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Quebec Legal Education Since 1945: Cultural Paradoxes and Traditional Ambiguities

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Articles

J. E. C. Brierley*

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I. INTRODUCTION

1. *Some Singularities of Quebec Legal Education*

Some remarkable things have occurred in Quebec legal education over the last forty years. All phases of the educational process have been the object of an official government enquiry (as a consequence of widespread student discontent that led to street demonstrations); a major sociological and futuristic study of the profession and of university studies has attempted to stimulate a major shift in the intellectual orientations of legal education to ready us for the year 2000; the loss by the Quebec legal professions of lawyers and notaries of substantial power to the profit of a government agency regulating all professions in the province opens up the prospect of a major new impact on the nature of legal training; the university educational network in law has grown to be the largest and yet one of the poorest, in financial terms, in Canada; and, it almost would seem, without anyone really noticing, a semi-Marxist teaching institution has been established within the otherwise highly conservative establishment that Quebec law faculties have traditionally been.

Most of these events and developments occurred in the aftermath of that period of great social change beginning in the 1960s, now known as the "Quiet Revolution" (*révolution tranquille*). Many of the ideas that then took root continued to be nurtured in the climate engendered by the election in November 1976 of the present separatist government and the near-miss of a political revolution in 1980 on the occasion of the referendum of that year on Quebec sovereignty. The whole subject of legal education has also been coloured by the view of government that universities are public institutions in which society, represented by the state as financial provider, can legitimately expect local community needs to be given high priority.

There have been specific developments in Quebec legal education, therefore, that are of particular interest because they have not been duplicated elsewhere in Canada or, probably, elsewhere in North America. Quebec is, moreover, as everyone already knows, culturally specific in Canada in the legal sense. It is a "mixed jurisdiction". French civil law (*droit civil*) is, for historical reasons, implanted in the context of

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I wish to record my thanks to Stephen Fogarty (B.C.L., LL.B., McGill); Arnold Banfill Esq.; Deans J.-M. Lavoie (Sherbrooke), Y. Bernier (Laval), R.A. Macdonald (McGill); and to Professors Pierre Mackay and Serge Allard, both of the Université du Québec à Montréal, Professor Andrée Lajoie of the Université de Montréal, as well as to my colleagues Professors J.W. Durnford and P.-A. Crépeau at McGill, all of whom provided me with assistance of one kind and another in the preparation of this study.

a state, judicial and administrative apparatus organized according to principles of English law. This mixture, and the North American context in which it functions and to which it necessarily relates, has given rise to certain broad cultural paradoxes in Quebec legal education. It is this same North American context that has perpetuated in Quebec a traditional ambiguity known to all American and Canadian legal educators. I refer to the polarity of ideas that is often expressed by the somewhat hackneyed oppositions drawn between "theory v. practice" or "academic" v. "professional" or, again law as a "science" v. law as an "art". The dialogue from these perspectives has stimulated much of the literature on legal education on this continent and Quebec has not escaped it. Some effort will be made here to clarify the use of these terms in the Quebec context, even though this is an endeavour made more difficult by shifting meanings attaching to them.

Tracing the themes of Quebec legal education since 1945 involves therefore some broad observations about its inherited legal traditions, its local and relatively distinctive social milieu as well as its larger North American context. It also, of course, involves envisaging the specific relation of legal education to the idea of the university and the evolution of attitudes within the legal profession itself. Before embarking on these considerations, it is however appropriate to provide a portrait of the contemporary scene in Quebec legal education as it now exists. But to sketch such a portrait, which is of interest in its own right, some earlier history is, I think, first needed.

2. *Legal Education down to 1948*

An account of the contemporary phase of Quebec legal education should formally be dated from shortly after the close of World War II. Legislation of 1947¹ provided that, beginning 1 June 1948, a three year university law course would be compulsory for all those intending to seek professional qualification. With this requirement full-time university study was no longer merely an optional path alongside the system of indentures (*cléricature*) that had been in place for more than a century, as either an alternative or concurrent route. The legislation also provided for professional entrance examinations and service in a period of articles (*le stage*), features of Quebec's present system still in place at least for the lawyers.

This scheme, it may be noted, was first introduced ten years earlier, in 1937,² after extensive studies³ in the earlier part of that decade had

1. *Bar Act*, S.Q. 1947, c.62.

2. *Bar Act*, S.Q. 1936, (1st Sess.), c.5.

3. L. Pelland, "Études légales universitaires" (1930-31), 9 R. du D. 193; M. Nantel, (1934-35), 13 R. du D. 466, 432, 577; J.P.A. Gravel, (1935-36), 14 R. du D. 90.

concluded that a compulsory university training was the only way in which to "improve" the quality of candidates. There is as well some reason to believe that these changes, and the requirement that candidates for law studies also hold a bachelor's of arts degree or its equivalent, were also intended to make access to the profession more difficult by containing the number of persons likely to qualify as candidates. The intervention of World War II prompted the temporary withdrawal of these new requirements,⁴ and a return to the earlier arrangements. The scheme was fully re-instituted in 1947.

But while modern legal education is therefore formally dated from 1947-48, when the structures for its future development were put in place,⁵ the real growth in university legal education only began in the early 1960s when all Quebec universities entered into the period of great expansion that gave shape to the educational establishment as we now see it.

II. PORTRAIT OF THE CONTEMPORARY EDUCATIONAL ESTABLISHMENT

3. *Growth of the Establishment*

An obvious but nonetheless striking feature of the forty year period since 1945 has been the growth in the educational enterprise in law. To the three law faculties established in the last century⁶ (McGill in 1853, Laval in 1854 and the Université de Montréal in 1878), all of them on a modest scale that was to endure until the 1960s, three more have been added within the last thirty years (the Civil Law Section of the Faculty of Law of the University of Ottawa in 1953, Sherbrooke in 1954 and the Département des sciences juridiques of the Université du Québec à Montréal (UQAM) in 1973).

There has been more than a ten-fold growth in the undergraduate student population within the forty year period — from 349 students in 1945-46 to over 3600 in 1984-85.⁷ A dramatic growth in the order of

4. S.Q. 1944, c.41.

5. A general account of legal education, at least in its institutional aspects, from 1849 to 1947 is provided by M. Nantel, "L'étude du droit et le barreau" (1950), 10 R. du B. 97.

6. Canada's oldest — and first "independent" — law school was the Collège Ste. Marie in Montreal directed by M. Bibaud. Cf. Léon Lortie, "The Early Teaching of Law in French Canada," (1975), 2 Dal L.J. 521.

7. The early statistics are provided in a notice in (1947), 7 R. du B. 182 and in subsequent volumes of the same periodical; the current figures are drawn from the latest annual statistical study on Canadian law faculties compiled by the "Committee of Canadian Law Deans" (hereinafter CCLD). For the past ten years or so the Quebec law student population has remained steady at not less than 3,000. Over 1100 students are admitted each year into the six faculties. These figures, do not include those registered in part-time adult education programmes leading to a "certificate" in a number of institutions.

some 80% occurred between 1965-66 and 1969-70. From less than a mere handful of full-time law teachers in 1945-46,⁸ the number of career professors (*professeurs de carrière*) has increased to over 200,⁹ most of whom were appointed within a few years of the growth in student population. This professoriate has always been supplemented by a corresponding number of part-time teachers (*chargés de cours*) drawn from among members of the Quebec Bar and Chamber of Notaries. Judges are now rarely involved in university teaching in the way they once were.¹⁰ New or additional buildings for the older law faculties are now in place and modern premises for the three new institutions have been constructed.¹¹ The Université de Montréal has the largest faculty of law, in every meaning of the word, in Canada. Legal education in Quebec is, in truth, big business. It might have been even bigger, one can only suppose, if the early efforts and hopes for two additional institutions had been carried through.¹²

4. *Reasons for and Consequences of Growth*

One reason for this growth in Quebec, as elsewhere in Canada and North America, was the general economic development in the post war period that called for a large number of law trained personnel in both the public and private sectors. The children of the baby-boom were there to satisfy the need. A specific reason in Quebec has been the government, and therefore the university, policy to promote greater access to higher education. This has been achieved by maintaining the lowest tuition fee structure in Canada and, in the case of law studies, by relaxing the pre-legal educational requirements instituted in the legislation of 1947. This change constituted a major shift in traditional policy.

A general university or liberal arts education was seen in Quebec as a complement to or prerequisite for the study of law itself over many years. Obtaining an arts degree had the effect of reducing the period of indentures in the earliest regimes of the last century governing entry into

8. S. LeMesurier, F.R. Scott and J. Humphrey at McGill; M. Caron at Montréal. The first full-time law teacher (apart from M. Bibaud, *cf.* n. 6 above) appears to have been Frederick Parker Walton appointed Dean at McGill in 1897.

9. CCLD 1984-85 statistics.

10. It was the conclusion of a former Chief Justice of the Quebec Superior Court that even a part-time teaching role for judges was incompatible with the *Judges Act*, R.S.C. 1970, c.J-1, s.36.

11. The earlier general poverty of Quebec law faculties is described by Maxwell Cohen, "The Condition of Legal Education in Canada" (1950), 28 Can. Bar Rev. 267.

12. A law programme was contemplated in the 1950s for Loyola College in Montreal (now constituted along with Sir George Williams as Concordia University). Bishop's University (Lennoxville) did have a degree programme in law during the 1880s. *Cf.* D.C. Masters, *Bishop's University: The First Hundred Years* (1950), p. 75, 95.

the profession. It was made a requirement for admission to the study of law by the Bar in the scheme instituted in 1937 and 1947. An interesting feature of the latter was the specific requirement that the arts degree have included "a regular course in philosophy". The study of philosophy, in the view of the time, was "the very basis of a legal education" (*le fonds même de l'éducation juridique*).¹³ Now, however, for the majority of Quebec law students, a law degree is a first university degree; a normally admissible law student (at least in the French-language law faculties¹⁴) will be the graduate of a Quebec "junior college" (*collège d'enseignement général et professionnel* or CEGEP, as they are also commonly called in English). These institutions provide a two year programme conceived as terminal studies for those not aspiring to go on to university and as pre-professional training for those who do. The law faculties prescribe no fixed list of courses, however, in this phase for those contemplating law. Completion of CEGEP, giving a "diploma of collegial studies" (*diplôme d'études collégiales*, or DEC), is generally viewed as equivalent to first year university level work in the traditional undergraduate programmes of other provinces.

Quebec has thus embarked upon a democratization of legal education. First year law students are usually about 18 years of age and generally lack any pre-law university experience. There are few signs, however, that professional educators or the professional corporations are ready to call for a re-assessment of CEGEP as the threshold admission criterion for law studies. And yet there is no doubt, in the view of many observers, that the presence in the majority of students holding no more than a diploma of collegial studies has had an adverse effect on the intellectual climate reigning in most law faculties. It has created a "culture gap" between the student population and, at least, the older generation of teachers.¹⁵ It is seen as having also led to a general lowering of standards, and as having produced a sense of illegitimacy in academic excellence. Some have referred to a "de-professionalization" of attitudes that has over-compensated for the previously too narrow "professional" focus of university legal education.¹⁶ On the other hand, it may, indeed, be no

13. Cf. the studies and reports cited at no. 2, n. 3 above. The study of philosophy was a major component of the education of those graduating from a *collège classique* but was not, apparently, uniformly part of the B.A. studies pattern of English-speaking students, a situation the Bar was determined to correct.

14. McGill has always accepted a significant number of francophone students. It remains nonetheless an English-language institution. Its particular characteristics, in student admissions and in other respects, are outlined in no. 16 below.

15. Early concern were expressed by Jacques Boucher, "Evolution récente de l'enseignement du droit: méthodes d'enseignement: Canada; droit civil" (1974), 11 Col. Int. Droit comparé 138; E. Colas, "Le Barreau, les facultés de droit et de stage" (1973), 33 R. du B. 2.

16. Y. Ouellette, "Les conditions d'admission dans les facultés de droit du Québec et les

mere coincidence that some of the present thrust for linking the study of law to the social sciences and humanities springs, within the law faculties themselves, from students without that pre-law university experience.

5. *Graduate Studies and Research*

The growth in undergraduate student population has been paralleled, although more modestly of course, by that in graduate studies. While the accurate head-counting of graduate students is notoriously difficult in view of the differences in institutional methods, Quebec can claim, it would seem, the largest graduate student population in the country.¹⁷

In the older faculties, graduate work by way of the occasional submission of a doctoral or master's thesis has always been possible. Formal graduate programmes, involving post-graduate instruction, are however a much more recent development. McGill's Institute of Air and Space Law, founded in 1951,¹⁸ appears to be the first of such structured programmes. It was followed in the next years by master's and doctoral level programmes at the Universities of Ottawa (1957),¹⁹ Montréal (1961)²⁰ and Laval (1964)²¹, all offering varying general concentrations in public and private law. To these were added, in 1966 at McGill, offerings in comparative private law and international commercial law²² and, at Sherbrooke in 1984, a concentration in health law (*droit de la santé*).²³ All faculties now allow for some form of part-time graduate student status and have thus been able to attract young practitioners into the graduate ranks. The foreign (i.e. non-Canadian) student fee differential has had, one suspects, a greater impact on McGill's graduate enrolment than it has in other faculties which have traditionally drawn on the local population. The number of out-of-province Canadian students is, in these other faculties, also unfortunately modest.

In Quebec faculties, it is not always clear to what extent graduate

conséquences sur la formation juridique" (1980), 11 Rev. gén. de droit 357 at p. 381. This study provides a statistical analysis of the 1979 admissions.

17. CCLD 1984-85 statistics.

18. John C. Cooper, "McGill's Institute of International Air Law" (1951), 29 Can. Bar Rev. 515. *Adde* L.C. Green, "McGill's Institute of Air and Space Law at Twenty-five," (1977), 25 Chitty's L.J. 244.

19. L. Ducharme & G. Pépin, "Les études supérieures en droit civil et en droit public à la Faculté de droit de l'Université d'Ottawa" (1964), 1 Can. Legal Studies 41.

20. A. Morel, "Le doctorat en droit à l'Université de Montréal" (1964) 1 Can. Legal Studies 44; *Cf.* The notice appearing in (1961), 21 R. du B. 323. *Adde* J. Hétu (ed.), *Album souvenir 1878-1978. Centenaire de la Faculté de droit de l'Université de Montréal* (1978), J. Pineau, p. 281, 351.

21. L. Marceau, "Le doctorat en droit à l'Université Laval" (1964), 1 Can. Legal Studies 20.

22. J.E.C. Brierley, "Developments in Legal Education at McGill 1970-1980" (1983), 7 Dal L.J. 364 at p. 370.

23. J.-M. Lavoie, "La Faculté de droit de l'Université de Sherbrooke (1985) Dal L.J. 762.

studies are linked to staff research as is so very often the case in other parts of the university, especially in science and medicine and many of the humanities. In the first days of the faculties' expansion during the 1960s, when there were few graduate students enrolled in any event, research efforts on the part of the new teachers related more directly to the preparation of courses and teaching materials than to personal academic interests. There was, at the time, a general lack of texts and monographs on most subjects in the curriculum and an urgent need, for teaching purposes, to bring up to date those that did exist. It is easy, today, to underestimate the dimension of the task that faced the teachers of that period. Within a relatively short period, however, specific areas of research were established in several faculties, with governmental and other institutional financial support. The first established was the "Centre de recherche en droit public" in 1961 at the Université de Montréal.²⁴ Others followed somewhat later.²⁵ These "research centres" were intended to provide organized structures for the promotion, through "team" or collective efforts, of advanced legal research and thus assist in the training of future academics drawn from among the graduate student population. No great success has been achieved by such centres in this regard. There was also some hope, at least on the part of the sponsoring agencies, that these centres might achieve a "co-ordination" of research effort as among the faculties themselves. On the whole there has been little realized on this last point either, as individual research rather than combined efforts appears to motivate most members of the contemporary academic community.

6. *The Contemporary Professoriate*

Quebec's university law professors now constitute about one-third of all the full-time law teachers in Canada. Two studies, interspaced by a period of some thirteen years, delineate the main features of this contemporary professoriate.²⁶ Their data can be further complemented

24. L. Patenaude, "L'institut de recherche en droit public de l'Université de Montréal" (1964), 1 Can. Legal Studies 36; (1963-64), 15 U. of T. L.J. 185.

25. McGill's two centres in air and law space and in private and comparative law are summarily described in Brierley, *op. cit.* (n. 22) at p. 372. Laval has a comparable structure devoted to research in "justice administrative". The Centre Canadien de droit comparé at Ottawa, inaugurated in 1966, had primarily a teaching mission: P. Azard, "L'organisation d'un centre de droit comparé" (1964) 1 Can. Legal Studies 99; P. Azard & T. Feeney, "Canadian and Foreign Law Research Centre at the University of Ottawa" (1963-64), 15 U. of T. L.J. 186; *cf.* the *Avis* (1966), 26 R. du B. 262.

26. H. Reid, "Le Professeur de droit en 1968-1969" (1970), 11 C. de D. 733; *Law and Learning. Report to the Social Sciences and Humanities Research Council of Canada* (1983) at p. 89 (hereinafter *Law & Learning*) and its 1981 research study *Canadian Law Professors*. The SSHRCC report consistently refers to "civil law professors" when, from the context, it presumably means to refer more generally to "Quebec professors".

by additional personal observations, some of an admittedly impressionistic character.

The majority of Quebec law teachers are men of Canadian nationality who received their primary legal education in Quebec and have earned one or more graduate degrees.²⁷ Graduate work today is as commonly pursued in American institutions as it once was in European universities. Most are members of one of the professional corporations, although only a minority is actively engaged in the practice of law. The group, as a whole, was recruited in the late 1960s and 1970s. The middle aged and older groups have moreover, on the whole, tended to remain in law teaching rather than opting to pursue a career outside the university, unless the choice has been open to go to the bench,²⁸ or into politics or, in the case of public law teachers, into government service. The professoriate is thus ageing. And the financial difficulties of Quebec universities have made new or replacement appointments increasingly difficult. It would be of great interest to have a statistical study of the attitudes of the older and younger generations of Quebec law teachers. There are indications that, at least in the older group, not a few consider themselves to be legal professionals who happen to be teaching law, rather than first and foremost university teachers of law who have also acquired professional qualifications.²⁹

Whatever may be the accurate gauge of attitudes on this point within different generations of the professoriate, it cannot be gainsaid that an important part of its activities over the last twenty years has been the production of an increasingly extensive legal literature. Indeed it has been observed that the "publishing production" of Quebec law faculties has been much greater than that of their counterparts in Common law Canada.³⁰ Quebec literature has undoubtedly come a considerable way since 1945, when one observer spoke of the "penury" of works available.³¹ The reasons for this growth are of different orders. There is, of course, something of a perception in Quebec, deriving from the French continental tradition, that it is a primary part of the university function to contribute to the elaboration of *la doctrine*. There is moreover an ample

27. Completion of a doctoral degree was, at one time, in some faculties a formal requirement for a tenure track appointment and remains in some a reason for a salary supplement (*prime de salaire*).

28. Cf. Hon. Mr. Justice J. Beetz, "Le professeur de droit et le juge" (1978-79), 81 R. du N. 506. About half a dozen Quebec law professors have accepted judicial appointment over the last years.

29. Professional cards and the sequence of styles and titles in publication credits are revealing *indicia* in this regard.

30. *Law & Learning* p. 89. Adde S. Normand, "Une analyse quantitative de la doctrine et droit civil québécois" (1982), 23 C. de D. 1009.

31. A. Pérrault, "La science du droit" (1946), 6 R. du B. 289, at p. 292.

number of publishing vehicles open to Quebec writers in the form of periodical journals³² and a considerable demand for student-oriented texts.³³ Another factor stimulating publication, although as already suggested of lesser impact, has been the implantation of "research centres." The work of graduate students is now increasingly published as well. And the professional corporations themselves, in one form or another, are also contributing in a significant way, to this growing literature.³⁴

Much of the literature of the period has been in various fields of public law (constitutional and administrative law); these fields naturally proved to have special attraction in a province that, over the last twenty to twenty-five years, has experienced an extraordinary growth in state activity and where political life has been largely characterized by varying philosophies of provincial autonomy. Many public law teachers were active participants in this evolution and reflected this new concern in their writing. The volume of literature devoted to private law in the same period seems less significant. The reason no doubt lies in the fact that many private law university scholars were heavily engaged, through the Civil Code Revision Office, in re-thinking the basic institutions of private law, a process that continued for over a decade.

Considerable attention, as we all know, have been focused lately on the nature and quality of Canadian and Quebec legal writing and published research.³⁵ The judgements delivered, it is commonly thought, are perhaps somewhat harsh and underestimate the accomplishments achieved, in Quebec at least³⁶, whatever the situation may be in the rest of the country. Quebec, it is true, does not yet enjoy the luxury of many

32. All law faculties (except UQAM), produce periodical publications that have appeared under varying titles; these are now, for the most part, institutional organs rather than student-driven enterprises. The two professional corporations have had professionally orientated law reviews for many years (the *Revue du Notariat* since 1898; the *Revue du Barreau* since 1941). The university law journals exhibit little or no editorial specificity and, when evaluated according to rigorous standards, vary considerably in quality and interest.

33. There is no exact Quebec equivalent of the French continental practice of producing a multilith version of professors' course notes (*les polycopiés*), although suggestions that the practice be developed are periodically made, as by M. Lamarre & C. Fabien, "Des polycopiés" (1964), 14 *Thémis* 176. On the other hand student manuals or *précis* are now a well-established form of Quebec literature, as in the series of the Université de Montréal produced by "Les Éditions Thémis" or that of commercial house Yvon Blais.

34. The Quebec Bar publishes the series *La Collection professionnelle* which now has over twenty volumes re-issued annually. The Chamber of Notaries has also made important publishing contributions to the literature of continuing professional education over the years.

35. *Law and Learning*, n. 26 above.

36. Cf., for example, A. Poupart, "Le rapport Arthurs et les études de premier cycle en droit" (1984), 44 R. du B. 619. For a more analytical assessment, cf. R.A. Macdonald, "Understanding Civil Law Scholarship," *Osgoode Hall Law J.* (in press).

second editions in areas where books have been published, nor that of two or three texts in the same field. One can also point out that there is little or no contemporary published work in fields such as legal theory, the philosophy of law, legal history or the sociology of law and other intellectually rather than professionally oriented subjects. It must be remembered, however, that the institutional development of the law faculties within Quebec universities has been relatively recent. The written production now being assessed is, on the whole, from that generation of full-time teachers hired in the 1960s and 1970s. The real measure of their achievement must be judged in the light of their own time and in view of the challenges that were first presented. A variety of institutional developments of Quebec university law faculties, now to be considered, helps fix the context in which any judgement should be made.

7. Law Faculties and their University Milieu

The contemporary portrait of Quebec law faculties broadly sketched in the preceding observations has emerged within the last twenty years. This is a relatively short period in which to develop a sense of academic identity and vocation within the university milieu. We have to remember that it is only a short while since the very first and very small generation of full-time law teachers has disappeared from the scene.³⁷ They faced considerable problems in laying the first foundations for university legal education. While some of them spoke out strongly about the objectives of such education, they did not live to see their vision fulfilled.³⁸

Quebec's three senior law faculties are among the oldest in Canada. None of them however can really be considered to have become integral and vital parts of the universities to which they were attached or to have been able to sustain a vision of university legal studies much before the mid 1960s. They were never the counterparts of the intellectually broadly based and prestigious law faculties of continental European universities. An affirmation of a university mission in the study of law was hardly possible for institutions staffed by a majority of part-time teachers (and even part-time deans) and when the professional corporations controlled the very detail of courses taught and the number of classroom hours in which to do it. As one observer has so aptly put it, the law faculties were

37. I refer here to the small group composed of such figures as the late Stuart Lemesurier, Maximilien Caron, Percy Corbett and F. R. Scott.

38. Early direction in this sense was provided by H.A. Smith (of McGill) in "The Functions of a Law School" (1921), 41 Can. Law Times 27 who wrote this piece so that those involved in university education would be "fully informed as to the nature of the academic ideal in legal scholarship."

little more than the “ante-chambers” of the professional corporations.³⁹ Today, all of them, in differing degrees, can still be described as somewhat uneasy members of the university in so far as they continue to search for that balance between the “academic” and the “professoinal” perspectives with which it is their fate to wrestle.

It was the growth of the 1960s that gave rise to the claim for a new legitimacy in university law teaching. Quebec law teachers, collectively in their newly formed association (APDQ),⁴⁰ called for a new vision in legal education and an enfranchisement of the university programmes from professional control in 1964.⁴¹ Shortly thereafter, the Bar itself, in the process of renewing its own structures, accepted the notion that there should be greater freedom in university legal education. It contented itself with accrediting degree programmes rather than prescribing their detailed contents.⁴² Optional courses were thus made possible and all law faculties took advantage of this new freedom. It was a momentous change and an exciting time as intellectual horizons were broadened, graduate programmes established, additional staff hired, library expansion and physical plant facilities planned and in some instances realized. In the late 1960s and early 1970s, a new self-image therefore emerged in the world of Quebec legal education. This movement in ideas is demonstrated, in the case of a number of institutions, by their own feeling of having passed from the perceived inferior status of a *law school* (*école de droit*) to the superior one of a *faculty of law* (*faculté de droit*).⁴³ Even though the real content of the mutation was not always fully expressed, it certainly related to a sense of new intellectual departure and to a new belief in the importance of university law studies.

But the new confidence engendered in this period has been dissipated, to an unfortunate degree, by the continuing financial stringency with which the Quebec university network has now been living for some years. The growth of the late 1960s came, perhaps, just a little too late for

39. The expression is that the Me Louis Gagnon on the occasion of a colloquium on legal education marking the centenary of the law faculty of the Université de Montréal, “Le droit vit-il à l’heure de la société” (1978), 13 R.J.T. 231, at p. 262.

40. The “Association des professeurs de droit du Québec” was founded 7 March 1964. It held its first meeting on 22 May 1965.

41. “Mémoire de l’Association des professeurs de droit du Québec” in (1964), 14 *Thémis* 179-194.

42. *Bar Act*, S.Q. 1967, c. 77. Many of the details of the new regime are provided in (1968), 28 R. du B. 276. The development in changing attitudes can be traced, particularly in the published documentation of the Bar, as of 1965, in the *Revue du Barreau* of that year, volume 23 at p. 288, 313, 318, 388, 508. A leading figure in the work of change was McYves Prévost, Bâtonnier (or president) of the Quebec Bar.

43. For example I. Bernier, “La Faculté de droit de l’Université Laval de 1970, à nos jours” (1982), 7 Dal L.J. 356.

law faculties to benefit fully from the significant new government funding made available to universities generally in order to make university education more broadly accessible. Never having gained an initially strong budgetary position within their universities, the faculties have suffered — and still do suffer — from seriously inadequate funding. It is a matter of public notoriety that Quebec law faculties are less generously supported in their respective universities than most other disciplines and than their sister law faculties in other Canadian universities.⁴⁴ The impact on individual law libraries has been devastating;⁴⁵ the student:teacher ratios have for many years been among the worst in the country.⁴⁶ Salaries are also a problem. At one time it was considered reasonable for the salary of a senior full professor to approximate that of a superior court judge, with younger staff being paid in proportion. Now there is a manifest lag. These problems have been compounded in a number of universities by the policy of their central authorities that have required an *increase* in enrolment to generate further income without granting matching increases in operating funds. Inter-faculty co-ordination with a view to sharing costs has made no headway, even in respect of libraries, graduate studies and law journals. Independent development on all these fronts is, understandably, very much a matter of institutional pride.

The dramatic expansion of the law faculties and their first steps towards the creation of a new self-image; the continuing predictions of a saturation of the traditional legal professions; the financial stringency facing higher education in the province; and the new political and social climate in Quebec, — all these factors, as congruent influences operating within a relatively short span of years, have stimulated new reflections about university law teaching and its relationship to professionalism. It is to the leading ideas in these changing intellectual currents that we can now turn.

III. INTELLECTUAL CURRENTS IN QUEBEC LEGAL EDUCATION

8. *Quebec's Cultural Specificity in Law*

The existence in Quebec of the French legacy of the Civil law (*droit civil*) sets it apart from the rest of Canada and makes of Quebec what has come

44. Cf. A. Poupart, "A hue et à tia . . . ou les changements dans la filière à suivre pour devenir avocat" (1972), 7 R.J.T. 273; the joint press release of law professors of the Université de Montréal, "La formation des juristes est en péril", *La Presse* 16 April 1985, p. A-7. J.-M. Lavoie, article cited n. 23 above, *in fine*.

45. *Law and Learning* is only one of the more recent studies to draw attention to the "particular stringency" (p. 32) and "critical situation" (p. 159) in Quebec's university law library funding.

46. CCLD statistics for 1984-85 and earlier years.

to be called, in the large classification of families of law, a "mixed" legal system. The Quebec legal idiom, in other words, draws upon the juridical thought of the two great traditions of the western world, that of English Common law and that of the European or Romanist laws. There is no need here to rehearse the historical circumstances that brought this situation about. It is however appropriate to examine its intellectual impact upon the range of activities that are commonly designated as legal education.

The period of time fixed for our enquiry is, once again, highly appropriate. In 1945 the vision of the fundamentals of a Quebec legal education, with its emphasis everywhere upon Roman law and Civil law studies, is firmly in position. A first section of this part is therefore devoted to this classical view of the study of law. It is of course a view that, with the passage of time, and the new social and political influences already referred to, has been questioned and, in some important respects, supplanted. In a second section, therefore, and from a more contemporary perspective, the current intellectual climate of Quebec legal education will be analyzed.

A. The Classical Tradition in Legal Education

9. *Roman Law: Its Special and yet Artificial Relevance*

The study of Roman law long occupied a prominent place in Quebec legal education. This could be explained on the basis that Roman law has been, historically, a *real* source of private law, alongside the many other sources in the complex legal scene of Lower Canada.⁴⁷ Even with the codification of the Civil law in 1866, Roman law did not lose this status because, unlike the position legislated in France upon the promulgation in 1804 of the *Code civil*, pre-Code law in Quebec was not uniformly repealed.⁴⁸ What is even more surprising is the fact that it has never been stopped off as a source since 1866. Technically at least, therefore, Roman law can still be drawn upon in the law of Quebec today. That the subject could claim time in a university curriculum is not perhaps surprising when its place in the theory of the sources of private law is seen in this light.

And yet it can be truly doubted that Roman Law has ever been seriously deployed as a truly living source of law since 1866, as of which date the Code itself became the primary formal source of Quebec private law. It may be argued that it was, therefore, somewhat artificial to

47. McGill's curriculum in the 1850s consisted primarily of Justinian's *Institutes*, Blackstone's *Commentaries on the Laws of England* and the *Coutume de Paris*.

48. J.E.C. Brierley, "Quebec's Civil Law Codification: Viewed and Reviewed" (1968), 14 McGill L.J. 518.

perpetuate its study to the extent that it was in Quebec faculties,⁴⁹ and probably at the expense of other more proximate historical sources. Roman law can of course be justified in any law curriculum on broad, cultural grounds. After all, next to the Bible, it has been said, the compilations of Justinian have had greater influence on western civilization than any other work.⁵⁰ And it is on some such basis that its study was traditionally maintained in France and England. But, on the evidence now available, that is not the way its study was generally approached in Quebec.

Quebec students, no doubt like those elsewhere, never took easily to Roman law or showed much affection for it. Its study, as early as the 1860s, was said to have been "neglected".⁵¹ R.W. Lee, a Romanist of some note, testified to the same *malaise* in 1923.⁵² And the late Jean-Charles Bonenfant of Laval referred to the "crisis" in the teaching of Roman law in Quebec universities in 1954 and again in 1960.⁵³ This decline, he rightly suggests, was because of the way in which it was generally taught. It was treated as though it were a living law actually in force and therefore required a systematic treatment in all of its parts (not excluding the institution of slavery!). Somewhat inconsistently with this pedagogic approach, however its large place in first year studies was often justified on the ground that it constituted an "introduction" to law. As such it remained a compulsory first year subject longer in Quebec than it did elsewhere in Canada. To the extent that it survives at all in the curriculum today — and it has been almost invisible since the early 1970s — it only forms part of those courses, introductory or otherwise, that deal with the general evolution of western legal culture, concepts and institutions or less frequently as an elective course.⁵⁴

With the general decline of Latin studies throughout the educational system, there is really no question today that the study of Roman law will ever be revived or that Roman law scholarship will ever flourish in Quebec law faculties.⁵⁵ And even the maxims of Roman law, or those

49. Until the mid 1960s, Roman law was taught on average three or four hours each week throughout the whole of first year, at least in the older faculties.

50. Frederick Parker Walton, as cited by Jean-Charles Bonenfant in "L'enseignement du droit romain" (1954), 14 R. du B. 71, at p. 84.

51. M. Bibaud, *cf.*, n. 6 above.

52. R.W. Lee, "The Place of Roman Law in Legal Education" (1923), 1 Can. Bar Rev. 132.

53. In the article cited above at n. 50 and, under the same title, at (1960), 7 McGill L.J. 213. The literature narrating the general decline in Roman Law studies elsewhere in Canada is considerable.

54. Roman law was an optional course at McGill in the mid 1970s.

55. Indigent Roman law scholarship, as such, never really did progress beyond the stage of occasional doctoral theses. Deans F. P. Walton, R.W. Lee and Percy E. Corbett, all Romanists of note, had done most of their writing in the field before taking up their McGill appointments.

originating in the medieval gloss upon it, — those useful tools expressing general principles of law and legal morality, — would be an arcane vocabulary to the contemporary student and practitioner were it not for the publication of a dictionary on the subject, now happily in its second edition, compiled by one of Quebec's most distinguished contemporary jurists.⁵⁶

10. *Civil Law: Its Centrality in the Legal Order*

It is the implantation of Civil law rather than the study of Roman law that has made Quebec a culturally distinctive legal jurisdiction. The Civil Code, giving legislative expression to the Civil law, has undoubtedly dominated the law curriculum ever since its promulgation in 1866. And as the Civil Code has surely been the most prominent feature of the Quebec educational process over the years, its intellectual impact has been far-reaching. To understand this impact, some explanation has to be supplied of the place of the Code, and therefore of Civil law, in the Quebec legal order.

The Civil Code has been central to Quebec legal thought because it assumed the place of a Quebec "common law" (*droit commun*) in respect of the subject matters comprised within it. The 1866 codification, it will be recalled, reduced much of the living law of mid 19th century Lower Canada (or at least that of a "general" and "permanent" character in civil and commercial matters) into a highly systematized and highly stylized enactment similar in many respects to the French *Code civil* of 1804.⁵⁷ Its system amounted to setting out in one place, within what was then thought to be a supremely rational framework, the jural status of persons and their relations in the family context, the jural relations of persons with respect to property and, finally, the transactions, facts and acts of "civil" life giving rise to legal consequences. Its style involved expressing the propositions of the law on these topics in a language sufficiently general in scope to cover, or so it was intended, a variety of unforeseen cases with which future judges and practitioners would have to deal and which, therefore, would be adaptable to future circumstances as they arose. The legislative cast of mind of the Civil Code was very different from the statutory style of the time and it has remained a highly distinctive legislative instrument to this day.

The Civil Code thus assumed the central place of a "common law" in Quebec because, first and most importantly, it laid out the law on a range of fundamental legal institutions. It is the Code to which reference is

56. A. Mayrand, *Dictionnaire de maximes et locutions latines utilisées en droit québécois*, Montreal: Guérin, 1972; 2nd edition 1985.

57. Cf. in general, Brierley, *op. cit.*, n. 48 above.

made for the working concepts of Quebec law, such as marriage, contract, property, corporations and so on, and to which other legislation must necessarily refer.⁵⁸ It stabilized the vocabulary of the law on such basic concepts in both English and French.⁵⁹ Its formal structure, moreover, was viewed as the very model arrangement to which other major legislative instruments would conform.⁶⁰ This structure has also dictated the form in which doctrinal comment on the Code has been written⁶¹ as well as the organization of related judicial decisions in digests and indices. Its rational systematization of ideas has thus had long-lasting effects on the formal presentation of legal materials and has, in effect, somewhat eclipsed other areas such as public law and commercial law⁶² in which a comparable organizational imprint was not so readily achieved.

11. *Civil Code: Its Impact on Teaching and Legal Thought*

The Civil Code has been a major feature of the intellectual history of law in Quebec for well over a century. It has thus dominated the curriculum in all faculties right up to the present time. And while one may not want to go so far as one observer who has claimed that it was the *sine qua non* of "good" law teaching,⁶³ its advent has without doubt conditioned much of the general mode of law teaching in Quebec classrooms for many, many years.

As to the first point, and most obviously, Civil law subject matters have occupied the major place in the law faculty curriculum. From the time when all subjects were compulsory in all three years of the programme and even into the 1970s when optional courses became a standard feature, Civil law topics constituted the largest block of subjects

58. The Quebec legislature attempted to permit in its own enactments only *explicit* derogations to the Code, after the passage of the first *Interpretation Act* S.Q. 1868, c. 7, at s.10, a provision that, curiously enough, has never been consolidated or repealed.

59. P.-A. Cr  peau and J.E.C. Brierley, *Code civil — Civil Code 1866-1980. An Historical and Critical Edition* Montreal: 1981, "Introduction" at p. xxv.

60. The Quebec statutory revisions of 1888 and 1909, as well as some other major compilations such as the *Municipal Code*, adopt the same formal codal structure of titles, books, chapters, sections and subsections.

61. Quebec's early treatise authors, such as Loranger, Mignault and Langelier, scrupulously observed the arrangement of the Code in their own works. Those writing since World War II have considered themselves as free to depart from it. The same phenomenon is observable in, and probably can be traced to, the practices of French continental writers.

62. Parts of "Commercial Law" constituted Book IV of the 1866 Code rather than a distinct enactment, as in France. Much of it has of course since been superseded by later federal legislation.

63. S. Frost, "The Early Days of Law Teaching at McGill" (1984), 9 Dal. L.J. 150, at p. 155. The codifiers of 1866 did however see the Code as an aid in legal education, *Sixth Report* p. 262.

offered. This is hardly surprising when one enumerates, concretely, the topics comprised in the Code itself: the law of persons and domestic relations, matrimonial property law, inheritance and wills; the law of property and security devices, and the land titles registration system; the general law of contract, and the specific contracts such as sale, lease of things and services, partnership, mandate, gift, and other lesser contracts, as well as the “*quasi contracts*” and important parts of “commercial law” such as insurance; the law of civil wrongs (delicts and *quasi delicts*); conflicts of law or “private international law”; and finally, the law of civil evidence and, arguably, although opinions have been divided on this point, the law of procedure and practice before the civil courts even though this last topic is contained in the companion Code of Civil Procedure.⁶⁴

Secondly, the very style of the Civil Code has had an impact on classroom techniques and, therefore, upon the manner in which the Quebec student is drawn into thinking about the content of the law and its processes. Civil law teachers have been traditionally inclined to adopt an expository and didactic method in which the texts of the Code, rather than particular fact situations, are the primary raw materials subjected to analysis. This magisterial style and emphasis upon Codal texts do not, of course, necessarily exclude (as it once may have been thought⁶⁵) paying close attention to both judicial decisions and to the historical, socio-economic and comparative dimensions of any given topic. And a critical dimension, mainly through the prism of doctrinal comment, has long enjoyed a place of honour in Civil law teaching in both France and Quebec. It can also be said that, in the hands of a master, the grandly expository, continental classroom style, gathering all these threads together, may be a brilliant and, one might almost say, aesthetic experience. In different hands, however, it can certainly be an arid exercise in doctrinaire exposition.⁶⁶

But such an *ex cathedra* lecture style, of course, remains above all a performance: it is a show, more than anything else, in which a student

64. It is sometimes a matter of discussion whether “civil procedure” forms part of the Civil law cluster. This attitude may proceed from the general tendency to deny that the law of procedure has a “theoretical” dimension and, consequently, to conclude it can only be taught effectively by practitioners.

65. Cf. Louis Baudouin, “Comparison des méthodes et des institutions en matière d’enseignement du droit, leurs mérites et leurs défauts” (1951), 11 R. du B. 425.

66. The Quebec Civil law of property is constructed upon the fundamental classification that all property (whether corporeal or incorporeal) is divided into “moveables” and “immoveables” and the Code, at article 374, formally so prescribes. A distinguished law professor of some years ago (now deceased) who taught the subject is recalled as having invariably started his lectures with the statement, no doubt altogether mystifying to his students, that “in Quebec, there are two kinds of property, moveable property and immoveable property”.

audience has little or no participation, or indeed any activity other than the taking of notes. It implies for students only minimal or no pre-class preparation and none of the post-class muddle which may be consciously contrived by the archetypal "paper chase" teacher of the American classroom.⁶⁷ The rejection of such an approach and the defense of the formal teaching style was said to be justified by the very form, expression and style of the Civil Code itself. Taken together, both the Code and the manner of its teaching emphasized the logical and coherent character of the law and were seen as a way to inculcate an analytical ability and to expose the humanistic values for which the Civil Code itself was seen to stand. In this philosophy, these aspects of legal education were viewed as surpassing the need to promote a merely problem-solving technique in relation to particular fact situations.⁶⁸ Some such thinking was also reflected in the classical examination style of the "dissertation" or essay on a given theme, in which the student's response is laid out with all the formality of a strictly organized *plan* in the Cartesian manner.⁶⁹ It is to these different ideas that the charge of being overly "conceptual" and doctrinaire can no doubt be traced.

It is not seriously advanced today that such a formalistic approach to classroom activity or examination techniques is inherently the consequence of the existence of a Civil Code. And since the late 1960s, with the new generation of full-time teachers, such pedagogical views are very much in retreat. Conscious efforts have been made in all faculties and in all subjects over the last twenty years or so to develop a wide variety of teaching materials, to adopt *les méthodes actives* and to orient exams and other exercises (*les travaux pratiques*) towards concrete problem solving and policy issues.⁷⁰

67. It is, I think, some such point that is implied in the remark of the late Lon Fuller when he asserted that civil codes are, for students, "why-stoppers".

68. Baudouin, *loc. cit.* n. 65 above; Y.-A. Caron alludes to the same point, "Gilt-Edged Legal Education: A Comparative Study" (1968), 14 McGill L.J. 371. *Adde* G. LeDain in the articles cited below n. 70.

69. L. Baudouin, "Examens de droit civil dans les universités de la province du Québec" (1947), 7 R. du B. 477. The typical style of French continental law exams, not unknown in Quebec, involved calling for a disquisition on an abstract theme such as "Of defects of consent" (*Des vices de consentement*) or "Of Usufruct" (*De l'usufruit*) without any attempt being made to frame it in the form of a question. It should not however be assumed that the candidate was simply expected to give an uncritical account of some such subject; on the contrary the "good answer" would be one that exhibited a thoughtful reflection on all aspects of it and revealed a sophistication that the average law student did not possess or was even inclined to pursue.

70. Collections of "materials" in one form or another are now as common as in other North American faculties; the place of the *manuel* has already been adverted to, no. 6 above. *Cf.* Hon. Mr. Justice G. E. LeDain (as he now is), assessing the educational scene on these points, on the eve of the change, in a report to the Association of Canadian Law Teachers (Ottawa, 1957), published as "Teaching Methods in the Civil Law Schools" (1957), 17 R. du B. 499 and in "The Theory and Practice of Legal Education" (1960-61), 7 McGill L.J. 192. J. Boucher,

It nonetheless remains true that the Civil Code has been emphasized in the curriculum of Quebec law faculties as much for its style, and the method of analysis to which it gives rise, as for its substantive content. It has been traditionally viewed not only as the most important part of the "private law" but as the most important part of the law itself. A thorough training in the Civil law, it is often argued, imparts those fundamentals and skills that equip the student to tackle other branches of the law,⁷¹ many of which have not yet reached the level of legislative sophistication achieved by the Code itself. Much can indeed be said for this point of view in so far as it underscores the not very controversial point that some large part of the legal education, at least in the first year of study, must promote the fundamental grasp of basic principles and skills. The real question is not there. It is rather in the choices to be made about teaching styles and about how much Civil law is truly "fundamental" and about how other parts of the law, notably those deriving from the Common law tradition and relying upon other methods and techniques, should be reflected in curriculum choices of law faculties serving the needs of a bi-systemic legal jurisdiction. To the evolution of more contemporary attitudes on this matter, beginning in the mid 1960s, attention can now be given.

B. Contemporary Ideas and Attitudes

12. *Summary of the Last Two Decades*

Over the last twenty years Quebec law faculties have been exhorted to shed their conservatism and to strike out in new directions by re-defining their orientations. They have been called upon both to strive for the fulfilment of a university vocation that they had not hitherto been perceived as having embraced and, more recently, to forge a new blend of "academic" and "professional" training that would displace the contemporary duality in the structures of legal education arising from the shared jurisdiction between the professional corporations and the

"Évolution récente de l'enseignement du droit: méthodes d'enseignement: Canada, Droit civil" (1974), 11 Col. Int. Dr. comp. 138. It is of interest to note the call, as early as 1929, for the adoption of the case method in Quebec law teaching by E. Lambert & M.J. Wasserman, "The Case Method in Canada and the Possibilities of its Adaptation to the Civil Law" (1929), 39 Yale L.J. 1.

71. For ex. P. Azard, "Recherche d'une méthode pour l'enseignement du droit civil" (1947-48), 50 R. du N. 133. G.A. Beaudoin, "Évolution récente de l'enseignement du droit: les programmes: Canada, droit civil" (1974), 11 Col. Int. Droit Comp. 13. The latter also sees it as "normal" that Civil law retain an important place in law studies because it is "an inherent part of the distinct Quebec culture" (*imprégné du génie propre de la population du Québec*), p. 16-17.

university. These two missions may well be compatible, but working models, as we shall shortly see, do not come readily to hand.

The APDQ in 1964 was the first body to call for a new vision in university legal education.⁷² Its arrows were directed to the professional corporations' tight control over university training which, the Association maintained, had to be relaxed. It wanted law teaching be given what was said to be its real dimension — that of forming “jurists.” It argued for a freedom in education that would allow a law degree to serve as basic training for professionals as well as for others who sought a general or “liberal” legal education. The Bar, in the following year,⁷³ adhered to this view. It encouraged the faculties to develop programmes along more than the traditional “professional” lines. In fact, this meant that it was open to faculties to move away from its long-standing concentration on private law. The next years were devoted to working out the way in which the field of legal education could be shared as between the university and the profession, each having a distinct vocation. These arrangements were in place by 1968 when the Bar organized its own post-degree and pre-Bar examination “professional” training programme. The change coincided with what was called a “de-standardization” of university legal education through the implementation, in all faculties, of varying ranges of optional courses. The substance of the shift was reflected in the new attention being given to public and commercial subjects at the expense of traditional private or Civil law.

These new arrangements were hardly in place when they were found to be faulty. They did not adequately recognize the need as among faculties for a “common core” (*tronc commun*) in the curriculum upon which the Bar could build its own professional training programme. To the on-going discussions provoked by the release of the “Guérin Report”⁷⁴ of 1983 on what these arrangements might properly be, there was then added the voice of a further and more elaborate study (the “Lajoie Report” released in two parts in 1974 and 1976) on the general adequacy of legal education when assessed against the predicted future needs of Quebec society in the year 2000.⁷⁵ This report advocated a radical re-orientation away from Civil law and in favour of “public” and “social” law. Two further intervenants also delivered themselves of views

72. APDQ *Mémoire* of 1964, n. 41 above.

73. Me Yves Prévost, at the 1965 annual meeting of the Quebec Bar (1965), 25 R. du B. 289 and his speech of 5 June 1965 (p. 318) and again at the swearing-in of new lawyers (p. 388), at the opening of the courts (p. 406 at p. 410) and at the inaugural meeting of the Federation of Quebec Law Students (p. 508). The *Rapport final* of the “Comité de révision des structures” is given in the same volume at p. 312.

74. Below no. 20.

75. Below nos. 13 and 14.

on legal education in the 1970s. The "Office of Professions", created in 1974 as the agency to superintend all professions in the province pursuant to the *Professional Code*, challenged the very idea that any profession should assume any educational role whatsoever. Its view amounted to affirming that if any "professional training" were required in addition to academic training it should form part of the responsibilities of the university.⁷⁶ Finally, the Council of Universities, an advisory body to the Quebec Minister of Education, found it appropriate to comment on all these earlier views.⁷⁷ It concluded in 1980 that Quebec law faculties were fundamentally "old fashioned"⁷⁸ and suggested that they should be pursuing . . . all of the above!

There can be few other jurisdictions over the last twenty years in which legal education, in its various ramifications, has been the object of so much rhetoric on the part of so many actors, — and not all of it trivial. But the themes are nonetheless easily identifiable, as already suggested. They may readily be reduced to two issues: first, the question of identifying the appropriate nexus between "academic" and "professional" phases of legal education; and second, which in some measure is the same question but from a different point of view, the matter of how to articulate the specific role of the university. Having sketched the general background of the last two decades, we are now in a position to gauge the measure of specific change that has occurred in the universities' ideas about legal education. We can then turn, in a final part, to the evolution that has taken place in the views about professional training as it has been envisaged by the professional corporations.

13. *Decline in Primacy of Civil Law*

In a first and leading change of ideas, there has been a decline in the relative importance of Civil law studies in Quebec law faculties. A comparison of any faculty's calendar or announcement (*annuaire*) of 1965 with that of the current academic year will show this to be the case. Many of the subjects within the traditional canon of the Civil law, once compulsory, are now optional. Not all the Civil law, therefore, is now viewed as an integral part of a basic legal training. And in so far as it was ever the practice of any faculty to proclaim its primary research

76. Below no. 21.

77. Gouvernement du Québec, Conseil des universités, *Avis au Ministre de l'Éducation sur deux rapports réalisés par le Centre de recherche en droit public de l'Université de Montréal: "La place du juriste dans la société québécoise." "L'adéquation des programmes des Facultés de droit aux fonctions de travail de leurs diplômés"* (Avis no 78.12), Quebec: 1979, 25p.

78. Gouvernement du Québec, Conseil des universités, "Avis préliminaire sur la formation des professionnels à l'université" [Quebec:] 1980, 83p. (and *annexes*).

orientations, Civil law is not today advanced as one of the priorities.⁷⁹ There is, as well, the general impression about that proportionately fewer graduate students specialize in Civil law. The subject matter is not, in a word, “fashionable” in the word of legal education.

The decline in the primacy of the Civil law reflects, no doubt, a perception that private law has lost the pivotal place it once had in western legal systems generally and in the nature of the practice of law itself. It would be inappropriate here to attempt to enumerate the social and economic causes since World War II that have brought this change about. Suffice it to say that Quebec has not been immune to these developments, as an important contemporary study of Quebec legal practice and education has shown. The “Lajoie Report” of 1974/1976 has plotted the trend in some considerable detail in Quebec⁸⁰ and advanced it to argue for a major re-orientation of educational priorities for the future in favour of “public” and “social” law,⁸¹ as we shall see in a moment.

Some of the decline may also be attributable to other factors specific to Quebec itself. The parameters of the Civil law have been dictated, since 1866, by those of the Civil Code itself. The geography of the Code established at that time has conditioned the intellectual reflection about the appropriate range and scope of the Civil law, whether in the legislative chamber when contemplating amendments,⁸² in the doctrinal commentary upon it⁸³ or in the university classroom. These attitudes have been prompted, and in turn nurtured, by both a fear that the “purity” of the Civil law would be compromised if a broader view of its horizons were adopted (the theme is omni-present in the literature) and by the fact that important developments, involving new inter-personal relations not falling within the very heart of the Code’s original scope, have often been placed outside its covers.⁸⁴ The two ideas, in reality, amount to the same

79. McGill in the mid 1960s singled out “Civil Law Studies” as a particular research preoccupation.

80. A. Lajoie & C. Parizeau, *Adéquation des programmes des facultés de droit aux fonctions de travail de leurs diplômés* Centre de recherche en droit public, Université de Montréal [Montreal:] 1974, 307p.

81. A Lajoie & C. Parizeau, *La place du juriste dans la société québécoise*. Centre de recherche en droit public, Université de Montréal, 1976, printed as (1976), 11 R.J.T. no.3 p. 393-601.

82. The immobilism of the legislature in respect of amending the Civil Code is well known, Cf. P.-A. Crépeau “Civil Code Revision in Quebec” (1974), 34 Louisiana L.R. 921. The practice of “inexplicit statutory derogations” theoretically ruled out by S.Q. 1868, c.7, s.10 (as explained above no. 10 and at n. 58) is less well documented.

83. The attitude, best exemplified by F.C.S. Langelier styling himself as “Professeur de Code civil” in his treatise *De la preuve* of 1894, was still prevalent well after World War II.

84. Quebec’s *Charter of Human Rights and Freedoms* was, for example, originally contemplated as an introductory “decalogue” of articles at the start of the Civil Code itself. It was however enacted as a separate statute, now R.S.Q. c.C-12. In the same progression of

point. Nor has Civil law scholarship, over the years and probably for the same psychological reasons, contributed much to an understanding about how "public" law and "private" law inter-penetrate and, in particular, how Civil law notions are deployed in new and rapidly developing fields, such as social security law or administrative law.⁸⁵ What is more, it has been Civil law scholarship that has uncritically accepted, and perpetuated, the traditional European 'distinction' between "public" law and "private" law which may well not have the same justification in Quebec that it has had in France and other European countries.⁸⁶

Can a renaissance in Civil law studies be anticipated in Quebec faculties? There are reasons for thinking so. We are, in Quebec, in an era of law reform. A complete renewal of the Civil Code is now in progress following upon the proposals made by the Civil Code Revision Office.⁸⁷ The thrust of the reform is to expand the horizons of the Code and thus to re-situate it at the centre of the legal order. Its ultimate passage will surely imply the need for a renewed importance for Civil law studies, and in particular the place of Civil law legal theory, in the province's law faculties.

14. *New Developments: Preparing for the Year 2000?*

The decline in the relative importance of the Civil law, beginning in the late 1960s, was matched by the increased place given to a whole range of new and often highly specialized concerns. In this respect, Quebec's educational programmes have paralleled, in varying degrees, those found elsewhere in the country although the language of the labels used to describe these new concerns may be distinctive. There has been noticeable growth in two quarters: "public law" (*droit public*)⁸⁸ and what is now called "social law" (*droit social*).⁸⁹ The boundaries of these two

ideas, a current legislative reform of the Civil Code (Bill 20 1984, *An Act to add the reformed law of persons, successions and property to the Civil code of Québec*) would apparently place the *Charter* above the Civil Code itself in the hierarchy of "sources" of law (v. the *Preamble*). Quebec's "consumer law" constitutes a separate enactment as the *Consumer Protection Act* R.S.Q. c.P-40.1 rather than a "special contract" of the Civil Code alongside other "special" contracts.

85. This task has fallen to and been accomplished by "public law" lawyers, as for ex. R. Dussault, *Traité de droit administratif canadien et québécois* (1974), 2 vols. now in its second edition.

86. Cf. L. Baudouin *Les aspects généraux du droit public dans la province de Québec* (t. XVII, *Les systèmes de droit contemporains*) (1965), at p. 285-289.

87. [Gouvernement du Québec] Civil Code Revision Office, *Report on the Québec Civil Code* (Quebec: Éditeur Officiel, 1978).

88. "Public Law" is generally taken to include at least constitutional law, administrative law, public international law and organizations, municipal and planning law, public finances, communications and transport law.

89. "Social law" has been used as the umbrella term to designate such diverse fields as labour

newly acknowledged sectors naturally overlap and inter-connect. But whatever the language used and whatever the organizational framework adopted, these curriculum developments recognize the new importance of the role of the state and its agencies and, in jurisprudential terms, demonstrate a concern for the values of a system of distributive rather than corrective justice. Some observers have gone so far as to suggest that such orientations should in fact become *the* major component (*axe de développement*) of the curriculum in preparation for the year 2000.⁹⁰ Most institutions have, however, retained a more even-handed view and reserve a still significant place for fundamental Civil law. Nor is such reticence to make revolutionary changes in curriculum necessarily no more than a sign of conservatism. As explained above, the Civil law is itself on the point of a major renewal and will soon acknowledge aspects of distributive justice within traditional private law relationships (family, property, contract). In the light of these imminent developments the real challenge in future curriculum planning is to avoid the creation of a multitude of little parcellings of courses in the face of the vast statutory law now in place. The real need is to promote that kind of synthesis in these new subjects for which the systematized method of the Civil Code itself still provides a model.

There has been less development in what have been called "foundation" law courses (*fondements de droit*)⁹¹ although there are signs in some faculties of a new interest here too, as well as in inter-disciplinary studies (sociology of law,⁹² law and economics,⁹³ legal history). It is, perhaps, singular, at least at first sight, that comparative law has not made greater strides. In Quebec one lives, in a sense, the everyday reality of at least comparative methodology, with the Civil Code on the one hand and English statutory style on the other. But what is more, the potential for meaningful comparative law investigation at the substantive level is considerable in view of Quebec's "mixed" legal system. One suspects,

law, health law, poverty law (*droit des défavorisés*), human rights and civil liberties, consumer protection, social security law, women and the law courses, etc.

90. A. Lajoie & C. Parizeau, *La place du juriste dans la société québécoise*, cited above n. 81, at p. 585.

91. Jurisprudence (*théorie générale du droit*), legal philosophy, legal history, drafting and interpretation of legislation, "legal method." McGill has offered, for many years now, a first year course, entitled "Foundations of Canadian Law", that attempts to provide students with a broad view of the nature of law, legal process and the historical and philosophical traditions of the common law and the civil law in Europe and Canada, as well as what is specific about "Canadian law" on a national scale.

92. Cf. F. Dumont, "Une science à construire: la sociologie du droit" (1952) R.J. Thémis 51. Criminology has a distinguished place at the Université de Montréal under Professeur D. Szabo . . . but not within the law faculty.

93. It has made a start at the Université de Montréal and at McGill.

however, that not all academic programmes in the province fully reflect the Common law origins of many Quebec legal institutions and tend to see them as, in some sense, autonomous or as having come into existence without historical roots. Political philosophy may, in part, explain this phenomenon. Formal comparative law studies have not, in any event, gained much prominence in Quebec. Lack of dual training within the professoriate and the inability on the part of large numbers of students to manipulate both languages (English in particular) no doubt account for it in some measure.⁹⁴

Quebec law faculties today, therefore, reflect a wider range of interests in their programmes than they did twenty years ago. It remains however to be seen over the next years whether one or more of them will move along the path of greater specialization, either spontaneously or as a result of some co-ordination emanating from a higher authority. Some schools, as already pointed out, have proclaimed particular orientations in research and graduate work.⁹⁵ On the other hand, it is difficult to see how undergraduate programmes could ever become truly distinctive. Inevitably, there is a large degree of homogeneity among faculties in their conceptions of legal education, and this will probably not change despite a veneer of optional courses and specialization at the graduate level.

15. *Homogeneity of Legal Education*

From the earliest times undergraduate legal education in Quebec has been resolutely and frankly conceived as a training intended to prepare students for the practice of law, whether as lawyer or notary. And since its content was dictated in detail by the professional corporations, it necessarily gave rise to a uniformity of approach as among the several faculties. Even with the introduction in the 1960s of optional courses, which enabled many schools to refer to their programmes as “well rounded” or “liberal”, and the changes in emphasis just described which allowed for some minor specializations within first degree programmes, an overall homogeneity nonetheless continues to reign. To some degree this similarity is no doubt inevitable.

No faculty, for example, is apparently ready to move into a two stream approach that would distinguish training of “legal technicians” from that of “jurists” although binary programmes of that type have

94. A. Mayrand, “Le droit comparé et le pensée juridique canadienne” (1957), 17 R. du B. 1 raises some of these points. The Université d’Ottawa published a series of *Colloques* devoted to a variety of comparative law topics for many years (1963-1975), through its Centre canadien de droit comparé, but this collection appears to have been discontinued. McGill’s efforts have been directed for the most part to international commercial law.

95. No. 5 above.

recently been advocated as socially desirable.⁹⁶ The student population exerts a powerful influence on this homogeneity, of course, simply by consistently opting for courses that relate to preconceived ideas about the nature of the practice of law. It is a pattern of choices that some have qualified as stereotyped. But it nonetheless reflects the real ambitions of most students. And no faculty, probably for want of resources, or the will to do so, has yet been prompted to develop fully a clinical programme that would give new character to this precocious professional orientation.⁹⁷

These are the realities with which university administrators have to deal, even when they see it as desirable to strive to ascribe a "distinctive character" (*identité propre*) to their several law programmes. The play of different circumstances has however set two Quebec institutions apart from the others.

16. *The Oldest and Newest Law Faculties*

Two institutions, the oldest and the newest of the province's law schools, have gained distinctive places in the Quebec educational milieu. McGill and the Université du Québec à Montréal (UQAM), for very different reasons, do stand apart from other faculties in the province.

McGill, because it is an English language institution, has had closer links with the rest of the North American continent than her sister faculties.⁹⁸ It has for some years seen itself as constituting a bridge across the jurisdictional lines of the Civil and Common law traditions in Canada.⁹⁹ It is the only Canadian law faculty to provide Civil law

96. The "Lajoie Report" of 1976 (n. 81 above), that of the Conseil des universités in 1980 (n. 78 above) and *Law and Learning* in 1983 have all advocated programmes along these lines. No faculty now offers training for para-legal personnel unless the adult education programmes leading to a *certificat* (rather than a degree) at Montréal, Laval and Ottawa are meeting this need. UQAM's programme (*Cf.* no. 16 below) may also be characterized, in some part, as conceived to this end.

97. Various forms of clinical training in undergraduate studies have been called for over the years. *Cf.* for example, in addition to those cited in the preceding note, J. Choquette (as Minister of Justice), "Un rôle nouveau pour les facultés de droit?" (1972), 7 R.J.T. 281; F. Chevette, "De l'enseignement clinique du droit aux "cléricatures" imaginaires" (1972), 7 R.J.T. 315; M. Guy "Facultés de droit et chambres professionnelles" (1970-1971), 73 R. du N. 3.

98. McGill was a member of the AALS (Association of American Law Schools) in 1921. *Cf.* A.Z. Reed, *Present Day Law Schools in the United States and Canada* (1928), p. 522.

99. The "National Programme" at McGill, established in 1968, is described in J.E.C. Brierley, "Developments in Legal Education at McGill 1970-1980" (1983), 7 Dal L.J. 364. An account of H.A. Smith's earlier effort to do so is given in S. Frost & D.L. Johnston, "Law at McGill: Past, Present & Future" (1981), 27 McGill L.J. 31 at p. 35. The following further details can be added to this account. A chair in "Jurisprudence and Common Law" was established in 1919. Opposition from the local Bar brought about the demise of this early vision. In the academic year 1923-24 the place of the common law in the curriculum was reduced to that

training in English alongside a range of French language courses. Its integrated undergraduate programme in Civil and Common law gives access to professional milieux across the country and, lately, to the U.S.A. and beyond.¹⁰⁰ McGill, moreover, among Quebec law faculties, was the first to embrace the concept, in 1925, of a full-time undergraduate degree¹⁰¹ and it did so therefore well before this was made a universal requirement by the Quebec professional corporations. It appears to have emphasized, earlier and more than other faculties, business and commercial law and public and international law. For some time now it has drawn its teaching staff and student body, both undergraduate (a sizeable majority of which is composed of those holding one or more university degrees) and graduate, from across the country and elsewhere. It thus enjoys a cultural diversity that is not duplicated in other institutions. In its sense of national and international objectives,¹⁰² its use of both Canadian official languages and in its dual private law training, McGill is probably perceived as being neither a typical "Civil law faculty" within Quebec nor as a typical "Common law faculty" within Canada. It enjoys a position in which it can develop new dimensions in legal theory with respect to which the total substance of Canadian law offers rich potential.

The educational programme of the "Département [or "module"] de sciences juridiques" was founded in 1974 at UQAM, in the social climate already described, in order to promote a highly specific orientation in the study of law. Because its programme constitutes a radical departure from traditional educational goals, it has not been free of controversy.¹⁰³ Its highly articulated philosophy of education is rooted within a materialistic *critique* of the legal system: law is seen "not primarily as a social reality

of "in so far as it is in force in Quebec". Reed (n. 98 above) qualified the attempt to create a national law school as "ambitious" and concluded in 1928 that the time was not yet ripe for it. The earliest reference to the idea that McGill was particularly suited for such dual training that I have been able to find is that of W.S. Johnson, "Legal Education in the Province of Quebec" (1905), 4 Can. Law Rev. 451-457, 491-499, at p. 496. H.A. Smith's own views were, apparently, not free of imperialist aspirations about "the Empire". Cf. his "Law in the Empire" (1926), 4 Can. Bar Rev. 322 (reprinted from *The Times*, London, 7 April 1926).

100. For several years now some half-dozen or so McGill graduates, usually with both B.C.L. and LL.B. degrees, qualify for the New York Bar.

101. This was made possible by legislation of that year S.Q. 1925, c. 56. Cf. below no. 17. A.Z. Reed attributes this change to a McGill initiative, *op. cit.* (n. 98 above), p. 355, but I have been unable to verify this assertion.

102. Particularly in relation to its graduate programmes, cf. above no. 5.

103. It was in fact born in controversy. S. Brault *et al.* give a very full account in *L'université, la politique et le droit. L'affaire des sciences juridiques à l'UQAM* Montreal: Editions québécoises, 1973. See also UQAM, *Rapport du comité de planification sur l'enseignement du droit*, Service de planification, Montreal: Université du Québec, 1970. *Débats*, Assemblée nationale, vendredi 4 mai 1973, B-1068-1071 and editorial comment in *Le Devoir* 5 May 1973 and *La Presse* 10 May 1973.

but rather as a language the main function of which is to hide, to the benefit of well identified interests, a social reality oppressive to the majority."¹⁰⁴ The curriculum is designed to prepare for the social change, perhaps radical social change, in which "individual citizens, citizens' groups [*organismes populaires*], unions and the cooperative movement"¹⁰⁵ will have new prominence. The perspectives of "public interest" groups such as tenants' and consumers' associations and "social law" have been primary. A real effort to move towards inter-disciplinary dimensions in order to place law at the crossroads of "les sciences humaines" has been attempted. To achieve these ends a full integration of "theoretical" and "practical" training has been articulated and new pedagogical techniques and modes of evaluation put into place. UQAM tries to draw its students today from the milieux in which, as graduates, they will later be apt to intervene directly as "agents of social change".¹⁰⁶ Professionalism, in the usual sense, is thus rejected outright. Applicants to the school are alerted, in a *lettre de désincitation*, that it does not have the training of future members of the professions primarily in view, and it has not been immodest about the lack of success its graduates have had in professional entrance examinations.¹⁰⁷

This highly courageous innovation in legal education is now little more than ten years old and it has undergone a number of adjustments that have involved some departure from its earliest vision. Some say it now tends to have a more *bourgeois* orientation. Its approach remains nonetheless the most original of any Quebec or Canadian institution. One suspects that it could not have been achieved anywhere except in the new and popular university that UQAM was intended to be and at a time, as already described, when professional control over legal education was waning. It is to this aspect of legal education in Quebec, and particularly the on-going search for models of "professional" training as promoted by the professional corporation themselves, that attention can now be turned.

104. Brault, *op. cit.* p. 37 (*le droit, considéré non pas d'abord comme une réalité sociale, mais comme un langage dont la principale fonction est de masquer au profit d'intérêts précis et identifiables une réalité sociale oppressive pour la majorité*). Adde P. Mackay, "Les notions de justice et d'équité dans les sciences sociales québécoises (1935-1985): ruptures et continuités, absences et apparences" appearing as chapter XXII of *Continuités et Ruptures. Les sciences sociales au Québec* Montreal: Presses de l'Université de Montréal, 1984, at p. 337-339.

105. Brault, *op. cit.* p. 7.

106. C. Thomasset, "Les juristes non avocats du Québec" (1981), 4 Bull. can. de l'aide juridique / Canadian Legal Aid Bulletin 89-129.

107. P. Mackay, "L'enseignement du droit dans une perspective de changement social" (1980), 44 Sask. L. Rev. 73, at p. 93-94. Details of graduates' poor results in professional examinations are given at p. 95.

IV. THE SEARCH FOR PARADIGMS IN PROFESSIONAL TRAINING

17. *Early Role of Professional Corporations in Legal Education*

Ever since their creation as autonomous professional corporations in the late 1840s, the Quebec Bar and the Chamber of Notaries have exercised control over admission to the practice of law. This control has always gone beyond merely setting qualifying examinations and has included the specification of the kind of training students must undergo in order to be eligible even to sit them.

For almost a century dual paths were open to the student. He might by-pass university training altogether and serve indentures (*cléricature*) in a law office for a number of years (varying from five to four and ultimately reduced to three), or he might acquire a university law degree and concurrently complete a reduced period of indentures. University study in this system was therefore part-time and its content was wholly dictated by the demands of the professions' entrance examinations. The corporations thus controlled both the content and the mode of university legal education. The first step towards recognizing the potential of a larger role for university education came in 1925 when students were given the choice between a three year indenture or a three year full-time university programme complemented by a service in articles (*le stage*). As already described, the consummation of this idea, first attempted in 1937, was put firmly in place in legislation of 1947 when the three year university degree was made a universal requirement. But the content of that degree, and even the features of pre-law education, were still prescribed by the corporations. As one historian has put it, the professions never abandoned their "rights" in legal education, they merely delegated their exercise to the universities. It was, in effect, a "public duty" and an *objet naturel* of the corporations to control the educational process in order to ensure not only a minimal competence among practitioners but also, it was argued, and more grandiloquently, "to safeguard legal institutions".¹⁰⁸

With the maintenance of professional control over university curriculum as well as professional entrance examinations, and the institution in 1950 of a period of "professional training" interposed between the two phases and the imposition of a required period of articling, all the elements were in place for the debates and the conflicts of the next thirty years. The struggle has involved the corporations, the law faculties, the law students and, more recently, the state itself.

108. These ideas are expressed by M. Nantel, "L'Étude du droit et le barreau" (1950), 10 R. du B. 97, at p. 118.

18. *The 1950 Regime of Professional Training*

The significance of the change in 1947-48 for the universities' place in legal education has already been described.¹⁰⁹ While some may argue that they have been slow to fulfil all of the implications of universal, full-time legal education, it has to be reiterated that the universities have only recently been recognized as better placed than law offices (if not always especially well equipped) to provide the first elements of legal training. Today, however, it seems surprising to recall that the universities were also seen, at the time, as the appropriate forum in which to organize a post degree "fourth year of practical and professional training" and, for the lawyers at least, the completion of articles. The notarial profession, until recently, has not seen the need for such an additional phase of training.

It is certainly now accepted wisdom that there be such additional "professional" formation over and above the earning of a law degree. Some complement to the perceived new academic emphasis in university training is thought by most observers to be not only appropriate but essential. This has been the prevailing attitude in Quebec since the early 1950s.¹¹⁰ Looking back now, however, it is not clear why the corporations were themselves not prepared at the time to take on the job of this new professional training and why they delegated it to the universities. Perhaps they saw the best of both worlds in an arrangement whereby the law faculties did all the work of recruiting practitioners to teach the programme and the corporations retained final authority in the whole process. The reality of that authority was fully revealed to the candidates in the professional admission examinations which, for many years, were administered according to an almost inhumane timetable and, what is more, bore as much upon the content of university studies in their "theoretical" part as upon that of the "practical training" programme itself.¹¹¹ The latter, in fact, had little content relating to what legal professionals actually do. The design of the programme was not geared to initiate students to the techniques of law as a business and its location in the university milieu had the not unexpected effect of duplicating to a large extent a university-type approach.

109. No. 2 *et seq.* above.

110. W.C.J. Meredith, "A Four-year Law Course of Theoretical and Practical Instruction" (1953), 31 Can. Bar Rev. 878, at p. 881. There was however some early uneasiness about the programme, at least on the part of the notaries: J.-G. Blain, "La quatrième année de droit mérite-t-elle d'exister?" (1951), 2 *Thémis* 63.

111. All three final examinations were completed in a single day. The "theoretical" examination consisted of a memory test of the contents of the Civil Code and Code of Civil Procedure. F. LeBrun, "L'examen du barreau: une réforme est-elle souhaitable?" (1963), 13 *Thémis* 157.

The 1950 regime was, at the time however, judged to be an important new development in Canadian legal education.¹¹² But by 1964, it was condemned as flawed by the basic artificiality just mentioned. "Practical and professional training" it was argued by the APDQ¹¹³ should take place in the milieu to which it related, not the university. As mentioned earlier, the APDQ also attacked the broader issue, namely the corporations' demonstrable lack of confidence in the university training, manifested through their retention of control over pre-law qualifications and the actual content of the degree. In 1968, as we have seen, the Bar did assume responsibility for the fourth year practical component and also relaxed its control over pre-law qualifications and the content of the law curriculum.¹¹⁴ The faculties were, as many then saw it, thus fully enfranchised in their vision of what they should be about.

19. *The 1968 Regime and the 1972 Crisis*

The new "fourth year programme" of the Quebec Bar was inaugurated on 1 June 1968. It consisted of an obligatory period of articles (*le stage*), a series of "practical courses" (*entraînement professionnel*) given by the corporation itself in centres established in Quebec City, Montreal and Ottawa, and later in Sherbrooke, and of a set of professional examinations, framed in practical terms, on the content of those courses and administered according to a reasonable schedule. Good work was accomplished in the preparation of teaching materials.

But the new regime had a number of weaknesses which soon brought the programme into discredit.¹¹⁵ The growing numbers seeking admission, as the large university enrolments passed through the system, and the inadequate number of teachers in the Bar admission course, required a magisterial teaching style not very different from that known in the faculties. And a disparity in the requirements and expectations of the different faculties themselves, now well launched in establishing optional courses, forced the Bar (so it argued) to teach in "fundamental" subjects and to provide a theoretical framework (*rappel théorique*) for its

112. Meredith, *op. cit.*, n. 110 above; Adde G.E. Ledain (as he then was), "Legal Education and Training: A Report to the Quebec Committee" (1958), 1 Can. Bar. J. 33 and "The Practical Training of Law Students in the Province of Quebec" (1960), 3 Can. Bar J. 242.

113. APDQ *Mémoire* 1964, cited no. 7, n. 41 above.

114. Report of the "Comité des études universitaires et de formation professionnelle" (1967), 27 R. du B. 338; Report of the General Council of the Bar of 3 June 1967, (1967) 27 R. du B. 425. Details of the new régime are provided at (1968) 28 R. du B. 276 and 387.

115. Much of this material is related in the "Guérin Report" cited below. Adde H. LeBel, "Formation juridique et formation professionnelle: quelques réflexions" (1972), 7 R.J.T. 305. The Bar's point of view at this time is provided by J. Moisan, "Barreau et universités" (1972), 7 R.J.T. 287.

practical component. There was, moreover, a dispersion of authority within the structures of the Bar admission course. The Bar's examiners in the professional exams were not the same people who did the teaching. This system had grown up, not as a conscious choice in favour of external examiners as in the English mode, but rather through the peculiarities of the Bar's structures. Inevitably, an embarrassing gap between what was taught and what was subject matter for examinations appeared to the discomfort of the students.

The situation exploded into a public issue in the session of 1972 when an outrageously large number (58%) of students failed the August examinations. A student strike, street marches and near riot conditions in the premises of the Bar made headlines in the news and prompted questions in the Quebec legislative assembly. The Minister of Justice, under the authority of the *Public Inquiry Commission Act*,¹¹⁶ struck a commission of enquiry, under the chairmanship of Judge Guy Guérin, to examine fully the whole matter of legal education in the province.

20. *The "Guérin Report" (1973): A New Blueprint*

Judge Guérin's report, handed down in June 1973,¹¹⁷ was the first major study of the structures of legal education in the province since that undertaken by the Bar itself forty years before when it concluded that a system of full-time legal education was needed in Quebec.¹¹⁸ Like that earlier report, the Guérin Report drew upon the experience of other jurisdictions, notably English and American, for its formulation of a philosophy of legal education. Its principal merit was to have articulated concrete means, among a number of subsidiary suggestions and formal recommendations,¹¹⁹ for balancing what it took to be the distinct interests of the universities and the Bar. And, what was an innovation until then, it also left in place a joint committee in which the dialogue between them could continue. It was, in effect, a good effort at providing a largely workable blueprint for the future development of Quebec legal education. None of its recommendations was, however, formally implemented. The possible impact of the report was effectively negated, save in one particular, by the appearance of a new actor, the Office of

116. R.S.Q. 1964, c.11.

117. ["Guérin Report"] *Commission d'enquête sur la formation des jeunes avocats* Montreal: 1973 (mimeographed, 52p.)

118. No. 2, above.

119. Submissions to the Commission inevitably broadened out to include the universities' lack of resources as well as the financing of the Bar's programme. Interest arising on lawyers' trust accounts could, it was suggested, be directed to assist the latter (p. 34-36). At the present time, unlike the situation in many other provinces, such monies remain entirely in the control of the professional corporations themselves.

Professions, which was to bring into play yet a further and different view of the matter.

The exception related to Judge Guérin's proposal for achieving an accommodation between the universities' desire to retain its freedom in curriculum through optional courses and the Bar's concern that some common ground of fundamental subjects be offered in all faculties upon which the Bar's professional training programme itself could be built. It also recommended that the Bar's course accede to the status of a meaningful "skills training" rather than remain a review of substantive law. The report concluded that the one was the correlative of the other — and that there be instituted within the faculties a *profile obligatoire* or *tronc commun*, a compulsory core of subjects amounting to two-thirds of the course credits for a law degree.¹²⁰ Discussions on its detailed content and possible future adjustment did subsequently lead to an unenthusiastic understanding between the parties, largely because a sizeable portion of the proposed *profile* was already compulsory under university requirements. Effective communication of the content of the *profile* to students was however later hampered in as much as not all faculties were prepared to serve as messengers to their respective student constituencies about the Bar's expectations.

Relations between the Bar and the faculties were therefore somewhat uneasy in the early and mid 1970s. The *profile*, never formally implemented, was only partially observed; the Bar's professional programme did not re-tool itself into one of "skills training"; and there was sentiment in some professional quarters that the universities had shifted too far from their earlier "professional" (or "narrowly professional" as the faculties said) orientation in favour of optional courses. Quebec, moreover, was moving into a period of financial constraint in higher education. The Minister of Education had made it known that its substantial financial support for the Bar's admission course could be cut off. In this rather muddled and indeed stressful climate, the newly created Office of Professions then intervened. The views of this new regulatory agency, whose mission was to superintend all professions in Quebec, changed the terms of the debate.

21. *The Office of Professions: A New New Blueprint?*

The principal aim of the *Professional Code*¹²¹ is to ensure the protection

120. "Guérin Report" p. 17-19.

121. Originally S.Q. 1973, c.43 ("Bill 250") and now R.S.Q. c.C-26 Cf. in general, R. Dussault & L. Borgeat, "La réforme des professions au Québec" (1974), 34 R. du B. 140 and, in particular, the passages dealing with "la jonction de la formation académique et de la formation professionnelle" (at p. 151-152).

of the members of the public in their dealings with Quebec professions and their individual members. As part of this mission, the implementation of the Code has curtailed the powers of the professions, in particular by displacing their traditional authority in matters of university degree accreditation. If current proposals made by the "Office of Professions" established under the Code are carried forward, the structures now in place to test professional qualification under the authority of the individual corporations themselves will also be withdrawn.

Under the Code it is the executive arm of the government, after consultation with the Office of Professions, the Council of Universities, the "teaching establishments" and the professional corporations concerned, that is empowered to accredit university diplomas.¹²² It is also called upon to regulate the "co-operation" (*collaboration*) of a profession and the universities in respect of both curriculum and examinations.¹²³ The Office of Professions is, in turn, given an important role in educational planning because, among other things, it is specifically charged with the function of "suggesting ways to ensure the best possible training" for future professionals.¹²⁴

The philosophy of the Office, articulated in a series of reports issued after extensive consultations and public hearings,¹²⁵ is that all phases of legal education should form part of the universities' responsibility — in other words, that the professional corporations should vacate the field of professional training altogether and renounce their licensing authority. In this view of things, after graduation from university with a degree in law, there would be no Bar admission course, no professional entrance examinations and, arguably, no period of articles. All these present features of post university training are seen as "supplementary requirements" (*conditions supplémentaires*) that cannot be justified. The state-accredited university diploma issued by each of the six teaching establishments would thus give direct access to practice.

Two issues preoccupy the faculties of law: whether the objectives of professional training should be "repatriated" to the university and

122. Originally section 178 (a), now s.184 (a).

123. Originally section 178 (b), now s.184 (b).

124. Section 12 (*mesures à prendre pour assurer aux professionnels la meilleure formation possible*).

125. Five reports have so far been issued by the "Office des Professions du Québec": *Commentaires de l'Office des professions sur la rapport "La place du juriste dans la société québécoise"* [Quebec:] 1978; *La formation des professionnels* Québec: 1979; *Les conditions supplémentaires au diplôme ou à la formation de base et les comités de la formation* Québec: 1980; *Avis sur les conditions supplémentaires au diplôme ou à la formation de base et les comités de la formation* Québec: 1980; *Conditions supplémentaires et comités de la formation: Commentaires de l'Office sur les interventions aux audiences publiques et avis modifiant l'avis du 31 juillet 1980* Québec: 1984.

whether, if that is accomplished, its content should be "integrated" into the undergraduate degree or should remain, much as before 1968, a distinct phase. On the first point the faculties, through their respective universities, declared with reluctance in 1975 that they would accept repatriation of the professional course content upon receiving adequate additional financing.¹²⁶ No government response was ever received to that proposition. On the question of integration, however, opinion has been divided among the faculties. Some have concluded in favour of a newly integrated four year degree programme¹²⁷ and others have stated a preference for a two-step approach in which the "academic" and the "practical" training would remain discrete entities within a four year time-span. The Bar for its part has stoutly defended the need for a uniform and province-wide entrance examination and the desirability of at least an initially restricted and supervised practice (*juniorat* or *période d'initiation encadrée*).

The Bar, moreover, with new vigour, has in the meantime moved into the active planning of a programme of "skills training" (*habilités professionnelles*) in which "learning by doing" (*apprentissage actif*), through role-playing and various simulated models, will initiate students to fact research, consultation, negotiation techniques, drafting and office management. This new training would replace its present "practical" but in fact highly *livresque* programme.¹²⁸ The Bar's earlier reluctance to develop such an approach had strengthened the force of the criticism of the Office that its *cours de formation* resembled too closely university programmes and that its entrance examinations thus subjected students to duplicate evaluations on the same subjects. On another front, the Office was able to cite, as against the Bar, the fact that the notarial professional

126. A 30 crédit programme giving rise to a "certificat d'aptitude à la profession d'avocat" (CAPA) was accepted by the senior administrations of all institutions concerned.

127. The idea has had currency for some time in one form or another: Cf. M.-L. Beaulieu, "Un cours de droit de quatre ans à base d'enseignement théorique et pratique" (1953), 13 R. du B. 399 who evoked the Minnesota (U.S.A.) model of 1930; V. Bergeron, "La valeur de l'enseignement dispensé face au présent et à l'avenir de la fonction juridique" (1978), 9 Rev. Gén. de Droit 430, who justified it on the need that law degrees cover more substantive material; E. Colas, "Le Barreau, les facultés de droit et le stage" (1973), 33 R. du B. 2, who saw it as a way to bridge the cultural gap of CEGEP graduates; Y. Prévost, "La Formation professionnelle du juriste" (1966), 26 R. du B. 213, who saw degree programmes at that time as too theoretical and not teaching enough procedure. The idea is not, therefore, on the whole, traceable to the continental French notion of the 1950s that a law degree be increased from three to four years with a view to integrating "les sciences économiques et sociales". Cf. A. Perrault, "Les études de droit" (1954), 14 R. du B. 381.

128. Literature on the proposed programme is not readily available. Cf. however, the communication of the Director of the Bar's training programme, Me Clément Fortin, to the ACLEA/IBA Conference on Skills Training, Washington, D.C., 1-3 July 1985, "La préparation à l'exercice de la profession d'avocat au Québec" (15p.)

training programme had been "successfully" run in several Quebec law faculties and without the supplementary requirement of a period of articles.¹²⁹ Here too, however, attitudes have rather overtaken the position of the Office. The view is now widespread that the notarial programme itself needs renewal¹³⁰ and requires in fact the institution of an articling period or *stage*.¹³¹

There is, then, at the present time, no real clarity prevailing in conceptions about the best models in legal education. The position of the Office of Professions, while certainly not disavowed by the government in the pre-election quietude we now enjoy, is from all appearances nonetheless largely discredited. In professional milieux it is thought to be anti-professional, even hostile to the professions' corporate power. Its monolithic philosophy about professional education, forcing all the professions into a single design, fails to acknowledge the particular needs of individual professions. It seems, as well, unaware of the indifferent success in the university context of the pre-1968 regime in professional training for lawyers. One doubts moreover whether its vision of future development makes adequate allowance for present day financial realities in university education. In university circles the philosophy of the Office is taken to hold out the possibility of a return to the trade-school mentality from which law faculties see themselves as only recently enfranchised. The professional corporations and the faculties may thus yet be allies, as well as uneasy partners, in a new bonding of opposition to a government intervention in legal education that, if fully implemented, would put Quebec out of step with most of the rest of North America and many jurisdictions beyond.

V. CONCLUSIONS

22. *Cultural Paradoxes and Traditional Ambiguities*

Law teaching in the university has been offered longer in Quebec than elsewhere in Canada and its educational establishment is the largest in the country. And yet one is constrained to conclude that there has not

129. The professional training programme for notaries, offered at the faculties of Montréal, Laval, Ottawa and Sherbrooke, has led to a "university diploma" since 1971 (DDN or "Diplôme de droit notarial").

130. It, in turn, was disturbed by a strike in the 1978-79 academic year. The programme has been located in the university milieu since the early 1950s: J.-G. Cardinal, "La Faculté de droit et le Notariat" (1967), 2 R.J.T. 151 where, as a "stage universitaire" involving a "formation juridico-technique", it has enjoyed a less troubled existence than that of the Bar. Cf. today, however, S.V. Morency, "L'accès ordonné à la profession" (1983-84), 86 R. du N. 204 and Y. Desjardins, "Plaidoyer pour l'amélioration de la formation professionnelle des notaires" (1984-1985), 87 R. du N. 304.

131. See especially the two last-cited articles in the preceding note.

emerged any truly common conception about the real mission of university legal education, its true parameters and its meaningful connection to the needs of the legal professions. The reason lies in the twin realities that legal education and the university have not been in a truly close association over much of Quebec history and that the professional corporations have had an exaggerated influence, whether directly or indirectly, over most of the same period on what university education in law is all about.

Since law has never been — at least until very recently — in the mainstream of university life and since legal education was always, so to speak, the creature of the professions, Quebec law faculties have never gained the status or prestige that they have enjoyed in the tradition of the great French and European universities. In France, for centuries, there has been a close connection between the study of law and the idea of the university, an association that is relatively new in the English tradition. The result of the association, in France, has been to see the law as an intellectual science to which university teaching and doctrinal efforts have made distinctive contributions. It is a major cultural paradox that Quebec society, which shares with France the same language, much of the same temperament and mentality, and certainly a large and important part of the same legal tradition, has not yet duplicated the conditions and attitudes allowing the same notion to flourish. University law studies in Quebec, in other words, have not yet acceded to the same vigorous intellectuality about the law that characterizes the very best of the French university legal tradition in which, as one senior Canadian legal educator put it, the “higher accolade” is given to the scholar, the codifier and the teacher rather than to the advocate or the judge.¹³²

Quebec’s development in legal education has in fact more closely duplicated the American¹³³ and even the English experience than the French. The historical parallels in the evolution that has taken place in each case are striking: first, that legal education implied a period of study (i.e. non-university study) followed by a professional entrance examination; second, that the period of study would normally be an apprenticeship and only exceptionally in a university; and third, that university training constituted a universal requirement without the alternative of office study. Quebec’s passage through these stages was of course much later than in the American counterpart: it entered the last phase only in 1948 and the implications of the change only became

132. Maxwell Cohen, “The Academic Lawyer’s House of Intellect” (1961), 14 J. Legal Education 141, at p. 142.

133. Cf. R. Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (1983), at p. 205.

realities in the 1960s. The reason for the duplication of the American experience appears to lie in the fact that, both before and after 1948, closer attention has been paid by those responsible for the directional shifts in Quebec legal education to American models¹³⁴ than to those of continental France. Isolationism is not therefore a charge that can be levelled against them. We can, at least, say that this was so until the advent of the Office of Professions, whose models are obscure or, more kindly perhaps, merely original. But this principal observation may not however, in the end, be so very surprising. While history and politics have done much to promote the idea that Quebec is culturally distinctive in its French connection, it does very obviously share much of general North American values and aspirations, and this is strikingly so in the manner in which it has come to think about the university and the legal profession.

It is interesting to observe that American and more recently Canadian critics of legal education have been advocating a broader and more intellectual — one might almost say “European” — vision of university legal education. Is Quebec a propitious context in which this idea might become established? It is certainly premature to predict, given the recent swirl of events and differing views traced above. Quebec legal education moreover bears the same yoke of traditional ambiguities that has characterized legal education elsewhere on this continent. While there is no longer direct professional control over the content of programmes or the recognition of degrees, most law students still see themselves as seeking professional qualifications and entertain a narrow view, on the whole, of what that implies. All law faculties accept that fact as a major principle in their own policies of educational development. These attitudes are palpably reflected in a curriculum organization that is largely designed to satisfy student choices. The Office of Professions, attuned to these trends, and the Council of Universities in concert with the Office, can thus logically conclude that “professional” skills should be integrated into the training offered by professional faculties. There again, however, there are surely paradoxes of a minor sort. There is something discordant in the fact that, on the one hand, the body charged with the surveillance of professions considers the professional milieu to be unsuited to skills training and, on the other, that the body charged with advising the government on university development should see the academic milieu as pre-eminently suited for it. It amounts, in effect, as suggested at the beginning of this study, to a changing view of what the university’s mission really is in our post-industrial society.

134. In the 1930s in the studies cited at no. 2, n. 3 above and in the “Guérin Report” no. 20 above.

One can predict, then, with perhaps some certainty, that there will continue to be an ambiguity in Quebec as between the “academic” and the “practical” aspects of legal education. These terms, liberally sprinkled throughout the discussions and the literature, have had shifting meanings and one often has the impression that no one among the interlocutors really knows what is actually meant by them. Yet they are, evidently, real forces at work in how people think about legal education. It will, in the end, fall primarily to the universities themselves to define their content and to ensure that they remain in balance as a healthy tension rather than as an “unhealthy dichotomy”.¹³⁵ To do so will require a vigorous affirmation of the singular, or perhaps even the unique, features of legal education. These we are only now beginning to discern and describe as involving a combination of scholarly insight, a sense of practical realities and the need for policy analysis,¹³⁶ to all of which aspects of legal education this journal, by constituting an archive on the topic, is making an important contribution.

135. A term of R. Stevens, *op. cit.*, n. 133, at p. 264.

136. D.A. Soberman put it adequately when he wrote that university law studies combine scholarly insights (as in a liberal arts education), practical insights (as in medicine) and policy formation: “Law Schools under Attack” (1983), 7 Dalhousie L.J. 825.