

The Internationalization of Canadian Faculties of Law:  
Contributions to a modern legal knowledge economy

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## **Abstract**

How do law faculties in Canada deal with internationalization in terms of their political economy and knowledge, and how do international students contribute to the circulation and production of legal knowledge? This dissertation draws on the evolution of international student enrollment from 2010 to 2020 and interviews with law professors from the six most internationalized faculties of law in Canada to describe the main features of the internationalization of legal education in the country to answer those questions. The extended case method is applied to amplify the discussions. The populational distribution of international students in faculties of law, compared to universities, points out structuring factors of current models and shows how different the internationalization in law is from the patterns in universities in general. Social situations presented by participants, touching on how they conceptualize internationalization, institutional strategies, relations with international students, circuits of circulation of knowledge, and economic aspects, reveal how the forces of academicism, professionalism, and globalization interact to frame the current internationalization of Canadian law faculties. Based on that, I propose a theoretical reconstruction of the Law and Learning tradition where the analysis of the political economy of legal education focuses on the traits of the ongoing legal knowledge economy. It concludes by claiming that forces of professionalism have led the internationalization of law faculties according to a business model similar to the pre-modern mercantilist economic system, in line with the reproduction of law as a pre-modern discipline. In that system, international students are primarily consumers rather than producers of knowledge within a legal knowledge economy that lacks communication between basic research and the profession. An alternative modern legal knowledge economy is imagined, where a modern legal science is unleashed from formal institutions of practice and international students become valuable assets for innovation both in legal research and practice.

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## **1. Introduction**

The internationalization of law faculties has been poorly portrayed in our mental landscape. As a rule, law schools are perceived as very localized professional schools training future lawyers in domestic law for a practice regulated by the local bar association. In this sense, internationalization is usually perceived as restricted to the exchange of students, enrollment of international students, cotutelle programs, international cooperation, and the rise of international law and the study of transnational subjects. Such an approach rarely links this phenomenon to the deeper, complex constellation of problems and opportunities it entails. In this dissertation, I draw on qualitative and quantitative data to understand how conflicting forces of professionalism, academicism and the global legal education market have shaped the political economy of the internationalization of Canadian law faculties. Based on an analysis that portrays an economy of circulation of knowledge that does not consider the potential of international students to an innovative legal knowledge production, I suggest a research agenda for the internationalization of legal education literature and a policy agenda to develop a legal knowledge economy. To do that, this dissertation aims to answer the questions: what role does internationalization play in the political economy of knowledge of Canadian Faculties of Law and how do international students contribute to that political economy in terms of circulation and production of knowledge?

In this Introduction, I will describe my encounter with the subject and the multiple ways I engaged with it. In the first subsection, I will contextualize myself and my research by pointing out the several questions raised during my experience as an international student studying a process I lived through. In the second subsection, I will describe my first impressions of the literature on internationalization and how identifying its gaps impacted how the research was structured. The

third subsection explains how my initial questions and exploratory endeavours consolidated into the final research questions and methodological choices presented in this dissertation. The fourth and last subsections present how the dissertation is organized and the content of its parts and chapters.

### 1.1 The Origins of a Research Interest

This project is partially the product of a cultural shock. Describing this shock may clarify my research questions and help the reader navigate the context behind the dissertation. Upon arriving in Canada, I intended to study the judicial politics at the Ibero-American Judicial Summit. I had written my proposal in my country of origin, Brazil, before knowing much about the Canadian legal system. During the courses I took at the law faculty, I soon saw myself immersed in a very internationalized student body and in touch with professors with diversified backgrounds. In short, I was an international student willing to research a transnational topic in a globalized environment, with little knowledge of the local Canadian law. This fairly international academic environment was new to me since my academic culture had been built with little contact with foreign professors or colleagues. That was a sign of a consistent circulation of people that would bring me an unprecedented experience of circulation of knowledge.

The legal knowledge I had accessed in Brazil was indeed very international, as is usual in Latin America and other parts of the Global South, which are traditional receptors of expertise from North America and Europe. I had read and discussed legal theorists, sociologists and philosophers from Europe, North America, and Latin America despite not having personal contact with people from those regions (except for Latin America), indicating an existing circulation of ideas but a limited circulation of people. However, in class in Canada, it looked like the circulation

of people was not linked to the circulation of ideas, experiences, and knowledge as I supposed. The richness I expected started to fade when it became evident that the topics, theories, and methodologies were most native to top universities in North America, and little effort was put into harnessing the diversity entrenched in a multinational classroom.

Do not get me wrong. Professors were always committed to the best academic standards and gave valuable insights on undertaking research according to North American standards, which I think are great. However, the fact that they were doing their best and that the diversity of knowledge was not on the agenda only reveals that the issue is not personal. It seemed that the production, diversification, evaluation, integration, and circulation of various kinds of legal knowledge brought by doctoral students from Africa, the Middle East, India, Latin America, and Canada (places my colleagues were from), whenever outside of a particular Western canon, was not of genuine interest. Sometimes, I look back on my learning experience with my former law faculty in Brazil and feel I had contact with a wider variety of international academic traditions there than in my experience at my university in Canada. That seemed quite paradoxical and counterintuitive to me.

I studied the theory and philosophy of law and published a book at the end of my master's in law. I have been in touch with Paulo Freire's critical pedagogy, Marxist economic theories, decolonial literature, critical legal studies, German system theory, French sociology, and Latin American criminology. I worked for almost ten years with social movements and access to justice in Brazil. I have experience with political organizations and international funding for human rights. All that to say, I was well-equipped to understand the problematic universality of Western canons and the colossal waste of knowledge, talents, and innovation that the actual internationalization I saw implied. I wish I had learnt more from my peers and the legal problems they were dealing

with in their countries. I believe this would have enriched my understanding of the legal challenges in Brazil, Canada, and the world.

The more I lived the academic experience, the more I felt inadequate. Canadian universities looked surrealistically wealthy to me. Facilities were new and clean, and services efficient at first sight. A fairy tale! They strongly contrasted with old, often ill-equipped public universities in developing countries. At the same time, I started to question where all that wealth comes from and the role of international students, especially from developing countries, in financing them. I felt that I had to look at myself, the system I was immersed in, and what my research and lack of more profound diversity had to do with the internationalization model of universities and law faculties in Canada. So, I decided to change my research topic, and I had already mastered a research methodology that could guide me in this new journey, the extended case method.<sup>1</sup>

In my first year in the doctoral program, a traumatic event happened. A roommate of my closest colleague from the doctoral program committed suicide during a holiday when no one was at home. The young man was an international student at the university, just like my colleague and me. He was not the only case of suicide we heard of during those pre-pandemic years, but that happened right at our door. I sheltered my friend for a few days after the incident, and we counted on my supervisor's help to move his things out of the house. The case made me think about the pressure, lack of support, and other challenges international students face.<sup>2</sup>

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<sup>1</sup> The extended case method is a multilayered approach to qualitative research and case study developed by Michael Burawoy, a former professor of Sociology at UC Berkeley. Burawoy served as president of the American Sociology Association and the International Sociology Association and is a founding editor of the *Global Dialogue* journal. He is also well known for advancing a “public sociology” and for trying to renew Marxist sociology by incorporating criticisms and insights from Pierre Bourdieu, Lakatos, Polanyi and other authors. His books and papers are available at <http://burawoy.berkeley.edu/index.htm>. The extended case method will be detailed in Chapter 2.

<sup>2</sup> Reportages about how international students struggle with the lack of support are very informative. One of them was crucial for my research, see Nicholas Hune-Brown, “Students for Sale”, *The Walrus* (September/October 2021) 21. Also see Claudia Hirtenfelder, “Le Canada ignore ses étudiants étrangers”, *La Presse* (April 26, 2020), online <<https://www.lapresse.ca/debats/opinions/2020-04-26/le-canada-ignore-ses-etudiants-etrangers>>. Nazim Baksh, L.

So, I first decided to analyze the internationalization strategy report of the University of Ottawa as the first move in this direction.<sup>3</sup> I found out that the report employed a managerial discourse marked by a narrow economic understanding of globalization characterized by increasing competition in general and among higher education institutions (HEI) in particular. Internationalization was a means to deal with rising challenges in this economic context. In this sense, internationalization implied enhancing the university's brand by attracting talented international students for research-intensive programs, recruiting as many international students as possible for course-based programs for funding purposes, reducing international student attrition rates, and developing intercultural skills to qualify the workforce for a multicultural, globalized setting. Innovation was seen as marketable innovation. Apart from an insufficient account of interculturality centred on human capital, there was no pedagogical approach to the curriculum, diversification, or knowledge exchange. I learned that internationalization entailed a business model with managerial and economic primary rationalities. It explained some of my concerns.

I contacted the University's International Office to observe their approach to internationalization. I was lucky because, at the time, the Office invited graduate students researching the topic for some round tables. I noticed that many of them were interested in how to foster global citizenship and awareness. The International Office was starting the first uOGlobal Recognition, and I volunteered as a mentor. The training process was based on developing communicative skills like icebreakers and stimulating students' participation in class activities.

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Ellenwood, M. Kelley, S. S. Aulakh, "International students enticed to Canada on dubious promises of jobs and immigration", *CBC News* (October 21, 2022), online <<https://www.cbc.ca/news/canada/international-students-canada-immigration-ontario-1.6614238>>, and many more pieces of news.

<sup>3</sup> This analysis was published as Vinicius AB da Silva, "A Critical Discourse Analysis of the University of Ottawa's Internationalization Strategy Report from a Third World Perspective" (2020) 193 *Canadian J Educl Admin and Policy* 49.

The activities themselves were akin to what I had read in the internationalization strategy. Students watched the speech of alumni who were successful global entrepreneurs. In class, icebreakers were tools to create an environment for students to realize they could work together despite their origins and feel unique to access a diverse university. Global citizenry and awareness were fostered as skills to be successful professionals.

What remained untouched was why those students had to come to Canada to pursue their education, the price they had to pay, and their parent's expectations. More profoundly, the privilege of developing countries' elites and how their investment in the Canadian higher education system relates to global inequalities. I wish I could have listened to their personal stories, fears, and expectations in the classroom. That would probably have been another way to bond them. From these experiences, I learned once more that tolerance and interest in cultural differences were not just values related to human rights or political liberalism. They were economically instrumental. I realized that liberal multiculturalism attempts to reconcile tolerance and personal feeling of inclusion with market goals as a response to globalization: respect for difference as an economic asset.

I participated in other aspects of student life to understand student politics and governance. I engaged with the Graduate Students Association of the University of Ottawa (GSAED) as the representative of graduate law students. I also participated in the Association of Graduate Law Students (GSLEED). I had done the same during my undergrad and master's degree in Brazil, and I knew that such involvement would translate into research insights. Also, student associations would extend my international student network beyond that of classmates, Latin American students and friends.

Due to my position as a representative of law graduate students at GSAED, I encountered many student complaints and brought one up for discussion. One of my Latin American friends pursuing her master's in engineering was dissatisfied with her schedule and the amount of work at the lab. She was supposed to stay for long shifts beyond the established hours in her agreement, which impacted her research and mental health. According to her, that was a widely accepted practice, and she felt she could not discuss the problem with the professor responsible for the project, her supervisor. She thought she could be easily replaced by another student willing to work under those conditions and would not risk losing the professor's recommendation letter after she graduated. Her scholarship was directly related to the project fund, so she was not unionized. There was little we could do in a situation like that. She represented a gap in the student welfare system.

It is possible to look at this case from many angles, such as the power relationship between professors and students, the circulation of credentials through the letter of recommendation, how it structures a habitus in that social field, and the role played by gender or other factors. But what caught my eye was the question about the kind of economy she belonged to. It looked like she was a worker trying to improve working conditions but was under the pressure of the reserve workforce and could not risk losing her salary; in this case, her scholarship and the letter of recommendation represented a passport for future work. If we look at it as an economic struggle, what kind of economy is this, and what is the role of international students in it?

The link to a particular knowledge economy was evident. Still, I needed a bridge between this kind of economy I saw unfolding in the faculty of engineering and how the faculty of law is supposed to function. It was unclear whether that kind of economic conflict would happen similarly. Legal education operates differently from engineering. Students are not expected to work in the lab or seriously engage in quantitative or qualitative research methods, which are not

traditional methods of legal scholarship. The distance between the academic standards of research in law and other faculties is well known. On top of that, the integration of students and their research products into the professional market is hardly comparable.

The connection was the Law and Learning movement. I was lucky again because my supervisor had just organized the Law and Learning in the Age of Partnership conference that "discuss[ed] the state of socio-legal research in the current context of such long-term, interdisciplinary and collaborative projects."<sup>4</sup> The fundamental legal research fostered after Harry Arthurs report<sup>5</sup> on the state of legal research has aimed to integrate legal knowledge into the broader sphere of academic, scientific knowledge produced at the university, distinct from doctrinal scholarship tributary to the legal profession. The Arthurs report boosted the restructuring of the Canadian legal field toward innovative legal knowledge using interdisciplinary methods, embracing marginalized topics and subjects, and valorizing legal pluralism as part of a restructured academic legal culture. The potential of such transformations and economic consequences have not yet been fully explored, especially considering internationalization. Do these changes in the legal academic field push for a knowledge economy similar to the one we see operating at the faculty of engineering? It is hard to tell; this has probably never been a discussion point in the socio-legal arena, with some thinking that law will and should never conform to hard science dynamics. Still, it sounded like this question opened a series of other questions about the faculty of law that could lead to further developments in the discussion of legal education and

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<sup>4</sup> To access the outline of the event, see University of Ottawa, "Law and Learning in an Era of Partnerships", online <<https://uocal.uottawa.ca/fr/node/24108>>

<sup>5</sup> Social Sciences and Humanities Research Council of Canada (SSHRC), eds, *Law and learning: report to the Social Sciences and Humanities Research Council of Canada* (Ottawa: The Council, 1983).

internationalization. You will find my answers to such questions in the conclusion chapter of this thesis.

Intense dialogue with my supervisor was an essential part of my research, and to some extent, this research results from this fruitful interaction. His participation pushed my arguments further due to many aspects of his personal and professional backgrounds. He was once an international student pursuing a doctoral degree at the same university. More than that, we shared similar geographical and social origins. We both had studied at public universities in Rio de Janeiro and came from the same social class, with shared values and political views. We even had friends in common of whom we were not aware. That was useful because we spoke the same language, had similar concerns, and communicated smoothly. Also, he is an immigration expert and was familiar with the kind of research I was conducting. Thus, there were intersections between his field of expertise and my interest in the internationalization of legal education, particularly the role of international students.

Furthermore, he was responsible for the mandatory methodology course for LLM students and was very active in faculty governance, especially in the graduate studies program. Because of that, he was in direct contact with international students and was aware of the impact of their increasing numbers in the program. Our discussions about the consequences of creating the course-based LLM stream sparked ideas concerning the faculty's business model and the clash between professional academic research and professional legal training (professional LLMs) in graduate law programs.<sup>6</sup> Therefore, he was knowledgeable enough to react to my hypothesis based on his

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<sup>6</sup> Professional LLM programs are directed at training Canadians who obtained their degree in law abroad and non-Canadian lawyers to meet the National Committee on Accreditation (NCA) standards, pass the bar exam and practice law in the country. Important Canadian law faculties offer such programs, including the University of Toronto, the University of British Columbia, York University, and the Université de Montréal. Beyond the LLM degree, students can also access career services and counselling to help them integrate into the legal market, which are services typically offered to JD students. For a deeper analysis of professional LLM programs, see Chapter 4.11.

privileged experience as a former international student, expert, and faculty member dealing with international students daily.

When the pandemic hit, new concerns arose.<sup>7</sup> The network of friends kept alive by social activities was brutally affected.<sup>8</sup> Colleagues from the university returned to their countries of origin, and what was already a very lonely research environment became depressing for many. I had already felt the impact of the atomization process of research, which differed from the collaborative and social environment I encountered in Brazil during my master's. This atomization proved to be the most significant weakness of the doctorate program in my experience.

Nonetheless, the departure of international students, the uncertainties of border crossing, and virtual learning were all sources for more inquiries in my research. After all, how would the global legal education market react? Which university business models would be more impacted? What would faculties do to recover? Would international students search for alternatives to prestigious legal education in their or nearby countries? Since students were not on campus, would they pay cheaper tuition fees? How did the pandemic affect the completion time and attrition rates? What kind of international students were most impacted and from which countries?

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<sup>7</sup> During the first lockdown, Prof. Shauna Van Praagh invited my supervisor to write his contributions to the special issue of the prestigious journal *Lex Electronica* on “Law and Learning in the Time of Pandemic”, an invitation Joao extended to me. The article we published condenses the uncertainties about the future of legal education and highlighted the gap about internationalization in the Law and Learning tradition. Those arguments are still present in this dissertation. See Joao Velloso and Vinicius da Silva (2020) “Delocalizing Law and Learning: Challenges and Opportunities for International Cooperation in the Time of Pandemic” 25:4 *Lex Electronica* 111.

<sup>8</sup> Since the Fall of 2018 I had given dance classes. I taught a Brazilian couple's dance called *farró* for free at the students' centre of the University of Ottawa. That created a community of around twenty people. One of them became my partner and the mother of my child in November 2021. By the time the pandemic started, the *farró* scene in Ottawa had grown. We were a team of four people involved in the management of the dance group and taught two classes in a studio downtown. There were also weekly dancing *soirées* in a Brazilian café that gathered students and young professionals. Unfortunately, we never recovered after the first lockdown.

In August 2022, I had an opportunity to travel to Argentina on a three-week research trip,<sup>9</sup> where I interviewed law professors about the internationalization of legal education in that country. The goal was to learn a third reality, diverse from Brazil and Canada, that could contribute to understanding various contexts and approaches to the global legal education market. A preliminary assessment indicates that Brazil represents an enclosed, non-existent market where quality legal education is provided by public universities fully funded by the government, thus unconcerned with the market logic in any sense. Argentina represents a regional education hub with a model where undergraduate legal education is free of charge while graduate legal education is dependent on student fees. In that scenario, international student dollars have a significant impact but raised serious criticisms about a double-tier system where international students would enjoy privileges and less demanding academic standards than locals. So, the business model was getting ground while facing resistance. Compared to those countries, Canada represents a country where the business model was more overtly accepted, with universities and law schools investing in attracting international students and becoming dependent on that source of fees for general operations.

Finally, in the last months of 2022, my direct engagement with the field had its final moment. With few activities happening on campus and social and research life still weak under the inertia caused by the pandemic, it looked like the faculty and graduate student associations had not yet recovered their capacity to provide students with a rich knowledge exchange environment. Under such a context, a colleague and I took the initiative and invited other doctoral law students for biweekly meetings, where someone would be responsible for bringing a topic of choice for discussion. We explored the moment to share our findings, discuss methodologies, learn how to

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<sup>9</sup> It was possible thanks to the Mitacs Globalink Research Award.

navigate scholarship applications, apply for ethical clearance, and ask for advice when supervisors stopped being responsive. Such an opportunity compensated for the loneliness and lack of general methodological guidance plaguing some graduate students.

## 1.2 A Look at the Literature

Internationalization of Higher Education Institutions as a field of study in Education has grown considerably since the 90s, following the liberalization of the economy, the decline in the welfare state and the emergence of neoliberal globalization, with the bulk of its production in English-speaking countries. After engaging with that literature,<sup>10</sup> I realized it would be possible to separate most of the arguments into three main streams: a technical or professional, a descriptive, and a critical stream. The technical or professional stream describes pedagogical techniques to promote internationalization. One example is the methodologies to internationalize the curriculum.<sup>11</sup> In that case, experts become invited consultants by institutions to introduce tools or

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<sup>10</sup> The best opportunity I had to engage with scholars of the field of Internationalization of HEI was at the Conference “Shaping Sustainable Futures for Internationalization of Higher Education.” The conference took place at the Ontario Institute for Studies in Education (OISE) at the University of Toronto in June 2019. At the conference, I realized that, although organizers were not expecting to focus so much on the economic aspects of internationalization, the conference was immersed in the confrontation between dominant discourse about the benefits of internationalization—such as integration, shared values, improving opportunities for people in developing countries, revenue, and immigration of skilled workforce—and contesting Third World narratives on the reproduction of Western values, lack of sovereignty, neo-colonialism, dependency, soft power, uniformization, and brain drain. Of course, the future of China was of great concern for both. Also, for the first time, I realized that Canadian education experts were working as consultants for African and Southeast-Asian countries to create local programs and build branches of foreign universities. For a student used to public universities and an education tradition that sees knowledge production as a sovereign asset for nation-building, that was something new, strange and problematic. However, it made clear that there was an economic rationale underlying internationalization that I needed to understand.

<sup>11</sup> Terrance R Carson, “Internationalizing Curriculum: Globalization and the Worldliness of Curriculum Studies” (2009) 39:1 *Curriculum Inquiry* 145–158. Betty Leask, “Internationalizing the Curriculum in the Disciplines—Imagining New Possibilities” (2013) 17:2 *Journal of Studies in International Education* 103–118. Betty Leask, “Internationalization of the Curriculum and the Disciplines: Current Perspectives and Directions for the Future” (2013) 17:2 *Journal of Studies in International Education* 99–102. Betty Leask, “Using Formal and Informal Curricula to Improve Interactions Between Home and International Students” (2009) 13:2 *Journal of Studies in International Education* 205–221.

improve their internationalization standards.<sup>12</sup> Market-driven practices quickly adopted such discourse and underpins a consultancy market for experts.

The descriptive stream describes actual internationalization models or applies a comparative approach between countries.<sup>13</sup> A neutral, scientific tone, often based on empirical evidence, is a characteristic of such literature. At some point, however, it helps to naturalize internationalization as a business understanding the marketization as an unstoppable trend. I was more akin to the third stream, a critical one, which denounces the inequalities reproduced by internationalization and how decolonial theories, Indigenous communities, and the Global South could produce alternatives based on a more pedagogical rather than market-driven approach.<sup>14</sup>

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<sup>12</sup> One example is John K. Hudzik, former dean and vice president of international programs at Michigan State University, who was invited by the uOttawa International Office to speak about comprehensive internationalization in January 2020. According to his speech, The Core H.E. Mission Rationale translates into “with globalization, the ‘business’ of H.E. is increasingly conducted across borders when assessing the best talents and cutting-edge knowledge. Higher education must function in a *global* marketplace through collaborations, partnerships, and conditions of competition.” That reinforces the discourse of a market-driven internationalization strategy at that university. See John K. Hudzik, “Comprehensive Internationalization: Strategic Context to Internationalize Curricula, Teaching and Learning,” (January, 2020), online <[https://www.uottawa.ca/about-us/sites/g/files/bhrs336/files/2022-03/j\\_hudzik\\_university\\_of\\_ottawa\\_en.pdf](https://www.uottawa.ca/about-us/sites/g/files/bhrs336/files/2022-03/j_hudzik_university_of_ottawa_en.pdf)>

<sup>13</sup> Philip G Altbach and Jane Knight, “The Internationalization of Higher Education: Motivations and Realities” (2007) 11:3–4 *Journal of Studies in International Education* 290–305. Elspeth Jones and Hans de Wit, “The Globalization of Internationalization?” in Deborah N Cohn and Hilary E Kahn, eds, *International Education at the Crossroads* (Indiana University Press, 2020) 35. Louis Volante, Xavier Fazio and Jo Ritzen, “The OECD and educational policy reform: International surveys, governance, and policy evidence” (2017) 184 *Canadian Journal of Educational Administration and Policy* 34. Jane Knight, “Meaning, rationales and tensions in the internationalisation of higher education” in *Routledge handbook of international education and development* (Routledge, 2015) 345. Elizabeth Buckner, “The internationalization of higher education: National interpretations of a global model” (2019) 63:3 *Comparative Education Review* 315. These are just some few examples of an immense body of literature.

<sup>14</sup> Recent critiques, including contributions from Indigenous and postcolonial perspectives, have been systematized and spread by the Critical Internationalization Studies Network, which count with an extensive bibliography on the topic. See also Sharon Stein and Dale M McCartney, “Emerging Conversations in Critical Internationalization Studies” (2021) 11:S1 *Journal of International Students* 1. Stephen J Ball, “Privatising education, privatising education policy, privatising educational research: network governance and the ‘competition state’” (2009) 24:1 *Journal of Education Policy* 83–99. Sari Hanafi, “University systems in the Arab East: Publish globally and perish locally vs publish locally and perish globally” (2011) 59:3 *Current Sociology* 291–309. Elizabeth Alva Sumida Huaman, Belinda Chiu and Carrie Billy, “Indigenous internationalization: Indigenous worldviews, higher education, and Tribal Colleges and Universities” (2019) 27 *Education Policy Analysis Archives* 101. Ramón Grosfoguel, “Colonial difference, geopolitics of knowledge, and global coloniality in the modern/colonial capitalist world-system” (2002) *Review (Fernand Braudel Center)* 203–224. Walter Mignolo and Catherine E Walsh, *On decoloniality: concepts, analytics, praxis*, On decoloniality (Durham: Duke University Press, 2018).

However, the void of the economic problem caught my attention as I met this critical literature. Its powerful decolonial critique does not seem to provide an alternative for the market approach beyond the need to boost public funding for universities. That is pretty much where the literature is now. While market-driven internationalization is based on a narrow, biased understanding of the globalized knowledge economy, most of the critical stream does not address the knowledge economy, resting its case on a moral stand for equity and reparation. Thus, it looked reasonable and convincing but little practical due to the limited concern with the economic landscape.<sup>15</sup>

After reading the education literature, I focused on law faculties in Canada. Unlike what I saw in education, where the discussion about the internationalization of HEI is a well-established field of its own, in the legal field, the topic is often mixed with the internationalization of legal thought, methods and subjects such as comparative law, international and transnational law, legal history, law and political economy. Despite that, a limited field of internationalization of legal education (IOLE) exists and requires further development, which is what I expect to do with this dissertation.<sup>16</sup>

Legal approaches to the international somewhat mirrored those three in the education field. One may consider the literature about comparative law methodology, transnational law, and

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<sup>15</sup> I would say it presents symbolic critiques rather than a material one. Since I am discussing the political economy, I think it is crucial to consider the production of Marx, who revolutionized the political economy of his time. His goal was to produce a more scientific account of equity and reparation against utopian attempts to do so. This is somewhat the same feeling I had reading the decolonial literature about the internationalization of HEI. Another remarkable feature of North American academia concerning Marxism is the fact that when it engages with political economy, it seems to completely ignore contributions from Marxism. For instance, I found it very strange that Harry Arthurs, when writing about the political economy of legal education in Canada, and Law and Political Economy project at Yale (more information on <https://lpeproject.org/>), never cite Marx or any Marxist literature despite reproducing arguments traceable to authors such as Gramsci, Poulantzas and Althusser. Apparently, we still suffer the consequences of McCarthyism in the North American academy. This repulse looks counter-productive from the knowledge production perspective.

<sup>16</sup> I will not cite any piece of scholarship about the internationalization of law and legal education in this Introduction because they are the object of the literature review in Chapter 3, where the reader can find all the references.

international law as examples of the technical or professional stream in internationalization. That is the case if one considers the specific legal knowledge, often normative and doctrinal, that reverberates into the legal profession. However, legal education as a professional field is far from being as developed as education studies. Canada's legal education has not seriously addressed internationalization strategies, methods, and techniques. For instance, we do not see discussions about promoting institutional reforms to induce a “comprehensive” internationalization, internationalization of the curriculum, or organized responses to boost transnational research and comparative methodologies. McGill's transsystemic model and its method of combining and comparing Civil Law and Common Law concepts appear to be an exception, and this became an experiment of high interest to me.

A neutral, descriptive approach to programs established by law faculties, their institutional goals, and expected results can be found in the aforementioned IOLE literature. This literature does not provide the institutional or pedagogical techniques to foster internationalization. Still, it produces informative papers addressing exchange and cotutelle programs, international projects, double degrees, and certificates that Canadian law faculties may have. The problem is that this description is often not informed by fieldwork, interviews, or surveys to develop a complex assessment of those programs.<sup>17</sup>

Critical analysis is dispersed throughout fields such as the history of legal thought, law and political economy, and the internationalization of the legal profession. The first is an account of the various waves of legal influence and legal transplants; the second is a critique of the consequences of the predominant neoliberal ideology on law and legal education, and the third is an account of the alliances and conflicts between international and national legal elites in

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<sup>17</sup> I present a review of the IOLE literature in Chapter 3.9.

competition for positions in the state and new professional contexts of global law firms and arbitration.<sup>18</sup>

I identified three blank spots in this multifaceted approach to internationalization in law. The first big concern is the lack of quantitative and qualitative data in the literature. The lack of perception of international students as an active part of internationalization is another concern and indicates enclosure and self-centrism. The third is the need to overtake a narrow approach to the political economy and globalization that does not go beyond the training of lawyers and does not consider the circulation and production of legal knowledge as a (potential) economic factor. Thus, we need an understanding of law and political economy that includes the study of the role of the law faculty in the knowledge economy of our time.

These blank spots are more salient in the Canadian scholarship about internationalization. Things look different in the United States, where empirical methodologies appeared in the remarkable work of Carole Silver and Swethaa Ballakrishnen, who interviewed and surveyed students. I also mention Gail J. Hupper, who wrote the history of the doctorate in law in the U.S. by studying the minutes of graduate studies department meetings and analyzing international students' doctoral dissertations to assess the methodologies in use. These scholars were essential guides to further my research since researching the role of international students in the production and circulation of legal knowledge would require similar qualitative and quantitative methods.

Pierre Bourdieu and his followers in legal sociology also became relevant sources of inspiration and my contact with the scholarship produced by Bryant Garth and Yves Dezalay. More recently, their research featured the globalization of legal education as a stream dedicated to

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<sup>18</sup> References and a detailed discussion on such analyses can be found throughout the literature review. See Chapter 3.2 to 3.5.

analyzing the curriculum of international law schools in developing countries like India, China, Brazil, and Argentina. They are interested in how those new faculties change local elites' landscape by introducing an American legal thinking model, competing with traditional law faculties connected to statecraft and training national elites with a dogmatic legal education, so law faculties are a place for different forms of capital building (symbolic, political, relational, etc.), used by lawyers and professors to propel their influence and establish relationships with foreign elites, which are advantages in internal power struggles.

### 1.3 Building a Research Subject

After recognizing the lack of empirical data about international students and the overall invisibility of that population in the Canadian legal literature was the central void in the literature, it looked like a good idea to start by collecting basic quantitative information and move on to further qualitative research to know who the international graduate law students were, what they were researching, their work outside the university, their academic experience, challenges, prospective career, and their desire to immigrate. To answer those questions and trace the profile and production of international students, I would ask for data from universities and law faculties about enrollment, interview students, and read master's and doctoral theses available. I would focus my research on the five most extensive programs.

However, these ideas changed after defending my thesis proposal defence. The topic was relatively new; not much was written about in Canada, and there was some uncertainty about the ethical implications for students and institutions. The subject was sensitive, and caution was needed. Also, the project was too ambitious. International students comprise a large and diverse population, raising many methodological concerns.

Nevertheless, there were fundamental questions that professors could answer based on their experience as teachers and administrators. What does internationalization mean for professors and law faculties? How is it discussed and assessed by the faculty? How does supervising international differ from supervising domestic students? What are the main concerns of international students? To what extent does the circulation of people lead to the circulation of knowledge? What is the economic weight of international students, and how does this affect the distribution of resources among law school programs?<sup>19</sup>

Therefore, focusing on the professors' side of internationalization seemed to be the first step to designing some hypotheses and preparing the ground for future research with students. Moreover, professors and institutions represented a smaller sample and highly significant actors in the internationalization process. It looked like a better opportunity to deal with permanent agents who designed courses, applied pedagogies, participated in admission committees, served as deans and vice-deans, supervised and taught international students, and reflected on the topic for a longer time. While students are the customers in the global legal education market, professors are workers, managers and visionaries, and institutions are the providers. Those are permanent actors with lasting and structuring impacts on the market and are crucial to creating and solving students' problems. Thus, I accepted the suggestion of my committee and chose this path as a first step that may underpin future inquiries with students. Due to this change in my subject, it was also possible to explore different experiences of knowledge exchange beyond the main traits of the international student population.

To prepare for the interviews, I gathered data about the enrollment of international law students in the six largest law faculties in terms of the international student population from 2010

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<sup>19</sup> Those questions ended up constituting my questionnaire for interviewing law professors.

to 2020.<sup>20</sup> I also read all the documents related to internationalization produced by these universities and law faculties I could find on their websites. I intended to conduct semi-structured interviews with at least thirty law professors. Unfortunately, I managed to interview twenty-nine.<sup>21</sup>

If the lack of empirical data and the invisibility of international students were tackled by the means I mentioned above, a later encounter with the literature about the economics of knowledge was crucial to addressing the political economy of internationalization.<sup>22</sup> I learned that a serious approach to the knowledge economy went way beyond the discourse used in education and reproduced in the Internationalization Strategy of the University of Ottawa (2017), the most comprehensive report about the internationalization of a Canadian university available during the period of my research. Knowledge can be seen as a particular case of public goods with specific properties that impact how it is measured, evaluated, produced, and circulated. At the same time, we can have different effects depending on the interaction of various categories of knowledge (or expertise). The economics of knowledge aims to understand how knowledge is mobilized within a whole economy, industry, or company to optimize procedures and maximize profit. It describes a research agenda.

Conversely, the current discourse about the knowledge economy in the field of internationalization takes for granted the production and circulation of knowledge as the main feature of the current global economy stage to develop a business model instead of evaluating the

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<sup>20</sup> Also, I was given access to a massive database with the results of the Canadian Association for Graduate Students' surveys in 2010, 2013, 2016, and 2019 containing 1139 questionnaires filled by domestic and international graduate law students. The surveys covered many aspects of academic life, social life, and university services. Despite the volume, the survey does not comprise a representative sample of the graduate law student population to infer reliable conclusions. Because of that, I decided not to use this data in this dissertation.

<sup>21</sup> A justification and description of the methodology, data collection, and interviews can be found in Chapter 2.4.

<sup>22</sup> The seminar work of Dominique Foray in systematizing the field of the economics of knowledge is especially remarkable in my research since it helped me to think about the law faculty as knowledge "factory" in an economic sense. See Dominique Foray, *The Economics of knowledge* (MIT press, 2004).

scientific validity and empirical implications of such an assumption. This diagnosis may be partially proper, but it inevitably has an ideological side. It omits the refinement of an economic analysis of knowledge as a good and reduces the issue's complexity to the global competition for talent and human capital. In this sense, universities compete for students, train the workforce for a globalized economy with the required social and technical skills, and create innovation to be integrated into the global market as a good for global consumption. This understanding pushes an agenda about globalization and how the internationalization of HEI should respond to the premises of globalization in a limited direction based on little economic science.

Starting from that premise, I also say that the current discourse about globalization and internationalization is economicist. It does not apply the lenses of the economics of knowledge to the processes of knowledge production and circulation inside the university and the different faculties. It halts the investigation of the actual knowledge economy to push a particular managerial agenda affiliated with a business model. It is to say that it is based on limited economic science. In an economicist approach, researchers look for results that confirm their economic premises. Internationalization may serve different purposes with multiple financial implications, and despite being central to innovation, knowledge may not be the most valuable element in a modern economy. It may depend on the industry, the country, and what knowledge our society values the most. Determining the weight of knowledge within a given economic sector is a matter of investigation, which does not seem to be in the plan of universities, faculties, and people dedicated to promoting internationalization.

This discussion led me to think, what if we applied the concepts of the economics of knowledge to the faculty of law? What would happen if we considered the law faculty as a unity of production, like a company or a factory? What is the product, how is it produced, what

knowledge is involved, what is the raw material to be transformed, who buys it, and how does internationalization fit? What is innovation in the context of law? Maybe I do not have the proper training in economics to answer those questions, but I can identify other questions more suitable to an audience of socio-legal scholars. For instance, how does internationalization respond to law faculties' business models? What knowledge do these business models mobilize? What approaches, methodologies and methods are regarded as attractive assets? What forces are fighting for resources and prestige in the context of internationalization, and where are these resources allocated? Is the experience and knowledge international students acquire in countries of origin mobilized by law faculties? How can such knowledge be harnessed to produce legal innovation for Canada and globalization?

Good answers must consider that the faculty of law is not isolated from the legal profession, state, market and civil society forces, which demand different knowledge to deal with contradictory aspects of social life. The legal field is complex, and a successful approach to internationalizing legal education must acknowledge this complexity. These questions are a tentative effort to break down the more general research problem I tried to answer in this dissertation: how do law faculties in Canada deal with internationalization in terms of their political economy of knowledge? After answering it, we can move on to the more specific question: How do international students contribute to the circulation and production of legal knowledge? I will be happy if the reader feels she is better equipped to elaborate on some other good questions about the topic at the end of this dissertation.

We can justify the relevance of this research from a more pragmatic, institutional perspective. Canadian law faculties are applying significant energy to attract and manage international students, while law professors have engaged in university committees on the topic.

Besides that, international students' presence in law faculties is increasing, especially in graduate programs. Nonetheless, law faculties seem to produce little information about this population and its impact on the production and circulation of legal knowledge.

From a more theoretical perspective, the internationalization of law faculties raises fundamental questions about the reproduction of elites and hierarchies<sup>23</sup>; global governance and management of inequalities<sup>24</sup>; influence, dependency, and global hegemony;<sup>25</sup> and the political economy of knowledge within the relationship between North and South,<sup>26</sup> or center, semi-peripheries, and peripheries.<sup>27</sup> Despite the evident links to these approaches, Canadian law professors have not explored them yet.

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<sup>23</sup> Yves Dezalay and Bryant G Garth, "Corporate Law Firms, NGOs and Issues of Legitimacy for a Global Legal Order" (2012) 80:6 *Fordham L Rev* 2309; Yves Dezalay and Bryant G Garth, "'Legal Theory,' Strategies of Learned Production, and the Relatively Weak Autonomy of the Subfield of Learned Law" in Justin Desautels-Stein and Christopher Tomlins, eds, *Searching for Contemporary Legal Thought*, 1st ed (Cambridge University Press, 2017) 137; Yves Dezalay and Bryant G Garth "Introduction: Constructing transnational justice" Dezalay, Yves and Bryant G Garth, eds, *Lawyers and the construction of transnational justice* (Abingdon, Oxon ; New York, NY: Routledge, 2012) 3-12; Yves Dezalay and Bryant G Garth "Marketing and legitimating two sides of transnational justice: possible trajectories toward a unified transnational field" Dezalay, Yves and Bryant G Garth, eds, *Lawyers and the construction of transnational justice* (Abingdon, Oxon ; New York, NY: Routledge, 2012) 277-295; Y Dezalay and B G Garth, "Marketing and selling transnational 'judges' and global 'experts': building the credibility of (quasi)judicial regulation" (2010) 8:1 *Socio-Economic Review* 113-130. Yves Dezalay and Bryant Garth, "Les usages nationaux d'une science « globale » : La diffusion de nouveaux paradigmes économiques comme stratégie hégémonique et enjeu domestique dans les champs nationaux de reproduction des élites d'État" (2006) 48:3 *Sociologie du Travail* 308-329; Yves Dezalay, "Les usages internationaux du concept de champ juridique" (2013) 200:5 *Actes de la recherche en sciences sociales* 56.

<sup>24</sup> Boaventura de Sousa Santos, "Governance: Between Myth and Reality\*" (2009) #0 rccsar, online: <http://journals.openedition.org/rccsar/95>; Martti Koskeniemi, "International Law as 'Global Governance'" in Justin Desautels-Stein and Christopher Tomlins, eds, *Searching for Contemporary Legal Thought*, 1st ed (Cambridge University Press, 2017) 199.

<sup>25</sup> Obiora Chinedu Okafor, "Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?" (2008) 10:4 *International Community Law Review* 371-378. BS Chimni, "Third World Approaches to International Law: A Manifesto" (2006) 8:1 *International Community Law Review* 3-27.

<sup>26</sup> M Sornarajah, "On fighting for global justice: the role of a Third World international lawyer" (2016) 37:11 *Third World Quarterly* 1972-1989; Mohsen al Attar and Vernon Tava, "TWAIL Pedagogy – Legal Education for Emancipation" (2009) 15:1 *Palest Yearb Int Law Online* 7-39. Yves Dezalay and Bryant G Garth, *The internationalization of palace wars: lawyers, economists, and the contest to transform Latin American states*, The Chicago series in law and society (Chicago: University of Chicago Press, 2002).

<sup>27</sup> Maria Fernanda Beigel "Las relaciones de poder en la ciencia mundial: un anti-ranking para conocer la ciencia producida en la periferia" (2018) 274 *Fundación Friedrich Ebert; Nueva Sociedad* 13-28. Maria Fernanda Beigel, "David y Goliath. El sistema académico mundial y las perspectivas del conocimiento producido en la periferia" (2013)

Deeper discussions about internationalization must look at the management, production, and exchange of knowledge, considered pillars of the modern economy in the form of human capital, to better integrate complex economic systems aiming at tackling more complex conflicts that lay way beyond the global education market competition. In this sense, an honest look into the internationalization of law faculties should aim to understand the combination of internationalization, research, and law according to their relevance for raising awareness of global inequalities and the impact of qualified work for research-based activities on social and economic welfare. By doing that, we may find that empirical methodologies in legal research drawing on various experiences worldwide are essential for improving our welfare.

More than just presenting the research problem and the questions, this introduction was conceived as a moment to introduce myself and contextualize the research within the inventory of ideas and traditions I am mobilizing. The introduction was also written as an open conversation to arouse the reader's interest in a topic rarely explored by legal scholars. After all, this is the first time the issue is being addressed using quantitative and qualitative data, and I feel responsible for providing my positionality so you can assess my arguments' validity, limits, and potential.

#### 1.4 The Outline of the Dissertation

The dissertation is organized into three parts divided into seven chapters. Each part reflects a stage of the research. Part I consists of chapters 2 and 3, presenting the cornerstones of my inquiry regarding methodology, theoretical framework, and the contextualization of the discussion in the

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15 *Prohistoria; Pensamiento Universitario* 15-34. Maria Fernanda Beigel, “Centros y periferias en la circulación internacional del conocimiento” (2013) 245 *Fundación Foro Nueva Sociedad; Nueva Sociedad* 110-123. Raewyn Connell et al, “Toward a global sociology of knowledge: Post-colonial realities and intellectual practices” (2017) 32:1 *International Sociology* 21–37. Sari Hanafi, “University systems in the Arab East...,” *supra* note 14.

specialized literature. Part II comprises chapters 4, 5 and 6, where the empirical data is presented and analyzed. As Chapter 6 already exhibits a considerable level of theoretical abstraction and analytical closure, it could have been set as the final chapter, reducing it to the last part of the dissertation. However, I preferred to include it in the empirical part as Part III was designed to integrate the conclusions of the data analysis into even higher levels of theoretical discussions. Part III comprehends Chapter 7 and the Final Considerations, where I expose the findings with the most relevant Canadian legal education tradition and, ultimately, how the legal knowledge economy is organized.

The chapters can be described in more detail as the following. Chapter 2 introduces the methodology by which I got inspired and the methods I used. Burawoy's extended case method allowed me to elaborate on the data collected through interviews, observation, and participation to build a theoretical approach anchored in my positionality as an international student while making sense of quantitative data to describe structural trends and the broader context. At the end of that chapter, I introduce my theoretical framework, the Law and Learning tradition, which I further develop on Chapter 7. In Chapter 3, I review the literature about the internationalization of legal education. It provides an overview of what is missing in how the topic is addressed in Canada and what we can learn from innovative approaches from the United States. It will also explain why I prefer the term internationalization to transnationalization or globalization.

In Chapter 4, the reader will find quantitative data that portray the evolution of international student enrollment at six major universities and law faculties from 2010 to 2020. I compare the enrollment rates at law faculties with the overall numbers at the universities to highlight the specificities of law faculties' internationalization processes and the relevance of researching law

faculties separately. Despite not being its primary goal, that chapter also demonstrates the impact of the pandemic on international student enrollment at those six law faculties.

In Chapter 5, I present the result of my analysis of twenty-nine interviews with law professors from those same universities by highlighting dissenting conceptions, evident and underlying conflicts, the diversity of approaches, and the patterns I identified. In Chapter 6, I analyze the material I set forth in the previous chapters according to the extended case method. Thus, I will conduct further generalizing steps in order to identify the structuring elements, social situations, and forces at play in the political economy of internationalization. Chapter 7 is an attempt at theoretical reconstruction. I underline some flaws in the Law and Learning tradition and propose contributions for implementing a legal knowledge economy that could strengthen the academic autonomy of legal science by harnessing the diversity international students bring. In the Final Considerations, I summarize the main conclusions and suggest twelve recommendations to move toward a modern legal knowledge economy that sees international students as valuable knowledge producers.

**PART I. Problematizing Internationalization of Canadian Faculties of Law: a multi-layered analysis**  
Chapters 2 and 3

## 2. Methodology

This chapter will describe my encounter with different meanings attached to methodology in the social sciences and in law, more precisely its epistemological, formal, and substantive meanings. In the sequence, I will explain why I chose the extended case method and how it is supposed to operate in relation to those three meanings. Finally, I will make my choices of sources and techniques to apply the extended case method to this research explicit.

In the social sciences and legal research, methodology is a multifaceted subject, and different meanings can be given to it. During my research, I came across three main ones. First, methodology can be seen as an academic discipline devoted to explaining how scientific knowledge is produced. In this sense, it is the scientific method's science underpinned by the philosophy of science or epistemology. A good example is the work of Thomas Khun or Imre Lakatos.<sup>28</sup> In law, jus-naturalism, legal realism, legal positivism, neo-constitutionalism, and legal pluralism have methodological consequences comprising this meaning, for they all have claims on what law is about, how to produce valid legal knowledge, and what the sources of legal knowledge are.<sup>29</sup>

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<sup>28</sup> Thomas S Kuhn, *The structure of scientific revolutions* (University of Chicago press, 2012); Imre Lakatos, *The Methodology of Scientific Research Programs* (Cambridge University Press, 1978).

<sup>29</sup> For jus-naturalism, see John Finnis, *Natural law and natural rights* (Oxford University Press, 2011); for legal realism, see Alf Ross, *On law and justice* (Oxford: Oxford University Press, 2020). Karl N Llewellyn, "A Realistic Jurisprudence – The Next Step" (1930) 30:4 *Columbia Law Review* 431–465. See also Roscoe Pound and Marshall L DeRosa, *An introduction to the philosophy of law, Storrs Lecture* (London: Routledge, 2017). For legal positivism, see H L A Hart, *The concept of law*, 3rd ed. (Oxford: Oxford University Press, 2012) and Hans Kelsen, *Pure theory of law* (Gloucester, Mass: Peter Smith, 1989). For post-positivism and neo-constitutionalism, see Ronald Dworkin, *Justice for hedgehogs* (Cambridge, Mass: Belknap Press of Harvard University Press, 2011) and Robert Alexy, *A theory of constitutional rights* (Oxford university press, 2010). For a deep overview of legal pluralism, see Brian Z Tamanaha, *Legal pluralism explained : history, theory, consequences* (New York: Oxford University Press, 2021).

In the second meaning, methodology is a formal technique to strategically design and adapt a research project to the challenges that arise during the research process. It discusses how to choose, operate, and combine the methods to better systematize the data and results to answer the research question. In this case, it is a formal technique because it does not guide how to make good research questions and is not directly committed to the topic of inquiry, but it is more akin to showing how to search for the answers. It justifies how knowledge should be produced using quantitative and qualitative data, primary and secondary sources, and other materials. Many aspects of Howard Becker's work<sup>30</sup> go in that direction. We may identify the comparative methodology,<sup>31</sup> action research,<sup>32</sup> and legal history<sup>33</sup> as methodologies following this sense in law.

The third meaning of methodology is the set of traditions through whose lenses one looks at the world to identify the research problem and formulate research questions. In this sense, the methodology provides the inventory, the mental landscape, and a system of meaning and concepts one can use to read certain aspects of reality. This meaning of methodology as an approach or a framework of analysis is popular in North American legal academia, leading to methodologies

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<sup>30</sup> Howard S Becker, *Tricks of the trade: How to think about your research while you're doing it* (University of Chicago press, 2008). Howard S Becker, "How to find out how to do qualitative research" (2009) 3 *International Journal of Communication* 9.

<sup>31</sup> Jaakko Husa, "Methodology of Comparative Law Today: From Paradoxes to Flexibility" (2006) 57 *Revue internationale de droit comparé* 1095-1117. Mark van Hoecke, "Deep Level Comparative Law" in *Epistemology and Methodology of Comparative Law*, ed. Mark van Hoecke, (Oxford: Hart Publishing, 2004), 165-195.

<sup>32</sup> Rory O'Brien, "An Overview of the Methodological Approach of Action Research," (1998), online <<http://www.web.net/~robrien/papers/arfinal.html>>. Cathy MacDonald, "Understanding Participatory Action Research: A Qualitative Research Methodology Option," (2012) 13 *Canadian Journal of Action Research* 34. Fran Baum, Colin MacDougall, and Danielle Smith, "Participatory Action Research," (2006) 60 *Journal of Epidemiological Community Health* 854.

<sup>33</sup> John Baker, "Reflections on Doing Legal History" ch. 2 in *Making Legal History: Approaches and Methodologies*, ed. Anthony Musson and Chantal Stebbings (Cambridge UP, 2012), 7-12. David Ibbetson, "Historical Research in Law," in *The Oxford Handbook of Legal Studies*, ed. Mark Tushnet and Peter Cane (Oxford UP 2005), 863-879.

derivate from approaches such as Gender Theory,<sup>34</sup> Critical Race Theory,<sup>35</sup> Law and Economics,<sup>36</sup> Law and the Political Economy,<sup>37</sup> Third World Approach to International Law,<sup>38</sup> Critical Disability Theory,<sup>39</sup> Queer Theory,<sup>40</sup> and others. I call those substantive methodologies, for they mobilize consolidated perspectives on society that researchers can work with, skipping the endless need for justification. They offer concepts that are reliable starting points in "progressive" research programs.<sup>41</sup> The complexity of multidimensional and transdisciplinary research requires a sophisticated methodology that can integrate different methods into a coherent universe. Such a

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<sup>34</sup> Katharine T. Bartlett, "Cracking Foundations as Feminist Method" (2000) 8 *Journal of Gender, Social Policy and the Law* 31. Katharine T. Bartlett, "Feminist Legal Methods" (1990) 103 *Harvard Law Review* 829

<sup>35</sup> Shawn Wilson, "What is Indigenous Research Methodology?" (2001) 25 *Canadian Journal of Native Education* 175-179. Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," (1991) 43 *Stanford Law Review* 1241. Imani Perry, "Cultural Studies, Critical Race Theory and Some Reflections on Methods," (2005) 50 *Villanova Law Review* 915

<sup>36</sup> Alessio M. Paccès and Louis T. Visscher, "Methodology of Law and Economics," (2011) in Bart van Klink and Sanne Taekema (eds.), *Law and Method: Interdisciplinary Research Into Law*, Series Politika No. 4, (Mohr Siebeck, 2011), 85-107, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2259058](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2259058). Christine Jolls, Cass R. Sunstein, and Richard Thaler, "A Behavioral Approach to Law and Economics," (1998) 50 *Stanford Law Review* 1471.

<sup>37</sup> Angela Harris and James J Varellas, "Law and Political Economy in a Time of Accelerating Crises" (2020) 1:1 *Journal of Law and Political Economy* 1, online: <https://escholarship.org/uc/item/8p8284sh>. Jedediah Britton-Purdy et al, "Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis" (2020) 129 *Yale LJ* 1784, online: [https://www.yalelawjournal.org/pdf/Britton-Purdyetal.Feature\\_iwo42jj4.pdf](https://www.yalelawjournal.org/pdf/Britton-Purdyetal.Feature_iwo42jj4.pdf). Harry W Arthurs and Claire Mummé, "From Governance to Political Economy: Insights from a Study of Relations Between Corporations and Workers" (2007) 45:3 *Osgoode Hall LJ* 439

<sup>38</sup> Obiora Chinedu Okafor, "Critical Third World Approaches to International Law..." *supra* note 25. Makau Mutua and Antony Anghie, "What is TWAIL?" (2000) 94 *Proceedings of the Annual Meeting (American Society of International Law)* 31. BS Chimni, "Third World Approaches to International Law..." *supra* note 25.

<sup>39</sup> Sami Schalk, "Critical Disability Studies as a Methodology," (2017) 6 *Lateral*, online <<http://csalateral.org/issue/6-1/forum-alt-humanities-critical-disability-studies-methodology-schalk/>>

<sup>40</sup> Kath Browne and Catherine J Nash, "Queer Methods and Methodologies: An Introduction," in Kath Browne and Catherine J Nash, eds. *Queer Methods and Methodologies: Intersecting Queer Theories and Social Science Research*, 1-23

<sup>41</sup> Lakatos divides research programs into progressive and degenerated. Michael Burawoy explains that, according to Lakatos, "In a progressive program the new belts of theory expand the empirical content of the program, not only by absorbing anomalies but by making predictions, some of which are corroborated. In a degenerating program successive belts are only backward looking, patching up anomalies in ad hoc fashion, by reducing the scope of the theory, or by simply barring counterexamples. In a degenerating program new theories do not anticipate new facts, and thus knowledge does not grow." Michael Burawoy, "Marxism as science: Historical challenges and theoretical growth" (1990) *American Sociological Review* 775 at 778. I believe that those substantial methodologies represent research programs that may apply several methodologies to keep their relevance. In other word, to keep being progressive.

methodology must offer guidance to navigate more factual data with a lower abstraction level up to middle and higher complexity and abstraction levels.<sup>42</sup> It is also relevant that it navigates those three meanings I mentioned to guide knowledge production comprehensively. In this part, I will describe Burawoy's extended case method according to these three meanings and justify why I think it is the methodology that would help me address the multiple facets of my research question.

## 2.1 Reflexive Science

I will start addressing the first meaning of methodology by describing Burawoy's epistemological stances.<sup>43</sup> In his article "The Extended Case Method," the author draws on what he calls reflective science to build his methodology.<sup>44</sup> Reflexive science is framed in opposition to the principles of positive science. He critiques the hegemonic form of science produced in North American sociology, led by quantitative research and marked by the desire to neutralize the researcher's position. Instead, he upholds "a model of science that embraces not detachment but engagement as the road to knowledge."<sup>45</sup> For this, he argues for the redefinition of the concept of objectivity.

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<sup>42</sup> I am using multidimensional and transdisciplinary as qualifiers that indicate that economic, political, sociological and pedagogical aspects are not treated according to the disciplinary models that see disciplines as closed systems. In that sense, they are dimensions of a phenomenon. The idea of dimensions reinforces the idea of perspective, which depends on the observer, and is completely detached from the object of study. Thus, dimensions are not inherent to the phenomenon, but are mere ways to organize the world methodologically. Multidimensional research conducts analysis from various perspectives without reifying any of them in a discipline. Transdisciplinarity is used to say that the research does not belong to any disciplinary field nor employs concepts from two or more disciplines. Rather, the research recognizes that there is a body of knowledge that cannot be confined into any disciplinary field and the boundaries between disciplines are not just blur but should be abolished in order to account for a better understanding of the object of study.

<sup>43</sup> Most of the description of Burawoy's extended case methods in this chapter derive from previous reflections I did for my master's dissertation. This description, along with a broader analysis of Burawoy's account of the American sociology disciplinary field, his stance on structuralism, and criticisms that could be made based on Howard S. Becker's methodological ideas were published in Portuguese in Vinícius AB da Silva, "A epistemologia de Michael Burawoy e seus desdobramentos metodológicos" (2018) 9:3 *Rev Direito Práx* 1503–1530.

<sup>44</sup> Michael Burawoy, "The Extended Case Method" (1998) 16:1 *Sociological Theory* 4–33.

<sup>45</sup> *Ibid* at 5.

Positive science employs the mirror metaphor to portray an exact image of the social world by mapping social mechanisms in detail.<sup>46</sup> This image is produced through rigorous procedural objectivity that should eliminate the researcher's interference. Opposing that kind of positive science, he draws on Jack Katz's four (4Rs) positive science tenets – reactivity, reliability, replicability, and representativeness – to design reflexive science principles.<sup>47</sup>

As mentioned, positive science advocates against reactivity in favour of restraining the researcher's interference. It requires reliability, implying that it is necessary to reduce the world's complexity by creating criteria for selecting data; this is done by coding. It requires replicability, meaning that coding and criteria should be clear enough to make the research replicable so that it is possible to confirm the results with future research. Finally, it works with a narrow understanding of representativeness, by which samples should provide information extendable to the whole population.<sup>48</sup>

Quantitative methods are more capable of complying with these tenets, and surveys are attentively designed with techniques that turn the researcher irrelevant, standardize the data collection, control the environment, and choose participants so that they can represent a wider population.<sup>49</sup> Grounded theory is the attempt to apply the principles and techniques of positive science to participant observation.<sup>50</sup> Qualitative analysis may also work with those principles using

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<sup>46</sup> The metaphor of the mirror of nature indicates the believe in which truth is reached by correspondence between representation and the world based on the ability of our perception to absorb a reflected image of the world that is polluted by subjectivity. The metaphor is deconstructed by Rorty in the field of philosophy. See Richard Rorty, *Philosophy and the Mirror of Nature* (Princeton university press, 2009).

<sup>47</sup> Jack Katz, "A Theory of Qualitative Methodology: The Social System of Analytic Fieldwork" (2015) 1:1–2 *Méthod(e)s: African Review of Social Sciences Methodology* 131–146.

<sup>48</sup> Michael Burawoy, "The Extended Case Method", *supra* note 44 at 10.

<sup>49</sup> *Ibid* at 12.

<sup>50</sup> *Ibid* at 25.

coding software that restrains the researcher's subjectivity and systematizes choices made while examining the data.

These principles are meant to minimize the four effects of contexts. The first is interview effects, which claim that reactivity is produced independently of the interviewer's attitude, whether because of unavoidable personal characteristics of the participant or interviewer, like race and gender, or biases related to the topics, schedule, and how questions were asked and in what order. Other effects of context are respondent effects, which are impossible to predict and the employment of accurate meaning to standardize questions is destined to fail because meaning is mainly contextual, thus affecting reliability. Field effects also hinder the replicability of research because, again, it is impossible to isolate the sample from the context. Finally, there are situation effects that put representativeness into question. The whole is not composed of individuals alone but of social situations where individuals are in relation to one another. Therefore, good samples should be formed from a universe of social situations, but we do not yet know how to select relevant or representative social situations.<sup>51</sup>

Contrary to positive science, for him, context effects should not be taken as distortions to be avoided but should instead be incorporated as constituent aspects of reality to be regarded by the researcher. The absorption of effects of context into the research occurs through the reinforcement of a dialogic perspective that can account for the researcher's intervention in the world. It encompasses the discursive and non-discursive implications present in going into the field and formulating knowledge, the environment where the investigated situation sits, the social processes and forces at play as external elements, and general conclusions that may give up on the objectivity and representativeness of the sample. Thus, scientificity is generated by incorporating

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<sup>51</sup> *Ibid* at 12.

different dialogue levels throughout the research, comprising four principles or dimensions: intervention, process, structuration, and reconstruction.

Intervention is the principle by which we should acknowledge the scientific value present in the interaction between the researcher and the participant, which entails a social situation that dislodges both from a neutral position and must be harnessed for knowledge production. Thus, knowledge draws from the mutual reactions and perturbations inflicted by researchers and participants. Such perturbations are tools to assess routinized behaviours and expectations.<sup>52</sup> Process is when the multiple contextual, discursive, and non-discursive elements involved in producing meaning and assessing the context with the participants are considered. It allows for amplifying the dialogue by aggregating knowledge from diverse social situations into a broader array of social processes.<sup>53</sup> Structuration is a moment to look at elements external to the situations and processes we study. Those elements are the social forces at play within processes we are not directly observing but interacting with. Those forces have structural consequences because they limit and shape local social processes; at the same time, they are also continuously shaped and remodelled by the reconfiguration of those same social processes.<sup>54</sup>

Theoretical reconstruction is the fourth principle. Here, Burawoy stresses the point of generalization and universality, which are closely related to the question of the representativeness of the sample in positive science. In its place, reflexive science adds the theoretical framework as the last level of dialogue. The research draws on situational knowledge to identify the theory's flaws and advance its reconstruction by proposing innovations that increase its explanatory force. Therefore, instead of mirroring reality, generalization and universality are viewed as scholarly

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<sup>52</sup> *Ibid* at 14.

<sup>53</sup> *Ibid* at 14-15.

<sup>54</sup> *Ibid* at 15.

contributions to the inventory of ideas through which we understand the world and forecast new scenarios. By describing a reflexive science, Burawoy's methodology responds to the first meaning of methodology as an epistemological discussion about the fundamentals of knowledge and how it unfolds into using methods.

## 2.2 The Extended Case Method

The extended case method operationalizes the principles of reflective science just as quantitative research (surveys) and grounded theory apply positive science principles. In this sense, the extended case method allows the observer to provoke reactions to the research field to the point where he becomes a participant. Through perceiving such reactions, meaningful information about the object of study can be extracted. This intervention is similar to the knowledge produced by the activist in his attempts to push for transformations. Thus, one learns about the resistance undertaken by institutionalized behaviour and conservation techniques, which expose core values, group interests, and underlying conflicts.<sup>55</sup> Often, such reactivity assumes a greater proportion when the researcher presents his findings to the group he studied.<sup>56</sup> All these moments are treated as rich in scientific learning. Furthermore, they make it evident that the research is pervaded by regimes of power that run through the social situations under inquiry.

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<sup>55</sup> *Ibid* at 17.

<sup>56</sup> "There are few who like to be partialized, reduced to reified forces or in any other way made an object of sociological research. Second, most communities are driven by conflicts so that it is impossible to navigate them to everyone's satisfaction no matter how careful the observer." *Ibid*.

Regimes of power are omnipresent and are the links between the social situation, local social processes, and the surrounding structure.<sup>57</sup> They take centre stage because they are the means of communication between internal and external elements of the case so that the reproduction of the regime of power is assured in both ways, internally by the mobilization of resources and conservation schemes and externally by the action of social forces.<sup>58</sup> Therefore, the centrality of regimes of power leads to expanding research into considering the social forces involved.

The extended case method does not seek to discover general laws or make assertive affirmations about social situations. Instead, it aims to investigate the ballast of social forces operating within specific power regimes to horizons farther up the social scale. That is done by interconnecting cases to infer the operation of the social structure. However, the largest field of research extension concerns the theory itself, requiring a considerable antidogmatic effort to search for refutations and the ability to undertake a theory reconstruction. Accordingly, theory as a body of explanations used by the researcher to understand and navigate situations and processes is also considered “an intervention in the world it seeks to comprehend.”<sup>59</sup>

The theory is considered the ultimate social force, for it frames how we observe the social situation and processes and understand the social structure, which may explain why it is so hard to challenge well-established theoretical traditions and be innovative. That can worsen when theoretical traditions are entangled with authority or assume a power project.

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<sup>57</sup> “First, a social situation becomes a social process because social action presupposes and reproduces its regime of power. . . . Second, in the struggles around the regime of power, history and macrostructures are invoked as resources and schema within the social situation. . . . Third, interventions from outside the social situation have consequences structured by the regime of power.” *Ibid* at 18

<sup>58</sup> *Ibid* at 19.

<sup>59</sup> *Ibid* at 21.

Navigating regimes of power also adds limitations to the extended case method. Suppose positive science struggles with the effects of context related to the interview, the respondent, the field, and the situation. In turn, reflexive science must deal with the effects of power that may turn the principles of intervention, process, structuration, and reconstruction into domination, silencing, objectification, and normalization. The researcher's intervention in the social situation may translate into a struggle to dominate or resist domination. Intervention is an intrusion with unpredictable reactions. The researcher may not be welcomed into a field where the participants want to hide their hierarchies, the source of their power, conflicts, and weaknesses. The researcher also has idiosyncrasies that make him an ally or antagonist to some participants.

Silencing happens when we do not incorporate the voices of minorities dominated by the regimes of power to address social processes and the action of social forces. Objectification is a mistake that is present when we address social forces and fail to comprehend that they are not static but have roots in the dynamic field of social processes. That is an easy mistake because those forces are external to the local processes under scrutiny, so they appear more coherent and powerful than they often are. Lastly, normalization may occur due to the contradiction between using the theory to address the issue and then using the results to reconstruct that same theory. Selecting cases that fit the theory may only reinforce previous assumptions. This mistake of adapting the subject to the theory leads to a regressive research program. There must be room for learning from the case.<sup>60</sup>

Finally, the existence of two opposing science models does not mean they cannot be combined to increase each other's explanatory potential. Positive science can use reflexive methods to deal with context effects. At the same time, surveys and quantitative data can help map

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<sup>60</sup> *Ibid* at 22-24.

social forces external to the situation and processes under scrutiny and design better interventions in the field. They can offer valuable information about the expanded universe beyond the restricted area of intervention and show patterns of the structure that frames regimes of power and social forces. Therefore, they are handy in the structuring moment of the research.<sup>61</sup>

To sum up, Burawoy devotes his epistemology to advocating the qualitative method's scientific validity (ethnography, participatory method, and interviews) based on a reflexive science model, which opposes the positive science model. While the latter aims to suppress the effects of context to provide an unbiased explanation of the phenomenon, the former aims to scientifically integrate the context to produce scholarly generalizations that differ from the inferences learned from a sample's representativity. Therefore, reflexive science takes the researcher's actions and participation in the methods for granted. Objectivity is not ensured by neutrality or distance. Instead, it is achieved by multiple levels of dialogue, which constitute the extended case method itself.

The first level is based on the dialogue between the researcher and the participants within a particular social situation, which may employ direct observation, participation, and clinical interviews. The second level involves identifying shared features, such as group dynamics, behaviours, expectations, strategies, goals, and conflicts that allow for identifying local social processes. In the third level, external forces and larger social processes that frame local social processes are mapped into the structuring phase. The fourth level promotes the dialogical integration of the previous findings into the theoretical tradition we come from to proceed with its reconstruction. This integration is expected to identify the insufficiencies of existing theoretical models and propose new elements to fill the gaps and advance the theoretical tradition's

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<sup>61</sup> *Ibid* at 29.

explanatory power. That is how the extended case method responds to the second meaning of methodology.

### 2.3 The Extensive Case Method as a Substantive Methodology

At the beginning of the last chapter, I presented three meanings of methodology. At this point, I need to deal with the last one, methodology as an inventory of concepts, a tradition or a substantive approach to the topic based upon a positionality. The first remark to be made is to understand that methodology in this sense and theoretical framework are different categories, although they share a common ground. Critical race theory, third-world approach to international law (TWAIL), feminist theory, queer theory, and critical disability theory, among others, were born as theoretical perspectives; however, they also developed as methodologies. For that, they cling to the specific subject whose points of view, experiences, and differential identities become primary sources to formulate research questions: Indigenous, black people, developing countries, women, queer, and disabled people. Within the range of these questions, theories emerge as competing, systematic answers.

Methodologies, in this sense, are a significant contribution from North American academia. The continental legal scholarship I was familiar with is organized by theory level because the social theory was meant to have a universal reach. The particular subject's emancipation was attached to the liberation of all other dominated social actors. Marxism is the most exemplary attempt to combine a universal theory with a universal subject (the proletariat), making those two elements dialectically imbricated. This synthesis between theory and subject also represented the

synthesis between theory and social practice, known as praxis. Therefore, Gramsci refers to Marxism as the philosophy of praxis.<sup>62</sup>

Following the decline of those grand narratives<sup>63</sup> and the universal answers they attempted to provide, new critical approaches, mainly from the North American academia, decoupled the syntheses between theory and subject (social actors) and theory and practice as a way to open new research agendas and respond to the rise of new social movements. Concomitantly, pragmatism<sup>64</sup> regained prestige by dignifying minor social life issues instead of focusing on big concepts such as truth and emancipation, which are hard to translate into our daily life experiences. Such an environment led to the abandonment of the universal subject. It legitimized particular social actors and the rise of particular theories by producing limited syntheses with a more limited scope.<sup>65</sup>

Nevertheless, beyond creating room for new particular syntheses, decoupling subjects from the universal praxis also showed that all syntheses are contingent. Therefore, we would better decompose big narratives into fragmented subjects to prevent localized "universal" narratives from emerging (particular syntheses with universal explanatory force within the set of relations involving a particular subject) and regressive research programs. Therefore, it is now not only possible but also desirable to develop methodologies out of theories by taking a particular social actor's perspective to formulate new research questions. That is a strategy to establish progressive research programs, even though they may become more unstable or contingent.

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<sup>62</sup> Antonio Gramsci, *The modern prince and other writings* (New York: Internat. Publ, 2011).

<sup>63</sup> See Jean-François Lyotard, *The postmodern condition: a report on knowledge*, Theory and history of literature v. 10 (Minneapolis: University of Minnesota Press, 1984). In the legal field, Mariana Valverde opposes world-scale theories, which are supposed to be static and monological, to pragmatically assemblages of ideas. See Mariana Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance*, 1st ed (Routledge, 2015) at 3-4.

<sup>64</sup> Richard Rorty, *Consequences of pragmatism: Essays, 1972-1980* (U of Minnesota Press, 1982).

<sup>65</sup> Nevertheless, we must acknowledge the work of many scholars that are still committed to extracting universal lessons from such a context and using the plurality of subjects to advance grand narratives.

Decoupling the subject from the theory allows the researcher to navigate more freely among competing theories, proceed with the bricolage of otherwise conflicting concepts, and produce innovative answers, thus creating a progressive research project. Hence, methodologies become broad research agendas that encompass an array of theories in dialogue. The downside of putting theory in second place is that we miss well-established concepts as solid starting points since they are also put into question, which increases uncertainty. It fosters a bricolage of ideas that makes the research riskier. That is the price for freedom and innovativeness in a more complex society.

Burawoy's extended case method reacts to the issue of positionality by inviting the researcher to participate in the set of social relations under scrutiny and take other dominated positionalities into a privileged account. That is not just a political statement associated with Burawoy's Marxist affiliations but is vital to a method based on exploring the effects of context and regimes of power. His approach is promising because struggling against power regimes is one of the best ways to understand how power works. Such a positionality, however, is different from identity. To be in a social position means that that position is available to be taken and is not automatically addressed to someone due to an intrinsic personal condition, like ethnicity, colour, gender, disability, or sexual orientation, which are identity issues.

Therefore, positionality works better with economic roles, such as professions, institutional hierarchies, and class. It brings an advantage to Burawoy's method against other methodologies, such as TWAIL<sup>66</sup> or other theories attached to an identity in case we want to address

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<sup>66</sup> TWAIL methodology provides unavoidable input since international students are primarily from developing countries, and there are evident consequences of global inequalities in the internationalization of legal education. However, it goes without saying that international students may also come from developed countries and the international distribution of political and economic power may have different consequences in that case. Still, in both cases, international students may experience a similar position in the legal knowledge economy of Canada.

internationalization from the perspective of international students as an economic position.<sup>67</sup> Internationalization is primarily an economic phenomenon, and international students are a heterogeneous population with multi-faceted backgrounds and identities. Their place in the knowledge economy is a common ground for a research agenda.

Moreover, for the present research, the extended case method is handy for framing internationalization within multiple dialogues between the positionality of the researcher as an international student with the diversified pool of experiences of professors and administrators. It helps to contextualize these dialogues within the influence of larger social processes and forces disputing the resources made available by globalization, mainly the profession, the academia, and the market. Finally, it pushes for incorporating the findings into perhaps the most influential traditions in Canadian legal education, the Law and Learning, through another dialogical attempt.

## 2.4 This Research

I selected six major law faculties in the country to gather quantitative and qualitative data that should portray complementary aspects of the internationalization process. These law faculties are those at the University of Ottawa, the University of Montreal, McGill University, the University of Toronto, York University, and the University of British Columbia. That choice was made based on the relevance of their programs, the number of international students, and geographic and cultural elements. The sample includes the most frequent destinations of international students in

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<sup>67</sup> This is an intentional abstraction with methodological purposes. Surely racialized students, women and students from Third World countries will experience internationalization differently and with specific challenges. Therefore, research from these perspectives must be encouraged. By considering this population as a whole, however, we can identify other research questions, often related to their place in the knowledge economy, which is my primary interest here.

Canada, i.e., Ontario, Quebec, and British Columbia, covering francophone, anglophone, and bilingual universities with a higher level of internationalization. They represent the most extensive graduate programs in law by enrollment and proportion of international students. They are also different enough concerning the targeted audience, cultural environment, and history so that it is possible to apprehend common traits and differences. Therefore, they compose a sweeping landscape of what is going on in the internationalization of law faculties in general.

It is not the first time Burawoy's methodological ideas have inspired me. I had previously employed it for my master's degree when I studied politics within the Public Defender's Office in Rio de Janeiro. It was an unavoidable guide because, at the time, I had been involved in judicial politics for more than five years. I researched the field I was intervening in and needed to produce a knowledgeable account of that experience to intervene better. Considering power regimes and the active position of the researcher in the power struggle proved essential for what I expected to do with the knowledge I produced. It paid off.

In the case of this dissertation, political struggles in terms of the effects of power described by Burawoy are not as evident as in my previous research. Internationalization is not as politicized in Canada as human rights and access to justice are in Brazil. Nonetheless, I am immersed in the same relations I want to investigate, not at the same power level as professors and institutions. My experience as an international student is inseparable from my research topic, and my desire to become a professor in Canada is in many ways connected to the fate of internationalization and international students, so it is impossible to avoid the effects of context. Instead, these effects would be valuable clues that illuminated my investigation.

Intervention was a principle of constant use. In the introduction, I described my immersion into the field, the insights and stories it raised, and the contradictions and power effects I noticed

in legal education's internationalization. This participation and observation encompassed my experience in class, my interaction with other international students, my participation as the representative of graduate law students at the Graduate Students Association, the suicide of an international student who was a roommate of a close friend, the participation in seminars, endless conversations with my supervisor, the pandemic, the support group for young researchers, and the interaction with the International Office of the university. Although these experiences were not considered systematic sources for my research—which supposed methods to register my intervention, such as a field note journal, were crucial to identifying my research questions and mapping the field.

Knowledge is relational and flourishes from a material set of problems, actions, and reactions. Living the positionality of a subject may often lead to the necessity of understanding the history of relations and the regimes of power one is dealing with. In that vein, personal experience is the primary source because it is the living motor to ask questions and look for answers. Being closely related to positionality as the social position one has in a determined situation, process or structure, the intervention can be associated with the third definition of methodology as a substantive perspective that guides my inquiry.

However, the issue I first faced was that I did not find an established tradition with developed concepts extracted from any substantive perspective that I could employ as my safe inventory of ideas. Canadian legal scholarship does not study internationalization from the perspective of international students. Thus, I needed to build up the foundations of such a methodology by myself.<sup>68</sup>

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<sup>68</sup> A partial result of this effort was recently published in Vinicius A.B. da Silva, “What do we know about the international student population in Canadian Law Faculties?” (2023) 10 *Canadian Legal Education Annual Review* 51-79. The arguments presented in the article are further developed in this dissertation.

Alongside direct participation and field observation, interviews were selected as a means to get access to various social situations. Interviews were semi-structured, making them open to collecting unpredicted narratives crucial to capturing a broader range of situations. Semi-structured interviews are a standard method applied in research about internationalization, as Ballakrishnen and Silver<sup>69</sup> demonstrate. These interviews used clinical methods.<sup>70</sup> Answers to standard questions often led to inquiries of hidden pre-assumptions that bring up unexpected reflection on sensitive aspects of internationalization, such as funding, the lack of an institutional project, and the faculties' business model.

At the end of the interviews, I would return some impressions and preliminary findings to the participants to learn from their reactions. This interaction had relevant consequences because

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<sup>69</sup> “Interviews were open-ended and semi-structured, and both authors were involved in developing interview questions, especially as subsequent interviews began to probe into emergent themes from the preliminary data. Interviews lasted approximately one hour and all but two were recorded. All recordings were transcribed, and interviewers took detailed written notes of unrecorded interviews. Authors discussed emerging themes from the data as the interviews progressed and developed an exhaustive coding scheme (174 items) that incorporated both personal and demographic data (e.g. home country, education, characteristics of US law school, etc.) as well as a range of thematic categories that motivated the interview questions around experiences (e.g. in the law school classroom, within pan-ethnic community spaces), interactions (e.g. between different contingents of JD students and international students) and temporal life events (e.g. marriage, partnership decisions, career interests, etc.). The emergent data were further analyzed with more focused coding on similarities and differences, interpreted based on existing research on minority experiences in higher education research (e.g. peer group affiliations, classroom sociability) as well as our schematic understanding of the data (e.g. stigma for international status, unperturbed international status) especially around students’ emerging cosmopolitan life experiences (e.g. previous socialization in the US through camps, exchanges, transnational parents). Participants are referred to by a pseudonym derived from lists of common given and surnames in the participant’s home country. American names were assigned to participants who used American names”. Swethaa S Ballakrishnen and Carole Silver, “A NEW MINORITY? International JD Students in US Law Schools” (2019) 44:03 Law and Social Inquiry 647–678.

<sup>70</sup> The definition of clinical methods I used is summarized Burawoy: “Just as participant observation can follow positive principles, interviews can follow the precepts of reflexive science, in what I call the clinical method. The psychoanalytic variant is a prototype, especially when the analyst is seen as reflexive anthropologist (Chodorow, forthcoming). The relation between analyst and analysand is dialogic and interventionist. Each reconstitutes the other. Second, the analyst tries to recover and work through situationally specific experiences via dream analysis and free association. Process is the leitmotif of psychoanalysis. The third element of structuration, that is locating psychological processes in their wider social context, may not always be present. But here Fanon is an exemplar. His brilliant essays on colonialism, which derive from clinical work in Algeria, demonstrate the interdependence of psychic processes and economic, political, social, and cultural contexts. Finally, the analyst works with a prior body of theory that is continually evolving through attention to concrete cases. Theory is reconstructed. The clinical interview not only instantiates the principles of reflexive science but thematizes its limitations: domination of analyst over analysand, silencing of the past, objectification of personality structures, while the theory itself is heavy on normalizing.” Michael Burawoy, “The Extended Case Method,” *supra* note 44 at 27.

the multiplicity of meanings from the context effect would often collapse, and the participants could then map my position and reframe theirs accordingly. Sometimes, this would raise their interest in continuing the conversation. So, I believe the effects of contexts were exploited for the sake of the research.

On the one hand, the effects of power were not felt much during the interviews, mainly because professors who agreed to participate in the research were volunteers interested in discussing the topic. Many were engaged with an academic culture that valorizes critical approaches and empirical research or were already familiar with internationalization. However, some would show discomfort when realizing my questions were not about transnational or international law but the functioning of internationalization within the law faculty. They would ask me if that was the information I was looking for. One asked me whether I was studying law at all. These reactions bring about a crucial understanding of internationalization and the legal field because they translate the mental landscape of the issue.

On the other hand, an effect of power can be seen in the number of professors who did not return my contact, requested more information, and never returned my message, and the few who said they were not interested. Although I consider 29 interviews out of 91 attempts to communicate with professors to be a successful proportion, breaking into the field was more challenging than I expected. I intended to conduct thirty interviews with law professors and program coordinators (professors or not) from six universities, hoping to talk to five actors per institution.

I relied on two main sampling strategies. First, I sent a general invitation to the secretary of graduate programs or the dean's office asking for the message to be sent to the list of professors. Not all law faculties were happy to do so or said they had the list of professors, but most answered positively. Still, only three interviews were held because of these messages. One coordinator of a

professional LLM program who was not a professor, one professor coordinator of a professional LLM program, and a senior professor with a distinguished international career made themselves available to be interviewed. That indicates the profile of the most interested actors in talking about internationalization. I also conducted one experimental interview with my supervisor to test the questionnaire, an interview that I ended up using integrally, thus counting four interviews.

Second, I sent an individual message to the professional e-mail of eighty-eight professors based on their profiles on the faculty's website. I primarily looked for professors with administrative experience and an interest in international topics. It was a pragmatic choice because I believed these professors would be keener to share their views and experience. However, I was also open to interviewing with recently hired professors, professors teaching Indigenous law, and finally, professors with no direct relation to international issues in case I did not have interviewed enough professors. That is justified because internationalization can permeate all aspects of legal education and subjects. From those eighty-eight messages, I managed to interview twenty-five more professors. The interviews were carried out from January 24<sup>th</sup> to August 17<sup>th</sup>, 2022.

My goal of interviewing five professors from each university was not accomplished. In order to obtain four interviews from UBC, I reached twenty-seven professors. To conduct five interviews from York, I messaged seventeen professors. Regarding the UofT, I contacted fifteen professors to interview four. I contacted ten professors at UdeM and got four interviews. Messaging eight law professors from McGill resulted in four more interviews. Of the eleven professors I approached at the University of Ottawa, eight were available to give an interview. I also unsuccessfully contacted two professors from UQAM and one from Dalhousie.

We may think that the University of Ottawa is overrepresented; however, representativity is not a concept applicable to this research. Neither is saturation. Diversity of perspectives is indeed

essential, but the goal is not to exhaust the possibilities of analysis, elements, and discourses. Instead, to disturb the field to learn from emerging tensions and conflicts. In a topic that has received little attention, this research can map new problems and suggest research questions for future inquiries.

Since I committed to strict anonymity in the ethical clearance process and interviews, I was very conservative in snowball sampling because I feared that professors would have a better chance to identify peers who had participated in the research. I had free access to professors' profiles available online, so snowball sampling would only provide better help if professors were engaged in inviting their peers, which would ruin the anonymity of the sample. Due to anonymity, most of the time, their institutions and other traits that could identify the participant, such as administrative positions, previous experience, level of seniority, gender, and specific facts, were omitted unless essential to the argument.

Before I posed the questions, participants consented to the recording and were encouraged to introduce their background, including international, research, administrative, and teaching experiences. The questions concerned the following topics: personal experience with internationalization, the meaning of internationalization for the participant, how she perceived the meaning the law faculty attributed to the term and the faculty's approach to internationalization, whether and how internationalization is evaluated, differences between supervising international and domestic students, challenges faced by international students, circulation of knowledge, and the economics of the internationalization model. The interviews lasted 45 to 60 minutes, with a few lasting up to 90 minutes. The Zoom platform automatically transcribed some interviews. Others were transcribed using an online AI app. I also directly transcribed many parts and revised the excerpts put to use. The interview material comprised about 30 hours of audio.

Upon listening to the recording, I made extensive annotations in a notebook for each interview based on my impressions and how arguments connected to the content from other interviews. These annotations profited from the notes I made right after the encounters with professors so that I could relate new findings to my previous impressions. Moreover, I employed the NVivo coding software to compare excerpts addressing similar topics and have a clearer image of the repertoires of situations, perspectives, and conflicts.

Participation, observation, and interviews allowed me to interact and be in contact with social situations, whose analysis made me move up to the second level of contextualization, that of social processes. Processes draw on how professors define internationalization and depict conflicting forces, institutional policies, students' expectations, and challenges. Documents produced by universities and law schools about internationalization are supplementary sources of some relevance because they reveal institutional discourse.<sup>71</sup> Still, professors' perceptions of institutional practices are more relevant for understanding the actual functioning of internationalization.

The most recent strategic plans published by those six law faculties and respective universities were also considered to contextualize and prepare for the interviews.

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<sup>71</sup> Hupper is a good example of gathering different sorts of materials. She primarily relied on interviews in her research. To assess the programs, she interviewed fifty faculty members and program administrators between November 2003 and December 2007. She also examined documents and had access to the list of graduates and dissertations whenever publicly available. With regard to dissertations, she only checked the content and methodology of "a portion" and not tried to verify their quality. She interviewed twelve students and graduates between May and October 2005, most of them from just one program, Harvard. She made summaries after each interview from the notes she had taken. She did not transcribe the interviews. To study the legal transplant impact, she examined published papers on legal education in targeted countries, and she relied on her background knowledge. She assumes that her findings are not systematic but mostly anecdotal. Still, her work is a cornerstone of the discussion on the internationalization of doctoral programs. We would like to do a similar job. See Gail J Hupper, "The Academic Doctorate in Law: A Vehicle for Legal Transplants?" (2008) 58:3 *Journal of Legal Education* 413–454.

For York University, I consulted the following documents:

- The Osgood Hall Law School Strategic Plan 2021-2025;<sup>72</sup>
- The Issue Paper for Community Consultation 'York University: Globally Minded and Globally Engaged.'<sup>73</sup>

For the University of Toronto:

- The University of Toronto Faculty of Law Academic Plan 2017-2022;<sup>74</sup>
- The University of Toronto Faculty of Law Academic Plans for 2012-2017;<sup>75</sup>
- The 2019-2020 Annual Reports of the Office of the Vice-President, International;<sup>76</sup>
- The 2018-2019 Annual Reports of the Office of the Vice-President, International;<sup>77</sup>
- The 2017-2018 Annual Reports of the Office of the Vice-President, International.<sup>78</sup>

For McGill University:

- The McGill University Strategic Research 2019-2024 Summary Document,<sup>79</sup>

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<sup>72</sup> York University, *Osgoode Hall Law School Strategic Plan 2021–2025*, online <[https://www.osgoode.yorku.ca/wp-content/uploads/2021/04/2021-2025\\_Strategic-Plan\\_FINAL.pdf](https://www.osgoode.yorku.ca/wp-content/uploads/2021/04/2021-2025_Strategic-Plan_FINAL.pdf)>.

<sup>73</sup> York University, *York University: Globally Minded and Globally Engaged: Towards an integrated strategy and framework for internationalization and global engagement* (2019), online <<https://www.yorku.ca/laps-faculty-council/wp-content/uploads/sites/265/2021/03/York-University-Globally-Minded-and-Globally-Engaged-Issue-Paper.pdf>>.

<sup>74</sup> *University of Toronto Faculty of Law Academic Plan 2017 – 2022*, online <[https://law.utoronto.ca/sites/default/files/documents/e-Legal/law\\_academic\\_plan\\_2017.pdf](https://law.utoronto.ca/sites/default/files/documents/e-Legal/law_academic_plan_2017.pdf)>.

<sup>75</sup> *University of Toronto Faculty of Law Academic Plan 2012 – 2017*, online <<https://www.law.utoronto.ca/sites/default/files/documents/internal/AcademicPlan2012.pdf>>.

<sup>76</sup> University of Toronto, *Reimagining our Global University 2019-20, Annual Report Office of the Vice-President, International*, online <<https://international.utoronto.ca/wp-content/uploads/2023/11/2019-2020.pdf>>

<sup>77</sup> University of Toronto, *A GLOBAL UNIVERSITY, The 2018-19 annual report of the Office of the Vice-President, International*.

<sup>78</sup> University of Toronto, *GLOBAL ENGAGEMENT: U of T in the World The 2017-18 annual report of the Office of the Vice-President, International*.

<sup>79</sup> McGill University, *Strategic Research Plan 2019-2024 Summary Document* (2019), online <<https://www.chairs-chaire.gc.ca/program-programme/srp-prs/mcgill-eng.pdf>>.

- The McGill International Strategy and Framework;<sup>80</sup>
- The McGill University Strategic Academic Plan 2017-2022 and McGill Strategic Research Plan;<sup>81</sup>
- The McGill Strategic Research Plan.<sup>82</sup>

For the University of British Columbia (UBC):

- The UBC Global Engagement Strategy 2020-2030;<sup>83</sup>
- The UBC International Strategic Plan;<sup>84</sup>
- The Peter A. Allard School of Law Strategic Plan website.<sup>85</sup>
- The Peter A. Allard School of Law International Reach website<sup>86</sup>

For the University of Montreal:

- The brochure "Mapping the Law, Bridging Worlds" as part of the internationalization campaign of the Faculty of Law of the University of Montreal;<sup>87</sup>
- The University of Montreal Strategic Plans for 2022-2032;<sup>88</sup>

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<sup>80</sup> McGill University, *International Strategy and Framework*.

<sup>81</sup> McGill University, *Strategic Academic Plan 2017-2022*, online <[https://www.mcgill.ca/provost/files/provost/20170509\\_final\\_provosts\\_strategic\\_academic\\_plan\\_2017-2022.pdf](https://www.mcgill.ca/provost/files/provost/20170509_final_provosts_strategic_academic_plan_2017-2022.pdf)>.

<sup>82</sup> McGill University-Research and Innovation Office, *McGill Strategic Research Plan (2019)*, online <[https://www.mcgill.ca/research/files/research2/ri\\_mcgill\\_strategic\\_research\\_plan\\_2019\\_final\\_0.pdf](https://www.mcgill.ca/research/files/research2/ri_mcgill_strategic_research_plan_2019_final_0.pdf)>.

<sup>83</sup> University of British Columbia, *UBC Global Engagement Strategy 2020-2030 (2020)*, online <[https://global.ubc.ca/sites/default/files/documents/ubc\\_global\\_engagement\\_strategy\\_web.pdf](https://global.ubc.ca/sites/default/files/documents/ubc_global_engagement_strategy_web.pdf)>.

<sup>84</sup> University of British Columbia-Office of the Vice President Research and International, *UBC International Strategic Plan (UBC, 2011)*, online <<https://research.ubc.ca/sites/research.ubc.ca/files/vpri/UBC-intl-strat-plan-2011.pdf>>.

<sup>85</sup> Peter A. Allard School of Law, "Strategic Plan," online: <<https://allard.ubc.ca/about-us/strategic-plan>>.

<sup>86</sup> Peter A. Allard School of Law, "International Reach," online: <<https://allard.ubc.ca/about-us/international-reach>>.

<sup>87</sup> Université de Montreal-Faculty of Law, *Mapping the Law, Bridging Worlds* (Université de Montreal).

<sup>88</sup> Université de Montréal, "L'Université de Montréal et du monde de demain: Plan Stratégique 2022-2032", online: <[https://www.umontreal.ca/public/www/images/planification-strategique/Documents/Plan\\_strategique\\_UdeM\\_2032.pdf](https://www.umontreal.ca/public/www/images/planification-strategique/Documents/Plan_strategique_UdeM_2032.pdf)>.

- The University of Montreal Strategic Plans for 2016-2021.<sup>89</sup>

For the University of Ottawa:

- The Strategic Plan Transformation 2030;<sup>90</sup>
- The Transformation 2030 Progress Report;<sup>91</sup>
- The Strategic Plan 2019-2024 of the Faculty of Law Common Law Section;<sup>92</sup>
- The Internationalization Strategy Report of the University of Ottawa.<sup>93</sup>

These documents were supplemented by the International Education Strategy 2019-2024,<sup>94</sup> published by the Government of Canada; the University of Alberta International Strategic Plan;<sup>95</sup> and the Internationalization Survey 2014,<sup>96</sup> published by the Association of Universities and Colleges of Canada (AUCC). At the level of the provinces, I consulted Ontario's International

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<sup>89</sup> Université de Montréal, *Plan Stratégique 2016-2021* (2017), online <[https://cpu.umontreal.ca/fileadmin/cpu/documents/\\_archives/CPU\\_Plan\\_strategique\\_VF\\_2016-2021.pdf](https://cpu.umontreal.ca/fileadmin/cpu/documents/_archives/CPU_Plan_strategique_VF_2016-2021.pdf)>.

<sup>90</sup> University of Ottawa, *Transformation 2030: Building the University of Tomorrow, Strategic Plan*, online <[https://www.uottawa.ca/about-us/sites/g/files/bhrsksd336/files/2022-03/DGC19\\_1135\\_T2030\\_BROCHURE\\_ENG\\_WEB4.pdf](https://www.uottawa.ca/about-us/sites/g/files/bhrsksd336/files/2022-03/DGC19_1135_T2030_BROCHURE_ENG_WEB4.pdf)>.

<sup>91</sup> University of Ottawa, *Transformation 2030: Building the University of Tomorrow Progress Report 2022-2023* (2023), online <<https://www.uottawa.ca/about-us/sites/g/files/bhrsksd336/files/2023-10/TRANSFORMATION-2030-ANNUAL-REPORT-2023.pdf>>.

<sup>92</sup> University of Ottawa-Faculty of Law, Common Law Section, *Strategic Plan 2019-2024* (University of Ottawa).

<sup>93</sup> University of Ottawa-Office of the President, *University of Ottawa Internationalization Strategy Report* (University of Ottawa, May 2017), online <[https://www.uottawa.ca/about-us/sites/g/files/bhrsksd336/files/2022-04/2017-12-04\\_-\\_full\\_report\\_final\\_accessible.pdf](https://www.uottawa.ca/about-us/sites/g/files/bhrsksd336/files/2022-04/2017-12-04_-_full_report_final_accessible.pdf)>.

<sup>94</sup> Global Affairs Canada, *Building on success: international education strategy 2019-2024* (Ottawa, ON: Global Affairs Canada, 2019), online <<https://www.international.gc.ca/education/assets/pdfs/ies-sei/Building-on-Success-International-Education-Strategy-2019-2024.pdf>>.

<sup>95</sup> University of Alberta, *International Strategic Plan* (April 18, 2019), online <<https://www.ualberta.ca/provost/media-library/strategicplans/international-strategy-final.pdf>>.

<sup>96</sup> AUCC, *Canada's Universities in the World: AUCC Internationalization Survey* (AUCC, 2014), online <<https://www.univcan.ca/wp-content/uploads/2015/07/internationalization-survey-2014.pdf>>.

Postsecondary Education Strategy 2018,<sup>97</sup> Quebec's internationalization strategy (2003),<sup>98</sup> and the British Columbia International Education Strategy.<sup>99</sup>

Although I did not intend to move on with a systematized analysis of those documents, they contributed to identifying the narratives about internationalization, which should comprise the motivation, the means, the target audience, and the programs' goals. That also would inform my assessment of social forces and processes involved in the effort to internationalize. Despite the focus being on the law faculties, the documents from the universities, the government of Canada, the provinces, and other agencies are relevant because they frame the higher education environment and provide clues about how the law faculties may interact with them.

I also demonstrate the evolution of the internationalization of those six law faculties by examining the enrollment of international students from 2010 to 2020. These numbers were collected from universities' statistics available online or directly requested. There are several layers of comparison in use. The first is the comparison between the enrollment of international students in the law faculties and the universities. The second comprises the horizontal analysis of each law faculty through the timeline. Such a procedure considered the number of international students and the percentage of the general population they represent per program. The third layer of comparison is the identification of patterns and differences among the six faculties of law. In each layer, the data was disaggregated per program, i.e., undergraduate, graduate (combining master's and

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<sup>97</sup> Ministry of Advanced Education and Skills Development, *Ontario's International Postsecondary Education Strategy 2018: Education Global Citizens, realizing the benefits of international postsecondary education* (Toronto, ON: Ontario Government), online <<https://www.tcu.gov.on.ca/pepg/consultations/maesd-international-pse-strategy-en-13f-spring2018.pdf>>

<sup>98</sup> *To succeed in internationalizing Québec education: a mutually advantageous strategy* (Québec: The Ministère, Direction des affaires internationales et canadiennes, 2003), online <[https://www.education.gouv.qc.ca/fileadmin/site\\_web/documents/PSG/aff\\_intern\\_canadiennes/strategie.pdf](https://www.education.gouv.qc.ca/fileadmin/site_web/documents/PSG/aff_intern_canadiennes/strategie.pdf)>

<sup>99</sup> *British Columbia's International Education Strategy*, online <[https://www2.gov.bc.ca/assets/gov/education/post-secondary-education/international-education/internationaleducationstrategy\\_web.pdf](https://www2.gov.bc.ca/assets/gov/education/post-secondary-education/international-education/internationaleducationstrategy_web.pdf)>

doctoral programs), master's, and doctoral. The JD program was considered an undergraduate program for this purpose. Quantitative data within this framework should not be regarded as a mere representation of a sample. This data allows multiple analyses, the results of which were identified as structuring factors and presented in the first part of the sixth chapter. The data must be contextualized within multiple sources and interpreted to contribute to revealing social processes and forces. Therefore, the use I made of the extended case method, a multi-level dialogical methodology, combined a multi-layer analysis drawing on quantitative data (statistics of international students enrollment), qualitative data (interviews with professors), and, to a lesser extent, documents about internationalization (strategic plans and reports). I hope that yields a more complex picture of the issues, tendencies, and structure surrounding the internationalization of legal education in Canada.

According to the methodology I am following, the last stage of contextualization is theory reconstruction, which is related to enhancing and updating the intellectual tradition used in the research. Therefore, I must distinguish the theoretical framework with which I am affiliated. In that case, in the last chapter, I use my findings to contribute to the Law and Learning tradition, taking Harry Arthurs analysis of the political economy of Canadian legal education as the core aspect of such tradition, even if it has never explicitly embraced the issues related to internationalization of Law Faculties. Theory reconstruction is the most crucial aspect of Burawoy's method because it is designed to improve the explanatory power of a given theory by using complex cases, which makes it a living body of knowledge instead of an abstract and reified ideological narrative.

I justify the use of Law and Learning as a living tradition with the potential to competently incorporate the research about the internationalization of Canadian law faculties due to its

indigeneity – it is a Canadian tradition on legal research and education – and historical impact in the development of new institutional and intellectual arrangements in Canadian law faculties based on the assessment of the struggle between academic and professional forces. Moreover, the empirical research about the internationalization of law faculties in North America does not follow any particular theoretical framework. The North American style of empirically-oriented socio-legal scholarship about the internationalization of legal education applies a pragmatic view of problem-solving that disregards theoretical generalizations to address more specific research questions and policy-oriented approaches. That is the case of the research conducted by Carole Silver, Swethaa Ballakrishnen, and Gail Hupper, who lack any theoretical affiliation from my perspective.

Bourdieusian tradition about the globalization of legal education carried out by Yves Dezalay and Bryant Garth is an exception since they apply a continental approach that seeks to explain and predict social phenomena. They have focused on the internationalization of the legal field with the creation of international governance stances, arbitration, and the relationship between local and international legal elites.<sup>100</sup> The law faculty is primarily the place of elite training and circulation. Their most recent work addresses the globalization of American-style legal education through the lens of the conflict between traditional legal dogmatism and research-based legal education drawing from the most prestigious North American universities.<sup>101</sup> This conflict reflects the competition between national legal elites and international elites.

The Canadian scholarship on the Internationalization of legal education (IOLE) follows an institutional perspective. Scholars approach the phenomenon based on law schools' traditions, the

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<sup>100</sup> Pierre Bourdieu, "The force of law: Toward a sociology of the juridical field" (1986) 38 *Hastings LJ* 805.

<sup>101</sup> Bryant Garth and Gregory Shaffer (eds.), *The globalization of legal education* (New York, NY: Oxford University Press, 2022).

best case being McGill's transsystemia, and by describing programs and degrees designed to respond to the globalization of legal education. I intend to have a dialogue with this tradition but in other terms. My research questions about the internationalization of legal education draw on the perspective of international law students in Canada instead of institutions. For that, I believe we need to reframe IOLE as a methodology with a more complex subject and questions. It is necessary to prove that international students are a worthwhile research subject and that a deeper understanding of the knowledge economy is crucial to make them a more active and valuable asset within law schools than they currently are.

The problem is that the former two approaches (IOLE and the Bourdieusian tradition) do not address my research questions adequately. Drawing from the discussion about methodology as a separate element from theory, I decided to move on with an international student perspective to study internationalization, which conflicts with an institutional viewpoint presented by IOLE. At the same time, the Bourdieusian tradition is underpinned by the legal field's point of view regarding the dispute for symbolic capital. Because of that, this tradition seems to be more interested in the curriculum and the transplant of the U.S. legal education model to other countries. Despite recognizing the relevance of such propositions, it does not fit the purpose of this research since I am not pursuing this kind of analysis.

The North American scholarship about internationalization indicates that a unifying general theory is unnecessary in studying the topic. Also, those scholars do not seem to be affiliated with any methodology regarding the perspectives they embrace. Two reasons may explain this absence of positionality. First, they are following a positive model of science where they should assume a neutral point of view, even though they are aware of the power structures around their research topics. The second is that being professors might prevent them from assuming the

positionality of the international students they study, although they may be very sympathetic to the hardship international students often face. The point is that international law students are subjects without a methodology and theory. There is a gap to be filled up, and I noticed that it is possible to develop a methodology based on the positionality of international law students in the knowledge economy that can organize and promote the study of this population.

In this sense, adjusting Burawoy's methodology to develop a multi-layered analysis of internationalization in law faculties in Canada through quantitative data, qualitative data, and institutional documents on the topic from key universities by organizing those sources so as to identify social situations, structuring processes and forces, followed by a theory reconstruction, may help to provide some methodological and theoretical guidance for future studies on internationalization of graduate studies and legal education.

## 2.5 The Law and Learning tradition

In order to expand on the subject of theoretical reconstruction, I introduce the history of the Law and Learning tradition in this subsection and indicate the main ideas concerning the legal education sustained by Harry W. Arthurs. I will revisit these ideas in Chapter 7, where I identify the most relevant shortcoming of the tradition with the purpose of amending it by integrating an analysis of legal education through the lenses of the legal knowledge economy.

Law and Learning is the title of the 1983 Report to the Social Sciences and Humanities Research Council of Canada (SSHRC) by the Consultative Group on Research and Education in Law, chaired by Harry W. Arthurs, the primary author. Arthurs is primarily known for his work and scholarship in the fields of labour law, legal education and profession, but he also counts on significant contributions in several other areas, such as legal history, and constitutional and

administrative law. Prior to chairing the Consultative Group, he also served as Dean of the Osgoode Hall Law School, York University, from 1972 to 1977.<sup>102</sup>

The Report aimed to study the state of legal research and scholarship in Canada,<sup>103</sup> a concern justified by the fact that applications by law professors for research grants from SSHRC were incompatible with the number of applications by professors from other disciplines in the social sciences.<sup>104</sup> In the Foreword to the Report, the president of SSHRC writes that in 1978 only two grants had been awarded in law. In 1981-82, SSHRC received 21 applications and awarded only 14, among 613 full-time law professors in the country.<sup>105</sup> Although the numbers related to other disciplines are not mentioned, this scenario indicated an underdeveloped research culture in law that prompted an exhaustive investigation.

The value of the Report can be seen by the questions raised and the data collected. It was designed to evaluate to what extent the Canadian legal and intellectual communities were able to address complex issues related to how law is made and administered, and its reflection on the economy, politics, society, or culture. Moreover, to what extent legal education considered not only the interests and perspectives of lawyers, but also politicians, administrators, citizens, scholars, public administrators, journalists and critics.<sup>106</sup> To portray the state of the legal

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<sup>102</sup> Harry W. Arthurs published his memoir in 2019. See Harry W Arthurs, *Connecting the Dots: The Life of an Academic Lawyer* (McGill-Queen's University Press, 2019).

<sup>103</sup> SSHRC, eds, *Law and learning...*, *supra* note 5 at 3.

<sup>104</sup> In Arthurs words, "The Council was anxious to understand why applications from legal academic community for research grants, graduate and leave fellowships and other programs did not conform to patterns in other disciplines." *Ibid*, at v.

<sup>105</sup> *Ibid*, at iii.

<sup>106</sup> Arthurs unfolds those points into the following questions: "Are Canadian lawyers, for example, being educated in such a way that they possess not only the necessary technical competence to give legal advice and representation to clients of various classes and interests, but as well to offer them wise counsel in the social and economic implications of their legal problems, to adapt to changing laws and client needs, to assume positions of political and community service and leadership, to evaluate critically and help improve the administration of justice? Are Canadian legal researchers, whether in universities, government or governmental areas, intellectually prepared to

scholarship in Canada, the Consultative Group relied on a survey of all full-time law professors and statistics given by deans of law faculties, which were also surveyed. Furthermore, it analyzed current and retrospective books and articles in the area to trace the profile of legal research and surveyed governmental and non-governmental actors involved in legal research.<sup>107</sup>

Consequently, Arthurs worked with an expanded concept of law, legal education and profession that immersed other experiences beyond the traditional, doctrinal approach. It represented a turning point toward a reflexive, interdisciplinary, empirically oriented legal research concerned with the law in action, public policy, legal history, and theory. The Report itself can be portrayed as an example of the scholarship it sought to promote, with a solid use of empirical evidence that shaped theoretical arguments that are helpful more than forty years after publication.

The first theoretical contribution is the identification of two profiles of legal education, professional and academic, which can be situated at the opposing ends of a spectrum. Moreover, legal education can be studied by looking at the struggle between these two profiles, which represent different projects, practices, and interests and will respond to external social forces that will seek to influence the future of legal education. Such a struggle has material implications, for instance, regarding how programs are managed and symbolic implications regarding which methodologies are favoured in legal research. Therefore, this framework allows for a political-economy analysis of legal education concerning how professional legal education dominates law faculties and how academic legal education can resist and push for an alternative model, which I see as the central point of the report. I refer the reader to Chapter 6.3 for the due references to the

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confront the tasks of understanding, systematizing, publicizing, criticizing, and reforming law? Have Canadian social scientists and humanists recognized the rich potential and the challenges of law as a subject of investigation and reflection? Does the Canadian public possess the information and basic conceptual vocabulary to comprehend, participate in, and assess its own legal system?" *Ibid*, at 4

<sup>107</sup> *Ibid*, at vi.

Report and further discussion on this topic since I am using the two profiles of legal education from the Report to describe academicism and professionalism as conflicting processes, along with globalization, to examine the internationalization of Canadian law faculties.

Arthurs elaborates on this framework again in 1998 in an article entitled “The Political Economy of Canadian Legal Education,” where he revises the Law and Learning Report.<sup>108</sup> In the article, he says that a crucial weakness of the Report is that it did not adequately investigate the political economy that had produced the existing structures and strategies that shaped the recent history of Canadian legal education and consequently did not accurately anticipate future developments.<sup>109</sup>

The paper updates the approach by including the struggle between progressive, idealistic professors committed to reconceptualizing law following an interdisciplinary and academic perspective and students who sought professional training and “tended to be a political drag on the intellectual revolution in Canadian law faculties.”<sup>110</sup> Although this particular clash was scarcely addressed in the dissertation because I did not interview students, it is worth noticing that international student demand for professional LLMs that give them access to legal practice in Canada is a relevant drive of internationalization in Canadian law faculties, as indicated in Chapter 5.6.6.

More important, however, is that he expands on professional and academic legal education ideas. He claims that legal education is in the borderlands between the higher education sector and

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<sup>108</sup> “The political economy of Canadian legal education is characterized by conflicts over resources, values, and interests” Harry Arthurs, “The Political Economy of Canadian Legal Education,” (1998) 25 *Journal of Law and Society* 14 at 1

<sup>109</sup> *Ibid* at 18-9.

<sup>110</sup> *Ibid*, at 21.

the legal profession, each comprising a set of interests, ideologies, and institutions.<sup>111</sup> He described the impact of the profession on legal education as follows:

If the profession - the governing body, the major law firms, the bar association, the alumni - becomes convinced that law schools should concern themselves with technical competence, moral tutelage, or the deployment of their graduates elsewhere than in private practice, law schools are likely to respond by increasing the number, length or content of 'core' courses (deemed, with no good reason save history, indispensable for the practice of law) and of specialized or advanced courses with obvious professional salience or a skills-training component, by reducing theoretical and interdisciplinary seminars and support for social activism, and by introducing counselling programmes designed to shift law graduates to other career options.<sup>112</sup>

Therefore, he not only identifies the main actors, or social forces, behind the profession (government, law firms, the bar, and alumni) but also depicts professionalism as a process where the interests of those actors are enforced onto the law schools. On the opposite side, social forces associated with academicism and the university include the education ministry, senior academic administrators, the Senate, and foster the following policy:

If, on the other hand, universities - the education ministry, senior academic administrators, the Senate - insist that law professors conform to university- or system-wide expectations of scholarly productivity, meet high standards of pedagogic competence, and perform their fair share of university service, a different set of institutional adjustments will likely occur. These may include rewards and incentives for faculty members who win grants and publish prolifically, better support for research centres, greater investment in teaching technology, pedagogic training, and the systematic assessment of teaching, or more law professors 'volunteering' for university committees.<sup>113</sup>

One last noteworthy remark is that while such pressures may effectively shape legal education, they are rarely direct and explicit. They are more often conveyed by diminishing the prestige and credibility of the law school within respective fields, the fear of cuts in the funding or partnership, or other mechanisms. Law faculties should also retain agency when navigating those

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<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*, at 22

messages. However, that agency is limited by the allegiance of internal constituents to one of the sides so that external forces reflect on faculty politics.<sup>114</sup>

Globalization is highlighted in two articles Arthurs published later. In the 2001 article “The State We’re In,” he expands on the idea of the “globalization of the mind” to refer to the spread of neoliberal values and practices across the legal field, which imposes a new perspective on the law and public policy.<sup>115</sup> Such changes are explained by the historical ties of Canada with the United States and the United Kingdom and the integration of the Canadian economy into the United States economy.<sup>116</sup>

Globalization of the mind has consequences both for the management and intellectual aspects of law faculties. Due to the academicization and integration of law faculties into the university realm in the previous decades, Arthurs recognizes that law faculties are firmly oppositional to such a globalization process. That, however, did not make them immune to the decreasing funding for higher education that followed neoliberal policies, which resulted in hiring fewer professors, a decrease in faculty-student ratios, and fewer resources for facilities, libraries, services, and student aid. That situation prompted faculties to search for alternative funding sources, usually by increasing student fees and reliance on support from the legal profession.<sup>117</sup>

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<sup>114</sup> “Legal education, then, remains subject to influences emanating both from the profession and from the university. Although these influences seldom take the form of explicit directions, law schools respond to them in part to avoid negative consequences, in part to gain institutional advantages, but in part because internal constituencies align themselves opportunistically with or against the profession or the university. Thus, the internal political dynamic of Canadian law schools is often destabilized by the competing visions of legal education of its 'suzerains'. Of course, destabilization is not inevitable: some versions of the academic enterprise are more acceptable to the profession than others; some universities are willing, even eager, that their law schools should be held in high repute by the Bar, an affluent and influential sector of the community; some law schools manage to achieve at least the appearance of a balance between the divergent perspectives and their respective adherents. But in the end, the two visions are different: at any given moment, they do not project equal power and influence, and whichever is ascendant in a particular law school will shape its teaching programme and intellectual ethos.” *Ibid*, at 23

<sup>115</sup> “At very least, then, with some local variations in degree and timing, Canada has experienced a disjuncture in progressive political and legal thought, policies and strategies. And globalization has arrived at precisely the right moment to allow neoliberalism to fill the void. In effect, globalization captured the hearts and minds of our cosmopolitan, knowledge-based elites—the influential politicians, business executives, community leaders, civil servants, consultants, lawyers, journalists and academics whose shared values and assumptions are so influential in shaping how we think about public policy and how we translate it into law. There are a number of strands in this process, which I call ‘globalization of the mind.’” Harry W Arthurs, “The state we’re in: legal education in Canada’s new political economy” (2001) 20:*SPEISS The Windsor yearbook of access to justice* 35 at 43-4. He introduces the idea of globalization of the mind in Harry Arthurs, “Globalization of the Mind: Canadian Elites and the Restructuring of Legal Fields,” (1997) 12:2 *Canadian Journal of Law and Society* 219.

<sup>116</sup> *Ibid*, at 44.

<sup>117</sup> *Ibid*, at 49.

Nowadays, we can see that international student fees have become one of the ways to circumvent cutbacks in public funding, but by the time the article was published, it was not yet a significant alternative. These cuts could also translate into less funding for interdisciplinary research, leaving doctrinal scholars virtually untouched since their scholarship requires none or less support.<sup>118</sup>

Neoliberalism would also prompt the rise of new managerial styles based on performance indicators that linked the intellectual production of law faculties to a perceived market value. As Arthurs put it: “Consequently, law schools which accept applicants with unconventional credentials, teach students critical theory or produce future anti-establishment practitioners are unlikely to be rated ‘highly’ or financed generously.”<sup>119</sup> A new legal education market—or a “new competitive market-place for legal education”<sup>120</sup>—takes shape, one in which law faculties are more dependent on the market, which is dominated by the profession. Additionally, students embody those values as most see themselves as future big law firm lawyers as a mark of success and become transmitters of market signals. As he mentioned:

Now that students pay a significantly higher part of the cost of their education, they are becoming empowered ‘consumers’ with enhanced power to ‘vote with their feet,’ to send market signals to law school administrators and faculty councils about what profile to maintain in the competition for students, what kind of curriculum and support services to provide, what kind of faculty to hire in order to ensure student satisfaction and alumni support.<sup>121</sup>

At the same time, neoliberalism changes the values and purpose of law in society and the economy. Democracy and the rule of law are increasingly associated with the free market, property rights and business interests, with the decline in social policy and economic regulation. Therefore, there is a change in the perception of the law that is reflected in the curriculum, with more emphasis expected on delivering “core” courses, i.e., private law, and the law of the United States due to its prominence in the global market.<sup>122</sup> Services related to getting students into articling positions in big law firms and providing managerial skills to future lawyers are also expected to be highly valued.

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<sup>118</sup> *Ibid*, at 50.

<sup>119</sup> *Ibid*.

<sup>120</sup> *Ibid*, at 53.

<sup>121</sup> *Ibid*.

<sup>122</sup> *Ibid*, at 51-2.

“Law and Learning in the Era of Globalization,” published in 2009, is the second article where Arthurs discusses the relationship between the new political economy of globalization and Canadian legal education.<sup>123</sup> A critical aspect of the paper relates to the question Arthurs asks about whether and how Canadian law faculties can resist the market forces of globalization and reaffirm their autonomy. I introduce this discussion in Chapter 7, to where I refer the reader. Now, I focus on how he reassesses the impact of globalization on legal education eight years after the previous article and revisit his theoretical framework.

At the beginning of the article, he mentioned that governments, due to their legislative and regulatory power, heavily influence law and legal education but do not act alone. Governments are limited by the possibilities defined by the forces of the political economy. Therefore, he claims that:

political economy ultimately determines the content of the law school curriculum, the attitudes and assumptions law students bring to their studies, the judgments and books which find their way onto law school syllabi and the research agenda of legal academics. . . My pessimist’s conclusion, to reiterate, is that political economy does much to determine the ends and means of legal education and research. And because globalization is a dominant influence on political economy, it becomes the 800-pound gorilla whose presence in our deliberations can hardly be avoided.<sup>124</sup>

Reasserting the predictions made in 2001, he says that globalization significantly altered the distribution of power and prestige by resignifying what is relevant knowledge, valued skills, and exemplary behaviour, which translates into changes in what legal academics view as important teaching and writing about.<sup>125</sup> To sustain that, he mentions the fact that law schools have portrayed themselves as “global law schools,” which apply a “global curriculum,” taught by a “global faculty.” They are proud of their research centres on “global law” and “global partnerships” with international institutions. The same trend can be seen in academic research and publications, with an increasing number of articles about law and globalization, as well as comparative, international, and transnational law. He also names more than a dozen academic journals in English dedicated to the subject of law and globalization.

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<sup>123</sup> Harry Arthurs, “Law and Learning in the Era of Globalization,” (2009) 10:7 *German Law Journal* 629.

<sup>124</sup> *Ibid.*, at 630

<sup>125</sup> *Ibid.*

Many years after his seminal discussion about political economy, globalization, and legal education, one can say that these predictions have not necessarily come to pass. He certainly did not predict the role of internationalization and international student fees in the political economy of law schools. Still, Arthurs signed out what I see as the business model implemented by professional forces to harness the resources made available by market-centred globalization. Although the model has been applied in the context of J.D. programs, it has not saved law faculties financially due to the limitation of increasing domestic student fees in Canada. Since such a limitation does not apply to international students, internationalization became the primary means to implement the business model, especially in professional LLMs targeting international students, as I describe them in Chapter 4.11 and Chapter 6.3.

In Chapter 7. I draw on this framework to analyze academicism and professionalism as processes driven by professional and academic forces which engage in collaboration or disputes over material and symbolic resources. The internationalization of Canadian law faculties can be understood from a political-economic perspective by paying attention to the interactions among those forces to harness the resources made available by globalization to propel academicism or professionalism as models for the law faculty. Indeed, these interactions are complex, and actors such as professors and managers can play roles in both social forces and processes. Collaboration and domination of one process over another is also complex, with various gradations. Still, the framing of internationalization within the Law and Learning tradition allows me to propose an analysis of the legal knowledge economy that can situate international students as consumers and producers within the material and symbolic organization of law faculties.

### **3. Literature Review**

In the following pages, I will present a literature review on the main approaches to internationalization in legal education and some relevant topics for my arguments. This chapter is divided into nine subsections and a conclusion. The first subsection is dedicated to institutional approaches, where I present the discourse of former deans of law faculties and how scholars have assessed the internationalization carried out by law faculties in the United States with respect to their goals, means and achievements. Institutional approaches are frequently categorized into models that reflect the financial capabilities and the target audience of the law school.

The second subsection addresses the globalization of legal thought, i.e., how scholars have framed the waves of legal ideas that expanded across the globe, contributing to the uniformization of law around the two main legal traditions, the Common Law and the Civil Law. Such waves followed colonialism, imperialism, and the post-colonial influence of hegemonic countries. They counted on promoting theoretical frameworks (positivism and post-positivism, for instance) and ideologies such as liberalism, socialism, neoliberalism, and post-modernity.

In the third subsection, I present the discussions about the economic consequences of the internationalization of law schools, which is described in terms of increasing global competition for students. Such competition supposedly leads to widening the gaps between international and local law schools, winners and losers. It reinforces the reproduction of elites and global inequalities. The fourth subsection expands on debates introduced in the second and third subsections and focuses on Americanization, which refers to the centrality of the United States law, legal frameworks, and law school curriculum in the current stage of globalization.

The fifth subsection discusses the approaches developed by Bryant Garth and Gregory Shaffer to study the recent movement of exporting the American professional legal education model (the JD program) and curriculum, seeing as interdisciplinary and flexible, to countries where legal education is traditionally affiliated to a rigid, outdated, doctrinal model. The sixth subsection presents what I consider innovative approaches to internationalization, which are advanced by Carole Silver and Swethaa S. Ballakrishnen. This subsection is subdivided into five parts that briefly present the main results of their scholarship, which is characterized by the use of empirical methods. They use empirical methods to identify the profile of international students enrolled in U.S. law schools and how those law schools promote multiculturalism based on that profile. They also analyze how “international” becomes an identity that varies according to self and peer perception. That is relevant to demonstrating that the “international” identity of international students is not restricted to their official status at the law school.

Moreover, they measure the growth of the number of international students and compare it with ethnic groups within the law school to assess the relevance of that specific population in the overall student population. They surveyed international students to enumerate their motivation to pursue international legal education and, finally, researched how they socialize in law school in order to understand whether law schools were taking advantage of their presence to promote internationalization at home.

The seventh subsection covers the scholarly work of Gail J. Hupper, who dedicated three lengthy articles to the history of doctoral programs in law in the United States. This subsection is divided into two parts, the first focusing on the concept of legal transplant and the role of the doctorate in the circulation of legal knowledge. The second part summarises the topics and methodologies applied by international students in doctoral programs and how those topics and

methodologies are distributed according to the background of students and the prestige of law schools.

The eighth section mentions the Third World Approach to International Law as a particular framework from which it is possible to draw precious contributions despite not having addressed the internationalization of law faculties directly. Suppose highly internationalized law schools and universities are seen as international global entities with an international agenda that reproduces the interests of Western powers in training global legal elites and that play a role in international affairs similar to transnational companies or international NGOs. Applying TWAIL criticism of such international entities to those higher education institutions can produce a significative critique of the growing inequalities between the Global North and South.

The ninth section is dedicated to assessing the Canadian literature about the internationalization of legal education, which is much more limited in terms of methodologies and topics. It mainly describes programs and the exchanges between Common Law and Civil Law traditions, with McGill's transsystemic program attracting most scholars' attention. It has not applied empirical methods to describe the reality of internationalization and is silent about international students.

Finally, in the conclusion, I describe the lessons the literature teaches concerning how internationalization is implemented according to the position of law schools in the global market. I also address the shortcomings of the Canadian literature. I discuss how transnationalization, internationalization, and globalization provide different lenses through which to analyze the political economy of legal knowledge, and I explain why internationalization suits this research better than the other concepts.

This literature review reflects a pragmatic choice to pay more attention to the actors and understand their immediate context. Such a choice presents a fragmented theoretical picture but raises fundamental questions for a methodological approach to the internationalization of legal education.

The internationalization of Canadian higher education institutions (HEI) has been a growing hot topic, mainly in Education (understood as a discipline), due to the increasing number of new international students (IS) and the rising effort to attract more of them. Canada has become a member of a select group of countries that compete in this market, including the United States, United Kingdom, and Australia,<sup>126</sup> in a context shaped by changes in educational institutions' funding policies.

The imposition of reforms that led to decreasing public funding, mainly by conservative cabinets inspired by neoliberal programs, pressured educational institutions to seek alternative revenue sources to keep high-quality standards. Moreover, policies based on neoliberal ideology have pushed market rationality into education by reconfiguring the values to which educational

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<sup>126</sup> “Many countries recruit international students to earn profit by charging high fees – including Australia, Canada, the United Kingdom, and the United States. International graduate students also provide research and teaching services for modest compensation. International students also spend significant amounts of money in the host countries – an estimated \$12 billion to the U.S. economy, for example”. Philip G Altbach and Jane Knight, “The Internationalization of Higher Education...,” *supra*, note 13 at 292.

institutions should attend.<sup>127</sup> Those policies have fostered an entrepreneurial culture,<sup>128</sup> business management of schools, colleges, and universities, global standardization of student evaluation, and the assessment of research funding based on innovation production, i.e., the production of value for the market economy. The critical analysis of education and economic integration under the neoliberal agenda has been conceived under the concept of academic capitalism.<sup>129</sup> Once seen as an exception to academic capitalism, Canada has joined this global trend as a late player, with a more evident turn in attracting private funding in the first decade of the century.<sup>130</sup>

With similar criticism, Altbach and Knight have addressed internationalization as closely related to globalization and the reproduction of global inequalities between the Global North and South in the modern political economy. They have concluded that while

[g]lobalization tends to concentrate wealth, knowledge, and power in those already possessing these elements[. . .] international academic mobility similarly favors well-developed education systems and institutions, thereby compounding existing inequalities. Initiatives and programs, coming largely from the north, are focused on the south.<sup>131</sup>

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<sup>127</sup> Michael W Apple, “Chapter 12: Are Markets in Education Democratic? Neoliberal Globalism, Vouchers, and the Politics of Choice” (2005) 280 *Counterpoints* 209–230; Stephen J Ball, “Privatising education, privatising education policy, privatising educational research. . .,” *supra* note 14.; Gerald Fallon and Wendy Poole, “The emergence of a market-driven funding mechanism in K-12 education in British Columbia: creeping privatization and the eclipse of equity” (2014) 29:3 *Journal of Education Policy* 302–322; Lana Parker, “Creating a crisis: Selling neoliberal policy through the rebranding of education” (2017) 183 *Canadian Journal of Educational Administration and Policy* 44–60; Peggy Sattler, “Education Governance Reform in Ontario: Neoliberalism in Context” (2012) 128 *Canadian Journal of Educational Administration and Policy* 1-28.

<sup>128</sup> Creso M Sá and Andrew J Kretz, *The entrepreneurship movement and the university*, 1. ed, Palgrave Pivot (New York, NY [S.I.]: Palgrave Macmillan, 2015).

<sup>129</sup> Sheila Slaughter and Larry L Leslie, “Expanding and Elaborating the Concept of Academic Capitalism” (2001) 8:2 *Organization* 154–161. Richard Münch, *Academic Capitalism: Universities in the Global Struggle for Excellence*, 1st ed (Routledge, 2014). Bob Jessop, “Varieties of academic capitalism and entrepreneurial universities: On past research and three thought experiments” (2017) 73:6 *High Educ* 853–870. Brendan Cantwell and Ilkka Kauppinen, eds, *Academic capitalism in the age of globalization* (Baltimore: Johns Hopkins University Press, 2014).

<sup>130</sup> Amy Scott Metcalfe, “Revisiting Academic Capitalism in Canada: No Longer the Exception” (2010) 81:4 *The Journal of Higher Education* 489–514.

<sup>131</sup> Philip G Altbach and Jane Knight, “The Internationalization of Higher Education. . .,” *supra*, note 13 at 291.

Altbach and Knight are among the most prominent authors on the topic in Canada and introduced relevant insights to understand internationalization within the global political economy in all its complexity. In this sense, they acknowledge that internationalization should not be seen as a one-sided imposition from developed countries. They say, "internationalization is a two-way street – students move largely from the south to north, for example – and serves important needs in the developing world. But the north largely controls the process."<sup>132</sup> Thus, internationalization favours both the North and the South while maintaining or enhancing the North's advantages.

From a political-economy perspective, internationalization primarily works as an alternative funding source for for-profit and non-profit HEIs willing to increase revenue during financial crises.<sup>133</sup> HEI financial problems may stem from government policy changes, such as decreasing public funding, demographic changes, or increasing competition.<sup>134</sup> Often, those situations come together. Secondly, we must also consider the impact of internationalization as a source of input for a knowledge-based economy, for international students count as a substantial workforce in research and teaching activities that feed knowledge industries.<sup>135</sup> Additionally, those students are responsible for boosting local economies as immigrants. Small businesses and rentals, for instance, rely on students' workforce and consumption.

While the research about HEI internationalization is carried out in education, the internationalization of law schools belongs to the legal education field. Legal scholars have also

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<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid* at 292

<sup>134</sup> Bryant G Garth, "Crises, Crisis Rhetoric, and Competition in Legal Education: A Sociological Perspective on the (Latest) Crisis of the Legal Profession and Legal Education" (2013) 24:2 *Stan L and Pol'y Rev* 503.

<sup>135</sup> "[I]t is impossible to quantify the financial scope of academic internationalization. But the sums are large because knowledge industries – especially higher education – often form a substantial part of the total economy. It is also difficult to calculate the impact of international activities on engaged academic institutions and firms, but again the amount is large and rapidly growing". Philip G Altbach and Jane Knight, "The Internationalization of Higher Education..." *supra*, note 13 at 293.

approached internationalization by considering the political economy,<sup>136</sup> i.e., the relationship with globalization<sup>137</sup> and its prevalent neoliberal ideology.<sup>138</sup> However, by internationalization, they often refer to the internationalization of law and legal thought.<sup>139</sup> Whenever they specifically address the internationalization of law faculties, they usually discuss different institutional models of internationalization.<sup>140</sup> In Canada, the internationalization of legal education literature (IOLE) replicates these mentioned traits; however, it draws on Canadian bilingualism and bijuralism to include the reform of legal education to foster a consistent dialogue between civil law and common law systems and practices.<sup>141</sup> Thus, the internationalization of Canadian legal education takes advantage of a national particularity to address globalization. McGill's transsystemic program best represents such an approach.

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<sup>136</sup> By legal scholars I refer to those situated within the discipline of law in a large sense, including those with legal training, socio-legal expertise, working at law faculties or not. Harry Arthurs, "The Political Economy of Canadian Legal Education," *supra* note 108; Harry W Arthurs, "The state we're in: legal education in Canada's new political economy," *supra* note 115; Bryant G Garth, "Notes Toward an Understanding of the U.S. Market in Foreign LLM Students: From the British Empire and the Inns of Court to the U.S. LL.M" (2015) 22:1 *Indiana journal of global legal studies* 67–79.

<sup>137</sup> Harry Arthurs, "Law and Learning in the Era of Globalization," *supra* note 123.

<sup>138</sup> Harry Arthurs, "Globalization of the Mind...", *supra* note 115.

<sup>139</sup> Duncan Kennedy, "Three Globalizations of Law and Legal Thought: 1850–2000" in David M Trubek and Alvaro Santos, eds, *The New Law and Economic Development* (Cambridge: Cambridge University Press, 2006) 19; Duncan Kennedy, "The Globalisation of Critical Discourses on Law: Thoughts on David Trubek's Contribution." *Critical Legal Perspectives on Global Governance : Liber Amicorum David M Trubek* (Hart Publishing, 2014) 3–14; David Kennedy, "Law and the Political Economy of the World." *Critical Legal Perspectives on Global Governance : Liber Amicorum David M Trubek* (Hart Publishing, 2014) 65–102

<sup>140</sup> Larry Catá Backer and Bret Stancil, "Global Law Schools on US Models: Emerging Models of Consensus-Based Inter-nationalization or Markets-Based Americanization Models of Global Legal Education," (2011) 3 *Revista de Educación y Derecho/ Education and Law Review* 2 102. Helge Dedek and Armand de Mestral, "Born to be Wild: The "Trans-Systemic" Programme at McGill and the De-Nationalization of Legal Education," (2009) 10:7 *German Law Journal* 889.

<sup>141</sup> Bijuralism is the preferred expression by this body of literature, which more recently included Indigenous legal traditions as a way to expand towards a pluralistic approach. Drawing on a transsystemic perspective, Nicholas Kasirer criticizes the bijuralism in place at McGill before transsystemia. "Bijuralism at McGill thus meant peaceful cohabitation rather than active dialog between the common law and the civil law (and their teachers)." Nicholas Kasirer, "Bijuralism in Law's Empire and in Law's Cosmos" (2002) 52 *J Legal Educ* 29 at 29.

Differently, the Third World Approach to International Law (TWAIL), the Bourdieu-inspired research by Bryant Garth, Yves Dezalay and Gregory Shaffer, and the empirically driven analysis by Carole Silver and Gail J. Hupper in mapping the population of international LLM and PhD students in law in the United States highlight aspects other than the legal thought or institutional models. They widen the research scope by questioning globalization, considering conflicts between local and international legal elites, and surveying actors involved in internationalization, professors, and international students.

### 3.1 Institutional Approaches and Strategies

The literature about institutional models of internationalization of law schools in North America is quite vast. In general, professors and especially deans see internationalization as a necessary response to the globalization of law in the context of expanding international governance (WTO, GATT, ICC, International Human Rights System, etc.), private arbitration, and global business opportunities.<sup>142</sup> It is also regarded as a response to increasing competition within the legal job and international legal education markets. Thus, most articles and strategic documents that address internationalization concern curriculum and circulation of knowledge for professional training. It means that the focus is on undergraduate courses, and little attention is paid to graduate courses, with few exceptions, which we will describe later.

At the beginning of the 21<sup>st</sup> century, when the debate about globalization was at its peak, the discourse of Claudio Grossman, former dean of the American University Washington College of Law, represents the shared idea about the effects of globalization on legal education. According

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<sup>142</sup> David E. Van Zandt, "Globalization Strategies for Legal Education" (2004) 36 *University of Toledo Law Review* 213 at 213-4.

to him, lawyers whose mindset is attached to national borders can no longer deal with more frequent and genuine global social problems, such as international crime, environmental crises, economic interdependence, pandemics, migration, inequality, and labour conditions.<sup>143</sup> This means that traditional legal knowledge is less sufficient nowadays. Therefore, learning from other disciplines must be introduced into legal education, and legal education must provide training on supranational and international issues through internationalization strategies.

He points out the evolution of those strategies according to three different approaches. The first one, the translation approach, claims that international law is not yet the most crucial arena for lawyers to work and that international cases are relatively rare. In this situation, "modification of legal education is unnecessary because the global issue is 'only a matter of translation.'"<sup>144</sup> The second approach is modernization, which urges that translation is too superficial and lawyers must deepen in their clients' culture and values.<sup>145</sup> He still suggests a third approach while claiming that those two are insufficient to face globalization's challenges. This last approach encompasses the following strategies: "creating linkages between the study of domestic and International Law," "studying different legal systems," "including cultural and gender issues in the academic agenda," "including the perspectives of other academic disciplines in the study of the law," and finally "promoting social change and international awareness through purpose-oriented programs outside the curriculum."<sup>146</sup>

Dean Van Zandt, from the Northwestern University School of Law, sums up the very feeling that leads American law schools to internationalization as a response to globalization: "the

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<sup>143</sup> Dean Claudio Grossman, "Building the World Community: Challenges for Legal Education" (2000) 18:3 *Dickson Journal of International Law* 441 at 444-5.

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*

best preparation for the emerging global practice is to develop a strong foundation in the basic principles of Anglo-American law and to understand the underlying business objectives that drive the legal service business.”<sup>147</sup> This perspective is based on the perception that globalization leads to the weakening of the national state in favour of the forces of the market, following a coherent neoliberal paradigm that law schools should adopt.<sup>148</sup> The author reinforces the importance of “core” elements of legal education (contracts, corporations, financial regulation, and dispute resolution) as the most relevant for becoming an international lawyer.<sup>149</sup>

Two distinct streams guide his law school's internationalization strategy: prepare lawyers to assist in the globalization of business on the one hand and international human rights through the Center for International Human Rights on the other. Some may see those two elements as contradictory, but it is known that they share common roots in prevalent American internationalization models.<sup>150</sup> His discourse exemplifies how American law schools adopt internationalization to export American legal scholarship and American law values and institutions as the main foundations for global governance. This export is a recurrent trait in the literature under the concept of Americanization.

As for tactics or techniques of internationalization, Van Zandt points out that law schools have pursued i) hiring international faculty, mainly for visiting positions; ii) creating courses about international law, comparative studies, a given national system, or a course about international topics; iii) attracting international students (mostly LLM); and iv) creating programs abroad. My

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<sup>147</sup> David E. Van Zandt, “Globalization Strategies for Legal Education,” *supra*, note 142 at 216.

<sup>148</sup> *Ibid* at 213.

<sup>149</sup> *Ibid*.

<sup>150</sup> Dezalay and Garth, “Marketing and legitimating two sides of transnational justice”, *supra* note 23.

analysis draws on his awareness of a “borderless competition among law schools”<sup>151</sup> from developed English-speaking countries (U.S., U.K., and Australia; and I shall add Canada). Simultaneously, the author predicts that international students will represent a fifth to a quarter of JD students by 2030. He also suggests reducing international LLM students by 2030 because most would prefer to enroll in JD programs for professional reasons.<sup>152</sup> Nevertheless, he is silent about doctorate programs.

Simon Chesterman, Global Professor and Director of the New York University School of Law Singapore Program, describes three historical moments in the evolution of international legal education: internationalization, transnationalization, and globalization. Internationalization refers to a period of little international exchange that emphasizes “traditional international law,” where lawyers build mediation among an “archipelago of jurisdictions.”<sup>153</sup> Transnationalization refers to the more intense flow of capital and people during the second half of the 20th century when the actual exchange of legal training and practice started. In this period, there was a “rise of firms with presences in many cities[, ]law schools began to offer summer programs abroad[, and there was] the increase in exchange programs and the rise in the number of foreign students admitted into law degree programs.”<sup>154</sup> The current phase is globalization, where “non-traditional regulatory regimes that transcend traditional jurisdictional analysis”<sup>155</sup> flourish. Greater integration required lawyers

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<sup>151</sup> David E. Van Zandt, “Globalization Strategies for Legal Education,” *supra* note 142 at 218.

<sup>152</sup> *Ibid* at 220

<sup>153</sup> Simon Chesterman, “The Evolution of Legal Education: Internationalization, Transnationalization, Globalization”, (2009) 10:7 German Law Journal 877 at 880-1

<sup>154</sup> *Ibid* at 882.

<sup>155</sup> *Ibid* at 883.

to cross jurisdictions and borders more often. This makes law schools “move from exchange programs to double-degree programs across national jurisdictions.”<sup>156</sup>

Backer and Stancil describe three internationalization strategies; each one can follow two conflicting philosophies: integration or competition. The integration philosophy is grounded in a “collaborative effort [that] mirrors emerging collaborative, stakeholder-driven forms of internationalization in which governance framework is public in character meant to develop and implement a rough consensus among participants. Its objective is harmonization and collaboration to increase the efficiency of systemic interaction.”<sup>157</sup> In this sense, internationalization should be driven by democratic forces and public purpose so that the harmonization of legal systems prevents legal transplants and colonization.

Conversely, the competitive philosophy seeks “global competition among domestic law systems as the foundation system for global culture. . . . [It] mirrors emerging global market behaviours in which law and legal education are understood as commodities competing for markets in a borderless world.”<sup>158</sup> Therefore, instead of harmonization, the second philosophy would look for the “globalization of the domestic legal order of the system most successful at presenting a national framework for the handling of legal issues on the global stage.”<sup>159</sup> This is compatible with the Americanization model of exporting legal education.

When describing the three strategies for assimilating international knowledge into the curriculum, the authors describe three models: integration, aggregation, and segregation. The integration model seeks to produce generalists since the international content is inserted into the

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<sup>156</sup> *Ibid* at 884.

<sup>157</sup> Larry Catá Backer and Bret Stancil, “Global Law Schools on US Models...,” *supra*, note 140 at 114.

<sup>158</sup> *Ibid*.

<sup>159</sup> *Ibid*.

existing curriculum to enrich the learning experience. The division between national and international is blurred, creating an immersive effect that would allow students to navigate the complexities of globalization. It demands a more profound commitment from law schools to face the barriers of traditional legal education, leading to changes in teaching and research to accommodate such international perspectives. Moreover, it requires expensive resources, thus making it employable by only the most prestigious institutions.<sup>160</sup>

In the second place, there are those law schools that implement the aggregation model of internationalization. It is the most popular because it is the most economically efficient. It does not lead to profound changes in the legal education culture, but it can still meet some demands of the legal education market. In the aggregation model, international issues are addressed separately in specific courses but are still considered privileged study areas. This approach is usually employed by institutions that do not believe their students will engage with international practice in the short term.<sup>161</sup> Last, institutions with no genuine interest in internationalization follow a third model, the segregation model, by which law schools isolate internationalization efforts in one specific centre or administrative department with little impact on the academic culture.<sup>162</sup>

These categories are relevant because they directly relate internationalization strategies to the hierarchies of law schools. There is a correlation between a law school's place in the legal education hierarchy and how deeply internationalization will be incorporated into the curricula of undergraduate and graduate programs, with consequences for the use of traditional or interdisciplinary methodologies and, therefore, for the circulation of knowledge.

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<sup>160</sup> *Ibid* at 119.

<sup>161</sup> *Ibid* at 119-20.

<sup>162</sup> *Ibid* at 120.

### 3.2 The Globalization of the Legal Thought

Duncan Kennedy's theory about law and globalization categorizes the evolution of legal thought in three moments: classic legal thought, social, and current globalization. Different from other authors, internationalization is not a recent phenomenon for him. Instead, it can be traced back to the formation of modern states in the 19<sup>th</sup> century. The first moment corresponds to classic Liberalism and goes up to its crisis in the 1930s, reflecting the predominance of property rights. The second moment corresponds to the rise of social democracy in the West and the Cold War, with the introduction of social rights. Third globalization or the current period "is founded on a brutal critique of its predecessor, in this case, the social."<sup>163</sup> Despite opposing the welfare state's principles, the current phase does not present a unifying theory of law. Still, it reframes concepts from the classic legal thought (the "core") and the social component of legal thought (the "periphery").

He claims that the current globalization, rather than criticizing the indeterminacy of the law as done by Critical Legal Studies, takes such an indeterminacy for granted and uses it as a tool to manage differences in a pluralist framework.<sup>164</sup> Indeterminacy is helpful in the context of logical formalism, which, rehabilitated as neo-formalism, is now applied to propose concrete solutions from abstract principles according to "the correct legal answer" in a specific conflict, following the post-positivism framework. Indeterminacy is also valid for policy analysis, which can support

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<sup>163</sup> Duncan Kennedy, "Three Globalizations of Law and Legal Thought...", *supra*, note 139 at 63.

<sup>164</sup> "The contemporary ideal is a legal regime that is pluralist, not in the sense of CLT, which coordinated atomized individuals through universally valid abstract rules, nor in that of the Social, preoccupied with finding and supporting the 'valid' 'living' law of subcommunities as a path toward an idea of distributive justice. But in the sense of appropriately recognizing and managing 'difference.'" *Ibid* at 65.

contradictory social goals equally. As a hero, the judge must apply both techniques together if necessary.

Human rights and the recognition of identities, which have become leading topics in this era, would not escape this pattern.<sup>165</sup> However, the widespread acceptance of such an agenda imposes a change in the strategy against inequality. Instead of facing the elite, human rights discourse privileges enhancing the situation of vulnerable identities. Human rights discourse would disregard that, in order to tackle social vulnerability, the elite must be challenged, which requires an alternative economic setting to be implemented. Kennedy would still claim that “[t]he international business community gradually adapted to the rise of identity rights rhetoric by transforming property ownership into a minority identity and government regulation into the analog of discrimination by legislative majorities.”<sup>166</sup> This insight is relevant because it clarifies how economic elites can embrace the human rights agenda that fosters internationalization in law.

Unlike deans and researchers concerned with institutional responses to globalization, Kennedy’s approach is an example of how to make sense of the impact of globalization on legal concepts and law as a discipline and practice. He makes a correlation between the economy and geopolitics and the main traits of the dominant legal theories. Current globalization creates the

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<sup>165</sup> “Human rights are the ‘hypostatization’ of this trend, operating as universals, at once natural and positive, in a way oddly analogous to the operation of right, will and fault in CLT private law. Human rights also function sometimes as rules (even absolute rules) and sometimes as mere policies, potentially relevant in virtually every legal dispute even if there is no claim of violation of an enacted constitution or charter or treaty.” The same combination between essence and context can be applied to identities. “Identity thinking alternates between essentializing what it is to have some particular traits that sets its possessors apart, in order to develop and legitimate legal claims, and trying to reconcile those claims when they conflict.” Therefore, “[w]hen an identity is recognized, it will be through a typically contemporary mix of highly formal norms, of equality and non-discrimination, with a highly negotiated, ad hoc set of norms, about tolerance or accommodation for identity defining practices . . . . In other words, public law neoformalism combined with conflicting considerations (balancing, proportionality). There will be as many ‘solutions’ as there are law-making authorities.” *Ibid* at 66-7.

<sup>166</sup> *Ibid* at 67.

conditions for the rise of post-positivism, and Dworkin's legal theory<sup>167</sup> is considered the apex of that spirit.

### 3.3 Global Competition and Internationalization

Bryant Garth has analyzed the dynamics of open competition and its consequences on increasing law schools' tuition in the U.S.<sup>168</sup> Relying on Caroline Hoxby, he further contests the common sense claim that increased competition will lower prices.<sup>169</sup> According to Caroline Hoxby, local institutions that join broader markets amplify their pool of competitors and consumers, which causes a more intense competition for quality that can only be met with higher tuition fees. Ultimately, this market process implies a more prominent differentiation and the reinforcement of hierarchies since more selective schools increase their tuition higher than less demanding schools.<sup>170</sup>

Besides, selectivity works for both students and law schools. It means that the brightest students attending local institutions can now access high-quality and prestigious law schools due to better information about ranking and other means of comparing the hierarchy among law schools. Students perceive themselves as immersed in broader opportunities that hinder local and less selective law schools' chances to attract them.<sup>171</sup> Conversely, cutting tuition is not the best

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<sup>167</sup> Ronald Dworkin, *Justice for hedgehogs*, *supra* note 26.

<sup>168</sup> Bryant G Garth, "Crises, Crisis Rhetoric, and Competition in Legal Education..." *supra*, note 134.

<sup>169</sup> Caroline M. Hoxby, "How the Changing Market Structure of U.S. Higher Education Explains College Tuition" (1997) 1 *Nat'l Bureau of Econ. Research, Working Paper No 6323*.

<sup>170</sup> Bryant G Garth, "Crises, Crisis Rhetoric, and Competition in Legal Education..." *supra*, note 134 at 524.

<sup>171</sup> *Ibid.*

strategy to attract the brightest students because this would affect quality.<sup>172</sup> In conclusion, institutions are constantly increasing tuition fees but not necessarily to make more profit or increase salaries. Instead, they are reinvesting this revenue in student quality to meet ever-increasing standards. Although it may sound great at first sight, this situation causes an indefinite increase in tuition, making legal education increasingly unfordable with increasing student debt levels. Moreover, it widens the abyss between elite schools that lead this process and less fortunate institutions. As mentioned, adopting internationalization models will depend on the resources available to law schools.

Guided by market forces, internationalization amplifies this tendency to a global scale up to an unprecedented degree because the pool of the brightest students or, more importantly, students willing to pay higher tuition fees, becomes virtually infinite. This process produces an increasing differentiation and hierarchization of institutions at the global level, which would keep excluding those not seen as the brightest or unable to afford high-quality legal education, a mass of young people who are not part of the global elite, relegated to declining local law faculties unable to compete in the global market and harness the resources there made available. This situation reinforces systemic hierarchies with reflection on the legal profession and income generation. Therefore, increasing competition does lead to more investment in quality due to the broader pool of candidates and their higher expectations. However, it implies ever-increasing tuitions, the differentiation and strengthening of national and international hierarchies, and inequality in access to the advantages of legal education. To sum up, it contributes to the reproduction of global legal elites.<sup>173</sup>

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<sup>172</sup> *Ibid* at 525.

<sup>173</sup> “The above description of the changing paradigms of legal education is not intended to suggest that the evolution that has taken place is either equitable or progressive in the political sense of the term. Indeed, on the face of it the

### 3.4 Americanization

Despite different perspectives about its consequences, a shared belief in the literature is that internationalization has promoted the position of the United States in the globalization setting. In the case of that country, universities, the government, and market forces have joined forces to promote internationalization, which has globalized the U.S. legal thought produced by leading American law schools.<sup>174</sup> It has contributed to the soft power of the U.S. by exporting American law, policies, and legal models. Finally, it has enhanced the position of American law firms and law schools, which accumulate the most significant share of the global legal market.<sup>175</sup> This movement of Americanization follows the neoliberal forces of the market, is the hegemonic factor of legal globalization and dominates legal thinking. As Arthurs claims, neoliberalism has been taken as an unwritten constitutional *Grundnorm*,<sup>176</sup> propelled by Americanization.

Americanization can be defined as a tendentious internationalization, according to what Becker and Stancil call the “nationalist globalization model” that intends to “universalize the

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exact opposite would appear to be true, as the ability of graduates to enter into the top jobs is increasingly tied to their ability to study in the most expensive or exclusive institutions. Is this new global legal education, then, simply a discourse of the rich? It is. . . . the emergence of ‘global law schools’ will certainly be an elite phenomenon.” Simon Chesterman “The Evolution of Legal Education...,” *supra* note 153 at 885-6. “[L]aw schools will necessarily approach internationalization differently, in part, not because of ideological assessment but because of the realities of capabilities. As such, elite and well-resourced law schools will likely choose methods of internationalization on the basis of criteria substantially different from those used by the least well reported or resourced law schools.” Larry Catá Backer and Bret Stancil, “Global Law Schools on US Models...,” *supra*, note 140 at 117.

<sup>174</sup> Gail J. Hupper, “The Academic Doctorate in Law...,” *supra*, note 71 at 444.

<sup>175</sup> “Of the ‘Global Fifty’ law firms . . . thirty of the top firms by size were American; when ranked by revenue all but seven were. Within the academic world, one can see the shift of English-speaking educational pedigrees from Oxbridge to the United States . . . as well as the gravitational effect of U.S. institutions on pedagogy and U.S journals on research.” Simon Chesterman, “The Evolution of Legal Education...,” *supra*, note 153 at 886. Chesterman also considers that globalization is developing as Americanization.

<sup>176</sup> “However, I am afraid that increasing number of legal actors – legislators, judges, senior civil servants, policy wonks, lobbyists, lawyers, legal academics and editorial writers – simply regard a globalized version of neoliberal capitalism as the first principle of every nation’s unwritten constitution.” Harry Arthurs, “Law and Learning in the Era of Globalization,” *supra*, note 123 at 633.

principles of the domestic legal system of the United States to places abroad.”<sup>177</sup> It aims to globalize the U.S. legal hierarchy by employing three strategies: exporting pedagogical methodologies, the extraterritorial extension of the U.S. law school system, and providing graduate degrees in law for international students. Again, these strategies rely on the global market competition to succeed.<sup>178</sup> Kennedy reinforces this idea by stressing that the so-called “third globalization” of law originates in the recent U.S. development.<sup>179</sup> Americanization rises as the centre of Gail J. Hupper’s work when she studies the internationalization of doctorate programs in the U.S. under the concept of legal transplant.<sup>180</sup>

### 3.5 The Globalization of Legal Education

Bryant Garth and Gregory Shaffer introduced a critical approach to studying the globalization of legal education, applying much of the lessons learned from the research on legal hierarchies and the internationalization of the legal profession.<sup>181</sup> In their account of the term, the globalization of legal education today is reflected in many countries' adoption of U.S. law degrees, especially in Asia, and the reproduction of American legal education practices. Law faculties also adopt a

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<sup>177</sup> Larry Catá Backer and Bret Stancil, “Global Law Schools on US Models...,” *supra*, note 140 at 160-1.

<sup>178</sup> *Ibid* at 102-3.

<sup>179</sup> “The rise of U.S. style transnational law firms is obviously tied to the relative dominance of U.S. transnational corporations in the globalized economy”. Duncan Kennedy, “Three Globalizations of Law and Legal Thought...,” *supra*, note 139 at 68-9

<sup>180</sup> Gail J. Hupper, “The Academic Doctorate in Law...,” *supra*, note 71.

<sup>181</sup> Yves Dezalay, Bryant G Garth, *The internationalization of palace wars ...*, ” *supra*, note 26.

“global” discourse underlying their teaching and learning elements, focusing on transnational law, processes, and issues.<sup>182</sup>

Globalization of legal education follows a pattern set in the era of empires, and the flow of students still reflects a centre-periphery model that resembles the education of colonial elites for the sake of colonizers. However, the emergence of the U.S. as the dominant power contested the old imperial configuration of legal education by challenging the influence of Great Britain’s, France’s and Germany’s legal doctrine and the underpinning practices of legal training that traced back from the medieval. The U.S. government and influential private foundations promoted a more profound legal education reform after the 1950s, aiming at diffusing interdisciplinary approaches and legal scholarship not restricted to doctrinal comments and interpretation, with legal clinics, Socratic and case methods, full-time professors, and less formalism.

Despite not successfully reforming legal education in the countries under the U.S. sphere, these became fundamental elements of today’s discourse on the globalization of legal education. Other elements intrinsic to the phenomenon are the economic globalization and market liberalization that followed the end of the Cold War, which diffused U.S. regulations, corporate law firms and arbitration, accounting for a two-sided globalization of legal education.<sup>183</sup> Such globalization is pursued by increasing professor and student exchange, intense networking, partnerships, and the creation of branches. It should not be regarded as a natural process based on the superior quality of U.S. legal education. Instead, it is carried out by reproducing global

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<sup>182</sup> Bryant Garth, Gregory Shaffer, “The Globalization of Legal Education: A Critical Perspective” in Bryant Garth and Gregory Shaffer (eds.), *The globalization of legal education* (New York, NY: Oxford University Press, 2022) 3 at 3.

<sup>183</sup> *Ibid* at 13-14.

hierarchies, the dispute over credentials, the influence of economic actors and global law firms and entrenched struggles between global and local elites, constitutive elements of their analysis.<sup>184</sup>

Their theoretical framework combines two approaches. One is “transnational legal ordering,” addressing the flow of legal norms across different jurisdictions and the constitution of transnational law and legal practices. Transnationalization of legal education thus focuses on the impact of the exchange of professors and students on the rise of transnational legal issues, legal responses, and, ultimately, a transnational legal order. Conversely, the rise of transnational law also fosters the transnationalization of legal education and its reform.<sup>185</sup>

The other is the “comparative sociology of legal professions,” primarily developed by Yves Dezalay and Bryant Garth. This perspective studies the role of the legal field in structuring state power and governance and how this service is crucial to the economic and political sustainability of legal professions. It maps the reproduction of legal elites and struggles between their segments for influence. The clash between traditional national legal elites reproduced by doctrinal legal education imposed in the era of empires and the newer internationalized elites inspired by the U.S. legal education model determines the success of legal education reforms worldwide. This tension tends to put familial and social capital afforded by traditional elites against the academic and meritocratic capital of internationalized elites.<sup>186</sup> This conflict is undoubtedly more nuanced, with processes of co-optation and compromises shaping legal education reform differently according to the country. While Brazil and India saw the creation of a few law schools with curricula inspired

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<sup>184</sup> *Ibid* at 3-4.

<sup>185</sup> *Ibid* at 17-8.

<sup>186</sup> *Ibid* at 19-21.

by U.S. legal education, South Korea and Japan imported the JD model entirely, although with various levels of success.<sup>187</sup>

### 3.6 Innovative Approaches to Internationalization

The difference between the research pursued by Carole Silver, usually in collaboration with Swethaa S. Ballakrishnen, and the arguments described above is the use of quantitative and qualitative empirical methodologies to assess the profile, behaviour, production, and other traits of international students in the United States. Their research also examines the relationship between domestic and international students and how law schools foster or do not foster their integration into the broader academic environment. They work with a large pool of law schools and students and identify new, complex issues through fieldwork not usually addressed by the literature.

In turn, Gail J. Hupper published a trilogy about the history of the doctoral degree in law in the U.S. since its inception in the late nineteenth century. In that trilogy's last paper, she addresses why law schools shifted from educating domestic to international doctoral students after World War II.<sup>188</sup> On top of that, she describes the topics and methodologies those students apply according to their law schools, country of origin, and the legal systems in which they were trained. She did so by interviewing students and analyzing dissertations. I have not identified any similar research employing these methods to study legal education in Canada. In the following pages, I

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<sup>187</sup> *Ibid* at 9.

<sup>188</sup> Gail J. Hupper, "The Academic Doctorate in Law...", *supra*, note 71.

will depict their main contributions to the discipline of internationalization of legal education and how they can be mobilized for this and future research.

### *3.6.1 Profile and Multiculturalism*

When addressing the profile of international law students (ILS) in the U.S. by their background and language skills, Silver notices how those elements are crucial to classifying how law schools promote intercultural integration on campus. She argues that elite law schools recruit applicants with very high language skills, which helps them integrate immediately into classes dominated by native students. Those schools also create institutional-driven opportunities for interactions between international and domestic students.<sup>189</sup>

Conversely, less prestigious law schools recruit students from a diversified pool of multicultural applicants who belong to recent immigrant families whose first language may not be English. Those students would also face challenges integrating into the political and social culture in which legal education is embedded. In such an environment, intercultural learning rises from autonomous student socialization rather than institutional efforts. These law schools are more concerned about providing support to improve students' English fluency instead of harnessing a multicultural environment. Since cultural exchange is more likely to happen outside academic activities, its potential will not likely be institutionally appropriated for global legal skills training.<sup>190</sup>

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<sup>189</sup> Carole Silver, "Getting Real about Globalization and Legal Education: Potential and Perspectives for the U.S." (2013) 24:2 *Stanford Law and Policy Review* 457 at 492

<sup>190</sup> *Ibid* at 492-3.

Nevertheless, intermediate law schools face the biggest challenge in promoting a global environment. They attract international students with some English competence but insufficient to allow immediate integration and participation into the local legal culture and law class dynamics. In this scenario, students tend to isolate themselves in groups of nationals, with limited interaction with domestic students in class or social activities. Thus, institutional incentives are required to break isolation and create intercultural connections between international and domestic students. Those activities could be “clinical courses on immigration or asylum issues, for example, or through international internships.”<sup>191</sup>

### *3.6.2 International as an Identity*

In an article published in 2019, Ballakrishnen and Silver traced the conflicts around the international identity of JD students in the reproduction of student hierarchies.<sup>192</sup> By international identity, they mean recognizing that a given student is a foreigner within the law school. For such a purpose, they interviewed fifty-eight students from seventeen U.S. law schools. Many findings in this article are groundbreaking. The first one is that the international identity of students is relative and relational.

As a social concept, being “international” depends on the reaction of the main actors involved with the internationalization process: the student’s self-perception, how peers and professors perceive the student’s identity (“stigmatized reception by others”), and the formal status

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<sup>191</sup> *Ibid* at 493.

<sup>192</sup> Swethaa S Ballakrishnen, Carole Silver, “A NEW MINORITY?...,” *supra*, note 69.

of the student. Those perceptions are all relatively independent, and their multiple combinations will produce different social identities with consequences for their place in the social hierarchy.<sup>193</sup>

This finding clarifies that the foreign or domestic student's formal status will only provide a partial picture of their international identity. For instance, one Canadian student in the United States may perceive herself as not as international as a student from Asia. Yet, that same Asian student may have American citizenship despite not mastering English or not sharing the local version of the American culture. The opposite may also happen, i.e., an ethnic Asian student may be very well immersed in the American culture and considered a local Asian-American by colleagues and professors. Still, she is enrolled as an international student.

The link to the reproduction of hierarchies is made by classifying the combination of “self-perception as international” and “stigmatized reception by others” into four categories. First, disadvantaged majority, when self-perception as international is high and stigmatized reception is also high. In this case, being international is a burden to overcome. Second, model minority, when self-perception as international is high and stigmatized reception is low. It includes students who feel that being international is irrelevant or even a sound distinction contributing to their careers. Third, assimilated other, when self-perception as international is low and stigmatized reception is high, which is the case of students who feel successfully integrated but are still targeted with disadvantages because of a non-local characteristic (e.g., a foreign name or accent). Fourth, cosmopolitan, when self-perception as international is low and stigmatized reception is also low. Those are the best assimilated into the local legal culture. They need to adjust minor differences

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<sup>193</sup> “Dissecting these factors and their interaction is important because it enables us to think of international identity as a ‘system’ that operates across different levels of analysis, reinforcing and priming the status in different ways given different circumstantial permutations. Our findings show that students experience their international identities differently and that the same identity that could offer welcome subversion to some, could be irrelevant, or even stigmatizing to others.” Swethaa S Ballakrishnen and Carole Silver, “A NEW MINORITY?....,” *supra*, note 69 at 651

to pass as locals and they do not suffer stigmatization. Canadians in the U.S. are a good example. Those categories are pervaded by other elements, such as race and social classes, which imply an intersectional constellation of factors to consider in assessing identity and reception.

Methodologically, this conclusion leads to caution about using information about international students provided by law schools. It is necessary to confirm the international identity by supplementary means, which is essential to contextualize interviews. In this sense, snowball sampling is the best technique to identify international participants because students may better navigate these multiple identities.<sup>194</sup> Canadian students represented a quarter of international students in the study sample.<sup>195</sup>

### *3.6.3 Measuring the Population*

Another relevant topic is the measurement of the international student population. In this case, the focus was on international JD students compared to other minorities at law schools. They demonstrate that the international population in all ABA-approved law schools increased by around forty percent between 2011 and 2017. The proportion of international students in the whole student population increased by more than eighty-six percent (from 1.78% to 3.32%) due to the overall decrease in the total number of law students and the increase in the number of international students.

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<sup>194</sup> *Ibid* at 657.

<sup>195</sup> “Canada accounted for approximately one-quarter of all international JD students needing a visa, China accounted for approximately nineteen percent, and South Korea for nearly sixteen percent. Our sample generally reflects this demographic.” *Ibid* at 658.

Data from the top twenty law schools are even more impressive. The number of international students doubled, and the proportion rose from four to eight percent of the total population of JD students. This group's numbers increased more than Latino (37.11%) and Black students (17.6%).<sup>196</sup> This approach teaches us that international students can be statistically perceived as a specific population and can be analyzed in the same way we study minorities within a given population, mainly concerning their evolution over time.

#### *3.6.4 Motivation*

Silver surveyed international LLM students to assess why international students pursue a legal education in the U.S. The results demonstrate the order of importance of several different motivations: i) expansion of professional opportunities in the home country (82%); ii) interest in a particular area of law (54%); iii) desire to improve English skills (51%); iv) career advancement (39%); the desire to live in the U.S. (39%); the influence of colleagues/friends who had an LLM (29%); the path to a job in the U.S. (29%); family considerations (21%); necessity for U.S. bar exam (16%).<sup>197</sup> This study draws on Kritzer's work, which considered four main reasons for such a choice: "potential income, social status, the prospect of interesting and satisfying work, and/or service to a community or an ideology."<sup>198</sup>

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<sup>196</sup> *Ibid* at 654.

<sup>197</sup> "Using a combination of survey and interview methods, I investigated the role of U.S. legal education in the careers of international students who earned an LLM in the United States in the late 1990s and early 2000s. Survey results identified the most common reason for pursuing the LLM as the expansion of professional opportunities in the student's home country." Carole Silver, "Perspectives on International Students' Interest in U.S. Legal Education: Shifting Incentives and Influence" (2015) 49:3 *New Eng L Rev* 463 at 475. Unfortunately, in the paper she does not clarify how many students were surveyed.

<sup>198</sup> Herbert M. Kritzer, "It's the Law Schools Stupid! Explaining the Continuing Increase in the Number of Lawyers" (2012) 19 *Int'l Legal Prof* 209 at 210.

Such a list of motivations makes it evident that international students may consider many elements in both their home and host countries. Furthermore, the reasons for pursuing legal education in general and abroad may overlap. This discussion leads to the question of the legal hierarchy in the home country. Do local law schools provide enough symbolic capital to climb better positions in the home country's legal field? Under which circumstances can international legal education offer a better place in the legal field hierarchy?

### *3.6.5 Dynamics of Socialization*

Silver also empirically analyzed the interactions between international LLM students and local JD students. She noticed that, although law schools tend to foster a global perspective on legal education, they emphasize classes about globalization and global issues instead of creating an integrative environment to promote social skills highly valued in the international legal sphere. Generally, JD students lack the opportunity to develop intercultural connections accessible only to those with the resources to travel abroad or engage in international academic activities. Most of the time, those international experiences burden students who are already highly indebted. This means that internationalization at home is cheaper and can reach more students.<sup>199</sup>

Since international students abound in LLM programs, it would make sense for law schools to employ them as a resource to promote engagement between local and international students and fill this gap. However, a survey carried out in 2011 that asked domestic students about their interaction with international law graduates showed the distance separating those two populations. In general, exchanges are very infrequent. The conclusion is that domestic JD students with

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<sup>199</sup> Carole Silver, "Getting Real about Globalization and Legal Education...", *supra* note 189 at 471-2

previous international connections, either because of an interest in international law or studying abroad, are more likely to interact with international students.<sup>200</sup> Domestic students feel that their schools do not promote such interactions. Still, classrooms are the most common place where those interactions happen.<sup>201</sup> Interactions between international and domestic students are rare and occur primarily when a faculty member enforces them. These findings stress law schools' institutional role in arranging more meaningful intercultural learning opportunities, circulation of knowledge, and leisure activities that create moments of interaction.

### 3.7 Internationalization of PhD Programs in Law: the work of Gail J. Hupper

Gail J. Hupper produced a trilogy of articles about graduate studies in Law in the U.S. The first article focuses on the creation of SJD programs at the turn of the XX century.<sup>202</sup> The second explains the evolution of SJD programs towards internationalization after World War II.<sup>203</sup> Finally, the third addresses the scholarly production of international doctorate students and current features of the internationalization of doctorate programs in the top-seven American law schools.<sup>204</sup> Of these, I explore the second and focus primarily on the third.

In “Educational Ambivalence: The Rise of a Foreign-Student Doctorate in Law,” the author describes how SJD programs were changing from programs dedicated to training domestic lawyers

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<sup>200</sup> *Ibid* at 483.

<sup>201</sup> *Ibid* at 486.

<sup>202</sup> Gail J Hupper, “The Rise of an Academic Doctorate in Law: Origins Through World War II” (2007) 49:1 *American Journal of Legal History* 1–60.

<sup>203</sup> Gail H. Hupper, “Educational Ambivalence: The Rise of a Foreign-Student Doctorate in Law” (2015) 49 *New Eng L Rev* 319.

<sup>204</sup> Gail J. Hupper, “The Academic Doctorate in Law...,” *supra*, note 71.

for a professorship to training mostly international applicants throughout the second half of the XX century.<sup>205</sup> According to her research, SJD programs became less attractive for domestic students because most of their innovative interdisciplinary approach from the Legal Realism movement was already incorporated into the JD and LLM programs.<sup>206</sup> Besides that, LLM degrees from high-ranked law schools were considered enough for students to reach teaching positions at law schools in an expansion moment for new programs and courses.<sup>207</sup> A doctoral degree in social sciences was also seen as an option to increase the chances of being offered a law school position.<sup>208</sup>

Many factors led to an increasing number of international students filling the void left by domestic students in such a context. Naturally, as the capitalist superpower, the U.S. became an

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<sup>205</sup> “The current Article has focused on the twenty-five year period following World War II, the period in which the transition from a U.S.-trained to a foreign-trained student body took place. It tells a story of educational ambivalence-how the doctorate, once an important site of Legal Realist experiments, fell increasingly out of step with post-war developments in the U.S. legal academy. As domestic interest in the degree declined, foreign students stepped in-a phenomenon fueled by the post-war explosion of international legal studies at U.S. law schools. Until recently, however, foreign students have met with ambivalence as well.” Gail H. Hupper, “Educational Ambivalence...,” *supra* note 203 at 446.

<sup>205</sup> *Ibid*, at 434-9

<sup>206</sup> “According to one Harvard faculty member, by the 1980s every J.D. student was exposed to ideas like law and economics, critical legal studies, and feminist legal theory during his or her time at the school; graduate students were not” *Ibid*, at 342.

<sup>207</sup> “The single largest challenge for the doctorate after the war was student demand. Specifically, both law school hiring committees and those who hoped to be hired increasingly viewed the doctorate as unnecessary. Indeed graduate work of any kind was increasingly unnecessary, particularly for top students who had been trained in elite law schools. It was much more cost-effective for these graduates to go directly into teaching, or to get some practice experience before going into teaching. And once in teaching, there was less occasion to take a year or more off.” *Ibid*, at 366. Moreover, “First, as a matter of teacher training, one of graduate work's chief benefits remained its broadening effect, particularly for graduates of state and local law schools. The dissertation project could have a broadening effect, in the sense of helping a student relate his or her particular interests to broader intellectual horizons. However, it would not necessarily do so, and a focus entirely on the research project was more likely to be narrowing. To the extent that writing was beneficial, the LL.M. would suffice. Schools' hiring committees seemed to agree.” *Ibid*, at 379.

<sup>208</sup> “More generally, the schools began to hire more faculty members who held Ph.D.s in other disciplines, to establish research programs in law and the social sciences, etc.” *Ibid*, at 388.

attractive student destination. In addition, during the Cold War, the Ford Foundations and the State Department funded the Law and Development movement and the modernization theory in order to create a network of scholars in developing countries to promote American legal thought and the American legal scholarship style. SJD was also used to provide international leaders with expertise in American law, encouraging international students to pursue the program.<sup>209</sup>

Those factors were in step with a missionary conception carried out by elite law schools seeking to spread their legal traditions (such as the American Legal Realism). This missionary purpose was associated with building the legal infrastructure in recently independent countries and exporting the core values of U.S. law, namely democracy, individual rights, and the free market.<sup>210</sup> This missionary idea would be guided by “altruism, sense of responsibility, and geopolitics.”<sup>211</sup>

U.S. elite law schools did not need to change the target audience from domestic to international students consciously or institutionally. There was no intentional decision to do so. Instead, law schools accommodated the new reality by offering better conditions for international students as an opportunity to keep SJD programs alive. Thus, academic and international ambivalence refers to a moment when “[o]n the one hand, by the 1970s U.S. legal education had become an active player on the international scene and international legal studies as a field of U.S. study was broadening. . . . On the other hand, these activities were increasingly viewed as marginal to the schools’ basic mission of training lawyers for U.S. legal practice.”<sup>212</sup>

More recently, the tendency of increasing participation of international students accounts for the general decline in applications and enrollment in law schools. For instance, from Fall 2010 to

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<sup>209</sup> *Ibid.*, at 434-9.

<sup>210</sup> *Ibid.*, at 404-5.

<sup>211</sup> *Ibid.* at 406.

<sup>212</sup> Gail J. Hupper, “The Academic Doctorate in Law . . .,” *supra*, note 71 at 421.

Fall 2014, applications dropped from 604,300 to 355,100 (41.24%).<sup>213</sup> One reason that helps explain this reduction is the high cost and high student debt, which forces law schools to seek international students to compensate for the decrease in revenue. In such a situation, keeping an SJD program is a part of the strategy to attract and retain international LLM students. It is a way to offer career perspectives and opportunities to stay longer in the country. Thus, law schools with SJD programs have an advantage over those without it.

In “The Academic Doctorate in Law: A Vehicle for Legal Transplants?” Hupper analyzes to what extent doctorate programs pursued by international students become a mechanism for the global diffusion of U.S. legal concepts, norms, and methodologies. She focused on the doctorate programs of the top seven U.S. law schools. Her first meaningful finding has to do with the reasons for international students' high interest in doctorate programs in the U.S. She argues that such an attraction is caused by a combination of “the increasing academization of U.S. legal education, heightened interest in internationalization in U.S. legal education circles, and the growing dominance of U.S. legal models internationally.”<sup>214</sup>

The fall of the Soviet Bloc and the rise of globalization catalyzed international interest in following U.S. legal models and education. United States law guided legal reforms in different countries for different reasons. In Canada in the 1980s, legal practice and scholarship absorbed the U.S. influence under the criticisms of the traditional doctrinal approach the Arthurs Report brought about.<sup>215</sup> U.S. influence can also be seen in the adoption of the Canadian Charter of Rights and

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<sup>213</sup> Carole Silver, “Perspectives on International Students’ Interest in U.S. Legal Education...,” *supra* note 197 at 465.

<sup>214</sup> Gail J. Hupper, “The Academic Doctorate in Law...,” *supra*, note 71 at 418.

<sup>215</sup> “In Canada, the engagement with U.S. legal education was hardly new by the 1980s, 138 but the rapid rise in doctoral student enrollment followed two important events. The first was the 1982 adoption of the Charter of Rights and Freedoms, which greatly expanded the range of legislation that would be subject to judicial review in Canadian courts. 139 U.S. courts had by then embraced both rights-based judicial review and open policy argumentation in deciding these kinds of cases. The second was the release of an influential 1983 report to the Social Sciences and

Freedoms in 1982, which expanded the role of the judicial review and the Supreme Court, similar to the U.S. constitutional model.<sup>216</sup> In the 1990s, Eastern Europe, Taiwan, and South Korea imported U.S. legal concepts following the capitalist shock, neoliberalism, and the democratic opening. In Latin America, U.S. legal models inspired security and administrative reforms.<sup>217</sup>

At the same time, more countries adopted the doctoral degree as mandatory for becoming a law professor, and the degree made it easier to access a wider variety of careers.<sup>218</sup> For law schools, having a doctorate program is a passport to the international education community since it helps to attract international LLM students and adds value to the missionary perspective. For faculty members, an internationalized program facilitates international exchange and supervision.<sup>219</sup> Some faculty explicitly defend the programs as a means to popularize certain legal traditions, such as critical or “left” legal theory, and law and economics.<sup>220</sup>

The second important finding tells us that, more than ever, doctorate programs fulfill the role of preparing students for becoming professors when “teaching in one’s country or region seems to be the primary career goal of most foreign-trained graduates,”<sup>221</sup> although students are more aware

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Humanities Research Council of Canada. That report devoted substantial attention to the need for research on the relationship between law and its social, political and historic context, including interdisciplinary work. In this context, the elite U.S. law schools were a natural magnet for the academically ambitious: not only did they have more developed research in these areas, but they were also richer and more prestigious. More students came to the United States, and some stayed on for doctorates.<sup>141</sup> Moreover, those who came tended to be interested in what was cutting-edge about U.S. scholarship rather than the doctrinal diet to which they were accustomed at home.<sup>142</sup> By the late 1990s theoretical, interdisciplinary, and policy-oriented work had become a commonplace in Canadian legal education. Holders of U.S. doctorates are not the only reason, obviously, but they almost certainly played a role.”  
*Ibid at 447-8*

<sup>216</sup> *Ibid at 447.*

<sup>217</sup> *Ibid at 449.*

<sup>218</sup> *Ibid at 423.*

<sup>219</sup> *Ibid at 426.*

<sup>220</sup> “On the other hand, some faculty members who are frequent supervisors explicitly reject the notion that their work serves a missionary or gospel function.” *Ibid at 427.*

<sup>221</sup> *Ibid at 430.*

of the possibility of working in the U.S. market. Despite that, doctorate programs generally account for just a small part of law school students, faculty, and resources, which implies an ambivalent and diffuse commitment of law schools to these programs.

### *3.7.1 Legal Transplant and Circulation of Knowledge*

Hupper's concept of legal transplant combines three elements to address the influence of U.S. graduate legal education as “a mechanism through which U.S. legal norms are transplanted to other countries”<sup>222</sup> through doctoral programs. First, it means the spread of the way American lawyers think about law. Second, it implies that the U.S. government does not impose this transplantation. Third, it diffuses U.S. legal scholarship, which diffuses U.S. legal concepts and methodologies globally.<sup>223</sup> Since a doctorate prepares for an academic career and most international students assume positions at universities in their home countries, the legal transplant finds its way into professors' roles: classroom teaching, scholarship, and legal education policies. Thus, when international students become professors, American legal knowledge may be replicated in lawyers' and future professors' training in their countries. Yet, this replication depends more concretely on the teaching and learning dynamics.<sup>224</sup>

A doctoral degree would be especially suitable for transplants because it lasts longer and requires deeper contact with the legal culture and scholarship of the host country. Besides, the

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<sup>222</sup> *Ibid* at 444.

<sup>223</sup> *Ibid*.

<sup>224</sup> “The extent to which [legal transplant] actually occurs depends in part on what a particular faculty member is teaching, whether the imported idea is presented as central or peripheral, and whether it is adapted to a preexisting framework or presented as the framework. It may also depend on the extent that the faculty member uses pedagogical techniques derived from the foreign experience. Finally, the impact also is likely to depend on the extent to which other faculty members reinforce those lessons.” *Ibid* at 445

dissertation becomes a stepping stone and a crucial one; thus a central product of one's academic career, and doctoral research may condition the scholar's future career. Furthermore, many countries require a doctorate to access an academic career.<sup>225</sup>

That being said, the author claims the main traits of U.S. legal culture are at the core of legal transplants: individualism, litigiousness, and law as social engineering (instrumentality). Nonetheless, she argues that there is a good lesson the U.S. legal education has to offer to the world. It is how to teach critical thinking, allowing international students to apply their experience with U.S. scholarship in their home countries as it pleases them. In this sense, internal dynamics in home countries carry the ultimate responsibility for transplants.<sup>226</sup>

However, she pays little attention to the import of legal ideas from international students. Importing legal ideas is only considered when law schools hire foreign-trained professors to respond to the quest for internationalization. In this case, professors with foreign legal training and local doctoral degrees have an advantage because they combine contributions from the two legal environments. All she can say is that those international professors contribute to the academization of legal education, taking a relevant stand in the conflict between academization and professional legal education in their host country.<sup>227</sup> She does not address whether significant contributions are made to local scholarship or policies from their international background.

Unlike Hupper, I am unsure whether the doctorate is the best place for legal transplants. Although it favours a more extended exposition for international students to absorb the style and themes of the U.S. legal culture, it is sought after by more mature international students who may have a more consolidated perspective based on previous education. Compared with JD and LLM

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<sup>225</sup> *Ibid* at 446.

<sup>226</sup> *Ibid* at 452.

<sup>227</sup> *Ibid* at 453.

students, PhD students may have more time and opportunities to reflect on legal transplants and promote a richer dialogue between different legal traditions. Since the JD and LLM programs are more concerned with professional training and thus more restricted regarding the circulation of knowledge from other jurisdictions, those programs probably enforce the reproduction of American legal concepts and doctrine more strictly than the Ph.D.

### *3.7.2 Topics and Methodologies Applied by International PhD Students*

Another fascinating insight derives from Hupper's analysis of the type of research developed by international students, which she relates to their geographic origins and the prestige of the law school they are enrolled in. In the most prestigious law schools, such as Columbia, Harvard, Michigan, NYU, and Yale, international students are encouraged to engage with a theoretical/interdisciplinary model that fosters abstract thinking to mobilize fundamental legal concepts and contextual methodologies. They are trained to connect law to other crucial aspects of modern social life. Those law schools mainly accept doctoral students from developed Common Law countries, such as Canada, Ireland, Israel, Australia, New Zealand, and the United Kingdom.<sup>228</sup>

The bottom layer consists of the law schools at George Washington University and Wisconsin University, which attract students with a doctrinal civil law training background,

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<sup>228</sup> "The entire dissertation need not be theoretical, and indeed many include discussions of how theoretical insights play out in the actual operation of legal norms. What distinguishes this work is an effort to engage theoretical debates in the area of the dissertation at a high level of abstraction and an effort to organize the work around this engagement in some meaningful way. It is interdisciplinary to the extent that it explicitly draws on the insights of disciplines other than law (economics, political science, philosophy, linguistics, and sociology). I also include in this category "law and status" work, or work that examines how law affects historically disadvantaged or dominated groups of people, to the extent that it deploys theoretical or interdisciplinary insights in doing so." *Ibid* at 433.

usually from East-Asian countries. The doctrinal model prevails at these universities, focusing “on rules, whether in isolation or applied to a particular problem.”<sup>229</sup> Students engage in comparative methods, thus preserving the doctrinal approach to the home country's law<sup>230</sup> and comparing legal solutions different countries give to similar problems. They may also study research topics that are more developed in the foreign country to propose legal reforms in their home country, leading to “importing.”<sup>231</sup>

Hupper also describes the policy pragmatist model, which can be found in all law schools mentioned.<sup>232</sup> It is a compromise between the two previous models. In this model, international students seek to deal with concrete problems and study the relationship between the law and the context to suggest public policies. It goes beyond the doctrinal approach but does not engage with the higher levels of abstraction of the first model. That is also a way to import U.S. legal culture because U.S. legislation or policies inspire policy-driven solutions students may propose.

A couple of questions arise based on the relationship between methodologies and hierarchies. First, is there a correspondence between a more theoretical/interdisciplinary model and a better response to the challenges imposed by internationalization and the needs of

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<sup>229</sup> *Ibid* at 440.

<sup>230</sup> Dissertations from this model usually take the shape of “a discussion of the rules as applied to a particular problem or set of problems, plus a policy proposal. Some take the form of a comparative exercise in which the student discusses the approaches of two or more countries (one of which is typically the student’s home country) to a particular problem. The dissertation may examine emerging fields such as digital technology law, fields that are highly developed in the United States but underdeveloped in the author’s home country, or fields as to which there has been scholarly confusion or neglect. While the thesis may touch on the theory underlying a particular body of legal doctrine or the context in which it operates, discussion of theory and context take a back seat to the comprehensive presentation of doctrine.” *Ibid*.

<sup>231</sup> *Ibid* at 442

<sup>232</sup> “Theses in the “policy pragmatist” model are like those in the doctrinal model in that they have a significant proportion of doctrinal content. However, policy pragmatist theses go beyond the formal rules, discussing the political, economic, or technical context in which the rules operate. In this sense, they represent a significant departure from the continental conception of the “law book,” and a significant change in approach for students schooled in the civil law or another autonomist tradition. What distinguishes these theses from the theoretical/interdisciplinary model is the concrete, descriptive way the contextual discussion proceeds.” *Ibid* at 443

globalization? Instead, it may be that such methodologies are considered the most suitable and valuable scholarship to face globalization's challenges because they are promoted, in some cases through a missionary perspective, by the most prestigious law schools from the U.S. (the leading country of globalization so far). In other words, is this approach responsible for keeping law schools at the top of the international legal education market hierarchy, or is it considered the most innovative approach due to the hierarchy reproduction effect?

To what extent does the theoretical/interdisciplinary model engage students with empirical methods? Or does it instead emphasize interconnections between legal theory and philosophy to contextual (empirical) findings from other disciplines? It is unclear how empirically-oriented any of those methods are, which indicates that the academicization of U.S. law schools has not yet integrated empirical methods as an essential aspect of their leading research.

### 3.8 Third World Approach to International Law

TWAILers<sup>233</sup> have addressed the unfair global distribution of power but have not looked at internationalization processes in higher education institutions as part of their subject of analysis. TWAIL has historically focused on international law and governance,<sup>234</sup> world market players and

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<sup>233</sup> Obiora Chinedu Okafor, "Critical Third World Approaches to International Law...", *supra* note 25. James Thuo Gathii, "TWAIL: A Brief Story of its Origins, its Decentralized Network, and a Tentative Bibliography" (2011) 3:1 *Trade Law and Development* 26. Makau Mutua, "What is TWAIL?," *supra* note 34.

<sup>234</sup> Antony Anghie, *Imperialism, sovereignty, and the making of international law*, Cambridge studies in international and comparative law 37 (Cambridge, UK ; New York, NY: Cambridge University Press, 2005);, James Thuo Gathii, "Neoliberalism, Colonialism and International Governance: Decentering the International Law of Government Legitimacy" (2000) 98 *Michigan Law Review* 1996

financial and trade organizations,<sup>235</sup> and international human rights law enforcement.<sup>236</sup> When applied to education, TWAIL has been mostly restricted to the legal education of international law.<sup>237</sup> Despite not addressing my topic directly, TWAIL is relevant because it represents a body of literature that refuses to forget and silence the current consequences of colonialism and imperialism in the global sphere, a concern shared with other scholars affiliated with the Latin American decolonial movement.<sup>238</sup>

TWAIL adds complexity to the educational debate on internationalization when we apply some of its central concepts, such as law, knowledge, and hegemony over that subject. Chimni provides a good interrelation among them when he reinforces the classic idea that domination is not only exerted by force but mainly by the imposition of a worldview leading to the naturalization of the social order. In this way, normative discourses must incorporate the consensus dimension to justify a prevalent natural order that seeks to apply values such as “rationality, neutrality, objectivity and justice.”<sup>239</sup>

Often, we see Gramsci’s concept of hegemony applied to international governance. Hegemony is then characterized by the naturalization of a knowledge hierarchy (judgments about

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<sup>235</sup> Antony Anghie, “Time present and time past: globalization, international financial institutions, and the third world” (1999) 32 *New York University Journal of International Law and Politics* 243.

<sup>236</sup> Makau Mutua, “Savages, victims, and saviors: The metaphor of human rights” (2001) 42 *Harvard International Law Journal* 201.

<sup>237</sup> Mohsen al Attar and Vernon Tava, “TWAIL Pedagogy...,” *supra* note 26.

<sup>238</sup> By decolonial (or postcolonial – we are not making the difference here) tradition we mean the post-Marxist critique of colonialism that rose following the cultural turn in the ‘90s, with consequences for Philosophy, Epistemology, Education, and Social Sciences. Walter D. Mignolo, Edgardo Lander, Aníbal Quijano, Fernando Coronil and Ramón Grosfoguel are the most relevant names within its Latin American branch. Gayatri Spivak, Saskia Sassen, and Stuart Hall are other important authors. Edward Said can also be considered as part of the decolonial tradition despite being from a precedent generation. Relevant concepts from the Latin American decolonial tradition are Quijano’s “coloniality of power”, Lander’s “coloniality of knowledge”, Mignolo’s “geopolitics of knowledge”, and Coronil’s “globocentrism.” Within the social sciences, the decolonial tradition is opposed to more economic-centered theories as Wallerstein’s world-system theory and the Latin-American dependency theory. For an overview of this debate, see Ramón Grosfoguel, “Colonial Difference...,” *supra* note 14.

<sup>239</sup> BS Chimni, “Third World Approaches to International Law...,” *supra* note 25 at 15.

facts, a worldview) that contributes to the reproduction of a determined power setting (normative and value judgments, a political program). Hegemony is not necessarily rooted in the falsification of reality, which is the core element of the traditional concept of ideology. Still, it calls attention to the production of an active consensus of the subjugated towards the political program of the dominant as an essential part of the reproduction of social order. Law, for TWAIL, is the idea or political program around which a hegemonic set of knowledge and discourse is built.

In that sense, the internationalization of legal education can be addressed according to the “geopolitics of knowledge”<sup>240</sup> and “coloniality of knowledge”<sup>241</sup> referring to the circulation and rating of knowledge in the global society and its contributions to reaffirming global power disparities. Such an asymmetry of global power can be reinforced by the reproduction of legal canons from the North and the co-optation of developing countries' legal elites, strengthening Northern countries' soft power. The competition among theories, methodologies, regulations, approaches, and solutions in global and local scenarios may replicate colonial structures in terms of hegemonic and marginal knowledge. Therefore, TWAIL and the decolonial movement remind us that the internationalization of legal education must not be split from the struggle for political and economic redistribution that underlies globalization and its colonial origins. As an alternative, they propose validating marginal knowledge as essential to strengthen Third World countries in the international balance of power.

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<sup>240</sup> Walter Mignolo, “Las geopolíticas del conocimiento y colonialidad del poder” (Interviewed by Catherine Walsh) (2003) 1:4 *Revista On-Line de la Universidad Bolivariana de Chile* 1; José de Souza Silva. *La geopolítica del conocimiento y la gestión de procesos de innovación en la época histórica emergente*, (Campina Grande, Brasil: Red Nuevo Paradigma, 2008).

<sup>241</sup> Edgardo Lander and Santiago Castro-Gómez, *La colonialidad del saber: eurocentrismo y ciencias sociales: perspectivas latinoamericanas* (Buenos Aires: CLACSO, 2000). Edgardo Lander, “¿Conocimiento para qué? ¿Conocimiento para quién? Reflexiones sobre la universidad y la geopolítica de los saberes hegemónicos” 7:12-13 *Estudios Latinoamericanos* 25.

From TWAIL's perspective, this research can hypothesize that global universities and law faculties have fulfilled a role similar to that of international organizations. They are active institutions in the geopolitics of legal knowledge and crucial to reproducing global hegemony. On the one hand, they train lawyers for international practice; on the other, they engage in international relations with government agencies, universities, and research teams worldwide and may reproduce neocolonial patterns through these interactions.

### 3.9 The Internationalization of Canadian Legal Education

Most discussions on the internationalization of legal education in Canada have focused on curricular responses to the impact of globalization in legal practice. Thus, it translates into introducing exchange programs, courses in international law and transnational subjects, and comparative teaching methodologies that train students in fundamental skills that allow them to practice in different legal systems. As stated by Grenon et al.,

In Canada, the internationalisation and globalisation of legal training and practice refers to engagement as much with the multiple formal legal systems operating within the country (civil law, common law, and also Aboriginal law in some context) as with other national and supranational legal orders.<sup>242</sup>

Also, a considerable number (likely well over 50%) of faculty have foreign degrees, and law schools usually offer joint and dual programs.<sup>243</sup> There is a consistent mobility of foreign lawyers into the Canadian legal profession through the accreditation of foreign degrees and professional

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<sup>242</sup> Aline Grenon, H Patrick Glenn, Helge Dedek, "The Global Challenge in Common and Civil Law Contexts: A Canadian Perspective" in Christophe Jamin and William van Caenegem, eds, *The Internationalisation of Legal Education* (Cham: Springer International Publishing, 2016) 75 at 79.

<sup>243</sup> "It is very common for law professors to hold one or more foreign (graduate) degrees; the authors estimate that the percentage of law faculty staff having a foreign degree is likely well over 50 %. These degrees are most commonly obtained in the United States, the United Kingdom, and France; a not-insignificant number of faculty hail from countries around the world, including an increasing number from Africa and Asia." *Ibid* at 83.

LLMs dedicated to facilitating such mobility. Despite that, international law is not mandatory in many law schools, and promoting Quebec civil law among Common Law students has still been a challenge.<sup>244</sup>

Although internationalization involves preparing law students for practicing in a globalized world through contact with different legal systems and international law, it may also encompass developing soft skills related to tolerance and multiculturalism. Furthermore, it is expected to raise attention to complex conflicts from which new legal concepts and disciplines emerge in fields like human rights, humanitarian law, migration, and environmental law. Those multifaceted aspects of internationalization indicate the intrinsic polysemy of the term and the many approaches it may entail: "how 'high' on our list of priorities the 'internationalisation of the curriculum' should be strongly depends on the definition of 'internationalisation.'" <sup>245</sup>

Within the discussion about navigating various legal systems, McGill's transsystemic program<sup>246</sup> gains prominence as a Canadian curricular innovation with profound institutional consequences. Among the prolific internal debate preceding the curricular reform, there emerged the concept of polyjurality, which suggests a pluralistic approach to law and legal education based on the acknowledgement of the contributions of all legal traditions and forms of communicating

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<sup>244</sup> "Thus most law students graduating from law schools in the common law provinces have little or knowledge of Quebec civil law, despite the fact that such knowledge would allow them to have a better understanding not only of Quebec's system, but also of national legal systems in other civil law jurisdictions. This lack of interest, insofar as the Canadian context is concerned, goes a long way towards explaining the absence of a meaningful pan-Canadian debate about internationalisation and globalisation." *Ibid* at 82.

<sup>245</sup> *Ibid* at 91.

<sup>246</sup> A collection of literature about the transsystemic program is available on McGill's website, online: <[www.mcgill.ca/centre-crepeau/projects/transsystemic/articles](http://www.mcgill.ca/centre-crepeau/projects/transsystemic/articles)>. While we cite examples of this literature in this article, the most recent paper is Shauna Van Praagh, "Palsgraf as 'Transsystemic' Tort Law" (2012) 6:2 J Comparative L 243, which describes the transsystemic method in the classroom. For a relevant historical account of the creation of the program, see Roderick A Macdonald and Jason MacLean, "No Toilets in Park" (2005) 50 McGill LJ 721. For a report on a study of the transsystemic model conducted by an external researcher, see Helena Whalen-Bridge, "A Common Law Fly on the Transsystemic Wall: Observing the Integrated Method at McGill Faculty of Law" (2017) 51:2 L Teacher 188.

legal statements (discursively and non-discursively, formal or informal, from the state or not) to widen the interpretation of norms and innovate on legal responses.<sup>247</sup> The program also harnesses the bilingualism of Canada, the ongoing dialogue between Civil law, Common law, Indigenous law, and interdisciplinary methodologies, once promoted by the Law and Learning tradition, to offer a curriculum attuned with a scholarly account of law that enables students to navigate the globalization of law and the legal profession.

In this sense, the program opposes the "Europeanization" approach, where legal education focuses on international or European law by following the traditional positivist paradigm without opening to alternative ways to experience law de-centred from state law.<sup>248</sup> According to the authors, the main institutional adaptation that enables this kind of legal training is exchange programs like Erasmus.<sup>249</sup> At the same time, law schools in different countries get their curriculum more or less harmonized due to the Bologna Process towards a supranational or European

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<sup>247</sup> Roderick A Macdonald, Jason MacLean, "No Toilets in Park" *supra* note 246.

<sup>248</sup> Helge Dedek and Armand de Mestral, "Born to be Wild..." *supra* note 140.

<sup>249</sup> Erasmus is a multi-billion program managed by the European Commission in partnership with the European Education and Culture Executive Agency and national agencies across Europe. The program funds mobility and cooperation projects for students, professors, and researchers to increase education integration. It plays an important role in creating a European sentiment of unity by promoting shared experiences for students throughout the continent. In 2022, Erasmus turns 35 years old, and the current program is scheduled to last at least until 2027. For further information see, online: <[erasmus-plus.ec.europa.eu/](http://erasmus-plus.ec.europa.eu/)>.

jurisdiction, thus leading to the loss of diversity.<sup>250</sup> Conversely, transsystemia should dissociate legal education "from its ties to a positivistic training in the law in force in a certain jurisdiction."<sup>251</sup>

In the case of transsystemia, the law faculty gains relevance due to its role in managing difference and diversity intellectually. Legal ideas and concepts become central instead of geography and jurisdiction. In that scenario, the exchange of students is not essential for learning because the curriculum is designed to introduce diversity when teaching major legal topics.<sup>252</sup>

That is done by resorting to shared principles and meta-normative reasoning that justify norms from different traditions dedicated to similar cases. However, professors are meant to resort to interdisciplinary knowledge whenever necessary to create a conversation between those legal traditions, especially when principles of justice are not enough for the task. Therefore, "the omnipresent experience of difference ... connects legal discourse with the discussion of historical, sociological, economic, philosophical etc. questions in the classroom."<sup>253</sup>

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<sup>250</sup> "Until very recently, the debate on the 'Europeanization' of law or even the actual 'harmonization' of the legal orders of the member states had not had a didactic counterpart as to how to teach law in the face of Europe growing together" (Dedek and de Mestral, "Born to be Wild...", *supra* note 140 at 892). The Bologna Process accounts for the European effort to standardize higher education across the continent in order to make education and professional training compatible with the mobility of the workforce. The Process started in 1998 and pushed many reforms, including the uniformization of the three-cycle degree structure of bachelor's, master's, and doctorate degrees and their respective length and credit requirements. Two main critiques of the reforms argue that they erased national education traditions and were driven by a neoliberal agenda in favour of shorter programs with an emphasis on professional training in the first cycles, with the marginalization of reflexive and critical education. Dedek and de Mestral point out that the Bologna Process was not able to diverge from the positivistic approach that includes European law as simply another body of legislation and doctrine to a content-laden curriculum and introduces transnational legal topics in a reflexive fashion. The authors also comment on the negative impact of the Bologna Process on the local regulation of legal training and access to the profession. See Dedek and de Mestral, "Born to be Wild...", *supra* note 140 at 896.

<sup>251</sup> *Ibid* at 898.

<sup>252</sup> In the transsystemic curriculum "an area of law is treated as a unified field across the divide of different traditions. ... By integrating what used to be two courses into one, trans-systemic teaching is designed to promote a more profound and coherent understanding of fundamental legal principles, rather than to simply teach the logic of a single system of law" *Ibid* at 905.

<sup>253</sup> *Ibid*.

By materializing a pluralistic approach with the use of theoretical, fundamental, and interdisciplinary elements into an operative curriculum, McGill is expected to have fulfilled a milestone in establishing a scholarly approach to law more distant from the traditional professional training heavily dependent on the reproduction of doctrinal lessons. In that sense, it can be viewed as a successful experiment in aligning the law faculty to the academic rationale within the broader university.<sup>254</sup>

Harry Arthurs first evaluates the McGill experiment in a paper in 2005, from where one major criticism can be extracted. Despite its interdisciplinary proposal, only a few professors were trained in non-legal subjects, indicating that the program had difficulty implementing socio-legal methodologies and creating a true exchange of knowledge with other social sciences and humanities.<sup>255</sup> Four years later, in another paper where Arthurs reassesses McGill's curriculum, he shows how the curriculum stresses the law's indeterminacy as a tool to face globalization, and I will centre my arguments on the diagnosis Arthurs advances in this second paper.<sup>256</sup>

One can see that the emphasis given to indeterminacy resonates with a classical assumption of the Critical Legal Studies movement, that the unavoidable indeterminacy of legal norms is fulfilled by political bias, which reproduces social hierarchies under the ideology of the neutrality of the law.<sup>257</sup> Unlike Critical Legal Studies, however, transsystemia does not critique that indeterminacy, which is considered instead an opportunity to produce innovation through

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<sup>254</sup> “[T]he rationale for these innovations stemmed from a vision of law as a discipline with a firm place in the academy among the social sciences and humanities.” *Ibid* at 908.

<sup>255</sup> Harry Arthurs, “Madly off in One Direction: McGill’s New Integrated, Polyjural, Transsystemic Law Programme” (2005) 50 McGill LJ 707 at 715

<sup>256</sup> Harry Arthurs, “Law and Learning in the Era of Globalization,” *supra*, note 123.

<sup>257</sup> Duncan Kennedy, “A Social Psychological Interpretation of the Hermeneutic of Suspicion in Contemporary American Legal Thought” in Justin Desautels-Stein and Christopher Tomlins, eds, *Searching for Contemporary Legal Thought* (Cambridge: Cambridge University Press, 2017) 365.

introducing a dialogue with other legal traditions. By doing this, transsystemia takes advantage of the indeterminacy and polyjurality of the law to deliver a curriculum that can face the challenges of the future of legal education.<sup>258</sup>

We can also find an analysis of the current state of graduate legal education in Canada in the literature.<sup>259</sup> Although not directly related to internationalization, it is relevant for our study because graduate legal programs are the most internationalized in terms of the attending student population. Graduate studies in law are the battlefield where opposing forces of professionalism and academicism confront. They have, especially the LLM, been designed to advance students' research while profiting from international students who pay higher tuition fees while attending undergraduate courses,<sup>260</sup> in a compromise between the leading forces of professionalism and academic research mediated by the global legal education market.

Graduate studies in law at McGill are also criticized because transsystemia is exclusive to undergraduate students since first-year transsystemic courses are not available for graduate students. So, when attending more advanced classes, "the master's students are bound to be either confused or unable to engage fully with the course material and pedagogy."<sup>261</sup> That is credited to

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<sup>258</sup> According to Harry Arthurs, instead of teaching

students to 'think like lawyers,' we will do something different to teach them not to think like lawyers – or at least not like the lawyers we've been training up to this point. Instead of parsing judicial decisions, for example, they may have to peruse arbitration awards or observe mediators at work; instead of reading legislation, they may be asked to scrutinize corporate codes of conduct or consult ethnographic studies; and instead of being taught to fetishize fairness, rationality, predictability and clarity as law's contribution to social ordering, they may find themselves learning to value pragmatism, imagination, flexibility and ambiguity (Harry Arthurs, "Law and Learning in the Era of Globalization," *supra* note 123 at 635).

<sup>259</sup> Rosalie Jukier and Kate Glover, "Forgotten - The Role of the Graduate Legal Education in the Future of the Law Faculty" (2014) 51:4 *Alta L Rev* 761.

<sup>260</sup> *Ibid* at 766.

<sup>261</sup> *Ibid* at 774.

the underdevelopment of the graduate program at McGill at the time of the curricular changes that gave birth to transsystemia in 1999.

That loss is especially damaging for international students, who accounted for 60% of graduate students in 2014, when the paper was published, and reached up to 69% in 2017. However, in the JD/BCL program, international students barely reached 10% of the student population. In any case, if international students enrich the classroom with insights from a foreign perspective, professors of undergraduate courses may also feel an additional burden in managing expectations and differences in legal training and cultural backgrounds.<sup>262</sup>

## Conclusion

This literature review provides elements to situate law schools' focus when promoting internationalization according to a spectrum. On the first end, internationalization's primary goal is to generate revenue, and on the other end, to boost knowledge production. In the United States, law school deans noticed that internationalization is necessary to update legal education to the new stages of globalization. At the same time, globalization brings new opportunities for law schools in a global legal education market. This situation has implications within major player countries since the global legal education market reshapes the hierarchy of law schools by deepening the resource allocation abyss between those on top and those at the bottom.

Law schools develop various strategies based on their available resources to compete in the global market in a way that some international divisions are reproduced. Supporting civil law doctrinal approach, carried out by students with lesser English skills, is less demanding from global

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<sup>262</sup> *Ibid* at 776.

law schools at the bottom of the hierarchy. In their case, the prestige of studying in the Global North, regardless of the law school's reputation, may look sufficient to attract international students from the Global South. At the same time, students need not adapt to unfamiliar methodologies and can easily apply acquired knowledge to their home country's legal context. In this sense, Americanization – which can be seen as the last stage of Westernization, based on the centrality of the free-market ideology<sup>263</sup> – concentrates on spreading U.S. regulations and policies, exempting alternative methodologies from this exchange.

Those institutions at the bottom tend to invest less in exchanging knowledge and promoting interactions between international and domestic students since it requires new pedagogies, curricular reforms, and more significant changes in institutional behaviour. Concomitantly, international students are seen as an economic asset of more substantial value at less resourceful law schools than those on the top of the hierarchy. It means those students are primarily desirable more for the revenue they bring than the knowledge they may produce or share with their domestic peers.

The opposite seems to happen with the most prestigious law schools, where the prevalence of philosophical and sociological methodologies exercising abstract and critical thinking combined with a more rigorous application process (at least with regard to English proficiency) tend to absorb students from common law countries with more similarities to the American legal education system, including Canada, Israel, Hong Kong. Such a situation requires less institutional effort to promote the circulation of knowledge and interaction among students due to the nature of teaching

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<sup>263</sup> That is the core of Coronil's argument. He brings about a discursive change from eurocentrism, which used to strengthen those cultural and economic hierarchies to justify the global order, to globalcentrism based on the global equalization of the market discourse as a new way to reproduce the neocolonial ideology. See Fernando Coronil, "Natureza do pós-colonialismo: do eurocentrismo ao globocentrismo," in Edgardo Lander (ed.), *A colonialidade do saber: eurocentrismo e ciências sociais: perspectivas latino-americanas* (Buenos Aires: CLACSO, 2005) 50-62

and research methodologies in use, the ability of international students to express their ideas in English, the nature of addressed issues, less limited to a particular legislation or policy, and the similarities of the legal system (common law) in those countries.

With lesser economic constraints, these law schools can provide better support for international students to exchange knowledge and create opportunities for internationalization at home, thus benefiting domestic students. These law faculties tend to spread more than American regulation models and policies. They export methodological approaches and legal theory, which may potentially reshape key legal actors' understanding of the law, the structure of the legal system's institutions, constitutional reforms, and legal education reforms abroad. For this, those institutions may develop a sense of (civilizing) mission or merely rely on their prestige, combined with the international competition for credentials, the reproduction of the international legal education and profession hierarchy by means of a global legal education free market to surf the globalization.

Therefore, there seems to be a connection between the political economy and the circulation of knowledge. Top-tier law schools' main impact in the international legal market is a gradual shift from the positivist methodology that privileges state law toward non-positivist methodologies (Dworkin's principialism, legal pluralism, socio-legal studies, law and... methodologies, etc.) Once marginal, those approaches are becoming mainstream today, which begs the question: can they reframe the internationalization of law and legal education in favour of the less privileged and challenge the hierarchy that propelled them?

Following Kennedy,<sup>264</sup> I believe that those methodologies are primarily instrumental and not intrinsically aligned with a conservative or emancipatory project, despite their original connections with visionaries who genuinely believed in their role in challenging the status quo. They follow the hegemonic centre of power in the political-economic setting. I understand that the shift from positivism to non-positivism may correlate with the neoliberal globalization model in the weakening of the regulatory control of the state and an outlook where the economic agents gradually abandon the traditional state regulation, seek full autonomy, intend to self-regulate their conflicts and have the support of the state for their agenda. That expresses a movement of return to a moment where the state's necessary mediation and regulation are deemed unnecessary.

Another caveat is that these non-traditional approaches hardly propose an alternative internationalization engagement that would question the reproduction of hierarchies regarding legal knowledge production and circulation. They suggest adopting critical thinking in developing countries as a tool for modernization, following the model in place in the most developed higher education centres. However, by not contextualizing its political and economic basis, the agenda of promoting critical thinking fails to criticize modernization as a neo-colonial endeavour.

Also, the impact of international hierarchies can be seen in the fact that perspectives from Third World countries, such as TWAIL, and marginal thinking, such as race and LatCrit theories, are only validated when embraced by a highly prestigious institution from the Ivy League. Concerning TWAIL, for instance, although it counts as a successful case of knowledge exchange, circulation and production in Ivy League and Canadian law schools, it is interesting to notice that this kind of research has been done for decades in Third World countries and barely any scholar

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<sup>264</sup> Duncan Kennedy, *Legal education and the reproduction of hierarchy: a polemic against the system*. Vol. 56. (New York: NYU Press, 2007). See also Yves Dezalay and Bryant Garth, "From the Cold War to Kosovo: The Rise and Renewal of the Field of International Human Rights" (2006) 2:1 *Annu Rev Law Soc Sci* 231.

doing it considers herself a TWAILer. The need for branding such a methodology comes from a strategy to make room for this much older scholarship in North American legal academia, which would more easily attribute value to what is endogenous.

In Canada, the literature has not portrayed institutional discourses about globalization and hierarchies. It remains a subject to be investigated. Due to the public nature of Canadian universities, their relatively small number compared to the U.S., and the reduced impact of Canada on the global knowledge economy compared to other English-speaking countries, the discussion about the internationalization of legal education (and globalization of the legal profession) followed other directions, with more emphasis on internal aspects.

Canada itself looked for alternatives to reform legal education following the U.S. model, yet with some distinctions. Indeed, such a reform started after Harry Arthurs report on law and learning. Still, the fact that many Canadians got their doctoral legal education in top-tier American law schools contributed to the more profound Americanization process, where non-positivist methodologies were incorporated to foster more robust legal academia, less dependent on the legal profession and more connected to university research standards. At the same time, Canadian scholars were more concerned about training lawyers for a global practice, which propelled the development of transnational legal subjects and the recognition of pluralistic methodologies as mainstream. One element that strongly differs from the U.S. is the lack of scholarly interest in international students, their role in “internationalization at home,” or even in studying their role in revenue generation in a moment of decline in public funding for universities.

From my account of the Canadian IOLE literature, we can see that the McGill transsystemic experience has monopolized the discussion over the last ten years. There may be some explanation for this monopoly: other experiences may not sound interesting enough to attract

attention, or legal scholars are not overly concerned about the subject, McGill being the sole example of a broader institutional debate over curriculum reform. Another explanation may be that legal scholars involved in McGill's program are the sole ones devoted to IOLE, so they address their own experience on the IOLE stage.

This account within the Canadian IOLE literature suggests that too little has been said about the topic in the last decade and strongly contrasts with the impact of international students among law faculties and the steady growth and investment in internationalization during this period. No data about the international student population has been published in academic journals, and no clear policy regarding these students' needs, research, or goals has been discussed in the scholarly literature. Despite being in most classrooms nationwide, international students have been left off the radar.

McGill's transsystemia is a clear case of a deep legal education reform that draws on Canadian particularities to redesign an institutional response to the globalization of legal education and profession. However, despite having a large student population, international students were not considered an asset for such a purpose. This reform was barely seen as a process of internationalization but rather of integrating knowledge from both legal systems present in Canada to train lawyers to surpass systemic boundaries in North America and Europe.

Canada's IOLE is meant to innovate professional legal training with non-positivist methodologies and transnational legal subjects, which reveals that it is concerned with the output of law and learning and internationalization. In contrast, the input of internationalization (faculty and more voluminously students) is disregarded. One explanation is that, as I show in this research, unlike the U.S., international JD students have always been limited to 10% of the student

population and tend to enroll in graduate programs, which the legal education literature has generally disregarded.

This review also highlighted that different expressions address the relationship of legal education with globalization. Globalization, transnationalization, and internationalization of legal education are some expressions used in the literature, and each may be used in a different context with different meanings. Globalization may refer to the waves of international legal influence of certain countries throughout history and the current mechanisms of credential acquisition, elite reproduction, and competition behind it. Transnationalization focuses on developing transnational legal subjects and a transnational legal order, shifting the attention from traditional legal topics related to national regulations to international law and multi-level regulation of global issues such as climate change, migration, transnational crime, etc.

Internationalization has been used to address institutional responses for training lawyers for a global practice, including cultural awareness and a sense of global citizenship, the ability to work in different jurisdictions, draw on a plurality of legal sources to innovate in the legal professions and transit across different legal systems. For that, law faculties usually rely on exchange programs, dual-degree programs, international law and human rights centres, courses on foreign, international or transnational, or develop methodologies to teach law regardless of local or national boundaries.

Internationalization is also used to name the process of diversification of faculty members by hiring professors with an international background or expertise in foreign, international or transnational law. It may also refer to international networking and building global partnerships or the diversification of the student body with the promotion of international student enrollment.

What remains a common ground for all meanings is that they are all institutional responses to an ever-increasing economic globalization.

My decision to use the term internationalization is based on my research focusing on those same institutional responses, according to the most common meaning of the expression, encompassing various phenomena described above. Notwithstanding, my approach implies a particular perspective where the competition in the global legal education market is key to understanding the adoption of internationalization tactics and strategies. In this sense, the transnationalization of legal subjects is considered primarily an institutional strategy to compete in the legal education market rather than an initiative to regulate and solve transnational problems. Moreover, for the sake of the quantitative analysis of international student enrollment carried out in Chapter 4, I am applying the term internationalization to refer to increasing the percentage of international students in the overall student population.

The global legal education market, with the elements of economic competition and the development of human capital for a knowledge economy, is a privileged lens for understanding the current globalization of legal education. Americanization and legal education reforms are closely connected to modernizing state regulations to increase competitiveness and compliance with international practices driven by economic actors under the neoliberal framework. Garth and Dezalay are right to explain the globalization of legal education based on the struggles in the interior of the legal field. However, these struggles are motivated mainly, at the institutional level and in countries like Canada, by the disputes over the resources made available by the current economic globalization. Those resources are harnessed by delivering educational services within business models that play with the distribution of credentials and prestige by emulating the curriculum of the most prestigious law schools. Still, the actual role of a globalized (Americanized)

curriculum, as innovative and critical as it may be, seems rather secondary to the success of the business, let alone a knowledge economy based on the production and circulation of knowledge.

**PART II. Nexus Empirica: What the data says about internationalization**  
Chapters 4, 5 and 6

#### 4. International Students in Numbers

This chapter describes the evolution of international student enrolment in the six more internationalized Canadian law faculties. It depicts the main traits that frame the distribution of such a population over the last decade, more precisely from 2010 to 2020 (eleven years). In order to infer conclusions that shed light on the uniqueness of law faculties, I analyzed enrollments by programs and compared the evolution of international law student enrollment with the overall enrollment of international students at the respective universities. Data was collected from requests for information or the annual enrollment reports of the University of Ottawa,<sup>265</sup> McGill University,<sup>266</sup> York University,<sup>267</sup> the University of Toronto,<sup>268</sup> the University of Montreal,<sup>269</sup> and the University of British Columbia.<sup>270</sup>

Those universities were selected according to the existence of major doctoral programs at law faculties in 2010, meaning those with more than 30 students in total in 2010. Although somewhat discretionary, that criterion indicates a significant institutional investment in research programs and

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<sup>265</sup> University of Ottawa-Faculty of Law. “Student registrations by level of study, attendance status, student’s gender language in use, immigration status, and co-op enrolment,” online < [https://www.uottawa.ca/institutional-research-planning/sites/www.uottawa.ca.institutional-research-planning/files/law\\_-\\_enrolment\\_-\\_report\\_-\\_v0.1\\_english-pdf\\_0.pdf](https://www.uottawa.ca/institutional-research-planning/sites/www.uottawa.ca.institutional-research-planning/files/law_-_enrolment_-_report_-_v0.1_english-pdf_0.pdf)>

<sup>266</sup> McGill University, “E-Factbook” <<https://www.mcgill.ca/apb/analysis/e-factbook>>, also McGill University, “McGill University Enrolment Reports,” online <<https://www.mcgill.ca/es/registration-statistics>>.

<sup>267</sup> York University, “Quick Facts: Graduate Citizenship Profile,” online <<https://oipa.info.yorku.ca/data-hub/quick-facts/quick-facts-graduate-citizenship-profile/>>. Also, York University, “Quick Facts: Undergraduate Citizenship Profile,” online <<https://oipa.info.yorku.ca/data-hub/quick-facts/quick-facts-undergraduate-citizenship-profile/>>

<sup>268</sup> University of Toronto, “Facts and Figures,” online < <https://data.utoronto.ca/reports/facts-and-figures/>>. Also, Jeffrey Waldman, *Data requestion* (sic) *from U Ottawa* (2021)

<sup>269</sup> Alexandre Chabot, *Demande d’accès à l’information 2122-020* (2021).

<sup>270</sup> University of British Columbia, “Annual Enrolment Reports,” online <<https://pair.ubc.ca/student-data-analytics/enrolment/annual-enrolment-reports/>>

defines a baseline to calculate the proportion of international students in the less populated program at law faculties. After all, law faculties with more than 30 doctoral students should be more likely to enrol a more significant number of international students in those programs.

In an article I published with a preliminary analysis of part of the data,<sup>271</sup> I draw on the proportion of the international law student population to answer why scholars were so little interested in mentioning international students when addressing the internationalization of Canadian legal education even though they represent roughly one-third of graduate students in law. My best conclusion was that, despite all the progress after the Law and Learning report, graduate studies in law are given way less attention and energy from faculty members and institutions than undergraduate programs due to their professional appeal. Since the internationalization discourse focuses little on graduate programs, international students, who are a minority in those programs, become invisible.

The fact that international students in undergraduate programs hardly reach 10% of the student population does not help either. That is one of the structuring factors we can identify about the nature of internationalization with the support of quantitative data. Beyond that, we can combine quantitative and qualitative data to form a better understanding of the role of international students in different programs, their distribution in professional versus academic programs, and the impact of the economic rationale behind internationalization on them by looking at international enrollment's growth rates.

As a method to analyze the data, I drew a sheet for each university and law faculty, where I organized the data by the number of total enrollments (domestic and international students) and the number of international students so that I was able to calculate the internationalization rate. Therefore,

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<sup>271</sup> Vinicius A.B. da Silva, "What do we know about the international student population in Canadian Law Faculties?," *supra* note 68.

that is the specific meaning I attribute to internationalization in the chapter, i.e., the proportion of international students in a given student population. For all cases, I identified four levels: the entire university or the faculty of law, and each academic cycle (1<sup>st</sup> cycle for undergraduate, 2<sup>nd</sup> cycle for masters and 3<sup>rd</sup> cycle for doctorate). I also combined the 2<sup>nd</sup> and 3<sup>rd</sup> cycles to compare undergraduate and graduate programs. I classified JD programs as undergraduate programs because they are the first legal education level in Common Law. Despite being commonly perceived as a graduate degree, the JD is recognized as the 1<sup>st</sup> cycle of legal education in all those universities as a second-entry undergraduate program.

The academic year begins in the fall, which is the reference used by universities to compare enrollment through different academic years, except for the UBC, which relies on winter enrollments. Entries for 2010 refer to the academic year 2010-2011, and the timespan goes up to 2020-2021. Data reflects headcount instead of full-time equivalent (FTE) numbers, and I am not distinguishing between full-time and part-time students, i.e., I am considering all students. We must note that individual students are counted multiple times whenever they enrol in subsequent years or in more than one program. University data includes affiliated institutes and all campuses, which is particularly relevant in the case of the UdeM, which includes the Polytechnique Montréal and the HEC Montréal, and the UBC, which also provides for the Okanagan campus. However, the University of Ottawa data does not include Saint Paul University, considered an institution apart. Data available for McGill until 2017 includes students registered in non-credit activities, so numbers for 2018, 2019 and 2020 reflect a different methodology used by the university.

Students from all programs are counted at the university and the faculty of law entries, including the post-doctorate, except for the UdeM, where post-doctorate students are excluded. We may encounter discrepancies as we look at how universities compile enrollments. To minimize those,

I tried to find the data corresponding to cycles instead of degrees, thus encompassing a broader set of students and reducing the margin of error. Still, I needed to adapt.

We know that the first cycle in law includes not only regular JD but certificates and diplomas for students whenever the faculty offers such programs. However, for McGill, UBC, York, and UofT, undergraduate law numbers equal the JD because of how data is compiled or because universities only offer the JD program in the first cycle. In the case of the UdeM, I only used the numbers for the baccalauréat for the undergraduate and counted the JD program separately. The reason is that the JD program at UdeM has barely any international students attending it; thus, internationalization would be severely distorted compared to other faculties if we counted both programs together in an undergraduate entry. Yet, the JD is counted for calculating the numbers of the Faculty of Law as a whole. For the uOttawa, the undergraduate encompasses the Common Law JD, Civil Law LL.L program, the national program, certificates, and diplomas. That was the only way to count exchange students, as done by the other universities, with the available data.

Graduate programs are not restricted to master's and doctorate programs and include graduate diplomas and certificates. That is also valid for the law faculties, except for York, UofT, and UBC, where the entry for graduate studies in law reflects the sum of LLM and PhD in law programs due to how universities compile the data. At the University of Montreal, free students (*étudiants libres*) are included in all entries. Differences between how universities compile information about international students indicate that the comparison between universities is less reliable than within the same university, i.e., between its programs and the university and the faculty of law. That is why we stress this kind of comparison in a longitudinal way.

As I said, in all cases, exchange and other special students from abroad are counted in the student population by the universities. It was not possible to segregate them in all universities to

produce a more detailed analysis comparing exchange and fully enrolled international students. That is one limitation of the data since law faculties welcome a significant number of international exchange students, probably the kind of international students most impacted by the pandemic, and this data has been challenging to map. It is certainly a subject for future research,

Another relevant remark concerns how universities classify international students when producing enrollment reports. Universities usually amalgamate Canadian citizens and permanent residents within the same category and regard international students as those with a study permit (visa). That is explicit at uOttawa, where “foreign students are defined according to their immigration status, regardless of tuition fees assessed.”<sup>272</sup> That is implicit in the data from the UdeM, where international students are counted by excluding those who do not have Canadian citizenship<sup>273</sup> (or permanent residency).

At UBC, international students are “persons who are not citizens, refugees, or permanent residents of Canada and who must be in possession of a government-issued study permit.”<sup>274</sup> At McGill, “Canadian residency categories are based on Proof of Citizenship and Proof of residence. Visa breakdowns are based on self-declared citizenship,”<sup>275</sup> and international students comprise two subcategories, USA and Other Visa students. Hence, permanent residents are implicitly considered among Canadian citizens, and international students are those with a study permit. The same method seems valid for the University of Toronto, although enrollment reports do not clarify how international students are counted.

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<sup>272</sup> University of Ottawa-Faculty of Law. “Student registrations by level of study...,” *supra* note 265.

<sup>273</sup> Alexandre Chabot, *Demande d'accès à l'information...*, *supra* note 269.

<sup>274</sup> University of British Columbia, “Annual Enrolment Reports,” *supra* note 270.

<sup>275</sup> McGill, “McGill University Enrolment Reports,” *supra* note 266.

York, however, clearly classifies international students according to other criteria and differentiates them from visa students as follows:

“1) International students studying outside of Canada do not require Visa but could be considered ‘International.’ 2) Refugees studying in Canada likely do not have a Visa but could be considered ‘International.’ 3) Permanent Residents do not require a Visa but could be considered ‘International.’”<sup>276</sup>

Therefore, the category “International” represents a larger population at York than other universities, involving Visa students, permanent residents, refugees, and enrolled students from abroad who are not in Canada.

In order to have a better understanding of internationalization at York, I will display data about both international students and visa students. Portraying international student numbers indicates how York University measures internationalization and its policy to expand its global reach. Visa numbers, in turn, allow for a more accurate comparison with other universities. Still, that comparison is not precise because York may count Visa students who became permanent residents among international students. In contrast, other universities should consider them within the same set as Canadian students.

The pandemic had an unavoidable impact on the 2020 enrolment data, the last year of our series. I am aware of the methodological implications of such a disturbance since students and universities responded abnormally. In that case, I was confronted with the alternative of limiting the sequence to the decade 2010-2019 or pursuing the data for 2021 and 2022 to measure whether, when and how enrollments normalized. Nevertheless, I decided to portray the abnormal data as designed in my research project and take some lessons from it.

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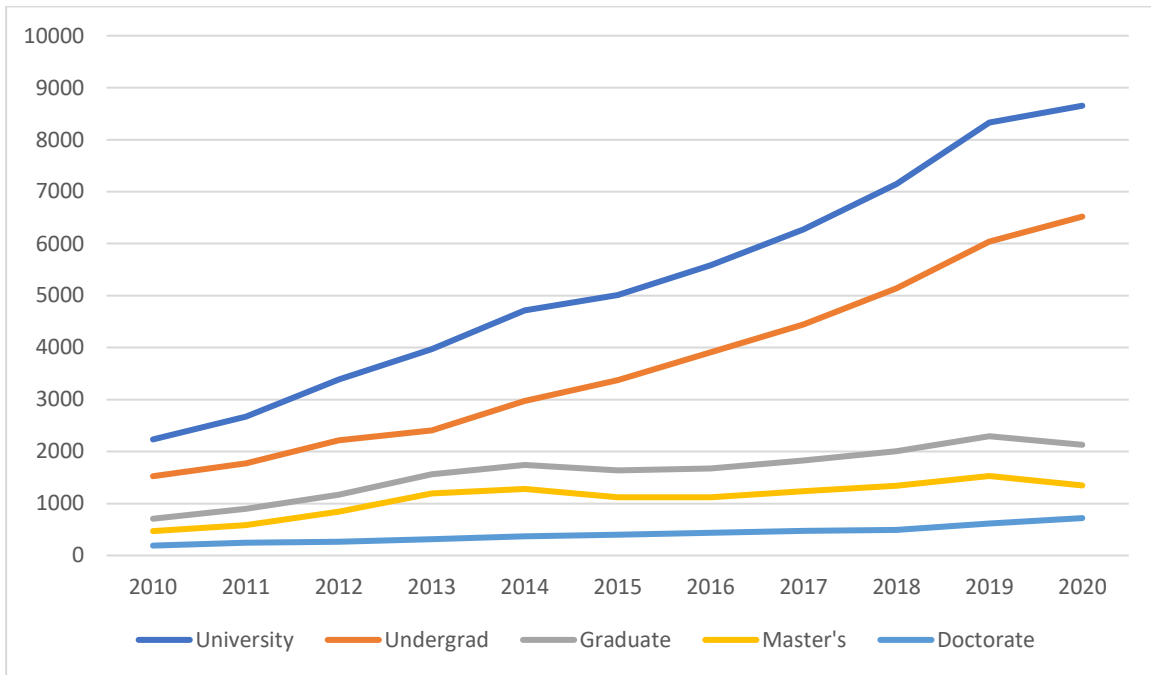
<sup>276</sup> York University, “Quick Facts: Graduate Citizenship Profile”, *supra* note 267. York University, “Quick Facts: Undergraduate Citizenship Profile”, *supra* note 267.

The first lesson measures how differently the pandemic hit enrollment in each program, indicating those more vulnerable to market fluctuation. Second, comparing the numbers under the pandemic influence to the numbers of 2010, when the series began, may demonstrate international student (hereinafter, IS) enrollment's resilience despite a global catastrophe. Still, abrupt changes caused by the pandemic *are duly stressed* so the reader can compare normal data and notice abnormalities.

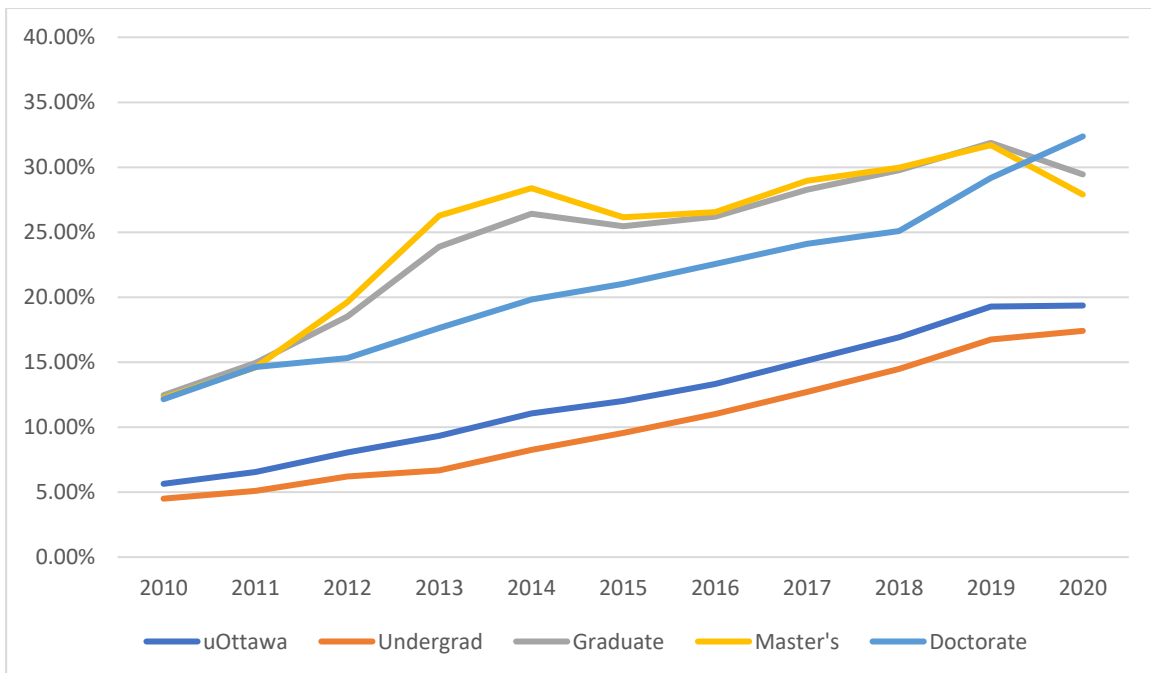
By portraying data from six major Canadian universities and law faculties, I do not want to foster comparison and ranking. Each university and law faculty develops its own set of international relations, focuses on specific areas of the globe, has its own goals, and defines its niche. As stated in the methodology, quantitative data support qualitative analysis by determining large-scale scenarios that frame the action of social forces, institutions, and individuals, thus presenting structuring factors to a more comprehensive understanding of internationalization.

#### 4.1 University of Ottawa

*Figure 1: Number of International Students, University of Ottawa*



*Figure 2: Proportion of International students, University of Ottawa*



From 2010 to 2019, the University of Ottawa experienced a steep growth in the number of international students, with a slight decline caused by the pandemic in 2020. In 2010, only 5.6% were international students, or 2,234 students. This situation changed profoundly to what can be seen as probably Canada's most intense internationalization process over these years. In 2020, 19.4% of the student population was international, encompassing 8,653 students. That represents a 287.3% growth rate.

Although most international students attend undergraduate courses, international students' participation is much more significant in graduate courses, which encompass master's and doctorate programs combined. At the graduate level, the proportion increased from 12.5% in 2010 to 31.9% in 2019, when it peaked. These numbers are similar to those in the master's programs (12.3% and 31.7%) due to the volume of master's students compared to doctoral students.

It is easy to identify the impact of the pandemic in the chart. It flattened the growth of internationalization in undergraduate courses and the university. Still, the worst results were on enrollment in master's programs and, therefore, in graduate studies as a whole. At the graduate level, the proportion reduced from 31.9% in 2019 to 29.4% in 2020, with a 7% decrease in absolute numbers from 2,295 to 2,133. At the master's level, international students represented 31.9% in 2019, and in 2020 they represented 27.9%. Enrollment in master's dropped from 1,530 in 2019 to 1,346 in 2020, going back to the numbers in 2018 (1,344). The reduction was 12%.

Nevertheless, doctoral programs were not affected by the pandemic. On the opposite, there was an inflow of international students to these programs after 2018, making them the leading ground for internationalization. In 2010, 12.2% of doctoral students were international, representing only 191. We can see a steady growth up to 2018 when 493 international students represented 25.1% of the total. In the last two years, growth steeped. In 2019, there were 615 (29.2%) and, in 2020, 720

(32.4%). In those years, the number of international doctoral students increased by 42% and reached more than 30% of the total.

Figure 3: Number of International Law Students, Faculty of Law, University of Ottawa

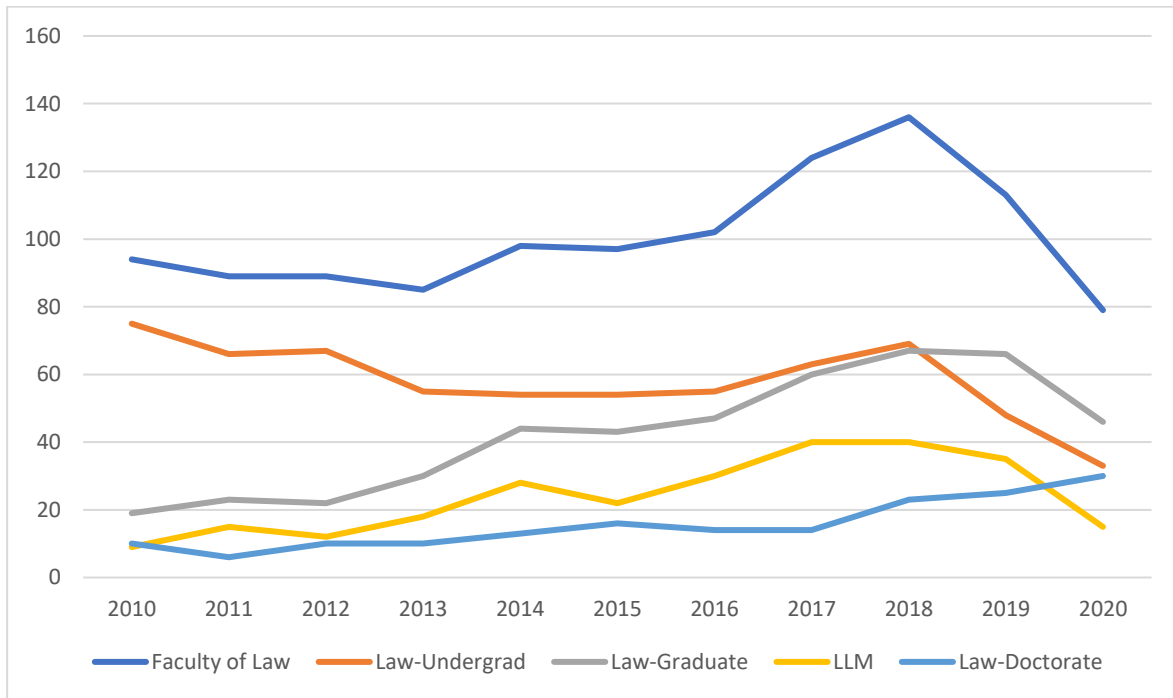
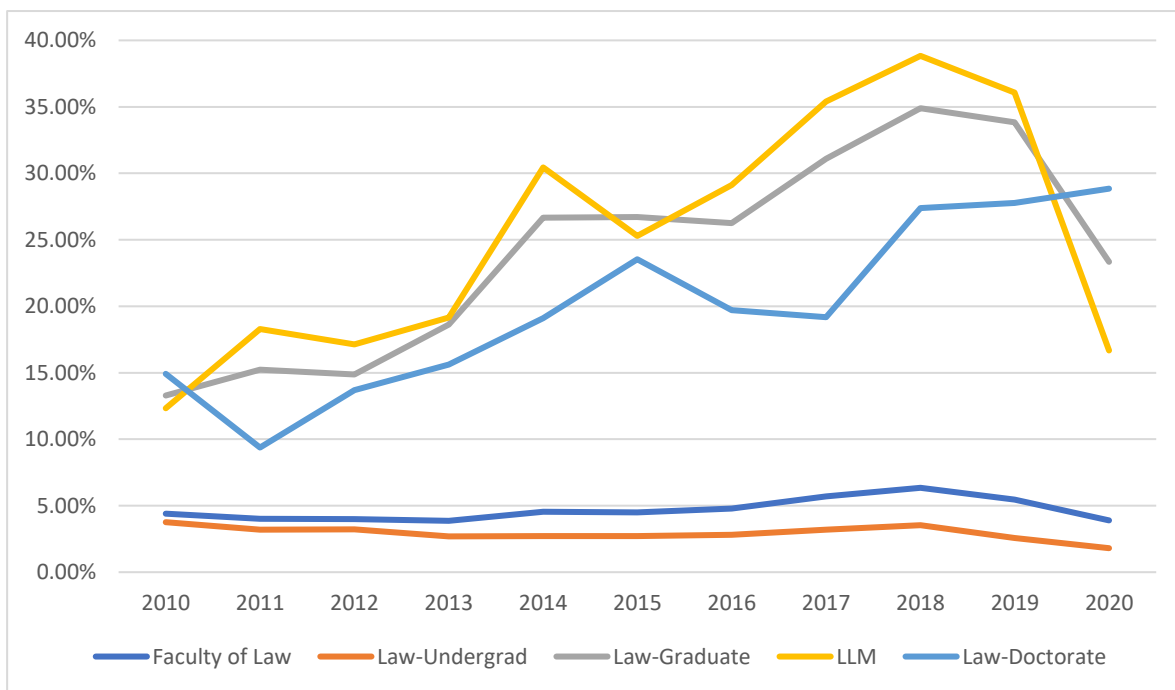


Figure 4: Proportion of International Law Students - Faculty of Law, University of Ottawa



The trajectory of the Faculty of Law, to a certain extent, mirrors the University concerning graduate studies alone. Conversely, there is an evident cleavage between undergraduate and graduate programs, reflecting on the internationalization level of the Faculty of Law as a whole. At the faculty level, its all-time peak was reached in 2018, when 136 international students were enrolled, accounting for 6.3% of the total. After 2018, we can see a decline up to 2020 (see below), when the presence of international students fell under the 2010 rates (see below).

In 2010, 94 international students enrolled in the Faculty, representing 4.4%. In 2020, the Faculty registered 79, which accounted for only 3.9%. This regression must be a consequence of the pandemic, especially for exchange students. The enrollment of permanent students<sup>277</sup> in the JD and LL.L programs was not affected. The number of international students in those programs remained very low anyway. In the Common Law Section, in 2018, there were only 11 (1%), while in 2020, there were 12 (1.1%). The highest rate was reached in 2015, when 15 international students represented 1.2% of the population of the section. In the Civil Law Section, the situation is not much different. The programs in French have a higher rate in 2020, despite the pandemic. That year, 19 international students registered, corresponding to 2.7% of the population. Thus, regarding permanent students, JD and LL.L programs were not internationalized, and the pandemic had no impact. Nonetheless, the effect of the pandemic in the first cycle could be seen in the dramatic decrease in students' enrollment in co-op programs. From 45 (88%) in 2018, this number decreased to 25 (75.7%) in 2019 and only 2 (50%) in 2020.

Graduate studies present different demography. Composed of the sum of master's and doctoral students, its trajectory suffered the impact caused by the pandemic, and the numbers reduced by 31% from 2018 to 2020. There were 67 students (34.9%) in 2018 to 46 in 2020 (23.4%). That was caused

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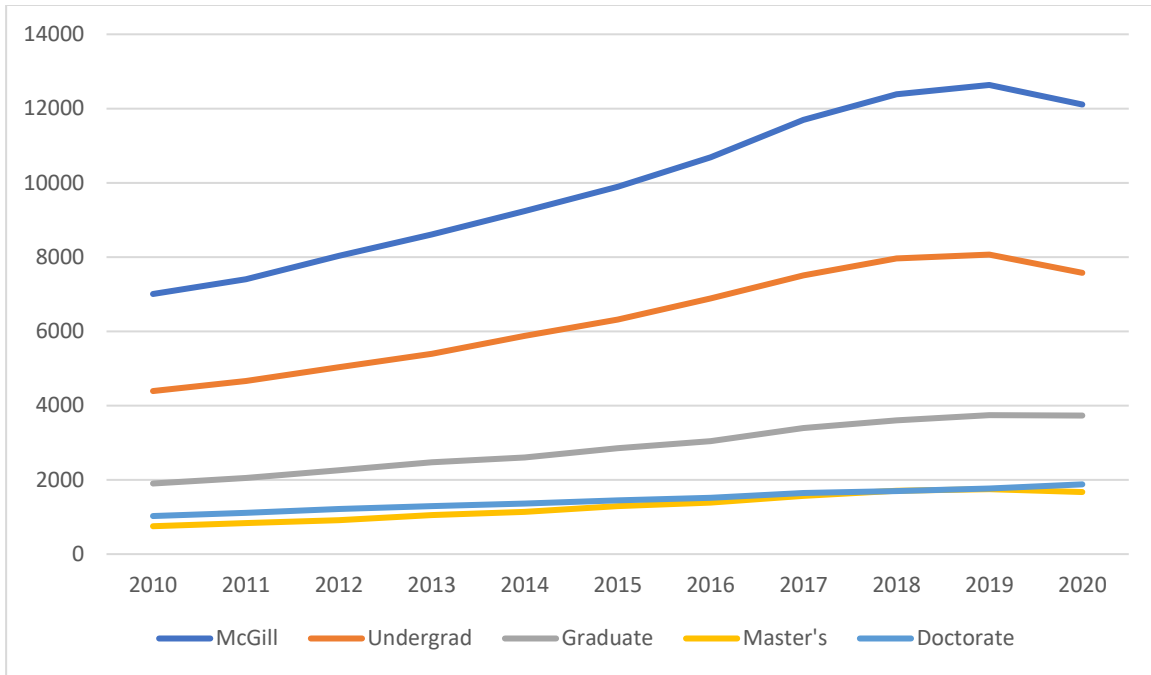
<sup>277</sup> As opposed to exchange students.

exclusively by the drop in the enrollment of international students in the LLM program, from 40 (38.8%) in 2018 to 15 (16.7%) in 2020. The doctoral program maintained the international student rate during the pandemic, culminating in 2020 with 30 international students, corresponding to 28.8% of the program's population.

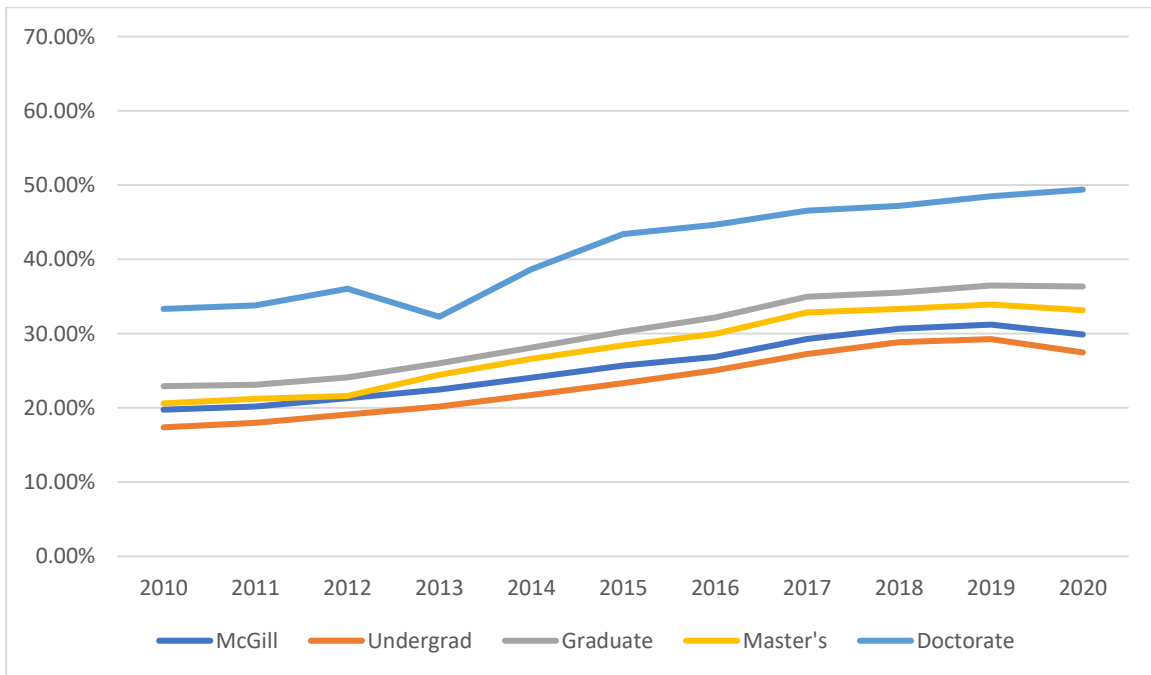
Based on the data, international students never reach 3% of professional programs, such as LL.L and JD. If we count co-op programs, they never get to 4%. Unlike undergraduate programs at the University, undergraduate law programs are isolated from participating in the internationalization of the student body. The weight of international students can be seen in graduate studies, where they reached almost 35% in 2018. Before the pandemic, international students represented over a third of master's and a quarter of PhD students, demonstrating the relevance of this population for the sustainability of graduate programs and the production and circulation of knowledge. In those programs, the faculty of law shares common traits with the university.

## 4.2 McGill University

*Figure 5: Number of International Students, McGill University*



*Figure 6: Proportion of International Students, McGill University*



At McGill, the growth in the enrollment of international students at all levels has been consistent across the decade, although not as steep as at the University of Ottawa, which is justified by the fact that the internationalization in 2010 departed from higher rates. At the university level, the proportion increased from 19.8% in 2010 to 29.9% in 2020, and the number of students rose from 7,006 in 2010 to 12,108, a 72.8% growth rate. The percentage of foreign undergraduate students also increased by 10%, changing from 17.4% in 2010 to 27.6% in 2020. The inflow of international graduate students was even more impressive. In 2010, they represented 22.9%, and in 2020 the proportion jumped to 36.4%. The number of students almost doubled from 1,902 in 2010 to 3,732 in 2020, a 96.2% increase.

Unlike the University of Ottawa, McGill has always welcomed more international students in doctorate programs than in master's. In the latter, there were 751 international students in 2010, which accounted for 20.6% of the total. In 2020, the numbers jumped to 1,671, accounting for 33.1%. Hence, enrollment increased by 122% over the period. Doctoral programs stand out in the chart as the most internationalized cycle of the university. They welcomed 1,026 international PhD students in 2010, representing a third of that population, whereas, in 2020, they accounted for almost half; 1,879 students represented 49.4%. This population increased by 83% over the period.

Doctoral programs were also the sole ones not impacted by the pandemic. At other programs, the highest-rate year was seen in 2019. That year, the university welcomed 12,636 international students or 31.1% of all enrollments. Of these, 8,068 were undergraduate (29.2%), and 3,743 (36.5%) were graduate students. In masters' programs, there were 1,749 international students (33.9%), while in doctoral programs there were 1,764 students (48.5%). Undergraduate programs were the most affected, with enrollment dropping 6% from 8,068 students in 2019 to 7,580 in 2020.

Figure 7: Number of International Law Students, Faculty of Law, McGill University

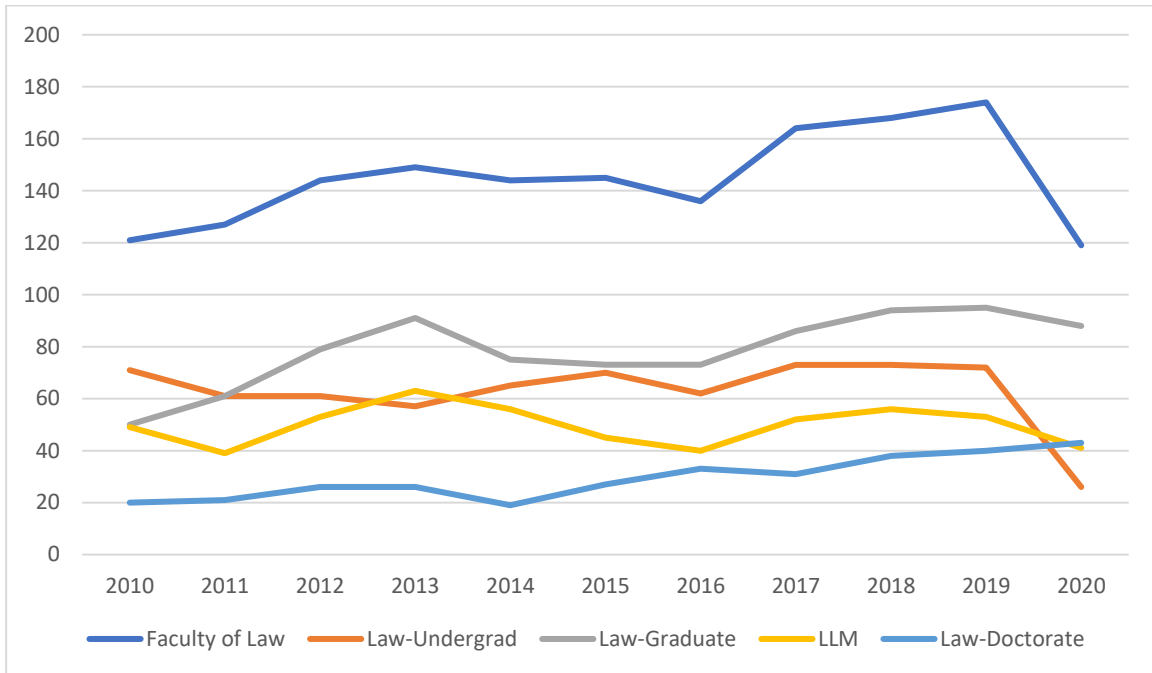
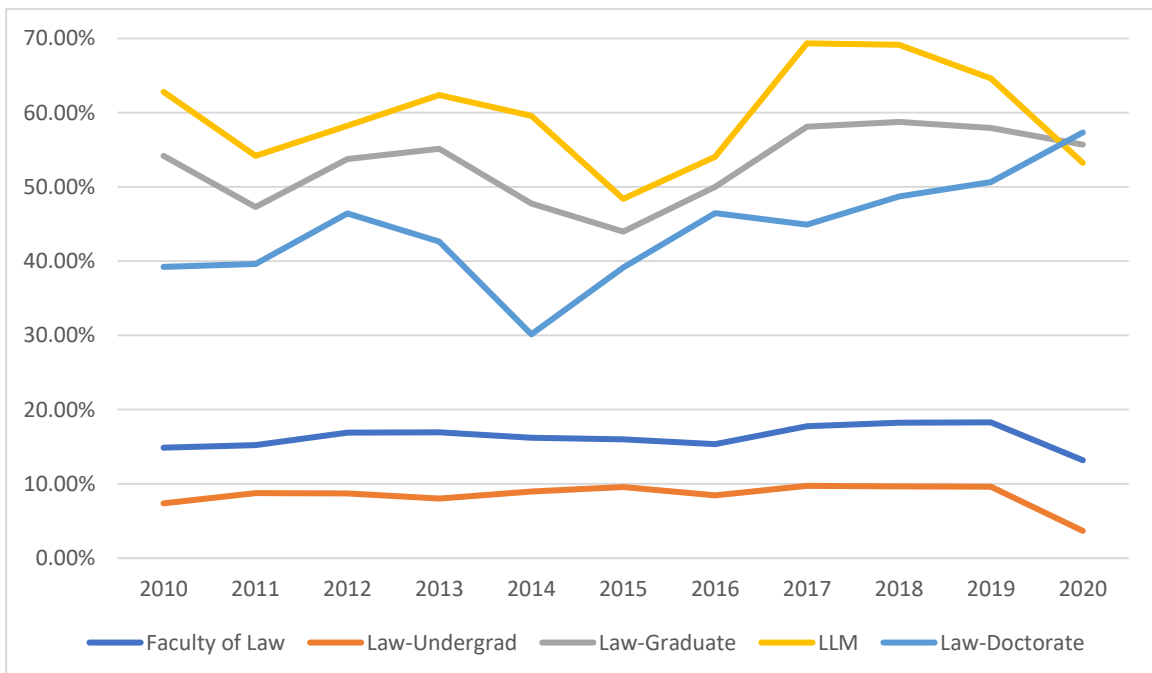


Figure 8: Proportion of International Law Students, Faculty of Law, McGill University



Traditionally, McGill's Faculty of Law had presented the highest proportion of international students, which changed in 2020 when Osgoode Hall took over. From 2011 to 2019, the presence of such a population was superior to 15%, reaching 18.3% in 2019 with 174 students. The pandemic hit the Faculty, so in 2020, only 119 international students had enrolled, dropping the proportion to 13.2%. This reduction is due to the decrease in the enrolment of international students in the master's program and, more importantly, in the undergraduate program.

Surprisingly, since 2017, France has overtaken the U.S. as the country with more international students in the Faculty as a whole. However, the opposite happened at the undergraduate level. From 2016 to 2019, France had more nationals in the program, reaching 29% of international students in 2017 against 16% of students from the U.S. In 2020, the U.S. overtook France when 42% of international students were from the country. Nevertheless, that same year, France was still the origin of 35%.

The pandemic hit the BCL/JD program hard. The number of international students dropped from 72 in 2019, which accounted for 9.6% of the program, to only 26 in 2020, accounting for 3.7%, possibly due to the drop in the number of exchange students. The impact is also reflected in the number of countries represented in the program. In 2019, there were students from 23 countries, while this number reached only eight countries in 2020. Before the pandemic, international students represented around 10% of the program, a remarkable percentage.

Regarding graduate studies, we can identify that international students consistently accounted for half or more of the enrollments, except for 2011 and 2014. Their participation peaked in 2018 when 94 international students corresponded to 58.8% of all registrations. That is the highest rate registered among all graduate law programs in Canada during the period. This proportion dropped a

little to 55.7% in 2020. China is traditionally the country with more natives enrolled at this level, which changed in 2020 when India took the position.

The master's program student population is highly internationalized. A maximum of 52 international students, corresponding to 69.3%, was reached in 2017, making this rate the highest proportion ever registered, considering all entries and universities. During the pandemic, this number decreased to 41 students, accounting for 53.2%. It means that, despite the restrictions and the adaption to the new virtual environment, more than half of the master's students were still international.

The pandemic did not impact the doctorate program. Because of that, it has a higher proportion of international students than the master's as of 2020. In 2019, 40 international students corresponded to 50.6% of enrollments. In 2020, this number increased to 43 international students, corresponding to 57.3%. Beyond the increase in international students, domestic students dropped from 39 to 32, corroborating the increasing proportion of international students in the doctoral program during the first year of the pandemic.

This chart somewhat reproduces the tendencies in the uOttawa's Faculty of Law. In both faculties, the master's and the doctoral programs switched positions, and the undergraduate and master's programs were the most affected by the decrease in enrollments during the pandemic. The Faculty of Law is more internationalized in its graduate programs than the university while being considerably less internationalized in undergraduate courses.

### 4.3 York University

Figure 9: Number of International Students, York University

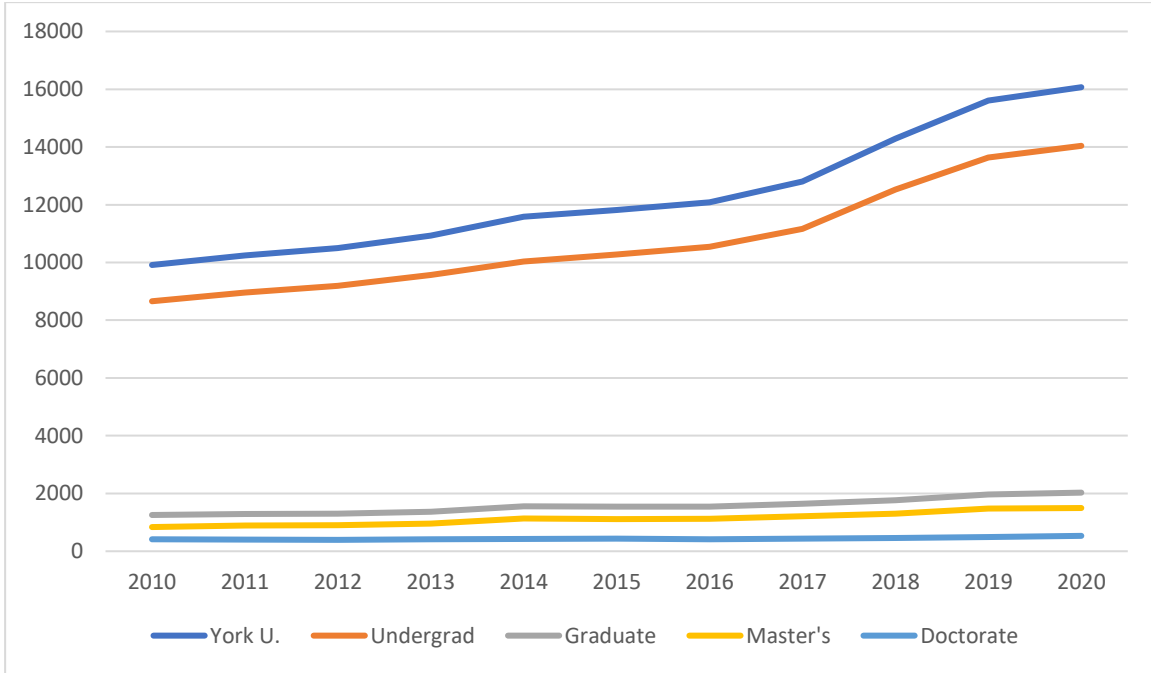


Figure 10: Number of Visa Students, York University

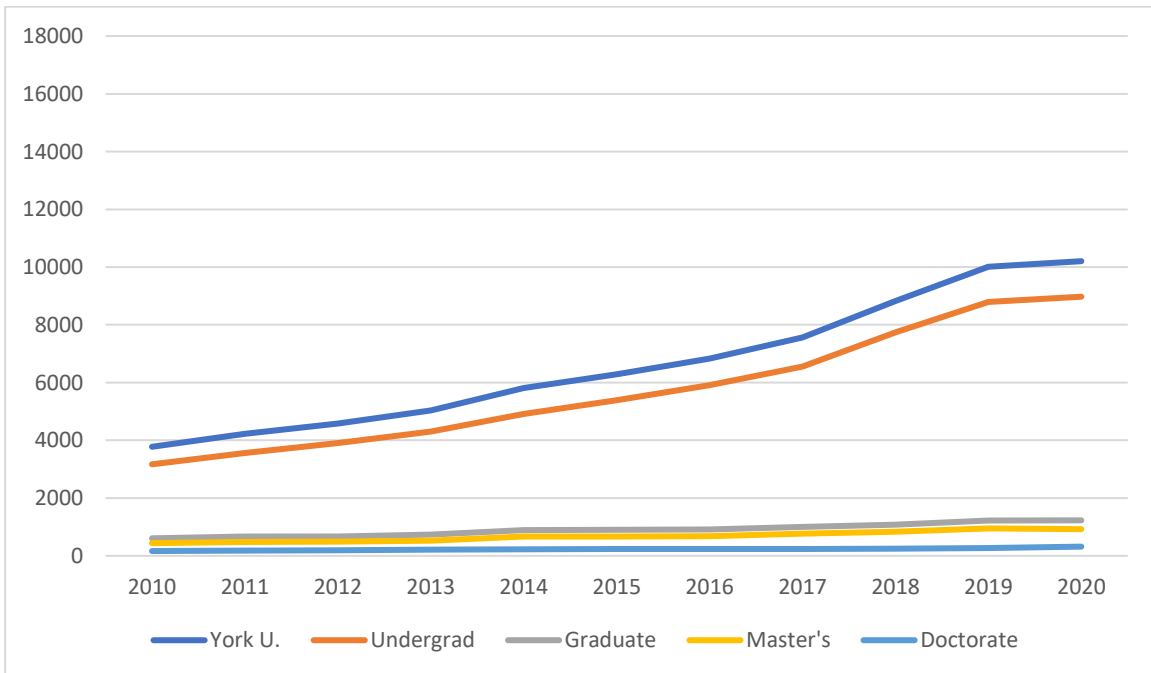


Figure 11: Proportion of International Students, York University

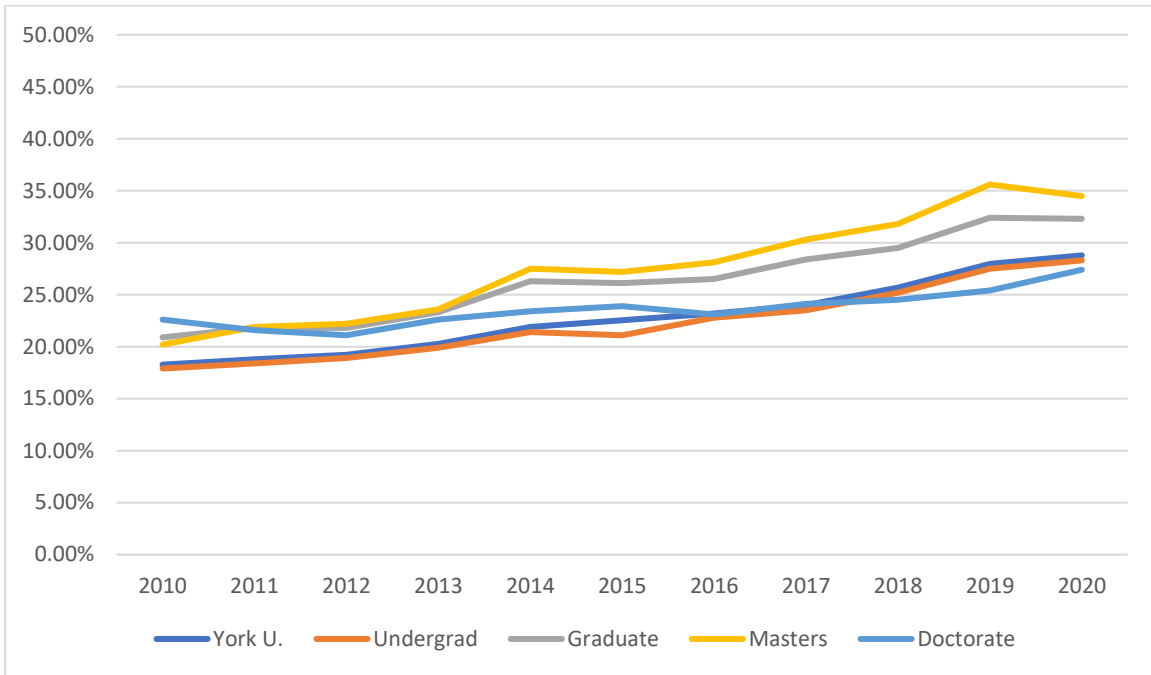
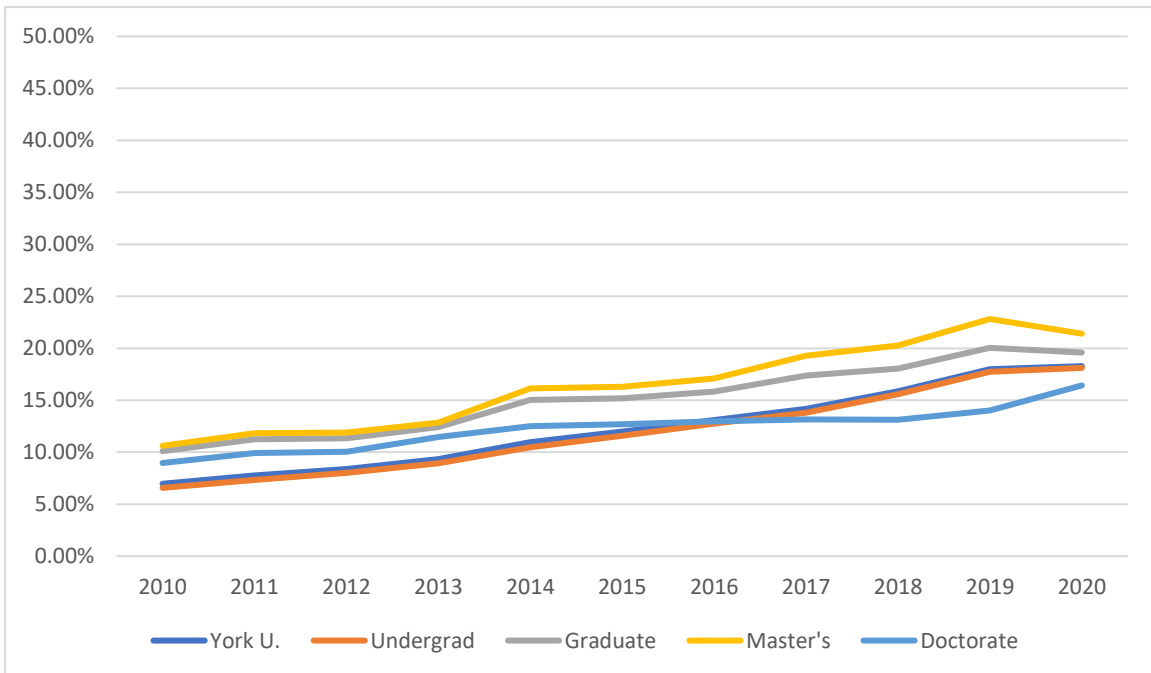


Figure 12: Proportion of Visa Students, York University



Over the period, the participation of international students (IS) in the student population at York University increased from 18.3% in 2010 to 28.8% in 2020. The visa students (VS) rate increased from 7% to 18.3%. In absolute numbers, there were 9,913 IS in 2010, reaching 16,069 in 2020, a 62% growth. The VS number varied from 4,579 to 10,204, indicating a 170.2% growth.

In 2010, 38.1% of the international population comprised visa students. In 2020, that rate jumped to 63.5%. Unlike the previous universities, the pandemic did not reduce the enrollment of international students in any cycle. All entries considered, in 2020, there were more international students than in previous years. What is worth noting, however, is that the growth rhythm decreased, except in doctoral programs. However, that is not true for visa students, especially in master's programs, who had a decrease of 2.3%.

In undergraduate courses, the participation of international students jumped from 8,657 or 17.9% in 2010 to 14,039 or 28.3% in 2020, a 62.2% growth in absolute numbers. In turn, visa students increased from 3,179 to 8,974, a 183% growth. The similarity between the undergraduate and the university curves is because the participation of international undergraduate students in the whole population of international students at York is even more relevant than in other universities. In 2020, 87.4% of the overall international student population (and 87.9% of visa students) were enrolled in undergraduate programs.

Similarly, the curve of international graduate students tends to follow the enrollment in master's programs, but the rise in the proportion of international doctoral students in 2020 stabilized the proportion of international graduate students when the proportion of master's students decreased. 2020 also had a slight increase in the enrollment of graduate students. There were 2,030 enrollments that year compared to 1,971 in 2019, a 3% growth despite the pandemic, while the growth of visa

students was 0.9%. Compared to 2010, IS numbers increased by 61.6%. At the same time, the number of visa students increased by 102.4%.

The most significant change was observed in 2019, compared to 2018. 2019 had more substantial growth in the enrollment of international graduate students than domestic ones. In 2018, there were 1,763 IS, corresponding to 29.5% of the population, while in 2019, there were 1,971, representing 32.4%, an 11.8% growth in enrollments. The numbers for visa students show that they represented 10.1% of graduate students in 2010 and reached 19.6% of that population in 2020.

The pandemic most impacted the proportion of international master's students in 2020. In 2019, master's programs reached a maximum of 35.6% (1,484) of its population composed of international students, when the number of these students rose by 13.7% compared to 2018 (1,305). This rate dropped to 34.5% in 2020, although enrollments increased from 1,484 to 1,497. That indicates that the registration of domestic students increased even more significantly during the pandemic. Considering the whole period, the population of international master's students jumped from 838 or 20,2% in 2010 to 1,497 or 34.5% in 2020, a 78.6% growth in absolute numbers.

As we saw, visa master's students were the most impacted within the university, reducing from 950 in 2019 to 928 in 2020. Still, their share of the master's student population increased from 10.6% in 2010 to 21.4% in 2020. Enrollment increased by 110.4% over the decade.

The internationalization of the doctoral student population remained stable until 2019. It increased in 2020 when both the numbers and the proportion of international students peaked. Five hundred thirty-three students represented 27.4% of the population of these programs in 2020, while 487 corresponded to 25.4% in 2019. Considering the entire period, international doctoral students were 418 (22.6%) in 2010 and 533 (27.4%) in 2020, a 27.5% growth. Visa doctoral students were 116 (9%) in 2010 and 320 (16.4%) in 2020.

Figure 13: Number of International Law Students, Osgoode Hall, York University

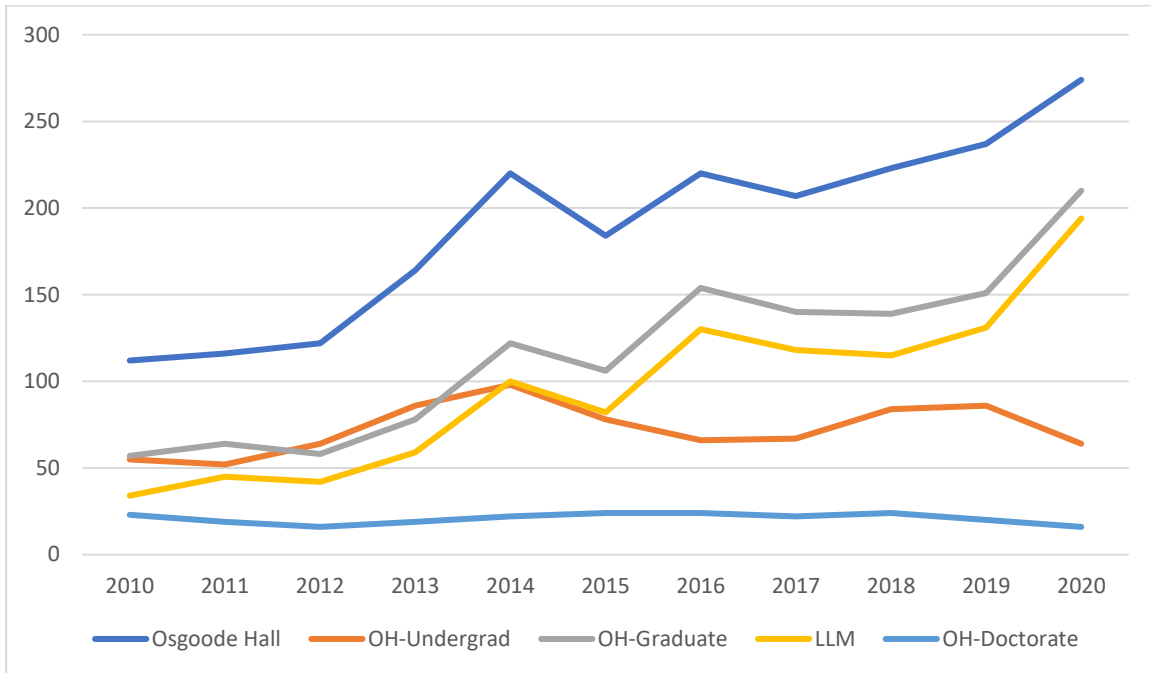


Figure 14: Number of Visa Law Students, Osgoode Hall, York University

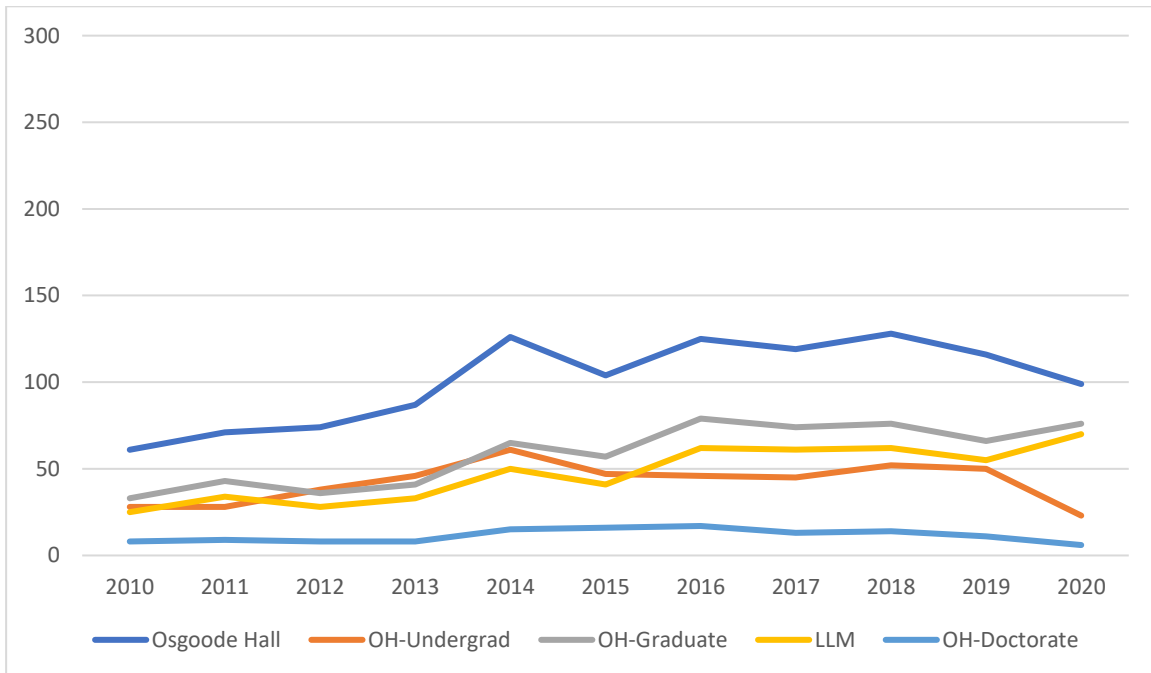


Figure 15: Proportion of International Law Students, Osgoode Hall, York University

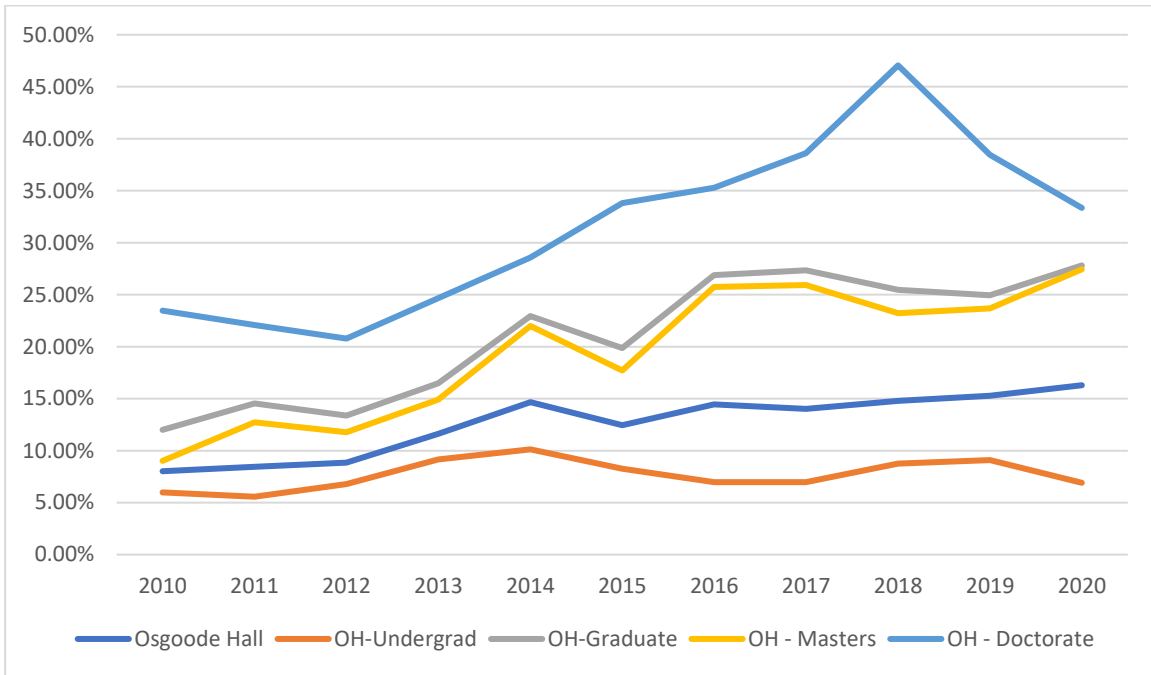
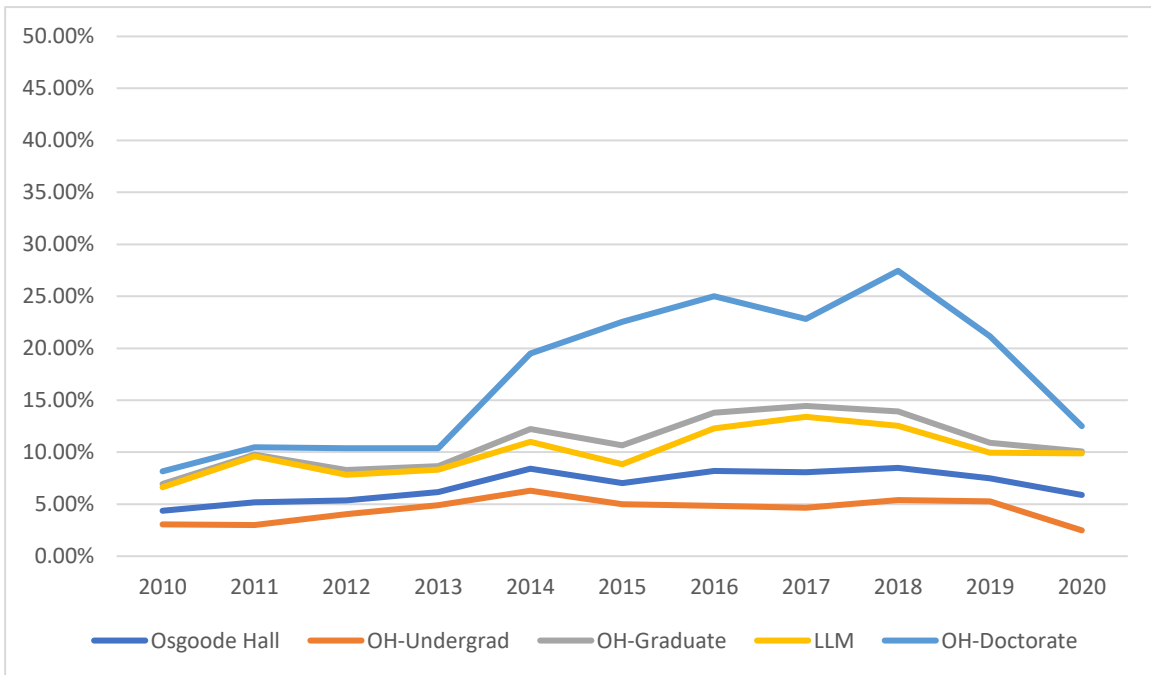


Figure 16: Proportion of Visa Law Students, Osgoode Hall, York University



Interestingly, the behaviour of international student enrollment at Osgoode Hall Law School differs from that of other law faculties. Considering the faculty as a whole, internationalization increased steadily despite the pandemic. In 2010, there were 112 international students at the faculty, which corresponded to 8% of the student population. In 2020, these numbers more than doubled; there were 274 students representing 16.3% of that population, a remarkable 144.6% growth. However, the number and proportion of visa students did not grow at the same rate. They were 61 in 2010, representing 4.4% of the student population in the law faculty. The number increased to 99 in 2020, representing 5.9%. Enrollment grew by only 62.3%.

Compared to the university, we see an inverse trend. While at the university, the growth rate of visa students (170.1%) was more than three times higher than the international students' growth rate (62.1%); at Osgoode, the growth rate of visa law students was (62.3%) less than half of international law students (144.6%). This pattern repeats for the other entries.

The proportion of international students in the JD program peaked in 2014 when 98 students accounted for 10.1% of the program. After the decrease the following year, enrollments rose again in 2019, when 86 international students corresponded to 9.1% of the program. The pandemic impacted the program in 2020 when the registration of international students (64) dropped 25% while the total enrollment (domestic plus international students) dropped only 2.1%. The proportion of international students decreased to 6.9%, similar to 2016. Visa students in the JD program were more severely reduced. At its peak in 2014, they were 61, accounting for 6.3% of the program. Before the pandemic, in 2019, they were 50 and 5.3%. Finally, in 2020, only 23 of them corresponded to 2.5% of the program's population. Thus, they reduced by 54%.

After 2014, graduate studies became the primary destination for most international students. In 2020, enrollment and proportion reached a maximum when 210 students represented 27.8% of the

population of graduate programs in law. Instead of depressing the numbers, the pandemic seems to have busted them. Compared to 2019 (151 students accounting for 24.9%), there was a 39% growth. This phenomenon happened only at the law schools in York and UofT, and it was headed by the unusual behaviour of IS registration in the master's program during the pandemic. By 2020, the number of international graduate students had increased by 268%. These general traits are valid for visa students, but their rates are more modest. They were 33 (6.9%) in 2010, 66 (10.9%) in 2019, and 76 (10.07%) in 2020. Although their proportion in the population remained stable during the pandemic, enrollment increased by 15%. From 2010 to 2020, enrollment increased by 130.3%.

Over the period, the enrollment of international students in the master's program increased by 470.6%, the highest growth rate in law programs in Canada in the period. They were only 34 in 2010, representing 9% of the program; by 2020, they were 210, representing 27.8%. The pandemic seems to have boosted the internationalization of the program, with a 48% increase in the number of international students in 2020 (210) compared to 2019 (151). Visa master's students peaked in 2020, with 70 enrollments representing 9.9% of the population, and had its lowest rate in 2010, when 25 students represented only 6.6%. Over the period, the visa master's student enrollment increased by 180%.

Conversely, we can notice a sharp drop in the internationalization of the doctoral student population after 2018, when the peak was reached, with 24 IS accounting for 47% of the program. In 2020, only 16 international students corresponded to a third of the program. Despite being a rate similar to 2015 (33.8%), the number of students was at its lowest. The drop was because domestic students increased from 27 in 2018 to 32 in 2019 and remained stable in 2020, while the number of international students decreased from 24 in 2018 to 20 in 2019 and finally to 16 in 2020. That indicates that something affected international registrations in the program, specifically.

Regarding visa students, their numbers have been reducing since 2016, when 17 corresponded to 25% of the program. The decline resulted in 11 students in 2019 and only six in 2020. Most of the pandemic impact was felt by those visa students, whose presence was reduced by 45.5%, while international students decreased by 20%.

The internationalization of the PhD program student population at Osgoode differs from other doctoral programs in law because it was not achieved by increasing the number of international students, which remained largely stable between 16 and 24. Instead, the program consistently reduced the number of overall enrollments. For instance, in 2010, there were 98 PhD students, of whom 23 were international, and 8 were visa students. In 2020, there were only 48 PhD students, including 16 international students, 6 of them being visa students. Therefore, looking from this perspective, the strategy was to reduce the size of the program while keeping the numbers of international students more or less stable.

The law school is less internationalized than the university as a whole, except for the doctoral program. However, the law school has been under a sharper process of internationalization. This means that the participation of international students is not as significant, but it has grown faster over time. However, this is not true for the JD program, which did not follow the curve of undergraduate courses at the university, where rates are three to five times higher. Moreover, graduate studies in law count a smaller proportion of international students than the graduate level at the university, with 2016 being the sole exception.

The university is also more internationalized when we look at the rates at the master's level. However, the 470% enrollment growth in the LLM program over the period exceeds the 78.6% enrollment growth at the master's programs at the university by far. Also, unlike the University, the master's program at Osgoode has the largest number of international students.

Despite the pandemic, the doctoral program remains the most internationalized program in Osgoode. Except for 2020, it is the only program at the law school whose internationalization rate exceeds that of its counterpart at the university. Furthermore, after the pandemic, the LLM and PhD in Law trajectories are inverted compared to their university counterparts. While the proportion increased in the LLM program, it decreased at the university's master's level. While the proportion sharply dropped at the PhD in Law program, it grew slightly at the university's doctoral level.

#### 4.4 University of Toronto

Figure 17: Number of International Students, University of Toronto

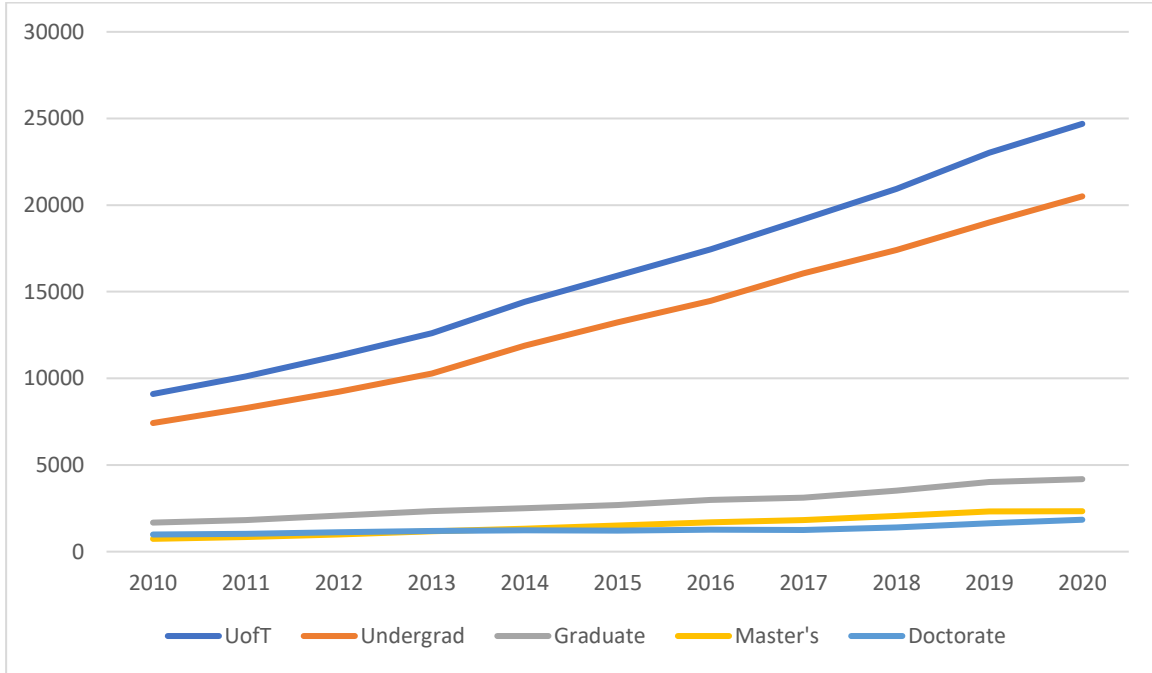
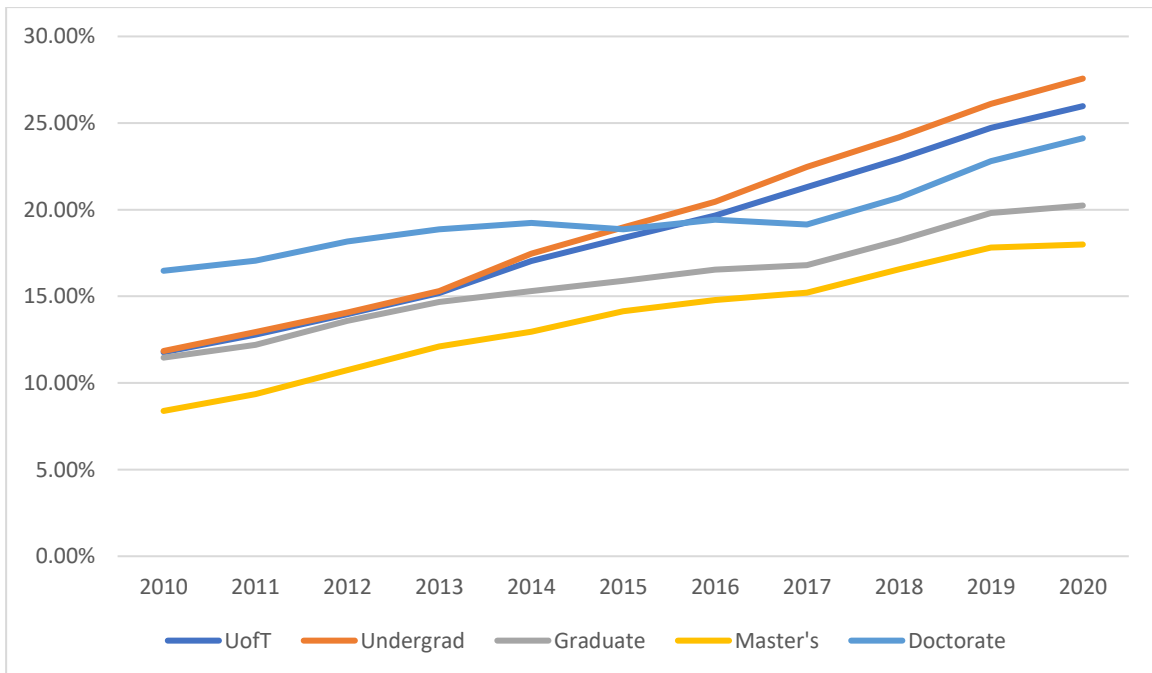


Figure 18: Proportion of International Students, University of Toronto



International students' participation in the UofT student population has constantly increased over time. In 2010, 9,099 international students represented 11.8% of the population; in 2020, this number jumped to 24,691 students, accounting for 25.9%, making it the second most internationalized after McGill. 2020 was also the year when internationalization peaked, with a mild impact of the pandemic on master's registration. During this period, the enrollment of international students increased by 171%.

The undergraduate level followed a similar pattern. In 2010, 7,423 international students corresponded to 11.8% of enrollments in undergraduate courses. In 2020, the numbers increased considerably when 20,507 international students reached 27.6% of the undergrad student population, the highest number in the period at UofT, comparable to 28.3% at York and 27.5% at McGill. Enrollments increased by 176%, making this the most internationalized cycle at the university, unlike all the other universities, where graduate studies enroll the highest proportion of international students. The pandemic did not seriously impact the presence of international students despite bending down the internationalization curve and decelerating the previous growth rate.

The proportion of international students in graduate studies did not grow at the same rate, but still at a very high rate. In 2010, 1,676 international students accounted for 11.5% of these programs. In 2020, 4,184 students were enrolled, representing 20.2% of the total. Thus, enrollment increased by 150% over time. Again, the pandemic did not reduce enrollment or the proportion of IS in graduate programs but halted the internationalization rate, making the impact more significant at the graduate than the undergraduate level.

Curiously, the master's level is the least internationalized, a unique characteristic of UofT. In 2010, only 739 international students were registered in these programs, accounting for 8.4% of all master's students. In 2020, the numbers peaked, with 2,333 students representing 18%. There was a

considerable 215.7% growth in enrollments during the period, making this level the one that faced the fastest internationalization process. The pandemic affected this growth, though. It forcibly slowed down the process, with a slight decrease of 0.6% reduction between 2019 (2,333) and 2020 (2,317), while between 2019 and 2018, a 12% growth was registered. Therefore, the master's level was the most affected by the pandemic.

The doctoral level's curve does not present constant growth. From 2010 to 2014, we can identify a period when the enrollment and the proportion of international doctoral students grew steadily, making this the most internationalized level at the university. In 2010, 990 international students enrolled in doctoral programs, corresponding to 16.5%. This situation evolved to a stage where, in 2014, 1,228 students enrolled, representing 19.4%. From 2014 to 2017, this proportion remained somewhat stable, so in 2017, 1,242 international students accounted for 19.1%. During this period, the undergrad level overtook and became the most internationalized cycle. After 2017, the internationalization process regained momentum, and in 2020, 1,842 international students represented 24.1% of the population of doctoral programs. The pandemic did not seem to have impacted such programs. Over the 11 years, the number of international students increased by 86%, at a lower rate than the other cycles.

Figure 19: International Law Students, Faculty of Law, University of Toronto

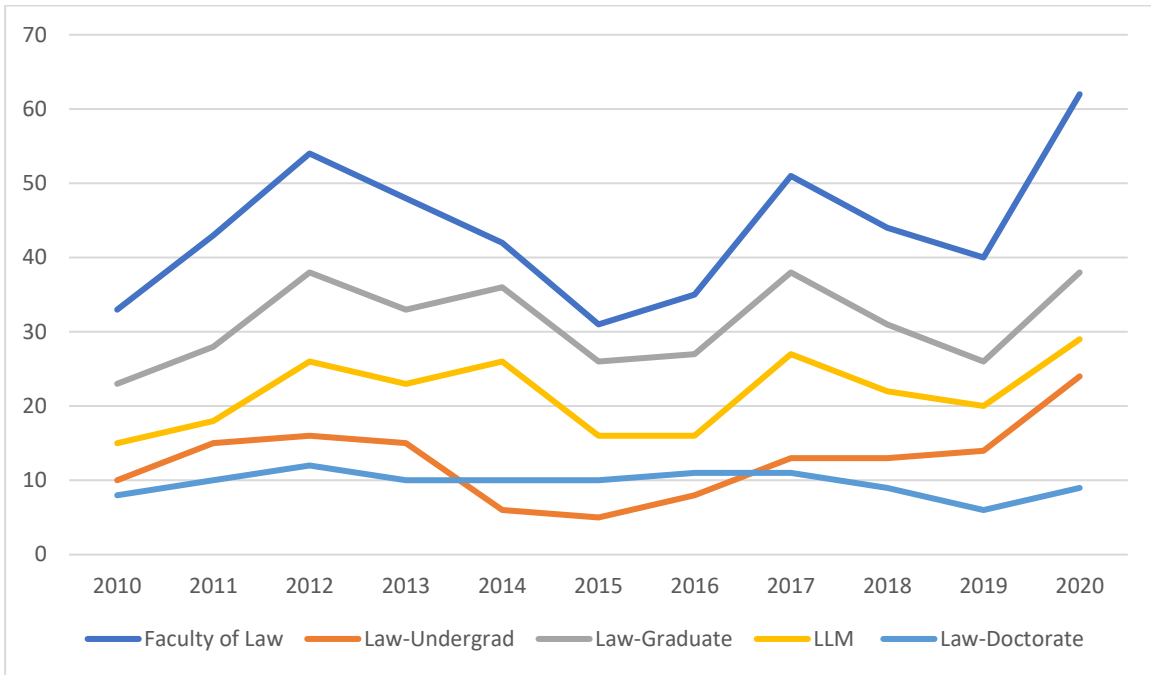
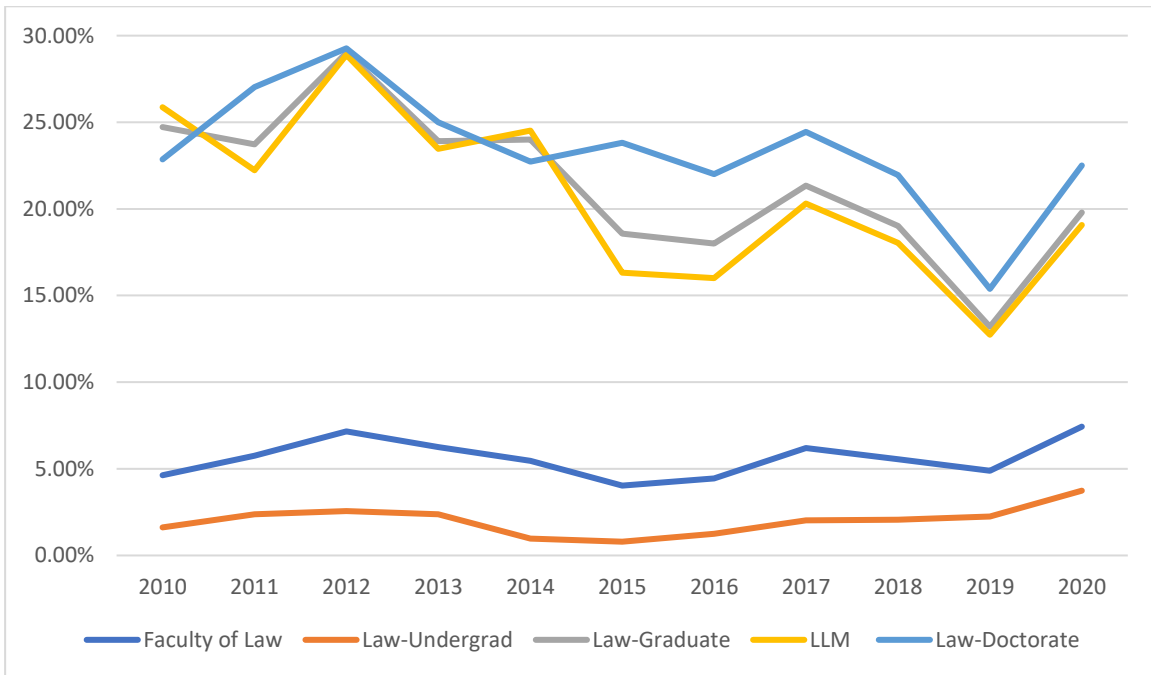


Figure 20: Proportion of International Law Students, Faculty of Law, University of Toronto



It is self-evident that the UofT Faculty of Law does not follow the university's internationalization pattern, with ups and downs. In general, the faculty's curve reproduces the curve of the JD (undergraduate) program due to the size of that program. That is a trait common across all law faculties. Despite some 'high seasons' in 2012 and 2017, the peak was achieved in 2020, when 62 ILS corresponded to 7.43% of all law students. Compared to 2010, when only 33 ILS represented 4.6% of the population, we can note an 87% enrollment growth. The pandemic did not decrease internationalization; on the contrary, in 2020 (62), enrollment increased by 55% from 2019 (40) and 41% (44) when compared to 2018.

As usual, the JD program is attended mainly by domestic students, but internationalization increased during the pandemic, a trend only repeated at UdeM (in the baccalauréat program). The ILS number and proportion in the 1<sup>st</sup> cycle were at their maximum in 2020 when 24 ILS corresponded to 3,7% of the program. It demonstrates how little internationalized the JD is. Still, ILS increased by 71% compared to 2019 (14). In 2014 and 2015, the program barely registered international students. Only six enrolled in 2014 and five in 2015, representing less than 1% of the program. Considering that in 2010 there were only 10 ILS in the JD program accounting for 1.6%, the number of ILS increased by 140% over the period.

In graduate studies, the highest proportion was achieved in 2012, when 38 ILS accounted for 29% of the graduate law student population. There was a significant drop in internationalization right after, with the bottom line reached in 2019, before the pandemic. In 2019, 26 ILS enrolled in the graduate program, accounting for 13.2%. In 2020, 38 ILS represented 19.8%, despite the pandemic. That was the highest number of ILS enrollment, also achieved in 2012 and 2017. The drop in domestic students during the pandemic also contributed to the increase in the proportion of ILS. By comparing 2019 to 2020, we see that, in 2019, the graduate student population encompassed 171 domestic and

26 ILS. In 2020, domestic enrollment dropped by 10% and only 154 domestic students were registered, while international enrollment increased by 46% and 38 ILS were registered. Therefore, in this case, the pandemic boosted internationalization. Since 2010 (23), the number of ILS in graduate programs in law has increased by 65% until 2020.

At its peak in 2012, the LLM program had 26 ILS, accounting for 29% of the program. The drop in 2015 (16) and 2016 (16) was caused by a decrease in ILS rather than an expansion of domestic students' enrollment. In 2017 (27), the ILS enrollment rose to previous levels, followed by a similar increase in domestic student numbers (from 84 in 2016 to 106 in 2017). In 2019 this tendency deepened; the number of domestic students rose to 137, and ILS dropped to 20, producing the year with the fewest proportion of ILS, 12.7%. In 2020, the pandemic year, this pattern shifted; 123 domestic students registered, a 10% decrease, and 29 ILS accounted for 19% of the program, a 45% increase. During this period, the number of ILS increased by 93%; however, the number of domestic students increased by 186%, which helps explain the curve's shape.

Except for 2014, the PhD program has been more internationalized than the master's. 2012 once more was when the internationalization rate was at its peak; 12 ILS represented 29.2% of the program that year. The number of ILS never reached 12 again. 2019 was the year with fewer ILS; only six enrolled that year, representing 15.4% of the program. 2020's recovery followed the trajectory described above, with enrollments reaching the level of 2018 (9). The falling curve after 2012 was due to the growth in domestic enrollment while ILS numbers remained stable. Numbers dropped significantly only in 2019. Compared to 2010, the ILS only increased by 12.5%, a variation from 8 in 2010 to 9 in 2020. Only the UBC Faculty of Law's doctoral program is less internationalized.

#### 4.5 University of Montreal

Figure 21: Number of International students, Université de Montréal

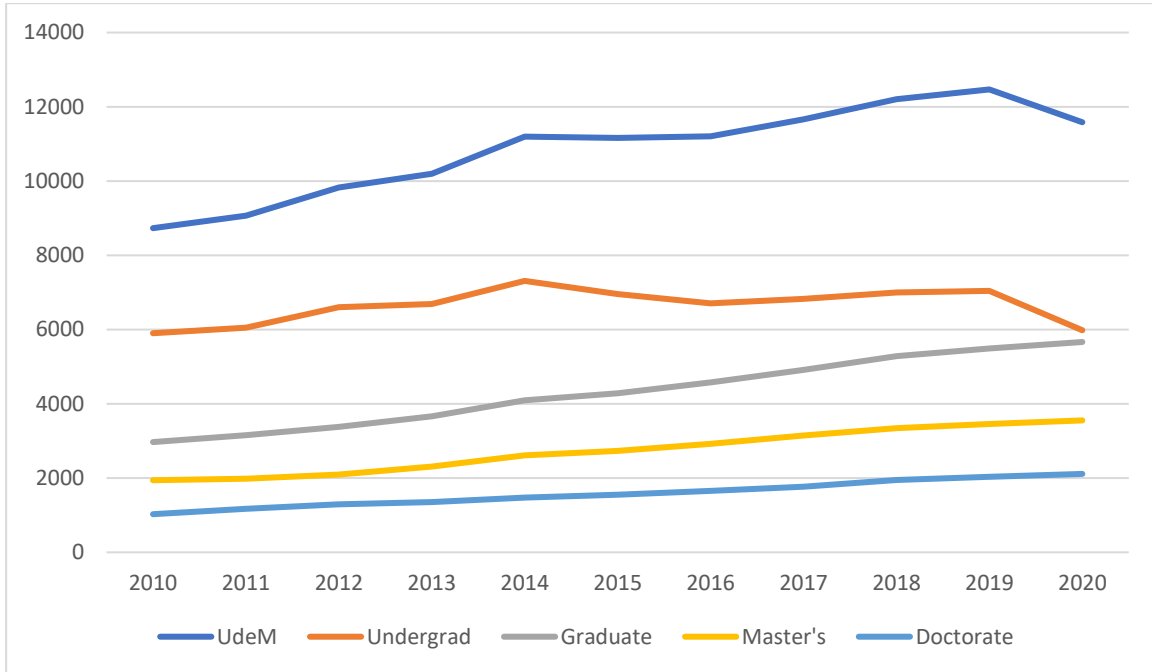
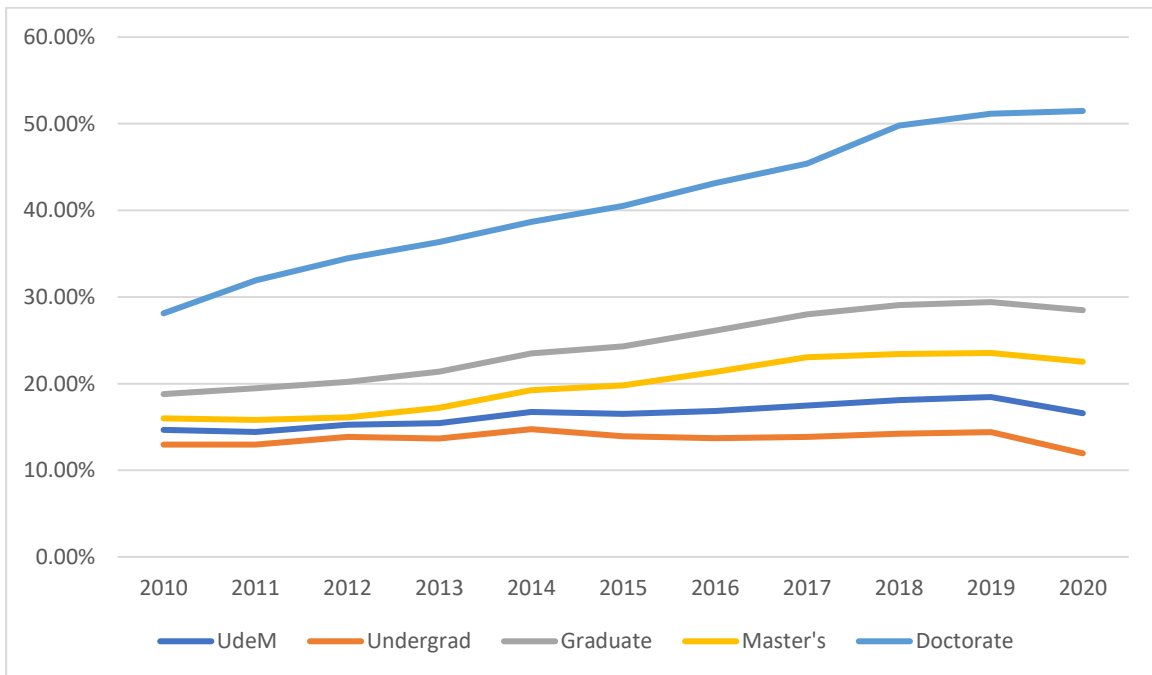


Figure 22: Proportion of International Students, Université de Montréal



The University of Montreal is similar to McGill in that the doctoral level is the most internationalized, followed by the master's, with the undergraduate being the least. Different from McGill, however, the internationalization rates of each cycle are more distant from one another. Overall, the UdeM had the lowest rate of internationalization in 2020 (16.6%) compared to the other five universities. That year the internationalization rates returned to the 2016 level. Even before the pandemic, the UdeM was the least internationalized; in 2019, IS represented 18.5% of the student population. Considering the evolution of enrollments, from 2010 to 2020, the number of IS increased by 33%. , from 2019 to 2020, IS enrollment dropped by 7%.

The undergraduate level was the most affected in 2020. That year, the internationalization rate reached its lowest level at 12%, and the number of IS was similar to that in 2010. In fact, over the 11 years, enrollment increased by only 1%, being virtually stagnant. There was a 15% drop in the number of IS compared to 2019, making undergraduate courses the most impacted by the pandemic at the university. 2014 had the highest proportion of IS (14.7%), and more IS registered in undergrad courses.

Graduate studies follow a different trajectory. The peak was reached in 2019 when IS accounted for 29.4% of all graduate students. Although this proportion fell slightly to 28.5% in 2020, IS enrollment increased by 3.2% from 2019 to 2020. That is because domestic graduate student enrollment increased more significantly by 6.5%. Thus, the pandemic had no adverse effect but a higher domestic registration growth. 2010 was the year with the lowest rate, 18.8%, and fewer IS. From 2010 to 2020, the enrollment of IS experienced a 91% growth.

The second cycle's trajectory shows steady growth from 2010 to 2019, when the proportion of IS peaked at 23.5%. The lowest rate was in 2011, at 15.8%. In 2020, the number of IS slightly

increased by 2.7%, but the proportion dropped to 22.5%. Here, we can see the same effect described in the last paragraph: IS increased, but domestic student enrollment increased even more. During this period, the registration of IS experienced an 83% growth.

Doctoral programs are by far the most internationalized. Even in 2020, during the pandemic, internationalization and the number of IS were higher than in 2019. Therefore, internationalization peaked at 51.5% in 2020, higher than 51.1% in 2019. 2010 was the year with the lowest proportion of IS, 28.1%. The balance and number of IS constantly grew, and IS enrollment increased by 106%.

*Figure 23: Number of International Law Students, Faculty of Law, Université de Montréal*

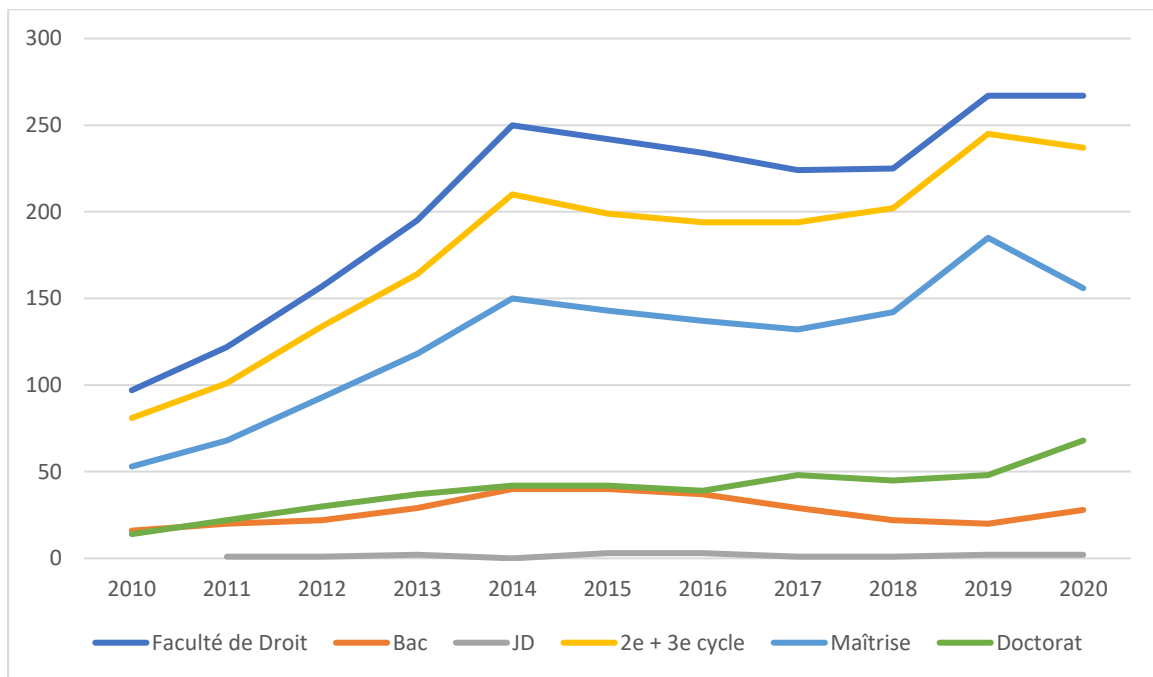
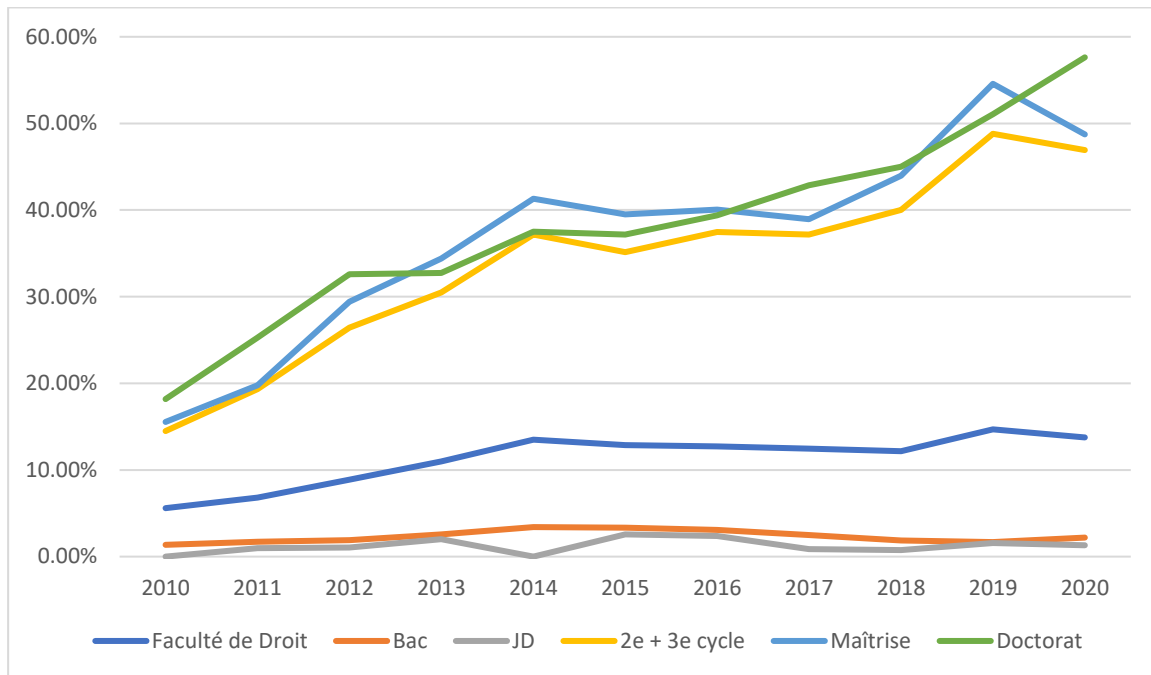


Figure 24: Proportion of International Law Students, Faculty of Law, Université de Montréal



The Faculty of Law at the University of Montreal is only less internationalized than McGill and Osgoode Hall. For a Francophone faculty, this is a noteworthy achievement. ILS reached 11% of the student population in 2014 and peaked in 2019 at 14.7%. In 2020, ILS numbers remained the same as in 2019 (267), but an increment in the number of domestic students caused the proportion to drop slightly to 13.7%. Considering that in 2010 there were 97 ILS enrolled in the faculty, the number of ILS had a 175.3% growth by 2020, the highest growth rate among the six faculties.

However, the bachelor's degree is very little internationalized, with a maximum of 3.4% reached in 2014, when 40 ILS enrolled in the program. In 2010, only 16 had enrolled, accounting for 1.4% of the population, the lowest level. Curiously, in 2020, 28 ILS registered, 40% more than in 2019, when 20 had registered. The proportion also grew from 1.7% in 2019 to 2.2% in 2020. Although the presence of ILS is negligible in the bachelor's program, it has increased by 75% over the period. The JD program is even less internationalized. Even though the overall student population

in the JD progressively increased from 104 in 2011, the program's first year, to 154 in 2020, the number of ILS never exceeded 3. Therefore, the participation of ILS is hardly noticeable.

Once more, it is at the graduate level where we see the presence of ILS, which has constantly grown up to 2019. At its lowest, in 2010, 81 ILS represented 14.5% of the graduate studies population. In 2019, in contrast, 245 ILS accounted for 48.8%, implying a 202.5% growth rate in a decade before the pandemic. In 2020, the numbers dropped to 237 ILS, representing 46.9% of the program; hence, ILS enrollment fell only 3.3%. Even with this drop, by comparing enrollments from 2010 to 2020, we note a 192.6% growth in the presence of ILS.

The trajectory of international master's students is quite similar. In 2010, 53 ILS accounted for 15.5% of the program, a modest level of internationalization. In 2019, this proportion reached 54.6% with 185 ILS registered, making this the second most internationalized master's program in law, only behind McGill's. Thus, until 2019, the number of ILS has increased by 249% since 2010. In 2020, however, ILS enrollment dropped by 15.7%, and only 156 registered, making the proportion fall to 48.7% that year. Still, comparing 2010 to 2020, we note a significant 194.3% growth rate.

Conversely, the internationalization of the doctoral program was not reversed in 2020. That year, the doctorate became the most internationalized program in the faculty when 68 ILS represented 57.6% of the student population, making it the most internationalized law program in Canada. Considering that in 2010 there were only 14 ILS, accounting for 18.2%, in 2020, numbers increased by an impressive 385.7%, the second-highest growth rate in law programs in Canada after the master's at Osgoode Hall.

## 4.6 University of British Columbia

Figure 25: Number of International Students, University of British Columbia

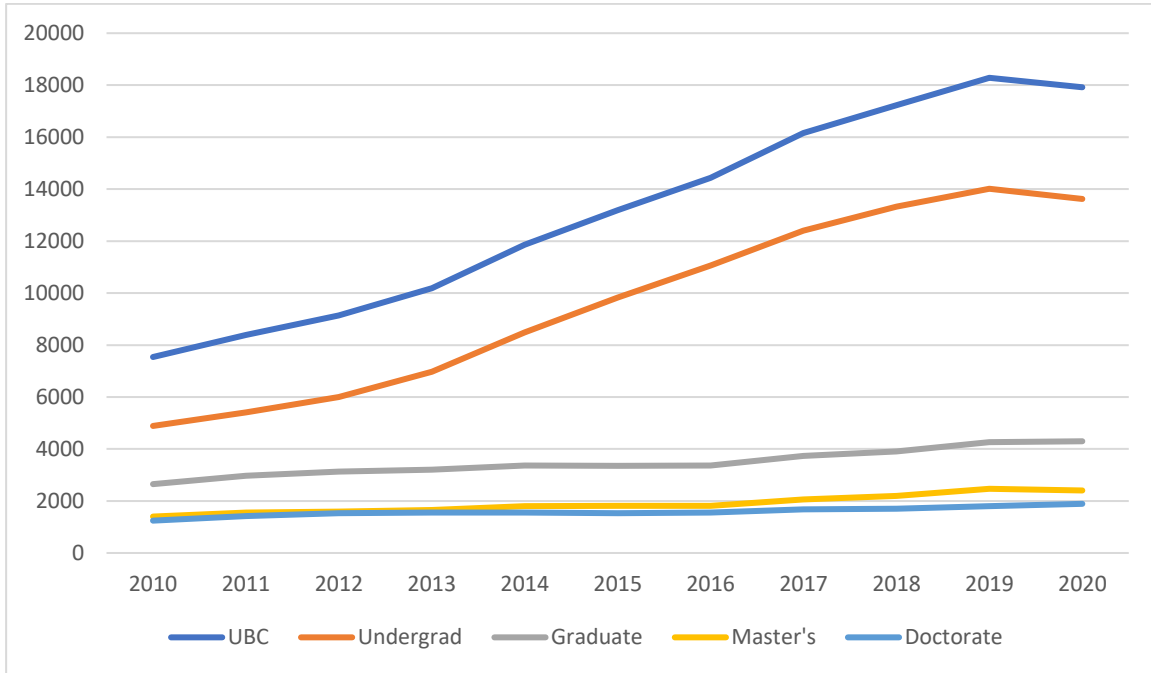
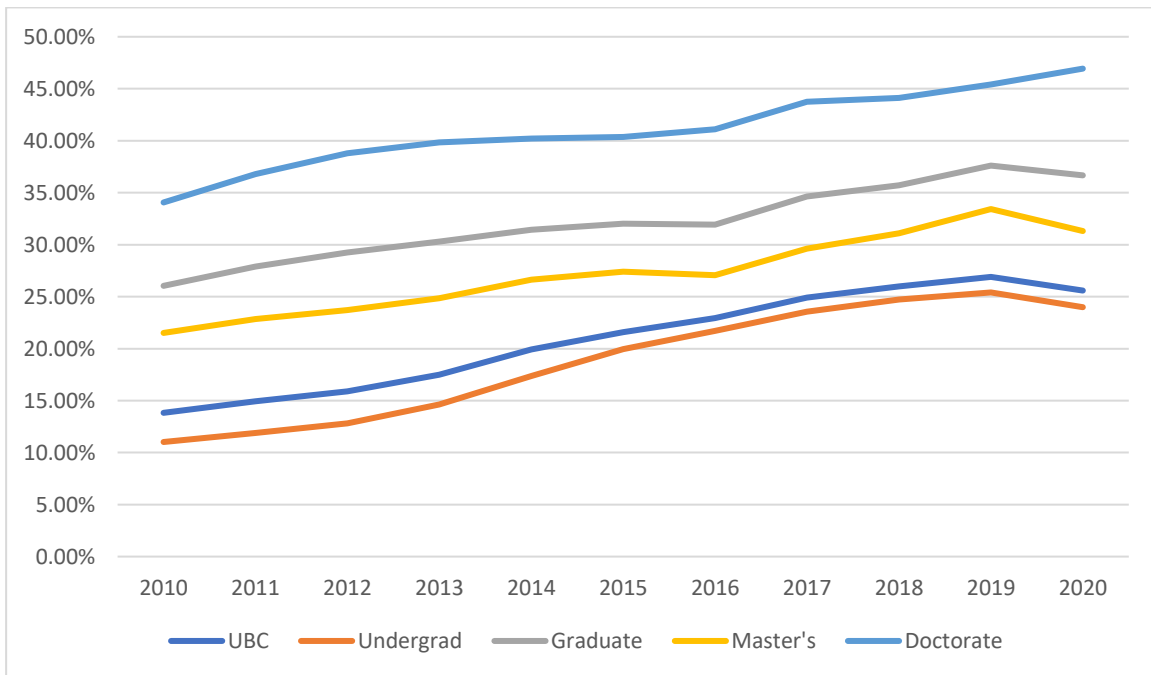


Figure 26: Proportion of International students, University of British Columbia



Overall, the University of British Columbia has presented a steady trajectory of increasing internationalization, which declined in 2020, possibly because of the pandemic. In 2010, the internationalization level was 13.8% and enlarged to 26.9% in 2019. During this pre-pandemic time, IS enrollment had a 142.5% growth. In 2020, these numbers slightly declined, and the participation of IS in the student population dropped to 25.6% while IS enrollment decreased by 2%. A similar pattern can be seen in the other curves, except for doctoral programs. Including the pandemic year of 2020, the overall IS enrollment growth rate in the period was 138%, making UBC the university with the third fastest internationalization process, behind uOttawa and UofT.

The internationalization rate was even higher at the undergraduate level. In 2010, IS represented only 11% of the student population. This proportion peaked at 25.4% in 2019, with the IS enrollment rate reaching 186.7% growth before the pandemic. In 2020, the participation of IS dropped to 24%, with a 2.8% fall in IS enrollment compared to the previous year. Even so, the overall growth rate from 2010 to 2020 reached 178.6%, which is inferior only to the uOttawa's.

IS presence in graduate programs jumped from 26% in 2010 to 37.6% in 2019. Despite this proportion dropping slightly to 36.8% in 2020, the number of IS enrollments increased by 0.7%, remaining virtually stable. The enrollment of domestic students increased at a higher pace, though. Considering the constant growth in IS enrollment in graduate programs, we can note that the number of IS students increased by 62% from 2010 to 2020.

Master's programs had a quasi-linear growth trajectory from 2010 to 2019, with a slight drop in 2016 compared to 2015. In 2010, IS accounted for 21.5% of the student population in those programs. In 2019, the proportion increased to 33.4%. During this period, the population of international master's students experienced a 76.2% growth. In 2020, however, this population dropped 2.5%, and the proportion of IS was 31.3%. From 2010 to 2020, the growth rate was 72%.

PhD programs, differently, were not affected by changes in 2020. Internationalization kept growing from 2010 (34%) to 2020 (46.9%), and the number of international doctoral students increased by 52% over the period. The pandemic did not have a negative impact, so IS enrollment rose 5.1% in 2020 compared to 2019. These numbers make the third cycle at UBC the most internationalized after UdeM and McGill in 2020.

*Figure 27: Number of International Law Students, Faculty of Law, University of British Columbia*

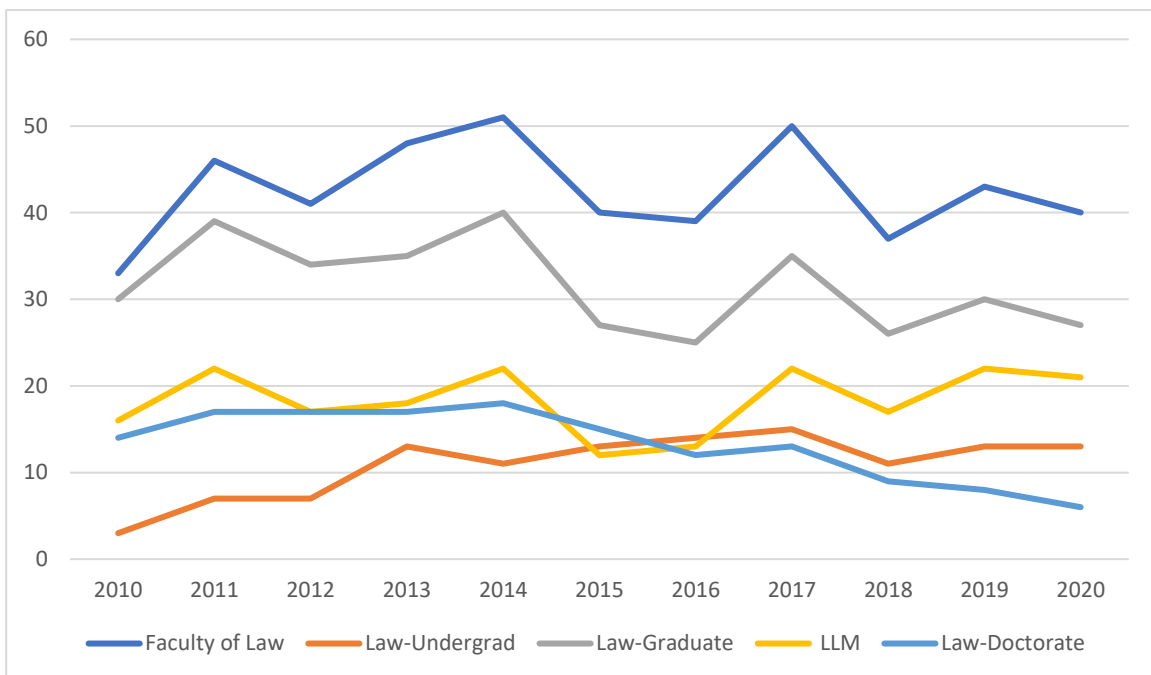
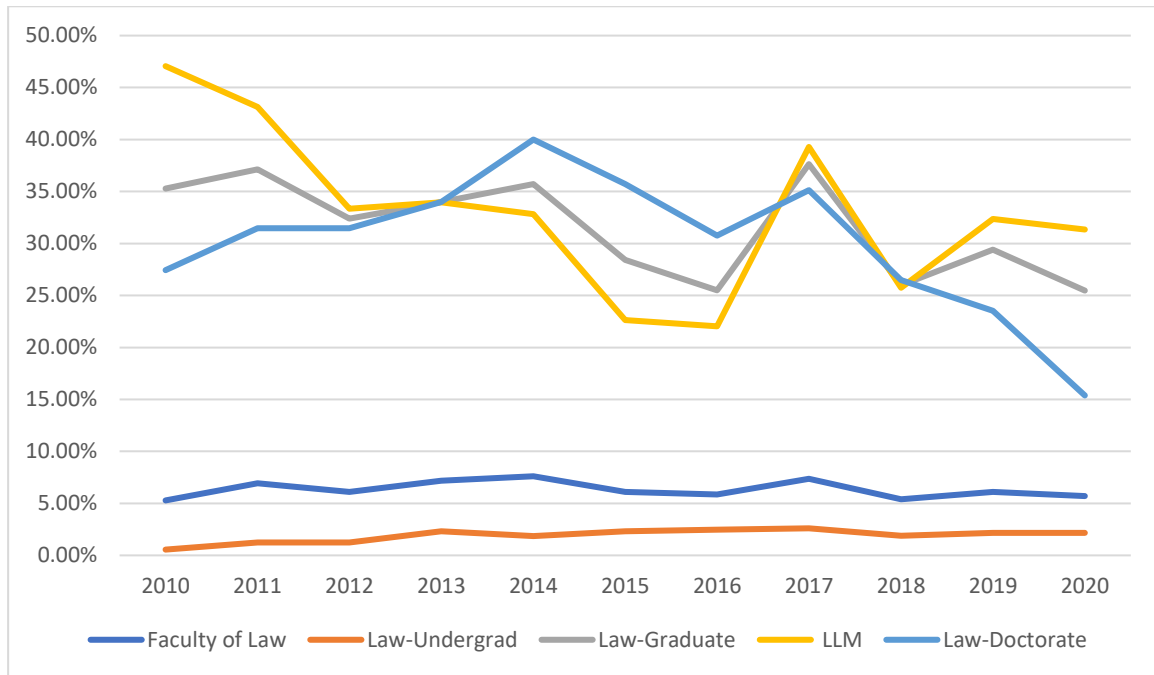


Figure 28: Proportion of International Law Students, Faculty of Law, University of British Columbia



The participation of ILS in the law student population transitioned between a minimum of 5.3% in 2010 when 33 ILS enrolled, and a maximum of 7.6% in 2014, when 51 ILS registered at the faculty. Then, internationalization remained stable. In 2019, there were 43 ILS and 660 domestic students; then, ILS represented 6.1% of the student population. In 2020, the situation did not change much; there were 40 ILS and 662 domestic students, meaning IS represented 5.7%. Despite the 7% drop in the ILS enrollment, we note that it materializes into a decrease of only three ILS. Considering the whole period, the faculty had a modest 21% growth in internationalization. Excluding the pandemic year, the growth rate rises to 30.3% from 2010 to 2019.

As usual, the JD program is very little internationalized. The lowest level was in 2010 when only three ILS enrolled in the JD, representing merely 0.6%. The peak was reached in 2017 when 15 ILS accounted for 2.6% of the program. The number of ILS remained the same in 2019 and 2020,

13, and the proportion remained at 2.2%. As the departure number in 2010 was meagre (only 3), by 2020, the number of ILS had increased by an incredible 333% (to 13).

The internationalization of graduate programs in law ranged from 25.5% in 2020 and 2016 to 37.6% in 2017; the number of ILS enrolled in such programs varied from 25 in 2016 to 40 in 2014. From 2019 to 2020, enrollment dropped 10% (from 30 to 27), and the proportion fell from 29.4% to 25.4%. Excluding the pandemic year, the number of ILS in 2019 was the same as in 2010, but when comparing 2020 to 2010, we note a decrease of 10% in ILS enrollment in graduate programs. That is the only case among the six law faculties in which internationalization in 2020 went below 2010 levels.

In the LLM, ILS represented a minimum of 22% in 2013 when 12 registered, and a maximum of 47% in 2010, when 16 registered. One remarkable feature is that the size of the program increased by 97%, from 34 students in 2010 to 67 in 2020, whereas the number of ILS increased by only 31%. In 2020, the enrollment of ILS was not much impacted; it dropped from 22 in 2019 (32.3%) to 21 in 2020 (31.3%), whereas the number of domestic students remained stable at 46. Compared to 2010, the ILS population in LLM programs increased by 31% by 2020.

On the contrary, the PhD program underwent a de-internationalization process where the ILS population was reduced by 57%, the deepest across all graduate studies in law at the six universities. In 2010, 14 ILS represented 27.5% of the doctoral student population. The peak was reached in 2015 when 18 ILS corresponded to 40% of the program. The decline culminated in 2020, with only 6 ILS accounting for 15.4%. The pandemic supposedly deepened this decline since the ILS enrollment dropped 25% compared to 2019 (8). However, it is likely to have aggravated an ongoing process of reducing the enrollment of international doctoral students.

#### 4.7 Internationalization per University, Law Faculty and Cycle

Figure 29: Percentage of International Students per University in 2010

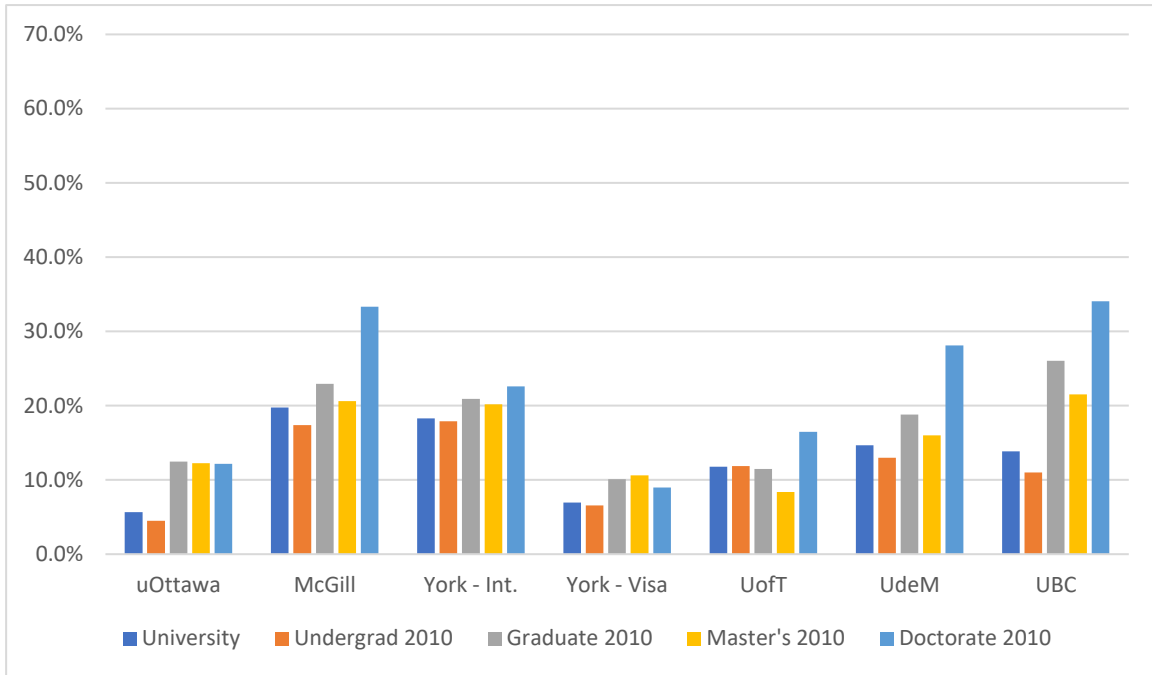


Figure 30: Percentage of International Students per Faculty of Law in 2010

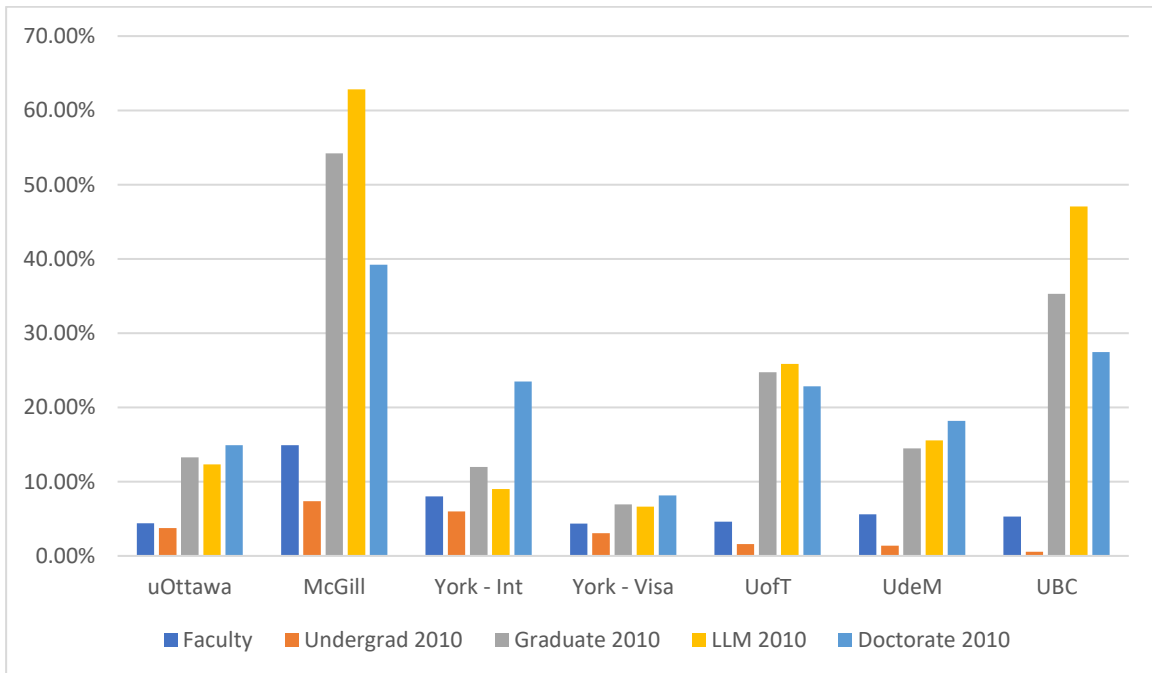


Figure 31: Percentage of International Students per University in 2020

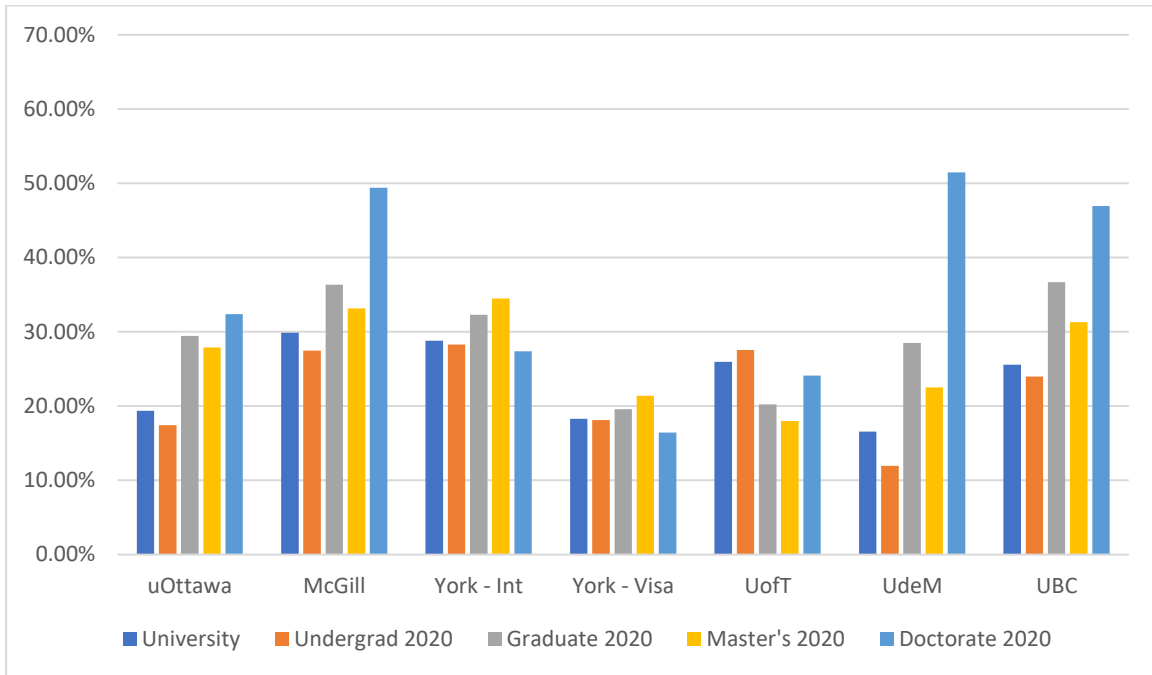
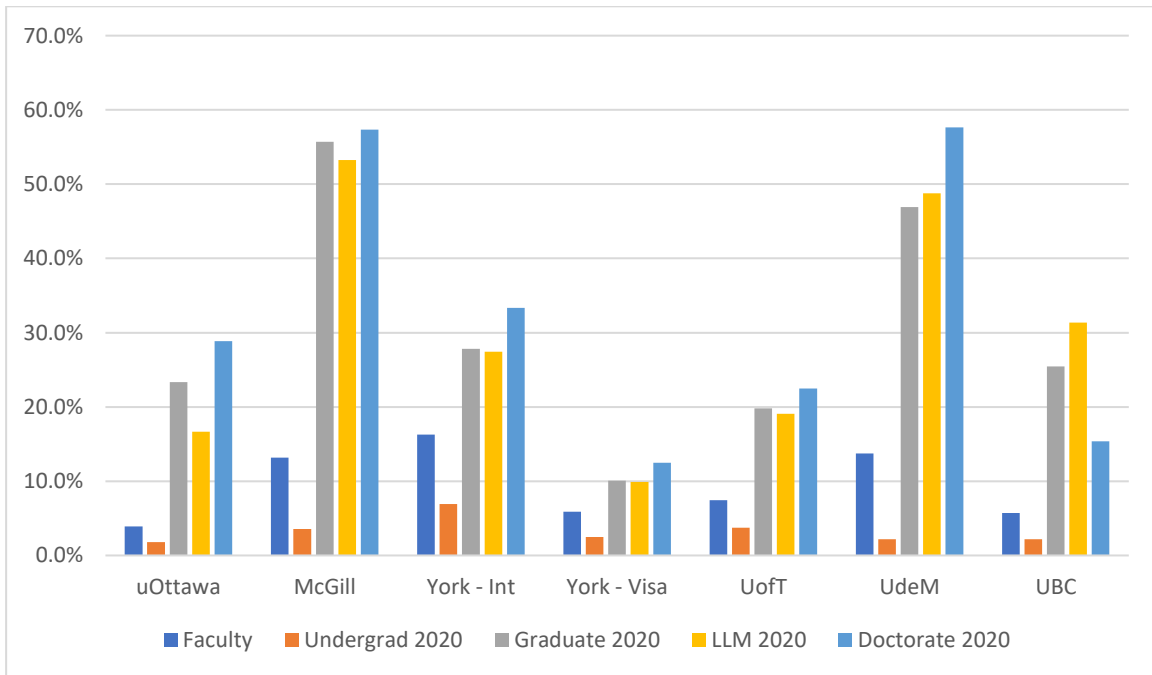


Figure 32: Percentage of International Students per Faculty of Law in 2020



The internationalization of the student population can be measured by calculating the proportion of international students in each university, faculty and program, which may also indicate the level of reliance on international students to keep programs running. In this section, I will compare the internationalization of universities and law faculties in 2010 and 2020 in order to highlight the differences between both. Data for 2019 is available at the end of the section to facilitate comparisons between two normal periods.

In 2010, the uOttawa Faculty of Law presented similar levels of internationalization to the university. 2020 data shows that the Faculty of Law had strayed from the university standards. Over the decade, internationalization became prominent in graduate studies in law while remaining insignificant in the first cycle. Graduate programs at the university have always been more internationalized than undergraduate ones; however, although the internationalization of the first cycle at the university had remarkable growth, the same did not happen at the faculty of law. In 2020, no program at the faculty of law was more internationalized than at the university, but that is due to the pandemic because, traditionally, the LLM had a higher proportion of ILS than the set of master's programs at the university.

McGill Faculty of Law in 2010 had higher internationalization rates in graduate studies than the university, with emphasis on the LLM program. On the contrary, the BCL/JD program was less internationalized than the overall undergraduate population of the university and was kept aside from the internationalization process. Such a scenario persisted at the end of the decade. The PhD program in law follows the higher levels of internationalization seen in the overall doctoral student population, with even higher rates. McGill Law has the highest rates of internationalization by the end of the decade in graduate studies considering all faculties and law schools.

Except for the PhD program in law, Osgoode Hall was considerably less internationalized in 2010 than York University. By 2020, graduate studies in law were only slightly less internationalized than graduate programs at the university, while the JD program did not experience a similar process, remaining far less internationalized.

Excluding the JD, the UofT Faculty of Law in 2010 was more internationalized than the university. However, that changed over the decade, when the rates were similar. We can see that UofT boosted the internationalization of the undergraduate population, but that did not reflect a considerable increase in ILS participation in the JD program. Despite that, the proportion of ILS in the LLM program decreased in 2020 compared to 2010, while it increased in the JD program.

The UdeM Faculty of Law also focused on the internationalization of graduate programs, making its second cycle considerably more internationalized than the university's by 2020, competing with McGill. The doctoral program at UdeM, including in law, became highly international, while less effort was put into internationalizing the first cycle. Despite that, the first cycle in law is far less internationalized than the respective population at the university.

At UBC, the internationalization of the student population advanced in all programs. However, that is not true for the Law Faculty, where the proportion of ILS decreased in graduate programs. In 2010, the LLM program was more internationalized than the overall master's population at the university. In 2020, they shared similar rates. In 2010, the PhD program in law was not far from the rates of the university, but by 2020 its internationalization rate was inferior to half of the overall university doctoral population. Although the presence of ILS in the JD program increased over time, it remained as little internationalized as in other law faculties and considerably less internationalized than in the first cycle at the university.

A closer analysis of the charts displaying law faculties indicates that the participation of international law students in the whole student population increased in most of them. The exceptions were the uOttawa (4.4% to 3.9%) and McGill (14.9% to 13.6%), the faculties most affected by the pandemic. Considering the proportion in 2019, however, we notice that the rates increased to 5.5% at uOttawa and 18.8% at McGill. At Osgoode and UdeM, the internationalization rate more than doubled from 2010 to 2020, from 8% to 16.3% and 5.6% to 13.75%, respectively.

Considering the undergraduate programs, we see a downward trend at uOttawa aggravated by the pandemic (3.8% in 2010 to 1.8% in 2020, while in 2019 the proportion was 2.7%). At McGill, 2010 (7.4%) had the highest proportion of international students in the JD program, but the pandemic contributed to the drop to 3.5% in 2020, since it was 9.6% in 2019. By 2020, the proportion had slightly increased in other faculties, with the highest found at Osgoode (6.9%).

At the graduate level, participation rose consistently at uOttawa (13,3% to 23,3%), McGill (38,2% to 55,7%), York – international students (12% to 27,8%), and Montreal (14,5% to 46,9%). On the contrary, it dropped at the universities of Toronto (24,7% to 19,8%) and British Columbia (35,3% to 25,5%). The pandemic did not cause that since this tendency can be identified in previous years.

The LLM internationalization rate at uOttawa increased from 12.3% to 16.7%, but it was 36% in 2019; therefore, we can see that as an effect of the pandemic. The same might have happened at McGill, whose numbers changed from 62.3% to 53%. In 2019, the proportion was higher, 64.6%. At Osgoode, the proportion went up from 9% to 27.4%. At UofT, it dropped from 25.9% to 19%, while UdeM registered an outstanding growth from 15.5% to 48.7%. At UBC, the proportion fell from 47% to 31.3%.

In doctoral programs, internationalization decreased at UBC from 27.4% to 15.4% and remained the same at UofT. All other faculties presented a significant internationalization process. At uOttawa, it almost doubled from 14.9% to 28.8%. At McGill, it rose from 39.2% to 57.3%. At York, it increased from 23.5% to 33.3%. At UdeM, it impressively raised from 18.2% to 57.6%.

An interesting point can be made by observing visa students' behaviour at Osgoode. In 2010, the rates both at the university and the faculty of law were quite similar, with visa students comprising around 10% or less of the programs' population. The situation changed in 2020, when visa student rates were transitioning towards 20% at the university while it remained around 10% at Osgoode. Compared to international students, the participation of visa students is more significant at the university, reaching around two-thirds of international students. In contrast, they are less relevant for Osgoode, comprising only one-third of ILS. Indeed, the pandemic explains the numbers for 2020 so that the visa law students were more affected or, in turn, were classified as international for not being able to attend classes in person.

Additionally, visa student enrollment at the university was more resilient than at the law faculty. We can also say that, except for being more impacted by the pandemic, visa student enrollment tends to reproduce the general traits of the broader international student population but at consistently lower rates. Therefore, if we consider visa students to assess the internationalization of York, we will conclude that that university is significantly less internationalized than most other universities.

Figure 33: Percentage of International Students per University in 2019

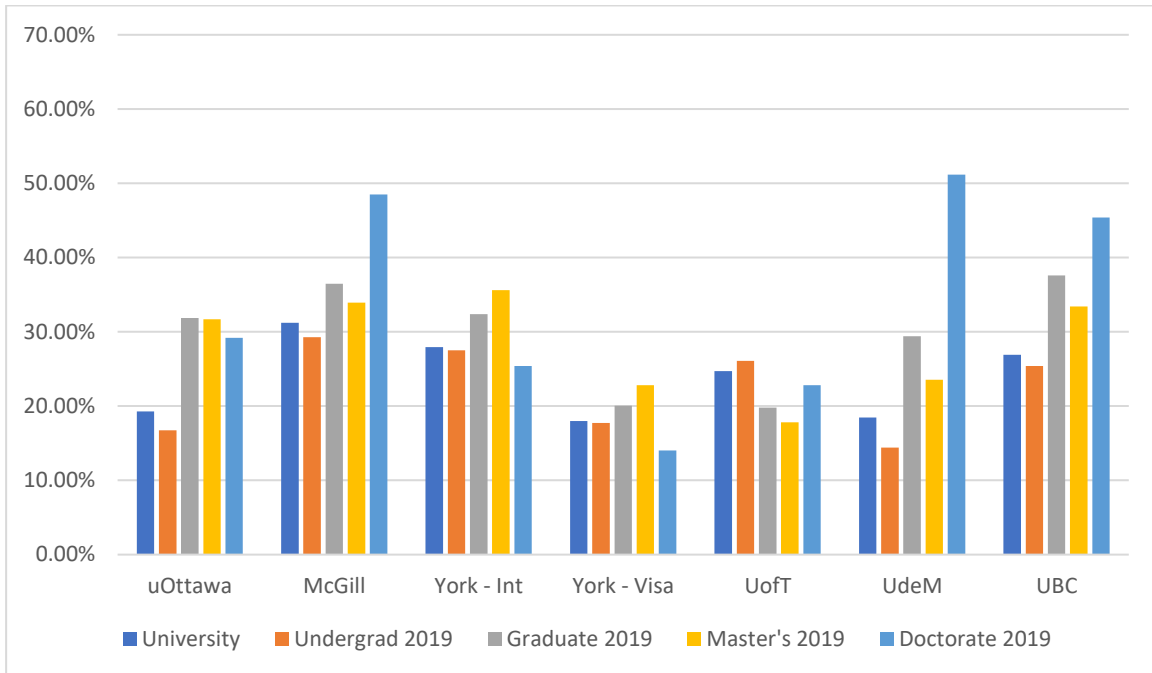
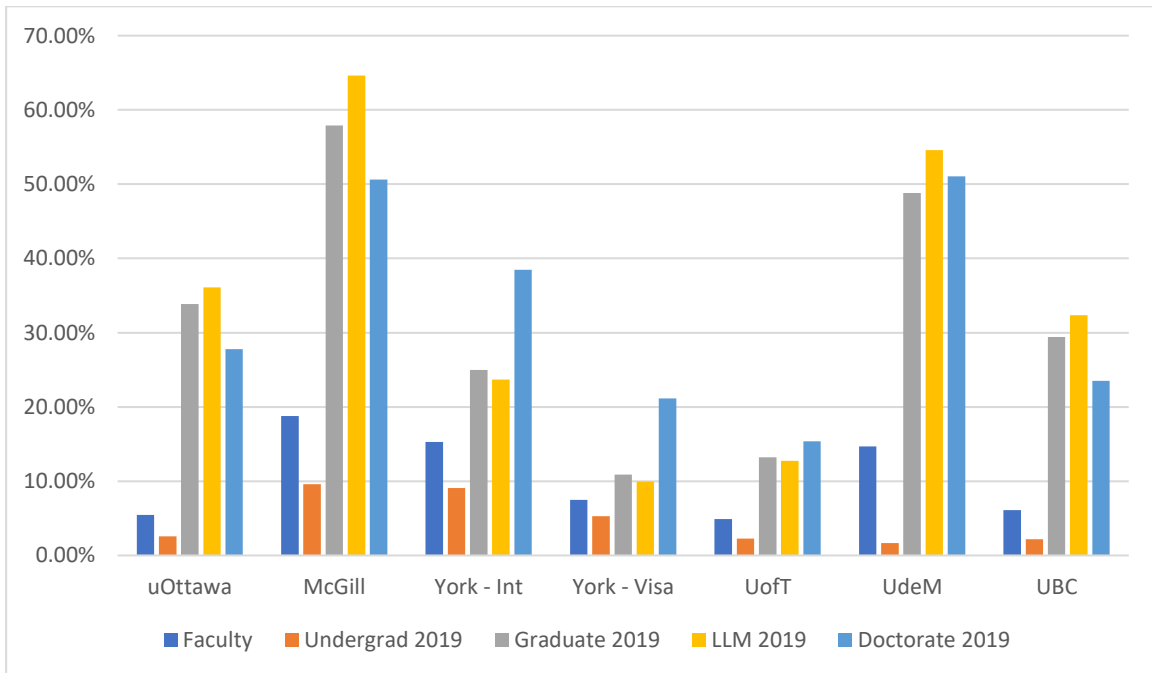


Figure 34: Percentage of International Students per Faculty of Law in 2019



#### 4.8 International Student Enrolment Growth

Figure 35: Growth Rates of International Student Enrolment per University, 2010 to 2020

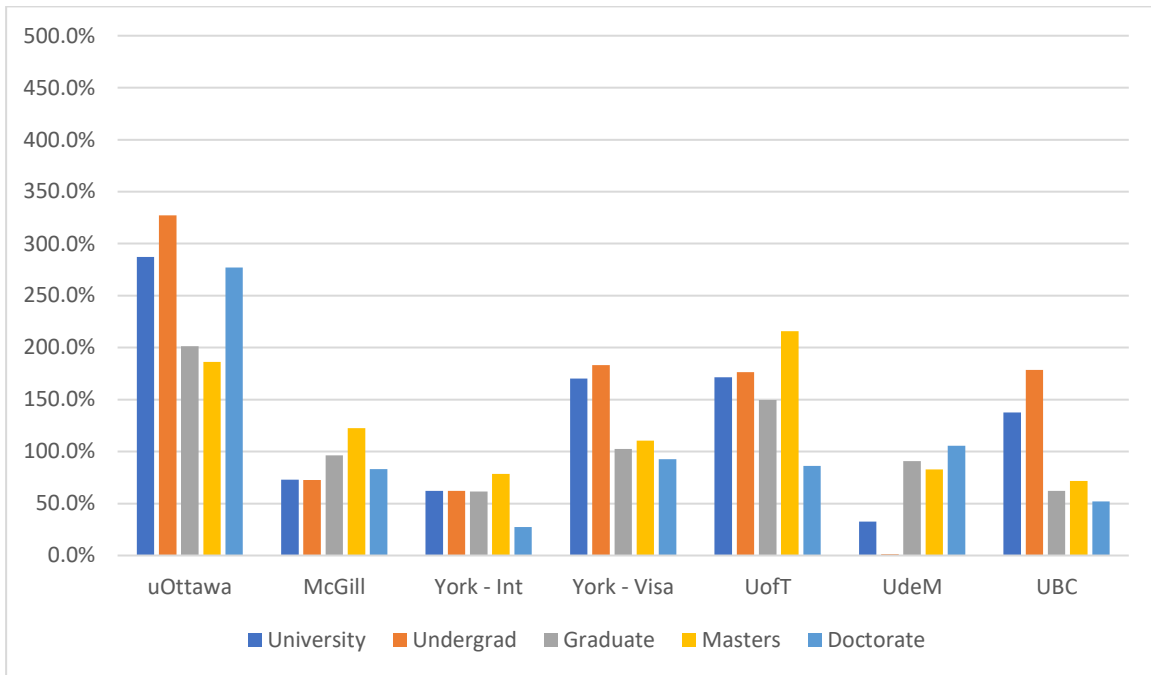
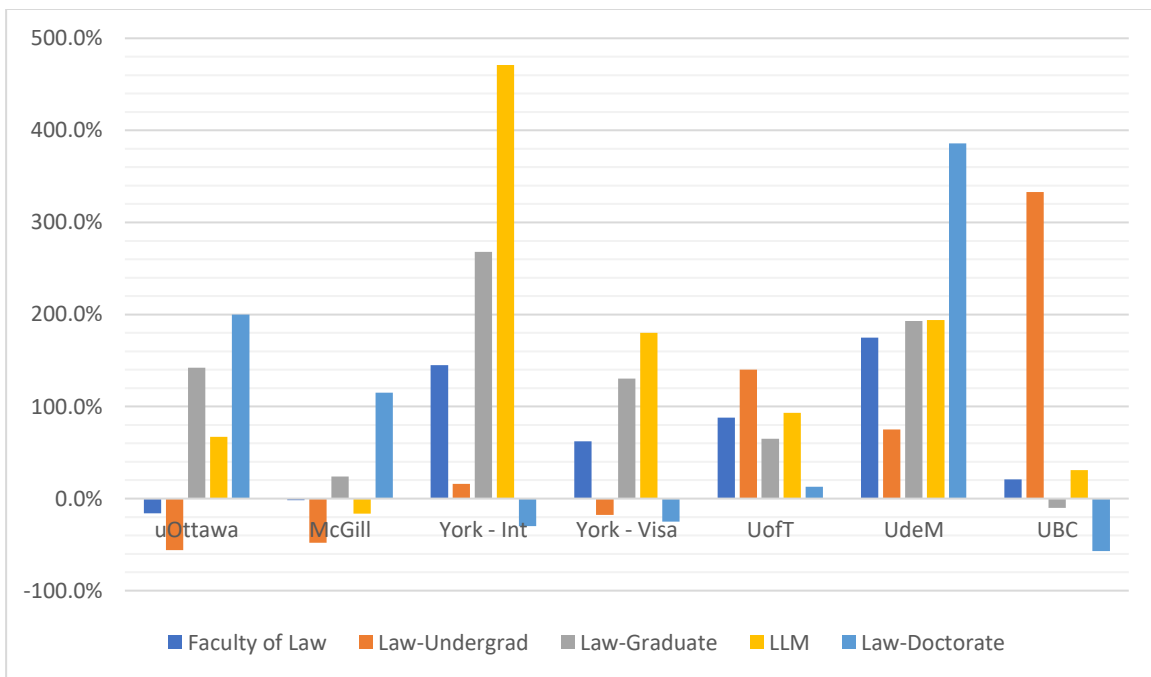


Figure 36: Growth Rates of International Student Enrolment per Faculty of Law, 2010 to 2020



To create the charts above, I compare 2020's enrollments to 2010's to determine the growth rates over the period. I displayed the result so that it becomes possible to assess the rates per program and university at one glance. Then, it is easy to identify where enrollments increased or decreased and the intensity of changes. In the first chart, dedicated to universities, the University of Ottawa presents outstanding rates, especially in undergraduate and doctoral programs, being the university with the most intense internationalization process of its student population. Such growth is explained by the lower rates of internationalization of its student population in 2010 and demonstrates the institutional commitment to change that situation. In turn, McGill and York started from higher internationalization rates in 2010, which explains lower growth rates.

By looking at universities rates, we see that master's programs had the highest growth rates in most cases, three in six universities (McGill, York and UofT), followed by undergraduate programs in two universities (uOttawa and UBC), and the doctorate at UdeM. The first cycle at UdeM was the only case of stagnation, but the pandemic caused that. The data from 2010 to 2019, under a period of normality, is shown below and demonstrates a 19.3% increase, which is still very low. Doctorate programs at the UofT followed suit with 27.5%, a low growth rate, according to a trend already identified in 2019. We can also see that visa students at York University had significantly higher growth rates than international students, especially in undergraduate programs.

Regarding law faculties, the growth rates in Osgoode LLM programs are outstanding, probably due to the expansion of the professional LLM, since ILS admissions into the research LLM remain restricted to a few. The doctorate at UdeM and the JD at UBC also presented higher growth rates. Doctorate programs were those with higher growth rates in three out of six law faculties (uOttawa, McGill, and UdeM), followed by the JD at UBC and UofT, and the LLM at Osgoode.

When comparing universities with their law faculties, there are similarities and differences to be noted. First, law faculties present an unequal distribution of internationalization growth among their programs compared to universities, meaning that they channel the effort of attracting ILS to some programs. In that sense, law faculties follow the university rates in specific programs. For instance, at the University of Ottawa, growth has been similar in graduate studies in general and in law (a perception that is reinforced by considering the rates of 2019-2010 below). Still, undergraduate programs in law are entirely dissociated from corresponding trends at the university to the point that the number of international undergraduate students in law has decreased.

In contrast, international undergraduate students at the university have presented the highest growth rate among all programs. McGill has passed through a similar situation, but it is related to the LLM program. In that case, master's programs have the highest growth rate at the university, while ILS at the LLM program have remained stagnant (2019) or decreased (2020). The LLB/JD program has shown the same kind of behaviour. That may be explained, once more, by the fact that those programs at the faculty of law were already largely internationalized, with little room for growing.

Osgoode downsized its doctoral program in law by half, from 98 to 48 students over the period, reducing the number of ILS by 30%. That reduction was compensated mainly by growth in the LLM program. It indicates a migration from research-intense programs to professional programs in the last decade. It follows the university's tendency to limit the growth of doctoral programs in general. The UofT Faculty of Law presents limited growth rates compared to the university. Still, while the university expanded the doctoral programs and made them more internationalized, the law faculty halted the expansion of its doctoral program. As a result, the program did not change much over time, which explains its meagre growth rate of 12.5%.

These charts show more clearly the inverse growth tendencies between the university and the law faculty at York regarding visa and international students. Overall, the growth rates of international students at the university are lower than those of visa students, indicating that visa students are gaining relevance in internationalization at the university as a whole. However, the opposite happens at Osgoode, where visa student enrollment has not grown at the same rates as international students, meaning they are less relevant to internationalizing the law school. Until 2019, visa students had higher growth rates only in the undergraduate and doctoral programs.

The UdeM Faculty of Law is unique because it is the only one with higher growth rates than its university in all cycles. It has expanded its doctoral programs in law basically by admitting more international students. Regarding the second cycle, it downsized its overall student population from 559 in 2010 to 505 in 2020 while admitting more international students (numbers jumped from 81 to 237), thus internationalizing it more intensely.

UBC Law School downsized its doctoral program from 51 to 39 students but also reduced ILS admissions, a tendency also seen at Osgoode's doctorate. The expansion of enrollments at the JD level is somewhat misleading because numbers remained low. Registrations increased from three to 13, and the program has little internationalized over time. Considering that, UBC Law School has generally been apart from the university's internationalization process.

We can see from the charts the general tendency of growth in the population of international students at those faculties, despite the number of the uOttawa and McGill during the pandemic. Using the numbers of 2019 as a reference, the enrollment at the uOttawa's Faculty of Law increased by 20.2% and 43.8% at McGill compared to 2010. Still, that growth is way below the growth rates at universities, except for York and UdeM law faculties. We can also see that international law student enrollment is growing faster in graduate than undergraduate law programs, except for UofT and UBC

law faculties. Those tendencies do not necessarily match with the trends at the respective universities, indicating that internationalization at law faculties is relatively independent of the universities.

Figure 37: Growth Rates of International Student Enrollment per University, 2010 to 2019

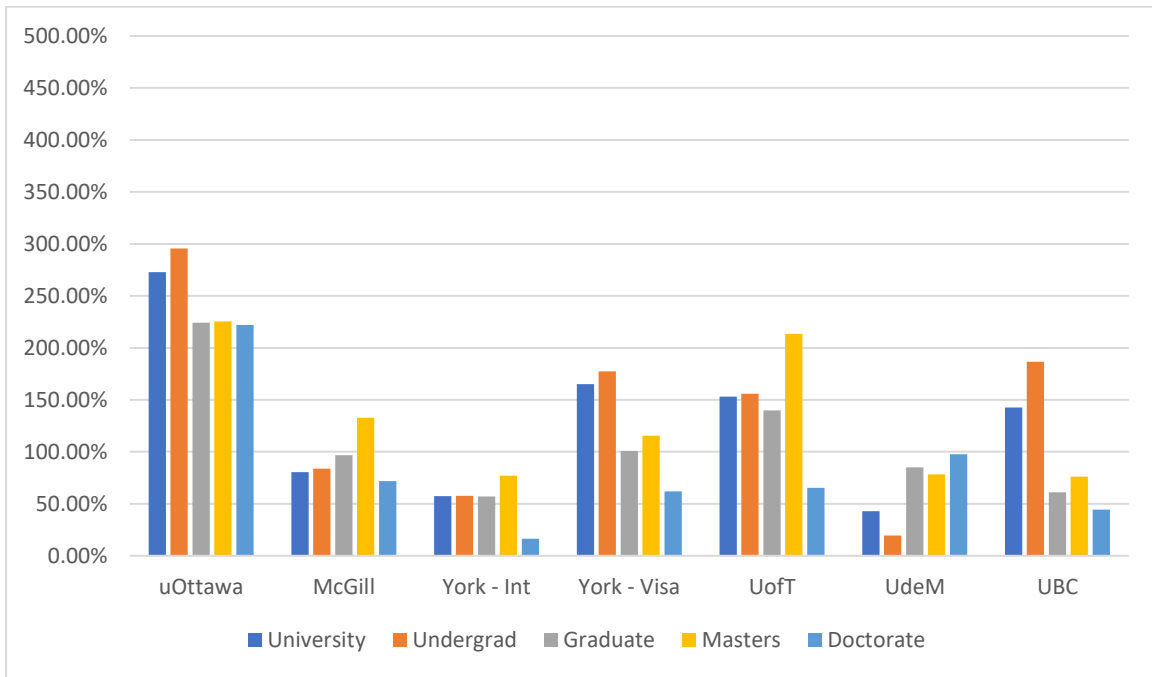
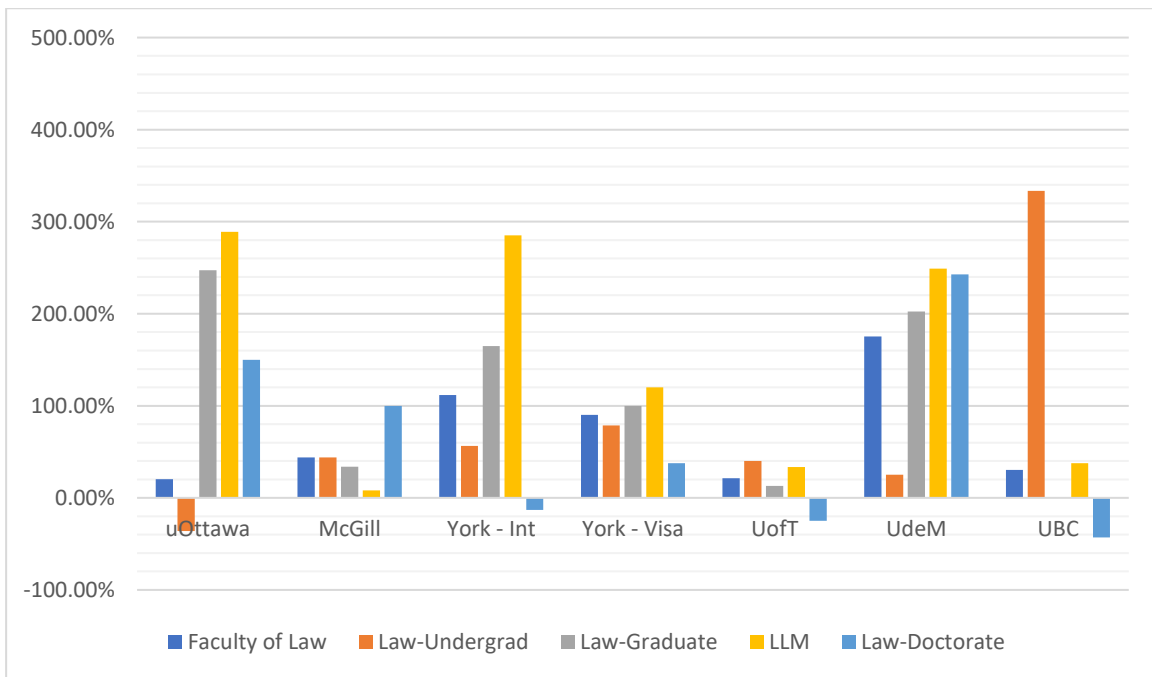


Figure 38: Growth Rates of International Student Enrollment per Faculty of Law, 2010 to 2019



#### 4.9 Undergraduate vs. Graduate Studies

Figure 39: Distribution of International Students per University, 2010-2020

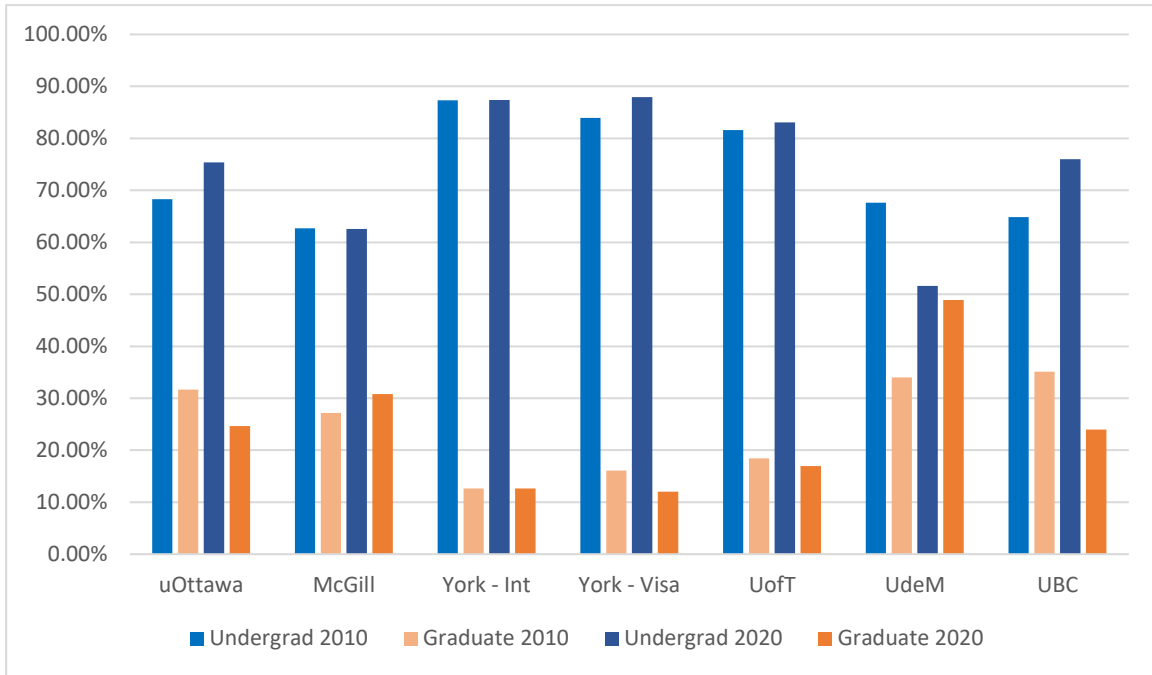
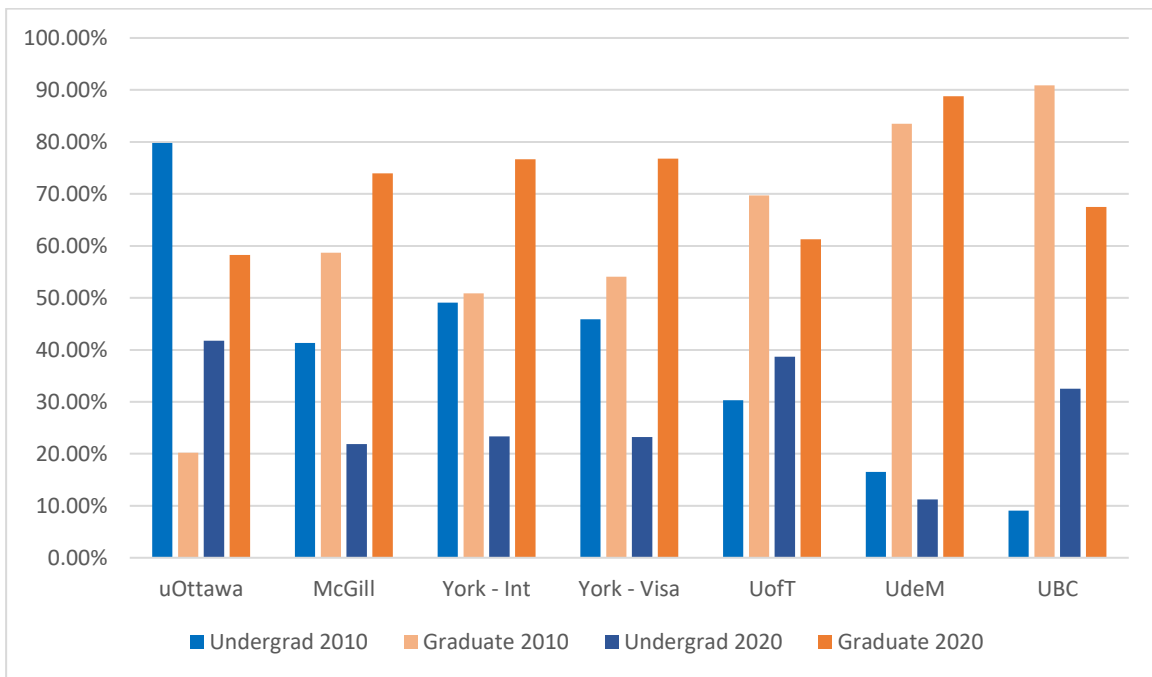


Figure 40: Distribution of International Law Students per Faculty of Law, 2010-2020



Another relevant way to portray changes in enrollments is to assess the distribution of international students between the undergraduate and graduate programs at universities and law faculties to identify where international students are most enrolled. Once again, I compare such a distribution in 2010 and 2020 to see whether and how it changed over the period.

At the universities, it is clear that most international students enroll in undergraduate programs. At McGill, York and UofT, the distribution in 2020 is similar to 2010, and York and UofT are the universities that profit the most from undergraduate enrollments. uOttawa and UBC increased the proportion of international undergraduate students. The UdeM is the only one with significant growth in the proportion of international graduate students.

The scenario is different at the law faculties, where the profile of enrollments changed toward graduate studies. Except for the UofT and the UBC, graduate programs registered more international law students in 2020 than in 2010. We must highlight the change in the profile of international law students at uOttawa and Osgoode, where the distribution drastically shifted from undergraduate to graduate programs. In 2010, 20.2% of the international population attended graduate programs in law at uOttawa, 58.7% at McGill, 50.9% at Osgood Hall, 69.7% at UofT, 83.5% at UdeM, and 90.9% at UBC. In 2020, these proportions increased to 58.2% at uOttawa, 73.9% at McGill, 76.6% at Osgoode Hall, and 88.7% at UdeM. Conversely, it dropped to 61.3% at UofT and 67.5% at UBC.

#### 4.10 The Impact of the Pandemic

Figure 41: Growth Rates of International Student Enrollment per University, 2019 to 2020

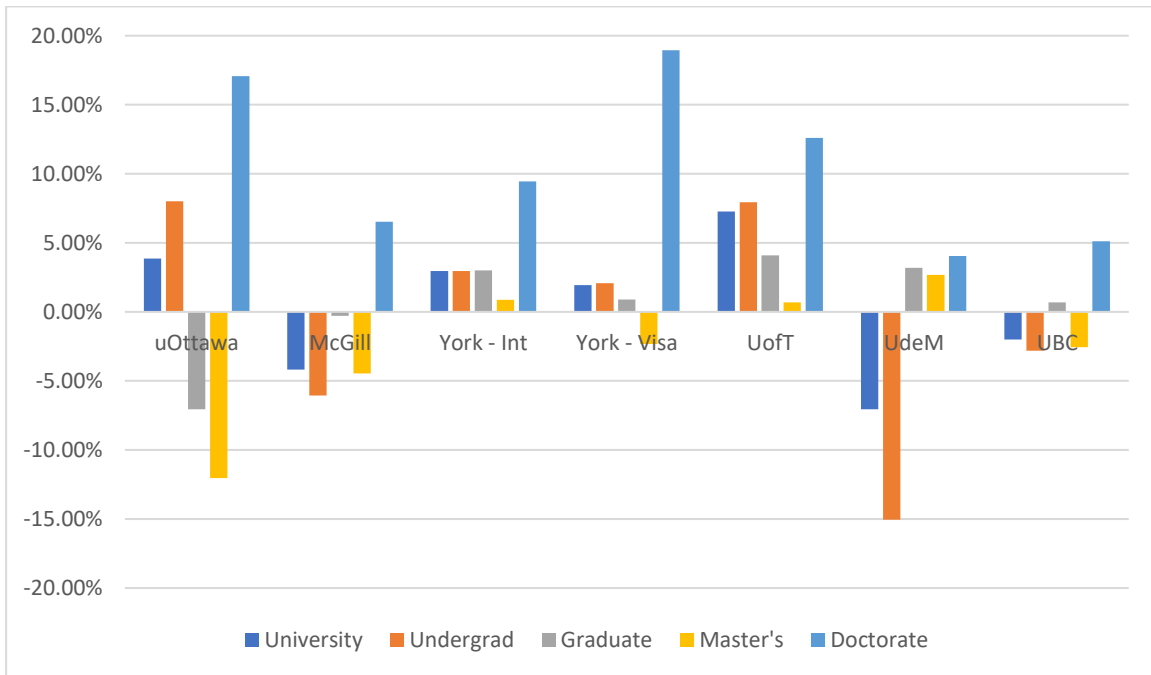
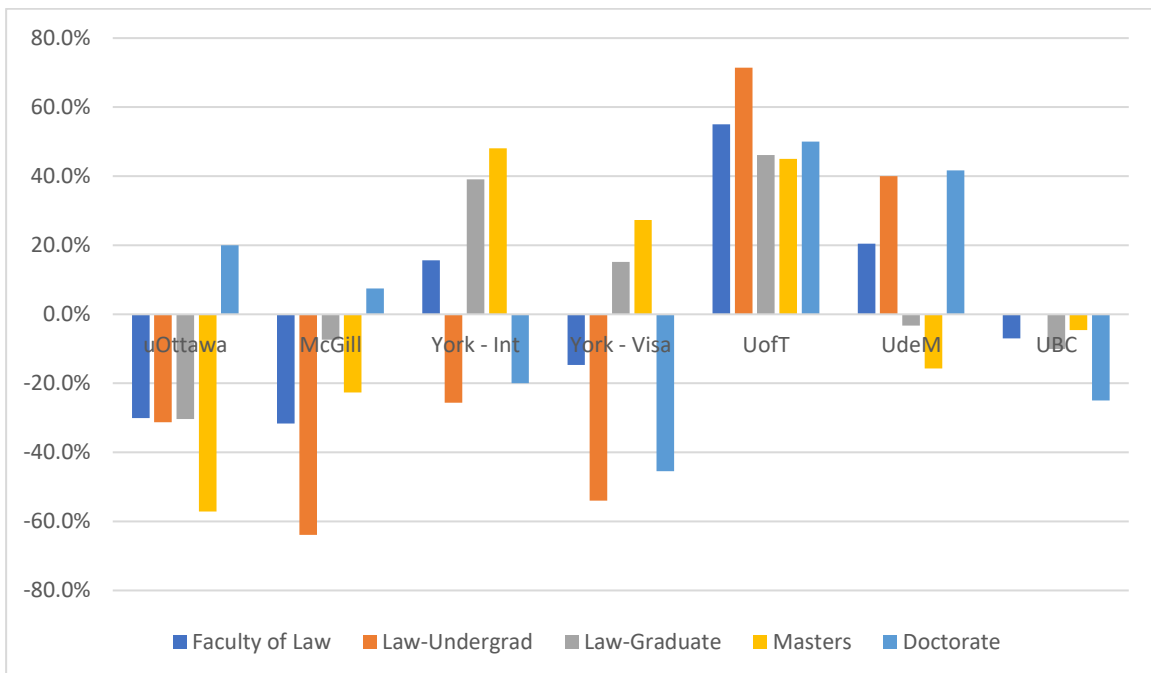


Figure 42: Growth Rates of International Law Student Enrollment per Faculty of Law, 2010 to 2019



In order to read these charts correctly, we must keep in mind that they follow different scales. Variations concerning the universities range from minus 15% to 20%, while they range from minus 60% to around 80% at law faculties. That difference per se reveals the impact of the pandemic in the two environments.

That said, doctoral programs at the university level were more resilient when considering the growth rates during the pandemic, especially at the University of Ottawa, York U. and the University of Toronto, where IS enrollment grew consistently. Master's programs were affected the most at three out of the six universities, uOttawa, York, and UofT. Undergraduate programs suffered the most at McGill, UBC and UdeM, the university most affected considering the first cycle. uOttawa was also profoundly impacted, mainly in master's programs. UBC and McGill had a loss of IS in all programs except the doctorate. UofT was the university with the most resilient programs, with all of them gaining students. That also happened at York U. but to a lesser extent.

Considering the law faculties, except for Osgoode and Peter A. Allard (UBC), the resilience of doctoral programs was replicated. The uOttawa Faculty of Law saw a profound loss of students in all programs but the doctorate. That loss can also be seen at McGill. However, the loss was more pronounced in LLM programs at uOttawa and the BCL/JD program at McGill. At Osgoode, LLM programs saw a consistent growth rate while enrollment decreased at the JD and doctoral programs, contradicting the university's behaviour. The pandemic did seem to have impacted the UofT Faculty of Law, which had a growth rate superior to 40% in all programs, with emphasis on the JD, where ILS increased by 71.4%. ILS growth rates at the UofT Faculty of Law were significantly higher than at the university. The UdeM Faculty of Law presented a behaviour opposite to the university, with the baccalauréat growing 40% for ILS, while the number in the LLM was reduced by 15.7%. The

doctorate program also increased the ILS enrollment by 41.7%. At Peter A. Allard, the JD program remained stable, while LLM programs reproduced the losses at the master's level at the university.

In general, the pandemic affected the enrolments of international students at law faculties much harder than at universities as a whole. That is due to the smaller number of ILS compared to the university. So, minor variations cause a more drastic impact on law faculties' growth rates. Therefore, faculties are much more vulnerable to external problems than universities, indicating a more volatile dependency on international students, mainly for their graduate programs.

We can also notice that visa law students at Osgoode were more impacted than international students, leading to a decline in undergraduate and doctoral program enrollment. Conversely, visa student enrollment at the university's doctoral programs increased significantly during the pandemic, declining only in master's programs. That reflects a considerable difference between the role of visa students at the university and Osgoode Hall.

#### 4.11 Professional LLMs vs. Research LLMs

In the last sections, I portrayed master's programs as a single entity in order to compare them with undergraduate and doctoral programs. However, LLM programs are diverse in their goals and academic requirements, with a notorious division between professional and academic streams at some law faculties. It is fair to assume that that division implies the more substantial operation of professionalism or academicism as driving forces. Thus, professional LLMs have fewer academic requirements and are primarily course-based programs.

They are often associated with training for practice in a specialized legal field and training lawyers with experience in a foreign jurisdiction to practice in Canada, which is of high interest to comprehend the internationalization of law faculties. The charts will show the total number of students enrolled so it is possible to identify the programs' growth over time. It is also easy to see international students' enrollment and proportion in the program. By doing so, we can make several comparisons related to professionalism, academicism, and internationalization of the student population.

Based on available data, in this section, we will compare the participation of international students in professional and academic LLMs at Osgoode, UBC, and UofT, and zoom in on the professional programs aimed at training foreign lawyers to practice in Canada at Osgoode Hall (the Professional LLM in Canadian Common Law – LLM/CCL), Peter A. Allard School of Law (the Master of Laws Common Law – LLM CL, which is the only professional LLM at UBC), and the Global Professional Master of Laws Program – GPLLM at UofT, which was design for meeting the National Committee of Accreditation criteria to practice in Canada.

Figure 43: Professional LLMs at Osgoode Hall Faculty of Law, York University

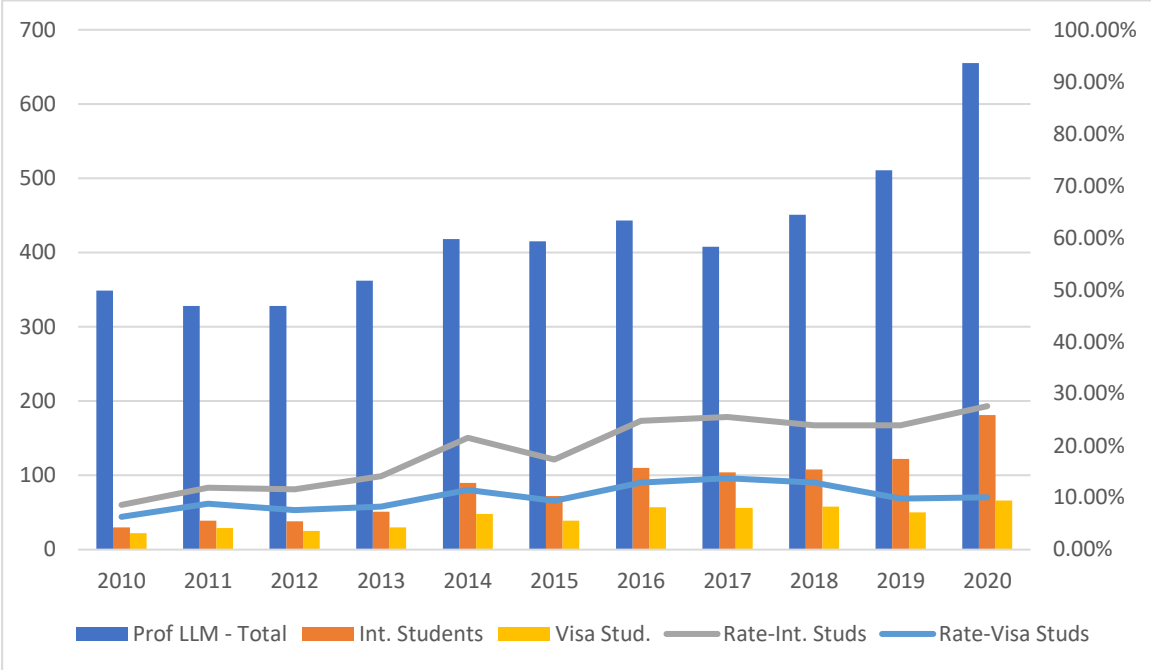


Figure 44: LLM Research at Osgoode Hall Faculty of Law, York University

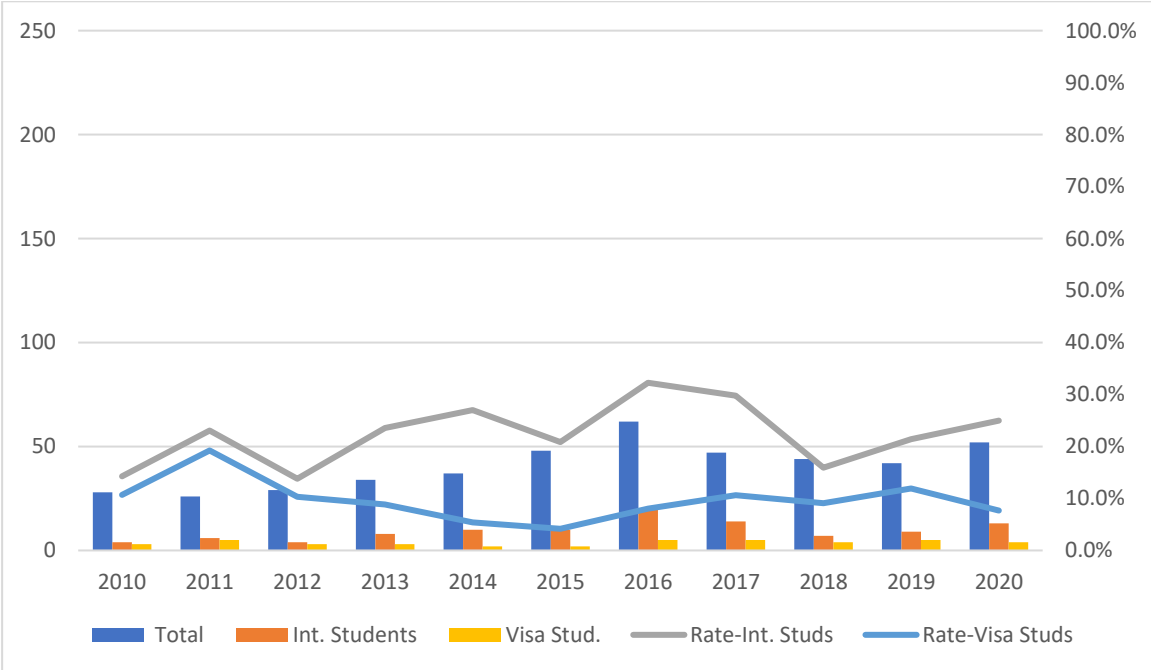
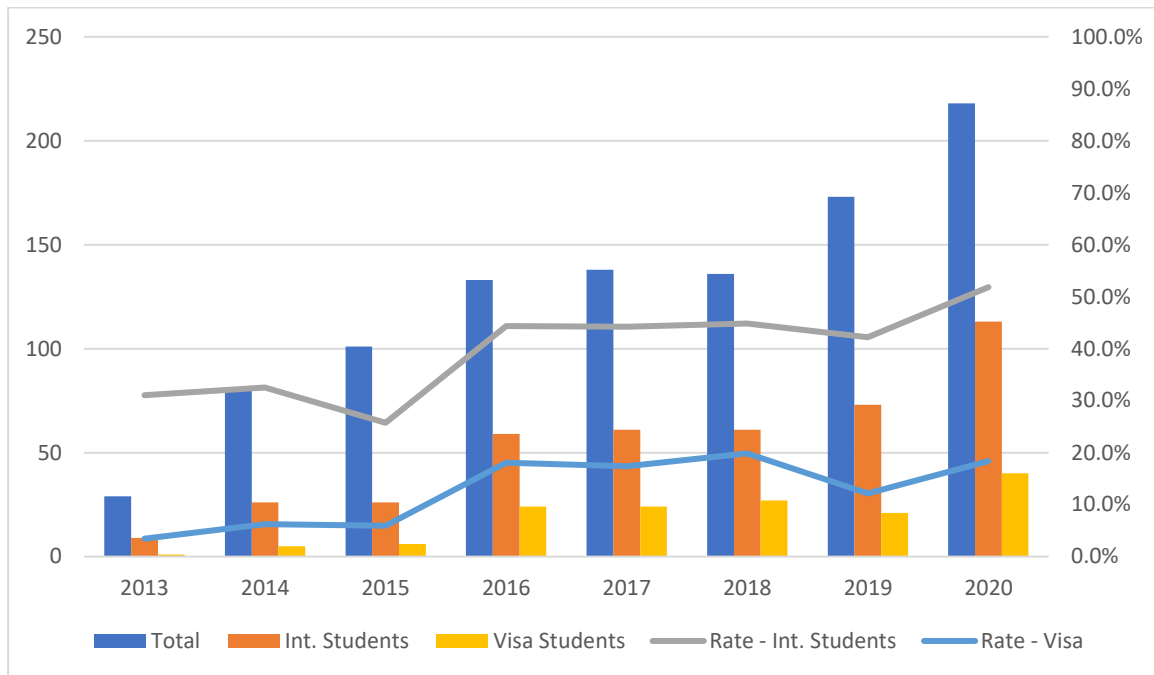


Figure 45: LLM CCM at Osgoode Hall Faculty of Law, York University



At Osgoode, professional LLMs have enrolled many more students since 2010, with 349 students, compared to only 28 in the LLM research, so professional LLMs have been larger programs than the LLM research, at least since then. That difference in size is reflected in the ILS enrollment, with 30 ILS enrolled in professional LLMs against four in the research stream. Still, the LLM research was more internationalized at that point (14.3%) than the sum of the professional LLM programs (8.6%).

Over the decade, professional LLMs expanded considerably, reaching 655 enrolled students with an 87.7% growth rate. The LLM research increased overall enrollments in a similar proportion, 85.7%, enrolling 52 students in 2020. The main difference, however, can be seen in the international population. ILS registered in professional LLMs increased from 30 in 2010 to 181 in 2020, indicating a staggering 503.3% growth rate. On the other hand, the ILS population in the LLM research increased by 225% from 4 to 13, and by 2020, both had similar internationalization rates, 27.6% and

25%, respectively. That means that professional LLMS, not being much internationalized in 2010, overtook the LLM research on that front. That has been happening since 2018, therefore, before the pandemic.

Nevertheless, a better comparison must consider the LLM Canadian Common Law in relation to the LLM research because both are single LLM programs. In that case, 2013 is the initial year of reference, when we have the first data about the LLM/CCM. In its first year, the LLM/CCM program had fewer students but was already more internationalized than the LLM research. Of 29 students, nine were international, representing 31% of the population. At the same time, the LLM research enrolled 34 students, with eight being international; therefore, an internationalization rate of 23.5%.

Then, the program grew tremendously and fast. In only one year, enrollments increased by 175.9% to 80 students. The program grew by around 30% per year in 2015 and 2016, with the same happening in 2019 and 2020 relative to the previous year. In 2020, the program counted 218 students, representing a tremendous growth rate of 651.7% compared to 2013. The international student population increased even faster. From nine ILS in 2013, it jumped to 26 in 2014, thus increasing by 188.9% in a year. It remained stable in 2015 but rose again by 126,9% in 2016. Finally, in 2020, the international population reached 113 ILS, indicating a tremendous growth rate of 1,255.6% compared to 2013. The internationalization rate in 2020 was 51.8%, the highest at Osgoode Hall and double that of the LLM research. In conclusion, the LLM/CCM program grew faster, with more international students and higher internationalization rates than the LLM research, indicating professionalism as the leading force of the internationalization process.

Figure 46: Professional LLMs at Peter A. Allard School of Law, University of British Columbia

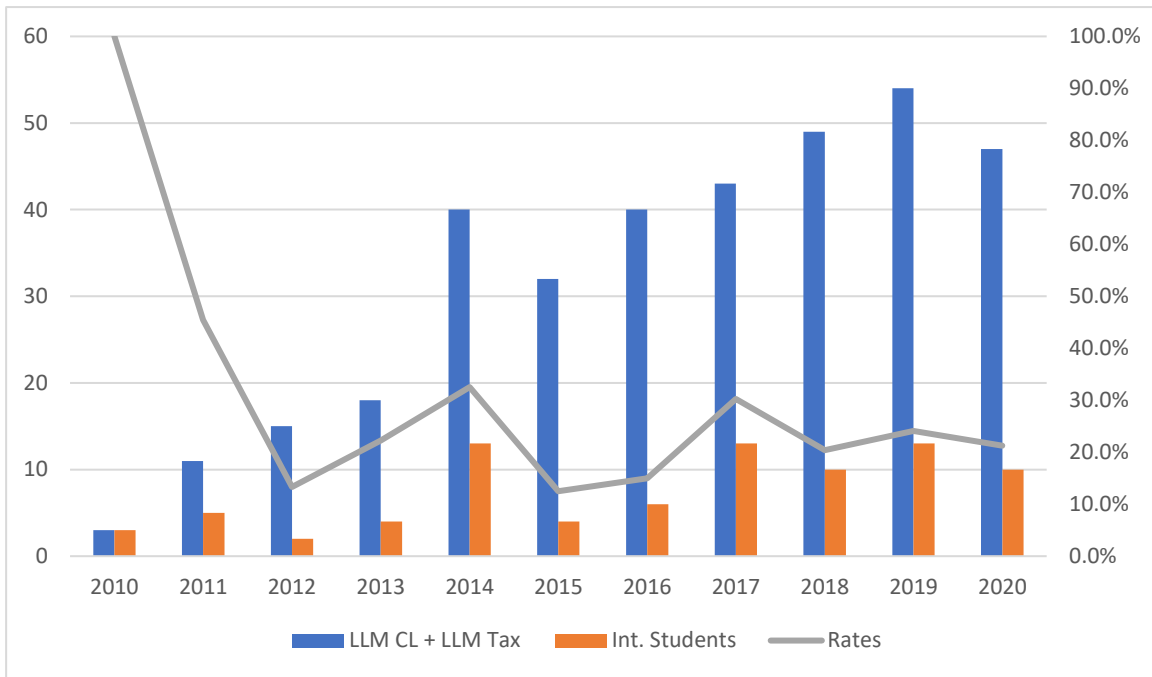


Figure 47: LLM Research at Peter A. Allard School of Law, University of British Columbia

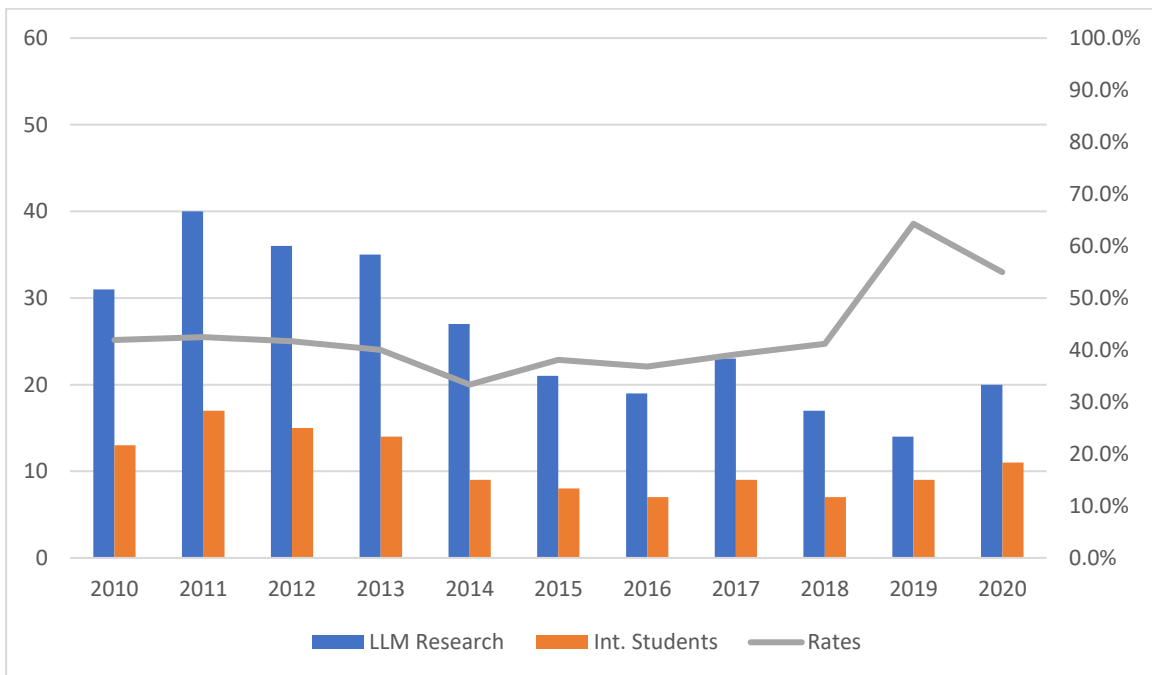
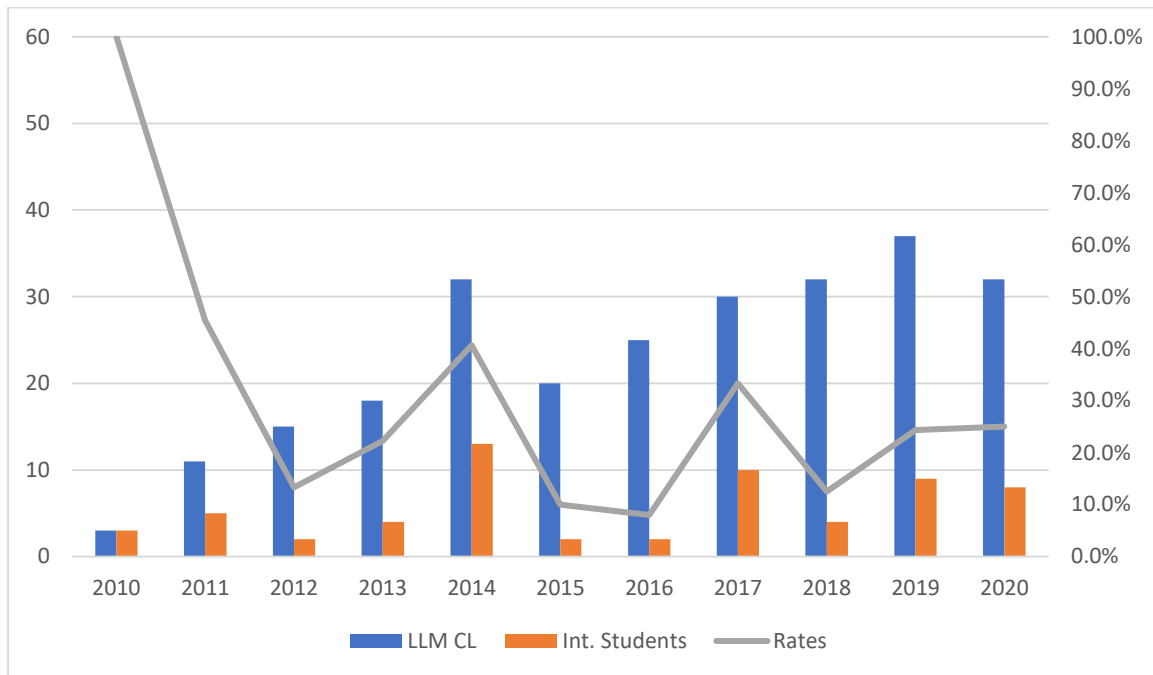


Figure 48: LLM Common Law at Peter A. Allard School of Law, University of British Columbia



At Peter A. Allard School of Law, professional LLMs comprise the LLM Common Law (LLM CL), a course-based program devoted to training foreign lawyers and non-common law-trained Canadian lawyers and designed to meet the NCA requirements, and the Masters of Laws in Taxation program, a course-based program aimed at training lawyers and accountants in tax law. The Master of Laws (LLM) is a research master’s program that requires a full thesis (100 to 120 pages or 25,000 to 30,000 words) to be completed. Repeating what I did previously, I will compare the data about the two professional LLMs combined with the LLM research, then compare it with the LLM CL. Since the Master’s in Taxation had its first enrollments registered in 2014, from 2010 to 2013, the chart showing the professional LLMs reproduces the numbers of the LLM CL.

In 2010, the LLM CL enrolled only three international students, but by 2013, it had registered 18 students, four of whom were international. In 2014, the program had grown by 77.8% compared to the previous year, with 32 students. 13 were international, indicating a rate of 225% growth. In its

first year, 2014, the LLM in Taxation registered eight domestic and no international students. That year had the highest internationalization rate in the LLM CL, at 40.6%, and the professional programs combined, at 32.5%. Enrollment in the professional LLMs constantly increased until 2019, when 54 students were registered. Still, only 13 were international, indicating a rate of 24.1%. That means that professional program growth was not based on international student enrollment. These programs reduced by 12.9% in 2020, losing four domestic and three international students.

Conversely, the LLM research shrank. The peak was reached in 2011 when there were 40 students, and 17 of them were international, representing 42.5%. In 2019, when the professional stream had peaked, the program was at its lowest, with only 14 enrollments and nine internationals. The fact that international enrollments did not drop at similar rates compared to total enrollments boosted the internationalization rate, which reached 64.3% that year. Unlike the professional stream, in 2020, the program increased student numbers to 20, with eleven international students representing 55% of the program. Over time, the program was reduced by 35.4%. The opposite tendencies demonstrated in the charts highlight the research stream lost students to the professional stream. Still, it does not reflect a considerable change in the distribution of international students, which is more resilient than the domestic student population.

The data in Figure 4.11.6 indicates that the LLM CL program had not expanded based on international enrollment, with the internationalization rate varying widely over time. Compared to the LLM research, the LLM CL is less internationalized, which contrasts with the situation at Osgoode. These findings are at odds with the goal of training international lawyers to practice in Canada. Most students may be Canadians trained in other jurisdictions wanting to get accredited to practice in Canada.

Figure 49: GPLLM at the Faculty of Law, University of Toronto

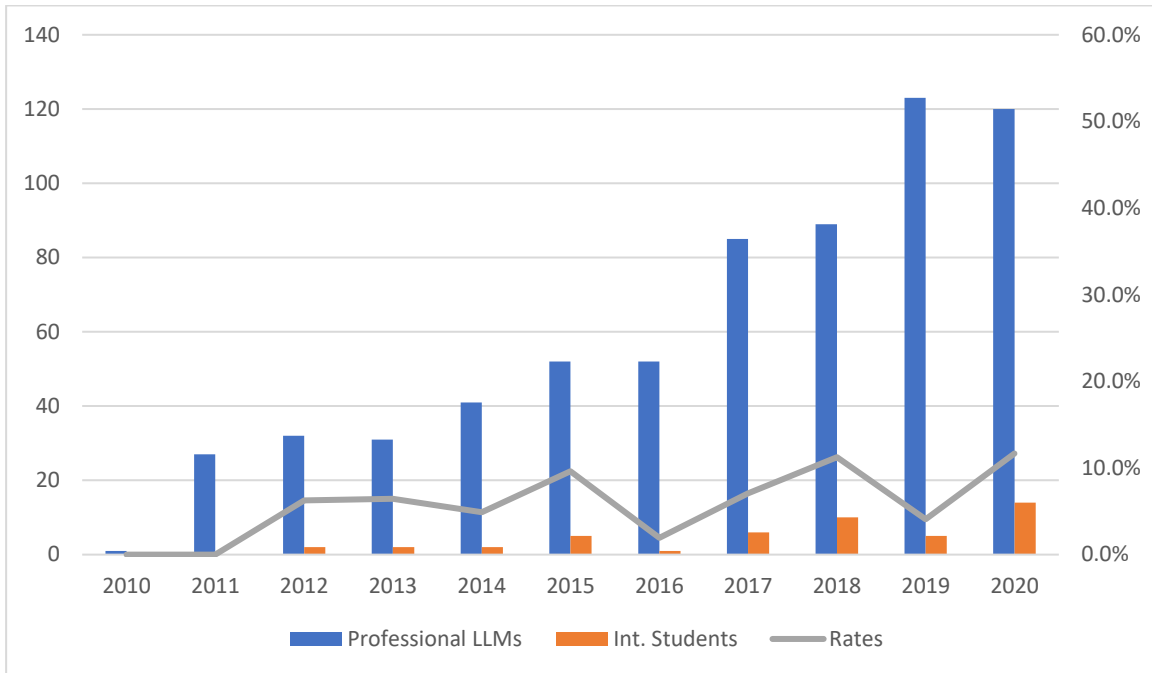
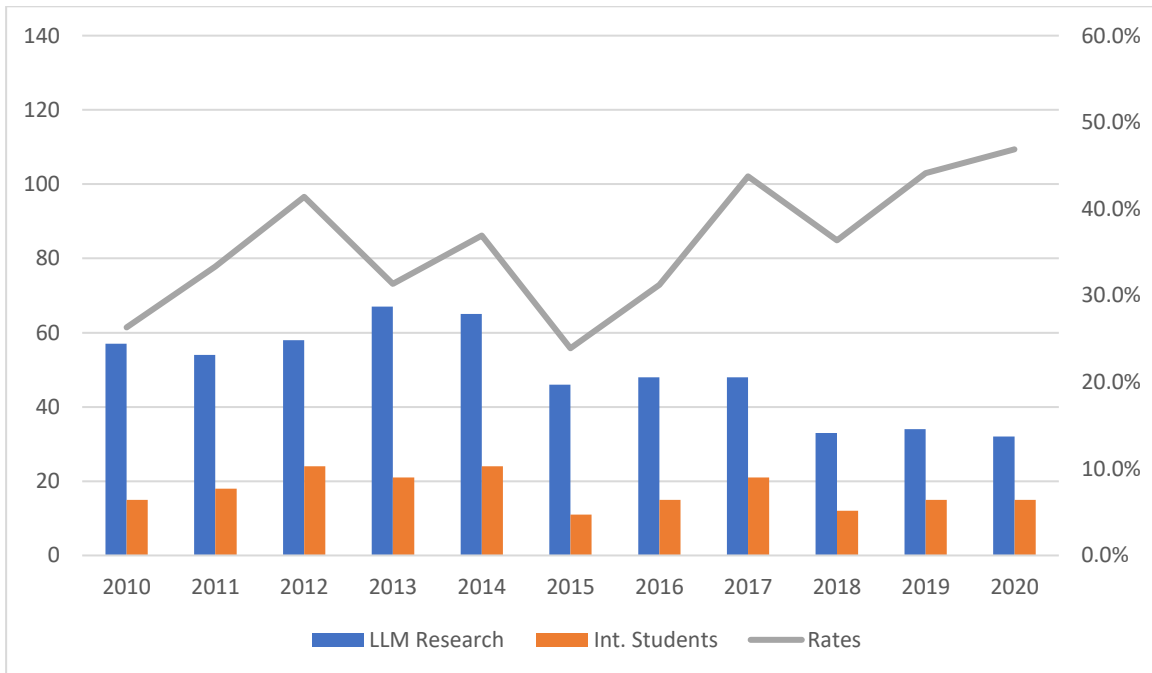


Figure 50: LLM Research at the Faculty of Law, University of Toronto



Like the Peter A. Allard Schools of Law, the University of Toronto's Faculty of Law has two main streams. The research stream comprises the Master of Laws (LLM), in which students pursue the thesis-intensive format with a longer thesis or a shorter thesis option. Yet, in the LLM program, students can follow a coursework-only format, where no dissertation or research paper is required. Under the umbrella of the research stream, there is also the Master of Studies in Law program (MSL), aimed at training scholars from other disciplines in how to incorporate law in their research. In that case, the program seeks applicants with doctoral degrees. Figure 4.11.8 shows the combined data from the LLM with the two formats and the MSL program.

Alternatively, the Global Professional Master of Laws (GPLLM) is a course-based program with three concentrations: Business Law, Innovation, Law and Technology, and Canadian Law in a Global Context, the latter targeting foreign lawyers and civil law practitioners who want to get accreditation in the common law by the NCA requirements. Due to the lack of data related to each concentration, Figure 4.11.7 portrays the evolution of enrollments in the program as a whole.

The GPLLM reproduces the traits of the LLM CL at UBC, with significant growth over the decade and an oscillating internationalization rate. In 2011, when the program gained relevance, there were 27 students, all domestic. The program grew consistently until 2017 when a faster expansion occurred. That year, 85 students were registered, with only six being international, representing a modest 7% rate. Compared to 2016, the program increased by 63.4%. The student population then jumped to 123 in 2019, reflecting a 38.2% growth compared to 2018. At the same time, international students dropped from 10 in 2018 to 5 in 2019, meaning that the program's expansion was not based on international students. Finally, in 2020, despite the pandemic, international enrollment rose to 14 as the overall student population slightly decreased to 120, producing the highest internationalization

rate at 11.7%. Therefore, the GPLLM was not as internationalized as expected, although the Canadian Law in a Global Context concentration could still have a higher internationalization rate.

Meanwhile, the LLM program got smaller despite the relative resilience of international student enrollment, which increased the internationalization rate to high levels. In 2010, the program had 57 students, 15 internationals. After peaking at 67 students in 2013 and 24 international students in 2012 and 2014, the student population declined after 2015. By 2020, there were 32 students, with 15 international students representing 46.9% of the population. Therefore, enrollments were reduced by 43.8% while international students remained stable.

## **5 Internationalization through the Eyes of Professors**

This chapter describes and analyzes the information obtained by interviewing law professors. It is subdivided into six sections encompassing the main topics that arose during those conversations. The first section unveils how professors look at internationalization, which includes teaching and research experiences that set different aspects and goals for this broad phenomenon. Moreover, professors tend to navigate internationalization symbolically through the lenses of internationalism and transnationalism, prompting them to refer to those frameworks in their research. Internationalization is also critically inquired from the perspective of Indigenous law professors, who challenge the relevance of the issue for the struggles of Indigenous nationhood. Still, internationalization plays a role in the circulation of Indigenous perspectives on the law. Finally, the first section ends with a description of how administrators perceive internationalization. Thus, by the end of the section, the reader will better understand the multiple meanings and how they operate in different roles law professors assume.

The second section focuses on institutional responses to internationalization and organizational approaches. That translates into questioning whether there are long-term strategies and how the relationship between administrators and professors may unfold into a governance dynamic that fills the gaps in the short term. Thus, top-down and bottom-up approaches are examples of more unstable arrangements than a concerted institutional alignment around basic principles. Given that well-established strategies are rare, we try to answer why in one of the subsections. Materially, a refined strategy should count on methods of evaluation. In the last subsection, we investigate if there is any evaluation and if it is done formally at the institutional level or even informally among professors.

Issues surrounding international students are explored in the third section, with attention to the problems of cultural diversity and adaptation, funding, and supervision. International students may face challenges in navigating the Canadian academic culture in relation to “critical thinking,” taking initiative, grasping the supervisor’s expectations, and plagiarism. Additionally, income, employability, and immigration materially frame their success in the program, as well as the availability of professors and their relationship with them. On the one hand, professors need additional skills to integrate international students; on the other, the shortage of professors to deal with increasing numbers of international students causes a series of problems.

The fourth section addresses how internationalization promotes or hinders the circulation of knowledge. Doctoral programs are viewed as the most favourable space for that, but an individualist research culture and a lack of connection with other programs may isolate students from that goal. Admissions can also reproduce elitism when international students are scrutinized based on the reputation of their previous law school, hindering the access of students from various social classes or minorities. Elitism often leads to uniformity among a globalized elite, preventing the rise of diversity. We also see that knowledge may circulate differently depending on the language and the international connection set in line with English- or French-speaking institutions.

We dedicated the fifth section to the transsystemic program and how professors evaluate its success in responding to various aspects of internationalization. The program created significant innovation in legal pedagogy by incorporating a plurality of legal traditions into the curriculum. Still, graduate students have had limited experience with transsystemia, and it is unclear how international students, potentially trained in those various traditions, are included in the program. Another question is whether transsystemia has been capable of translating its pedagogical innovations into a coherent research method capable of producing transsystemic legal knowledge.

In the last section, we dive into the economic aspects of internationalization. The first subsection discusses how law faculties' business models have increasingly used the LLM as a flagship due to its ever-reducing research components. The program seems to be transitioning from a preparatory step to a research career to a professionally-driven program, represented by the rise of course-based LLMs. That has indicated indeterminacy and lacks a solid pedagogical purpose, a void quickly occupied by an economic ambition fueled by international students. Decreasing public funding in Canada and developing countries has shaped the future of internationalization by deepening global inequalities. It has created incentives for searching for quality education abroad, while Canada's defunded institutions are portrayed as sellers of such services, profiting from the savings of developing countries' middle classes. However, there is a need to contextualize the economic opportunities within provincial educational and language policies. English- and French-speaking institutions will often compete in different realms. French-speaking institutions will compete with European institutions, where tuition is lower, for a smaller parcel of international students. That is a scenario that English-based programs will avoid. Finally, the student side of the equation is also analyzed by looking at the demand for international higher education.

As noticed in the literature review chapter, internationalization may have different meanings depending on who is talking. Often, this plurality of meanings represents several players enforcing conflicting approaches. The tensions around internationalization can be understood according to a struggle between an academic model, centred on research and knowledge as the mission of an educational endeavour, and a professional model, where learning is instrumental to other institutional goals—training professionals or securing the financial well-being of a higher education institution.

We know that the relationship between both models is dynamic. Sometimes, they collaborate as higher education institutions must be financially healthy to perform their academic duties. The

inverse is also true since valuable knowledge from research may be the main ingredient in promoting an educational business directed at training professionals. Thus, many social forces navigate internationalization, searching for opportunities to boost their interests according to a complex, dialectical embroilment. Those forces usually oppose each other but are also complementary.

Law professors' discourse provides a rich account of this multifaceted field where plurality is the norm. My analysis aims to present a somewhat coherent overview of this complexity by focusing on the main themes where contradictions and evident and underlying conflicts emerge. Those conflicts are entrenched in social situations where actors assume positionalities. We can identify social forces and processes at play by analyzing many social situations. Thus, in Chapter 6, I will examine the information presented in Chapter 5 to study the social situations, forces and processes that emanate from professors' discourses.

Since my analysis attempts to produce knowledge from fragments of reality expressed in each interview, reading the quotations is crucial to understanding the narratives I constructed and challenging their validity. More information on how the interviews were conducted can be found in Chapter 2, especially in section 2.4.

## 5.1 What is Internationalization?

In the last chapter, I displayed the data about the international student population and measured internationalization based on the proportion of those students in the overall student population, thus noticing how internationalized a student population was in a given year and using growth rates to calculate the corresponding internationalization process. In that sense, internationalization can be regarded as a process of changing the profile of the student population due to the increasing presence

of international students in a given higher education institution. Those terms were used with a specific purpose in a quantitative analysis context. However, that is far from how the literature defines internationalization.

The most popular definition was established by Jane Knight, who sees it as "the process of integrating an international, intercultural, or global dimension into the purpose, functions, or delivery of post-secondary education."<sup>278</sup> Curiously, her definition does not fully embrace the student population dimension as I did.

The effort to provide a working definition responds to the profusion of meanings and the prevailing confusion around the concept.<sup>279</sup> Law professors mainly refer voluntarily to two of the many current meanings catalogued by Knight: internationalization as international mobility, linkages, partnership, and projects, including for research purposes; and as internationalizing the curriculum by adding a global dimension to learning practices. It requires a direct question for them to refer to the economic side of it. In that sense, one participant also provided a general working definition of internationalization from which we can use. According to him, internationalization is an

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<sup>278</sup> The concept first appeared at Jane Knight, "Updated Definition of Internationalization" (2015) 33 IHE , online: <<https://ejournals.bc.edu/index.php/ihe/article/view/7391>>, and was further explained and confronted to other working definitions at Jane Knight, "Internationalization of Higher Education Concepts Rationales and Framework" (2021) 1:1 *Revista REDALINT* 65.

<sup>279</sup> Jane Knight acknowledges that situation when she writes: "The term internationalization is used in a myriad of ways as it means different things to different people. While it is encouraging to see increased attention to and use of "internationalization," there is often a great deal of confusion about what it means. For some people, it means a series of international activities such as academic mobility for students and teachers; international linkages, partnerships, and projects; new international academic programs and research initiatives. For others it means delivering education to other countries using a variety of face-to-face and distance techniques and such as international branch campuses, franchises or international joint universities. To many, it means including an international, intercultural, and/or global dimension in the curriculum and teaching learning process. Still others see international development projects or, alternatively, the increasing emphasis on commercial crossborder education as internationalization. More recently the focus has been on international collaborative learning online using virtual classrooms and internships. Finally, it is being used to describe regional education hubs, zones, hotspots, education cities, knowledge villages." We can see that that the internationalization of the student population is not even referred to as one of the current concepts in use in the field. It implies the invisibility of a fundamental dimension and the interests of international students on behalf of institutional interested of universities and professional interests of professors. See Jane Knight, "Internationalization of Higher Education Concepts Rationales and Framework," *supra* note 278 at 67.

initiative by the actor . . . in terms of policy and investment to seek to change the order manifestation of the university as a larger project, scholarly project, an academic entity, to purposefully broaden and deepen its connections, its engagements with the world beyond the institution of the university, beyond the geography of its spatial location . . . so to, as the word implies, add numerically linkages but also enrich them, make them thicker, more vibrant, more dynamic and, by doing so creating an opportunity for the university . . . as an institution and its members' community to connect and themselves navigate increasingly complex interdependent world . . . but also to be recipients . . . of currents and developments beyond the university.<sup>280</sup>

Therefore, internationalization predicates a spirit of institutional openness to diversity, which is necessary to keep the university up to its mission in a globalized world. It includes outreach and reception elements that unfold into cooperation and a general disposition to valorize what is unfamiliar, which can be addressed to either individual professors or the law faculty. It also has quantitative and qualitative dimensions in terms of the amount and productivity of established connections. It is transversal to teaching, research, and administrative responsibilities.

Such a comprehensive definition contrasts with another that centres on internationalization as an intellectual endeavour, i.e., the internationalization of ideas,<sup>281</sup> which entails a more individualistic engagement reflected materially in individualized research. Yet, that also corresponds to the internationalization of law and legal thought, as the circulation of legal concepts and experiences has traditionally accomplished it, depending on individual connections and interests. That seems to be the main, and I would say traditional, understanding of internationalization among law professors.

Thus, the meaning attributed by professors will often transit between these two extremes, sometimes pending towards a holistic, institutional perspective that recognizes that the faculty of law

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<sup>280</sup> Interview of Professor A (February 2022).

<sup>281</sup> “So, for me, internationalization is actually the internationalization of ideas. It is not about how many international students are in your faculty or how many profs are from different parts of the world but it is about engaging with ideas emerging from different parts of the world and ideas, and scholarship and writing on different parts of the world. . . . And that one could do by exposing yourself to different parts of the world and welcoming ideas and people from different part of the world.” Interview of Professor BY (April 2022).

is immersed in a broader university culture that should enforce strategic management of fruitful connections, and sometimes pending to a view restricted to the increasing value of getting in contact with international experiences and ideas that can impact legal subjects. Although opposing each other and being able to operate independently, those are complementary perspectives in so much as the institutional perspective has depended on existing individual connections to enforce a strategy. The same is valid for the individualistic view, which often relies on institutional support to develop further.

For some senior professors, a continuous change in the law faculty toward the internationalization of ideas made international issues and international law central to all aspects of legal education.<sup>282</sup> One defined it as a stealthy process by which professors started as domestic lawyers and gradually became international scholars simply by following the main tendencies of their disciplines.<sup>283</sup> This shift can be identified by how legal research developed over time. It became

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<sup>282</sup> “When I was a student . . . International human law, the course was given to a handful of students. We were nine, I think. It was considered entirely marginal. It was considered Mickey Mouse courses. That’s how we called them because, you know, you expected to have an A whatever you did. It was considered a course that was completely useless for bar exams and for professional advancements. Public international law was not mandatory. We were a bit more numerous at the course but not that many. And it was considered also useless. There was nothing at the bar exam on public international law. Even less on international human rights law. . . . So international law was simply not part of the picture. International law was not mentioned in any of the courses except public international law. You had courses of private international law that were of interest to lawyers because of obvious legal issues of, I don’t know, succession or contracts that were across boundaries, but this was business mostly or family law. It was not about international law. It was about which national law would apply. That was mostly the issue. . . . It is completely different now. International law is part of all aspects of law. There is international business law, international environmental law, international human rights law, international migration law, you know, international energy law, international law is everywhere. I don’t think there’s any course that does not mention international law.” Interview of Professor P (August 2022).

<sup>283</sup> “Stealth. I take my career as an example. When I started teaching the subject . . . it was a purely domestic affair. I mean, when I look at what we were teaching when I started in and when I look at what we are doing now, hum, it’s a completely different subject. It has the same title more or less but what we do is quite different, and I think this was a stealthy process. There wasn’t a moment when people said ‘ah, we have to internationalize’. In my case, [my discipline] became globalized as labour markets and globalization became a dominant phenomenon. My discipline was drag along, swept up in the stream of events that were happening everywhere. So, my interest in [international aspects of my discipline] . . . just happened without a conscious decision. It was what was going on, what was interesting, what you had to do if you were interested in the future of the discipline. And I think that’s happened this idea of stealth. It’s everywhere in terms of the internationalization of the faculties. You know, the internationalization of the people in our faculty happened quietly over time out of necessity, hum, due to events beyond our control. We were simply the recipients of the movements taking place elsewhere. We didn’t decide to internationalize. The world decided to internationalize,

necessary to ask legal questions in a transnational way and build relationships between researchers and learners located in different parts of the world to expand our understanding of the law<sup>284</sup> due to the changes globalization caused in the internal and global affairs of countries like Canada.

That leads us to another way professors may look at internationalization: through the dichotomy between teaching and research. Research is the field in which they feel free to play a significant role in shaping internationalization directly, while they are limited by institutional decisions when addressing internationalization in teaching. Curriculum, courses, and subjects are chosen by the faculty, taking into account perceived institutional needs. Indeed, professors can introduce international references and content to existing courses, but some are more susceptible to adopting international content than others. It depends on how the law is attached to the local jurisdiction regarding a given legal topic. So, an environmental law course is more likely to be internationalized than a sentencing course. It means that further curriculum internationalization depends on a strong push from the administration to change how traditionally local law is taught.<sup>285</sup>

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and we were happy to go along for the ride. . . . People at my age started off as domestic lawyers than gradually became internationalized.” Interview of Professor N (May 2022).

<sup>284</sup> “It means address questions of law . . . in a transnational way, taking into account various geographical experiences and the experience of different jurisdictions to feed a more rich understanding of legal phenomena and how it manifests itself in different jurisdictions, societies and so on. So, for me, internationalization is very relational. I see internationalization as building bridges so that students and researchers are able to learn from each other and expand their horizons and understanding of law through a dialogue with people who experience law differently because they are differently situated. It doesn’t mean necessarily giving just curriculum that is internationalized and so on. It really means for me to develop relationships between learners between researchers that are located in different places in the world in order to all together expand our understanding of law.” Interview of Professor C (February 2022).

<sup>285</sup> “The way I see internationalization goes mostly in two directions. . . . There is a component regarding education itself meaning the training of undergraduate and graduate students . . . and the other one being research. So research in something that in a way tend to be easier in the sense that professors are individual researchers. We have our own research agendas and connections and so on. We do not necessarily face any kind of constraint in terms of internationalizing the research or not. It is a matter of choice. . . . It doesn’t implicate connecting this to a specific course or requirements, anything like that. I would say that the legal education part is a little bit more complex. It doesn’t mean that it doesn’t exist but it is not solely based on an individual choice ‘oh, I decided to do an international course’. It doesn’t work like that in terms of the course I choose. . . . The decision is taken by the faculty in accordance with you in a way. It is not something exclusively yours. It is something that takes into consideration organizational constraints I would say. . . . In this sense, internationalizing legal education is not only my decision. It comes of a certain level of decision from the faculty.” Interview of Professor Q (January 2022).

A third aspect I noticed from listening to how professors define internationalization is that the diversification of the student body and faculty is often perceived as less relevant than exchange or research practices for internationalization. With the exception of international professors, professors do not seem to impose much of the idea that the link between population diversification and the promotion of new ideas is necessary and inseparable. Possibly, that is due to the rift between research, where the exchange of ideas is supposed to happen, and teaching, where the reproduction of a professional training model limits the potential for circulating new ideas.

For professors with non-Canadian backgrounds, however, faculty diversification gains relevance. They raise the problem of tokenism, criticizing that the mere diversification of the faculty body does not necessarily lead to an actual internationalization of the faculty. It raises the question of identity and how to measure the representativeness of a community.<sup>286</sup> These professors may feel instrumentalized in signalling the openness of a given law school to a certain global community when it may actually translate into an isolated position within the school, with no articulated institutional policy of inclusion and diversification.

Quite often, professors refer to internationalization as their participation in international forums to present their research to a broader public, to be invited to teach in Summer schools or to give a speech in a foreign country (usually, the United States is not considered a foreign country for such a purpose), to be a member of an international organization or network of scholars, international

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<sup>286</sup> “I am afraid that in many cases the idea is just to... you just fall into the new thing and you have to adapt completely to the new thing, which in the long term might frustrate the purpose of hiring international scholars, which should not be only to basically have some token personnel that you can show that you are international, but also to add their experience and expertise, having a weight in the way the law school works.” Interview of Professor Y (March 2022).

“I think we need to find rigorous metrics to measure inclusion, right? Because there’s often this sense, and I am not accusing anybody in particular, but there’s a way in which it’s understandable, that change is gonna, you know, be unsettling, but at the moment you have one African in a Canadian law faculty there’s a sense of you can now calm down, we have checked that box, and it’s time to add a Latino and then we are gonna look at a LGBT, you know, one, one, one. It’s not articulated at fully. . . We need more rigorous metrics to measure. What does inclusion mean and does membership only matter?” Interview of Professor G (April 2022).

teaching forums, be referees of foreign scientific journals, be an activist and engage in global issues<sup>287</sup> or to conduct fieldwork in other countries. These activities primarily involve networking with international peers and are supposed to impact metrics of academic work such as publications, organization, and participation in conferences, which are perceived requirements to be a global leader and a Canadian chair.<sup>288</sup>

A participant who occupied an administrative position points out the historical transition from a minimalist institutional view that used to correlate internationalization to the exchange of students towards the internationalization of the curriculum more comprehensively.<sup>289</sup> It includes incorporating

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<sup>287</sup> "I know that most people treat it as just getting more students from the globe at the university. But for me I think that internationalization, in my capacity as [administrative position] also relates to promoting and afford our academics [so] they engage in academic networks for research. For myself as a researcher it is engaging globally on issues, being a part of global institutions that support academia as for example in the area of . . . , working with colleague on international legal problems. I've been part of a group of global jurists who brought together to think about how to make...what kind of input to give to support the . . . process that is going on at the United Nations, because there has been a big lack of political will from the part of Western states to support that process. I am also a member of the . . . association, which is an academic association to create opportunities for networking of people who work in the area of . . . and to exchange scholarship. I am a member of boards of journals from other countries . . . . Our world is so globally connected that the internationalization has so many areas. The other part that has been established in . . . scholarship is a teaching forum where globally scholars share information about . . . . It is a place where you give your, you share your syllabus or syllabi in . . . courses and you get access to anybody else's and there's also an ongoing dialogue with people who talk about different teaching issues and announce events and things related to . . . . So it's another way of networking." Interview of Professor U (April 2022).

<sup>288</sup> "If you aspire to be a university research chair or Canada research chair, you need to be a global leader. You need to have an international reputation to do that." *Ibid.*

<sup>289</sup> "For a long time, there was a minimalist view that internationalization was just, you know, sending students on exchanges, right? That they would go spend a semester in Paris or Sidney or Buenos Aires and that was internationalization, which to me was never enough. It's great that we have these exchanges but it's still a minority of students who do that. So of course you have to bring it also to the university. It's not just send or welcoming students here. Although it enriches the education of the student, it's clearly not enough. So I think you have to internationalize the curriculum as well. If you do international law, it's international by nature but we know now that almost every area of law has a comparative or international dimension that can be usefully brought to bear. . . . I think we can further in our applied teaching. So I am involved in two different initiatives that have an international component. One is an international moot competition, where we take the students to another country every year . . . and they compete with students from all over the world. . . . That's a great experience for students to already interact with people with different legal culture, advocacy styles, different frames of reference. To me it is very valuable. . . . We do... like legal aid clinic for international beneficiaries. . . . Students have a mentor. This year the mentor was a lawyer in Paris who used to work for the Canadian government and the beneficiaries were in [an African country]. So the students interacted with them three times during the semester and produce their report conclusions at the end. Again, very good training for the students because it's more real life. They work with real questions from real people and had a feeling that they could make a difference. These students didn't have interactions before with Western-African countries or partners, so it was interesting also for them just to have those interactions." Interview of Professor T (March 2022).

transnational legal topics and global issues into teaching and the internationalization of applied education, such as international moot competitions, lab clinics and other initiatives to bring JD/LLB students from different countries together to practice professional legal skills. The curriculum's internationalization also includes the development of LLM concentrations with or for international students, where they are encouraged to meet with professionals in the field.

### *5.1.1 Internationalism, Transnationalism, and Indigenous Peoples*

An unusual practice of internationalization, mentioned only by one professor, is working closely with foreign judiciary members for training purposes or promoting international cooperation for legal reform and human rights, i.e., according to an international development agenda.<sup>290</sup> That is relatively marginal because it requires links to foreign legal profession fields that are more likely to be maintained by legal practitioners than academics. Due to the increasing specialization of Canadian legal academia, professors tend to distance themselves from the practice, and those who do not are usually immersed in local legal affairs.

Such an internationalization practice is also a reminiscence from the Law and Development mindset, which has been shifted from pushing legal reforms into a scholarly interest to understand the correlation between law and economics or law and society in Third World countries. That may

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Another analytical definition will unpack internationalization into the mobility aspect, including the exchange of faculty and students, the curriculum aspect, and the institutional networking aspect. (Interview of Professor CX (April 2022)).

<sup>290</sup> “I worked the question of the training of [foreign] judges. How interesting! They came to the university . . . to see other things than just the training of judges by judges, but also people who have a bit of an outsider vision. That was very interesting that this [court] president had. Although the idea was to have a good image, it was interesting to see that he wanted to go beyond the limited field of training judges by judges. Which is important. If you are dealing with a new human right, a new interpretation of human rights and international norms, it is possible that a traditional judge cannot help you or little. So I started coordinating that. It was difficult for the university because people still don't understand much that face-to-face, face-to-face training, you need to do it in the language of the person who is listening to it.” Interview of Professor AZ (March 2022).

explain why there is not much interest in Canadian law faculties for such an agenda since it may be seen as part of an old framework they are trying to overcome in favour of pushing a solid commitment to research. Another challenge for this kind of initiative is finding economic sustainability. Training foreign judges does not match the frequency and volume of attracting international students to regular programs and does not indicate academic excellence in the global legal education market.

Pushing for legal reforms and training foreign judges may also clash with another view of internationalization, one that means “whatever law schools do to move away from traditional law, which is domestic.”<sup>291</sup> In this sense, internationalization implies a modernizing approach towards transnational issues that question the legitimacy of traditional legal practice centred in the state. Despite crossing the border to another jurisdiction, fostering legal reforms and training judges is another way to keep the state in the centre, although introducing transnational subjects to foreign lawyers and judges otherwise firmly attached to their domestic law may well internationalize the legal practice in foreign countries.

That tension represents the clash between internationalism and transnationalism regarding how we relate to law beyond our borders. While the former engages in an exchange of local traditions, norms and legal approaches that may lead to some incorporation of foreign elements into one’s legal

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<sup>291</sup> Interview of Professor M (May 2022). Also, “[Internationalization] is one way in which law is not neatly bounded. . . . So lawyers tend to approach law jurisdictionally. We think about law in terms of its reach or the reach of its institutions alternatively, but in fact this is a misguided and unrepresentative way of thinking about law. So law does not fit neatly into jurisdictional boxes. So there is both a horizontal and vertical intermingling of legal orders. And so for internationalization speaks to, I suppose, what may be described as the vertical intermingling of legal orders. I use this kind of vertical and horizontal metaphors with a great deal of salt, just to distinguish them. So, you know, the ideal is that legal orders are constantly influencing each other and influencing behaviors that do not align with either the normative reach of applicable law or the executive reach of institutions. And it speaks to law as much more than a set of rules attempting to orient behavior, but as a resource in significance that gives meaning to various facets of life. So, for example, you may have Indigenous concepts embodied in the UN Declaration of Rights of Indigenous People may influence how we think about environmental protection in France, a county with no Indigenous population. Why? Because these are ideas that circulate and that are seized upon as a kind of revealing aspects of, you know, life. And they can be embraced and influential even in ways that have no relation to the substantive law in more formalistic way.” Interview of Professor F (March 2022).

context, the latter seeks to engage in shared issues. Instead of incorporating alien contributions to local problems, transnationalism seeks shared solutions for common problems. However, such a clash is more abstract than concrete since Canadian law faculties are primarily concerned with transnationalism when engaging with globalization, with little interest in pushing its law into other jurisdictions.<sup>292</sup>

The reluctance to work with foreign judges, remarkably from the Global South, also expresses prejudice and the reproduction of stereotypes towards the justice system of those countries, seen as corrupt.<sup>293</sup> Since law schools are still very concerned with the values and impressions that reverberate in the professional field, it is still possible that the disengagement of Canadian law faculties with this aspect of internationalization reflects prejudices that colonize the minds of Canadian judges and scholars. Thus, Canadian law faculties seem to have rejected internationalism as establishing international relations with the professional legal field of foreign countries.

Also, due to the existence of two nations (Quebec and the rest of Canada) and legal systems and the realization that Canadian law is international in its own character due to colonial and Indigenous encounters, internationalism and transnationalism became an unavoidable experience in

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<sup>292</sup> As a compromise, it is also possible to envisage an alternative internationalism where Canadian law professors take advantage of the non-missionary, horizontal, transnationalist approach to compete for influence over Third World countries as Canada is seen as a more legitimate partner for developing legal solutions to their local problems.

<sup>293</sup> “It is a problem of my country. Colleagues, some, from my country thinking that in [the South] they do not have the same capacity. They are not going to say it openly, but many comments in the meetings...they are very lazy countries, they are never on time, etc., all the stereotypes. The problem is that we are not participating in this, and we know that it is possible to do so if there is dynamism on our part and we do not have this dynamism. . . . It is one of the main reasons why Canada is not a member of the Inter-American Convention on Human Rights. I tell you very honestly. . . I was in . . . the training of judges . . . responsible for the university . . . , I was with a head of [a Canadian judge-led private organization], . . . [and she said] 'do you think that we Canadian judges are going to apply decisions made by judges from corrupt countries?' . . . It is interesting to see that there is clearly this bias.” Interview of Professor AZ (March 2022).

Canada's internal affairs, which explains that internationalization of law has been expressed through "an axis between transnationalism and internationalism"<sup>294</sup> within the country.

Although Indigenous legal traditions have recently been included as another fundamental element for de-localizing law and learning (for instance, in the transsystemic curriculum), the one Indigenous scholar I had the opportunity to interview clearly expressed that internationalization is far from being part of Indigenous people's or scholars' agenda. Yet, due to similar colonial history, when international or comparative research about Indigenous peoples or Indigenous law is done, it seems to be limited to North American jurisdictions and sometimes Australia and New Zealand. Indigenous traditions from Latin America, for instance, are often excluded. Moreover, the presence of Indigenous peoples in law schools has not been put under the umbrella of internationalization, and we have no notice of a policy of enrolling Indigenous students from abroad in Canadian law schools, which would partially defeat the economic purpose of internationalization.

Thus, issues of sovereignty, reconciliation, constitutionalism, and ongoing colonial legal practices and policies within Canadian national and provincial jurisdictions are understandably the primary concerns of Indigenous scholars, overshadowing the potential engagement in

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<sup>294</sup> "One could take the question of internationalization as being a question of the demographics of the student body. Or one could take it as questions about the impact of scholarship and student outcomes. Or one could take it as a mentality about how law is imagined and taught. And there is of course the axis between transnationalism and internationalism, and that it self is another source of ambiguity that is complicated. And finally of course there is the intrinsically character of Canadian law being inherently international in its own character. So, to my mind in one sense, the failure to think the Canadian law as intrinsically international in some character because of colonial-Indigenous historical encounters is just the failure to appreciate the character the Canadian law. And I think this is a failure that has characterize Canadian legal education for most of its history but less so today. . . . I am probably least interested in the question of just pure demographic, national diversity, though I think that is important to Canada and to the shape of the legal profession. I am probably most interested in the question about how we think about the traveling of ideas and influences and positioning legal orders as varieties of ways of experimenting with organizing societies as being a richer area of inquiry for me." Interview of Professor K (May 2022).

internationalization.<sup>295</sup> Still, more research is necessary to investigate the role of Indigenous law, scholars, and students in current internationalization practices and in envisioning alternative models.

### *5.1.2 Internationalization, according to Administrators*

A closer look into how administrators engage with internationalization shows that the primary focus for professors working as vice-deans is increasing international relations and collaboration by establishing agreements with foreign higher education institutions for exchange programs, co-tutelle, and joint degrees, whereas professors are more concerned with the exchange of ideas.<sup>296</sup> Notwithstanding, a participant remarked that such opposition could also be seen when comparing the different roles played by the central administration of the university and the faculty of law in this regard:

at the central administration level, internationalization is viewed as negotiating and signing agreements and relationships between institutions for the circulation and interaction among people from these institutions. The discussion therefore is which institutions, what kind of agreement and institutional image to provide added value. . . . At the faculty level, we discuss more what type of relationship do we have with these institutions, building organic relationships among people.<sup>297</sup>

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<sup>295</sup> “I am an Indigenous scholar worried about Indigenous-settler relations in Canada. I don’t actually give any thought to situations in the United States or Australia, New Zealand, or Israel, or South America. The historical circumstances of Indigenous peoples here are specific and so the jurisdictional, juristic and constitutional historical framework is exclusively Canadian and North American, and I don’t give any thought to internationalization whatsoever. [...] We should think this politics as domestic nations, sure, which is to say that they’re sovereign entities, but presumably I think about them within a framework of an existing state, that is Canada, and I don’t really have any trouble with anyone who thinks otherwise.” Interview of Professor J (May 2022)..

<sup>296</sup> “In the administrative perspective, internationalization means bringing international students and sending our students abroad. Meanwhile, the academic perspective is to the incorporate the voices from different places in the world.” Interview of Professor H (April 2022).

<sup>297</sup> Interview of Professor C (February 2022).

Thus, vice deans are supposed to travel abroad in an effort to build trustworthy relationships to open a new market,<sup>298</sup> with the underlying concern of developing an actual and functioning project. That is because they are aware that many agreements become a mere formality. Some see this role as key for supporting cultural exchanges and encouraging professors to establish research networks. Another way to put it is to “build connections between the institution and people in different jurisdictions and connecting students with the law in different jurisdictions.”<sup>299</sup>

However, internationalization has a more straightforward meaning for administrators in charge of professional LLM programs. For the most extensive professional LLM in Canada, it entails diversifying the student body as much as possible but focusing on a specific niche of internationally trained lawyers with some practice experience. For that, administrators work to increase awareness of the program worldwide and internationalize the curriculum. They must be attuned to new trends and demands from lawyers to adapt their courses constantly. International faculty who teach in those courses are also essential attractions, so visiting global professors who can teach online courses or co-teach alongside local professors are often invited to participate.

While curricular changes in academic graduate programs take more time to unfold due to slower shifts in academic canons, professional programs undergo constant changes because they follow current trends in the professional legal market.<sup>300</sup> In this situation, internationalization has a

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<sup>298</sup> “I went to China many times to build relationships and joint degrees Canadian LLM with Chinese LLM. . . . Climate with China deteriorated and it didn’t take off”. Interview of Professor T (March 2022)

<sup>299</sup> Interview of Professor O (June 2022).

<sup>300</sup> “[We are] a revenue generation unit, so we need to think carefully about... decisions we make about our program will at minimum be self-sustaining, but ultimately it is meant to generate income. So it is meant to bring more revenue than we spend. So that does mean that there are, you know, certainly some very specific types of programs and courses we choose not to run because we simply don’t see that there would be enough interest to make those self-sustaining, unless we can offset that with other things. And it also means that we need to be forward looking and sort of responsive to changes that are happening in the market. So we are quite often updating curriculum and introducing new options to be able to attract interest to our program. Unlike, I think, a lot of other graduate programs, where they remain quite static over time.” Interview of Program Manager S (February 2022).

more precise and immediate purpose. It is a central piece of a business strategy centred on offering international experience to international students. Developing multicultural competencies alongside legal expertise is branded as a service in such an environment. These skills translate into having a practical notion of how the legal professional field operates daily, rather than just being able to manipulate the black letter law. In the case of programs dedicated to training foreign lawyers to practice in Canada, it facilitated the quick adaptation to the actual Canadian legal culture.<sup>301</sup>

Therefore, it looks like the general perception is that administrators are primarily concerned with establishing formal connections and the perceived institutional value added to the university or faculty, whereas professors aim at making these connections meaningful with regard to knowledge exchange and the circulation of ideas. However, such opposition is also reproduced when administrators at law faculties compare their roles with university administrators. So, the further we go into the management scale, the further it gets concerning the quality of established connections.

Furthermore, it seems that while administrators, in general, are more focused on securing connections that promote student exchange, managers of professional LL.Ms have a more comprehensive notion that encompasses constant effort to scan market and student demand, promote curricular adaptation accordingly, and invite professors to act as a beacon to attract students.

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<sup>301</sup> “The internationalization of law school education comprises... I mean, what I try to be focused on increasingly is not only teaching the black letter law, because the basic goal is to achieve competency in practicing law, but there’s something also known as cultural competency, which I think is very very important. So, we’ve tried to emphasize that. . . . So, in terms of internationalization, I would say, for our program, it’s more being geared towards how we can make them more successful when [international students] are working and practicing law in Canada. Because they are bringing a wealth of experience from their backgrounds here and so it not only involves teaching them the substance of it but how to...the day-to-day operations in Canadian legal culture. So, I think of internationalization in a sort of a holistic approach.” Interview of Professor R (January 2022).

## 5.2 Institutional Strategies

In the interviews, beyond the meaning professors attributed to internationalization, they were asked about the meaning their institutions attributed to it. For this purpose, they were questioned about whether there was a clear policy and what that would be. In other words, what institutional approach was put in place by law faculties? Not enough, they were questioned if internationalization was a topic that professors discuss formally or informally during committee meetings, board meetings, or in the hallway—which aimed to measure the capillarity of the issue among faculty members. The existence of metrics or any evaluation process was the subject of a follow-up question that would indicate how formalized internationalization was in the governance of the faculty.

If one is interested in organizational development and tackling the questions from a managerial perspective, framing the answers according to each faculty of law would be highly relevant. Law schools have various corporate cultures, histories, and mandates, so institutional responses to internationalization are immersed in their specific contexts. However, for ethical reasons, I avoided naming law schools and referring to their specificities in an effort to fix my attention on the general aspects that characterized social situations emerging from professors' narratives with respect to contradictions that added complexity to the issue.

### *5.2.1 Top-down Approach*

That said, one first diagnosis is that “within the university, the faculty of law is the most backward in [the internationalization] agenda; part of the reason is that the nature of legal education is still very

localized,”<sup>302</sup> especially in the undergraduate program. In that sphere, internationalization is not an actual rationale behind institutional behaviour, but it is eventually brought about amidst strategic planning discussions, yet with no specific meaning. At those moments, it may encompass the international presence of the faculty through research, recruiting international students, international collaboration, joint programs or even the internationalization of the curriculum.<sup>303</sup>

Due to the lack of a clear strategy, the ability to push internationalization policies forward largely depends on the deans' and vice deans' personalities and commitment to the agenda,<sup>304</sup> making it volatile and susceptible to dropbacks during changes in those positions. Ultimately, their visions of

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<sup>302</sup> “Within the university, the faculty of law is the most backward in [the internationalization] agenda; part of the reason is that the nature of legal education is still very localized. If you have a degree from the University of . . . you cannot practice in [another country]. So the idea that you can bring students abroad for the JD has very little currency. But you see a very different phenomenon at the law faculty in graduate courses. Here is where I think the idea of internationalization, and here I came back to my reasoning, internationalization in the administrative sense ‘let’s attract international students’ started much earlier and has been more prominent in the faculty.” Interview of Professor H (April 2022).

<sup>303</sup> “Going back to the internationalization project, well, we had discussions in the past, like strategic exercises to see how we should develop the faculty in five years or ten years. Well, in the past...internationalization appears as something to be considered as strategic from the point of view of the faculty, and I would say quite clearly that it was not clear what internationalization means. It could be anything. It could be more present internationally in terms of research, which I would say, like, a good part of professors are already doing that because we had a lot of people doing interdisciplinary research, empirical research, that usually comes with some level of internationalization, at least when presenting results. . . . But also people dealing with topics related to international law, human rights, that have this more global forum. So, when we had this discussion, this was one of the things ‘well, we’re already doing this.’ Sometimes it would be framed as collaborations and even joint programs, which is quite odd and interesting at least from my perspective. I am originally from . . . , but when we’re going to see these collaborations it is like ‘oh, we have a joint JD program with the University of Michigan or University of Washington; it’s almost like summer courses.’ Students from one faculty can stay one summer or a year at these universities and get the credits from. You know, it’s an internationalization within, I would say. You are not necessarily framing internationalization by comparative approach or contrast but where I can go and see everything I am seeing here and use the same credits because they are having the same discussions they are going to have here. So, this appears as internationalization. Others will say ‘well, we should internationalize the curriculum, get more, you know, anticolonial, postcolonial stuff, see how experience, the struggles we’re facing here being also discussed abroad.’ There’s also this perspective.” Interview of Professor Q (January 2022).

<sup>304</sup> “Well, it depends on the moment, the orientation, the change of the channel team. So, I would say it fluctuates in fact according to the orientation, the priorities in relation to the international.” Interview of Professor X (February 2022).

“From what I have observed this far, it’s been... it seems very ad hoc. I don’t know, maybe there was a more considered effort, but it seems that it’s always dependent on who is in the administration and what their interests are.” Interview of Professor L (16 May 2022).

“I think definitely the faculty has responsibility to make it strategic, objective and to make sure it does get, hum...I don’t like the concept of trickle-down in economics, but I think here it works because if you just let profs individually do whatever they think I don’t think it’s enough. But, of course, it depends on the leadership, I guess, and the priorities, and not every dean has the same priority.” Interview of Professor T (March 2022).

internationalization are the ones enforced, suggesting a top-down approach. Consequently, professors who have occupied administrative positions tend to have a clearer idea about the institution's role. More often, those professors know better the steps the institution has taken in that direction,<sup>305</sup> but that does not mean they claim an established, long-lasting policy exists.

The lack of discussions in other formal or informal faculty meetings described by most participants reinforces the idea that much of the concern with internationalization and the discussions are concentrated in faculty administration.<sup>306</sup> Whenever that is not the case, discussions are restricted to a certain group of interested professors, while many do not oppose it but do not get involved.<sup>307</sup>

One case sheds light on the role of administrators. In a faculty where professors seem to have mobilized to establish a formal internationalization strategy, such an initiative has halted before the lack of support by the administration,<sup>308</sup> reinforcing the perception that the personal commitment of the dean is critical for the success of the enterprise.

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<sup>305</sup> “It’s both increasing the number of international students but also increasing our visibility internationally. So, it’s not just about ‘ok, getting students here because they pay higher tuition’, it’s also about the exchange and what it brings about as opportunities for us. It leads also to institutional collaboration, exchanges, creating double programs, double diplomas. So this is something we work on. So, we approach universities in other countries. Mostly it’s been done with French universities, China also, to see what kind of common programs we could have, you know, our students go there, their students come here and they could get like a double degree from that.” Interview of Professor I (April 2022).

<sup>306</sup> “Internationalization is not a topic brought to discussion in a faculty meeting. It’s more for faculty and admin managing the programs.” Interview of Professor CX (April 2022).

<sup>307</sup> “So, I think that, and I can’t speak for the whole faculty, but I know that there are certain members of the faculty and certain groups of the faculty that feel that . . . should become much more of a global university. That is, it should . . . principle of internationalism in some sense, which involves bringing in faculty with different perspectives from different parts of the world, etc., etc. I don’t know how uniform that is. I don’t know that people are opposed to it necessarily but, just because the proportion has still quite heavily on Canadian faculty been the case, I don’t think it’s been seen as a threat in any way. But I think that some of the people are more involved in trying to make that happen whereas others don’t necessarily disagree, but they are just going about doing their work and they are happy to support the late candidate, etc.” Interview of Professor M (May 2022).

<sup>308</sup> “There have been some formal and informal conversations that we’ve had in our law school. . . . Our law school has a significant number of scholars who describe themselves as international law scholars, generally. So we talk about opportunities to, hum, in some way, institutionalize or at least make the group of scholars we have doing international work more entrenched in the institution. So, whether be the development of a centre, a research cluster, or whatever you want to call it. We had this type of conversation, but again I don’t know why they haven’t gotten anywhere else, but these really haven’t. So we have a few law centres at [the faculty], but none of them are purely international or transnational law in their focus. That could be due to again to the faculty’s approach to internationalization or could be just the victim of our faculty’s politics; who knows?” Interview of Professor L (16 May 2022).

Hiring international faculty has been mentioned as part of the perceived movement of law faculties,<sup>309</sup> and professors believe that an internationalized faculty contributes to internationalizing the curriculum.<sup>310</sup> Still, hiring foreign professors does not necessarily fall into a strategy for internationalizing the faculty but increasing diversity.<sup>311</sup>

Finally, it is possible to think, as claimed by many participants, that there is no clear conscious policy at all, and the administration follows steps imposed by the general trends of prestigious academic institutions, which include hiring international faculty and opening visiting positions, simply because it is impossible to be isolationist. After all, law faculties must keep up with the times to stay relevant and understand what is happening worldwide.<sup>312</sup> In this sense, internationalization is

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<sup>309</sup> “My faculty at . . . has, hum, I am one of the two, three hires in recent years of foreign nationals. Like I said, I am from . . . , so I don’t have any training Canada as such. So, I know that from the faculty point of view they’ve hired a few of us like that. And they will trust us to both teach domestic and international law. So we are not sequestered to teach only international subjects. It’s been quite integrated. In terms of the student body, I am really not sure. . . . And of course I know . . . has a large amount of, the number of post-doctoral visiting positions and other such positions and awards are often given to people from other countries.” Interview of Professor M (May 2022).

<sup>310</sup> “We do have professors who are not Canadian and do come with research experience from their home country or the other countries where they did graduate studies and tend, I would say, more . . . they do tend to teach their material in a comparative fashion, even at the law [faculty] at the JD degree. So I have a few European colleagues, I have a colleague from [a North African country] for instance that would bring that perspective in the classroom and so on. So I find that internationalization faculty may help internationalize the curriculum.” Interview of Professor C (February 2022).

<sup>311</sup> “– Do you believe that [your faculty] has a specific approach to internationalization? – No. I mean, part of it is ‘cause you get new leaders, you know, who have different views. We just have a new dean . . . So it’s hard to say. . . I couldn’t describe to you what his view on internationalization is. So I don’t think it is nearly as kind of coherent or deliberate or intentional as it might be. – Is there any discussion among faculty members about internationalization or issues related to it? – Yes. I don’t know that there’s a lot of organized discussion right now. I would say it’s more informal. Obviously, given the times we’re in, there’s a lot of discussion around diversity and increasing the diversity of our faculty, which has components of internationalization in it but it’s not, they’re not totally overlapping categories. So, I would say there’s been a lot of discussions about that, there’s been less in a kind of language of internationalization.” Interview of Professor L (May 2022).

<sup>312</sup> “Well, law schools are, you know, people see law schools as teaching people to practice law but that’s not what law schools do. . . . So, why law is so pervasive, it’s very hard to pretend that, and it has become much harder to pretend since the 80s and 90s even, that countries like Canada or any country can be isolationist. So whether or not to whatever extent you agree or indulge multilateralism or internationalization as a society, law schools should do this because it just opens up the world to its students and it allows university faculty to be open to receiving people around the world. Because places like [my faculty] provides world-class education and is very open to, compared to other places I have been, is quite open to people from other countries etc. . . . So I think why a university should internationalize is just to keep up with the times, it’s just to stay ahead for what is coming next. Because whatever is coming next is unlikely to be the kind of isolationism that Trump, you know, with these various countries around the world with the rise of nationalism is trying to become, you know, nation first, it’s not gonna work. . . . So, in order to stay relevant, in order to really understand what

an inevitable, stealthy process that occurs gradually and derives directly from the regular affairs of law schools.<sup>313</sup>

Therefore, although lacking in formality, consistency and strategy, a top-down approach to internationalization is clearly present in professors' discourses. Nevertheless, that does not prevent the existence of a bottom-up informal, individualistic, and uncoordinated approach put in place by professors in their daily affairs.<sup>314</sup>

### *5.2.2 Bottom-up Approach and Institutional Alignment*

We see that the engagement of faculty members seems to depend much on their research interests, so professors with academic interests are expected to be more active in internationalization than those purely involved in professional training.<sup>315</sup> Research-driven professors develop international networks individually, converting those networks into valuable assets for the faculty, thus operating according to an informal internationalization effort led by the individual initiative transformed into networks and collaborations. In this sense, in opposition to a more formal and somewhat limited top-

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is happening in the world, internationalization in terms of subject matter, in terms of students we attract, in terms of the faculty who teach, in terms of kinds of research and grants and conferences we attend, it's inevitable if you want to survive and hold your self up to a global standard." Interview of Professor M (May 2022).

<sup>313</sup> See footnote 283.

<sup>314</sup> "No. Internationalization is really the job of the Associate Dean and individually each professor is going to have an interest in internationalizing in the sense of wanting to promote their career internationally or in the sense of wanting some of their students to go abroad or to host other students. But often in a very personal way, it is not necessarily for the sake of the faculty. At the faculty, it's the vice-dean who takes care of that." Interview of Professor V (February 2022).

<sup>315</sup> "For professors, it varies. In law, it also depends on what they do. Some are more local professors, that's normal because it's a professional faculty, they are faculty that are very connected with other professionals and the Bar. . . There are some who really wanted, I wanted it as much as a professor as a university administrator because it is a source of enrichment, a source of openness, a source of enrichment, a source of decentering." Interview of Professor D (March 2022).

down approach led by administrators, there is a bottom-up process which management may draw on to advance an institutional strategy centred on supporting individual professors.<sup>316</sup>

There is a third case when professors feel they align with the law faculty discourse about international and transnational law. In that instance, the emphasis is not on the materiality of connections but on the conceptual understanding of law as an intrinsically international discipline. Thus, professors refer to the consolidated discussion among the faculty about the importance of transnational and international law and comparative methods to think and teach law, including reintegrating Indigenous legal orders into the intellectual life of the faculty.<sup>317</sup>

They may resort to the long history of institutional investment in human rights and international law of their institutions, for which they are well-known, with their human rights centres and specific programs directed at global issues.<sup>318</sup> Such a deep root in international legal affairs is a

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<sup>316</sup> "It takes a formal strategy that builds on an informal strategy. . . . There are many professors who have international collaborations on an individual scale. But, for me, it's important that the institution be able to create something out of that. Because the professor retires, the professor dies, it falls apart. And I was always aware of that. There are beautiful collaborations that have withered, that have ceased because they are only on the shoulders of one professor in the institution and another at the international level. That's why we have to create, we have to find institutional ways to create more links...that transcend the individual professors, but at the same time are real links, concrete links." Interview of Professor D (March 2022).

<sup>317</sup> "It depends on the form of the question. So, again, if what you mean is do we have an specific approach to or commitment to demographic internationalization of undergraduate law student body, I would say no. We don't seem to have that as a particular shape. . . . If you mean in the world of like how we think about law and how we teach, [the law school] has more so than the prior school in which I taught, has a recent tradition, I would say, of thinking through transnational, international and comparative as adjacent but not identical concepts that can be bundled together in a way that is highly illuminating. So international, transnational and comparative is often language that is used at [the law school] to capture a sort of domain of inquiry or a set of domains of inquiry. And there've been attempts at [the law school], that predate my arrival, to embed that international, transnational, and comparative way of positioning legal inquiry in the [first year] of student curriculum, in clinical education, in upper-year streams of curriculum design and there've been a series of people that have been important to building that. . . . If I were to say what is sort of the backbone of it, I think of that idea that there's something in international, transnational and comparative law that have something deep to say about what we're studying, what we're teaching. And I think that's unique. If not distinctive, that's unique. And then I have to circle back and say the strive the school has made in rethinking what Indigenous legal orders and Indigenous engagement within Indigenous law and Indigenous peoples looks like is another face of that internationalization. A new kind of species of awareness of the ways in which all law in Canada is international in very deep ways." Interview of Professor K (May 2022).

<sup>318</sup> "Human rights law has for long been a very important element of the identity of the faculty at [the university] both in international law, with one member of our faculty . . . who was one of the drafters of the Universal Declaration of Human Rights at the United Nations in 1948. Also in Canadian law, with people like . . . in 1950s pushing for the protection of

valuable organic asset for the institution, catapulting its prestige and attracting international students. At the same time, the influx of international students is supposed to feed back law schools' global traditions with more international input. Therefore, at least for highly prestigious institutions, no internationalization policy is needed<sup>319</sup> since it is an already constitutive element of law schools' brand.

Opposed to that alignment between professors and the institution, we found a case where a potentially global institution is criticized for its parochial character. That university is perceived to be situated at a crossroads between the forces of globalization and the institutional history and mission to develop the local minority community. Once perceived as an asset, its bilingualism has not been a tool for integrating diverse populations and knowledge due to the absence of solid enforcement since the institution may believe this would frighten student enrollment.<sup>320</sup> This unassertiveness is based

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human right under the Canadian constitutional law on the basis of provisions which don't talk about human rights . . . . At the provincial level, another colleague in the 1970s . . . , although a specialist in civil law contracts, was a main drafter of the Quebec Charter of Rights and Freedoms. So, all of that sort of combines to create a very significant heritage that speaks as well as continuous engagement of the law faculty at [the university] with human rights." Interview of Professor F (March 2022).

"[The faculty of law] has been a leading institution in Canada in the issue of human rights law and this go back to the time of . . . , who was one of the drafters of the declaration of human right. He was a law professor at the [university]. . . When he was at the faculty he realized that there were no course on human rights. And he was very keen that young Canadian law graduates should understand, only the concerns, the human rights concerns, but the human rights legal instruments and institutions. He started a summer human rights law program and he would take students to his house. . . for three weeks in the summer and would teach them human rights law. And that program is that what became the international human rights training program at what used to be the Canadian Human Rights Foundation, which now has rebranded itself as Equitas. . . And since then [the law school] is recognized for international human rights law, international humanitarian law, and more and more private international law. International arbitration." Interview of Professor BY (April 2022).

<sup>319</sup> "As for the faculty of law, I don't think we have an internationalization policy in the sense that we have a strategy of looking specifically for occasions or opportunities to expand our international networks. I don't think that's the case. One of the reasons for that is probably that [the law school] has an international reputation. . . Which means that [the law school], I think, does not have a strategy because internationalization is already part of its functioning. I would say structure, I would say functioning. Most of my colleagues have international contacts, go abroad on a regular basis, take sabbaticals . . . , they are guest professors, they receive colleagues from other universities, they have research networks that are international. So, that already exists. Moreover, the alumni of the faculty is all over the world." Interview of Professor P (August 2022).

<sup>320</sup> "We could say every student must at least take an introductory debutant course [of French]. Again, we will disincentivize some applicants, some applicants may be very happy to have that. It will enrich them, it will give them a kind of identified standard. But my sense is that we haven't even had a discussion about this because I think the university

on the tension between enforcing the use of the French language and playing the game of English globalization on the other, without a creative solution reflecting the uniqueness of its position in globalization. The absence of formal or informal discussion within the law faculty limits the potential to react to that situation.<sup>321</sup>

### 5.2.3 *Why Is There No Structured Strategy?*

Beyond the parochialism of one institution or another, there seems to be an economic reason for the absence of a structured internationalization strategy: “First of all, Canada only has less than twenty law schools. It’s not a very competitive field for legal education. [My law school] happens to be one of the top institutions in the legal academy in Canada. So, we don’t feel like we need to be very proactive in attracting the best international students from elsewhere.”<sup>322</sup> This assertion indicates that internationalization is a differential asset developed by law faculties competing in the global legal education market. Still, hierarchies in the Canadian legal education field seem consolidated enough to provide the signals students need to navigate the legal field; thus, certain institutions can count on their place in the hierarchy to fulfill their need to attract international students.

Moreover, Canada's legal education market is not competitive enough to force law schools to differentiate in that direction, leaving that to the universities, which have a more active role in

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is afraid of the discussion. Where I am getting at is that there is this tension between internationalization . . . in internationalization between globalization and the parochial character of the institution and its history. And that creates, I think, an institutional reticence, a fear to actually even have the discussion, a fulsome discussion, but certainly a fear to take policy decisions.” Interview of Professor A (February 2022).

<sup>321</sup> “I am not familiar with a determined...maybe I missed it...but I don’t remember...I don’t think we have a committee . . . specifically about internationalization. If there is, I am not part of it, I’ve not been invited to join it, but I am not aware of it. I know there are elements that are kind of, if not explicit, implicit, for example, graduate studies . . . definitely to graduate programs, graduate teaching, graduate students for various reasons, including economic of financial. I assume, but I don’t know, that there is a strong element of internationalization in that. I just don’t know.” *Ibid.*

<sup>322</sup> Interview of Professor CX (April 2022).

fostering internationalization according to a particular understanding of the global education market. Canadian law faculties may not have yet realized their participation as active players, and that seems to be reinforced by a sense of inferiority, which suggests that Canadian law faculties do not or cannot really compete in the global legal education market because the local professional legal market is much smaller than the U.S. or the U.K., and the LLM does not habilitate for practice.<sup>323</sup>

Therefore, a strategy is deemed unnecessary, mostly for law schools considered to be at the top tier and already prestigious global players. For the other ones, it is also possible that having a strategy may be ineffective since changes in the hierarchy would require too much investment for questionable results, and surfing on the universities' efforts suffices to attract international students. On top of that, and perhaps far more importantly, law faculties are still very concerned about professional training at undergraduate programs, fed primarily by domestic students, so internationalization is not a top priority.

#### *5.2.4 Evaluation*

The unanimous assertion among participants that there is no formal or informal evaluation of internationalization denotes that whatever policy may be pushed forward, it is not taken seriously enough for creating indexes, feedback, and accountability. The absence of an agreed meaning and

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<sup>323</sup> "Canada is not, you know, professionally particularly open to people with foreign training, and so the fact of having a Canadian master's degree does not give you much of an edge, if you want to stay here and work as a lawyer, you know, I think that the Ontario Bar or the Quebec Bar don't care much that you have that degree. They might, you know, take off a few courses in the list the long list of courses that you have to have to complete in order to be admissible to the Bar. This is in contrast to some American states where, you know, if you have an LLM from Michigan or California, then you might be admissible to the Michigan Bar or the California Bar, I mean this this used to be the case I'm not sure whether this is still today. But so it's limited." Interview of Professor F (March 2022).

policy makes assessing it harder.<sup>324</sup> Still, some believe internationalization is measurable and proposed metrics that the faculty of law could implement to keep track of. Those would focus on quantitative and qualitative analysis of the formal and informal international connections circulating at the faculty.<sup>325</sup>

We can confront that with the one perception professed by participants involved in professional LLM programs, which have more precise goals with internationalization, i.e., to promote the program in the international community of practitioners, attract international students from a diversified pool of countries, and adapt the curriculum and the faculty to the demands of the global market. The fact that these programs are intended to generate income makes revenue the main measuring element of success. However, even those professional programs do not count with a formal evaluation process of internationalization, relying on cyclical review processes and surveys sent to students. So, we may say that the adaptation to the market needs occurs via informal discussions within those programs, which administrators consider when arranging the next academic year in a more agile process.<sup>326</sup>

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<sup>324</sup> “I don’t know the answer to this question about measuring internationalization, because I think it is hard to measure something that isn’t defined completely. You know, if you don’t have a clear definition of what you mean by internationalization and certain benchmarks than it’s hard to measure when you’ve internationalized enough.” Interview of Professor U (April 2022).

<sup>325</sup> “There are qualitative and quantitative elements, and these are also measurable. So we also have the means. We are a university so we not only have the means, but we have full knowledge that we may evaluate quantitatively and qualitatively. The kind of easy things are to multiply our linkages. So, in my view, it’s hard to be a university and not to be linked to many different actors and institutions and so forth. So you can just those linkages. You can also count them into categories. Are they with one part of the world or another, geography, the diversity. So not only the numerical quotient of, for example, exchange programs but also how broad are they. Are they with all regions of the world, for example?” Interview of Professor A (February 2022).

<sup>326</sup> Interview of Program Manager S (February 2022).

### 5.3 International Students

In the interviews, professors were questioned about international student recruitment, the distribution of those students in different programs, the challenges professors and students face, and the differences between international and domestic students in terms of academic performance and skills professors need to develop to supervise them. These topics are broadly related to the management and supervision of students, therefore involving material elements of internationalization corresponding to the role played by administrators and professors. I will discuss the participation of international students in the intellectual life of the faculty in the next section of the chapter, which is dedicated to the circulation of knowledge. I want to start this section by quoting one professor in an administrative position who summarizes many of the issues other professors addressed during the interviews.

We also have professors who are from other countries and some of them help us, work to bring some students from their country of origin, you know, students they want to work with, because they know the institutions in those countries. Then there are some people, you know, that they feel...there is some critical discussion: 'do we really need to bring in international students just for the sake of bringing international students?' Because the truth is it is difficult for international students here. Not only the tuition, the living cost obviously. Even if we get them scholarships, it still doesn't cover living costs and we know that many of them have financial difficulties while they are here. So that's one thing. Like, is it right to bring international students if we cannot support them well enough financially? Then it's not only financially; it's the rest. Because often they come from very different legal or research cultures. The research environment they've been in previously has been very different. So, the expectations, maybe from us and from them, don't match always. So, they can have a lot of difficulty with the way we do things and what we expect from them. One thing that comes up a lot, I have to say, is the issue of how to write research papers, and plagiarism, for example, and what is considered plagiarism. . . Sometimes international students don't realize that what they're doing is plagiarism. And that's really a cultural difference. And they feel they are not quite prepared for this. . . Clearly, they don't receive enough support with that. . . There is also language because not everybody is Anglophone or Francophone. For many of our international students, English or French is not their first language. . . And professors get frustrated when they have a student who

doesn't write well in that language. And they feel like 'oh my gosh, I have to be, you know, writing their paper for them and correcting all their grammar mistakes.' Maybe the students are not getting enough support with the language here. It's so much, so many difficulties. This is also part of what faculty discuss. Are we giving enough support? How can we give enough support? Are we getting in too many international students and then we just let them manage by themselves?<sup>327</sup>

The first issue addressed in that quotation reveals that international professors are not just active assets to the internationalization of the Canadian legal mind but also fulfill a relevant role in recruiting international students. More commonly, they participate as international experts in some regions of the world to evaluate applications in graduate programs' admissions committees, which may represent a deliberate institutional policy to improve the quality of the admissions process.<sup>328</sup> Indeed, admissions committees have a hard time decoding the grading system of foreign institutions and classifying their prestige.<sup>329</sup>

Those professors still fulfil another role that may be harder for most Canadian peers. They work as beacons to attract international students from the regions of the globe to which these professors are connected. International students tend to prefer professors with whom they share research interests and similar backgrounds to avoid cultural shock, especially concerning a close supervision relationship, for they may better accommodate cultural differences and provide

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<sup>327</sup> Interview of Professor I (April 2022).

<sup>328</sup> "What we are doing right now is, we basically identify the so-called country and region experts for different parts of the world. . . . Because we realized that we were having a lot of international student applications to our programs, but sometimes it is really hard for faculty members on the admission committee to figure out their kind of, for example, the prestige of the institution they come from. You need some local knowledge of the specific place to figure that out . . . . So that's kind of an institutional effort that we do to kind of increase the quality of our admission process. But other than that I am not aware of an active discussion about . . . to further internationalize, to build up our reputation, for example, in a pretty good part of the world." Interview of Professor CX (April 2022).

<sup>329</sup> "The political and institutional architecture of a country allows the existence of a disparity of quality among higher education institutions in countries like India, Nigeria, and even the U.S. It makes it difficult to evaluate international students application to graduate studies. Luckily in Canada, there is a controlled number of accredited universities, with high quality. Professors who had only worked and lived in Canada have no idea how to do such a comparative analysis." Interview of Professor A (February 2022).

emotional support and close guidance related to non-academic aspects of a student's life.<sup>330</sup> Professors doing comparative, international law or transnational topics also feel international applicants reach out to them more often than those focused on local subjects like criminal or family law. That implies that international students, less acquainted with domestic Canadian law, would presumably opt for research topics familiar to them, so legal issues in their home country and international, transnational, and comparative law are natural choices, combined with the fact that professors dedicated to these subjects seem to be more engaged in the academic life.<sup>331</sup>

The second remarkable issue from the quotation refers to the existing criticisms about the increasing inflow of international students. The university, not the faculty of law, is the leading agent behind the active search for international students due to higher tuition fees and increasing cuts in public funding. That said, professors perceive that this search translates into more international students attending graduate programs at law faculties than in undergraduate programs.<sup>332</sup>

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<sup>330</sup> “For the non-Canadian students, especially for the ones that are closer, from similar nations, similarly situated countries, I think that I provide more than just teaching technical [my legal expertise] or whatever. I think that I provide a kind of sounding board that is more likely to see why that point makes sense, that line of inquiry makes sense, right? And then who they also rely on for a kind of...I don't want to say emotional, but...yeah, there's a kind of support that they get for just working with me. It's as almost I am seen as an ally. I need not be just because I am from the same country, but I think that they kind of expect that as well. . .Without requiring any less of standard, but they know that I am in their corner. They know that for sure. I set limits and make sure they know. But I think that is that familiarity with the context that they come from that most of them are interested in sort of research about that they get, you know, from me.” Interview of Professor G (April 2022).

<sup>331</sup> “So, the impact is really...because they aren't enough people supervising. Because there are certain programs that have more graduate students, so...international law attracts a lot of graduate students. So, since I've been at the university, I've had tons...I've been in a lot of committees, a lot of LLMS etc., but somebody who's teaching criminal law or family law they might have had one or two students, so it really just depends on the topic, right? There might not be many people in the graduate program. But international law course, because it is international!, and you know, comparative constitutional law is another thing, because you can come from any country and look for comparisons and do that.” Interview of Professor U (April 2022).

<sup>332</sup> “I would tell you that the particular economics of law school is interesting in that many very good local candidates after undergraduate law school do not go on to graduate school. They become members of the bar according to the province and do very well. It is a fact that in many cases, the majority of graduate students are foreigners. Candidates for graduate studies, doctorate... in our faculty there is a majority of foreign students from different countries. At the master's level it varies depending on the program, because there are specialized programs that give more added value from the professional point of view, where there are fewer internationals and more locals.” Interview of Professor D (March 2022).

Professors primarily resort to the local character of the undergraduate curriculum to explain why international students prefer to apply mostly for graduate programs. The curriculum is still focused on domestic law,<sup>333</sup> and the movement to internationalize it is recent, with limited success.<sup>334</sup> Thus, prospective international JD/LLB students must intend to immigrate to be lawyers in Canada, excluding from the pool those who intend to return to practice in their home countries. Moreover, international students seem less interested in professional training and more open to broader, fundamental discussions<sup>335</sup> that often include international and transnational subjects, which are better addressed in graduate programs.

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<sup>333</sup> “At the JD level... my understanding is just from informal conversations that have taken place, that... just because of how Canadian law schools have curriculums that are still very oriented to Canadian law, It's not always possible that you would have international students come, especially international students who want to come, earn this legal credential and then go back to their home country to practice there. I think a lot of the students I have met who may not be, but who recently immigrated to Canada or immigrated specifically for our JD program, have intentions of staying in Canada in the near future. Of getting called to the bar somewhere in Canada, potentially practicing in Canada shortly thereafter, and then maybe after that time thinking about an international career.” Interview of Professor L (16 May 2022).

<sup>334</sup> “Our international law courses are pretty poorly subscribed. So I would say that [internationalization] is coming from the top and going down rather than student demand going its way up. And I think that the demand has gone down as a function of having a mandatory course in the first year. And that has been controversial, it's not agreed on by everybody at the faculty. Does that have to be part of the mandatory first-year curriculum?” *Ibid.*

<sup>335</sup> “For the most part, I don't understand why foreign students would come to study with us at all. It's hugely expensive . . . It's true that we teach the common law, so you can go back to Hong Kong or Nigeria or anywhere else in the Commonwealth and have an understanding of how legal systems operate under common law system, but you're not qualified to lawyer anywhere except Ontario or California, New York, or maybe another province. So to the extent I see international students, I think of people who are not interested in becoming lawyers in Ontario. So then I think of people who are interested in legal theory, people who are interested in ideas about how nation-states states put together, about how constitutionalism worked, about how the distribution of property can and cannot be just. And I am interested in conversing with students at that level, and that is mostly the international students because, for the most part, they understand that, unless they are gonna visa up and live here, you know, PR and settle in, then what we are teaching them isn't about the practice of law. What they're learning, I hope, is about the theory of law and about the academic study of law, which is, I believe, our job to teach students. Not how to become lawyers, but how to think about law as an academic as rigorous intellectual study.” Interview of Professor J (May 2022)..

### 5.3.1 Academic Culture

Differences in academic culture are well-known among faculty, and it is a recurrent participant claim. A crucial aspect is that international and domestic students have been trained in different methodologies.<sup>336</sup> From a Western perspective, that may translate into a supposed lack of critical thinking by international students from certain parts of the Global South where deference to professors and a strong sense of hierarchy cause fear of providing criticisms and a more prominent expectation for guidance from professors, which is seen as passivity and lack of initiative.<sup>337</sup>

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<sup>336</sup> “In fact, the difference is mainly methodological. A student who is trained in the Middle East or who is trained even in Europe does not necessarily have the methodology that we have here, the North American method of writing, of citing sources. So we have some peculiarities that mean that a student who arrives here will not be familiar with our standards. And so it requires me to explain to them how to write a thesis, a master's thesis, what they have to respect, what the guidelines are, what the standards are. Also, they have language needs often. I am in a . . . university, it is especially the mastery of [our university's language].” Interview of Professor X (February 2022).

“One of the main differences can be just in the culture of research in law that can be different depending on where the students are from, and with Canadian students I will often take for granted that they will understand a lot of how it works. . . . A lot of the students I supervise were from France or French Africa, so they went through the French education system, where the research culture is pretty different. Like, the French system tends to be, for instance, very rigid. Your plan has to be... like the outline of any researcher, especially the thesis has to be two parts, or like very fairly well balanced and there's a certain way to bring an argument. The culture of the thesis is, you know, you need to show your erudition and long thesis and wordy, you know, wordy writing and so on, which I think is very different than the culture we expect here. The students will be maybe more reluctant at the beginning at committing themselves and, like, especially in critical thinking and so on. It's a different way of doing research. It is, at the same time, what attracts them here, right? So it's just very... it's different in having more discussions, I would say, on how what is research, how we do research or we think about research with international students. But it doesn't take very long, and it's super interesting because it brings me to more epistemological kind of discussion and thinking about, like, reflecting myself on what i'm doing and how I do it in order to be able to communicate it with international students.” Interview of Professor C (February 2022).

<sup>337</sup> “If I can generalize, I would say that Canadian students are more self-sufficient. Or maybe, another way of putting it, they take more initiative, whereas the foreign students. . . and the caveat here is that I basically work with the Global South, right? Those who want to be supervised by me, generally come from Africa, Asia, South Asia and Latin America. So I'm not talking about the European too. But these students, I don't know if because the academic culture in the Global South is more hierarchical, these students tend to come or interact with me in a way that they. . . I don't know if they expect more direction from me or if they think it is disrespectful that they come with an opinion, an agenda and a decision that they will present to me. So I think that's a pretty big distinction. The second distinction that I would make is that some of these students have this culture shock that I was describing, that I observe in the classroom. And it happens at the research level too. A thesis in Canada needs to answer a research question. It has to be clear, well outlined, and something that you can answer at the limit of the thesis. And some of these students come from countries where the thesis is a discourse on a subject. You have a chapter on history, a chapter on debates in the literature, on recent developments, but you don't have a research question. You are just. . . it is kind of an encyclopedic exercise. You are accumulating knowledge on a particular subject. So sometimes. . . I wouldn't say always, but sometimes with foreign students I have to do some preliminary work, which is to introduce them to Canadian academic culture.” Interview of Professor H (April 2022).

The dynamic of seminars that push students to actively interact by launching original ideas contrasts with some foreign academic traditions based on a formal environment where students are expected to passively absorb the knowledge from professors.<sup>338</sup> The emphasis on originality and critical thinking in Canadian law faculties is expressed in strict rules against plagiarism, unlike in other academic cultures akin to a more formalistic approach to law where the reproduction of established ideas is fostered.<sup>339</sup> Furthermore, international students often need support to improve their language skills,<sup>340</sup> get used to an academic environment where they must publish, get involved in student associations, and apply for positions and scholarships.<sup>341</sup> Therefore, domestic students are seen as more self-sufficient than international ones.

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<sup>338</sup> "If you take the Canadian law student, who spent four years at a university where he is encouraged to have an opinion, he is encouraged to do the readings before class, he knows that he is going to be asked to speak in class, he is going to be asked to write response papers with his opinion, they did that for four years, and you put a student who has never seen or heard of this, this student, one: he is going to resist contributing to the discussion. Even if he tries, he doesn't understand the rules of the game, so he contributes at the wrong time, he contributes in the wrong way, he contributes more aggressively than expected, and then the other students kind of discount what he is saying. And sometimes the student doesn't understand what the purpose of that exercise is. So I think the result is a little bit weird sometimes. But it's our fault! It's the university's fault, which is bringing in these foreign students without preparing them for what they are going to experience during their studies in Canada." *Ibid.*

<sup>339</sup> "I think for the most part it is probably the way they are taught – I mean, this is a substantive problem, not like a housing kind of problem – the way a lot of developing countries teach law is quite formalistic. So often people who go, at least from India to the UK, have an easier time settling into the university teaching environment at least. Because it's quite doctrinal, can be quite formal. Here, even more than the U.S. . . , here the expectation is that you will read a bunch of other stuff . . . and there's a series of courses that try to push foreign students to learn that stuff. . . So that's one kind. So, settling into the pace and kind of subject matter you're expected to learn many foreign students are glad to do it, but in terms of settling in . . . if you are not familiar with the culture, it takes a long time to settle in, learn the language, cultural differences and etc. So it can be quite unsettling." Interview of Professor M (May 2022).

<sup>340</sup> "International students, some, not all, but they're shy, they are not so used to public presentation, less confident about their ideas compared to Canadian students. So we create these little informal setting where they can present their ideas in eight minutes. And very friendly setting. In terms of skills, obviously. You know, legal research and writing skills...hum.. there is a significant investment of international students and... most of them come with brilliant ideas but it's the form also matters, not just the ideas. And constant sort of a lot of investment in structuring ideas. Language, of course." Interview of Professor BY (April 2022).

"They don't pose many problems so serious. Sometimes, the question of study permit. Language can be an issue in some cases, language levels and in law it is very important. So, sometimes, I think for example of the Chinese students who in the last years had a lot of language problems." Interview of Professor V (February 2022).

<sup>341</sup> "Then to be there also present more than, probably more than usual, more than with a Quebec or Canadian student because they are there, they arrive, then the environment, the university context and even the life at the university is different. So I have to tell them, for example, that they have to get involved, they have to write, they have to try to publish. So, they are not used to that. Even to get involved in the university associative life, to get contracts, to have assistantships

International students are reported to integrate poorly with the locals, being isolated or socializing with themselves,<sup>342</sup> which is worsened by law schools' focus on getting students jobs in the local legal market, which alienates those who do not intend to pursue a career as a lawyer in Canada,<sup>343</sup> or are disadvantaged due to their precarious status as temporary residents. The fact that they lag behind in their knowledge of the Canadian legal system and government functioning reinforces the isolationism of that population, who might turn their attention to non-professional aspects of the law.

The differences are also seen in the level of preparation experienced by Canadian students going abroad and international students coming to Canada in exchange programs, as well as in undergraduate and graduate programs. Students departing from Canada are trained to figure out their and the host institution's expectations when travelling abroad. They are put in contact with colleagues who have participated in the exchange program and are offered support from the Canadian university in case of need, including health and mental health support. International students rarely experience similar conditions, so they arrive with little preparation in Canada.<sup>344</sup>

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for research and everything. This is not found in universities everywhere, it's kind of like the North American model of encouraging students to have practical experience during their training." Interview of Professor X (February 2022).

<sup>342</sup> "They tend to be friends with each other rather than be fully integrated into the JD program." Interview of Professor L (16 May 2022).

<sup>343</sup> "I think our law school is, unfortunately, focused on getting law jobs in Canada, traditionally big firm law jobs in Canada, but especially [in the province] and, especially, [in the main city]. So I think that must have obvious implications for students for whom that's not their agenda. And it also must be sort of isolating for them, that there are so many events focused around getting yourself a job in Vancouver, Toronto or Calgary, which seems to be three sort of main areas that our students are looking for jobs. So I think that's isolating for them. I think many of them may come in with barriers in terms of not knowing as much about the Canadian government system and legal system as their counterparts. And I don't know if we do a great job of kind of bringing them up to speed. . . Now I think that is different if someone is coming here and wants to practice law here and sort of move in here, but I think it is the people that are going back to their home countries that would struggle." Interview of Professor L (May 2022).

<sup>344</sup> "The contrast with the foreign student coming to Canada and the Canadian student going abroad is huge. Because if you look at the law school and the exchange programs that they have, especially for undergraduates, they do all of these things that I am talking about. So before the student goes, they tell the student what the culture of the institution is, they put the student in contact with other students who have already gone, they give the student a whole list of expectations of the institution where the student is going, cultural differences that the student will encounter, etc., etc. I mean, so there's

When participants find international students easily adaptable to the format and traditions of Canadian academic legal writing,<sup>345</sup> they attribute this success to the recruitment process,<sup>346</sup> which will select those able to perform well in the program so that, at some point, the divide between domestic and international students is no longer relevant. At some point, the validity of a set of characteristics attributed to a single group of “international students” is questioned since academic cultures may vary consistently from country to country<sup>347</sup> and even from law school to law school in the same region, which may relate to social backgrounds and factors that transcend the academic culture. Additionally, those variations may also be seen among domestic students.

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an imbalance in the sense that the student who is being sent abroad, overseas, she goes with that preparation, but the student who is being received from overseas comes without that preparation.” Interview of Professor H (April 2022).

<sup>345</sup> “I’ve actually been pleasantly surprised thus far in the quality of students, international students, especially that we have recruited and admitted to [the law school]. Everyone language skills are, like, are equivalent, I would say, to students that have gone through, you know, a Canadian education for a much longer period of time. Their writing skills...hum. I think the only challenge with the writing skills is learning sort of more of the writing traditions that are sort of expected within Canada and within a Canadian education. But that’s not very different or that far off from what they’ve been, what they’ve been taught. So it’s really easy for them to adapt to what the writing traditions are here in Canada. Research as well. I would say very much on point. I’ve not yet supervised an international student where I would say where I think to myself, they are disadvantaged because they do not have a lengthy Canadian education. I have not encountered a student like that yet.” Interview of Professor L (16 May 2022).

“My general experience with graduate international students has been that they are fully qualified to take on serious research and they are doing it well. You just have to be supportive, and they’ll get the job done. So I haven’t noticed profound differences in that respect, except that international students from some parts of the world, I think, struggle more than others with written English if that is the language in which they are pursuing their degree. And I am not these... I haven’t had any issues myself, but colleagues have said from time to time I thought this student was fully qualified based on the English language proficiency assessment. And students’ written ability is inadequate when they arrive, and there’s a big backlog to close that gap.” Interview of Professor B (February 2022).

<sup>346</sup> “I think that’s just due to what is in the admissions process, especially at the graduate program where I’m sure attention is given to the students experience prior to coming to the law school. Some of our international students have had a previous degree earned in Canada, like, their LLM might be from a Canadian law school or a law school from the U.S. or from the U.K., where, you know, similar to the Canadian program and then they’re admitted into our Ph.D. A lot of our Ph.D. students as well are promoted internally, like, they advance internally. So they’ve been in our LLM and so there’s been sort of that screening that took place at the LLM level before admission. And so I think it’s probably a lot of this is a product of the process for admitting these students that really does try to be attentive to whatever benchmarks they have to ensure that these students will succeed in our program.” Interview of Professor L (16 May 2022).

<sup>347</sup> “I don’t think a lot right upon the international-domestic divide when it comes to what you have to do to help somebody at the graduate level as a supervisor or thesis committee member. So domestic students are a wide variation of cultural background, of intellectual background, interests, abilities. And I don’t see international students presenting...you know, it depends...somebody who’s got an undergrad degree from England as opposed to... India, as opposed to... Brazi... these are just very different.” Interview of Professor N (May 2022).

Therefore, more individualized variations may be more determinant to achieving academic prowess, and any attempts to generalize according to the international background may not be the best way to understand academic competence. In that sense, professors did not mention any gap in academic competence between domestic and international students.

At professional LLMS, failed expectations, anxiety and cultural shock are mostly related to international students' attempts to integrate into the local legal job market. International students must adapt to unfamiliar practices to fit into the market since, in some countries, graduating from a law school suffices to achieve a good position. Instead, they must get used to writing resumes and selling themselves to prospective employers in Canada. Frustrated expectations also have to do with the kind of job students are offered and how long it takes to achieve the position that comes with the status the student was accustomed to in his country of origin. These are challenges that the coordinators of such programs have to manage.<sup>348</sup>

### 5.3.2 *Funding*

The economic reality of international students, especially in graduate research streams, is another factor that requires a lot of attention from professors compared to domestic students, leading to criticisms of how internationalization has taken place, which has caused a “humanitarian problem.”<sup>349</sup>

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<sup>348</sup> Interview of Program Manager S (February 2022).

<sup>349</sup> “Other scholars will be critical of. . . not of internationalization per se but how it's performed by universities. You know, there's all the discourse on internationalization and welcoming an increased number of students and recruitment and so on, but we all know that, unless they are heavily supported by their origin country, get huge scholarship at home and so on, many international students will struggle when they come here. Financial support tends to be insufficient for many students. Many of them will come from regions or countries that are quite poor and are coming here with, sometimes, with no scholarship but imagining that probably there will be a way to sustain if they are accepted in a program and so on. They come in confidence that they will be able to support themselves well and, very often, this help doesn't come true, right? Once they're here and they realize that things are really expensive. Lodging, food, tuition and so on is very expensive. So I would say that many professors will question, in fact... or will see a tension between this will of the

Time and again, participants assert that they need to be more sensitive and provide extra support by understanding the financial hardship lived by international students under their supervision and finding ways to fund them. It often involves dealing with anxiety and failed expectations associated with a temporary migration.<sup>350</sup> Supervisors feel they need to be more interested in how their international students are fitting in.<sup>351</sup>

At least one law faculty has developed a rigid limitation to the presence of international students in their graduate research stream in order to avoid such problems. Osgoode Hall only accepts one international doctoral and one international master's student per year, those being fully funded. The faculty does not admit international students claiming a personal source of income to cover the tuition fees. Since the provincial government of Ontario does not contribute to supporting more than those few, the burden of enrolling more international students would eventually rest on the university. Hence, the institution opts not to invest money in it.<sup>352</sup>

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university to recruit and to internationalize and to show that they are looked at as an international level university and so on, by welcoming all these international students but that once they're here they don't get the support that they should get, right? So many professors see it as a huge issue, as a huge problem. A humanitarian problem but also... you know, it's just... yeah, the lack of support can draw a lot of criticism about internationalization." Interview of Professor C (February 2022).

<sup>350</sup> "One of the greatest challenges for international students is understanding and adapting to expectations that often vary widely from what they were subjected to in their home country, right? So, in many parts of the world what is valued is not going to be very highly valued here and so that it's very hard for students to kind of abandon a way of doing things that has brought them a lot of success up to now in their home country and to try out things that if you're very unsure it's very destabilizing, it's not easy to understand exactly what it is that, you know, the university wants you to do or your supervisor wants you to do." Interview of Professor F (March 2022).

<sup>351</sup> "I think there are a number of factors that you're involved with when you are the supervisor of an international student that are a little bit less relevant if you're supervising a domestic student. One of those things is I tend to be a little bit more interested in or concerned about how are they fitting in. I assume my Canadian students have friends, family, a doctor if they need one, experience getting a job if they need one in the Canadian context. Whereas a student who has just arrived in Canada for graduate studies doesn't necessarily know his or her way around, you know, like how, how does it work. And the University offers all kinds of support: housing, guidance on employment access to health services and so on. But if I'm a supervisor, I'm a little bit more interested in knowing that that works for a graduate student from another part of the world." Interview of Professor B (February 2022).

<sup>352</sup> "In terms of the student body, Ontario is not as open to internationalization, it talks a good game, at least, let me say, at least York. York has a lot of undergraduate students who pay to come from all over the world. But in terms of the graduate student body, every graduate program is only able to, for a number of complicated reasons, every year bring one master's student funded, all funded, usually because Canadian style is they wouldn't let you come unless you are funded.

Furthermore, this policy creates a highly selective situation where only the best candidate for the program is admitted, thus constraining the potential of internationalization while assuring the financial support of the few more competent. Still, the financial comfort level of those few international students is questionable. They are offered a scholarship that barely covers tuition fees and need to work as an assistant to make enough money to survive in a costly city such as Toronto. In that case, little time is left to pursue their research, extending the time necessary to finish the doctorate. By the end of the fourth year, they lose the scholarship and may still have a few years ahead to write the dissertation. The lack of international students in the research graduate stream is compensated by the increasing internationalization of the professional LLM program aimed at training foreign lawyers to practice in Canada, providing an option for those who still want to pursue graduate studies at Osgoode and are willing to pay.

### *5.3.3 Supervision Shortage*

The criticism of having international students just for the sake of having them can be seen through some other issues that law faculties with no such limitations in the admission process experiment. International graduate students add a considerable volume to the student body, stressing the restricted number of professors available to supervise them. In other words, international students, who primarily enroll in graduate programs, contribute to inflating those programs by increasing the demand for scarce resources, and supervision labour is the most sensitive of them. Such a situation

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Funded student: one Ph.D. and one master's student. So, for me, if you have a class of Ph.D. . . Osgoode has a lot of Ph.Ds. . . ten maybe a year, and there's only one international, that's not. . . the rest are Canadian. Even though the Canadian ones may themselves be immigrants, you get my point. The point is that. . . we have Canada as the raincoat, because a lot of the Canadian ones are either immigrants or children of immigrants. But they are admitted as Canadians, as locals. But people who are admitted straight from outside, just one. That's not enough, right? So my point in a roundabout way is the university doesn't put its money where its mouth is." Interview of Professor G (April 2022).

puts pressure on graduate programs that are already competing against undergraduate programs for resources within law faculties. Additionally, the revenue generated by international student tuition fees has not been invested, or at least seems insufficient to increase the graduate program's reputation and attract more professors to supervise international students. So, the growing international population may cause academic problems regarding the quality of research in the long run. Mental health problems should also increase in an environment where students do not receive the necessary guidance and try to compensate for that by themselves. Thus, implementing course-based LLMs is expected to alleviate the problem of supervision shortage since supervised research is not required. The fact that LLM students attend JD courses also helps manage inflated LLM programs.

At the University of Ottawa, where a course-based LLM was recently implemented in Fall 2021, it became a cheaper alternative to other professional LLMs at UBC, York or UofT, as it is not meant to prepare students to pass the Bar exam and practice in Canada. Although it also targets a domestic audience of professionals with no intention to pursue an academic career, the course-based LLM has opened another door for international students who want to acquire a cheaper and less research-demanding LLM degree while studying alone to pass the Bar exams and immigrate, leading the program to gain popularity with international applicants.<sup>353</sup>

The shortage of supervision labour may create academic integrity problems when law faculties do not have the means to train students adequately but feel they cannot fail the student, either because they implicitly do not want to penalize the student for the institutional failure or they are

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<sup>353</sup> Although the course-based LLM program at the University of Ottawa was implemented in the Fall 2021, its impact in the internationalization could only be seen in the Fall 2022, when the number of students in the LLM program increased substantially. At this time, I was done with the interviews. Because of that, my assessment of the program was based on later observation as a professor in the program and informal conversations with international students. This assessment was also confirmed by one professor working closely on the program. Therefore, although it can be considered anecdotal, by now it is very clear that the program is having the function described in the paragraph.

afraid of economic repercussions of failing incompetent students. A case narrated by one participant sheds light on the problem.

The professor says the research paper was relatively advanced when he was requested to supervise the international LLM student. The professor then assessed that the paper did not meet the minimum academic standards and did not approve the work. The student did not accept the failure, and instead of rewriting it, the conflict arose. The faculty agreed with the student, and the professor was requested to grant approval, which he refused again, leading to his removal from the student's committee. The new members who assumed the supervision then approved the paper without requesting any changes. The professor, who stands in a position of prestige at the faculty and is not known for being overdemanding with students, makes a strong claim after this case: "The university just sold a degree."<sup>354</sup>

As framed by the professor, the story brings about the mercantilist relationship centred on attracting international students to pay higher tuition fees. In a scenario of scarce supervision, the faculty may be pressured to grant the degree without academic merit for fear of damaging the institution's reputation in the market. Such damage may be caused by the perception that international students are taking too much risk of not getting the degree when paying higher fees or the faculty cannot properly train the student. The risk related to the loss of the degree's educational value seems less relevant in the legal education market due to the resilience of the institution's brand or the invisibility of the damage compared to the market scale.

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<sup>354</sup> Interview of Professor A (February 2022).

## 5.4 Circulation of Knowledge

Does the increasing presence of international students lead to an equivalent increase in the circulation of knowledge? The question was asked to the professors to explore their perception of how active those students are in research and teaching-learning processes, whether their presence forces professors to adapt their teaching methods and course contents, and whether such an exchange translates into adopting new authors, theories, and methodologies. After all, what is the contribution of international students to the academic environment of the faculty of law?

I find that bringing international students in really does help improve the environment and the law school. Bringing in different perspectives into the classroom is incredibly valuable. And in my four years teaching at [the university], I've had the privilege of supervising and teaching international students. And I've enjoyed it. And I find that their presence in the faculty really just enhances the overall experience. Because, I said, we can't be purely Canadian-focused anymore. And I think international students do really complement that. You know, that outward orientation and bringing a diversity of perspectives that might not always be reflected in a student body that is recruited exclusively from the Canadian population.<sup>355</sup>

As shown in the quotation above, professors understand that international students are a vital element in diversifying the law school, attuned to the perception that the relevance of international law, transnational legal issues and comparative law are crucial for the future of law as a discipline and profession. Complementarily, comparisons brought about by international students have the potential to reveal what may be unique to the Canadian legal system. “That’s often when the most interesting conversations happen. Because what is curious and interesting about Canadian academic inquiry and legal inquiry becomes most apparent when speaking to someone for whom it’s not familiar.”<sup>356</sup>

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<sup>355</sup> Interview of Professor L (16 May 2022).

<sup>356</sup> Interview of Professor K (May 2022).

In a research context, but also at personal and social levels, “working with international students opens lines of conversation”<sup>357</sup> that end up enriching academic life. This openness to the unfamiliar is often considered more relevant than the revenue international students are expected to generate for the university.<sup>358</sup>

This diversity is best harnessed in the classroom when professors are consciously willing to apply a pedagogy that encourages sharing experiences from multiple jurisdictions. Seminar and paper-based courses allow more freedom for engagement and initiative so students can learn from each other more actively. However, the pressure to teach the core curriculum may prevent professors from implementing these teaching methods. At the same time, it is not evident that international students will be willing to present papers on their countries, so this kind of knowledge exchange in a course also depends on students' interests.<sup>359</sup> Small optative classes devoted to comparative,

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<sup>357</sup> “Something else that is a little bit different. That tends to be the opportunities that I have as a supervisor to learn more about the country of origin of a graduate student. And perhaps it that arises from something that I read in an essay or a draft and I’m curious about it. Or perhaps it’s just conversation. . . Working with international students opens up lines of conversation that you don’t necessarily explore when you’re dealing with someone who you think has roughly the same baggage as you do in terms of what side of the road to drive on and what time of the year, the holidays take place and do people still actively go to church and, you know, all those things that that you learned about on the side.” Interview of Professor B (February 2022).

<sup>358</sup> “There is a financial impact for sure, but I am not saying that evaluating the financial benefit as the dealbreaker. What is more important is that you allow the program to keep open and more diverse, more courses. More diversity of topics and so on. So, it increases the richness of the program, not necessarily by the financial means.” Interview of Professor Q (January 2022).

<sup>359</sup> “It depends on the nature of the course and the willingness of the professor to put in place a pedagogy and certain classroom practices that encourage that type of discussion. So, I think that any course with...there’s a willingness to embrace a comparative approach to it then you can have opportunities for discussion. You know, any course that involves class presentations, significant flexibility in terms of paper topics. . . . In terms of the JD curriculum there is a number of types of courses in different schools, so we have seminar courses, but there are smaller classes that are paper based where students will write a major paper as a key component of their work and often there will a presentation as well. So, I think that’s one opportunity, especially if the prof is willing to indicate to students, you know, ‘you can write on a Canadian legal topic if you want to but don’t feel you’re required to if you want to write a topic.’ . . . And I think there’s another opportunities in the context of larger group classes as well. I am thinking about different approaches to certain areas. There’s always a tension there between the sense of needing to teach to a core curriculum as well as wanting to create opportunities to really learn from and for the students to learn from each other in the context of a class. . . . There is a tension too in terms of wanting to create an opportunity for students to be able to discuss matters from the perspective of different jurisdictions while also not wanting to sort of not pushing students from other jurisdictions to do present their country to the class and their perspective to the class.” Interview of Professor O (June 2022).

international and transnational law, once more, will provide better opportunities for this kind of discussion since all participants can expect to count on their background to promote an exchange of ideas beforehand.

In research-intensive programs like the doctorate, the relationship with supervisors tends to be where such an exchange occurs more frequently. It may eventually lead to opportunities to work closely with other professors within the student's research committee or beyond in a thriving environment where the relationship between students and professors unfolds into a two-way street of learning and sharing references and methodologies that deeply impact professors' work.<sup>360</sup> A participant describes her collaboration with an international Ph.D. student as how she got in contact with feminist methodology, leading her to adopt it and changing her entire scholarship in that direction.

Absolutely. Like, I guess I've collaborated with a Ph.D. student, but she wasn't my Ph.D. student, but she was in one of my classes, when she was doing research and we've written together, and she has brought, you know, feminist methodology into my sort of research life and has really, you know, that has been fabulous. So, yeah, I would say I write differently about different things, and also, I am also teaching some of those things now.<sup>361</sup>

Therefore, it is certainly possible to identify positive experiences that confirm the notion that a diversified student body (and faculty) materializes into a circulation of ideas that bring new perspectives to the way law professors and learners think about the law. Many understand that knowledge circulation happens informally in the classroom or outside of the school, regardless of

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<sup>360</sup> "Oh, absolutely, the second. I think I mean I'm on a couple of committees of people who, you know, some African Ph.D. students who have, you know, incredible experience in their areas that they're looking at on the ground, and are now looking at it from an academic perspective and there's so much, absolutely, an exchange of knowledge and that's one of the beauty of doing the things I love about doing, you know. Ph.D. work is that you get the benefit of all of these different perspectives and the experience and learning. It's a two-way street . . . yeah I think it's a two way street for sure, and if it's not a two way street, then maybe it's not really the best relationship." Interview of Professor U (April 2022).

<sup>361</sup> *Ibid.*

any structured pedagogy.<sup>362</sup> Nonetheless, those experiences do not mean that professors do not perceive shortcomings in how the opportunities for knowledge exchange are framed in law schools. These shortcomings are seen in terms of the professors' willingness to adapt to a diversified student audience, international students' learning objectives, how programs are designed, and how research is usually done.

We have pointed out that professors interested in comparative, international or comparative law tend to engage with internationalization more actively than professors committed to domestic law. Complementarily, professors committed to academic research tend to devote more time to internationalization than professors involved in the legal profession. Such a framework helps to understand the profile of professors who care about applying methods and pedagogies that set the stage for knowledge exchange and harness the most from international student participation. Although promoting the circulation of knowledge is considered part of professors' academic freedom and should not be imposed, participants agree that good professors should adapt to a diversified audience, and they often do so due to the increasing presence of international students and the relevance of transnational issues to any legal topic.<sup>363</sup>

However, the adaptation to a diversified student body has some caveats. One first insight has to do with the fact that professors cannot work as experts in the many jurisdictions students are from. Thus, professors must encourage students to be experts in their own topics and bring about the best contributions from their own realities while teaching them how to apply methodologies for rigorous study and communicate their findings with the global community. So, epistemology and methodology are the most transversal subjects that can impact students' academic success, and

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<sup>362</sup> Interview of Professor N (May 2022).

<sup>363</sup> Interview of Professor D (March 2022).

professors' role as experts in the black letter law seems secondary. If professors fail to perceive that, they may make the mistake of framing international students' ideas according to Western legal frameworks and canons that do not fit well with the research students are developing.<sup>364</sup>

Thus, internationalization as a means of knowledge exchange requires more effort from professors beyond the amount of work they are already assigned so as to avoid neo-colonial practices, and it certainly needs some training and incentives from the university to ensure that professors understand and apply this role, which are not always provided. From the perspective of work relations between professors and the university, adapting to new demands emerging from internationalization without the due institutional support may pass as additional precarization and unpaid work in the context of part-time and overloaded professors.

Another point of concern is the very nature of certain disciplines. Professors may teach international law, for instance, as an overarching legal framework that does not change according to multiple jurisdictions. Hence, the comparative aspect is less relevant since cases from different countries belong to a unified repertoire of international law.<sup>365</sup> Therefore, the universality of international law can be a discursive, ideological barrier that prevents professors from adapting their lessons to a diversified audience of international students. There may be needed a professor originally

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<sup>364</sup> “A lot of the LLM and particularly the Ph.D. are often projects that reflect what is happening in home jurisdictions, right? They are not usually on what is happening in Canada. They’ve come to explore either international issues and or international issues that have or pertain to something to do with their home country, on which the faculty here may not be the expert, right? So, I can help someone write a project on international environmental law, disaster or something about some part of Africa, but I don’t have site knowledge. So I quite straightforwardly tell them that they are the experts in that and they have to become experts in the knowledge that comes from whatever region. And as far as they’re doing it, I am happy to learn from that, but I can’t bring that to the day. So my job is to help them to bring that knowledge on the table and then help them see how it can be framed using methodologies that are popular here. One of the things that I will say is that, sometimes, this doesn’t often happen. I think what happens a lot is that people will bring the subject matter and been taught to put it into the Western legal framework. ‘So these are the lenses to which you should look, these are the literature, scholarship’, you know that...It’s rare that students also want to bring methodology from where they come from. So, I think that there is a circulation of substantive subject matter knowledge that they each want to focus on, but it usually gets subdued within Western methodologies frameworks of doing research.” Interview of Professor M (May 2022).

<sup>365</sup> Interview of Professor T (March 2022).

from a non-Western country with acute interests in global inequalities and decolonization to question that paradigm and introduce silenced perspectives denouncing the problems of that universal approach and harness the input from international students from the Global South.<sup>366</sup>

On top of that, professors may believe that students' goal is to learn the Canadian way of thinking about the law; therefore, bringing in foreign perspectives defeats the very purpose of the presence of international students due to the circulation of irrelevant content.<sup>367</sup> Such a discourse is informed by the perception that students assume a passive position to be trained to perform a profession and are more receptors than transmitters of knowledge, usually in the context of undergraduate courses, in which many international LLM students are also enrolled.<sup>368</sup>

As we mentioned in the last section, academic culture differences may hinder the knowledge exchange even in small seminar classes, for international students may not be accustomed to classroom mechanics based on intense reading and discussion. They may have been trained in their home country in a purely passive learning culture where their engagement in the classroom was not expected or discouraged. Putting together international LLM and domestic undergraduate students who underwent an active and critical education and were selected differently may worsen the situation by producing inhibition and clinging into groups as a defence mechanism for international students feeling ill-adapted.

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<sup>366</sup> "I don't think that's universally done, although I don't have any empirical study of that. I've done myself, but my sense is that I don't think that is a universal practice, right? But I do that, partially also because of my own experience as an international student, coming to this country as an international student, my own orientation, intellectual academic orientation, which has been to try to recentre most of the world. The rest rather only the West." Interview of Professor G (April 2022).

<sup>367</sup> "I think that the objective of the students who come to us is to obtain precisely this more...um...to obtain other things, a vision that is Canadian, Quebecois, often. So, we're not here to necessarily get used to or take over foreign law. So, I don't really see that here. That's not really what I do necessarily." Interview of Professor V (February 2022).

<sup>368</sup> "I would say they are there to be trained. So, they are more receivers than transmitters of something. So, they receive knowledge, information. Probably, occasionally they can be invited to give a talk or participate in activities, but they are more there to, in fact, receive information." Interview of Professor X (February 2022)

That may explain the poor interaction between international and domestic students. Without a safe environment that ensures students can participate at the same level, professors may create an atmosphere of “sink or swim” for international students. A quote from a participant who recalls her experience as an LLM student and relates it to what she sees in her courses illustrates the problem.

Nowadays I have a lot of international students who are graduate students who are in the classroom with undergraduates. So, the admission process is not the same and the background of the graduate students is not the same, meaning some of them, like was my case when I went for the LLM, never spoke in class because that's not how the system works. My legal education was like you go into the classroom, open your notebook, write everything down, close your notebook and go home. At most you can ask a clarification question at the end of the class. So, for example, you throw such a student into a seminar class where you have to read two hundred pages before entering the classroom, which is something I never did in my legal education [in my home country], and then you have to enter the classroom and participate in a debate about those readings and have opinions about those readings, it is an adjustment process that nobody prepares the international student before she enters that classroom. So, it's kind of a sink-or-swim process. They throw the international student in there and say good luck.<sup>369</sup>

This argument reveals that, despite the pedagogical attitude of professors, there are structuring elements in the design of programs that may affect the success of the circulation of knowledge, causing the so-imagined two-way street into a unidirectional reproduction of canons.<sup>370</sup>

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<sup>369</sup> Interview of Professor H (April 2022).

<sup>370</sup> “I think you know, in terms of exchange of knowledge, ideally, it should be a two-way street, right? Should be like, you know, international students bring their knowledge here. And then, you know, enrich our academic environment, right? And then, of course, they learn something here, and then, when they go back to their home countries, they can bring, you know, some knowledge wisdom, right? So, that's, I think, ideally, that's the way it should be, right? But I think, unfortunately, what I observed both here at [the university] and other law schools like when I was at [a law school in the U.S.], I see the same thing. I think it's more become a one-way street. It is like the students would come here and learn some knowledge about Canadian law or American law, and then they will go back to practice, right? But in terms of what they bring here to make our academic intellectual life better in our law school I think it's more limited than it should be. So I think there are actually a lot of talent and expertise from the students, we can actually learn from. But unfortunately, I don't think [my university] is alone in this. I think many law schools in Canada and also in the U.S. do not actually provide a good platform for these students to share their knowledge, their experience. Because, I mean, if you look at some of the students, they used to. . . they are already lawyers in their own countries before they come here. There are things they can talk about they can teach us, right? But you know, I think the way the curriculum is structured and also the way, you know, like other academic life is structured do not really provide them a lot of opportunities about this.” Interview of Professor CX (April 2022).

### 5.4.1 PhD Programs

Assuming that undergraduate and LLM programs are not proper places for knowledge exchange due to the emphasis on courses and professional training, the doctoral program is where such an exchange is expected to flourish for several reasons.<sup>371</sup> As we mentioned, doctoral students are involved in a long-term research project with formal interaction with a research committee and in a closer, more informal relationship with one or more supervisors.<sup>372</sup> They are also better funded. In that context, supervision and long-lasting relationships are often seen as the best way to foster the circulation of knowledge through formal and informal curricula. Diversifying the doctorate student body should have more profound consequences, and organizational arrangements, such as the formal commitment of supervisors and supervised students, internal conferences, research groups, and seminars, seem to be the material aspects that promote such an internationalization outcome.

Although we have already presented challenges related to student supervision in general, others seem to affect the circulation of knowledge at the doctoral level in particular. Intrinsic to Canadian doctoral culture, individualism and isolation affect both domestic and international students

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<sup>371</sup> “We have to distinguish master’s students from doctoral students. Master’s students stay on average one year, sometimes eighteen months. They are not interested in learning French. Many of them are there for the degree . . . in order to access a professional level and they go to their professions and move out to the world. Doctoral students are different. They stay three, four, five, six years, depending on who they are and how they are funded. They have much deeper contacts with their supervisors, with the faculty in general. Many of them find soulmates and settle.” Interview of Professor P (August 2022).

<sup>372</sup> “It is an international experience for a student coming from Denmark to spend a term or a year in Canada, and it contributes to the internationalization right here at our law school simply because that student brings the perspective of another country to the classroom. And we hear about that in our seminars and discussions, and, in a more elaborate level, it seems to me that internationalization might include the work of graduate students who are here in Canada for three, four, five years. Perhaps they are working on a research topic that is connected to their home jurisdictions or perhaps they are working on a topic that is pretty universal in its application, and their internationalization takes the form of their own studies, their research, their participation with other contemporaries from different parts of the world, and they become kind of a cohort or a cluster of international students that get to know each other and clearly they have a significant impact on our outlook and awareness and familiarity with things taking place in other parts of the [world]. That’s perhaps the personal or social side of internationalization rather than anything.” Interview of Professor B (February 2022).

but can be harder on the latter. It implies more limited opportunities to engage with other students and participate in joint research, group discussions, and courses since students need to manage their time between ensuring a source of funding – through assistantships and scholarships – and pursuing an intensive, often hyper-specialized, individual research project. In such a circumstance, the pandemic worsened students’ academic and social experiences by preventing in-person meetings, harming the development of an informal curriculum that heavily depends on the quality of social interactions around the academia.

For professors, individualism means that “there’s not much circulation of knowledge as there should be. You tend to get to know your own PhD students and the ones you are in a committee for, but I don’t know about a lot of other PhD students that are at the law school.”<sup>373</sup> The shortage of supervision we mentioned in the last section also hinders the exchange of knowledge structurally. Professors have little incentive to supervise. Their primary job is to teach undergraduate courses, and the time spent supervising is not formally recognized and does not translate into a lesser course load. Those who consider it an essential part of their job do it voluntarily while resenting the lack of commitment and dedication of colleagues who do not get involved.

The absence of metrics, like a minimum of supervised students, and means of accountability of professors who refuse to supervise or are systematically not responsive to students discourage professors with an academic profile away from research-based programs, weakening the circulation of knowledge.<sup>374</sup> As international students usually demand extra attention from supervisors, this shortage tends to affect them more.

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<sup>373</sup> Interview of Professor L (May 2022)..

<sup>374</sup> “One of the things that I think is a problem in our research-based programs is there is very little incentive to take on a student. You know, you have to teach x courses a year, to teach in the JD program to be a professor, but there’s no real criteria you also have to have x graduate students. I supervise a lot of Ph.D. students, but some of my colleagues have none. And there is no benefit to me in terms of the recognition of the amount of work that it takes. So, you kind of do it

The success of knowledge exchange in doctoral programs, as well as visiting positions, is said to be more frequent when there are previous connections and shared interests between professors and students,<sup>375</sup> which once more raises the critical role of international faculty in research-based programs, for those connections tend to be stronger between students and supervisor with similar backgrounds.

#### *5.4.2 International research*

The circulation of knowledge through international students' participation in international research projects professors manage and carry out, involving grants from SSHRC or other sources, remains a topic to be addressed. In those projects, advancing research involving partners in foreign countries entails navigating different institutional cultures, publishing standards and urgencies, challenges in managing the funds and coordinating work in various time zones.<sup>376</sup> These material challenges can be complemented by the eventual ignorance of professors of the law of the other jurisdictions involved in the project. Consequently, professors exclusively trained in Canadian law and with little international experience may have a more challenging time understanding and managing those differences than international faculty.

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because you feel you should, and some people do a lot more of it than other people do. And some people do a lot better than other people do, much more commitment and time. So, I think that we need to have a recognition of the importance of that as part of our jobs.” Interview of Professor L (May 2022).

<sup>375</sup> Interview of Professor T (March 2022).

<sup>376</sup> “It is very difficult to do research on an international scale. I would not be surprised that some of my colleagues run from that. You have to deal with different institutional cultures, different research cultures, constraints. Sometimes, they need to publish faster than you; sometimes, they don’t have resources for this and that; sometimes, they are dealing with a dictatorial or whatever and, you know, they are being under police surveillance. You have to deal with all these kinds of things. Time is not the same. You are booking meetings in five different time zones. So, it’s hell, you know, doing this kind of research. You do it because you are investing in that and you are in the topic, but I would say it is more difficult to do this kind of research than just doing domestic research. . . You don’t have translation problems and translation in terms of institutions, you know.” Interview of Professor Q (January 2022).

In such a context, international graduate students can provide valuable expertise to assist in such projects, linking the diversity of backgrounds to producing knowledge on a global level. International joint research projects could mobilize students' global skills and knowledge to collect data abroad, fine-tune research methodologies and methods to foreign contexts, organize international events, mediate between different institutions, and strengthen global networks. Given this potential, the systematic involvement of international students for such a purpose remains to be tested.<sup>377</sup>

Talents related to these tasks can be found not only in international PhD but also in LLM students and should be taken into consideration by admissions committees. Nowadays, there are no strategic connections between students' applications for ongoing research projects that may be in need of the expertise those students may bring. International students are rarely thought of as a specialized workforce for knowledge production and mobilization in research projects other than their own, and that could be a working criterion in admissions since these abilities may be more relevant for graduate programs than students' previous law school grades and prestige. In doing so,

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<sup>377</sup> “And the other aspect is the. . . and this is way more complex and doesn't happen a lot I would say. We definitely have room to develop more in this sense. . . is to connect this to research. So, for instance, if I am doing a particular project on prisons in [countries A and B] and so on, great if there is a student from [A] willing to work with you here. And I can definitely say, well, I want to have that student because she is going to [a remote region in country A] next year to work with my colleague that is doing this research there, and so on. And I don't see that strategic planning of international students and research operating in an optimal level yet. What I mean by that, you know. . . if the student already knows me and she's going to apply, you know, this is going to be met somehow, but I do not see both structures doing this integrated work, you know. Like, last year I was in the admissions for the LLM and there was a student from [a Latin American country], you know. The English level was passable, so he may have some difficulty in speaking English, but it was ok to accept. And this was raised 'I don't know if it's going to work . . . someone works with environmental issues in [that country], and so on, and Indigenous issues, and I said, you know, that professor just got a research grant on the use of water in Canada and Indigenous communities in [Latin America].’ Before accepting or refusing this student, talk to the professor. Maybe even if the English is not that good, can be functional. Well, she needs someone who can speak Spanish for her project. This kind of conversation may happen by accident but there is no structure to figure this out, to connect the dots. Let's say, like, we receive twenty-five international applications in different topics, so let's see what are the research projects that are going on and if there is international demand. So, we are not doing that, and I doubt if there is someone doing that in Canada at least in law schools.” Interview of Professor Q (January 2022).

international students might be hired as research assistants sooner and get the opportunity to refine their research skills and interests within a broader collaborative research environment.

Connecting international students' expertise to fulfill the specialized labour demand from highly internationalized research projects implicates a form of strategic planning by the faculty to support and stimulate this type of research and match students to it. Once employed in research projects, students play an active, key role in a globalized knowledge economy instead of being a passive source of revenue in exchange for a valuable law degree. Thus, they can be regarded as valuable economic assets due to their unique work skills and be paid for it.

One participant pointed out an area of interest where these internationalized research projects are necessary. International students are especially suitable for conducting empirical research that challenges theoretical assumptions, such as the universality of human rights, and investigating the impact of culture on the perception of human rights through global fieldwork. Thus, empirical methods are crucial for such an endeavour, and the expertise of international students can be a competitive advantage in that area.

I often am in debates and it's clear to me that the terms of that debate and the content of that debate is very limited, is limited by the experience of those who are debating it, right? If other people are in that room, that debate and the terms might change, and also the content would change. Let me give you a very concrete example. In international human rights, we often talk about the universality of human rights. Yet, rare is the scholar who has actually investigated universality empirically in a global way. Much of work that is universal is ought-proposition. It ought to be universal. We can agree with that and disagree that empirically it's actually universal or empirically that it is not universal. But only the surface has been scratched in terms of the anthropological work, right? So, what you find and the assumption that some concepts are lacking in other societies, that is made without serious research, which would not have been made if, in those days when those disciplines were developed, it was international in a more equal debate. . . . We don't know enough about a lot of what we say because we are not international enough.<sup>378</sup>

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<sup>378</sup> Interview of Professor G (April 2022).

### 5.4.3 *Elitism*

Nonetheless, we must ask about admitted international students' profiles to deepen our understanding of their potential to collaborate in global research. The concern is whether international students come exclusively from elite backgrounds and are part of global communities that reproduce Western values, thus detached from the cultural diversity of their home countries, or whether law schools receive applicants from diverse cultural and social backgrounds worldwide. In the case of an extensive elite reproduction, the pool of cultural diversity is limited and may exclude students from rural areas, minorities, and lower social classes; therefore, these contexts may end up being excluded from the international student potential contribution to global research. The same goes for the circulation of knowledge. Knowledge acquired by living experience in marginalized contexts does not circulate as much.

Tuition fees, scholarships, and the admission process frame the issue of elitism in knowledge circulation and production concerning the international student population. Scholarships compensate for tuition fees in the net price of education. So, more expensive programs with fewer scholarships are the most likely to attract elite members for mere economic reasons, although scholarships from the home country may help circumvent the problem.

At the same time, under the veil of meritocracy, admission committees look at the prestige of applicants' legal training, which in many circumstances indicates they come from legal elites, although this may vary according to the existence of private or public elite institutions and subsidies for the education of minority groups. Regarding issues of fairness and diversity, admission committees are reported to take into account the gender and race of applicants but let aside elite reproduction patterns related to social class.

Students mostly coming from elite backgrounds in their own countries? It is a problem, but is a problem very difficult to overcome, unless we provide scholarships, some kind of scholarship or financial aid to international students from different countries . . . I think that another part of the problem, coming back to the elitism of international students coming to Canada, and not just to Canada, I mean, coming to most parts of Western Europe and North America is that . . . think about who would have the incentive to do this kind of overseas legal education. They are utterly children of elites or at least children of upper-middle-class families. So, they want their children to be part of the elite part of the legal profession. Work in corporate law firms, for example, go into politics afterwards. There is a very strong logic of elite reproduction over generations in this kind of international programs. . . . And that is something very difficult to break down . . . I can only speak of [my university]. At least in our admission process, I don't think we have any criterium in admission taking into account . . . you know, we take into account diversity in terms of gender, race, these things, but we don't take into account diversity in terms of the social background of where international students come from. On the other hand, we actually, you know, [my university] is quite elitist in its orientation. We actually . . . we want our international students coming from prestigious law schools in their own countries. As I mentioned, I was kind of a country region expert in the admissions process. So, when I read a file, I was asked by our staff doing admissions to actually evaluate the prestige of the law school the student graduated from. And that, of course, leads to a kind of an elite bias, a very strong elite bias. Basically, we . . . kind of the idea is that we're the best law school in Canada, so we admit students from the best law school in their own countries. So that of course leads to a very strong logic of elite reproduction, elite circulation, international elite circulation as well. At least in our admission process, I don't see any concern about 'ok, this is a problem, we need actually expand the pool of the law schools we admit students from.' We actually see the opposite. We are pretty happy and even intentionally try to maintain the elite circulation. To some extent, that might be an unintended strategy. It is not really kind of a deliberate strategy, but it is this unconscious thing to reproduce our elite status in the Canadian legal education system, but also in the global legal education system.<sup>379</sup>

The elitism in recruitment responds, consciously or unconsciously, to the perceived elite position of the law school in the Canadian and global legal education markets, which is reinforced by the ranking in a context of intense competition among law faculties. Such self-perception corroborates the invisibility of social class within the pool of experiences and knowledge circulating

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<sup>379</sup> Interview of Professor CX (April 2022).

in the faculty. Competition seems to be marked by a discourse of meritocracy that frames internationalization practices.

The scarcity of public funding and the absence of a pressing public opinion in favour of subsidizing international students is an added circumstance that prevents universities from investing in the profound diversity of students since universities are themselves struggling for more funding. Finally, the lack of a strategic plan to employ such diversity to produce economic benefits for the university in the form of a sophisticated legal knowledge economy impedes harnessing the most from those students.

#### *5.4.4 French vs. English*

Language is of utmost relevance in Canadian legal culture and has consequences for internationalization. Canadian law faculties have historical and linguistic roots in the Anglophone and Francophone legal environment, which often implies the predominance of Common Law and Civil Law and, therefore, share ties with respective parts of the world where those languages and legal systems flourish. Some participants spontaneously pointed out remarkable comparisons on that topic.

One perception is that the internationalization of Francophone law faculties and Civil Law education, in terms of institutional linkages and references, is more geographically limited. It encompasses the French-speaking world and areas historically under French influence, including regions of Eastern Europe, Africa, and Latin America. That excludes areas of the globe with greater economic power, such as Asia, although countries like Japan, South Korea and China have adopted the Civil Law system. The decline of French as a dominant language and the rise of English as such

enables Anglophone law faculties to expand ties with more extensive parts of the world in a less limited manner.<sup>380</sup>

However, this distinction, based on the global reach of each language, is challenged considering the quality of the exchange of cultural elements, which has to do with the ability to understand and express in someone's native language. Here, translation and multilingualism are tools that enrich the potential for the circulation and production of knowledge more deeply rooted in local legal cultures. So, French-speaking institutions and professors often operate in a multi-lingual fashion, having access to scholarship in English and more easily accessing knowledge coded in Spanish, German, Italian or Portuguese due to more frequent translations. Thus, they transit more efficiently between the Anglo-Saxon and continental cultures.

Furthermore, the English-speaking legal culture is strongly dominated by a canon originally from the United States or the United Kingdom due to the immense cultural and legal influence of the last two hegemonic empires. Instead of welcoming the world's diversity, English dominance has pushed for exporting knowledge from those central countries to the world. Therefore, the internationalization of Common Law faculties should be embroiled in a more self-centred approach,<sup>381</sup> which we can relate to what the literature calls Americanization, which limits knowledge exchange.

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<sup>380</sup> "The references are also very different, which is part of the linguistic . . . so even from the scholarly question. So the international element of Civil Law is, of course, linked predominantly with the French-speaking intellectual world. So, that is, first of all, French-speaking, Francophone...sorry, predominantly French-speaking institutions: France, Belgium, Switzerland, French-speaking North Africa and so forth. La Francophonie. And then a little broader to the *quasiment* francophone or Francophile. So, for example, Romanian, historically certain parts of Latin America, much less so. . . , the result of which is the kind of international linkages of Civil Law in the intellectual and professional sense are still bounded, whereas the Common Law is less bounded because the English is the lingua franca globally and therefore integrates, for example, Asian, and, you know, other dimensions which are simply more available . . . I just want to profess those because we need to be conscious that they are not just different cultural communities, different formations; their real linkages are different." Interview of Professor A (February 2022).

<sup>381</sup> "I would tell you that you have to distinguish between English-speaking universities and non-English-speaking universities. My experience in English-speaking universities . . . is that there is a priori more access to intellectual diversity

Another difference is that Francophone programs in the context of a minority language look for Francophone international students (and domestic as well) to keep the language and the program thriving, regardless of the revenue those students generate. So, in this case, internationalization does not respond to economic but institutional and cultural rationalities, and international students pay the same as domestic ones.<sup>382</sup> That said, language frames not only the reach of internationalization efforts geographically but also the quality and the directions of knowledge circulation in terms of exporting or importing ideas. We will also see that it also frames it economically.

## 5.5 Transsystemia

McGill's transsystemic program is a recurrent topic in the literature. It provides an alternative to the dichotomies of English or French and common or civil law by combining both languages and legal systems into one program. In this section, we will touch on how professors immersed in the program understand the circulation and production of knowledge within the internationalization of this innovative and rather unique legal education setting.

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in non-English-speaking universities for a simple reason. It's that in French we still translate stuff from Italy, we translate stuff from Spain, we translate stuff from Germany much more than we do in English. In other words, there is a kind of autarchy or self-centered approach in English-speaking universities that has always struck me and that I continue to fight . . . Everybody knows everybody. Everybody quotes each other. So, I think it's super interesting is that I can read in Portuguese, um. So, I don't mind reading an article in Portuguese, I speak Spanish, I read well in Spanish, I read in Italian. Besides, often, Spanish speakers translate a lot. They translate a lot of German authors that are never translated into French or English. I am able to read that. It feeds me. . . It's normal in a Francophone law school in Quebec, we'll say, when you study the theory of law in a positivist style, it's normal to read Hart and it's normal to read Kelsen. [In English-speaking faculties], it is Hart, Hart, Hart. Hart, Dworkin. Even in philosophy. All that does not come from the Anglo-Saxon world. . . That is also an important variable. It has an impact on internationalization." Interview of Professor D (March 2022).

<sup>382</sup> "So internationally we're trying to do that, so I know, for example, that I have colleagues now who are preparing a trip to Africa, I think it was [to West Africa]. So, to meet people from universities there to create links for that. So, we are putting effort here and trying to get more Francophone international students, and those are not the ones who bring us extra funds because their tuition fees are the same as Canadians." Interview of Professor I (April 2022).

Before transsystemia, McGill students were trained in one of the legal systems and completed one year in the other to obtain accreditation in both systems within the so-called national program, which is still in use in other law faculties like the University of Ottawa and the University of Montreal. The national program would then isolate both legal systems, keeping them away from mutual influences when legal pluralism or “polyjurality”<sup>383</sup> could provide a better understanding of the law in a multicultural and globalized world where enclosed jurisdictions were becoming more permeable to international and transnational influences.

Therefore, located at the crossroads of the two major legal traditions and languages of the West, McGill not only embraced comparative, international and transnational law but also reformulated its teaching methodology by merging the two systems in a transsystemic approach. By promoting an intense dialogue between two different systems, enabling students to navigate various jurisdictions and get jobs around the world, transsystemia itself is seen as an asset that fosters internationalization through the circulation of knowledge.

I think [the transsystemic program] participates in internationalization because all students are now trained in both systems . . . . In that sense, bringing together two systems, which are two major systems of law in the world, and opening the door of jurisdictions which are way beyond Montreal, participates in internationalization. And this is one of the reasons why the alumni network of McGill Law is so geographically vast . . . and we have a lot of graduates who went to international organizations. . . . So, transsystemia, I think, has very much worked into opening the minds of students.<sup>384</sup>

Transsystemia also led to a resistance to compartmentalizing the faculty in isolated disciplines. Hence, professors teach in areas other than their primary expertise, which helps to internationalize the curriculum since professors with experience in international law will be

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<sup>383</sup> Roderick A Macdonald and Jason MacLean, "No Toilets in Park" *supra* note 246.

<sup>384</sup> Interview of Professor P (August 2022).

responsible for courses such as contracts or family law at some point, boosting connections between these fields.<sup>385</sup>

The requirement that undergraduate students be proficient in both English and French limits the pool of prospective students (including international students) but ensures the non-compartmentalization of the program into civil and common law. It creates the conditions for a non-jurisdictional legal education, enabling those same students to navigate both systems proficiently and gain an advantage in working in international organizations dealing with both systems simultaneously.<sup>386</sup>

Transsystemia has limitation. For instance, “it is only common law and civil law, and mostly Canadian common law and Quebec and French civil law. We are missing out on many other legal systems.”<sup>387</sup> Following reconciliation, Canadian law faculties started introducing Indigenous law courses into their curriculum. McGill also hired Indigenous professors and instituted a mandatory course on Indigenous legal traditions in the first year. Interestingly, the program is said not to be restrained to the legal traditions of Indigenous peoples living in Canada but also encompasses

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<sup>385</sup> “One interesting thing about the law faculty at McGill at that time and I think it remains true to a certain extent is a resistance to the compartmentalization of the teaching staff, which is something that I am not sure how often [it is in other universities] but in many places, certainly in the civil law faculties in Quebec, as it’s the case in Europe and I think much of Latin America, people get hired in the private law faculty or in the public law faculty, or international, sometimes legal history and you get kind of a silo, and this is your position and that’s what you teach. And McGill works the opposite of that. When I was offered the position, the dean at the time . . . told me that I could not, when we were discussing what should I teach next year when I start as a full-time prof, he said ‘well, you can’t only teach in your area, you have to teach a first-year basic course’. . . This was interesting because it’s an opening to an internationalization, but that seeks to underscore the interconnection with law in other spheres, including the national legal sphere.” Interview of Professor F (March 2022).

<sup>386</sup> “And we have a lot of graduates who went into international organizations and especially when the international criminal tribunals and the International Criminal Courts were created, the fact that they have to deal with the civil law criminal systems and common law criminal systems and in civil law criminal systems the language was often French in Africa, the Ruanda situation for example, and this meant that a lot of Canadians went into this field. It was heavily populated by Canadians, many of them trained at McGill but not only.” Interview of Professor P (August 2022).

<sup>387</sup> *Ibid.*

traditions of peoples indigenous to other countries such as Australia and New Zealand.<sup>388</sup> Thus, Indigenous legal knowledge is another source available for internationalization.

We can see that such a limitation does not challenge the transsystemic approach but pushes for the inclusion of more legal traditions to expand transsystemia. Other institutional constraints may pose deeper problems to the expansion of the model, especially concerning international students, graduate studies, and research. These limitations are related to transsystemia being mostly confined to the undergraduate (BCL/JD) program.

International students have historically represented less than ten percent of the BCL/JD student population, which is still one of the highest percentages across Canadian undergraduate programs but much less than any graduate program in the six major Canadian law schools. Besides not embracing graduate students, transsystemia does not seem to harness the presence of undergraduate international students to foster the circulation of knowledge and include other legal traditions, or does it in a very limited fashion. When asked about that issue, one participant noted that

students who come to do the BCL/JD I think generally are, I mean we kind of hope that they haven't decided exactly what they're going to do with their with their law degree . . . Practice, as you know, legal practice still is so closely tied to jurisdiction around the world that someone who plans to practice in Brazil is not going to just, they might find out about McGill from someone and think 'isn't that interesting to do Civil law and Common law together?', but they're not going to come and do their first law degree here, hoping that that will get them a job in practice in Brazil, because it won't, right? and vice versa. So, that I think it is very interesting to notice that in the world that first law degree is still tied so closely to practice and to admissibility to the bar, that's why we don't have as many international students. International students who might want to do our BCL/JD are anticipating, you know, they're coming for legal education where they have to know that the possible

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<sup>388</sup> “So, one change that is still ongoing is that McGill Law started to apply the recommendations of the Royal Commission on Indigenous Peoples, so we’ve hired several professors teaching Indigenous Law and . . . we’ve made a course on Indigenous Law mandatory in first year. So, adding the Indigenous dimension is not a tri-systemic teaching, but at least . . . the is now this push to include Indigenous legal traditions into the curriculum . . . and we are missing out on Chinese law, traditional African law. . . But we also do Islamic law, Talmudic law and we study the idea of legal tradition. . . And Indigenous legal traditions is not simply about Anishinaabe or Mohawk legal tradition. It can be Australian and New Zealand Indigenous legal traditions as well. It doesn’t cover the whole world, it’s just a small opening to something that is much vaster. . . It opens the minds on other types of thinking which can be next door in Montreal or on the other side of the world in New Zealand for example. So, to me that is also part of the internationalization of the curriculum.” *Ibid.*

bar to which they will be admitted will be a Canadian Bar or, of course, perhaps an American Bar but New York . . . certain American bars, but it's not going to open the door to the bar and the profession anywhere else.<sup>389</sup>

Accordingly, although the transsystemic approach opens the mind to how the law develops in various jurisdictions and cultural settings, the admissibility to bars in North America is seen as a major obstacle to the diversification of the student body of the BCL/JD program. In this sense, unbounded minds are still bounded by the delimitations of the legal profession, which frames the attractiveness of the program for international students. Still, similar to other undergraduate programs, the participation of international students, be they exchange students or LLM students taking an undergrad course, is well regarded as a source of enrichment for discussions, especially in seminar courses.<sup>390</sup>

Language requirements are another obstacle to extending the pool of international applicants to BCL/JD since students must have passive proficiency in both English and French. That is a relevant limitation self-imposed by McGill Law for preserving the transsystemic program that even bilingual universities like the University of Ottawa have not imposed to protect bilingualism. Perhaps when introducing the requirement, the faculty believed that the language requirements would strengthen McGill's brand by signalling that transsystemia would be taken seriously. Therefore, those requirements would increase attractiveness instead of reducing the number of applicants. Whatever the case, these language requirements do not apply to graduate students, who only need to master

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<sup>389</sup> Interview of Professor Z (March 2022).

<sup>390</sup> "They really enrich class discussion, so I just began my seminar . . . so helpful to have students from different countries, whether they're on exchange or doing a master's degree. So, they really contribute knowledge. I think there's a real possibility of bringing examples and knowledge and exchange. And I try my best to make little groups that mix up the undergraduate and graduate students and the Canadian and international students if we're talking about exchange students. And I'm sure many colleagues do the same in the courses where that makes sense. I think it's much harder when international students take business associations, for example. I think, rarely are they identified, and rarely would they probably identify themselves, right? Like, they kind of sit and just take the course as a, you know, a Canadian or here or kind of integrated business associations course." *Ibid.*

English. Such a difference is perceived as an inconsistency or a “tension” at McGill.<sup>391</sup> Nevertheless, the absence of bilingualism is one of the reasons why graduate students have limited access to transsystemia: “[graduate students] have a limited access to [transsystemia] because most of them do not speak French. And we do not have the French requirement for graduate studies because we want to open that to most . . . if we limited that to people who understand French in terms of what we call passive French . . . we would lose 90% of our graduate students.”<sup>392</sup>

So, unlike the undergraduate program, in graduate studies, language requirements are deemed to reduce the pool of applicants drastically, most of them international students who have represented more than fifty percent of the graduate student population over the last decade. Hence, because they are seen as less bound to a particular jurisdiction with various backgrounds, graduate international students could vastly profit from transsystemia.

Like other universities, participants indicated that the LLM and the doctorate work according to their distinctive dynamics, apart from the professional undergraduate education. When generally assessing if people’s circulation has entailed a proportional knowledge circulation in the graduate program, participants used expressions such as “to some extent”<sup>393</sup> and “not as much as it could be, I think”<sup>394</sup> because

we actually don't invite our graduate students, in particular international graduate students, to take or sit in on our foundational transsystemic courses. So those

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<sup>391</sup> “Another challenge has been that, you know, for BCL/JD students, students are expected to be kind of passively bilingual, functionally able to read in both English and French. In our graduate program . . . and so this is an interesting kind of tension at McGill, in our graduate program we expect people to be fluent in English. So, we actually haven't. . . like . . . so that's an interesting tension . . . we don't demand capability in French for graduate students. But that doesn't mean that someone who only speaks French and doesn't know any English can get into our graduate program. They can't. So, the graduate courses are offered in English, everything is in English.” *Ibid.*

<sup>392</sup> Interview of Professor P (August 2022).

<sup>393</sup> “To some extent. Then I think it is possible to be a graduate student at the institution and to have an engagement with the institution that is somewhat limited. And you might know people like that in your program. I mean the LLM is a very short degree and so it's possible to, you know, come in and go out of this so quick that, you know, you can remain really in a bit of a bubble that is quite shielded.” Interview of Professor F (March 2022).

<sup>394</sup> Interview of Professor Z (March 2022).

foundational transsystemic courses are reserved for first-year and second-year BCL/JD students . . . But what we have never done is invite our . . . or give credit, you know, the possibility of getting credit, academic credit, to our international graduate students for taking a first-year foundational integrated transsystemic course . . . the situation is that graduate studies is treated . . . it is its own autonomy . . . is kind of a corner of the faculty”<sup>395</sup>

On top of that, the LLM is quite a short program, and students are expected to acquire specialized knowledge in a specific area to compete professionally. Therefore, their loose and punctual involvement with the institution may not envisage creating space for introductory transsystemic courses offered in the first year.

#### *5.5.1 Transsystemic teaching vs. transsystemic research*

Doctoral students, who develop a long-lasting presence in the law faculty, might often be put in contact with both legal systems depending on their topic, despite not being formally introduced to transsystemia. Supervisors and members of the student’s research committee may eventually mention academic sources from different jurisdictions so that transsystemia may emerge from the supervision process as a way to integrate those sources into the research. However, no formal requirement or guidelines push transsystemia into the doctorate.<sup>396</sup> Consequently, transsystemia is supposed to

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<sup>395</sup> *Ibid.*

<sup>396</sup> “If [doctoral students] are doing work in private law, their supervisors will point out sources in the other system they don’t know. . . So, they are more attuned to...they have the capacity of being more attuned to transsystemia, more attuned to the other system. . . I am not really in contact with how my colleagues are dealing with transsystemia when they have a long-term relationship with a doctoral student, but I know that this is happening. So, I know they are talking about the different systems, and they are indicating sources and these students read the other sources . . . and they integrate some of the other sources. Not all of them, but they integrate some of the sources. So, to me this is beneficial for the students. It’s not a strategic push, it’s not an institutional mechanism, it’s very personal to the supervisor-doctoral student relationship and the topic that is chosen.” Interview of Professor P (August 2022).

“Also, McGill, for doctoral students, operates with doctoral committees, and so they these are two professors other than the supervisor, who are the examiners for the comprehensive examination, which happens a year and a half after the arriving at the start of the doctorate and then after that point they become members of the committee. So these are kind of people whose contributions are likely again to be influenced by working in different traditions and, you know, making comments saying ‘well, you know, you should have a look at you know what goes on in you know Swiss law this or in

influence graduate work, but the commitment to transsystemia in doctoral research is still fragile. At this point, McGill's graduate research does not differ much from those of other Canadian law faculties.

Nonetheless, reforms in the doctoral program appear to have increased teaching opportunities for doctoral students, thus improving the circulation of knowledge between graduate and undergraduate students. Beyond a mandatory course in theoretical approaches to law, doctoral students are encouraged to take a legal education course that connects them to transsystemic teaching. One professor describes the path to teaching and how this translates into the kind of internationalization transsystemia should foster:

there are many students who participate in these optional programs that we offer for teaching. So, in addition to theoretical approach, legal education is a quasi-mandatory course. It's not formally mandatory, but nearly all doctoral students will take it. And, again, this includes significant engagement with internationalization in general and, in return, transsystemic learning in particular. And then some students do teaching, these three layers of teaching training. So, the legal education seminar, then teaching mentorship, which is essentially a kind of shadowing and contributing in a limited way to the teaching of an undergraduate law class, and then teaching fellowship, which is a much more significant shouldering of responsibility by a doctoral student in the teaching of a course. They participate in kind of designing the class before the term choosing the readings; then they get to teach a number of classes, they get to provide feedback, they help to set the exam, they offer comments and tentative grades on part of the exam... So, basically, a little bit of teaching a class, but with somebody else that has the responsibilities, where you get a chance to get feedback and to get your foot in the water, and, of course, so that being the case, you're drawn into the teaching of the general undergraduate BCL/LLB as a doctoral student, which is, as I suggest, permeated by the transsystemic approach and internationalization more generally. So, this is another way in which you get drawn into this dynamic, even as a graduate student.<sup>397</sup>

If, on the one hand, the linkages between transsystemia and doctoral research are not institutionalized, on the other hand, the linkages between doctoral students and transsystemia as a

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Bolivian law that. So I think it finds a way to influence a lot of graduate work. That is done to varying degrees.” Interview of Professor F (March 2022).

<sup>397</sup> Interview of Professor F (March 2022).

teaching methodology are way more evident and institutionalized. That suggests that transsystemia is better understood and developed as a teaching methodology, one that seeks its internal reproduction through the doctoral program. In that case, internationalization as knowledge circulation has been developed in legal education seminars, where participants' backgrounds are perceived to have contributed to various approaches and critical analyses.<sup>398</sup>

The relevance of transsystemia to internationalization as knowledge production, in turn, depends on the existence of a consistent transsystemic approach to research. There is no clear answer to whether there is a transsystemic research methodology. In short, some professors point out that there must be transsystemic research because “the reality, as well, is that it is inevitable that transsystemic teaching generates transsystemic research”<sup>399</sup> since those immersed in transsystemic training cannot isolate civil and common law when doing research.

Furthermore, even though professors do not express their methodology as transsystemic, such an influence should be seen in the combination of sources from the various legal systems and in the research questions that frame the research, which usually comes from a perspective of dialogue among traditions. An exercise of inquiry that applies such a methodology could be seen in the questions students ask in courses dedicated to one legal system, such as torts. “So, you, you might have, you know, a course in trusts in the common law that is purely the common law, but students

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<sup>398</sup> “[McGill] initiated a teaching mentorship program, a teaching fellowship program where international students have an opportunity to have some experience being mentored or supervised by full-time professors in, you know, learning something about the design and delivery of courses across the curriculum. So that's, I think, been interesting for students. And in the legal education seminar, I notice every year that conversations and discussions and critical analyses depend very much on the backgrounds of the students in the classroom. So that's a small group but there's always this real range of languages, countries or . . . kinds of approaches to legal education that students are familiar with. So, in that sense, I think there's an opportunity to kind of assess or gauge or compare internationalization.” Interview of Professor Z (March 2022).

<sup>399</sup> Interview of Professor F (March 2022).

are going to ask questions from a civilian perspective, in which there is no concept equivalent to the trust, and so, it doesn't matter, it finds a way in whatever you do.”<sup>400</sup>

Although professors claim that “early on it was acknowledged that transsystemic teaching would only function if it were connected to transsystemic research and . . . if you didn't do that, then the transsystemic teaching would be very limited and it wouldn't have much depth,”<sup>401</sup> it seems that transsystemic research relies on the natural, stealth spread of its teaching methodology, hence not requiring an organized or systematized description of its research approach. That is similar to the idea of the supposed natural spread or circulation of knowledge around international students due to the mere presence of international students in law school.

This way of understanding the circulation and production of knowledge without an institutional push following an organized, strategic plan is quite common among professors. It is based on the idea that professors are already involved in a broader institutional culture that adopts openness to what is unfamiliar and international as sources of innovation and leaves strategic action to individuals and that academic freedom suffices to promote a vibrant intellectual environment.

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<sup>400</sup> “ – Do you believe there is a transsystemic approach to research?

– Of course, of course. Sure. I think that early on it was acknowledged that transsystemic teaching would only function if it was connected to transsystemic research and . . . if you didn't do that, then the transsystemic teaching would be very limited and it wouldn't have much depth. And the reality, as well, is that it is inevitable that transsystemic teaching generates transsystemic research because, if, you know, you are a Common law trained academic . . . but then you have to start teaching Civil law. And when you write about whatever issue it's not as if you can compartmentalize what you know about Civil law, the kind of questions that it gives rise to, the way that they are problematized in the Civil law. . . . So obviously all of this is constantly interacting. And not necessarily all of the research is explicitly transsystemic in the sense of doing in research what I described that we do in teaching, which is kind of drawing differently from sources from different legal traditions. But what I would suggest to you is that, even when research is on the face of it, either purely civilian or purely Common law or purely Indigenous, and I think that, very often, it will be transsystemic in its methodology, in its general approach, in the question that it asks. And so it does, you know, reverberate I think throughout the research agenda for anyone who's asked to do that. And maybe I'll just add one more thing. Even if you teach a course that is not explicitly designed as a transsystemic course, students, they are trained in across traditions, and so they will ask you questions that, you know, will bring in the other traditions. So you, you might have, you know, a course in trusts in the Common law that is purely the Common law but students are going to ask questions from a civilian perspective, in which there is no concept equivalent to the trust and so, it doesn't matter, it finds a way in whatever you do.” Interview of Professor F (March 2022).

<sup>401</sup> *Ibid.*

Like other law faculties, McGill does not present a specific approach to internationalization concerning its material aspects, relying more on a coherent discursive, intellectual or ideological approach to law that has developed into a lasting institutional narrative shared by all professors.<sup>402</sup> McGill is unique in creating such a cohesive, institutional alignment among faculty members, which is fertile ground for legal education innovations that other faculties have not experienced. However, despite its highly internationalized student population, international students have not been considered strategic assets for further developments in transsystemia, which is oblivious to the specificities of this parcel of the student population.

One senior professor, external to McGill but claiming to have close relations to the program, summed up the main criticisms around it. Transsystemia has worked very well as a marketing strategy to attract international students, even though they will not be immersed in it, meaning that they end up getting the same experience they would at other universities.<sup>403</sup> Moreover, the lack of a research methodology put into practice with a distinctive character has confined transsystemia as a teaching method.<sup>404</sup> In this context, the most significant impact of transsystemia on internationalization would

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<sup>402</sup> “I am not sure there is a uniform specific approach. I think . . . probably in our narrative about ourselves as a faculty of law in Canada, I think we turn our transsystemic or cross-system, cross-tradition approach into something we call international or global. I don’t actually like that characterization . . . about global, because I don’t actually think we fulfill that promise if we say we are offering a global legal education or even attention to global issues broadly. But I think at our faculty there’s a tendency to kind link our commitment to integrating legal traditions, to link that to some commitment to a broader openness to, and acknowledgement of the diversity of legal traditions and legal systems around the world.” Interview of Professor Z (March 2022)

<sup>403</sup> “There are no internationals. It's very pan-Canadian in representation, but there are no internationals. . . In other words, it has transformed the image that international people may have of McGill, but in concrete terms, has it. . . well, it may have attracted international students, but who will not go on to do transsystemic law, because they will enroll in an LLM or a Ph.D., but which they could do in Ottawa, in Montreal, in Toronto. . . From an international point of view, the McGill trans-systemic program . . . is marketing.” Interview of Professor D (March 2022)

<sup>404</sup> “It has remained an undergraduate teaching program, to a large extent. There's very little transsystemic research actually. Very, very, very, very, very little. They have not developed a transsystemic research methodology that is different from the multiple methodologies of comparative law.” *Ibid.*

be the epistemological contribution of Roderick MacDonald to the understanding of legal pluralism, which is considered to have guided the implementation of the program.<sup>405</sup>

We can see that while developing an innovative curriculum suitable to the globalization of the legal profession in a plural perspective and implementing mechanisms to reproduce its teaching method, transsystemia has not integrated other dimensions of internationalization, especially international students, which could boost it in several aspects, including as a research method.

## 5.6 Economic Rationale

Beyond the question of whether transsystemia plays a role as a marketing strategy for McGill law or not, the issue of the economic face of internationalization is of deep concern since it is one leading reason driving universities and their law faculties to internationalize, which must have consequences for the way programs are designed and managed, the way international students interact with institutions, and how those institutions position in the global legal education market. The purpose of education can clash with the economic rationale behind internationalization, which may translate into various strategies to accommodate tensions. With such spirit, I asked professors about the relevance of international students in funding the faculty, expecting to discuss the rising problems they had identified in that topic.

Professors have it clear that international students are usually perceived as a source of revenue for the faculty. Still, that statement is often nuanced by comparisons to the university as a whole or

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<sup>405</sup> "If there are some things that have been developed that are not so much related to transsystemicism, it's more related to Roderick MacDonald's concept of legal pluralism, this critical legal pluralism which is very McGillian. But Roderick is dead and there are less people interested in that. But well, even if I don't agree with him all the time, but it's still a contribution to the international, to the research, to the way. . . to the epistemology of pluralism, which, in my opinion, is much more promising than transsystemism, which is a very interesting program for an undergraduate, but it didn't go much further." *Ibid.*

practices of other countries, especially the U.S. and the U.K., where exploitation would be much more intense than in Canada. We believe this is one way to accommodate those tensions. The topic also seems not to be openly addressed among faculty members. Instead, it is confined to the administration.

The discussion mainly revolves around the role of the LLM in attracting international students, which is more overtly considered the main revenue-generation program at law faculties. Shrinking public funding, funding models, and neoliberal policies carried out by provincial governments are recurrent explanations. Still, issues related to how internationalization reproduces international economic dependency and inequity, such as transferring savings from developing countries to finance Canadian education, were missing from the discussion. Moreover, professors are not optimistic regarding changes in how universities are funded and do not envision creative alternatives.

### *5.6.1 LLMs: purpose and curriculum*

Professors stressed that it is impossible to address the economic logic behind internationalization without first understanding the origins of the LLM in the U.S. Participants recalled that the LLMs were born as an opportunity to bring lawyers from around the world into contact with American legal education. Hence, international students were expected to absorb styles, reasoning, concepts, and practices to incorporate or reproduce in their home countries. For that, no courses were designed for LLM students, who would take seats alongside JD students in their regular undergraduate courses.<sup>406</sup>

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<sup>406</sup> “North American LLMs they started, of course, in the U.S. Primarily, the assumption was that people would come for a year, be immersed in American legal education. In fact, traditionally they wouldn't actually have any courses that were specifically for them, it was just an opportunity to take some courses along with American JD students. And then, they would kind of take what they had picked up through approach, format, of pedagogy, awareness of the ways in which, for example, corporate law works here or in North America, and they would take that home with them. So, I think you know

LLMs were part of an Americanization strategy to spread legal models, and law faculties saw it as a way of proselytizing. Despite not being designed initially with that purpose, doctorate programs have also fulfilled similar goals.<sup>407</sup>

However, LLMs soon became part of law schools' business model as an essential source of revenue to finance undergraduate law programs. Their attractiveness was not restricted to American law and universities' prestige. They strongly benefitted from the possibility open for LLM graduates to practice law in enormously wealthy jurisdictions, such as New York and California, which turned such programs into a gateway to the U.S. legal profession for international students and foreign lawyers. This arrangement, which combined prestige and access to the profession, inaugurated a "farm system"<sup>408</sup> that allowed law schools to charge international students expensive tuition fees. LLMs were thus deemed a "cash cow."<sup>409</sup>

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some interesting writing and reflection on that, the ways in which American legal education, then kind of got spread around the world, in many ways, right?, through U.S. LLM programs." Interview of Professor F (March 2022).

<sup>407</sup> Gail J. Hupper, "The Academic Doctorate in Law . . .," *supra*, note 71.

<sup>408</sup> "I know that some universities, especially in the U.S. and the U.K., use LLM, basically international LLMs to subsidize, basically, their undergrad. In the U.S. I think it's pretty flagrant, so they will pack, you know, a hundred and twenty foreign LLMs in a course or in a class, charge them a fortune. . . In the U.S. it's different because once you have an LLM . . . I think they may have changed their rule, but up to a few years ago, you could do an LLM in the U.S. and take the New York Bar exam. I think it may no longer be the case, but it was for a long time. So, foreigners were willing to pay the price of an American LLM because it was their access to, you know, potentially a profession in the U.S. So, I think it became kind of a, yeah, a farms system, yeah, right? But American law schools are in crisis, there are too many of them, their students have too much debt, so the whole law schools in the U.S. is in trouble." Interview of Professor T (March 2022)

<sup>409</sup> "In the United States, that's classic. International students are the cash cow, right? It's purely economic. It's all about the undergraduate, the JD. Graduate school is basically for international students who pay a lot of money to get a degree at an American university. That's the proof. There are studies on this about the proliferation of LLMs in the U.S. It's really printing boards of bills." Interview of Professor D (March 2022). Also, "In the U.S. for instance, LLM programs are cash cows, right? They have two hundred students, most of them don't come on scholarship, so most of them have to pay at least some part if not all of it. And those like me, who were on scholarship had to take on loans at some time to sustain on myself and that is done by students on the PhD as well. So, it's very much seen as a cash cow, and the programs are sort of developed in a way that international students are discouraged from finding and having careers in the U.S. So, there's immigration mentality in the back of the university administration or the law schools administration as mine that they do not encourage immigration. They do not encourage you to seek law firm. So, basically, they want your money, and they want you gone, right?" Interview of Professor M (May 2022)

Differently, Canadian LLMs have not had the same imprinted proselytizing purposes as the Americans. Except for a few law schools, most do not share the same prestige, and LLM students do not have access to the profession upon graduation.<sup>410</sup> The program is regarded chiefly as an opportunity for further specialization and to prepare for the doctorate, and Canadian law faculties have been unable to imagine a strategic role for the program.<sup>411</sup>

Even its function as an introduction to research and preparation for the doctorate and academic career has been undermined with time. LLMs used to require an extensive publishable thesis of 30,000 words alongside a heavy load of courses. This exigence has lost popularity in favour of a non-thesis LLM with a research paper of 12,000 to 15,000 words. Yet, the thesis LLM remains an option, but now, it has a reduced course load. That is not to speak of purely course-based LLMs, which, due to their professional character, usually do not count for PhD-seeking students. Therefore, wherever you look, the LLM has undergone a reduction in its academic requirements. Does this reduction reflect an adaptation to better compete in the market and attract more international students?

It is not clear that these changes reflect a conscious adaptation to global competition and, thus, were directly influenced by economic interest. Confronted with this question, professors claim these changes primarily followed academic concerns. They claimed two main reasons for abandoning the old model. First, it was considered too much for a limited timeframe (2 years or less), narrowing down the number of prospective students that could comply with the thesis endeavour.<sup>412</sup> Second,

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<sup>410</sup> With the profusion of professional LLMs, this situation starts to change.

<sup>411</sup> “I think that Canadian LLM programs have never had as clear a kind of proselytizing message or even as clear a vocation. They really are a next level and opportunity to go into more depth, which is what we usually see from Canadian law students who then go to another faculty of law to do a master's degree.” Interview of Professor F (March 2022)

<sup>412</sup> “So, so we, we do not have an LLM that is purely course-based, and we, until recently, maybe 15 years ago, I'm not sure what do you call that recently, but whatever, there was a thesis that was required for all LLM students. And the thesis was something in the order of about 30,000 words, in addition to a quite heavy load of courses. And there were two issues that led us to adjust that. At first, is that we, we were told repeatedly that this was the requirements for those... too much for an LLM. It is that we have too many, too many classes in consideration of the fact that students have to write this hundred-page thesis. The second is that the requirement for writing a thesis imposed very severe restrictions as to who

there are limited resources available at the faculty for supervising students' research. Nonetheless, those changes were functional for a more competitive business model, bringing Canadian LLMs closer to market-driven LLMs in the U.S. and the U.K.<sup>413</sup>

Course-based LLMs represent the next step in reducing academic requirements in alignment with professional education. However, not all course-based LLMs are within a professional graduate stream. The University of Ottawa, for instance, inaugurated a course-based LLM in Fall 2021 despite not dividing the graduate studies into professional and research streams like the UBC or Osgoode. Unlike those law faculties, uOttawa's course-based LLM does not train students to meet the accreditation requirements and pass bar exams. Still, that model has experienced unprecedented growth in international student applications<sup>414</sup> while raising some concerns related to crowded

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could come and do this degree. Because, for linguistic reasons, many people, you know, for many people writing such a research document presents insurmountable obstacle. And so, about maybe 12, 15 years ago, we decided to create two strings in our LLM. So we have a non-thesis and a thesis LLM. The thesis LLM retains its 30,000-word thesis but with much fewer courses, so that, you know, they have courses in fall, but in the winter in turn they might take one or two courses, and the rest is spent to write the thesis. And so, it's possible theoretically to be done in 12 months, although I think that the average student probably takes till December of the second year to finish the thesis. The non-thesis students have a normal load. Probably five courses per turn and then they write a 12,000-to-15,000-word essay kind of LLM essay with the supervisor and all of that. But it is a kind of a . . . it is significantly less ambitious piece of writing, and so this is where we are at now. But there is no, there is no consideration or discussion or suggestion of a program where there would be no no significant piece of writing for the LLM." *Ibid.*

<sup>413</sup> " – Does these changes reflect a in market adjustments to this public of international students or, then the main reasons are academic as you said? – Well, I don't know whether you've ever read an article by Roderick Macdonald called Decolonizing law school. . . So it's very difficult to claim that institutions escape the market completely because the market finds a way to influence everybody. So, I'm wary of saying it wasn't a reaction to the market, but I would perhaps present it as these were not the concerns that we're central in the conversation anyway. So it's not that we had a problem that we weren't getting enough students or whatever. There was a concern that thesis supervision was a very heavy burden for the professors and especially for those students for whom it was an enormously challenging endeavor to write a very long a hundred-page thesis. And the reality, when you are a professor, is that graduate students do not correspond to an equivalent burden. It's not a very nice way to put it, but that is the reality is that some students require so much support that it becomes what you do, as opposed to research to a significant extent because you have to help that person, you know, move forward at every stage. And so, one concern that is more internal and resource driven that, said, well, you know, if we had we allow the students to be a non-thesis program or stream and write much shorter documents that would lighten the load and make life easier for the students as well. So, but it was not it's not that you know law firms told us, you know, 'why are you making these students write these long things?' or anything like that. We don't think we care that much about what law firms do, and I think they don't necessarily care either. So, I am not sure there's a kind of a direct connection to see with market forces." *Ibid.*

<sup>414</sup> "Oh yes, and especially this year we've had big numbers. Like, most of our applications were for the course-based. Most were for the course-based, and this is... So, I'm not quite sure what to think about the course-base LLM yet. So, it's

classrooms in the mandatory methodology course for LLM students and how to evaluate applications since no research project is requested. Also, the requirement of a compulsory methodology class for all LLM students is questioned, for many will not pursue research beyond the scope of regular courses.

As we may draw from the implementation of course-based LLM at the uOttawa, the absence of research requirements seems to increase the attractiveness of the program for international students. In turn, it materially impacts law faculties by drawing scarce resources, such as classrooms and more professors, for which the institutions must be prepared. It also affects how admissions committees assess applications. Due to the absence of research proposals, students' backgrounds gain prominence as the sole element professors can evaluate. Thus, those from elite law schools may have an even higher chance of being approved, reinforcing the elitism of the recruitment process.

### *5.6.2 Transitions and Indeterminacy*

The absence of a thesis requirement made the course-based option more attractive to a broader audience, including international students not interested in pursuing academic careers and has brought Canadian LLM programs closer to the American model, suggesting that Canada has acted as an

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new here, we've done it for a year...a year I think only and now there's a boom. I know that international students are all applying for this. And we don't even really know how to assess the files because there's no... it's not on the basis of research proposal because they're not even writing a major research paper. Obviously, they will be writing papers in the different courses, but it's not at all the same thing, and this is clearly, for those students to have that international experience and to get the Canadian degree, understandably, and they will still be sharing their knowledge in the classes, but it won't be, it won't be having that impact on our research like we've been talking about the research-based programs.”  
Interview of Professor I (April 2022)

intellectual colony of the United States in this regard.<sup>415</sup> Would it be just another face of Americanization?

Yet the fact that Canadian law is not as prestigious, that the LLM degree won't lead to the legal profession in Canada, that Canadian universities are public institutions,<sup>416</sup> and that the number of international students and the relevance of their fees to the survival of law schools are much smaller than in the U.S., makes Canadian LLMs again very different from American law schools. The absence of a strategic role for the LLM in Canada puts it in a place of indeterminacy, whereby it is abandoning a model but hasn't yet fully embraced a new one. Therefore, it is merely regarded as an opportunity to explore other subjects or get more profound yet limited expertise in one area, repeating the JD experience to a great extent.<sup>417</sup>

Such indeterminacy implies a conflict, which manifests itself when professors question the direction of change in defense of the research nature of graduate studies. One participant who held an administrative position expressed how the changes in the LLM curriculum have translated into challenges to academic quality and how they are motivated by the competition between universities to adapt to consumer demand for faster programs delivering the same amount of prestige.

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<sup>415</sup> "I think most LLMs in Canada are mostly course LLMs. There are some research LLMs here and there. We still have quite a few students in research LLMs, but for historical reasons. But you have to realize that Canada, in many ways, is a colony of the United States. It is an intellectual colony of the United States. It is increasingly an intellectual colony." – Interview of Professor D (March 2022).

<sup>416</sup> "Being a public university here cuts against that because, as I said, there's a funding cap. You can only give so much money to get some internationals coming in. You are not allowed more than that, you don't have the money. And, as soon as you say that someone has paid for the LLM, there is always a deep interest. And the interest is based on not just not being able to afford . . . you don't have the money, you count on scholarship or something. So I don't think that cash cow model really works. It might at private universities." - Interview of Professor M (May 2022)

<sup>417</sup> Said indeterminacy can be read in the way a participant described the purpose of the LLM: "I think that the LLM is an opportunity to go somewhere else to experience a different country, a different culture, a different approach to law, and a different approach to education at the university level, and it's also an opportunity to, you know, explore new issues and hopefully in different ways that that, you know, you weren't given the chance to do in your undergraduate degree. I, you know, I always tell students in the LLM in particular that, you know, you should really try to avoid turning this into one more year of, you know, the kind of law classes that you've done before." Interview of Professor F (March 2022). Consequently, the LLM may just reproduce the same experience seen in JD programs, without any differentiators added to it. It is up to the student to pursue a different experience.

I think all universities are going that way now. So, however, I know that most, many, many departments and faculties are not happy about this because they feel like this is not what graduate studies are about. Graduate studies have to include research. But at the same time, you know, we are in a competition with other universities that are offering faster programs, you know, do it, you know, finish it in a year or less and it's what sells. But where I struggle is exactly where to maintain the quality, the quality of the program and after students who come here.<sup>418</sup>

Another example of resistance can be noticed by the fact that participants recognized some predatory practices worldwide and refrained from implementing them when in administrative positions. One of those practices is “ghettoization,” and it is said to occur in the U.K. It refers to bringing a large cohort of students from one country, China mostly, and segregating them into one classroom with no contact with domestic students, and sending them back once the course is done, with no possibility of remaining.<sup>419</sup> Canada is well-known for being open to immigration through higher education, and such practices would counter the immigration policies the country has implemented so far.

As already discussed, market-driven programs tend to have a more straightforward strategy for internationalization by developing services to manage student demands, luring in international students, hiring specialized professionals to broaden institutional response to market changes and mediate the relationship with business enterprises, possible state-sponsor agencies, and other stakeholders. The British model, deemed to have openly embraced education as a business, is again a source of comparison, made explicit by one participant:

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<sup>418</sup> Interview of Professor I (April 2022).

<sup>419</sup> “Whenever I would, as [an administrator], try to build collaborations, I never wanted to create a ghetto, right? So, I’ve heard universities in the U.K., and they take, you know, even not international students, you know, three hundred Chinese students, and they put in one class. They don’t interact with anyone, and then they ship them back. To me that was awful! That’s awful! . . . That’s not right. If you’re not going to integrate them and have a true sharing and learning, it’s wrong. Just take the money and, like, they may learn but to me that was never the model. So, whenever, with agreements, we tried to limit the number of students from anyone university, so we didn’t have this question that we would have returning to China . . . but not have this idea that all the foreign students would be from one institution or from China. Because the richness is when you have . . . students coming from all different countries and interacting probably in the case for the first time, one on one. So, I think the risk is there, this ghettoization risk for LLM students, I would say, mostly, but I don’t think we fell in that trap.” Interview of Professor T (March 2022)

For example, the University of . . . in England. It has the highest percentage of foreign students and foreign faculty of a campus-based university in the United Kingdom. The program [enrolled] 250, mainly postgraduate students, was 80% foreign students. 80%, and was the principal means of generating income for not just to run the program but to the benefit of the university broadly. It's a business. Higher education is a determined business of the United Kingdom and has been for a very long time. So, [the program] had very clear internationalization services and programs, outreaches, recruitment, people employed to do these things with targets and all the rest of it. I mean, I don't think we have that in our faculty at all. I'm not aware of it.<sup>420</sup>

As LLMs in general are still transitioning (except for professional LLMs, which have completed transitioning), it explains the absence of a defined market-based internationalization strategy enacted by law faculties. Nonetheless, as the indeterminacy goes, the lack of an explicit commitment to the economic rationale does not mean the existence of an institutional commitment to internationalization as a circulation of knowledge based on research programs either. That same professor continues:

I don't think that [circulation of knowledge] is a principal objective of the whole kind of increasing student numbers. If it happens at all it is not conscious or deliberate. Because I think it's not the motivation and so forth. I think that there's an idea that there is an implicit [circulation of knowledge], a leakage, a kind of osmosis, also that by having foreign students, somehow it drips out of them. Some benefit. I'm not sure that's true.<sup>421</sup>

That said, Canadian LLMs and law faculties' internationalization is neither entirely framed around economic reasons nor is knowledge-driven. They are somewhere in the middle, with no strategic direction being asserted. An alternative to that indeterminacy could consider the idea of a “purposeful brain drain” or attraction of talents, which is part of the Canadian immigration policy,

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<sup>420</sup> Interview of Professor A (February 2022).

<sup>421</sup> *Ibid.*

although not institutionally developed and incorporated into the internationalization of law faculties.<sup>422</sup>

### 5.6.3 Business model: professionalism vs. research

Saying that Canadian law faculties do not seek international students for revenue as their counterparts in the U.S. and the U.K. does not mean that the economic rationale is not present or significant. When asked why most international students enroll in graduate studies, participants understand that the faculty has actively promoted these programs for international students for economic reasons.<sup>423</sup> International students pay higher tuition fees that are less regulated than domestic ones. However, participants believe that law faculties are less dependent on them than their universities or other units because the proportion of international students is smaller.<sup>424</sup> Professors tend to understand that the

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<sup>422</sup> “Foreign students come. They have their contractual relationship to, for instance, maybe leave, maybe don't. So I think that's terrible because, if we are good in our recruitment, we are recruiting quality foreign students. That means we are creaming off the top. I mean, part of the immigration of Canada and through the foreign students is a purposeful brain drain. We are actually an active element of it. And profiting as a society from it. But then I think we're stupid because if we're really smart about it and we have all these kind of brilliant, wonderful people coming, you know, I mean, aside from the stupid thing where we've got our immigration policy, people with law degrees who are driving taxis or worse than that, doctors, when we need doctors and nurses driving taxis, you know, that's an equivalency and qualification problem and so forth. But. But just to stick with the higher education area, there's so much we could be learning.” *Ibid.*

<sup>423</sup> “I don't really know what explains...it's sure that in graduate studies the number of international students is much more important than in undergraduate studies. This is probably because faculties are looking for international students, that is, their promotion policy is probably based more on the second and third cycles than on the undergraduate, especially for economic reasons. Because these students bring in more in terms of tuition fees than undergraduate students. So, probably, . . . it's for economic reasons but also for promotion reasons that always more aimed at international students in the graduate programs than in the undergraduate programs because in the undergraduate programs there are international students, but their number is not that big.” Interview of Professor X (February 2022)

<sup>424</sup> “My understanding, yes, certainly is important revenue source. But if you consider the entire [university], I think for the law school is actually a less important source than for the entire university. Because if you look at the entire [university], for example, we have, like, our undergraduate students, like, probably 20% worse, you know, more than, I don't know, at least 20% maybe 30% are international student, right? So, like, the majority of them coming from China, India, a few kind of major countries in Asia, and some other parts of the world, and some from Russia, from other places. So they pay a much higher tuition, right?, than the domestic students, right? So university-wide, yes international student revenue is very important for the [university]. But for the law school, I think less so. Why? Because I think the percentage of international students I think is smaller than, you know, overall, than in the entire university. And also as I said, I mean, if you look at our [doctoral] program, for example, there are actually more Canadian students and international students

meagre percentage of international students in undergraduate law programs, especially when compared to the rest of the undergraduate programs at the university, makes the financial impact of international fees less relevant.

That said, once more, participants identify course-based LLMs as programs designed to generate revenue, especially when designed as professional LLMs. They profit from the desire of international students to take courses instead of spending time writing more extended theses or research papers. Courses are seen as the most attractive elements in the curriculum.<sup>425</sup> Course-based LLMs allow classes to be way bigger with fewer professors involved.<sup>426</sup> According to a manager of a professional LLM, the program she runs has a significant role in the financial plan of law faculties

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in the [doctoral] program, which is actually very different from U.S. law schools. You know, for example, as mentioned, most American law schools, if you look at SJD program is almost exclusively for foreigners. No American lawyer, you know, would enroll in SJD programs. As same thing for LLM. And for the [university], I think, we do see kind of a mix of domestic and international student. So, that actually make it, the international student tuition money even less important. So, to answer your question, I guess the answer is that, yes, is an important source of revenue, but it's not as important as for some other units on campus.” Interview of Professor CX (April 2022)

“The law faculty is a very small faculty at [the university]. There is not a lot of concern of the university about what we do as long as we’re not causing too much trouble. We are a tiny faculty compared, to say, Arts or Sciences. Even some of the departments in those faculties are bigger than we are as a whole faculty. So, I would say no. Having said that, the university has a very different . . . I mean, the university makes, from the student level, which I focus on, the university makes enough a lot of money on international tuition. We have, the law school has a much much smaller proportion of international students than the university does as a whole. So I think the university has devoted more attention, and probably in a more deliberate way, that we have as a faculty. Because just by sheer numbers it’s a much bigger issue.” Interview of Professor L (May 2022).

<sup>425</sup> “But course-based is really, you can see them as more kind of, you know, revenue making enterprise, I think, for most schools, including [my university], across North America. I think that's kind of the. . .yeah. . .that's the one for the school, I think, that's more about making money. But, for the students, of course, I mean this, you know, if I were, you know, imagine if you're an international student from China or from India or from Brazil coming to Canada to an LLM, you want to take some courses. You don’t want to spend a year writing a thesis, right?, unless you want to be a scholar. So, I think, you know, it from the demand perspective, from the student demand perspective, I think, also the course-based in our curriculum makes us [more attractive].” Interview of Professor CX (April 2022)

<sup>426</sup> “So, the LLM programs that I see as being possible revenue generators are the ones that don’t require students to do a thesis. Because anytime a thesis is major component of an LLM then it’s a significant investment of a professor’s time. We have fifty faculty members and so, at the most, you’re kept at fifty students per year, more likely you have significant fewer. So twenty-five, ten, fifteen. I think LLM programs that don’t have thesis requirements can be really big, because then it is just students like you are saying, students taking JD classes, being folded into those classes, potentially there are one or two specific LLM classes that those students take whether it is introduction to Canadian law or some kind of methodology course or something on those lines, but. . . So, you’re right, we do have that professional program, but I feel that is our equivalent of a course-based LLM.” Interview of Professor O (07 June 2022)

and universities. It is expected to generate revenue, which impacts the courses it offers since they must be highly attractive to students, as already discussed.<sup>427</sup>

Professional programs respond to a free-market logic where acquiring the credentials to pass the Bar and integrate into Canadian legal practice counts heavily for their force of attraction. In that sense, international students and experienced lawyers willing to practice in Canada do not need to enroll in the JD or LLB program, which remains accessed mainly by domestic students. That contributes to the migration of international students from undergraduate to graduate programs.

In faculties with two streams, research-based and professional, such a structure creates a rift regarding the number of international students circulating and how they should fund or be funded by the faculty. International students in research streams should be funded entirely, but fewer tend to be accepted due to that commitment. At the same time, professional LLMs target international students for revenue generation, so they are supposed to enroll in more significant numbers of them. Furthermore, those two streams are guided by different rationales (economic vs. scholarly aspirations, although we have seen that academic LLMs are transitioning). They are seen as separate units that do not communicate, with staff and students following distinct objectives and not integrating into the other stream.<sup>428</sup> The passage below explicitly emphasizes the weight of the professional stream as a

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<sup>427</sup> “Yes, hmm yep, our budgeting is all rolled up into the [law school’s] and then [the university’s] sort of financial plan. So yes, our program does make a significant financial contribution to the overall budget of the law school. . . It does, because [my program] is a revenue generating unit, and so we need to think carefully about decisions we make about the program and that the program will at a minimum be self-sustaining. But ultimately it is meant to generate income, so it's meant to bring in more revenue than what we expend and so that does mean that there are, you know, certainly some very specific types of programs and courses that we choose not to run because we simply don't see that there would be enough interest to make those self-sustaining unless we can offset that with other things.” - Interview of Program Manager S (February 2022)

<sup>428</sup> “So, there's a dynamic there. The question you're asking me is what about the dynamic between the scholarly aspirations and the economic forces. And I think there's very little, my instinct. I haven't thought about it much before. My instinct is that these operate virtually independently of one another. Even the people involved in developing a vision of international comparative transnational law at [the law faculty] are not involved really in that other side of the equation. Nor is there any student meaningful student integration between those two student bodies. Very little bit. . . But as a kind of participant observer in [the law school] on these things, I think there are almost silos one from the other.” Interview of Professor K (May 2022)

source of revenue and the divide between the two streams by using expressions like “two worlds” and “two completely different worlds.”

Now move over to the kind of professional development, more free-market version that isn't really about Ph.Ds and research alums, but it's about credentials. And it's about entering, for example, into Canadian practice of law. So, universities are at large seeking international students who will pay top dollar to be engaged in undergraduate education and things like that. At the law school, foreign-trained lawyers and people who are seeking to move to Canadian practice are very much engaged by [the professional stream] through our [professional] LLM program, and that program both as an alternative to the NCA program, the National Committee on Accreditation. You can do our program, or you can do the NCA, and it's a huge income generator, an enormous income generator. So, there's kind of two worlds here. There's like the classic research stream graduate studies, and then there are the professional elements that are not research-based, but rather feed a process of kind of market-based legal services. And that's a big . . . There's no Ph.D. there. There are just a number of certificates and master's programs. So, I think universities writ large are seeking money from international students. But I think there's finer-grained detail in where that takes place and where it doesn't take place. And [my faculty] is just an example of where these are like two completely different worlds.<sup>429</sup>

The revenue generated by professional programs helps fund the faculty but does not convert into resources that would allow for more fully-funded international students in the research stream.

The passage below clarifies this situation.

So, it's not that these students fund these students, but these students who are paying in the professional LLM are a major source of base funding for the law school. But it doesn't translate into more positions for Ph.D. international students. That's governed by other quotas and spots that are given.<sup>430</sup>

Therefore, it is hard to say that law faculties benefit from the internationalization of the professional legal education market to foment the internationalization of the circulation and production of knowledge in research-intense programs. In this case, internationalization as the

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<sup>429</sup> Interview of Professor K (May 2022).

<sup>430</sup> *Ibid.*

circulation of people has been institutionally appropriated as an economic asset per se, regardless of what those people produce in terms of legal expertise or culture.<sup>431</sup>

The following passage exemplifies the understanding of the LLM as a program pervaded by a business or free-market rationale, even in law schools with no professional streams. In that case, the research-paper LLM fulfils the role of generating revenue for the faculty. As advanced previously, that happens because those are the most “transient” students, meaning they have little institutional commitment to the institution and are more concerned with their professional careers. At the same time, they are not expected to engage seriously in research. The existence of a business model in those circumstances contributes to the idea that LLMs are programs dedicated to trading credentials.

The business model has pervaded, I think. Maybe my dean wouldn't agree, but I think the business model has pervaded the LLM program because they are transient students, and we count on them to fund part of the activities of the faculty. It's convenient. No one is expecting a master's thesis to be, you know, of publishable quality. Several of them are, but it's not expected. You know, as long as they do a serious work, that's enough. They will have their degree and they will go wherever they want to have the profession they want.<sup>432</sup>

#### 5.6.4 Public Funding and Global Inequalities

Corroborating what is described in the literature, professors claim that “the business model is part of the response to the fact that government sources are dwindling or at least are not increasing and that we want to do more. We want to do a lot more.”<sup>433</sup> In other words, public funding has not kept up

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<sup>431</sup> “So what is true is that [the professional program] serves the professional legal community but also has this big [LLMs]. That is an enormous source of funding for the law school. And it's that way that I think internationalization, if what you mean by that, is sort of the market of international money that law schools are trying to tap into. [My law school] is a huge participant in that. But via this professional . . . program, not via its research LLM.” *Ibid.*

<sup>432</sup> Interview of Professor P (August 2022)

<sup>433</sup> *Ibid.* See also: “it's not a secret academic institutions need resources and are demanding a lot from all fronts. And public funding is shrinking and you need to diversify sources. So that's the case.” Interview of Professor BY (April 2022)

with the ambitions of law faculties within the current legal education trends, including the global legal education market competition.

Professors claim that examining how universities are funded is necessary to comprehend how internationalization relates to it. Funding indexes vary substantially depending on the province, but generally, universities are assigned public funds according to the number of students rather than providing more resources to an optimal ratio between students and faculty members so that resources can be invested in more quality and grow relatively independently of the number of students.<sup>434</sup>

Public funding should consider other quality indexes, such as the number of professors, to be more efficient. Funding per capita leads to a burgeoning race to enroll more students in a quantity-driven system. Concomitantly, students consume resources at a higher rate than new enrollments, and universities cannot sustain the same levels or increase excellence without resorting to other sources. Higher-branded universities count on contributions from alumni,<sup>435</sup> but international students are the most common alternative since international tuition fees tend to be deregulated, allowing for a significant margin of profit for universities.<sup>436</sup>

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<sup>434</sup> The Ontario's Blue Ribbon Panel Report released in November 2022 examined the financial sustainability of postsecondary institutions in Ontario after the Laurentian University financial crisis. Among other recommendations, the Report suggest increasing tuition fees and public funding to regain the funding levels of 2018. In a section dedicated to international students, the Report mentions that they provide support for the "financial sustainability of institutions, whether for the newest universities created or for long-standing players in both the college and university sectors. These observations notwithstanding, the risk associated with unbridled or unmanaged growth is also very real." The deeper dependence on international students is recognized in the passage: "[m]any colleges and universities have passed the point where they could survive financially with only domestic students. They are financially sustainable only because of international students." See Blue-Ribbon Panel on Postsecondary Education Financial Sustainability, *Ensuring Financial Sustainability for Ontario's Postsecondary Sector* (Toronto: Alan Harrison, Chair, 2023) at 37-8

<sup>435</sup> "So that's why the dean is doing lots of fundraising, trying to find donors, especially with alumni with deep pockets who will fund things, who will leave money at their death in programs of donations, who will be interested. You know, if one of them, and we've had that in the past, if one of them did a human rights internship that changed their lives, you know, 15, 20 years later, they might be interested in funding an internship, you know, And so that's where the there is quite a lot of work done in in the faculty to attract donors and especially alumni." Interview of Professor P (August 2022)

<sup>436</sup> "The fundamental problem is funding the university on a per capita basis, that is, per student. That is a huge mistake. So, leaving aside international, domestic students, it provides huge incentives to put, as people say, bulbs and seeds to increase. So, It's a growth driven. If you want more money, you need more students. That's a dump way build in a

At law schools, undergraduate programs have been spared from this economic rationale of internationalization.<sup>437</sup> It is more expensive than graduate programs, admission is more restricted, and there is no effort to recruit international students. Besides the genuine difficulty of getting international students to be attracted to or have the means to pursue an undergraduate law program in Canada, there seems to be an active attempt to conserve it away from the general trends of the university. In that sense, the undergraduate program has resisted the academicization process in other disciplines and resists internationalization, self-reproducing in a closed system.

The introduction of international law courses in the first year has been pointed out as the main move towards the internationalization of the curriculum. However, one should question if that is actual internationalization since international law has been part of the mandatory law curriculum in most Civil Law countries for roughly the last century, therefore being incorporated into professional training long before the current internationalization process. Hence, despite being the farthest program from any internationalization effort, the undergrad seems to be the primary destination of the financial resources gained with internationalization. Consequently, it is reasonable to imagine that the internationalization of graduate programs may subsidize the already costly professional undergraduate legal education attended by few international students. Further research must

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university, right? Because universities need more money with an optimal level of students, with an optimal faculty-student ration. You want quality, not quantity. So, it's a quantity-driven system, which is, a lot of universities got addicted to this growth. So, in Ontario in the nineties and early 2000, a lot of universities got serious trouble, financial trouble by getting addicted to this growth. But if you want to increase your budget, you have to have more students, right? But you have more students with incredible strain on existing resources. If you're not there, it's a treadmill with no happy ending. So then you had the international students come along because they are exempt from the cap and they don't get any money from. You don't get a basic income unit. You're familiar with this techno. Typical talk. But here are the fees are unregulated, so you can charge whatever you want. So suddenly, international students look like a bonanza and graduate international students look like an extra bonanza because master's degrees or graduate degrees are more expensive or can be. It's not so true in law, but that's a basic problem of quantity driven growth. That is the number of students. It drives growth, you know, budgetary growth. And then you add the international deregulatory element and you've got a cocktail for, you know, a heady set of incentives, which is nothing, but money driven." Interview of Professor N (May 2022).

<sup>437</sup> "So as I say, I think at the law school, there's a rationale for internationalizing the faculty because we can't internationalize at the undergraduate level or we won't. It just won't happen. We have to do it to graduate level so we can be programmatic about that." Interview of Professor N (May 2022).

investigate whether and to what extent the internationalization of Canadian law faculties has translated into a transfer of revenue from (mostly) Third World countries' middle classes to the Canadian middle class, supposing that that revenue is most necessary to fund the higher education system in international students' countries of origin.

#### *5.6.5 Transsystemia, Province and Language*

Funding constraints also vary according to the province. Professors from Quebec complain that universities charge much less than in Ontario, which decreases their ability to thrive in a situation of increasing competition. Quebec law faculties tend to see themselves at a disadvantage not only due to provincial education policies that limit how they can convert their prestige into tuition fees but also due to language requirements.

As already described, McGill's requirement of passive bilingualism in the interest of transsystemia is considered a limitation to the potential pool of international applicants to the undergraduate program.<sup>438</sup> Despite recognizing that the faculty has embraced the business model to a certain extent, professors perceived that it has not moved transsystemia away from its original

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<sup>438</sup> "You know that McGill is in Montreal, Quebec, and therefore that there are funding constraints as compared to our colleagues in Ontario. Our undergraduate students paid for... undergraduates who are residents of Quebec pay \$4,000 per year. As compared to UofT being above 25,000 a year now. So McGill has funding constraints that other universities in Canada don't know. Hence, the importance of graduate students being international students because they pay a lot more. But McGill has resisted bringing in graduate students, bringing in international students in the undergraduate program, and has kept the bilingualism requirement. Because we think that's the key to transsystemic. And even though it means that most of our students come from Canada and France. Some students come from France, but most of our students come from Canada at the undergraduate level, and therefore they pay either Quebec residence fees or Canada outside Quebec residence fees, which is higher than Quebec, but not as high as international. So resisting that means that we we're not having as much money as we could." Interview of Professor P (August 2022).

goals.<sup>439</sup> That may be due to the fact that McGill isolated transsystemia from the graduate studies,<sup>440</sup> where the business model took root by benefiting from international student enrollment.

Suppose Quebec institutions generally feel disadvantaged; French-speaking Quebec institutions believe they are even more disadvantaged. French as the primary language at the University of Montreal has similar market implications to bilingualism at McGill, reducing the pool of prospective international students. Furthermore, Canadian French-speaking institutions compete with universities in continental Europe, where, unlike the Anglophone world, the global education market is much more restricted, and domestic and international students generally do not pay high fees.<sup>441</sup>

For those institutions, a business model competes with a European mindset that sees education as a public good, where paying an exorbitant price is deemed “an enormous failure from the government.”<sup>442</sup> French-speaking countries in Africa, another relevant source of international students, represent a smaller market of prospective international students capable of affording higher

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<sup>439</sup> “What is important and that is that the structural objectives of the faculty have not derailed because of the business model . . . So we haven't derailed from that. It's not because, you know, we haven't become a moneymaking machine. That's that. . . and I think we're quite proud of that. . . Yes, we're trying to have as much money as we can in order to further the research and intellectual goals of the faculty and keep the distinction.” *Ibid.*

<sup>440</sup> “The graduate program certainly has expanded considerably. For financial reasons.” *Ibid.*

<sup>441</sup> “The point is, I mean, if you're talking about Canada, I mean the tuition fees that people pay to go to law school are incredibly high if you look at that from the European standpoint, okay? Where I come from the annual tuition fee for what corresponds to the JD program is 1200 Canadian dollars, right? That's tops. In other places might be a bit higher but I mean we're still speaking about orders of magnitudes below what people pay here or in the United States. I mean the United States that you pay more so the point is only rich people go to law school. I mean, all the people that can afford to pay or can afford to get in debt for incredible amounts of money. If you look it up from the European perspective, you can go to law school, and this applies to both national and international students, right? I mean, in Europe if you are an international student, you may pay more than the national students. Not so much more, as it happens in this country, okay? International students in Europe will still pay much less than an American student will pay in any US school.” Interview of Professor Y (March 2022).

<sup>442</sup> “As a European there's so many things that are so different from the way Canada law schools or even more US law schools work. As a European, the idea that you should that you go to school and you get out of school with like hundreds of thousands of dollars of debt would be considered as an enormous failure from the government, okay? Because we are completely convinced of the idea that one of the first reasons government exists is also to provide free and accessible education. It's not the same here I mean that's not the case when it comes to higher education in North America.” *Ibid.*

educational costs, especially compared to Asian countries, due to the size of their economies and middle classes. That may also be valid for Francophile countries in Latin America, Eastern Europe, and the Middle East.

Therefore, Francophone international students should be offered some privileges or incentives to pursue their degrees in Canada. For example, to keep the inflow of Francophone international students, graduate programs in French at uOttawa will not charge them international fees. In Quebec, French and Francophone Belgium students pay the same fees as Canadians who are non-residents of Quebec for the undergraduate program and the same as Quebec residents for the LLM and PhD.<sup>443</sup>

Thus, Francophone institutions may refrain from the business model in those cases due to the inability to compete in the global market in France, which is associated with the understanding that promoting legal education in French is an institutional mandate that overcomes the free-market rationale.<sup>444</sup>

Still, they will offer programs in English to participate in the market. In the case of the UdeM, they designed professional LLM programs in that language exclusively for international students. Therefore, structural factors related to the piece of the market Anglophone and Francophone universities target affect their ability to benefit from international students' fees and will lead to

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<sup>443</sup> See Quebec, “Exemptions from differential tuition fees under international agreements”, online <<https://www.quebec.ca/en/education/study-quebec/financial-assistance-international-students/exemptions-tuition-fees-under-international-agreements>>

<sup>444</sup> “Maybe there's not enough knowledge about the fact . . . you can do all your studies here in French if you want to. And even within Canada that's not well known always. And so internationally we're trying to do that, so I know, for example, that I have colleagues now who are preparing a trip to Africa, . . . so to meet people from universities there to create links for that. So we are putting and putting effort here and trying to get more Francophone, international Francophone students. And those are not the ones who bring us extra funds because their tuition fees are the same as Canadians.” Interview of Professor I (April 2022).

different strategies to adapt, sometimes conserving the language, occasionally switching to English.<sup>445</sup>

### *5.6.6 Student Demand*

Most of what we have discussed so far comes from the supply perspective. Nonetheless, participants claim the business would not survive without a solid demand for high-quality, prestigious legal education services from students worldwide, especially in developing countries. In that sense, the search for legal education abroad reflects the lack of quality and prestige of universities in developing countries, largely due to the disinvestment in public institutions, leading to the inability to fulfill the education needs of their population.<sup>446</sup> Curiously, though, this can be seen as the same process Canadian universities are currently undergoing, with more prominence in Ontario after neoliberal policies of cutting public funding.

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<sup>445</sup> “There has been a change in policy in the last two years, which favours English-speaking universities like McGill or Concordia, because they are better able, because of the English language, to attract more people and people who come from countries where we are used to paying higher prices. If we think about the natural pool of French-speaking universities, it is continental Europe. Continental Europe, there is money in continental Europe. But to do your doctorate in France, in Belgium, in Spain, in Germany, it doesn't cost you much. It costs you all expenses included, about 300, 400 € per year. And then you have incredible things, things, great things. So let's think about Africa, which is where there are the most French speakers. They can't afford to pay much, can they? So there is the question of financing these people. So the English-speaking universities, they at the international level are going to look for these people where? Just about everywhere in the world. You're going to say to me, but they're going to look for people in the United States, in the United Kingdom, in Australia, where it costs a lot to go to university. They don't have a problem paying \$40,000 or \$45,000 Canadian a year to do a Ph.D. Good for them. So you have to look at the economic impact here. And it is different, I would say, depending on how the universities are funded.” Interview of Professor D (March 2022).

<sup>446</sup> “It's a demand and supply thing. It's not that universities are hunting students. Students want universities too. And there is a bankruptcy of educational institutions in many parts of the world. Fine public institutions have been bankrupted. And university education has become a marketplace in countries like India, where the quality of education has completely. . . so there are some leading institutions, top institution. The rest of it is backdropped. So students want that black swan that their children go to top ranking schools and not just for economic opportunities, for knowledge! So I think there's a supply as well, it's not that universities . . . and in that supply side thing universities are competing to get the best and the brightest.” Interview of Professor BY (April 2022).

However, unlike their peers from the South, Canadian higher education institutions had previously achieved a developed status based on public funding, making them a desired destination for international students rather than a departure centre<sup>447</sup> when neoliberalism traded public funding for internationalization. In that sense, the marketization of higher education created opposite poles by lowering the quality of local universities in developing countries and reinforcing a migratory wave to global universities in developed countries since credentials from the North mean access to sophisticated knowledge and better economic opportunities.

Despite that, the expectations from the demand side of the equation must be met by professors, increasing their professional burden and overwhelming unprepared institutions.<sup>448</sup> These expectations usually originate in middle-class families in developing countries looking for better chances to climb the social ladder, ensure their status in an unstable global economy, and maximize their investments in the context of expansive fees and limited scholarships available for international students.

In that very scenario, just a privileged segment of developing societies can participate in that market, with some outsiders trying to gain access at the expense of submitting to precarious life, study, and work conditions. One participant expresses that situation and its implications for the accessibility to quality higher education:

I sit on the graduate committee, and I review files and LLM students' sources of funding. Family and parents, family and parents, and it's \$36,000 for non-thesis LLM plus living expenses. You're looking at \$50,000, \$60,000 for a year and families are able to pay that. So, um, so in that respect, I find that maybe we are not creating access for students from the South who actually need access to quality

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<sup>447</sup> We know that in the past, but less today, many Canadians would pursue legal education abroad, mainly in the U.S. and the U.K.

<sup>448</sup> “LLM as well, of course, international fees have gone way up. if we kind of now that the burden, the onus is still on us to make it worthwhile, right? I mean, and we assume that people, as I said before, are doing some calculus about why it's worthwhile to invest that much money and time to do a master's degree. So they're looking at, like, you know, what . . . whether it's because they just want to continue with school and go into more depth on something assume that they're thinking it's worthwhile, right? that it's worth it. And that is, I think, our obligation to make it worthwhile, but that doesn't mean that it doesn't coexist with the fact that that more funds come in, of course, with an international student and international fees have gone way up so it's very, very expensive.” Interview of Professor Z (March 2022).

education . . . how do we actually bring economic, social diversity from different parts of the world in our milieu? Or are we just bringing elites in our milieu? Because we are chasing international students and we just get those who can afford it. And we don't reach out further who cannot afford it and that's the kind of diversity we need and excellence need. So, we are paying attention to equity issues within Canada among Canadian students, but I think we are not paying attention to international students.<sup>449</sup>

As discussed in this chapter, law faculties evaluate applications by looking for the best candidates from the best universities to fill fully supported spots on a meritocratic basis, followed by most kinds of scholarships available in academia. Additionally, accessing quality education in the home country often depends on families' commitment to afford expensive tuition fees when public institutions have been defunded, in a process that was intensified by the marketization of higher education.

However, sometimes applicants' credentials are outstanding, but it is not because of the student's family wealth. In developing countries with a robust public and free higher education system favouring disadvantaged groups' training, credentials and family revenue can be dissociated. In those cases, tuition fees establish a more imposing threshold by determining those who can apply. This means that credentials and revenue are relatively independent factors that corroborate institutional elitism.

Once more, elitism is regarded as one consequence of the business model, limiting the pool of knowledge and experiences circulating in the law faculty as “the privileged class has a very different perspective of what the problems are and what needs to be fixed than people who have come from more disadvantaged backgrounds.”<sup>450</sup> Thus, knowledge circulates in a short circuit of highly

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<sup>449</sup> Interview of Professor BY (April 2022).

<sup>450</sup> “We certainly try. One of the commitments we made is that we don't take Ph.D. students without fully supporting them. So, if you get admitted to our Ph.D. we are going to give you, what is it? Forty thousand a year, you know, for four years. So, that's the way we have tried to make sure that it doesn't happen, but of course it happens, right? Getting a good education in their home countries is class-based. Being able to just leave for however many years is class-based. So, all

globalized elites, a subject that the diversification policies have not tackled seriously yet. One last mentioned economic problem relates to the fluctuation of the demand in a context of increasing dependence on a few countries to supply large numbers of international students to the law school – and the university – so that, in the event of a diplomatic, economic, environmental, or even populational crisis the flow of students might be cut, drastically impacting the institution's finances.<sup>451</sup> The market can also be shaken by the arrival of new competitors or even developmental policies in Third World countries trying to build education capacity at home. So, the business can be vulnerable to a myriad of factors out of Canada's control that can only be softened by increasing the share of public funding to protect against externalities derived from globalization.

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of those dimensions are class-based. We are more likely to be getting those who've had privilege in their own countries, although we do try to . . . and we are conscious of that, and we are trying to support qualified students. But the trouble is who's qualified, right? So, it's very self-perpetuating, it's hard to separate all those elements out. But absolutely, there is a class-based . . . Part of the problem is that you aren't getting the richness of perspective that you would be able to get from another jurisdiction or legal system or whatever . . . The privileged class has a very different perspective of what the problems are and what needs to be fixed than people who have come from more disadvantaged backgrounds.” Interview of Professor L (May 2022).

<sup>451</sup> “In Canada, some universities depend more on international students than others. [Mine] is not one that depends as much, and your stats will show that, we don't depend as much on foreign students. When there was a crisis with the students from Saudi Arabia, we were touched but I don't think it was bad as other places. With Chinese students, Indian students there are vulnerabilities depending on the university. For us I don't think it is as bad.” Interview of Professor T (March 2022).

## **6 Internationalization and the Political Economy of Canadian Faculties of Law**

This chapter analyzes the data from chapters 4 and 5 to apply the extended case method and identify social processes, forces and structuring factors that can explain the main topics I described and offer alternatives by addressing root causes from a political economy perspective.

The charts displayed in Chapter 4 comparing international student enrollment at universities and law faculties students reveal that internationalization follows particular lines in both environments so that the internationalization process at law faculties is considerably dissociated from the university. That calls for close attention to the specificities of legal education. By studying the international student population, we can note five structuring characteristics of the internationalization of Canadian law faculties, problematized in section 6.1.

Section 6.2 presents a systematic review of Chapter 5's content in an attempt to identify the significant social situations lived by professors, managers and international students. These situations will be the foundation for analyzing larger processes and forces at work in the sphere of internationalization, which will be introduced in section 6.3.

### **6.1 Structuring Factors**

First, international student enrollment in law graduate programs is much more significant than in undergraduate law programs, which have been considerably closed for internationalization compared to undergraduate programs at the university. Such closure may have many reasons, including exorbitant tuition fees for international students.

High fees may not necessarily imply a deliberated protectionist practice of the legal profession in Canada against international students since the cost of legal education has been increasing tremendously across North America, as discussed in section 3.3 of this dissertation. Still, it is plausible to argue that the difference between the fees for domestic and international students works as a protectionist factor that saves spots in undergraduate programs in law for domestic students, which has consequences for the profile of the legal profession, accessed primarily through undergraduate programs. By protectionism, I mean an economic policy to save a local market from external competition. International students who eventually became lawyers in Canada may be seen as additional competition from abroad by Canadian legal market players.

Although there is still a considerable difference between fees for domestic and international students in graduate programs in law, the cost for ILS is not as high, and the protectionist effect cannot be seen. That said, internationalization rates in law graduate programs tend to more closely track rates in university graduate programs. The impact of fees for ILS in professional LLM programs remains to be assessed, especially at those concentrations aimed at meeting NCA standards at UBC and UofT, where internationalization rates differ from the ones at Osgoode and are not as high as expected. In that case, Osgoode may profit from more competitive fees to attract international students while other law schools enroll more domestic students.

Participants explained the low presence of international students in undergraduate programs by asserting that they would not like to be confined to practice in Canada; therefore, they would pursue their professional degrees in their home country or a more attractive jurisdiction. I find this explanation rather odd due to the gain in popularity of practicing law in Canada, which was proved by professional LLMs exploiting that market, which should become more internationalized during post-pandemic years.

Protectionism seems to be a better explanation due to the elite character of legal education in Canada and the return of invested fees in professional revenue as a lawyer. The JD/LLB consumes most of the professors' time, institutions' attention, and law schools' resources. Law faculties are also largely committed to employability and providing services to ensure students' investment is managed to benefit them. It seems complicated to add large amounts of international students to the equation without the need for additional services and a potential drop in employability. Moreover, the legal profession worldwide is known for its corporatist attempt to regulate the supply of legal services to keep prices high and the social prestige associated with it. Therefore, limiting the intake of new members of the Bar is essential, and internationalization may be considered a threat.

The U.S. LLM model appears as a good alternative for internationalization since law schools do not need to ensure the same level of treatment due to JD students while still providing access to the same JD courses. Additionally, the LLM degree does not provide access to legal practice, thus not increasing competition in the legal profession. In the case of professional LLMs, the NCA regulates the intake of immigrant lawyers, which is economically limited by the higher fees of professional LLMs combined with a target audience of experienced foreign lawyers. All of those elements channel access to Canadian practice to a select set of valuable international experts that may add value to an elite profession instead of leading to decreasing prices of legal services. More research needs to be done on the consequences of differential fees on internationalization, the intake of internationally trained lawyers and the regulatory practices of the Bar (at least in Ontario, Quebec, and BC) concerning the internationalization of the legal profession.

Second, the distribution pattern of international students in 2010, which was already pending in favour of graduate programs, intensified such a tendency in 2020. It means that a given international student tends to attend the graduate program more than the undergraduate. In other

words, graduate programs gained more relevance in the choice of individual ILS at the end of the decade. Moreover, compared to the university levels, the internationalization of the LLM is often inflated, while the PhD in law tends to reproduce the same standards. That indicates the emphasis on the LLM, which may be receiving the demand repressed at undergraduate programs in law.

Therefore, international students represent a substantial share of the graduate student population (even at UofT and UBC), and this share has been growing (with the exception of these two universities aforementioned). This proportion was already significant in 2010; by 2020, it became impossible to ignore. In some programs, it reaches the majority of enrolled students, especially at McGill and UdeM, while reaching 20% to 30% in graduate programs at other faculties. In the case of those law faculties in Quebec, the internationalization of graduate law programs has higher rates than the graduate programs at those universities.

Third, by 2020, despite the growth in the internationalization of graduate law programs, international students are a minority in the overall population of law faculties, around 10% on average, and constitute an even tinier parcel of undergraduate programs, roughly around 5% on average. That also differs from the universities, where the international student population comprises 20% to 30% of the overall student population and approximately 20% in undergraduate programs.

Although the student population as a whole has become more internationalized in some law faculties, this growth is not significant because graduate programs, where it is taking place, are considerably smaller compared to undergraduate programs. This situation may explain why international students remain invisible for legal scholarship. More importantly, the literature about the internationalization of legal education, for the law faculty's institutional attention is still attached to the normative, professional tradition embroiled in the undergrad.

Fourth, law faculties are much more prone to lose international students proportionally to the university in situations of crisis like the pandemic, perhaps because of its tiny size, which runs against having strong resilience. It is hard to identify a standard concerning the impact of the pandemic across different faculties and universities, with programs being affected differently in each institution. It seems that undergraduate and LLM programs were more severely affected, while the doctorate was more resilient. Further research is needed to better understand the impact of the pandemic and recovery in the following years and whether internationalization softened or deepened in the current 2020 decade. Such research should also distinguish the effects on exchange and regular students.

Finally, professional LL.M.s are becoming leading programs in the portfolio of law faculties' graduate studies by looking at the cases of Osgoode, UBC, and UofT. They are enrolling more students while the LL.M. research is shrinking, stagnant, or not growing accordingly. That may be because they are course-based, so they do not require supervision time from professors and become less costly in terms of institutional resources and can accommodate more students. Also, because they are revenue generators, so they are expected to grow in order to be sustainable and profitable.

However, they seem to be populated mainly by domestic students, probably Canadians with legal training abroad, with the CCL LL.M. at Osgoode being the sole exception where international students were the majority, a position reached only in 2020. It is not yet clear how internationalization is or will be dependent on these programs. Since they enroll a large number of students and are becoming quasi-undergraduate programs with all the services and promised employability that used to be exclusive to JD programs, they will likely gain more popularity with international students. Despite that, higher tuition fees for international students may again limit the potential of internationalizing its student body to an elite of foreign lawyers or affluent families from the Global South.

## 6.2 Social Situations

Suppose we are to summarize the definitions brought about by Canadian law professors to describe internationalization. In that case, we should agree with the mainstream literature and understand that it is regarded as a response to globalization, although somewhat diffuse and uncoordinated. However, claiming that globalization is a common ground of multiple perspectives is not enough. Conflicting approaches and absences are the cues we need to follow in order to notice how professors relate to internationalization and how that speaks about their social situations. And it first and foremost speaks to their position as researchers.

Considering internationalization as a general disposition to integrate elements unfamiliar to a given social space, we can first see that this disposition has material and discursive aspects that have to do with, on the one hand, the way connections are established in the world through networking, travelling, establishing partnerships, designing programs – the material aspects –, and on the other hand, the way we look at legal problems and the law in a globalized world – the discursive aspects.

These two aspects can and ought to develop hand-by-hand, but sometimes they may unfold uncoordinatedly. In one case, we can see a material internationalization that does not integrate the diversity of legal knowledge that internationalization is supposed to deliver. On the other, we might see an intellectual reflection about the law that intends to be universal and transnational but generalizes a local perspective by lacking material input that forces the incorporation of multiple perspectives. In both cases, we might see the rise of coloniality of knowledge, Americanization, and other deviations from the supposedly noble purposes of internationalization. Thus, coordinating both aspects poses the most significant challenge for professors conducting international research.

A second tension is expressed in the opposition between research and teaching. Professors relate internationalization more frequently and intensively to their research than teaching. That may be explained by the importance of internationalization as a valuable tool in sharing and producing knowledge among professors due to the current appeal of transnational and international law and personal experiences related to travelling, conferencing, building international projects and working in international organizations, which technically is essential to career progress of full-time professors, top grants, and prizes. The focus on research may also explain why the diversification of the faculty population (students and professors) is seen as secondary. Diversification does not necessarily unfold in the development of internationalized research, nor is it seen as a requirement to foster international research. Conversely, teaching is usually tied to the undergraduate curriculum, which responds to specific demands of professional training in local law and institutional decisions by the faculty, so it is much harder to internationalize the curriculum than research.

The third aspect concerns the relative absence of international students in professors' discourse when asked what internationalization meant to them. Participants rarely commented on the supervision of international students faced with a general question about internationalization. I needed to ask specific questions to understand the role of supervision of international students. Whether international students are involved in international research activities, professors do not include these students' participation as a constitutive element in their personal experience. It reveals that there is not much strategic integration between professors' global reach and international graduate students as a way of increasing potentialities.

Instead, international JD/LLB students are more often remembered, especially in the context of exchange programs, moot courts, and international mentoring. In this regard, international and transnational law courses have been valorized and gained students' interest over the years. That

indicates that the – discursive – development of transnational legal subjects has been followed by new material arrangements with the emergence of international moot courts, legal clinics, centers of legal education,<sup>452</sup> summer schools, etc., which go beyond the mere exchange of students. Those initiatives not only teach international and transnational topics but also innovate across the landscape of legal professional education by internationalizing the space, the student body, the faculty body, and the simulated professional environment, including mentorship. Quite restricted to undergraduate programs, these innovations do not seem to gain track in research graduate programs.

The fourth situation refers to the differences between research and professional postgraduate programs, which reflects the tension between programs that conform more or less to the business model. As we said, internationalization in the academic model focuses on research and does not translate into a coherent approach that mobilizes administrators and professors following a unified strategy. Professors are more explicitly covered by academic freedom and pursue their own international goals, hoping to be backed up by the faculty. Conversely, global market competition in professional LL.M.s frames more coherent strategies that shape professors' teaching performance and the curriculum. For those programs, networking, travelling, and conferencing are means to attract students and promote the program, whereas transnational approaches to law and multicultural skills are marketable discursive assets. Moreover, international students gain more centrality in professional programs since they are perceived as valuable consumers.

That issue also involves the role of managers, for whom the diversification of the student body and the establishment of international partnerships are the most relevant aspects of

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<sup>452</sup> The Centre for Transnational Legal Studies, mentioned in the interviews, is a joint venture that encompasses 18 law schools around the world to provide a semester-long program in London with courses taught by professors from those institutions to a diversified cohort of undergraduate students also coming from those faculties. In Canada, the University of Toronto integrates the Centre. For more information, see online: <<https://www.law.utoronto.ca/academic-programs/jd-program/student-exchange-programs/centre-transnational-legal-studies>>.

internationalization. Those managing professional LL.Ms feel more pressure to deal with all sorts of international students' expectations to ensure the programs' attractivity and the student's employability. For them, the number of international students becomes a relevant index of success, which translates into international prestige and, very often, revenue for the law school.<sup>453</sup>

Social situations regarding how professors perceive institutional approaches to internationalization can be displayed according to how aligned institutional narratives and professors' ideas of internationalization are. The distinction between discursive and material aspects can be functional once again to explain different levels of alignment. Professors mainly engaged with transnationalism and internationalism as ways to approach legal thinking – discursive aspect – are more likely to positively embrace the institutional discourse of their law faculties as globally oriented institutions, regardless of how materially that internationalization has been carried out. The most relevant case is McGill and Osgoode Hall, where such an alignment is more prominent.

There seems to be less cohesion in faculties where professors and administrators are more materially engaged with internationalization and with a weaker emphasis on international/transnational law, given the diversity of interests, approaches, and the absence of a unifying strategy. In those cases, we find a reciprocal and tense relation between a top-down policy enacted by deans versus bottom-up initiatives headed by individual professors.

Discursive solutions to push for further internationalization and face resistance can be seen in the case of transsystemia, which tries to include other legal traditions beyond civil and common law, such as Indigenous law, when faced with the criticism that it is not transsystemic enough. Other

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<sup>453</sup> Very often, because there are cases where law schools do not seem to profit directly from international students. That is the case in Quebec, where French students pay the same fees as locals. According to one professor, fees paid by international students at McGill go first to the province, which distributes it as stated by provincial higher education policies. That is why the dean devotes time and work to consolidating a strong relationship with alumni to ensure a constant flow of donations to the faculty.

schools with a less coherent discourse on law and globalization may prefer some material solutions. They feel it is necessary to push for more connections with Third World countries when under the critique that they claim to provide a global education while actual links are restricted to some parts of the globe.<sup>454</sup> On that front, diversifying the faculty and preventing tokenism is still a material challenge, for faculties have been mainly internationalizing by hiring professors of European descent. Hiring professors from Africa, Latin America, the Middle East and of Asian descent is a recent phenomenon, still far from contesting the white majority.<sup>455</sup>

Then, professors who are more focused on the material aspects of internationalization are more concerned with an institutional approach, expecting a more specific policy or feeling the absence of one. The tensions in this positionality touch on the distribution of roles in navigating the issue. The lack of consensus among the faculty creates opportunities for administrators to push their agendas, with more or less participation of other professors through informal, dispersed discussions. At the same time, It also allows professors to advance individual agendas related to their research interests, with more or less support from the administration. Those circumstances present a coordination challenge.

International faculty play various functions in the internationalization process of the university, often aligned with the general push toward transnationalism and developing closer connections abroad. However, unable to challenge structures rooted in global inequalities, They are not infrequently invited to reinforce the elitism of student admissions, providing their expertise in evaluating the credentials of future students, without any concern for integrating students from lower social classes. Integrating students from lower classes would challenge the core of internationalization

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<sup>454</sup> Interview of Professor L (16 May 2022).

<sup>455</sup> Interview of Professor G (April 2022).

in prestigious Canadian law schools, and elitism has been left out of current demands for diversification and equality.

On the flip side, international faculty are concerned about tokenism in faculty recruitment, when law faculties hire professors from certain backgrounds as a checklist for diversification without a genuine intention to unsettle the white, Western-centred prevailing legal culture in law faculties. In that sense, they risk being regarded with exoticism and confined with other international peers to restricted niches, where their contributions are dislocated from the faculty's leading intellectual and managerial affairs. The fact that international students may cling to those professors might stress a situation where quasi-ghettos are formed, as in the case of Nigerian or Indian professors whose students are mostly Nigerians and Indians. Hence, knowledge circulation from international students in the faculty, already hindered by the admissions process, is again dammed.

Looking back at the literature, Canadian law schools do not embrace any model of material internationalization discussed in the United States. Despite some administrators' initiatives, professors generally do not feel that the administration has proposed an organized response to internationalization by allocating resources, inaugurating specialized centres, developing outreach goals, and mobilizing professors in a specific direction, which seems to be the case in that country. Existing initiatives, dependent on the administrator's personality, are not rooted enough to become a long-lasting policy.

Nevertheless, some Canadian law faculties have developed an ideological, intellectual approach that situates Canadian law among transnationalism and internationalism values, playing a more profound role in uniting interested professors and allowing the administrator to identify opportunities to promote the faculty internationally. More interestingly, that more intellectual than a material approach to internationalization ideologically differs from the proselytizing practices of U.S.

internationalization. We have seen that the U.S. model has advanced a material approach as a means to leverage the weight of U.S. law worldwide, which has led to transplants and Americanization. This specific character of Canadian discourse opens up new pathways for a non-hegemonic internationalization of legal knowledge based on horizontal collaboration and the integration of different traditions and perspectives so that Canada has the potential to become a trusted hub for sharing knowledge on complex conflict management.

Still, the fluctuations in the material policy of internationalization reinforce the idea of stealthy internationalization because law schools are responding to diffused pressure instead of taking the lead, and the response is often transferred to individual professors according to academic freedom. The results of stealth internationalization are questionable and weak before professional and market forces, which may conduct the legal knowledge economy in other directions. That is the case of professional LLM, where there is not only specialized staff planning more organized actions responsive to the global legal education market but also where the circulation of knowledge is not the priority.

International students contribute to the existence of different academic cultures sharing the same intellectual environment. Law faculties have not developed an approach to managing those differences, which concerns the role of authority and leadership of supervisors and autonomy for students. It also encompasses expectations about authorship and originality. By looking at those differences in order to identify and repress plagiarism and promote critical thinking, institutions may reproduce a vision where those other academic cultures belong to a pre-modern stage of academic development, ensuring conformation to the North American academic culture. Such an academic monoculturalism may isolate different forms of knowledge production and circulation and intimidate international students.

The lack of prestige and strategic thinking about the role of graduate studies, distant from the centre of attention and resources, has alienated the participation of the bulk of international students from the main intellectual developments in transnationalism/internationalism of the Canadian legal culture, with transsystemia being an example. International students from various backgrounds are not strategically considered valuable sources for knowledge exchange and production, considering their expertise in many legal systems to expand transnational, intellectual projects as transsystemia. Yet McGill has gone further than other law faculties in introducing doctoral students into transsystemic teaching, which is promising in connecting graduate and undergraduate students, international and domestic students and expanding the circulation of knowledge following a material strategy.

Despite that, other material aspects underlying the proper participation of international students in the prevailing academic culture are often not considered. Teaching methods stimulating critical thinking, such as seminar classes, require intense preparation and reading; therefore, students must enjoy free time to dedicate to those tasks. However, international students have been increasingly confronted with material needs and immigration concerns that have gained priority. All in all, applying the same methods and canons and managing the faculty the same way without adapting to international students' intellectual and material needs is a recipe for accumulating tensions.

Traditionally, law professors and faculties are expected to convey Canadian law and Western legal perspectives, structurally conditioning transnationalism/internationalism. Thus, institutional adaptations to take advantage of the diversity brought by international students in teaching and research can overload professors who are not used to these tasks. Professors do not have institutional incentives to do so and may consider this to increase the exploitation of their unpaid workload. The

situation is even worse for part-time professors. In that sense, internationalization can contribute to overwhelming professors.

That multicultural-related workload adds to the problem of a shortage of supervision labour, which has pushed for fast-food internationalization, with greater emphasis on course-based programs to alleviate such a burden. Professors, however, are increasingly aware of the risks of unplanned internationalization, especially concerning the consequences of the increasing presence of international students and the faculty's limited resources to ensure their success in the program. That problem assumes a greater proportion when professors claim that supervising doctoral students is how knowledge exchange mostly and best happens, which requires exhaustive supervision. Additionally, isolation and an individualistic academic culture have impacted the mental health of international Ph.D. students who face challenges financing their writing, joining the job market, and immigrating.

Professors also consider cultural differences in Canada in relation to the circulation of knowledge and economic aspects of internationalization. The French and English languages present advantages and constraints. French-speaking institutions and professors are often bilingual or multilingual, thus able to learn, translate, and transmit knowledge created in other – mostly romance – languages. They can also be more open to continental European tradition and, thus, less attached to Ivy League canons. Regarding the global legal education market, they have a more limited range of prospective international students compared to Anglophone institutions and compete with European universities, where education is much cheaper. The fact that Quebec institutions are perceived as being disadvantaged by having to charge much less than Ontario ones adds another layer of resentment concerning the exploitation of the international market.

English-speaking law faculties compete from an advantageous position, with a natural global reach but with the tendency to reproduce a self-centred approach to knowledge circulation and production, the same that has boosted their prestige. French-speaking institutions often offer programs in English and with a similar approach to have a more significant market share.

Professors acknowledge the existence of market-based internationalization in their institutions but claim that it is not as exploitative of international students as it is in the United States and the United Kingdom. Although one professor provided a case where the academic integrity of the law faculty was threatened when it became virtually impossible to deny the degree to one international student, professors usually assert that they have not suffered setbacks concerning academic freedom from how internationalization has been handled.

Market-based internationalization is more prominent in shorter programs with fewer academic requirements available in the law faculty, which become more prone to be revenue-generators, usually professional LL.Ms. Research-paper or course-based LL.Ms are the revenue-generator programs in those law faculties with no separate professional stream. Therefore, it is linked to the transfer of knowledge through teaching. In the context of professional LL.Ms, access to the Canadian legal profession is marketed as a precious, expensive service. In traditional LL.Ms, internationalization has been thought of so that those students come to Canada, pay costly fees for a desirable Western legal degree, and return to assume better positions in the legal job market of their home country based on the recognition of the acquired expertise, even though many international students will pursue an immigration path and their entry in the legal job market will be uncertain.

When we look at this material aspect of internationalization, we see that it is not connected to the circulation and production of knowledge and the discursive part of internationalization, which happens primarily in research-intensive programs and professors' research. That is because

professional and research streams do not communicate in terms of management, professors and students, and the revenue generated does not necessarily translate into scholarships, supervision incentives, and the employability of international students. The overall disconnection between material and discursive aspects of internationalization has implicated a vast loss of talent and knowledge. Due to the many contradictions between the transnational/international intellectual project surrounding Canadian law and its dissociation from a material strategy that internationally organizes the circulation and production of legal knowledge, this distinct project takes on an ideological face by omitting the impact of professional forces and market, which are gaining ground in the internationalization process of Canadian law schools.

### 6.3 Social Forces and Processes

So far, I have looked at internationalization in terms of the diversification of the student body – we must include the diversification of faculty as another element, which I have not explored in depth in this dissertation – and of professors’ claims about their personal implications, institutional efforts, circulation of knowledge and economic consequences. Now, considering internationalization broadly as an active and passive disposition towards what is unfamiliar to one’s local context, it is crucial to underline the social forces guiding Canadian law faculties’ interest in the unfamiliar.

As a starting point, we may want to consider that law schools are permeated by the main struggle that frames legal education in Canada, as noted by the Arthurs Report on Law and Learning in 1983. That is the tug of war between professionalism and academicism.<sup>456</sup> Professional legal

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<sup>456</sup> “We draw the line between the professional on the one side and the academic on the other, at the point at which the predominating influences shift from a desire to enhance the quality of professional preparation to a commitment to learning for its own sake” SSHRC, eds, *Law and learning ...*, *supra* note 5 at 55. Such a tug of war idea derives from the

education aims to train students for professional qualification and specialization, with knowledge concerning mostly content, techniques, or guidelines with relatively immediate applicability in legal practice. Teaching is the first means of professional legal training, but professional research also exists in the form of commissioned goal-oriented research to defend one's perspective or for a client.<sup>457</sup>

In contrast, academic legal education aims at contributing to the “scholarly discipline”<sup>458</sup> of law, where knowledge is produced disinterestedly, departing from different levels of ignorance to a more advanced level of knowledge, and the positions of knowledge and ignorance are fluid and overlapping. Research is the primary means of developing academicism, whereas teaching is devoted to training critical thinking and shaping research-like minds. Indeed, we'd better understand professional and academic legal education not as models or ideal types but as opposing processes or tendencies that blend into a gray zone where academic and professional elements are inseparable. Such a blend can be productive for both, or one process may dominate at the expense of the other.<sup>459</sup>

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diagnosis Arthurs presents in the section titled The Academic Education of Lawyers (SSHRC, eds, *Law and learning ...*, *supra* note 5 at 54-6).

<sup>457</sup> Professional legal education is employed to convey the meaning Arthurs gives to professional formation, “the acquisition of knowledge, skills and attitudes required for professional practice.” *Ibid*, at 16. When disserting about research led by lawyers, he observes that “[l]awyers are paid to produce results for clients. They cannot devote large amounts of time to research that will shed light on a client's predicament but not help to resolve it. . . . Lawyers perform in partisan (if not overtly adversarial) roles that are incompatible with the disinterested posture of a scientific investigator who (in theory at least) is prepared to live with whatever ‘truth’ the discovers. . . . Lawyers seek to identify aspects of a problem that will yield tactical and strategic gains, while academic researchers often focus on its generalizable characteristics.” *Ibid*, at 139.

<sup>458</sup> “By ‘scholarly discipline’ we mean to include both the academic study of law at the level of first and advanced degrees for purposes not necessarily related to professional qualification, and research and scholarly writing that is neither performed for clients nor mission-oriented.” *Ibid* at 134.

<sup>459</sup> The Report well recognize that in the following passage, with which I agree “We do not mean to overdraw the professional/academic distinction (which, as noted earlier, Canadian law schools were at pains to erase in the recent past in order to secure professional recognition and legitimacy). We accept that much of what is done in the context of professional formation is indeed challenging and that at least some parts of some courses in some schools have achieved a successful blend of the academic and the professional. But this is not to deny that the scholarly enterprise per se is in need of special attention.” *Ibid* at 134.

Those two conflicting processes unfold both discursively and materially, meaning that they not only interfere with the way the law is thought of, taught and researched but also how institutional practices (faculty recruitment, student admissions, institutional governance, services, etc.) and resources (rooms, grants, professors and staff's time, also symbolic resources such as prizes and recognition) are mobilized. Academicism gained momentum after the Arthurs report, emphasizing valorizing academic research in law and critical thinking in teaching. It implied that research was not or should not be attached to professional development, opening the field to methodologies other than legal dogmatism and doctrinal approaches, although empirical methods are not yet well established as mainstream scholarship.

Without such an anchor that binds legal research to state law and doctrine, Canadian professors could surf the globalization wave in the late 90s and experience a fast development in comparative, transnational law and, more radically, legal pluralism. This openness more recently met its roots in Canada's legal history with recognizing First Nations' legal traditions alongside the colonial traditions of common law and civil law.

However, this academic force – based on academic interest and freedom – that has driven the process of specialization of legal academia apart from the legal profession has been restricted mainly to the research component since research is the element of legal education the furthest from the forces of professionalism. Research has become the undisputed territory of academia, while professionalism still dominates teaching practices. That explains the contradictions of transsystemia. As a method designed exclusively for the BCL/JD program, it developed as a successful teaching method to give access to both civil and common law jurisdictions, thus complying with its professional mandate.

Still, it could never unfold as a research methodology in its own right despite its origin in a sophisticated academic view of the law.<sup>460</sup>

In turn, professionalism has always been the main driver of law faculties in Canada and the world since legal training has been closely connected to training future lawyers and bureaucrats, as well as the process of state-building and civil society formation. Thus, the state and the legal profession are, until today, the main clients of legal education. In such a context, professors are rewarded according to their connections to big law firms, the courts, and the government. They are committed to writing comments to legislations and decisions where interpretative skills help navigate legal controversies and inspire cohesion and trust in the law. Where such a process is largely dominant, research-minded law professors interested in legal phenomena outside of such a framework are often marginalized, and their research is barely considered legal but sociological or philosophical. As a compromise, we can note that professors have developed a kind of schizophrenic personality where they are committed to high-quality academic research and, at the same time, they reproduce traditional, professional-driven, doctrinal content in their courses, doing little to transpose the knowledge they produced to those courses.<sup>461</sup>

As the leading forces of professionalism, the state and the professional legal market incentivize the reproduction and application of instrumental, normative legal knowledge in the curriculum to regulate business and social life in response to the demands of a highly valorized and prestigious environment. They remunerate lawyers, economically and symbolically, more than the university does, which is a motor for colonizing the law faculty by those forces.

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<sup>460</sup> I am referring to the concept of polyjurality articulated in Roderick A Macdonald and Jason MacLean, "No Toilets in Park" *supra* note 246.

<sup>461</sup> We know that this may vary depending on the course and whether it belongs in the core of the curriculum composed of traditional, mandatory courses, or in the periphery, where alternative subjects and approaches, deemed less relevant from a professional perspective, can be taught. See Duncan Kennedy, *Legal education and the reproduction of hierarchy...*, *supra* note 264.

It is useful to see how the professional legal field has rewarded lawyers far better than the academic legal field so that, traditionally, the most prominent professors used to be those with higher ties to the top of the legal profession. Therefore, academicization can be translated as the process of moving the law faculties away from the professional field, creating a discursivity with its own underlying material and symbolic economy.

To sum up, although Canadian legal academia today is far more autonomous from the legal profession than at the time of the Arthurs Report, mainly in research, professionalism remains at the core of teaching activities and with a strong grip on the undergraduate curriculum, where research is meagre. Since undergraduate programs are the main programs by far, professional education continues to be the flagship of law faculties, with increasing potential to control graduate programs' teaching as well. Those processes, previous to the current stages of internationalization, although not restricted to the Canadian context, are somewhat indigenous to Canadian law faculties. The encounter of those processes with globalization frames the situations around internationalization described in the past chapters.

By globalization, I mean a process by which market-based rationality gained hegemony worldwide, within which a global education market rose as a specialized market and a pivotal component to the productivity of other global production chains. Globalization has increased competition by compressing time and place, thus integrating once-distant players into the same global market. The permeability of frontiers, standard trade regulations, and faster circulation of commodities, services, and people have led to an uneven distribution of shared benefits and harmful externalities among multiple players. While those externalities are produced and augmented by market competition, collaboration is needed to reduce their impact and undo the knots in global production chains.

Even when more competition is deemed the solution to externalities, collaboration around a concerted effort to increase competition is required. Therefore, competition and collaboration or cooperation are dialectical forces spread in a continuum, where they may antagonize and overlap, shaping the uneven globalization process depending on their distribution, coordination, or confrontation. The increasing awareness of the globalization process and the participation of a growing number of actors leads to the formation of global communities that establish a complex, global civil society (here taken in the oldest meaning of civil society that encompasses all non-state actors, including those pursuing economic and non-economic interests) that develop a sense of global citizenship.

In such a scenario, new abilities, values, norms, techniques, etc., became crucial for the management of complex conflicts and multicultural competence, i.e., the ability to read and horizontally navigate local idiosyncrasies and vertically transit between the local and the global, becomes central for allowing the smoother circulation of knowledge, itself the motor for competition and collaboration. In that sense, human capital formation has to integrate a global dimension for the sake of collaborative and competitive endeavours, expanding and further developing global citizenship. That means that the labour market is also increasingly globalized in many aspects. More people from more regions are competing, more perspectives from and competencies about different parts of the world are expected to be shared by the same group, and more people are expected to transit to more global regions.

That is broadly the account highly internationalized education institutions make of globalization to frame their participation, as stated by the University of Ottawa Internationalization Strategy Report: “[u]niversities train a workforce with necessary skills, foster innovation for competitive advantage and economic growth, as well as act as knowledge producers and repositories

for the complex challenges facing contemporary society.”<sup>462</sup> However, universities operate two roles in globalization; they are per se a global actor in relations of competition and collaboration worldwide, predominantly under the structure of the global education market, and a mediator for the formation of a global workforce imbued with the necessary skills to acquire a certain global citizenship.

Law faculties respond to similar pressures in the more definite context of law and the global legal education market. Still, they do it differently from universities due to the very particular characteristics of legal education we discussed before. In touch with the ongoing tension between professionalism and academicism in Canadian law faculties, globalization has affected teaching and research differently. That is to say, despite increasing competition and collaboration in both areas, globalization provided a platform for unequal and differentiated development, with consequences in law faculty management, forming the main traits of current internationalization.

Globalization undoubtedly fostered academicism by adding value to fundamental research linked to interdisciplinarity, legal pluralism, and transnational, international, and comparative law. It also de-localized the focus of traditional legal disciplines, such as labour, family, and criminal law, towards the international. That occurred because new global actors demand new knowledge to regulate new global conflicts and relations, which creates a solid demand that boosts the production of non-traditional legal knowledge.

The international element has become an essential part of the legal scholar identity, which can also be used as a differential asset in relation to the bulk of the legal profession. Law professors are more than ever expected to establish international networks and have international recognition to climb to higher positions in the academic field. Although globalization has enhanced competition for academic positions and perhaps access to resources such as research grants, it has, more emphatically,

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<sup>462</sup> Office of the President, *University of Ottawa Internationalization Strategy Report*, *supra* note 93 at 12.

pushed for international collaboration in research and created a better environment for larger independence of the legal academic from the professional field.

That influence is also reflected in teaching, with some changes in the curriculum, such as the implementation of international law courses in the first year and the appreciation of international students' perspectives in the classroom to de-localize legal concepts. Also, more cross-references between civil and common law traditions, Indigenous law, and other world legal traditions explored in seminar courses indicate an openness to teaching practices incorporating academicism input.

The encounter of globalization with professionalism had other consequences for research and teaching. In that case, the establishment of a global legal education market pressured well-positioned Canadian law schools to take advantage of the student demand and the resources that abounded. A process of conformation to market competition meant that law faculties had to select leading services and products based on international demand and incorporate dominant institutional and academic practices that have proven efficient and attractive.

Therefore, classes will teach Western legal knowledge, i.e., traditional legal canons and approaches developed or endorsed by leading institutions. Even alternative approaches, such as TWAIL or other critical methodologies, must have ties to the Ivy League or top-tier Canadian law faculties to be considered legitimate. Therefore, the market generally reinforces the hierarchy of canons, mainly in the case of graduate studies, thus affecting scholarly research production, especially in the doctorate.

Canadian local law will also be relevant due to the high value and attractiveness of the Canadian legal profession for international students and foreign lawyers, similar to the role played by the possibility of practicing in the U.S. to attract LLM students in that country. Although the LLM does not give direct access to legal practice in Canada, that has been circumvented by professional

LLMs and international students enrolled in non-professional programs autonomously studying to obtain accreditation, indicating that professional immigration is also an economic asset mobilized by law schools. That has also reframed graduate studies towards shorter and class-based programs, in the case of LLM, which have their research component gradually extirpated.

That said, professional training, which has always been seen as the *raison-d'être* of law schools and has been gaining an increasing share of graduate programs, is demanded and offered as the main commodity in the global legal education market, attracting most international students, revenue, and resources made available by globalization. Collaboration in the form of moot competitions, student exchange, international mentoring, double degrees, and international summer courses, which mobilize most of the institutional energy around internationalization, are often profitable enterprises committed to professional training. Thus, competition capitalizes on collaboration, dominating the relationship between globalization and teaching.

Therefore, professional teaching has profited the most from the encounter with globalization, far more than academic research, since it has far more appeal to become a successful service within the global market-based competition than any product the forces of academicism could offer. In other words, academicism has not been able to compete with professionalism in creating economically profitable exploitation of the new conditions that emerged with globalization. Academicism has benefited more from collaboration, but different from professionalism, it did not capitalize on the market competition to gain ground in the dispute with professionalism.

Such a context imposes an increasing rift between a scholarly internationalized discourse about the law that emerges from the collaboration of individual professors, the primary agents in the academic legal field, and a material structure of legal knowledge (re)production that relies on an

increasingly more organized, institutional response from the law school to the demands of the international legal market, where administrators are the leading agents.

Those forces also permeate international students. For academicism, they are learners with a particular aptitude for introducing new subjects, contesting stable assumptions, making unexpected correlations and putting Canadian law into perspective by comparison, contributions that are better harnessed in research supervision and the use of horizontal teaching methods. For professionalism, they are, first of all, strangers and, second, potential members of the profession in a process of regulated integration that establishes gates and delimits prospective candidates. In that sense, the undergraduate gate is closing, whereas professional LL.Ms are opening, but chances are in favour of senior foreign lawyers. To the global legal education market, they are consumers of legal education services, regardless of their program. As consumers, their research contributions are less relevant, and they accomplish their economic potential in programs with fewer research components. Additionally, as consumers, they expect more results from shorter, easier, and cheaper programs, although luxury consumers may expect expensive, exclusive, and high-quality services, with law faculties adapting to these niches and developing different programs to take advantage of both consumer profiles.

Programs traditionally tied to academicism, such as the PhD or research LL.Ms, will resist putting international students in the category of consumers, and those students will profit from a more collaborative environment where market-competition rationality is not dominant. However, students from academic programs who are not taken primarily as consumers may have lesser bargaining power in the fight for resources due to their position in the lowest levels of the academic field. Despite the benefits globalization brought to professionalism and the growing imposition of market models, it is also true that forces of academicism have prevented, so far, the adoption of exploitative practices and

the conversion of the internationalization of legal education as an open business in Canada as it is in the U.S. and the U.K.

The shortage of supervision labour can also be regarded from that perspective. In order to maximize market gains, law faculties stress their resources, with professors' supervision time being one of the scarcest. Supervision labour plays a crucial role in the academicization process against professionalism since research has been the motor of such a process, with traditional law professors oriented to professional training being less often committed to graduate student supervision. However, the academicization process has not yet reached a moment where institutional incentives to supervise are outlined, and poor supervision is constrained.

Suppose supervision labour has always been in shortage; the inflow of international students increases the demand even more. In that case, turning to professionalism, which is highly valued by the market, by reducing research requirements, shortening the programs, and virtually guaranteeing the degree regardless of students' merit not only alleviates the stress on supervision but also widens the capability of absorbing more students and increases the revenue. In that situation, it is hard to imagine that academicism will ever be able to impose any supervision standard or increase research requirements if faculties only respond to the economic rationale of the legal education market.

It follows that we can understand the internationalization of Canadian law faculties as a result of the tense encounter between academicism, professionalism and globalization that can be summed up and understood as a regime of relations organized by the dialectical imbrication of competition and collaboration on a global scale that gives rise to a global legal education market – in its predominantly competitive side – and more intense research collaboration – in its predominantly collaborative side, although the competition trumps collaboration overall and can leverage on

collaboration practices to improve competition more than collaboration can leverage on competitive practices.

As a result, that particular kind of internationalization unfolds a knowledge economy where academicism grows more potent as a research-oriented discourse that, despite pursuing more material support to develop with the allocation of global resources, has not been able to take the lead of the internationalization in its the institutional, material aspects. Internationalization has been directed predominantly by the forces of professionalism that, concentrated on teaching practices under higher demand, were able to develop services and products that dominated the more crucial, material aspects of internationalization. That means that the forces of professionalism manage more material resources made available by globalization, subjugating the development of academicism. For professors, the economic aspects are dissociated from and often hinder knowledge production and circulation practices. Still, they can hardly imagine how law faculties could economically benefit from those academic practices. So, willing or not, they comply with the professional demands of the market.

**Part III. Theoretical Reflections And Propositions**  
Chapter 7 and Final Considerations

## **7 Theoretical Reconstruction: Law, Learning and Internationalization**

In the previous parts chapters of this thesis, I constructed the internationalization of law faculties as a particular and timely object of study, proposing a multilayered analysis involving a literature review, documentary analysis (reports, documents, etc.), and extensive empirical research of the topic (quantitative and qualitative data). As proposed in the methodology and inspired by Burawoy, such layers of meanings about the internationalization of law faculties lead to an attempt at theoretical reconstruction, that is, the engagement with a theory or set of ideas relevant to the topic and a tentative theorization based on the data already analyzed.

This chapter is organized into three sections. In the first section, I examine the Law and Learning tradition by pointing out its limitations with regard to the relationship between legal knowledge and the legal profession. I argue that Arthurs does not develop legal science's full potential by conserving the ties with the traditional formal structure of practiced law. Consequently, he creates opportunities to incorporate advances in interdisciplinarity insofar as those advances are limited to hermeneutics and theory while empirically-based legal knowledge remains marginal.

In the second section, I assess transsystemia as a practical experience that actualizes and goes beyond Arthurs program. Transsystemia is an example of a successful innovation put in place by academic forces, representing the potentiality that can be released when facing the pressures of the profession. However, I argue that the limitations present in Arthurs program are reproduced in McGill's transsystemic curriculum, which reverberated in how internationalization is weakly integrated into the curriculum.

In the last section, I give my contributions to determining an empirically grounded legal science as a modern science of conflict governance in opposition to the currently pre-modern legal science underpinned in authoritative norms. In its first subsection, I argue why current law reflects a

pre-modern mentality and how it unfolds as a pre-modern mercantilist legal knowledge economy. The second subsection discusses how a modern legal knowledge economy can only rise from an empirical legal science. Moreover, that would be the only scenario where international students become valuable assets for knowledge production in a progressive chain linking legal research to practice.

Before presenting my theoretical reconstruction, a preliminary task attributed to this introduction is to justify the relevance of reconstructing the Law and Learning tradition for understanding the internationalization of Canadian faculties of law. Without expanding too much on the context of the Law and Learning Report, it suffices to say that due to its impact in assessing empirically the state of legal research and education in Canada until the 80s, it is an unavoidable source of reflection.

First, the report prompted the recognition that Canadian legal education was absorbed by professionalism in many aspects, ranging from the curriculum to the virtual absence of full-time professors who can dedicate time to non-partisan research. Its release led to the reformulation and modernization of law faculties in tune with other academic values in terms of promoting interdisciplinarity and basic research, graduate research programs, and creating material conditions for academic autonomous thinking. That would evolve into a culture of hiring full-time professors with doctoral degrees and increasing applications for research funding. Also, law faculties would become more independent from the profession, with fewer practitioners being employed, and professors' careers would become more attractive and stable.

Second, regarding the theoretical framework, by comprehending the internationalization of Canadian law faculties through the lenses of the intersection of academicism, professionalism and globalization and tracing its political-economic consequences, I claim to be affiliated with the Law

and Learning tradition inaugurated by the Arthurs report, where the primary tension between academicism and professionalism is first described and then updated by Arthurs article Law and Learning in the Era of Globalization, where the impact of market-driven, neoliberal globalization on the Canadian legal education is explored.<sup>463</sup> Not to mention that Arthurs discusses the political economy of legal education in many papers, including one with that same title.<sup>464</sup> Therefore, the key analytical concepts I am using follow this tradition of analysis already.

Last, I see Law and Learning as an intellectual tradition per se not only because Arthurs updates and applies those analytical concepts over time, with his work being very influential to this day, but also due to the chain of academic, institutional and informal discussions it sparked.<sup>465</sup> It is fair to say that contemporary publications about legal education in Canada will often refer to the Arthurs reports or themes raised by it, making it a living tradition that continues to develop in what Lakatos calls a progressive program. To a certain extent, McGill's transsystemic program has roots in this tradition, being an outstanding mark of his influence, with Arthurs using his framework to evaluate that experience more than once.

Furthermore, by empirically assessing the problems of Canadian faculties of law at the time, the report inaugurated an original way of discussing legal education from a Canadian perspective, which, for instance, was more critical of the legal education market and suspicious of the economic

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<sup>463</sup> Harry Arthurs, "Law and Learning in the Era of Globalization," *supra* note 123.

<sup>464</sup> Harry Arthurs, "The Political Economy of Canadian Legal Education," *supra* note 108.

<sup>465</sup> Three professors responded to the report in "Reaction to the Arthurs Report" (1985) 65 *Dalhousie review* 5–27. Papers concerning the report include William D. Moull, "Law and the Social Sciences in Canadian Legal Education: Some Perspectives on the Arthurs Report" (1984) 34:3 *Journal of Legal Education* 515, Constance Backhouse, "Revisiting the Arthurs Report Twenty Years Later" (2003) 18:1 *Canadian Journal of Law and Society* 33, Julian Webb, "The Ambitious Modesty of Harry Arthurs' Humane Professionalism" (2006) 44:1 *Osgoode Hall LJ* 119, Robert W. Gordon, "The Law School, the Profession, and Arthurs' Humane Professionalism" (2006) 44:1 *Osgoode Hall LJ* 157, Diana Majury, "Teaching Is Part of Legal Education" (2003) 18:1 *Canadian Journal of Law and Society* 51–59, Annie Rochette, *Teaching and learning in Canadian legal education: An empirical exploration* (PhD dissertation, McGill University, 2011).

effects of neoliberal globalization. That distinguishes the Canadian tradition from legal education concerns in the U.S., where criticisms related to privatization are not mainstream. Those traits seem to continue to permeate most Canadian law professors' ethics, feelings and values.

For the purpose of the theoretical reconstruction, I will draw on key aspects of that tradition to identify how it frames the success of further academicization and suggest some contributions for a more radical change in the relation between academicism and professionalism, necessary for a more fruitful internationalization concerning the circulation and production of legal knowledge. For that, I criticize how Arthurs envisioned how both fields should approach each other as a limited, although more realistic, model. In that sense, I call it a conservative approach because it preserves fundamental dispositions that cannot sustain a legal knowledge economy led by evidence-based legal research. However, I could also label it as pragmatic. Instead, I propose a more radical approach that, despite being much more challenging to implement, imagines relations where the law profession becomes more dependent on empirical developments produced by evidence-based legal research.

I suggest that a political economy of internationalization and legal education should look at the actual chains of knowledge production and circulation from a materialist perspective, like an industry with its input, transformation and output spheres, and internationalization as an element that enhances and differentiates the value added to the legal knowledge production chain. I hope to contribute to the theoretical analysis by outlining how another kind of internationalization could come to light.

In *Law and Learning in the Era of Globalization*, Arthurs describes the ascension of globalization as an ideology where the state's regulatory powers of government are condemned on behalf of the forces of the political economy, as to say, the adjustment of government to market needs. That yields to the undermining of state-centred law as it has been understood, taught, and researched,

as well as the ability of the state to regulate legal education itself. Therefore, not only has the political economy determined the law's content in terms of policies, jurisprudence, and legal concepts, but it has also impacted the curriculum, research agendas, and the administration of law faculties. It has modified where and how law is practiced by empowering global law firms, has led to the rise of international arbitration, and has emphasized the jurisprudence of international regulatory agencies and international and transnational law.<sup>466</sup>

In such a context, law schools started framing themselves as global institutions, teaching a global curriculum and having an international research portfolio with global partners. Does that adaptation to globalization, however, imply that law faculties have remained active subjects of globalization by consciously responding to the needs of globalization or instead have been forced to comply passively with the overwhelming forces of the political economy?<sup>467</sup> That is the highly relevant research question he addresses in one of his papers. Although he is inclined to think that law faculties have mostly assumed a passive role, he draws on McGill's transsystemic approach as an example of one law school that has presented an alternative path in the direction of a scholarly legal science, at the same time as it introduced some compromises with external forces to thrive in globalization.

Based on this dissertation, I can try to answer that same question and advance Arthurs analysis of transsystemia as a case. I argue that transsystemia is a heterodox example of the rapprochement between academicism and professionalism within globalization. However, it is still conservative and insufficient to take advantage of the full potential of internationalization. Transsystemia went beyond

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<sup>466</sup> Harry Arthurs, "Law and Learning in the Era of Globalization," *supra* note 123 at 629-631.

<sup>467</sup> "So globalization is a prominent new feature of legal education and scholarship. But does this prove the optimists right or the pessimists? Does it demonstrate that law schools have retained agency, that their new, global curricula, syllabi, pedagogies, staffing strategies and research agendas are the result of a conscious choice to embrace globalization? Or does it confirm that law schools have indeed been forced to bend to the new realities of a global political economy?" *Ibid* at 631-632.

the voluntarist rapprochement between academicism and professionalism suggested by the Arthurs report but is still far from challenging traditional structures of the law. That is because the kind of scholarly legal work envisioned by Arthurs and transsystemia proponents, notably Roderick Macdonald, is too much centred on advances in hermeneutics and legal theory instead of empirical research. Such types of academic advancements keep reproducing law as a non-empirically-based normative practice, not enough to underpin a modern, scientific legal knowledge economy.

### 7.1 A Conservative Rapprochement between Academicism and Professionalism

As I clarified in the last chapter when I described the tug of war between academicism and professionalism, there is a grey zone where both processes are mixed or at least very hard to set apart, for scholarly advances in the legal science may also be advantageous for the forces of professionalism, and the other way around. In that sense, the tensions are more clearly identifiable at the periphery of the spectrum, where academicism, in the process of affirmation and differentiation from traditional professionalism, seeks to take the lead of its own sub-processes and compete for resources against the hegemonic forces of the profession.<sup>468</sup>

However, to achieve a higher stage of academicism, it is evident that there might be a more substantial collaboration (or cooptation) between the forces running both processes. It implies the

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<sup>468</sup> Arthurs well presents this framework of struggle and compromise by stating that “[t]hus, the development of a scholarly discipline of law might lead to a struggle for the mind and soul of the law as it is taught, written and practiced, a clash of interests and attitudes at many levels, some of which are neither openly identified or clearly defined. In such a struggle, legal scholars would not have obvious allies, nor would they be able to clothe themselves in the armour of prestige won during the scientific revolution by their counterparts in the physical sciences, and still acknowledged by practitioners of those sciences. To summarize: the scholarly enterprise of law can flourish neither divorced from the profession, nor in its close embrace, nor in hand-to-hand combat with it. Its best prospect for growth and development is therefore to take up a position within the law faculties as a distinct and separate endeavour; with its own goals, standards and basis of legitimacy. Only such a stance will at once stimulate energies, promote sensible interdisciplinary cooperation and provide a free and equal basis for exchange between scholars and practitioners.” SSHRC, eds, *Law and learning ...*, *supra* note 5 at 140.

growing academicization of the legal profession, that is, the involvement of legal societies, judges and the government in promoting legal knowledge. That is even more true due to the deep, material and symbolic dependence – certainly mitigated nowadays compared to the 1980s – on the legal profession. That is widely acknowledged in the Law and Learning report, where Arthurs stresses the “professional nexus,” meaning that “[i]n virtually every example we have provided, the scholarly is deeply implicated in the professional: almost nowhere it stands on its own.”<sup>469</sup> The report then establishes the bridges for collaboration with the profession to foster a stronger academic field of law based on the following assumptions:

[i] A profession that lacks a scientific base cannot properly serve either its clientele or an increasingly complex society, cannot maintain a credible claim to its privileges and powers, cannot attract to itself the best minds or employ those minds to best effect. [ii] Nor, for specific historical and cultural reasons, can such a scientific base for law flourish at too great a distance from the project of law as it has been understood by practicing lawyers. After all, in large part it is their formal literature, institutions, culture and behaviour that provide a major focus of scientific study. [iii] In the end, lawyers will be among the most important ultimate consumers of scholarly work – and we believe that science neither demands, nor can tolerate, such indifference – they must have credibility with lawyers. This credibility is already strained by the novelty and potentially threatening nature of the scholarly project as far as lawyers are concerned: it would be lost altogether if that project were pursued in total isolation from professional activities.<sup>470</sup>

I will call those assumptions [i] the establishment of a modern legal profession informed by modern scientific advancements; [ii] the establishment of a scholarly science of law that respects the formal structure of practiced law; and [iii] a closer connection between the profession and the academia so that they belong to the same field, rather two competing streams, i.e., a more unified legal knowledge economy where legal knowledge production can be expected to circulate to professionals in a streamlined fashion. I will consider argument [iii] a corollary of the first two

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<sup>469</sup> *Ibid* at 136

<sup>470</sup> *Ibid* at 137-8

premises and focus on the compatibility problems between the chances of defining a modern legal profession and keeping the formal structure of practiced law. In other words, I will examine if assumptions [i] and [ii] are compatible. For that, we first need to understand the main traits of such a science of law that makes those premises compatible in Arthurs' mind. So, to him,

[s]cience in this context obviously has a different meaning than in, say, medicine or engineering. It is intended to connote the systemic study, using all possible intellectual skills, of all aspects of law, its outcomes and social consequences. 'How did we arrive at our present legal rules and institutions?' 'What is the overall effect on individuals and society?' 'Do they advance their ostensible purposes, and are those purposes congruent with higher social goals?' Can we not make those rules clearer or better and the institutions more humane or efficient? These are all interpretive and evaluative questions that scientific or scholarly investigators in law ought to be asking, as well as the more limited and familiar queries: 'What does the rule say?' or 'How is the institution formally constituted?'<sup>471</sup>

It is interesting to note that Arthurs frames those as "interpretative and evaluative questions" that should be investigated by legal scholars. Moreover, we should look at the four types of legal research pointed out in the report: legal theory, fundamental research, conventional treatises and articles, and law reform research. Of these types, legal theory and fundamental research are those more akin to an academic constituency, with legal theory being a form of research "in" law, i.e., which takes law as its subject, thus employing a doctrinal methodology, and fundamental research a form of research "on" law, for it takes law as its object, thus employing interdisciplinary methodologies.<sup>472</sup>

In that sense, legal theory is the type of academic legal research with more appeal to legal practitioners for sharing common roots in doctrinal methods and reasoning, not too far from what lawyers do, compared to empirical methods of the social sciences. It is also easy to imagine legal theory research co-opting interdisciplinarity as a way of resorting to other scientific rationales to

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<sup>471</sup> *Ibid* at 138.

<sup>472</sup> *Ibid* at 65-67.

perform an interpretative inquiry about the law. In that sense, legal theory has been thought of as Jurisprudence in the Common Law and philosophy of law in the continental tradition in the works of Hans Kelsen, Carl Schmitt, H. L. A. Hart, Joseph Raz, and Ronald Dworkin, to name the more prominent legal theorists. We may also include sociological legal theories like those developed by Luhmann and Habermas. All those theories have incorporated advances from other sciences (logic and mathematics, political science, philosophy, sociology, communications, cybernetics and biology) into law.<sup>473</sup> That seems to be the project behind Arthurs' project of legal science. However, where does empirical research stand in this project?

Despite advocating for more comparative and historical legal research and better conditions for non-interested and exploratory research, it still seems that empirical research is far from the central concern, being rather marginal. That can be seen in the general understanding that much academic legal research is conducted in the law library, with secondary sources. The report's recommendations reflect this situation. Although the preamble of the recommendations about "promotion of research" mentions fundamental and theoretical research, there are no recommendations about fostering the training of legal scholars in empirical methodologies.<sup>474</sup> In contrast, one can identify at least four

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<sup>473</sup> Those theories, because often dissociated from empirical justification, have a tendency to unfold as regressive scientific programs, as defined by Lakatos. Another critique of this kind of interdisciplinarity restricted to theoretical assumptions is made by Bourdieu, who call them "theoretical" theories aiming to criticize Marxist Structuralism in France. "Such 'theoretical' theory, a prophetic discourse that is its own end, and that stems from and lives from the confrontation with other (theoretical) theories . . . naturally forms an 'epistemological couple' . . . This compendium of scholastic precepts (such as the requirement of preliminary definitions of concepts, which automatically produce a closure effect) and of technical recipes, whose formalism (as, for instance, in the presentation of data and results) is often closer to the logic of a magic ritual than to that of a rigorous science, is the perfect counterpart to the bastard concepts, neither concrete nor abstract, that pure theoreticians continually invent. Despite its pretense of utmost rigor, this formalism paradoxically abstract from critical assessment the concepts used and the most fundamental operations of research, such as data coding procedures and choice of statistical techniques of analysis. Thus, if you allow me to plagiarize Kant's famous dictum: theory without empirical research is empty, empirical research without theory is blind" See Pierre Bourdieu, "Vive la crise! For heterodoxy in social science" (1988) 17 *Theory and society* 773 at 774.

<sup>474</sup> When suggesting recommendations regarding undergraduate programs, the report claims that "they should emphasize intellectual and theoretical, as opposed to professional perspectives while preserving connections, collaborations and crossover possibilities with the professional options." Again, no mention to empirical knowledge or methodologies, which remain largely distant from all degrees of legal training, not even being taught in most doctoral programs. SSHRC, eds, *Law and learning...*, *supra* note 5 at 155.

recommendations about improving the conditions of law faculty libraries and two more about increasing the participation of law professors in the production of legal dictionaries and treatises and improving access to legal records.<sup>475</sup>

So, based on those remarks, a legal science that can comply with those two premises underpinning the rapprochement between academicism and professionalism is better sustained by theoretical and non-empirical fundamental studies, which can hopefully attract a consistent audience of practitioners for being more adapted to the ongoing professional legal language, reasoning, institutions, and problems. That is crucial for the “development of a significant ‘academic’ constituency outside the law faculties.”<sup>476</sup> Ultimately, this rapprochement aims to form a “learned profession” committed to financing legal education and research.<sup>477</sup> It encompasses hiring “academic lawyers” to assist practitioners, welcoming practitioners to visiting positions at the law faculty, and incorporating academic research into legal reasoning.<sup>478</sup>

One problem with this strategy is that it leads to a subordinated integration where the use and appropriation of scholarly work by the profession is not a structural necessity to improve professional service and delivery, but a voluntary effort to enrich traditional practices with thoughtful insights from legal academia. That is precisely the opposite of what happens to modern legal professions, where there is a more or less unified knowledge production and circulation chain in the sense that segments of government and industry need to invest in fundamental research as a means to assess professional practices and develop new technologies, methods, services, and products that have the potential to revolutionize the professional field, in a progressive knowledge economy.

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<sup>475</sup> *Ibid* at 157-160.

<sup>476</sup> *Ibid* at 160.

<sup>477</sup> *Ibid* at 161.

<sup>478</sup> *Ibid* at 160-1.

By clinging to the authority of formal legal institutions dominated by the profession, legal science is very limited in its potential to revolutionize the legal field, becoming a limited “science” since empirical knowledge is often marginalized. In exchange, though, such a limited science keeps being professionally relevant. However, when based on empirical knowledge, legal science can develop its full potential and challenge the structural features of the legal field. Still, that effect probably will never happen because that knowledge is marginalized. Therefore, legal science presents itself in a dilemma. It either develops as an influential limited science that pays tribute to existing professional practices or abandons the authority of formal legal institutions and becomes a marginalized modern, evidence-based science apart from the daily life of professionals.

That dilemma is important for my argument because it is precisely the production of empirical knowledge and its mobilization towards a practical, professional use that establishes the link between modern, scientific academy and modern professional fields. This necessary communication between empirical knowledge production and the respective profession or industry constitutes the foundation of modern knowledge economies. In the case of law, that communication has not been established yet. I will expand more on this in the last section of this chapter, but I am generally considering modern science methods of knowledge production validated by empirical assessment of facts and modern professions that concern the application of scientific findings.<sup>479</sup>

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<sup>479</sup> I am aware that this is an oversimplification of one particular position within a complex epistemological debate with its origins in the controversy between the Continental Rationalists (Descartes, Leibniz and Spinoza) and British Empiricists (Hume, Locke, and Reid), which will find its synthesis in Kant. In the late nineteenth century, French Positivism, Marxism, and the Vienna Circle added new problems and justifications for empirically-based scientific knowledge, especially the idea of logical empiricism, which shaped legal positivism, particularly Kelsen’s program for a pure legal theory and science. My idea of law as a science of the governance of conflicts runs against logical empiricism, but also against current alternatives such as Dworkin’s post-positivism or Roderick’s polyjurality because neither introduces the urge to base law on empirical evidence. Hume’s guillotine or the is-ought problem is often used to keep law apart from empirical assessment since there would be no grounds for deriving a normative statement from a factual statement. In other words, Hume’s guillotine asserts that there is a rigid separation between how things are and how they should be and one cannot claim how things should be based on how things are. However, Hume’s guillotine is flawed, and many objections have been made against it using the idea of genuine expectations, for instance, a promise (fact) leads to an expected obligation (ought), and a profession (fact) leads to an expected behaviour from the

How about globalization? I argue that neither a limited legal “science” nor a marginalized modern science can develop approaches, social technologies, services and products to compete with the set of economic advantages established by the formation of the legal profession. They cannot attract so many investments, students and consumers made available by the collaborative and, above all, competitive elements of globalization. Only a modern legal science in a dominant position that supports advances in a modern legal profession can profit from globalization following an academic and evidence-based logic.<sup>480</sup>

In the existing limited legal “science,” the knowledge carried out by international students related to the law of their country of origin, and more importantly, their experience in managing and solving conflicts is not of genuine interest, except maybe to those affiliated with a marginalized modern academic field. The distance is greater when considering their experience with non-formalized institutions and dealing with conflicts that escape the apprehension of theoretical canons in the host country. Neither is their potential to intermediate international research between local and global actors systematically used in research projects. Although international students may still be relevant to putting canonical ideas into perspective, there is little systematic incentive for them to deviate from canons and offer a substantially differentiated input that draws on their background. By keeping its ties to the formal institutions of practice, the current model does not take full advantage of international students’ knowledge and potential to increment the legal knowledge production chain.

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professional (ought). Similarly, in our days, better knowledge about how things work leads to genuine expectations of technical advancements. Otherwise, modern professions and the capitalist economy would be completely compromised.

<sup>480</sup> Moreover, non-empirical academic research is more prone to reproduce canons, academic styles, and mainstream methodologies according to global hierarchies and knowledge colonialism. No wonder abstract thinking and the mobilization of fundamental legal concepts, with little to no reference to empirical methodologies, are the primary type of research conducted by international doctoral students in first-tier law schools in the United States, leading to legal transplants.

## 7.2 Transsystemia and Globalization

Even if based on a relatively conservative framework, Arthurs defends increasing autonomy for law schools to design curricula that are not limited to reproducing a generalist approach to law under the auspices of the legal profession.<sup>481</sup> He proposed the establishment of different pluralistic curricula where law schools could draw on their contexts to create complementary paths to addressing legal problems.<sup>482</sup> That would be an exercise of academic independence and agency by law faculties, more or less responsive to professional training. That seems to be the criterion Arthurs applies to assess whether law faculties retained agency when facing the harassment of the market forces of globalization. In that case, McGill's transsystemia proves that law schools can at least further their academicization process despite compromises to the profession and the market.

Arthurs then stressed that the transsystemic curriculum developed from an inner scholarly debate underpinned in legal theory and interdisciplinary research versing on the nature of law, in which law is radically dissociated from the state and studied according to a plurality of sources and an indeterminate institutional arrangement that enables "a sustained and humble dialog[sic] with otherness."<sup>483</sup> Although such an indetermination fits well with training lawyers for the emerging traits of globalization towards the porosity of borders, the weakening of state-centred regulations and the

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<sup>481</sup> I want to emphasize that the term conservative is not used in a political sense. Rather, it means a cautious, pragmatic affirmation of academic autonomy that preserves essential ties to the traditional legal profession, as opposed to a complete rupture, which is the position that I am defending. Politically, Arthurs analysis of the political economy of law is very progressive, which translates into his criticisms of neoliberalism and the market-centred globalization that hinder core values of law in a democratic, liberal society.

<sup>482</sup> "In our diagnosis, all of the goals of legal education are important, but they cannot be achieved within a single, unstructured and eclectic law school curriculum. What is needed is genuine pluralism – a series of alternative curriculums specifically designed to advance different objectives." SSHRC, eds, *Law and learning ...*, *supra* note 5 at 153

<sup>483</sup> Yves Marie Morissette, "McGill's Integrated Civil and Common Law Program" (2002) 52 J. LEGAL. EDUC. 12 at 22, cited in Harry Arthurs, "Law and Learning in the Era of Globalization," *supra*, note 123 at 637.

strengthening of the global market and civil society, that was never considered the first goal of transsystemia, which is devoted primarily to explore the indeterminacy of law.<sup>484</sup>

However, as he predicted in the 1983 report, that scholarly audacity would face some resistance from professionalism and had to make use of some strategies to thrive. The first challenge had to do with student demand in terms of professional expectations of access to the career, which implies a certain level of predictability related to their learning process. Partially due to the economic impact of those demands, transsystemia would have adopted a strategy of “stoop to conquer,” getting to a compromise where the professional curriculum remains somewhat central.<sup>485</sup> The second challenge is to attract students akin to the transsystemic model, which leads to a strategy of “niche marketing,” supported by Arthurs, who sees that as a way to align institutional purposes to an audience that shares its values. The issues with this strategy are that it takes for granted students make rational choices based on the curriculum, and by focusing on one audience, the program is not harnessing the diversity of perspectives it is supposed to embrace and promote.<sup>486</sup> The third challenge is to get students to pick the side of academicism, which entails convincing students to validate their own polyjural experiences, value more questioning the law than finding the correct interpretation, and reckon that diversity, plurality, contradiction and indeterminacy will be more often part of their career than not.<sup>487</sup>

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<sup>484</sup> “I want to make clear that McGill is not merely training law graduates for global law firms and enterprises, international agencies, transnational NGOs or other employers who might wish to hire young lawyers who are fluent in several languages and legal vernaculars!! While many of its graduates do end up in just such careers, the architects of the new curriculum would strenuously deny that they were trying to prepare students to practice law in what they ironically refer to as ‘trans-systemia.’” Harry Arthurs, “Law and Learning in the Era of Globalization,” *supra*, note 123 at 636.

<sup>485</sup> “Meeting student expectations today is more important than we might prefer, given that the financial wellbeing of our law schools depends increasingly on our ability to persuade students to enroll here rather than there, to pay us significant fees and to incur debt to do so, and to signal their satisfaction by responding to surveys and making a success of their careers” *Ibid* at 638.

<sup>486</sup> *Ibid* at 639.

<sup>487</sup> *Ibid* at 639.

By applying those strategies, it seems that McGill was able to apply most of the original Law and Learning program of building up academicism voluntarily, i.e., underpinned on the institutional will of scholars through the implementation of a curriculum initially dissociated from the forces of the profession – and we might say the market –, and some concessions to professionalism are compensated by other strategies to reaffirm the academic spirit of transsystemia. Arthurs approval is clear in his final words “[i]t is – you will conclude and I will confess — my kind of curriculum and my kind of teaching. Does this – I ask you — make me an optimist after all?”<sup>488</sup>

I agree that the transsystemic curriculum is a remarkable, innovative experience, but I want to stress other elements concerning the political economy of Canadian legal education and internationalization that have been left out. I believe transsystemia is a successful enterprise because, regardless of the intention of those who implemented it, it represents a product of academicism that could take advantage of the main traits of globalization I discussed before. It is an example of the inventiveness of academic forces to compete against traditional forces of professionalism for material and symbolic resources and opportunities made available by globalization.

Moreover, the collaboration (or co-optation) of the forces of professionalism is assured by using academic research methodologies that share more similarities with traditional legal reasoning, i.e., legal theory and fundamental research dealing with secondary sources (comparative and historical, for instance), and the transsystemic teaching method itself, with little emphasis on empirical research.<sup>489</sup> Therefore, I argue that McGill is the best example of what is possible and

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<sup>488</sup> *Ibid.*

<sup>489</sup> In that sense, transsystemia is still doctrinal, all too doctrinal. The reference to Nietzsche’s book *Human, all too Human* indicates a critique on the concept of polyjurality used by Roderick Macdonald in his attempt to develop the theoretical foundations of transsystemia. My critique goes in the sense that polyjurality is not a radical dissociation from traditional law. Despite de-localizing state law from the centre of his legal concerns as a way to open the repertoire of concepts, practices, legal systems, traditions and sources of legal inspiration, the goal is to complexify and enrich the process of interpretation. Therefore, norms are still in the centre of polyjurality and interpretation is the main way to work with

feasible within the Law and Learning framework and the view of a fairly conservative but possible integration between academicism and professionalism, which, again, is already remarkable.<sup>490</sup> Still, its success also depends on something Arthurs did not foresee in the report: the ability to create valuable products and services for a globalized market.

The limits of that enterprise, however, can be seen in the way internationalization in terms of the diversity of knowledge carried by international students is somewhat put aside. The professed openness to the dialog[sic] with otherness<sup>491</sup> has not integrated international students' grounded, empirical legal experience as a consistent piece of the repertoire of transsystemia. As I pointed out, that is explained by the very limits of the strategy to thrive in a compromise with prevailing traditional legal practice institutions and the use of non-empirical academic research methodologies, which create fertile soil for the reproduction of Western canons.

Consequently, international students' contributions are not systematically considered valuable otherness (asset) for the transsystemia as an academic product and service competing in the global market. As the collected quantitative and qualitative data suggest, international students remained in the same position as in classic professionally driven programs, i.e., as consumers, being mostly enrolled in the non-transsystemic LLM program. In the doctorate, where their knowledge may circulate more freely, transsystemia is not institutionally present either, and the little emphasis on empirical methodologies may also lead to deficits in how we access other legal traditions according to a material plurality of legal practices as ways complex social conflicts are managed and solved.

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them. That operation does not radically change the way legal professionals operate within state law and does not inaugurate a modern legal science concerned with empirically grounded practices of social conflict solving and management. See Roderick A Macdonald and Jason MacLean, "No Toilets in Park" *supra* note 246.

<sup>490</sup> Made possible by "theoretical" theories (see footnote 432) which are not directly focused on empirical data.

<sup>491</sup> I am referring to the expression "a sustained and humble dialog[sic] with otherness", in Harry Arthurs, "Law and Learning in the Era of Globalization," *supra*, note 123 at 637

Through this analysis of transsystemia within the Law and Learning tradition, I expected to have taken the best concrete example of Arthurs program of academicization of Canadian law faculties to demonstrate its limits to integrating internationalization and international students' knowledge. I maintain that incorporating internationalization as a valuable and necessary openness to the dialog[sic] with otherness encounters a structural limit in how legal science is portrayed in the Law and Learning tradition.

For that, I expect to have shown the need to modernize legal science by de-coupling it not only from the prevailing institutions of legal practice in a given jurisdiction and playing with the indeterminacy of norms but also questioning legal science as a normative endeavour about norms by grounding it on empirical evidence of efficient models of conflict management and resolution,<sup>492</sup> as any other modern science does, as the modern science of governance of conflicts.

In the current pre-modern legal knowledge economy, international students will mostly be consumers of professional legal knowledge. McGill did not provide an alternative internationalization where international students are primarily regarded as knowledge producers by not challenging this deeper conformation of how we understand law and legal knowledge. It is, therefore, necessary to outline an alternative knowledge economy that can produce capital from the extensive and diverse legal experience potentially transiting in Canadian law faculties, thus changing the role of international students to that of collaborators and knowledge producers. That way, the circulation of people can meet the circulation of knowledge.

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<sup>492</sup> Which includes the use of empirical data to assess and update norms.

### 7.3 A Modern Science of Law: a basis for an alternative legal knowledge economy

My final objective is to imagine a scholarly science of law that can operate independently from the existing institutions of the legal profession and, ultimately, the legal norms. That is not only because such science will finally share the foundations of modern empirical sciences and determine necessary advancements to the professional field but also because that is the only model where internationalization may develop differently, and the production of knowledge would be at its core. Discussing the current legal knowledge economy and the role of innovation in it is a first step in that direction.

For this imaginative effort, I will apply an essayistic style that should develop into a more rigorous inquiry in future writings. Ultimately, due to its drastic implications, such a theoretical reconstruction deserves a whole dissertation dedicated to underpinning my argument. Concepts from the critical political economy, which derive from the analysis of merchantilism and modern manufacturing first introduced by Marx, are primary sources of inspiration for understanding the legal knowledge economy and faculties of law as economic units. These are well-established concepts that need to be brought into Arthurs analysis of the political economy to make it capable of understanding internationalization within the existing legal education market and possible alternatives.

The establishment of a knowledge economy has been a central theme of globalization due to the replacement of the Fordist mode of production and regulation and the emergence of flexible, individualized, transnationalized, increasingly de-regulated post-Fordist production chains based on

constant innovation.<sup>493</sup> In this post-Fordist economy, human capital becomes, mostly under the framework of a neoliberal knowledge economy.<sup>494</sup> However, I want to diverge from the discussion of innovation and human capital that has permeated mainstream approaches to the knowledge economy. Also, I do not aim to analyze the role of law as a regulatory instrument in the knowledge economy in areas such as intellectual property, as we commonly see it. Instead, I want to focus on the general lines of the political economy of the legal field as an industry and how it creates a knowledge economy in itself. That is what I am calling a legal knowledge economy. I base my analysis on looking at innovation as the output of knowledge production. The legal knowledge economy should also be examined through the relationships within the distinguishable chains of legal knowledge production and circulation.<sup>495</sup>

The view of law as a science restricted within the institutions of the profession seriously limits our perception of legal innovation. New decisions (case law), legislations, and interpretations produce innovation because they introduce new elements to the legal system so that all innovation is hooked to a pre-existing enforceable set of norms, i.e., the state in a broader and normative sense. However, that is equally valid to any other platform for norms in a pluralistic sense. Despite not reproducing the same institutions of Western legal systems, Talmudic law, Indigenous law, Sharia law or any other set of legal norms are more or less manipulated according to a procedure where norms are

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<sup>493</sup> See Joachim Hirsch, *Materialistische Staatstheorie: Transformationsprozesse des kapitalistischen Staatensystems* (Hamburg: VSA-Verl, 2005), which apparently was not translated into English. Also see from the same author, Joachim Hirsch and John Kannankulam, “The Spaces of Capital: The Political Form of Capitalism and the Internationalization of the State” (2011) 43:1 *Antipode* 12.

<sup>494</sup> Foucault famously studied the origin of the idea of human capital and its relation to new models of governmentality promoted by neoliberalism and its variants. See Michel Foucault et al, *The birth of biopolitics: lectures at the Collège de France, 1978-79* (Basingstoke; Palgrave Macmillan, 2008).

<sup>495</sup> Such analysis of the relationship between moments of production and circulation to describe an economy is inspired in Chapter 4 of *Capital*, Vol. 1: The General Formula for Capital, where Marx described the stages of circulation and production according to the emphasis in the transformation of commodity into money in the circulation stage and money into commodity in the production stage. In the capitalist economy, the general formula for capital is M-C-M', where the valorization of capital is a consequence of commodity production. See Karl Marx, *Capital: volume I* (Penguin UK, 1990) at 247-257.

identified, interpreted, eventually applied and enforced. In that sense, legal innovation can also be identified in revising, upholding, derogating, and reforming legal norms.

The fact that law, regardless of the tradition, is centred on manipulating norms unifies a vast set of practices around the legal denominator, which is the formal structure of norms.<sup>496</sup> That is essential to understanding law as an activity of reasoning based on a recognized authority (the authority of the norm) according to an argumentative practice or hermeneutics, which can also be seen in religious reasoning and literary studies. In religious studies, the authority of God's words is an unescapable starting point for hermeneutic exercises, which can only be subverted by another act of God – another revelation or the work of a prophet – indicating the same circularity present in the legal reasoning. In literature, the authority of the text (not the author) is the basis for similar intellectual exercises lawyers do with norms. In sum, innovation cannot overcome the authority of norms, God, and the text in all those cases. For the sake of my argument, I call hermeneutic sciences those areas of knowledge production usually limited to applying argumentative methods.<sup>497</sup>

As we know, law as a hermeneutic exercise does not make it a pure speculative activity restricted to academics and less useful for professionals—the same with religion and literature. Lawyers, clergymen, and critics mobilize, sometimes innovatively, their respective normative systems while depending on their long-lasting stability and institutions, which allow some change in their fields while preventing their complete overcoming.

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<sup>496</sup> See Hans Kelsen, *Pure theory of law*, *supra* note 26.

<sup>497</sup> Paul Ricoeur's *The Conflict of Interpretations* inspired me to analyze the law as a hermeneutic science that shares the operational structures of religion and literature in opposition to empirical sciences. The hermeneutical tradition with heavy influence in legal studies also draws on Heidegger and Gadamer. Although I agree with the diagnosis that law is a hermeneutical science, which reiterates contextuality and the aversion to the conformation of any scientific and argumentative method (which, in their views, do not make law less scientific), I believe that by being hermeneutical law keeps its pre-modern characteristics and was not given the chance to enter the hall of modern sciences. In the end, I believe that legal positivists, hermeneutics, principlalists, and polyjurality can be grouped together as competing justifications that reinforce traditional formal structures of legal practice and knowledge. See Paul Ricoeur, *The conflict of interpretations: Essays in hermeneutics* (Northwestern University Press, 1974) and Hans-Georg Gadamer, *Truth and method* (AandC Black, 2013).

For those hermeneutic practices, empirical functionality is secondary or irrelevant to the legitimacy of the (authority of the) norms since the whole process of norm manipulation is supposed to be argumentative. Empirical assessment is not a necessary or valued part of the innovation process. On the contrary, speculative, historical, and comparative methods have better chances of being integrated into the innovation process since they are still within the large boundaries of hermeneutics and do not challenge the fundamental assumption of hermeneutic sciences, i.e., that they are built upon a set of authoritative commands available to interpretation.

“Revolutions” in legal theory have always happened without touching this core assumption. The evolutions of jusnaturalism (where law first originated in interpreting the natural order, then God, and finally, Reason) are centred on a search for authoritative sources of norms and the procedures of legal innovation delimited by how those sources are supposed to be reached. Modern positivism and post-positivism also shifted the prevailing sources of law, attaching them to formal procedures of the state or more substantive open principles inherent to the liberal legal order, but ultimately did not challenge the study of the law as a hermeneutic endeavour. Legal pluralism as a more radical alternative legal theory can also be framed within the limits of such an approach, although normative sources are dispersed through a myriad of formal and informal institutions and practices.

In that sense, law still operates today as hermeneutically as in pre-modern times. Actually, law still works mostly as all other sciences did before modernity: a hermeneutic exegesis anchored on scholasticism. If we take medicine, for instance, the authority of classic medical texts (canons) played a similar role to legal norms today. Empirical evidence of medical errors was not systemically considered relevant proof of misleading medical recommendations from the canons. Instead, the prevailing suspicion fell on the practitioners, who allegedly did not follow the medical instructions

properly, and innovation as a process of questioning the empirical evidence of the treatment efficiency was not systemically instituted, to say the least.

Certainly, there was room for some level of innovation for the physician and medical procedures evolved slightly over time. Still, the weight of authoritative, traditional teachings and norms, whose mastering characterized professional practice itself, was an overwhelming dam preventing the validation and circulation of innovative knowledge. Applying a treatment based on empirical evidence at some point could mean that the doctor was not well-educated in medicine and, therefore, was not a trustworthy member of the profession. Similarly, lawyers today work within a similar pre-modern mindset. Furthermore, hermeneutic sciences and professions develop a pre-modern knowledge economy. In the following subsection, I will compare a pre-modern to a modern knowledge economy by tracing parallels between a pre-modern mercantilist economy and a modern capitalist economy.

### *7.3.1 A Mercantilist Knowledge Economy of Law*

In this section, I will try to describe the political economy of the internationalization of law schools and legal education by taking into account a classical division of the economy in the spheres of production and circulation. This separation helps us understand the focus of wealth accumulation in a given economic system, whether it relies primarily on manufacturing or commerce, thus indicating two types of economies emerging in modern history: mercantilist and industrial. This analysis allows

us to show the role of the main actors in each economy and explain why current internationalization is more aligned with a mercantilist than an industrial knowledge economy.<sup>498</sup>

In the early days of modernity, under Mercantilism, nations understood the economy as a zero-sum exchange system. Wealth accumulation often meant reducing wealth from other countries by storing gold and silver as value reserves, according to an economic philosophy named metallism. The priority ways to acquire these metals were direct extraction, mining, plundering, or surplus trade. Thus, in Mercantilism, setting aside the direct obtaining of precious metals and the primitive accumulation of capital, the commercial circulation of products was the source of revenue according to the logic of buying cheaper to sell more expensive for a positive trade balance.

In this system, people's economic relevance is given by their participation in the market as intermediaries (mercantile capital) or consumers of expensive exotic commodities, not producers. In an inverted way, producers need not be considered economic actors since they were an economic burden that contributed to spending and were disposable since they did not add value nor took part in the consumption chain. Slavery in the plantation system is the model of mercantilist business par excellence. In this economy, the high marginal gains obtained by considerable differences in demand and supply outpaced so much the value added by enslaved people that it produced an economical chain centered on the circulation of goods with relatively little added value through work, which, despite being highly necessary, was essentially disposable.

The collapse of Mercantilism with the introduction of manufacturing and later modern capitalist industry shifted the value extraction model. Instead of in the circulation sphere, value is now obtained mainly at the moment of production and the consequent transformation of the raw

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<sup>498</sup>. In addition to Chapter 4, the analysis of Mercantilism draws on ideas that can be found in Part Eight: So-Called Primitive Accumulation, where Marx describes the rise of industrial capitalism as a negation-incorporation-overcoming (*Aufhebung*) of Mercantilism. See Karl Marx, *Capital...*, *supra* note 495 at 873-940.

material with intensive use of variable (skilled labour) and constant capital (machinery) in more efficient processes that increase the scale and quality of production while adding value to new products. Although circulation may also increase the price of the final product depending on demand, the value at the time of production is vital in determining most of the circulation price in a non-monopolized market. By introducing more sophisticated products and transforming raw materials, manufacturing not only becomes the main source of revenue but also imposes new demands and consumption patterns, leading to new commercial dynamics, i.e., the production sphere highly influences the circulation sphere.

With time, producers and their specialized skills become essential to generate value in this system. Thus, a competitive labour market opens up by hiring the producers offering the best skills at the lowest price. Producers acquire a more human value correlated with increased labour productivity and specialization and are also seen as potential consumers of their own products.<sup>499</sup> By those means, the gap between relevant consumers and irrelevant producers in Mercantilism tends to narrow in advanced industrial capitalist economies.

We can draw on this schematic framework to look at internationalization as an economic endeavour built around legal knowledge as a commodity within an industry.<sup>500</sup> We can notice whether the emphasis is on circulation or production, knowing that internationalization has different impacts on various programs following the general lines we traced throughout the dissertation.

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<sup>499</sup> Therefore, the actual human rights level enjoyed by a community should be grounded in the levels of labour productivity in a pure capitalist society that equalizes human value with economic value— it does not mean that we live in a pure capitalist society, but that is where neoliberalism is supposed to be guiding us to.

<sup>500</sup> Education has usually been included in the service side of the economy, along with medical care, legal services, banking, etc., where the economic transaction does not concern a good but a professional service. However, from the perspective of the economics of knowledge, knowledge is a commodity, although it has some special features. In that sense, knowledge is transmitted and appropriated for the development of products and services as a needful input. As a commodity, it can be produced, “stored” and traded. The production and circulation of knowledge as an economic asset forms a knowledge economy, whose main actors are companies and institutions in the RandD and higher education sectors. Storing knowledge is associated with human or intellectual capital formation. See Dominique Foray, *The Economics of knowledge*, *supra* note 22.

In programs chiefly devoted to professional training, circulation is by far the dominant sphere in mobilizing resources and generating revenue. Professional legal knowledge and credentials that can provide access to (higher positions in) the profession are highly demanded commodities destined for the few who can afford them. Although the government subsidizes the prices for domestic students and others included due to non-economical concerns,<sup>501</sup> international students in LLM programs (primarily professional LLMs, but also research LLMs since the research requisites have decreased in time) can be seen as one of the best examples of consumers of such a highly demanded commodity in an open global market.

The tuition fees are the price, and the degrees attest that the service was provided and the student acquired the supposed knowledge. The degree is then used again to immigrate or achieve a more advantageous position within the labour market, increasing the value of the graduate's services, thus ending the stage of circulation I am describing. How this knowledge will be used within the legal profession's knowledge economy is beyond our limited scope. In this model, circulation is the basis of the business. It is carried out by the teaching and learning process, carried out by institutions that serve as intermediaries (mercantile capital) and professors who are workers of such mercantile capital. In this scheme, professors are not producers but intermediaries.

In that situation, knowledge production is of little relevance to the business. It may even become dysfunctional if it disrupts the canons and institutions that make traditional legal knowledge so highly demanded, as the modern industrial economy disrupted mercantilist markets. It is welcomed chiefly due to the symbolic appeal it provides to research institutions regarding media exposure and visibility that turns into favourable marketing and branding, which feeds the demand for traditional, professional knowledge.

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<sup>501</sup> Like Francophones who are subsidized for social, linguistic and political reasons.

Disruptive legal knowledge or innovation that does not respond to the formal structures of practiced law remains enclosed out of that circuit with little chance of gaining the circulation sphere. Hence, knowledge production must be limited to prevailing legal institutions, language, and reasoning to have a chance to circulate. In that sense, legal knowledge producers are not primarily valued by their contributions but by how they fit in the circulation chain, i.e., whether they can teach the canons, offer new products adapted to emerging fields of professional interests, develop new teaching practices, expand the pool of customers, manage customer demands, and promote the brand of the faculty.

Other people participating in the knowledge production chain who are not integrated into the circulation sphere, such as doctoral students, are often not paid according to their work or output in a modern economic sense but following a system of incentives out of the economic logic. Scholarships, portrayed as charitable grants (therefore non-taxable), are at large more associated with the mere conditions of living and, thus, reproducing the workforce than paying for the research work that is actually done. By not bearing a research labour market, this knowledge economy shares another similarity with a mercantilist economy. Not in the sense that researchers are enslaved but are paid to reproduce minimum conditions of life dissociated from the product of their work. In that sense, the mechanism of alienation is equally distant from modern forms of capitalism.

This economy also applies to professors' research grants when they are not paid for the research work. Nevertheless, those grants can generate a restricted market for researchers, who get paid as research assistants for their work. However, this sub-market depends on a charitable program that runs through government subsidies. An open market for legal researchers within a given legal knowledge industry is still far from being a reality. International students doing research and mobilizing knowledge from various contexts, especially when not directed at the legal practice,

comprise a significant parcel of this restricted knowledge production chain. Naturally, international students' participation in the knowledge economy will only increase to the extent that they become professors and are absorbed into circulation as workers of the mercantile capital represented by the higher education institution.

However, another point of concern does not have to do with whether the research work is paid or not but the very nature of the research work. In many modern scientific disciplines closely related to professional training, including medicine and engineering, undergraduate and master's students work in laboratories and other more sophisticated forms of knowledge production, immersed in research chains that include professors and doctoral students.

That is because research in modern science, which is less dissociated from professional practice than in law, includes some level of quantitative or qualitative analysis related to empirical work within the lab, understood as a unit of knowledge production in an economic sense. Moreover, sophisticated empirical research needs a complex set of different skills that allow for the absorption of students from various levels of training, from the undergraduate to the post-doctorate, accounting for multiple levels of data processing, from fieldwork to theoretical contributions and later circulation and integration into the industry or professional practice.

While a lab economy is strongly associated with modern science following a modern knowledge economy, law faculties hardly develop such a model of knowledge production. Even in graduate studies, as our data suggest, lab work is far from the predominant moment in that economy. Given this general absence of labs as units of knowledge production, internationalization, as it is today, tends to reinforce the mercantilist aspect of the legal knowledge economy because it is underpinned by educational technologies centred on teaching and professionalization dynamics, which has been mainly focused on the exploitation of the circulation of knowledge. Therefore, in its

intellectual or discursive conformation, law can be seen as a pre-modern science that unfolds into a Mercantilist (pre-modern) economy in its material conformation.

This economic dynamic frames the fields of possibility for the development of internationalization. It indicates that the investment of resources and competition is almost entirely on the circulation side. International students remain consumers of highly desirable goods, materialized in the different law degrees. Their previous knowledge is hardly helpful in developing new professional practices immersed in the current structures of Canadian law. In the few opportunities where they contribute to empirically-based international research, it has low chances of impacting the profession.

The current mercantilist business model is a structural limitation to an unleashed modern legal knowledge economy. Pedagogically, it is poor because it does not foster systematic, integrative learning methods that can result in a better share of experiences among distant realities. Research-wise, it does not perceive international students as active producers of knowledge valuable to sharing or as fundamental links with other realities as chainrings in international networking; it reproduces traditional cannons and prevents disruptive innovation.

As intrinsic to the mercantilist model, the business depends on a barely diversified, volatile revenue source (consumers) that can be impacted by pandemics, wars, and embargos, making it vulnerable to global economic crises, and not rarely relies on aggressive tactics to attract students, with notorious backfires in terms of attrition rates, mental health issues, and isolation. It doubtfully contributes to finding new, more efficient regulatory models capable of managing or solving complex

global conflicts, including the structural demands of vulnerable groups in countries students come from.<sup>502</sup>

### 7.3.2 A Modern Knowledge Economy of Law

Understanding law as a pre-modern hermeneutic science<sup>503</sup> linked to the discourse of normative authority helps to explain why its political economy is predominantly an economy of circulation, not production. A legal science unleashed from the authority of the normative text would not be a hermeneutic science anymore and could accomplish its modern turn. Thus, legal researchers could replicate the ethos of researchers from other fields, who seek resources for labs and try to convert the performance of experiments into knowledge that will eventually translate into new services or the design of new products as part of a chain that encompasses basic and applied research within an industry segment. Consequently, the professional field would be more dependent on advances in the academic field, generating a continuum of knowledge transmission that would lead to investments from the profession in research beyond a voluntarist model of a learned profession.

Then, what could we expect from a modern, evidence-based legal science? As a science of governance of conflicts, it would scholarly investigate causes of complex interpersonal and social conflicts and produce empirical assessments of prevailing conflict-solving practices, including the

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<sup>502</sup> These considerations were written six months before the recent measures announced by the Federal government to cap the number of international students in Canada. Those measures reinforce the fragility of the business model and its detrimental consequences for international students. Despite that, the cap may not directly affect law schools since their business model relies on international graduate students, who are exempt from the cap. If we are to assume that the current model will relentlessly adapt to the cap on undergraduate and college students, that might put pressure on graduate programs to absorb even more international students as a compensatory measure. Consequently, there would be an increasing incentive for faculties of law to expand professional/course-based LLMs at the expense of research-based programs. For more information about the cap, see Abigale Subdhan, “What to know about Ottawa’s two-year cap on international student visas, and other measures”, *The Globe and Mail* (24 January 2024), online: <https://www.theglobeandmail.com/canada/article-international-student-visas-canada-explained/>

<sup>503</sup> See footnote 497.

legal norms, as a basic science. As an applied science, it would design techniques for identifying conflicts and their features as well as means to follow up, manage and solve them, according to proposing plans for implementing solutions. In such a context, resorting to normative-based conflict management (i.e., the law) is one among many options for conflict management whose efficiency in addressing a given conflict should be empirically assessed by research.

Indeed, practices of alternative conflict resolution and areas of law and public policy, law and society, access to justice, and many innovative interdisciplinary practices have incorporated these ideas; even lawyers in private practice and administrative and judicial bodies worldwide have, to a certain extent, given responses to complex conflicts by resorting to empirically-based plans with assessment procedures that follow up implementation. They have used soft law through recommendations, best practices, and compliance standards on the one hand, and empirical studies to pursue strategic litigation, legal reform, and public policy on the other. So, this is not new. Still, most of the energy of the legal profession and academia is concerned with the traditional manipulation of norms in court, which does not require modern science.

Social sciences, such as management, social work, human resources, psychology, economics, architecture and urbanism, and respective professionals use fundamental scientific knowledge, more or less experimentally grounded, to prevent, mitigate or solve problems without a necessary adversarial or inquisitorial setting mediated by a third party issuing a decision. Still, we can argue that those sciences inevitably fulfill legal functions and apply legal techniques if we regard law as a technique to organize and solve social conflicts. Therefore, modern legal science must be strongly interdisciplinary since drawing on the connections between all modern sciences and social conflict becomes inevitable. On the regulatory side of law, modern legal science should also rely on interdisciplinarity to investigate decentralized social practices of various scales, from communities

to global companies, not only to enact authoritative, evidence-based norms but also to develop alternative interventions in those practices, with regulatory effect.

However, that is not the same as law as social engineering, in which the state and judicial actors use legal norms as a tool to achieve desirable social goals. First, because a plurality of conflicts derives from the plurality in society, no ultimate desirable social goals for a whole community can be found in a diverse, liberal society. It means that there are no natural laws of social development that a hard science should investigate. Instead, identifying conflict management techniques should relate to a multifactorial context but within a certain delimitation of the conflict, depending on the capabilities of involved actors.

For the purpose of internationalization, such modern legal science, as any modern science, would be intrinsically international in the sense that it is not bounded by legal norms and jurisdictions. In other words, it should be interested in collecting and understanding conflict governance techniques and regulatory practices from everywhere as input for developing and updating new practices anywhere since the validity and efficiency of proposed techniques draw on the inventory of successful practices for similar conflicts, regardless of their jurisdiction.

As in other sciences, various local, international, or transnational conflicts compose a vast repertoire of experiences that introduce knowledge that should be used to improve the management of other local, international, or transnational conflicts. Therefore, as a general and open science of governance of conflicts, law should study the best means to solve social and interpersonal conflicts and regulate relations across the human experience, having the same human experience as its source of input and experimentation. It then becomes universal in this specific sense. It is also reasonable to expect empirically-oriented legal science to increase general productivity gains by allocating precious

resources more efficiently to manage conflicts; therefore, it would be economically attractive for public and private actors to invest in an emerging industry.

That perspective gives legal research a solid stake in internationalization and a clear definition of innovation connected to the expertise of foreign realities, and international students became a vital economic source for their ability to explore and translate global expertise into local practices. Moreover, soft skills related to multiculturalism and the mastery of empirical methods become fundamental to analytical thinking within a laboratory setting. It is also expected that the constitution of global and regional hubs of legal knowledge concentrating research on conflict-related practices becomes not only academically necessary but also economically attractive to form a strategic chain of a larger industry. In those hubs, international students as researchers can be employed and paid according to their valuable work, and we can imagine there would be a higher demand for their skills both in the research and professional fields, thus developing a more solid place for them in the job market.

That kind of legal science produces necessary linkages between scholarly research and professional practice and a modern knowledge economy based on a laboratory culture surrounding fundamental research projects where regulatory and conflict-management practices around the world are monitored. Rather than consumers, international law students (and law students in general) dedicated to empirical research become skilled lab workforce in a global legal knowledge production chain. A highly internationalized legal profession can mobilize that legal knowledge in the same sense that psychologists, managers, nurses, doctors, urbanists, etc., mobilize more or less the same body of theories and techniques. Beyond just allowing for a circuit of easier circulation and production of ideas, that circuit turns out to be the very motor of a thriving science and innovation based on knowledge production. Hence, knowledge production becomes a more significant reason

for the circulation of people. That contrasts with the current model, where the circulation of people is supposed to eventually produce some level of circulation of knowledge as a collateral effect of academic freedom.

Academic freedom could then be better understood within the scope of a basic empirically-oriented modern science where the understanding of conflictivity is still connected to the chain of knowledge production and application. Rather than a defensive mechanism to protect an enclosed, limited legal science from the forces of professionalism, it becomes a critical element of an innovation strategy. It is a source of creative force in a knowledge economy where research and profession form a continuum.

Thus, the tension between academicism and professionalism is resolved by establishing a synergetic and unified legal field discursively structured by modern scientific rationality and materially conformed to a modern knowledge economy centred on production. In a modern legal knowledge economy, greater centrality on production should provide greater equivalence, dependence, and circularity between producers and consumers of knowledge and between production and circulation. The importance of production increases as students move from undergraduate to master's and doctoral levels, and the function of the law faculty as a space for knowledge production is reaffirmed, along with its participation in the innovation processes. In this scenario, international law students would be differential, strategic assets for the legal knowledge economy.

## **Final Considerations**

Throughout this dissertation, I analyzed that the forces of professionalism harnessed the globalization context to develop a business model based on the circulation of highly desired legal knowledge that gives access to a desired legal profession, immigration, and valuable credentials. Also, such a business model takes advantage of the prestige and authority of prevailing professional legal institutions of Western countries and confines the circulating knowledge to what is considered relevant for market operations. In that scheme of things, internationalization is limited to the presence of international students as consumers of relevant knowledge, whereas scholarly work, which international students also do, is either confined to a restricted economy and field with minimal potential to challenge canonical knowledge and professional practices or confined to a limited, hermeneutical legal science with better chances to circulate and influence the practice without posing a fundamental threat its traditional structure and institutions.

I argued that the proposed academic legal science envisioned in the Law and Learning movement, and most successfully implemented by the transsystemic curriculum at the JD/BCL level, is still too much hermeneutical and dogmatic by not stressing the need to incorporate empirical methodologies, interdisciplinarity, data collection and experimentation thoughtfully. Thus, law has not undergone a modern turn as other sciences did. That said, I imagined a modern legal science not attached to prevailing legal institutions but devoted to studying forms of social regulation and governance of conflict in close connection to other sciences and experiences worldwide. Such legal science could seriously challenge the authority attributed to legal norms to manage disputes, with those challenges taken seriously by lawyers due to typical scientific defiance of authority.

I argued that the current legal knowledge economy centred on circulation mirrors a mercantilist economy where producers are paid not for their work but for covering living costs, while valued free labour is concentrated on trade work, thus connected to the delivery of commodities for wealthy consumers. That framework explains the position of international students primarily as affluent consumers and their precarity when assuming a role in the research chain (a precarity that encompasses all participants of the legal research economy, not only international students).

Furthermore, I imagined a modern legal knowledge economy underpinned by a predominant knowledge production sphere feeding a professional field that demands legal innovation based on modern, empirically oriented legal science. For that, a lab culture would employ international students as highly needed skilled workers for global research projects where multiculturalism and the mastery of empirical methodologies, as well as analytical abilities, would be crucial.

These ideas about an alternative, modern legal knowledge economy are not only rooted in a closer look at the Law and Learning tradition inaugurated with the Arthurs report in connection with a political economy approach to legal knowledge but also are intended to identify the limits of that tradition and give new impulses to it. Throughout the dissertation, we have observed the conflict between professional and academic views of law in interaction with the rise of collaborative and competitive elements of globalization, dominated by the formation of a global legal education market.

That knowledge economy would have the potential to invert the emphasis from the circulation of people as consumers to the circulation of people as knowledge producers. At the same time, professionals would become the primary consumers of knowledge by the force of competition among professionals, not by their humane or benevolent character, as claimed in the Law and Learning report. Within a modern knowledge economy, such modern legal science would also be expected to unleash the innovative potential of disruptive legal knowledge with better, more efficient ways of

managing and solving social conflicts in complex societies by deploying techniques not restricted to legal norms grounded in institutional authority and informed by practices and experiences not bounded by jurisdiction.

After extensive empirical work on internationalization at law faculties across Canada, I arrived at such a conclusion, which was the central piece of this dissertation. Nevertheless, I must admit that the extended case method pushed me to larger scales of generalization. By touching on a broader discussion about legal theory, political economy, and knowledge economy, it is evidently necessary to refine my arguments and find more empirical evidence of their validity in those areas, which exceeded the scope of this dissertation and should be done in future projects.

I also acknowledge the relevance of studying the impediments to establishing modern legal science and knowledge economy. I suppose it is due to the historical state monopoly on the social conflict management associated with the modern state-building process that has prevented the emergence of a true, modern, liberal profession in the area. The judicial system condenses the bulk of the professional exercise around an adversarial or inquisitorial method of conflict governance according to an authoritative, normative framework.

In my sense of legal science, lawyers, human resources managers, shamans, urbanists, teachers, elders, community leaders, and many other social actors employ legal practices when addressing conflicts within their range of action, whether by using authoritative norms or not. Still, practices may as well be depersonalized, unconscious, collective, or dispersed, carried out by communities themselves, social forces, and structuring factors. Those practices need to be empirically evaluated in order to identify the context and conditions where they operate and the impact of techniques and procedures in the governance of conflicts in the short, middle and long term.

Therefore, a comprehensive understanding of (or discussion about) conflict features must be established as a baseline for such a science.

I suggest some recommendations below to improve knowledge circulation and production through internationalization and strengthen forces of academicism according to an empirically-oriented legal science. They can be incorporated into coherent internationalization strategies that law faculties should enact, eventually centred on knowledge production for global problems, where international students' roles and contributions are clearly established.

1 – The admissions process for graduate studies in law, especially concerning international student applications, should look for marginalized groups in foreign countries, not restricted to racial and gender markers, so the experience of the law by marginalized peoples can have better chances to circulate and reach instances of knowledge production at the faculty of law. This means that admissions committees should evaluate their role in reproducing elitist practices that impact the structuring of legal knowledge circulation and production globally.

2 – Graduate students, especially international students, should be accepted into graduate programs within a co-op plan of study and work to ensure the financial sustainability of their stay and their position in the job market. Students in research programs should be offered research and teaching assistant positions based on their previous expertise. This should also limit international students' admissions to law schools' existing capabilities to provide a safe environment for knowledge production.

3 – Following recommendation 2, international students should be considered relevant assets for international research projects, for which they should be hired and within which they can develop their research and professional expertise. Therefore, admission committees should know existing projects and skills demanded to match with prospective students.

4 – Law faculties, institutes and centres should constitute a lab culture with research groups constituted by undergraduate, master’s and doctoral students under the supervision of a professor responsible for a line of research. Thus, supervision and research may unfold collectively, dissolving anxiety originating from the existing hyper-individualistic academic culture and providing a platform for long-lasting projects and student progress while optimizing supervision time. Research groups can also operate as self-managed platforms for knowledge mobilization.

5 – Courses at the law faculty should include and emphasize the empirical assessment of the legal system and norms rather than focusing strictly on normative teaching for professional training. That would seriously challenge the current professionalism of undergraduate programs, the bulk of resistance against academicism. At the same time, it should diminish professors’ schizophrenia, i.e., the fact they are affiliated with academic discourse, but keep reproducing professionalism when teaching legal courses.

6 – Teaching empirical methods within the legal context should be mandatory at all levels of legal education. That is a fundamental step to conforming law to modern science.

7 – The time professors spend in graduate programs should be taken into account in their overall workload, so their work in supervision or courses is considered paid work. This administrative change has the potential to incentivize professors to dedicate more time to supervision, thus reducing the issue of supervision shortage. It should lead to more resources being invested in graduate studies, making those programs more relevant for the faculty of law. It should challenge undergraduate programs’ centrality toward a more balanced distribution of institutional attention, time, and resources. In time, it should redesign the distribution of symbolic capital, giving more prestige to academics than professionals.

8 – Law faculties should develop incubating programs where pluralistic and empirical methods inform clinical courses devoted to complex conflict management. Those programs should be designed to test strategies to connect evidence-based legal knowledge to professional use.

9 – Research grants should consider evaluating the presence of a globally diverse literature, including from developing countries when assessing projects in law whenever suitable to the subject. This measure would immediately impact the circulation of knowledge by adding diversity and enhancing the quality of research with data and arguments not usual in the current academic context. The variety of sources should benefit high-quality science while questioning the reproduction of canons established by the geopolitics of knowledge.

10 – The LLM model of a master’s degree should be reassessed in its ability to teach empirical methods and to develop quality research. That is especially relevant when academic requirements are losing ground to course-based programs. The business model should also be re-evaluated since it is based more on the number of students than on the quality of research.

11 – Law faculties should create corridors for the circulation of knowledge between international and domestic students, graduate and undergraduate students, and research and professional programs, such as conferences, seminars, workshops, TA positions, mentorship programs, etc., through which graduate students could share their research and stimulate the formation of research-mind cultures involving all levels of legal education.

12 – The profit generated by professional programs, derived mainly from international student fees, should not only be invested in undergraduate programs attended primarily by domestic students following an international transfer of savings from developing countries to a privileged first-world middle class. It should also benefit international students' participation in research programs to produce knowledge that can impact global problems and challenges in developing countries.

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## Interviews

- Interview of Professor A (February 2022)
- Interview of Professor AZ (March 2022)
- Interview of Professor B (February 2022)
- Interview of Professor BY (April 2022)
- Interview of Professor C (February 2022)
- Interview of Professor CX (April 2022)
- Interview of Professor D (March 2022)
- Interview of Professor E (March 2022)
- Interview of Professor F (March 2022)
- Interview of Professor G (April 2022)
- Interview of Professor H (April 2022)
- Interview of Professor I (April 2022)
- Interview of Professor J (May 2022)
- Interview of Professor K (May 2022)
- Interview of Professor L (May 2022)
- Interview of Professor L (May 2022)
- Interview of Professor M (May 2022)
- Interview of Professor N (May 2022)
- Interview of Professor O (June 2022)
- Interview of Professor P (August 2022)
- Interview of Professor Q (January 2022)
- Interview of Professor R (January 2022)
- Interview of Professor T (March 2022)
- Interview of Professor U (April 2022)
- Interview of Professor V (February 2022)
- Interview of Professor X (February 2022)

Interview of Professor Y (March 2022)  
Interview of Professor Z (March 2022)  
Interview of Program Manager S (February 2022)

## Appendix A: Consent form

### Date

Dear Prof. AZ,

Over the last two decades, internationalization has been the focus of governments and universities across Canada. At the same time, faculties of law have seen significant growth in the enrollment of international students, primarily in graduate programs (LLMs and doctoral programs). However, little knowledge has been produced to systematize different approaches and practices regarding internationalization across the country. The purpose of this study is to collect information about how internationalization has been addressed in faculties of law with full graduate programs (LLM and PhD or equivalent).

This letter is an invitation to consider participating in the research I am conducting as part of my doctoral degree in Law at the University of Ottawa under the supervision of Professor Joao Velloso. I would like to provide you with more information about this project and what your involvement would entail if you decide to take part in it.

Participation in this study is voluntary. It will involve an interview of approximately 1 hour in length to take place virtually on Zoom or a similar platform. In-person interviews may occur, if public health conditions permit, in a mutually agreed upon location. You may decline to answer any of the interview questions or to address any topic of interest. Further, you may decide to withdraw from this study at any time without any negative consequences by advising the researcher. You will also be given the choice to withdraw your data and have it destroyed. With your permission, the interview will be audio recorded to facilitate the collection of information and later transcribed for analysis. Your identity will be confidential. Your name will not appear in the thesis or any report or publication resulting from this study; however, anonymous quotations may be used. Data collected during this study will be retained for at least 5 years in a locked home office briefcase. Only the researcher, me, will have access to the raw data and the supervisor of this project will have access only to the anonymized data. There are no known or anticipated risks to you as a participant in this study.

This study has been reviewed and received ethics clearance by the Office of Research Ethics and Integrity of the University of Ottawa (File Number S-10-21-7480). If you have questions for the Office of Research Ethics and Integrity of the University of Ottawa, at +1 (613) 562-5387 or [ethics@uottawa.ca](mailto:ethics@uottawa.ca).

For all other questions or if you would like additional information to assist you in reaching a decision about participation, please contact me by email at . . . You can also contact my supervisor, Professor Joao Velloso, by email at . . .

I hope that the results of my study will be of benefit to you and to graduate programs in Law across Canada, as well as to the broader legal and research community.

I look forward to speaking with you and thank you in advance for your assistance with this project.

This research has been funded by the Province of Ontario through the Ontario Trillium Scholarship.

Sincerely,

*Vinicius Alves Barreto da Silva*

*PhD Candidate - University of Ottawa*

## CONSENT FORM

By signing this consent form, you are not waiving your legal rights or releasing the investigator(s) or involved institution(s) from their legal and professional responsibilities.

I have read the information presented in the information letter about a study being conducted by Vinicius da Silva of the Common Law Section at the University of Ottawa. I have had the opportunity to ask any questions related to this study, to receive satisfactory answers to my questions, and any additional details I wanted.

I am aware that I have the option of allowing my interview to be audio recorded to ensure an accurate recording of my responses.

I will print/save a copy of the consent page for my records.

I am also aware that excerpts from the interview may be included in the thesis and/or publications to come from this research, with the understanding that the quotations will be anonymous.

I was informed that I may withdraw my consent at any time without penalty by advising the researcher. Participants who choose to withdraw are also given the option of having their data withdrawn and destroyed.

This study has been reviewed and received ethics clearance by the Office of Research Ethics and Integrity of the University of Ottawa (File Number S-10-21-7480). If you have questions for the Office of Research Ethics and Integrity of the University of Ottawa, at +1 (613) 562-5387 or [ethics@uottawa.ca](mailto:ethics@uottawa.ca).

For all other questions contact Vinicius da Silva by email at. . .

Make sure you have printed/saved a copy of this consent form for your records.

With full knowledge of all the foregoing, I agree, of my own free will, to participate in this study.

YES  NO

I agree to have my interview audio recorded.

YES  NO

I agree to the use of anonymous quotations in any thesis or publication that comes of this research.

YES  NO

Participant Name: \_\_\_\_\_

Participant Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Oral consent before the interview:  [Alternatively, to keep no traces of the participant's name]