

Flying Howney Kites: On Violence, Crime and Plural Diversity In 21st Century Bahamian Legal Education (0230)

This Paper examines complex issues of violence and crime in the post-modern globalized context of clinical legal education in twenty first century Bahamian society. In this regard, it is important to begin our discourse with the considered conclusion that legal development and legal education associated with it, must be, in many ways, a culture specific phenomenon and that there are many different environments for legal education in the Third World today, with there being, in addition to political and economic differences, a number of other differences, including differences in the uses of formal laws and legal processes and differences in the perception of their valueⁱ. This is a most valid consideration, as, increasingly, manifestations of violence and crime have become prominent features in most developed, developing and underdeveloped societies, creating spatial environments driven by fear, alienation and increasingly, fractured and ambivalent conceptualization of national identitiesⁱⁱ. An international legal research initiative of the International Legal Center (ILC) emphasized the importance of a multi-disciplinary approach to facilitate a better understanding of legal cultures, law and the actual workings of the legal system, lamenting the limited scope of of most legal research undertaken by law teachersⁱⁱⁱ

More critically, Eric Williams has observed that a great responsibility rests on the legal system and that its role should be that of a midwife to the emerging social order, but that, instead, it has become the chamber maid of the existing social order,^{iv} confirming a crucial indictment over the issue of law and development^v and the assertion that, particularly in the case of the Third World, there is a need to explore "new and vital" perspectives for the future^{vi}. More recently, Werner Menski has devised an innovative and excellent paradigm, a four sided kite structure, currently being fine tuned, to demonstrate that law and life, as kite flying, is a popular high risk activity, with living law never being stable and needing to maintain a subtle balance

at all times.^{vii} This extremely innovative and insightful imagery conveys the essence of the dynamic nature of law.^{viii} In this regard, this presentation explores a Bahamian variant of Menski's kite model, based on the geometrical symmetry of hexagonal and octagonal shapes which distinguish the distinctive *Howney* kite often flown in the Bahamas and reflects a model of kite found throughout the Caribbean renowned for being sturdy, airworthy and reliable, geared to survive the often tortuous and unpredictable windswept air currents of the region.

Given the turbulent, distorted and fractured nature of the socio-legal historical framework of Bahamian society,^{ix} this is a crucial exercise in the context of our central discussion of violence and crime and twenty first century legal education, which, of necessity, traverses concomitant issues of colonialism, slavery and capitalism and their incestuous progeny: myriad forms of racism and other hybridized race manifestations created from constant interaction with other social phenomena, including class, gender, geographical location and state of physical ability. This reveals that, in the dialectical interaction of living customary law and the official legal system, there is a 'drama' of social consequences, with every action creating an opposite reaction. The cause and effect phenomenon manufactured by this constant interaction of plural forms of law is, often, invisible to the official legal system and legal scholars, with black letter lawyers "constantly reducing law to formal expectations and processes", creating "mental blockages, confusions and disorientations".^x

Professor Werner Menski indicates that human rights lawyers frequently reject and ignore cultural and religious factors of differentiation in the name of rationality, hiding behind a smokescreen agenda of supposed or desired concepts of convergency and of universality.^{xi} In this regard, he, most profoundly points out that, almost everywhere, legal scholarship remains woefully dominated by positivist positioning and lack of inter-disciplinarity, with legal pluralism, like law itself, being an "ubiquitous fact" manifest in innumerable culture specific forms and myriad situation specific scenarios.^{xii} He indicates that, in view of such realities, taking legal pluralism theories more seriously, we should be engaged in constructing a globally relevant legal theory, rather than self serving

fictions of what 'proper' law ought to be, disregarding and 'othering' forms of law other than state law and refusing to build knowledge from other parts of the world in our still far too Eurocentric debates.^{xiii} In our central Bahamian frame of reference, it is critical that we examine the dynamic historical processes of colonialism, capitalism, slavery, violence and crime at the juncture of the ongoing interaction between black letter law scholarship, official state law and living customary legal norms in the daily lived experiences of ordinary, everyday Bahamians. As pointed out by Amilcar Cabral, in a wider African context but equally relevant in a Bahamian context:

"The colonialists have a habit of telling us that when they arrived in Africa they put us into history. You are well aware that it is the contrary – when they arrived they took us out of our own history. Liberation for us is to take back our own destiny and our history"^{xiv}.

James concludes that both White and Black people are common victims of a false tradition about Africa^{xv}, and that this fact makes both races race partners in the problem of racial reformation^{xvi}, presuming an abiding respect for plural and multicultural diversity and the development of a culture of non-violence and collaborative efforts towards sustainable development and social reconstruction driven by principles of distributive and restorative justice. Law and legal pedagogy must be enhanced and informed by this ideal. This paradigm resembles, in many ways, the wonderful geometric symmetry of the octagonal dimensions of the Bahamian *Howney* kite and is designed to soar to the exhilarating heights of the socio-legal stratosphere of a Bahamian jurisprudence relevant to the diverse and multicultural plural needs of the Caribbean, in general and the Bahamas, in particular.

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- i International Legal Center 1975:10
 - ii Hanna 2009; 2010a; 2010b; 2011a; 2011b; 2011c; 2011d
 - iii International Legal Center 1975:10
 - iv Williams 1968
 - v Trubek and Galanter 1974; Dias, Luckham, Lynch and Paul 1982
 - vi Dias, Luckham, Lynch and Paul 1982
 - vii Menski 2009a; 2009b; 2010a; 2010b; 2010c
 - viii Ibid.
 - ix Hanna 2011a; 2011b
 - x Ibid.
 - xi Menski 2009a; 2009b; 2010a; 2010b; 2010c
 - xii Ibid.
 - xiii Menski 2003; 2007; 2010a; 2010b; 2010c
 - xiv Cabral 1973
 - xv James 1989. Indeed, Western civilization has been inextricably bound by misconceptions about the wider non-White world including Asia and the islands of the Pacific Ocean, in addition to the people of the African continent and wider diaspora (Hanna 2011a).
 - xvi Ibid.