

# FAMILY AND CHILDREN IN ANGLOPHONE LEGAL CULTURE: A WAY TO UNDERSTAND THE GLOBAL AGE

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## Abstract

*As Anglophone legal method comes to predominate in a regimen of global law, it is useful to examine its approach to family and children. Such matters as the nature of family and mode of childhood training have been fundamental to its operation for several hundred years. One way to understand its approach today is to examine its development in the past.*

*The paper begins by discussing three levels of English legal culture: hereditary, professed, and individuated. It examines how these legal stratum correlate to the three rankings of nobility, middle class, and laboring multitude. It touches on the different modes of education employed to prepare the children of each group for their self-understanding and for their place in the world.*

*The paper then discusses how these patterns of differentiation are rooted certain medieval traditions that began with the imposition of Norman Kingship in the eleventh century. It explains how the Common law grew out of that tradition, how that law developed, and how its medieval attributes survived into the modern world. It examines how the rise of a merchant class became assimilated to the Common law, and how both strands of development were influenced by two modes of learning: Ciceronian and Calvinist.*

*The paper discusses how, in the nineteenth century, a Formalized English law came to be implanted in the United States. It examines how a unique Anglo-American legality emerged, and how it began to influence the nature of family and raising of children. It explains how the three stratum of English class fit into this legal regime and how it prepared each rising generation to enter a legally administered world.*

*Finally, the paper discusses how twenty-first century technology shapes Anglophone legal culture, as America becomes the harbinger and hegemon of its global project. Laboring families are atomized, adults individuated, and children are socialized by transmitted sound and image. The conclusion asks what effect these changes have on the hereditary, professed, individuated, and children under a global Rule of Law.*

Key Words: *Anglophone, legal culture, Civil law, family, children, education.*

JEL Classification: [K36]

## 1. Three Children

The whole of Anglophone law has become a composite of numerous strands and derivations. It includes, for example, English law, law of the United Kingdom, law of the Commonwealth of Nations, law of the various nations of the Commonwealth, as well as American law. It is also an important underlying influence in the laws of Hong Kong, and Israel. Even though its tradition of

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authority is exercised in ways that may seem antiquated, even though it operates in ways that are often inexplicit, not clearly defined, and almost completely out of public view, it still wields enormous influence in the world. It proudly adheres to medieval form and custom, not so much institutional and abstract in its composition as it is a pledged fellowship. Yet, it has come to predominate in many ways in the affairs of the twenty-first century. Perhaps most importantly it is also a central influence in what has come to be known as Global law. (Kennedy, D. 2016, 89)

But underlying this diversity, there has always been another level of the Anglophone tradition that seems particularly anachronistic in the Postmodern Age, the Age of Technology. It is a dimension that provided English law with a solid unity in a very deep way, and did so for centuries. That was the aspect manifest in its elevated and profoundly influential strata of hereditary descent. At the height of the Anglophone legal paradigm was the king or queen and the Royal Family. The living monarch took his or her place as the Royal Majesty, or royal magistrate, a title that indicated a paramount judicial office. Although that office would become in some ways merely honorific, mostly customary and ceremonial in form, in an aged tradition of law that was by its nature amorphous, inexplicit, and highly personal in its operations, the monarch wielded an undeniable legal influence. Even in the present day, the Queen is the vital link in matters of Constitutional importance within the United Kingdom and the Commonwealth. (Cannadine 1994: 55)

Joined with and surrounding the Monarch and the Royal Family was the Peerage, whose members of high rank were also, fundamentally, holders of law offices. Taking their place by descent, members of the nobility manifested themselves for legal purposes, primarily in the House of Lords. Over time, those assembled Great and Good, the Lords Temporal and the Lords Spiritual, as a practical matter, sometimes relied on a panel of Law Lords to act as a kind of high court within the United Kingdom. But whether dispersed to their various seats and counties, or assembled as a united judicial body, the titled nobility represented a stabilizing anchor for the often contentious matters of legal development and adaptation that occurred beneath their oversight. (Palmer 2015: 9)

Attached to the Royal Family and the Peerage in this legal hierarchy was a middle level of professional judges and practitioners who acquired their status, not by inheritance, but by merit and affiliation. Although not born into their high station, gentlemen of this second tier of the ruling class have long been joined in union by professed oath into a fraternal order that was integral to the daily work of the courts. Their guilds of legal trade have been the center of Common law practice for nearly a thousand years. These gentlemen of the law were united by training, by common interest, and by the bonds of fellowship, a bond made stronger from generation to generation by frequent and close association. Outstanding judicial officers within their profession were sometimes elevated and included in the august body of the Lords, adding to the prestige and reach of their calling. (Baker 2002: 65)

Beneath these two strata of the ruling classes existed, of course, the greater population of commoners. In the legal hierarchy that has typified Anglophone legal practice for centuries, there was a major gulf of status between those with the authority of law and those subject to the law. Put another way, the entirety of Anglophone legal culture was marked by an unbridgeable divide. Above was an elevated jural caste, where its members comprised a unified body of legal privilege. Below was a subordinate population of persons individuated by law, and defined for legal purposes in terms of guaranteed rights, and enumerated freedoms. But the division was not only a strictly judicial one, because that aspect merged into social and economic, educational and vocational elements that framed two different realities. Although it may be impossible to define with exactness the differences that separated the two levels of British life, the barrier that existed between them, came instinctively to be acknowledged by both those above and those below. Markings of class were the fundamental definers of place and identity in the British structure of life. They involved differences deeply learned, differences ingrained, beginning in the experiences of three different childhoods. (Cannadine 1999: 49)

## 2. Two Laws

Because Anglophone law is historically inexplicit and amorphous in its operation, defining its specific elements can be difficult. Often, the more useful way to describe its workings is in less precise, more impressionistic terms. Along with that, it is helpful to do so in contrast with its historic counterpart, Continental law - and to do so, by presenting them holistically, as the two different ways of life they represent. After all, every legal culture is comprised of two dimensions, the adjudicative and educative, or the coercive and persuasive. In the short term a mechanism of law may impose itself by sheer brute force, *in terrorim*. But over the long term the population under its authority must come to understand it in terms of the benefits it confers, and they must be taught the habit of compliance. Together the two parts, judicial and educational, comprise the atmosphere of a legal culture. The two traditions of law, Anglophone and Civilian, do these things in very different ways, and for very different reasons. Workings of the English language law are made more understandable by contrasting them with a tradition that began simultaneously with it, was distinct from it, and developed parallel to it, over many centuries.

For example, the English legal method is collegial, embedded in a fellowship of members who comprise it, while European law is philosophical, based on a set of established principles and upon certain broad underlying ideals and assumptions. As a collegial law, the English fellowship requires the use of a single language among its members and at least a rudimentary understanding of English by the public it oversees. At the same time the Civil law, based more on ideas and concepts, can be translated and applied in any language. Anglophone law also works on a strict division of knowledge whereby the public has little

understanding of the legal method it employs. Its popular legitimacy is based primarily on faith. By contrast, Civil law, although employing certain specialized terms, purports to be a rational science, with its legitimacy resting on the logic of its method matching the public sense of reason. Finally, in another striking difference in the modern period, the Anglophone Rule of Law manifests itself as an elevated and independent judiciary, while its Civilian counterpart manifests itself as assimilated to the structure of the state. (Baker 2002: 291)

The effect of the two different understandings of what law is, their two different methods of ordering human life and shaping human thought produce inevitable differences as they act upon the populations within their two legal cultures. These differences not only involve questions of privilege and right, reason and faith, culture and learning, freedom and obligation. The effect is also to produce two different types of person, with different identities and different frameworks of understanding. The two legal regimes inevitably produce different publics, different mentalities and different ways of living.

These differing patterns arise, of course, not merely from the way laws are enacted or enforced, whether they represent precedent or statute, whether the judge acts as oracle or administrator. After all, it is not only the force of law that determines the meaning of human life. Equally important in the long parallel history of both traditions, is not only the coercive aspect of governance, but also its educative aspects. Examining this broader picture in a generalized and impressionistic way can cut across differences of specific national distinctions. It can make clear what is basic to the nature of each legal tradition, when stripped of its particular habiliments of local color and vernacular expression. These divergent effects of Anglophone and Civilian legality take on a special significance in the twenty-first century, as their approaches to shaping mentalities is applied to rising generations born into the age of globalization.

### **3. The Children**

When such matters as heredity and descent, superiority and inferiority, expansive privilege and enumerated rights, knowledge and ignorance are part of the legal premise, then questions arise as to the status of children at each level of the legal culture. How are children regarded, how are they defined and differentiated, how are they trained and shaped in ways appropriate to their rank? What distinguishes the children born into a caste of entitlement and privilege? What sort of instruction and direction will they receive to prepare them to fit their high station? What about children born into the professional stratum, who are not endowed by birth with a heritable privilege? What about those children born among the large subordinate public, the laboring multitude? What defines the status of those children and what instruction will prepare each one for that unprivileged way of life. (Fraser 2006: 97)

More than that, how are these questions impinged upon by the changing context in which all of this occurs in the millennial age? That is, in the age of

technology, when Anglophone law is extending its influence to preside over every locality and people as a predominant influence in global law. How does a medieval law, deeply grounded in the customs and topography of an island kingdom, extend its authority across a world of rapid technical change? How could those three strata of the hereditary, the professed and the individuated be manifest across all regions and peoples? How might the training and socializing of children come to develop within the paradigm of an Anglophone Rule of Law in the age of globalization?

One way to illuminate these questions is by comparing the situation of children from the two legal regimes, Anglophone and Civilian. Even though both realms have methods of university and school that came from the same broad historical tradition, in fact, they represent two very different aspects of that heritage. Even though the outward forms of education on the Continent are similar to those of the Anglophone world, within their institutions and systems of learning there are fundamental differences, differences that are basic to the nature of each. Although there are many reasons for such differences, perhaps the most important factor is the historical divergence that has long existed between their legal foundations. In an age of globalization there are further questions about how those differences will be manifest on such a broad and all-inclusive scale. (Butts 1997: 199)

These questions are made doubly complex, as they pertain to Anglophone law, by various other subsidiary considerations. First might be the question of which strand or version of the English law would come to predominate in the global era - would it be, for example, the Anglo-American strand? Following on that might be questions of whether birth and inheritance will continue to be determinants of legal status. Would the privileged classes from a modest sized island kingdom still preside and still be regarded as superior by venerated tradition? If so, will a professional class remain attached to them? How would that professional class retain its cohesiveness across all regions of the world? How will children of the world be regarded and trained by a system that is applicable to every locality and people, and in a legal culture shaped by the Anglophone tradition? One way to attempt to illuminate these questions is to begin at the beginning of both legal traditions - and to examine, from their inception, some elements basic to the nature of each.

#### **4. The Past**

The famously unwritten constitution of England had its origins in a highly centralized version of Norman Kingship first established in 1066, under William the Conqueror. What came to be called the Common law of England grew out of that monarchy a century later, under Henry II. At that time guildsmen of the law served as a kind of bureau, internal to the monarchy and at the pleasure of the King. The larger population of the realm was ruled over by a Norman Peerage who had been granted title and possession of nearly the whole arable land of the kingdom. This Norman approach to rule, often very harsh, was based on the

foundation of landed wealth. The primary function of the Royal Court guildsmen was to litigate cases arising among the nobility, concerning matters of possession and title to land. Such matters were extremely important to the king, because land was virtually the only form of wealth, and the main source of revenue for the royal treasury. (Lesatter 2010: 207)

By contrast, historians trace the origin of the Civil law tradition to the founding of the University of Bologna, in 1088. That institution had been established specifically as a place for the study and teaching of law. There the great scholars Accursius and Irnerius attempted to extract from the ancient Roman Codes a kind of law applicable to the rather backward and rustic Latin Christendom. However, over centuries, as the university tradition developed in Europe, it came to include in its course of study all the inherited writings of the Greeks and Romans, as well as the Christian Fathers, even the science and mathematics of the Islamic world. Although the scholar of law occupied an honored place in these universities, the realm of knowledge studied there was considered to be a single unified continuum. Law was part of the great body of knowledge and the world of scholarship. Because of that, the workings of Civil law came naturally to reflect the attitudes and values of the educated public and through them the attitudes and values that descended down to the broader population of every status in every region. (Radding 1988: 113)

From these two very different origins the two traditions of law developed in different ways. The *jus commune*, the general law of Christendom, taught at the universities, including Oxford and Cambridge, came to be applied in England as well. It would continue to apply, for example, in matters of heraldry and ecclesiastical matters. But the learning of the university had no direct connection with the internal idiom and method of the London guilds. The language of the university was the universal Latin, the language of all scholarship. But from the beginning the Common lawyers were only semi-literate and had developed their own cryptic vocabulary that combined elements of early Norman French with Old English. That combined vernacular came to be the basis of an internal language that had no meaning outside their guild fellowship. Moreover, the scholars of the university were considered to be unwelcomed rivals, their teachings anathema in the Royal Courts. This stark division between the law of the university and the law of the guildsmen would reach a crisis point in the modern period. (Baker 2002: 300)

## 5. A Modern World

During the medieval period distant and insular England generally followed trends originating on the Continent, but often in delayed and somewhat altered form. For example, the rise of a new merchant class in Europe, emanating from Italy, had already become highly developed across Europe by the fourteenth century. Its growing influence was based on long distance finance and trade, and its wealth was accumulated in money. Only later would these forms of commerce and currency become important in England. Another example of contrasting

patterns occurred during the seventeenth century period of civil and religious warfare. At the conclusion of hostilities, Europe resolved itself into a system of nation-states, a process marked symbolically by the Peace of Westphalia in 1648. However, events in England concluded in a markedly different way and a generation later. After the failure of The Commonwealth, and a brief Restoration of its old monarchical forms, the Glorious Revolution of 1688 introduced an entirely new kind of Parliamentary Monarchy. In this structure the law guildsmen, allied with the ascending merchant class, became integral to the foundation of government - the guildsmen were no longer mere royal functionaries. At the same time, the new model Kingdom was presided over by a nobility that now combined enormous monetary wealth with the traditional land holdings of the past.

After much tumult and controversy these two levels of the British ruling hierarchy, the law guilds and the hereditary nobility, worked out a common basis of governance over the larger population. In the immediate circumstances rule was often imposed by extreme cruelty. But to establish legitimacy and entitlement, stability and continuity, the ascendant classes had to learn the attributes of word and action appropriate to a credible rule. They had to be understood by the public as deserving of their rank, while at the same time, the laboring multitude needed to be reconciled to their place of submission. Ultimately, this required the development of two levels of formation, or education, both of which would begin in early childhood. These two approaches to education approximately correlated with two modes of thought that had also come to predominance with the passing of the medieval order. The two approaches to education reflected the influences of the Ciceronian and the Calvinist. (Kennedy, G. 1999: 226)

Both methods of instruction, so important in eighteenth and nineteenth century England, employed the technology of the book. Both inculcated certain permanent structures of knowledge and certain personal habits of attitude and behavior. Both shaped the individual person to fulfill the obligations of rank, along with a common loyalty to the King or Queen. But the two classes were taught in two very different ways, with very different content, for different purposes, and by very different methods - especially in one notable way: while the children of privilege became highly literate, children of the working class, until the late nineteenth century, were kept purposely illiterate. The rationale for this policy was an obvious one: just as with the chattel slave, those of the laboring multitude posed a lesser threat to public order if they could neither read nor write. To contaminate their minds with diverse ideas, to open for them the unbounded world of published literature would only breed discontent and possibly provoke an underclass rebellion.

## **6. School and Church**

In this new regime, the course of study for children of nobleman and gentleman were very similar. Even though the nobility, like the Royal Family, might engage the services of a private tutor, the content of instruction was very

much like that employed at schools for children of the professional middle class. Those schools, collegial in nature, founded mostly beginning in the sixteenth century, had flourished with the rise of commerce and trade in England. Their regimen of learning was a version of the *studia humanitas* that had originated during the fifteenth century in Italy. In the new form of parliamentary monarchy, with the old men-at-arms no longer at the center of affairs, the courtier, the man of cultivated speech and manner prevailed. In particular, the Elect schools grounded the student in classical studies, usually employing Greek and Latin texts, in the original language. This provided him with a deep insight into events and institutions of the current day - by instructing him in the ancient sources from which those events had arisen. It also provided him with an underlying perspective on the nature of men and the requirements of rule. Thus, his view of the contemporary world was not shaped by the actual composition of that world, as much as it was shaped by a larger, prior, and more fundamental way of understanding. (Butts 1997: 199)

But this grounding in the Greek and Latin classics, and a developed quality of voice and gesture, entailed much more than mere oratory and demeanour. The *studia* also taught an attitude of entitlement, a sense of superiority, and a confidence that men could shape the destiny of the world. It also instilled a broad approach to learning that produced an amateur generalist, rather than the pedant scholar or the narrow expert. This was a training, not intended for counting house toil, for a life devoted to the pursuit of wealth, or any other narrow vocation. Instead, the young man was instilled with a sense of obligation to preside in council and kingdom for the betterment of all. Even his religious training converged with his pedagogy by its use of pageantry and ritual. Of course, this high ethic was sometimes forgotten in practice. Nonetheless, there was a strong enough sense of duty and devotion to maintain a remarkable history of achievement and stability across generations.

By contrast, those of the laboring multitude were entirely excluded from such a course of training. Only late in the nineteenth century were policies set in place to sanction and stabilize the nuclear family among a working class that had become virtually an impoverished and transient mob. There had developed an urgent need to encourage procreation and to reduce the number of feral children, a familial approach to civility and propriety was the answer. Beyond that, both adult and child of the working class would now be trained in the moral precepts of the Bible and the virtues of productive labor. They would receive these lessons in the one venue where the eloquence of the upper class reached them on a regular basis - over the pulpit every Sunday at Church. There, parents and children would be instructed in the importance of living according to the laws of God. They would understand the dignity of labor and the importance of royal authority in the plan of God for human redemption. They would come to see the King and Queen as descending from an august tradition, and as being clothed in the splendor of the Christian faith.

Underlying all of this teaching of the laboring class, and permeating the understanding of the rulers as well, was the Calvinist view of human nature as being essentially corrupt. The abrasive and divisive theology of John Calvin had eventually been discredited and discarded on the Continent. During the eighteenth century Age of Reason a more optimistic view of humankind came generally to prevail. But the influence of Calvinist Hebraism still remained strong in the British Isles, in the derivative forms of Puritanism and Presbyterianism. By these teachings, the perversity of natural man was clearly understood, the need for an imposed order recognized, and the unpleasant necessity of harsh punishments was made clear. By these instilled precepts, children of the laboring public came to learn their place and their purpose. In England religion became the primary vehicle of instruction for understanding the world and the place of laboring man within it. (Nelson 2010: 23)

Although there were obvious similarities with conditions of the common population on the Continent, there were differences as well. Most obviously Civilian governments on the Continent came eventually to be avowedly secular. But whatever their policies toward religion they were also more generally imbued with ideals of the eighteenth century Age of Reason, including its optimistic view about the potentials of humankind. In modern Europe, where governing power was not so strictly apportioned to a segregated class, the ancestral ties of family survived among all levels, especially in the rural areas. Because of its stabilizing influence, a high premium was also placed on maintaining local culture. But in the island Kingdom of England, traditional village life had been almost completely eradicated. During the seventeenth and eighteenth centuries, houses, markets, and chapels, whole villages had been razed to make way for the large landed estates of the newly enriched. The rural population took shelter in the tenements of the city; only a small number of them would remain on the countryside, and then only to work as menials. The great majority had been transformed and reduced to an urban mob of the destitute and desperate. (Hay 1975)

## **7. Progress**

Technical advances beginning in the nineteenth and continuing in the twentieth century, including steamship, telegraph, and railroad carried the Anglophone tandem of law and learning a step further. It enabled a more formal consolidation of the British Empire, and later the formation of the British Commonwealth. It also made possible a closer unification of all English-speaking peoples of the world including, especially, America. That country, during the nineteenth century, had drifted far from the Common law tradition. In fact, it had become more influenced by Germanic legal methods that were highly regarded during the period. However, the new abilities to communicate and travel, the new legal methods of incorporation and contract made it possible to strengthen relations of finance and trade between England and America. It had also become feasible to assimilate American legal practice back into the fold of Anglophone

law. But this required employing a derivative form of legality to match developments in such a vast young country so different from England. It also entailed a new approach for American education.

Even into the twentieth century, however, the fundamental method of British upper class instruction did not change, because its basic assumptions about the governing of men had not changed. However, with the advance of modern inventions and machines and the rise of modern corporate industry, a laboring class of merely brute, servile, or menial capacity was no longer adequate. The new methods of production and warfare required workers to have at least a basic numeracy and literacy. Thus, by the late nineteenth century, schooling had become the norm, even among the great British underclass. Moreover, the astonishing technical advances beginning in the twentieth century provided dramatically powerful ways to influence entire populations, and to augment the method of brick and mortar schools and churches. In fact, with the advent of a whole range of innovations, especially radio and cinema, new techniques for shaping attitude and understanding, less dependent on the book, less dependent on schooling and religion began to emerge. (Dicey 2008: 34)

Now more than ever before, it was not only possible to instill widespread attitudes of compliance and loyalty. More than that, it was possible to unify and mobilize entire populations for production and warfare. From the perspective of a legal culture, the brick and mortar school was still essential, just as the book continued to be the best medium of instruction for a permanently fixed composite of knowledge. The nuclear family was also still important for purposes of procreation and for socializing young children. Beyond that, once basic precepts and skills had been learned, and the child had grown, the adult could be kept informed about his or her place in the world by the continuing influence of a new mass media. Moreover, by these technical means it was now possible across continents and oceans to unite and mobilize the entire English-speaking world, including not only the people of Britain and the Commonwealth nations, but the American public as well.

## **8. Anglo-America**

From the time of its eighteenth century Revolution America had embraced French ideals: the natural equality of persons, the faculty of reason inherent in all persons, and perfectibility, the capacity of each person to grow and develop as a human being. From the time of its origin, the new nation had rejected hierarchical forms of governance. Beginning in the late nineteenth century, however, American legal institutions began to assume a distinctly elevated professional status, as their membership looked to England for inspiration and guidance. Just as commercial ties increased, and diplomatic purposes became aligned in an Atlantic Alliance, a strong fraternal bond developed between the American legal profession and its British mentors. Especially influential in these legal developments were the ennobled and knighted, including James Bryce, A.J.

Balfour, Henry Maine, and Frederick Pollock, as well as F.W. Maitland, A.V. Dicey, and Harold Laski. Their intervention from England brought a dramatic turn of legal discourse in America. (Cosgrove: 1987)

Since the time of the Founding Fathers a Common Sense outlook prevailed among the American people in matters of government. They avowed the *Sensus Communis* and its faith in the majority opinion of an enlightened public. Although such men as Franklin and Jefferson were mostly self-taught, with only limited classical learning, they nonetheless engaged the deeper questions about human destiny and the purposes of governing. In their own way they were true amateur generalists in the spirit of the eighteenth century Age of Reason. This tradition of faith in the wisdom of the public carried forward in the nineteenth century during the American Renaissance, by such writers as Emerson and Thoreau. At the same time a heated public debate about methods of law was taking place, especially with an influx of relatively well educated Europeans, such as Frederick List and Franz Lieber, along with Thomas Balch and others. At that time public outlook toward questions of government, law, and education was framed in ultimate terms, a philosophical perspective that was far larger than any established institution. (Habermas 2001: 57)

But this atmosphere was interrupted when the new derivative Anglophone legal culture began to be imparted to America. By the last decade of the nineteenth century the realm of law came to be lifted beyond the range of public view. Then gradually a two tier approach to education was established. The profession of law in America would not be schooled in the speech and manner of the *studia*. Nor would it begin with the fundamental questions posed in classical times. Instead, young adult men underwent a process of induction concentrated almost exclusively in the mind, a kind of ordeal or rite of passage that combined indoctrination, strict oversight, and a uniform identity formation. Rather than refined speech and manner, its acolytes were instilled with the abrasive and adversarial manner of the Calvinist. Their disputatious methods of litigation, devoid of elegance, were more concerned with complex reasoning fixed upon the Black Letter of precedent, statute, and treatise.

The public correlate to the school of law where the discipline of legal thought became instilled was a new philosophy of education and public school with a new purpose and its virtues of objectivity and the open mind. In this more passive mode of thinking there was assumed to be no need for pondering metaphysical principles or existential questions, because matters of government and law had become settled issues. The American system of government was accepted to be the best on earth, the pattern other nations sought to emulate—to question that premise became something like heresy. Unlike the Revolutionary idea that the Common Sense of a well-educated public was the best possible foundation of government, a new doctrine had been set forth. Now the only legitimate basis of government was assumed to be an unquestioned sovereign authority based in the Rule of Law. (Pohlman 1984: 52, 60)

In America such an innovation in public understanding required a major change in the educative method so a habit of unquestioning compliance could be instilled. The school was now the agent of socialization, instilling a pragmatic, rather than a principled understanding of life. It placed a high value on freedom - an idea with important legal implications--but widely understood in the practical terms of material accumulation. Unlike the British, who conceived of themselves in collective levels of status, with a sense of rank and place, and a code of propriety, Americans operated within a protective and legally defined reality, with its own religion of success. (Dewey 1989) A new generation of the public began to be trained for a mode of existence that stood in stark distinction from the unified and disciplined legal caste that presided over them. It could be said that in the aggregate and in a generalized way, there were now three major Western legal cultures that trained their children in three different ways. The Europeans emphasized cultivation, the English instilled class, while the Americans celebrated freedom. (Dewey 1989)

## 9. Technology

The dramatic technical and scientific advances of the early twentieth century were nothing when compared with innovations that came later. Development of the atomic bomb marked a kind of turning point, as the last half of the twentieth century brought a world of unheard of possibilities, some potentially catastrophic, others seemed to be almost miraculous in their potential benefits. In world affairs the English-speaking nations had emerged virtually untouched by the ravages of the Great War and were at the height of their industrial and military power. Those nations that had once been either part of the British Empire, or among its dependents and protectorates, where the fellowship of English law had been implanted, were united in a way that no other group of countries could be. They amounted almost to the skeletal basis of an alternative world system. A common language and a highly developed fellowship of law was the essential basis of their strong bond. (Cohen 2008: 60)

Later, with the introduction of television and computer, along with new modes of travel and transport, the way of life of all persons began to be affected. Then as the end of the twentieth century approached, there came networks of communication, the ability to transmit any quantity of information from any one location on earth to any other. The capacity to penetrate every domicile in any part of the world with transmitted sound and image would have a profound impact on how people thought. The ability to assemble capital, labor, and resources and to make war, all without regard to distance or topography also began to change the living patterns of all peoples in all locations around the globe. These developments would have equally important consequences in matters of law. For the Anglophone tradition those consequences were particularly striking. Moreover, they were important on both the judicial and the educational side of its legal culture. (Slaughter 2004: 131)

Already, a major advance for Anglophone legal purposes had been the acceptance of English as an international language for broadcast and business. Then with the proliferation of communicative channels and networks, English became a global language, spoken around the world by a rising generation exposed to a ubiquitous electronic media. For Anglophone law this was the second educative step to becoming global in its method. That law, embedded in a collegial fellowship based on language, had already reached all parts of the world on the high level of finance and trade. However, to preside over any population, that people must also have at least a rudimentary understanding of the English language. For the first time it seemed possible that Anglophone law in its transcendent reach could begin to penetrate the affairs of persons and property beyond the regions that had once been under British rule. Now the possibility opened to extend a legal authority across nearly every continent in a borderless world, united by a common language. (Giddens 1991: 145)

Anglophone adjudicative authority could preside from a level above the state and beyond the limits of public awareness. Moreover, it was not bound by confining principles or ideals, nor was its method necessarily correlated with public mores and values. As an organic method based in collegiality, its only requirement was internal consensus and external compliance. It was unlike the Civilian approach, which was deeply embedded in a nation-state system and had been weakened by technical advances. However, although technology expanded the possibilities of English language collegial law, the hereditary aspects of its tradition now seemed anachronistic and out of place. Would it be possible for the honorific class of an Island Kingdom, to serve as anchor to a law that reached every remote locality? Could its ancient classical sources and religiosity provide a plausible basis of global rule over publics that were very unlike those of the English tradition? Over time, could technology provide a way by which future generations would be divided from childhood, by ranks of superiority and subordination within a global Rule of Law? (Cohen 2008: 118)

## **10. Universal and Transcendent**

Both traditions of law, Anglophone and Civilian, are extremely important and both are extremely influential in the project of building a seamless atmosphere of finance and trade, oversight and governance across all lands and peoples. But they approach the task in two different ways with different ultimate purposes in mind. These differences are basic to the nature of each, and can be traced in their nascent forms, back to the simultaneous beginnings of both laws in the eleventh century. In that these traditions represent two different foundations upon which governance is based, they have different ways of ordering human life and shaping human thought. Inevitably, they would have different ways of shaping the world in which a rising generation would live, just as they have different ways of forming the way each child would come to understand the world and itself. (Habermas 2008: 115)

Because of differences in the two legal approaches to shaping a global order, each has certain advantages and each has certain disadvantages. In particular these varying aptitudes derive from the fact that the Continental is universal in outlook and the Anglophone law is transcendent in its operation. The idea of universality carries with it the implication that a law can apply equally in all regions, to all people, of every rank and status, rich or poor, male or female. Its principles are thought to be everywhere valid because it is based on the assumption of certain capacities and potentials that all humans share. It is not based on a premise of superiority and inferiority of persons, on a division between privilege and right, knowledge and ignorance, or ethics and morals.

In that sense, it produces a legal culture built as much from the ground upward as from the top down. In its balance between the coercive and persuasive elements of its legal method, it weighs toward the educative. It values culture in the sense of cultivation of all persons in thought, word, and deed. It assumes that among a people of culture and learning, where familial bonds are strong, where local custom is respected, persons are able to govern themselves. To the extent a people are able to conduct their own affairs, they will have less need to be ruled over by the coercive force of law. All of which will conduce to a happier and more prosperous way of life. Because of these assumptions, its first concern is that all persons within its realm are educated in its egalitarian premise.

By contrast, the Anglophone tradition claims to be transcendent, elevated in its workings above all persons and things. Because of this elevated independence it can preside over the affairs of human thought and action—and can do so impartially. In its view, attributes of culture and learning among the public are much less important. In fact, those attributes could be disruptive or destabilizing, especially where ancestral family bonds and local custom become a rival influence. Only the inviolable sanctity of its legal oversight among the population can be the basis of legitimate rule. Thus, its first concern is to maintain the hierarchy of authority in place. (Slaughter 2004: 75)

What this transcendent law offers, however, is an unusual degree of freedom, but it is freedom within established limits. In other words, individual persons are free to think and act in any way they desire, as long as they do not exceed the boundaries set by judicial authority. Because of this approach, in the tandem elements of adjudication and education within its legal culture, the vitally important one is the adjudicative side. If the sovereign authority of law fails, the society of persons it oversees - where familial and communal ties have been submerged, where custom and culture have been purposely effaced - its collection of individuated persons will inevitably fall into anarchy. (Breyer 2015: 134)

The transcendent method and purpose of an Anglophone legal regimen has important implications for the status of children and the enculturation of children in the global age. In fact, because America is both harbinger and hegemon of the new global order, the specifically American version of that legality is a prevailing influence within it. In particular, its definition of freedom, its idea of commercial culture, its scale of material values are advancing among all localities and peoples,

and may determine the enveloping legal atmosphere into which children are born and in which they develop around the world.

## 11. Global Family and Global Child

In many ways technology as an instrument of oversight and as a medium of instruction has opened the possibility of a global order based on an Anglophone Rule of Law. Not only has a professional English-speaking stratum developed across all regions of the earth, beyond that, a rising generation around the world is becoming conversant in the English language as well. These are the first two essential steps in establishing its collegial mode of authority. For the first time a seamless realm of finance and trade, of communication and travel, of diplomacy and warfare, together with a wholly mediated way of understanding for the global public, is making possible the global application of its legal method. It is the postmodern version of a basic model that has proven itself most recently in its American incarnation, as it has over centuries.

In no way are these developments more important than in their impact on the role of the family and its members, especially the children who will be born into and will grow up in the new regime. Historically, Anglophone legality has divided the population into three relatively defined classes, the hereditary, the professed, and the individuated. Within the higher ranks an unbroken family descent and collegial affiliation were integral to its fellowship of rule. At the same time, however, policies toward the larger population have varied over centuries between complete suppression of the familial bond at one point, to an encouragement of the nuclear family at another. But any substantive manifestation of the ancestral or extended family among the subordinate population has invariably been met with a policy of suppression. Any extensive combination of persons united by the strongest natural bond between persons, posed a clear threat to the Anglophone legal order. Hereditary descent was, after all its deepest anchor of cohesion, the basis on which its legal hierarchy was established. (Cannadine 1999: 167)

With new technical abilities, the nuclear family is once again unnecessary as an essential element among the general population. Within that population, nuclear and extended families, including any unit of multiple generations, might come to exist mainly as ideas, or memories. Their members can be dispersed socially and geographically, because the domiciled family unit is no longer important for purposes of procreation, and children can be socialized by means of electronic transmission. In any case, socialization is becoming less important as most human interaction among the larger public will be technologically mediated. All these developments have important implications for how each child understands the world, and how the child understands itself. They also have important implications for the way children are prepared for adulthood in an atmosphere defined by a global law.

However, even though the aged tradition, including its modern American version, has proven that such approaches to shaping the popular mind can be

highly effective among the public, questions still remain. In particular, it is unclear whether the ancestral and professional levels of the Anglophone hierarchy can be sustained. Questions also remain concerning whether a collegial foundation that is inherently contentious in its inner workings can retain its cohesion without the firm anchor of a hereditary Elect to preside over it. Without that kind of stable oversight will the professional class disintegrate in its own adversarial methods? There are also crucial questions as to whether or in what form, there can continue to be a foundation based on descent, education, ritual, and a premise of superiority, all grounded in religious teachings. How will children of high privilege be trained to assume the identity of entitlement in a technological age?

At the same time, will the method of global rule comprise two all-inclusive levels, divided by class, by knowledge, and by a great digital divide? Will children born to those who are privileged live in a world of familial attachment, and in a face to face atmosphere of collegiality? Will children of the unprivileged population live an individuated existence in a world of atomized families, a world of orchestrated appetites, and an immersive atmosphere of mediated communication? In the project to build an all-inclusive regimen of governance both great traditions of law can offer a proven record of stability and continuity. Their differences are sometimes posed as a choice between culture and freedom. All of these questions are important as the Anglophone tradition takes a central place in the movement toward a Rule of Law in the Age of Globalization. (Dewey 1989)

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