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Developments in Legal Education at McGill, 1970-1980

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In order to trace the developments in legal education at McGill during the last decade, it is first of all necessary to recall the principal initiatives which occurred in the 1950s and 1960s. These were, in chronological order, the creation of the Institute of Air & Space Law in 1951 and the offering of higher degrees in that speciality; the creation of the Institute of Comparative Law in 1965 to give particular focus to graduate work at McGill in fields other than air and space law; and the institution, in 1968, of a programme of undergraduate study leading to the Bachelor of Laws (LL.B.), alongside the traditional Bachelor of Civil Law (B.C.L.). Both degrees were, at that time, set within the framework of a National Programme of legal education, that is to say an integrated curriculum in civil law and common law studies at the undergraduate level.

During the period under review these initiatives were consolidated through a refinement of curriculum goals and the particular promotion of institutional research endeavours. The fact that the undergraduate population has almost doubled and that McGill now counts probably the largest post-graduate student population in the country,¹ suggests that these several efforts have met with some measure of success. This review of legal education at McGill is therefore sketched in three sections summarily describing the developments in the undergraduate programmes, the graduate programmes and in research activity.

(1) Undergraduate Programmes

The general orientation of undergraduate studies at McGill since 1968 has been a commitment to provide opportunities for a truly national legal education, one which academically and professionally raises the first legal training above local or provincial parameters. That commitment has meant providing a fundamental training in

* Sir Wm. Macdonald Professor of Law, Dean.

1. These developments prompted the University in 1977 to make available two further buildings to house the Institutes in premises near the present complex of Chancellor Day Hall.

both civil law and common law systems for all students and giving formal place in the curriculum to instruction in both the English and French languages. The developments in the 1970s with reference to each aspect of the National Programme, curriculum and language, are traced briefly here.

Curriculum. The major development at McGill on the eve of the 1970s was the inauguration of a programme of undergraduate study acknowledging the dual origins of Canadian law. The structure of the LL.B. programme, as instituted in 1968, and the new alignment then given to the traditional B.C.L. programme, were designed to reflect this reality. This bold and imaginative step has made McGill's undergraduate programmes unique in Canada and, probably, in the world.² All students proceeding to a first or primary degree, whether the B.C.L. or LL.B., follow instruction in Canada's two private law systems as an integral part of that training. Gaining familiarity with the fundamentals of the private law system other than that in which a student is primarily based is part of the "core" curriculum and not merely an "elective" within the range of optional courses available.

This programme goal has not varied since it was set in 1968 and its philosophy is simple. It is based upon the belief that a knowledge of another legal system is an asset from several points of view, and especially so in a country like Canada.³ Intellectually and academically, a knowledge of another legal system deepens the understanding of one's own legal system. Professionally, it provides an awareness of how lawyers in other parts of the country solve similar legal problems. In the broadest sense, therefore, the dual training contributes to the promotion of mutual understanding between different regions of the country. For the student of Quebec law, a familiarity with the common law is an advantage because few Quebec lawyers deal only

2. The Faculty of Law at the University of Ottawa is organized into two distinct "sections" in civil law and common law. The University of London and the Université de Paris organized a four year degree programme in 1979 which leads to two degrees after two years in each institution. A number of other universities in England, France, Switzerland and the Federal Republic of Germany now offer varying programmes of lesser intensity in the laws of neighbouring jurisdictions.

3. In this, it is interesting to note, McGill early on acknowledged the duality of Canadian law in the organization of its curriculum. In the 1850s and 1860s the *Institutes* of Justinian, the *Coutume de Paris* and Blackstone's *Commentaires* were all part of the undergraduate programme. The idea that dual training was appropriate for McGill was revived by the Romanist, Dean R. W. Lee, at least as early as World War I. Cf. *Legal Education Old and New* (1916), 36 Can. Law Times 24 at 115; and his paper before the "Ontario Bar Association" of 11 January 1916, *Uniformity of law in the British Empire* (1916), 36 Can. Law Times 298 at 302, 316. S. Frost & D. L. Johnson *Law at McGill: Past, Present & Future* (1981), 27 McGill L. J. 1.

with Quebec private law. Much law in Quebec, particularly that in statutory form, is common to others; and even Quebec private law, especially in its commercial aspects, is touched by common law thinking and developments. In the same way, a grasp of the civil law is no less an advantage to the common law lawyer, particularly as civil law models begin to penetrate common law legislative schemes in a number of areas. Both civil law and common law lawyers are called upon, moreover, to deal with clients and problems of a transnational and an international character in which an understanding of both systems of law is helpful. The dual training, finally, provides a truly national dimension for professional mobility in Canada and elsewhere and constitutes a good base for graduate work in law.

Having accepted these ideas in 1968 as the animating principles of the undergraduate programme, the challenge at McGill has been to work out, first, a proper balance in the detail of the B.C.L. and LL.B. programmes so as to provide the complete training necessary in the primary degree (B.C.L. or LL.B.) while combining it with a serious introduction to the other system; and secondly, the manner in which a complete dual training can be achieved in both systems so as to enable graduates to proceed to any Canadian professional corporation with that robust undergraduate preparation necessary to satisfy professional requirements. The first challenge has been met within the traditional structure of the three year undergraduate degree programme of 95 credits leading to the B.C.L. or LL.B. degrees. The second is achieved by requiring an additional year of residence (30 credits) in which the second degree is completed in the other system and for which the foundations were laid in the first degree programme. The two degrees, in this case, are taken sequentially and in either order (B.C.L./LL.B., LL.B./B.C.L.). As of 1971-72, it has been possible to work for the two degrees in what is termed the "joint programme" such that both are awarded at the end of four years. This path is open upon exercising an option at the end of first year rather than at the end of the third year (as in the first case). Two routes are therefore open to obtain the full dual training — the route of the sequential degrees and that of the joint degrees. The difference between them being in large part one of a technically different curriculum organization, they have both come to be subsumed under the term "National Programme".

How much training, within either primary degree, is necessary to provide a serious initiation to the other private law system and also constitute that base upon which, in a further year of study, as just explained, the second degree can be earned? On this point, thinking

has modified somewhat over the decade, not as to the principle involved but rather on two matters flowing from it — namely, the balance of subject matters necessary to provide that initiation and the year(s) in which such training in the other system is most effectively interposed.

The first year of law studies is readily seen by most educators as the singly most important moment in the university career of a law student. At that time the student is exposed to, and expected to acquire, the methods of analysis, reasoning and expression necessary to later development. The first year curriculum is thus a key element in the philosophy of curriculum organization. At McGill, in common with other law schools, the first year in the B.C.L. or LL.B. programmes offers that immersion in private law and public law necessary to provide such a base. B.C.L. students follow instruction in fundamental civil law (Obligations, Property) and LL.B. students receive instruction in fundamental common law (Contracts, Torts, Property). Both streams share courses in fundamental public law (Constitutional Law, Criminal Law). Such a programme, for each degree, would, no doubt, with some minor variations, be found in law schools across Canada. The distinctive feature at McGill is the first year course, in first term, *Foundations of Canadian Law* in which all students are exposed to the historical, institutional and philosophical underpinnings, and the methodological techniques, of both the civil law and common law systems, as transplanted from their European origins to their Canadian context. This course, the fundamental vehicle for sensitizing students immediately to the dual origins of Canadian law, is recognized to be among the most challenging in the curriculum to teach.

Just as the core private law curriculum provides that base in the first year of the primary degree, so too a similar alignment of courses is necessary to provide the introduction, in a later year, to the genius and methodology of the other private law system. Property (real and personal), Contracts and Torts have always figured as the common law subjects open to the civil law student in order that he complete his B.C.L. requirements and proceed, if desired, to the full training of the LL.B. as a second degree. Conversely, Obligations and Property and a range of other civil law courses, figure as requirements for the LL.B. degree and as prerequisites for completing the full training for the B.C.L. as a second degree.

On this point, the civil law component of the LL.B. degree, there have been adjustments over the last ten years. The LL.B. degree was conceived, in 1968, as normally part of a four year programme

leading to both degrees rather than an LL.B. programme not substantially different from those offered in other Canadian law schools. The curriculum was structured to reflect this notion by requiring over this period, a larger component of civil law courses than is now the case. Today the LL.B. candidate is required to complete 11 credits in civil law (rather than 14 civil law and two comparative law credits during the period 1976 to 1981; and 20 civil law credits during the period 1972-1975). On the other hand, the common law component of the B.C.L. degree has not been correspondingly increased from what it was at the start of the National Programme. Civil law students, it is reasoned, are exposed to much of the common law traditional reasoning and methods through federal and statutory materials in other than classical private law subjects. In the final and fourth year of study, of course, each stream of students proceeding to the second degree, B.C.L. or LL.B. as the case may be, rounds out his training in that legal system by studying other subjects in that tradition. And the range of courses to be selected corresponds to what it is for a student earning that degree as a first law degree. A certain symmetry thus prevails within each degree programme and as between them.

Thinking has also changed on the matter of the year(s) in which the component of the other system is best situated. Initially, in 1968, these courses were part of the third year programme. Two years concentrated training in the primary system terminating with an exposure to the other system in the third year of the primary degree was thought, at that time, to be the best arrangement. From 1972-73 until 1981-82 the requirements in the other private law system were fulfilled during second and third years. As we move into the 1980s it is now considered preferable to concentrate all these requirements in the second year of study. Under this arrangement first and second years are thus devoted primarily to the fundamentals of both private law systems, as well as a variety of other fundamental subject matters. Third year, at the option of the student, may thus be devoted to a greater range of elective courses, among which figures a variety of comparative law offerings supposing a knowledge of the basic tenets of both civil law and common law.

As an addendum to this section a few statistics may be of interest. Enrolment figures show that there is real interest in the National Programme on the part of students in all regions of Canada. B.C.L. applicants are, of course, by tradition, usually Quebec residents. The LL.B. programme, for its part, has increasingly attracted out-of-province students. While a sizeable majority of the LL.B. entering

classes was composed of Quebec students in the early 1970s, there has been a majority of non-Quebec residents who have applied, been accepted and registered in that programme over the last years. The heterogeneous character of the student body is considered an asset. And while the total applicant pool is only of middle size compared to other law schools, the limited number of first year places (B.C.L. 100, LL.B. 50) gives McGill a high ranking in the selectivity of its admissions.

It is also of interest to note that since the inauguration, in 1968, of the LL.B. degree and National Programme, 53% of the B.C.L. candidates have obtained the LL.B. degree and 27% of the LL.B. candidates have also obtained the B.C.L. degree. This breakdown undoubtedly reflects perceptions about job opportunities and political developments, matters about which students in Quebec are especially aware. Most graduates do, to our knowledge, proceed to the legal professions in Canada, and a significant number now qualify for more than one Canadian bar. Double degree graduates are also beginning to qualify for practice in a number of American and other jurisdictions, and it is noticeable that students proceeding to graduate work, at McGill and elsewhere, are more often than not those with the full dual training.

The preceding description of McGill's National Programme of undergraduate legal education, given summarily but nonetheless at some length, precludes any further very full analysis of other aspects of development in the undergraduate programme. Mention must however be made of the maintenance of a diverse number of elective offerings over the same period, particularly in public international law which has long been a strength at McGill.⁴ In addition to the first general course, there have been on average three or four other elective offerings in that field each year. Comparative law offerings and a cluster of courses in international and commercial law have also been put into place. A combined Law and Master of Business Administration programme has also been offered since 1979 by the Faculties of Law and Management (M.B.A./B.C.L., M.B.A./LL.B.) and allows as well for the completion of the second law degree along the lines described above.

Language. The other significant development at McGill during the period under review has been the evolution in the use of the English and French languages. McGill, as probably already well known, is

4. R. St. J. Macdonald *The Teaching of International Law in Canada* (1974), 12 Can. Yearbook of Int'l Law 67 at 69-81.

the only institution in Quebec and Canada systematically providing instruction in both languages. To provide English language training was undoubtedly one of the reasons for founding the Faculty in 1848 but historical evidence shows that French was also a language of instruction, upon occasion at any rate, in the 19th century. There has always been a significant proportion of the student population claiming French as its mother tongue and this is the case today, even though the Faculty remains primarily an English language institution.

Policy on language was first formalized, to our knowledge, in 1968 at the time of the inauguration of the National Programme. It was then decided, as a matter of principle, to offer French language sections of first year and upper year basic subjects, in addition to the regular English language sections, and it was also established that certain upper year elective courses might be offered in the French language only. Over the years the number of such offerings has of course varied and depends, in part, on student demand. In present policy French language instruction is intended as much for anglophone students as it is for francophones. Ten years ago the enrolments in such course units were primarily from among the francophone population. In recent years anglophone enrolment has risen sharply and proceeds, in an interesting development, as much from out-of-province and LL.B. candidates as from other groups. Faculty policy and growing student interest in this aspect of McGill education are seen as healthy endorsements of the national aims of the law school. To date, however, it has not been thought opportune to attempt to organize the teaching of common law in French.

(2) Graduate Programmes

Graduate studies have been offered at McGill for well over a century. The present organization of this aspect of the Faculty is structured around the Institute of Air & Space Law (I.A.S.L.) founded in 1951, and the Institute of Comparative Law (I.C.L.) founded in 1965. Each amounts to a department in the Faculty of Law and a division of the Faculty of Graduate Studies. All graduate students in law, except those in the I.A.S.L., come under the administrative direction of the I.C.L. (whether they are pursuing comparative law studies or other graduate work). Each Institute is headed by a director and, since 1976, has had a budget framed within that of the Faculty of Law itself. Both units during the decade now under review have consolidated and strengthened their positions in respect of graduate work and research by either laying down or reformulating the programme of graduate course work in their respective fields.

Institute of Air & Space Law. In 1981-82, the I.A.S.L. celebrated its 30th anniversary.⁵ From a total of 13 students in 1951-52 it has grown to the point where, in 1981-82, it accommodated 35 students in first year residence, 18 in second year residence (working for the master's degree) and 10 students qualified as D.C.L. candidates. This growth was achieved gradually throughout the 1970s. For many years students have come from well over 20 different countries; their disparate backgrounds provide a rich resource for the Institute as well as particular challenges for its teaching staff. In the last five years a noticeable increase in Canadian registrations has been observed.

The principal objective of the I.A.S.L. is to provide an overall view and understanding of the legal processes regulating world-wide aerospace activities. The programme of study includes the traditional disciplines of law (air and space law in their "public" and "private" law aspects) and draws substantially upon government and business experience indispensable to a full understanding of the field. A major development in its teaching programme — the only one of its kind in North America and one of two in the western world — was the re-casting of its course structure in 1979-80, so as to reflect more fully the multifold changes taking place in, and the inter-disciplinary aspects of, this highly specialized branch of law. Beginning with the academic year 1980-81, the I.A.S.L. offers 12 courses in public and private international air and space law, economics of air transport, aircraft financing and government regulation of air transport. For those not inclined to pursue a thesis leading to the Master of Laws a diploma has been awarded at the end of the first year of study since 1964. Significant numbers of students do however proceed to thesis work with a view to obtaining the LL.M. or D.C.L. degrees and have thereby contributed to the growing literature in this important and rapidly evolving field.

Within the last five years the I.A.S.L. has made very great efforts to animate an even more extensive research and publication programme than that fostered through formal graduate work. These developments are summarily described below.

Institute of Comparative Law. McGill has long offered interesting opportunities for graduate work. A new focus and administrative arrangement for graduate studies in general, that is to say in fields other than air and space law, was achieved in 1965 with the creation

5. It was originally known as the Institute of International Air Law and founded to take advantage of the location in Montreal of the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA).

of the Institute of Comparative Law. Since that date, and particularly in the 1970s, the I.C.L. has dedicated its efforts to the promotion of international business law and comparative private law. These orientations are sound perspectives to foster at McGill in view of the bi-systemic character of the undergraduate programme, its language duality, the Faculty's location in Montreal and the increasing role of Canada in international trade. Enrolments in the I.C.L. have grown during the 1970s to the point where it attracts three times the number of students it did in the late 1960s. Here too an increase in the number of Canadian registrants is observable.

The course programme in the international commercial law concentration is now established, well-rounded and probably unique in Canada in the variety of its offerings.⁶ In the second concentration, comparative private law, graduate students with a civil law background are normally required to select at least one fundamental private law undergraduate course from the LL.B. programme and those with a common law background one such course from the B.C.L. undergraduate curriculum. The formal course work is completed by a number of graduate comparative law courses which, in scope, are somewhat less extensive than in the first concentration.⁷ For the period 1967-1981, over 70 masters degrees and 11 doctorates have been earned, primarily in the two fields mentioned.

The I.C.L. has developed special structures for promoting research and publication efforts in some of the fields it has taken up. Attention will now be given to these developments as significant features of activity at McGill in the 1970s.

(3) Research Activity

The end of the 1970s saw the launching of a major and potentially significant study of legal research activity in Canadian universities.⁸ At the time of writing, we are awaiting the results of that enquiry. It will be of especial interest to see whether recent initiatives undertaken in Quebec universities generally, and within McGill's Faculty of Law

6. For the last five years the programme has comprised the following courses: Introduction to Comparative Law, Comparative Company Law, International Business Enterprises, two courses in International Business Transactions, International Taxation, European Community Law, Maritime Law II (International Conventions) and, for a few years, Resolution of International Disputes.

7. Introduction to Comparative Law, Comparative Private International Law, Comparative Civil Liability, Comparative Medical Law, Contemporary Civil Law Problems, Comparative & International Protection of Minorities' Rights.

8. Sponsored by the Social Sciences and Humanities Research Council of Canada, under the chairmanship of Professor H. W. Arthurs.

in particular, are duplicated elsewhere in Canada or form the object of comment in the forthcoming report. We are referring here to the creation of organized structures designated as "research centres" for the promotion, through "team" or collective efforts, of advanced legal research and the training thereby provided for future members of the academic profession.

Research in Canadian law faculties, over the relatively short period in which we can say it has been specifically promoted, has for the most part been undertaken on an individual basis. And much valuable work has come from these efforts in recent years. It is undoubtedly the case that many Canadian academics will continue to prefer to deploy their research effort in this way and, on that basis, continue to call for various forms of legitimate support to sustain it. But there have also appeared in Quebec, primarily through governmental encouragement and the funding into which it is translated,⁹ formally constituted research centres, attached to university units, which have as a foremost aim the promotion of research projects in which senior academics provide leadership and direction for teams of junior associates. This approach may offer the advantage of allowing for projects of greater scope and longer duration than those pursued by individuals working alone.

Two such centres were set up at McGill in the mid 1970s in order to give a particular focus to the research arm of some of the distinctive features of its programmes. In 1976, when the Institute of Air & Space Law celebrated its 25th anniversary, the "Centre for Research of Air & Space Law" was founded upon official recognition of the Quebec Ministry of Education. It was provided with a three year budget (subsequently renewed) for the creation of an administrative infrastructure. This enabled the Centre to seek funding from a variety of other agencies in order to pursue a number of specific projects in air law, space law and telecommunications of interest to Quebec, Canada and the international community. It subsequently acquired a major grant from the SSHRCC for an interdisciplinary study ("Space Activities and Emerging International Law"). These various projects¹⁰ are carried forward by teams of researchers selected primarily from among the I.A.S.L. graduate student population, and are directed by one or more members of the professorial staff. An important contribution to the literature in the field is the publication

9. Within what is called the FCAC programme ("Formation de chercheurs et action concertée").

10. Funded over the period 1976-77 to 1983-84 in the amount of \$1.6 million for 10 projects.

Annals of Air & Space Law/ Annales de droit aérien et spatial which has appeared annually since 1976.

In 1977 a "Centre for Research in Private & Comparative Law" was created along similar lines. It promotes fundamental research in the fields of civil law, comparative private law and comparative health (or medical) law, and is funded by a number of external agencies and professional corporations, as well as McGill itself.¹¹ Particular mention must be made here of the projected 12 volume treatise in Quebec law intended to reflect the progressive reforms which are being enacted subsequent to the proposals of the Civil Code Revision Office.¹² Other projects include a lexicon of Quebec private law terminology (English/French, French/English), and a dictionary of private law vocabulary, and newly edited annual publications of the Quebec Civil Code designed to supplement the *Historical & Critical Edition of the Civil Code of Lower Canada (1866-1980)* which appeared in 1981. The scope of some of these projects is such that efforts are now being undertaken to frame them within an inter-university institutional support base, an arrangement probably desirable in order to carry them forward to timely completion.

Conclusions

Such have been the principal developments in legal education at McGill over the last ten years or so. Like other social institutions, and in particular Canadian universities, it is now facing serious financial constraints and it must adapt to the changes necessarily coming. These changes may be especially dramatic for Canadian law faculties which, in general, have not been the object of particular development in their respective universities.

There is, of course, a certain irony in this because the law, more so today than ever before, is reaching into the lives of citizens and affecting social structures in ways probably unforeseen even as recently as ten years ago. Academic lawyers therefore have a duty to speak out clearly on the academic and professional importance of legal education and research in Canada. At McGill there is a strong conviction about the importance of its mission and contribution, through teaching and research, to legal development in Quebec, Canada and elsewhere. History, geographical location, and the vision and hard work of its staff members and students, have given it special opportunities for development not open to many law schools.

11. Funded over the period 1977-78 to 1982-83 in the amount of \$850,000 for 7 projects.

12. Its final report was deposited in the Quebec National Assembly in 1978.