Exploration of Landscape and History* (University of Chicago Press, 1989).

42 See, for example, B Attwood, *The Making of the Aborigines* (Sydney: Allen & Unwin, 1989); J R Miller, *Skyscrapers Hide the Heavens* (University of Toronto Press, 1989).

[43] J Manning Ward, *Colonial Self-Government: the British Experience, 1759-1856* (University of Toronto Press, 1976).

[44] JM Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820* (Cambridge University Press, 1993); EP Thompson, *Customs in Common* (New York, New Press, 1991).

[45] See, for example, B Kercher, *An Unruly Child: A History of Law in Australia* (Sydney: Allen & Unwin, 1995); B Kercher, *Debt, Seduction and Other Disasters: The Birth of Civil Law in Convict New South Wales* (Sydney: Federation Press, 1996); D Flaherty ed, *Essays in the History of Canadian Law, Vols 1 and 2* (Toronto: Osgoode Society, 1981, 1983); L Knafla ed, *Law and Justice in a New Land: Essays in Western Canadian Legal History* (Calgary: Carswell Co, 1986); P Girard & J Phillips eds, *Essays in the History of Canadian Law, Vol 3, Nova Scotia* (Toronto: Osgoode Society, 1990); H Foster & J McLaren eds, *Essays in the History of Canadian Law, vol. 6, British Columbia and the Yukon* (Toronto: Osgoode Society, 1995); P Romney, *Mr Attorney: The Attorney General for Ontario in Court, Cabinet and Legislature, 1791-1899* (Toronto: Osgoode Society, 1986); J Phillips, T Loo & S Lewthwaite, *Essays in the History of Canadian Law, Vol 5, Crime and Criminal Justice* (Toronto: Osgoode Society, 1994); B O'Brien, *Speedy Justice, The Tragic Last Voyage of His Majesty's Vessel Speedy* (Toronoto: Osgoode Society, 1992); C Wilton ed, *Essays in the History of Canadian Law, Vol 4, Beyond the Law: Lawyers and Business in Canada 1830 to 1930* (Toronto: University of Toronto Press, 1990); T Loo, *Making Law, Order and Authority in British Columbia, 1821-1871* (Toronto: University of Toronto Press, 1994); D Philips & S Davies ed, *A Nation of Rogues? Crime, Law and Punishment in Colonial Australia* (Melbourne: University Press, 1994); M Finnane, *Police and Government: Histories of Policing in Australia* (Melbourne: Oxford University Press, 1994); G Marquis, *Policing Canada's Century: A History of the Canadian Association of Chiefs of Police* (Toronto: The Osgoode Society, 1993); R C Macleod, *Canadianizing the West: The North-West Mounted Police as Agents of the National Policy, 1873-1905*, in L H Thomas ed, *Essays on Western History* (Edmonton: University of Alberta Press, 1976), 101-110.

[46] See, for example, B Wright, Quiescent Leviathan? Citizenship and National Security Measures in Late Modernity (1998) 25 *J Law and Society* 213; R Fraser, "All the privileges which Englishmen possess": Order, Rights, and Constitutionalism in Upper Canada, in R L Fraser ed, *Provincial Justice: Upper Canadian Legal Portraits* (Toronto: Osgoode Society, 1992), xxi-xcii. Raffaello Carboni commented of the Eureka Stockade that "The diggers did not take up arms against British rule, but against the *mis*-rule of those who were paid to administer the law properly; and however foolish their conduct might be, it was an ungenerous libel on the part of one of the military officers to designate *outraged British subjects* as 'foreign anarchists and armed ruffians'.": R Carboni, *The Eureka Stockade* (Melbourne: Melbourne University Press, 1963), at 130.

[47] D Neal, *The Rule of Law in a Penal Colony: Law and Practice in Early New South Wales* (Cambridge University Press, 1991); R Fraser ed, *Provincial Justice: Upper Canadian Legal Protraits from the Dictionary of Canadian Biography* (Toronto: Osgoode Society, 1992).

[48] AC Castles & MC Harris, *Lawmakers and Wayward Whigs: Government and Law in South Australia* (Adelaide: Wakefield Press, 1987); T Loo, *Making Law, Order and Authority in British Columbia, 1821-1871* (Toronto: University of Toronto Press, 1994); H Foster & J McLaren eds, *Essays in the History of Canadian Law: British Columbia and the Yukon, Vol. 6* (Toronto: Osgoode Society, 1995).

[49] The extraordinary efforts of Katy Chan, Judy Somers, and Kate Seaborn were immensely appreciated by all collaborators on the project. Phil Drury, Manager of the Information Technology Unit, also provided invaluable technical assistance at the ANU.

[50] W Pue, *Law School: The Story of Legal Education in British Columbia* (Vancouver: Continuing Legal Education Society of British Columbia and

Faculty of Law, University of British Columbia, 1995).

[51] The recommended Canadian text was C Strange & T Loo, *Making Good: Law & Moral Regulation in Canada, 1867-1939* (Toronto, University of Toronto Press, 1997). We were unable to find a comparable Australian work.

[52] The standard course evaluation survey at UBC, based on a scale from 1 (completely unsatisfactory) to 7 (excellent), reported an overall rating of 6.64, compared to a three year Law Faculty mean of 5.63. At U Vic the scale ranges from 1 (very low scoring) to 5 (excellent scoring). The evaluation rated this course overall at 4.06 (compared with a faculty average for the semester of 3.88. The lowest score recorded for the course related to workload (3.18). At ANU, the unit questionnaire used the scale from 1 (very poor) to 7 (excellent). The question relating to the learning climate obtained a mean score of 6.1 and the question relating to the overall impact upon learning and development obtained a mean score of 5.5.

[53] The student, Anthony Bettainin, has published the material on the internet, which may be viewed at URL:
http://www.anu.edu.au/~e950866/potlatch/.

[54] By way of example there is a fine multi-media website at the State Library of Victoria in Melbourne, providing a range of images relevant to law and legal culture in Australia, see www.slv.gov.vic.au. Also of great value is the BC History website operated from the British Columbia Archives and Record Service (BCARS) by David Mattinson**.**

[55] See www.law.mq.edu.au/scnsw. The site is also accessible through the Australian Legal Information Institute, see: http://www.austlii. edu.au.

[56] See eg R White, *The Middle Ground: Indians, Empires and Republics in the Great Lakes Region, 1650-1815* (Cambridge: Cambridge University Press, 1991); RK Williams Jr, *The American Indian in Western Legal Thought* (Oxford: Oxford University Press, 1990); R Milliss, *Waterloo Creek: The Australia Day massacre of 1838, George Gipps and the British conquest of New South Wales* (Sydney: UNSW Press, 1992); S Ryan, *The Cartographic Eye: How Explorers saw Australia* (Cambridge: Cambridge University Press, 1996); C Healy, *From the Ruins of Colonialism: History and Social Memory* (Cambridge: Cambridge University Press, 1997); T Murray Greenwood & B Wright, *Canadian State Trials, Vol 1, Law, Politics and Security Measures, 1608-1836* (Toronto: Osgoode Society, 1996); J Walker, *Race, Rights and the Law in the Supreme Court of Canada* (Toronto: University of Toronto Press, 1997); S Brawley, *The White Peril: Foreign Relations on Asian Immigration to Australasia and North America 1919-78* (Sydney: UNSW Press, 1995).

[57] For an explanation of these agreements see: www.ubc.ca under the Faculty of Graduate Studies entries. Cross-institutional study is similarly permitted at most Australian Law Faculties.