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Comments

Robert D. Bureau
Carol Jobin*

Les Sciences Juridiques à
L'Université du Québec à
Montréal: Fifteen Years Later

I. *Introduction*

The experiment of the Law Department as a new approach to legal education has been going on now for 15 years. It has directly involved more than 1,500 people as students, instructors (professors and sessional lecturers) and support staff (administrative and library personnel, *etc.*). This experiment has a unique identity, indeed a distinctive image, which has given rise to a certain amount of controversy in the Quebec legal milieu. Especially since the debates stemming from the publication of the Law and Learning Report,¹ it seems that the experiment has also aroused a certain amount of curiosity in the Canadian legal milieu. We would like to thank Professor R. St. J. Macdonald and the Dalhousie Law Journal for having shown such interest and for having given us this exceptional and valuable opportunity to share our experience with both the Quebec and Canadian legal milieux.

Our article is divided into two parts. We will first attempt to situate the reader by giving a brief account of the historical background of the experiment. This part is aimed at creating an understanding of the socio-political and institutional context within which the goals of our project were put forward and of how these goals have been attained in the context of changing needs and circumstances.

In the second part, we will attempt to identify those specific characteristics of the experiment which would be of interest to the Canadian legal community. These characteristics will be centered around two levels of activity corresponding to the operating structure of the Université du Québec à Montréal (UQAM); that is, the Undergraduate Law Studies Program and the Law Department.

It goes without saying that the present article in no way claims to be the final word on the matter and that it reflects only the authors' point of view.

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1. Report to the Social Sciences and Humanities Research Council of Canada by the Consultative Group on Research and Education in Law, Ottawa, 1983.

II. *Historical Background*

We are grateful to Professor Brierley for his comments concerning the Law Department experiment in his article, "Quebec Legal Education Since 1945".²

For us, the concept of experiment refers first of all to a certain originality at the outset, but also to 15 years of application and research, and to an incomplete but ongoing process which has developed through contradiction, difficulty and much satisfaction.

We were thus not surprised to read the following statement in Professor Brierley's article:

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.³

Looking back to the time when some of our colleagues were leaving their *alma mater*, the Université de Montréal, to become part of the new Université du Québec à Montréal, two qualities come to mind: our youth and our daring. In the social context of "post-May '68", which in Quebec was followed by the 1970 October Crisis and a profound movement for economic and political change, we cannot but recall our disappointment in the wake of the systematic refusal of certain experienced professors to join us when we received the go-ahead from UQAM authorities.

With the benefit of hindsight, we must admit that it was naïve to hope that securely placed professors would take such a risk.

Our founding colleagues were thus faced with the first of a series of contradictions: sacrificing the "establishment" and so-called "credibility" in favour of youth and boldness.

But time, events and a unique experience in intellectual partnership, know-how and solidarity have demonstrated that the decision to form a team of young teachers and fresh graduates, open to change and with a sense of social commitment, was the right one.

We think it unnecessary to dwell upon the controversial beginnings of the Law Department except to add that it can be explained on the one hand by our inexperience, and on the other, by a certain panic within the liberal establishment which found itself threatened in a field in which its leaders (politicians, lawyers and academics) had traditionally exercised control, if not to say a monopoly.⁴

2. J. E. C. Brierley, "Quebec Legal Education Since 1945: Cultural Paradoxes and Traditional Ambiguities" (1986), 10 *Dalhousie L.J.* 5.

3. *Id.*, at 33.

4. For a more in-depth discussion, see our detailed summary of events in "L'Université, la

Essentially, our position was no more revolutionary than that of the groups which we wished to serve: unions, consumer and tenant associations and community groups. In reality, our stands on social injustice, economic inequality and the privileges of the ruling class were no less radical than those of the Economic Council of Canada, the N.D.P. or the Oecumenical Council of Churches of the time. In fact, at the very most, we could only have been criticized for being a few years ahead of our time, since several aspects of our project, particularly with respect to law and social change, legal critique and legal reform, were taken up by the Arthurs Report in the form of the following questions:

Are Canadian lawyers, for example, being educated in such a way that they possess not only the necessary technical competence to give legal advice and representation to clients of various classes and interests, but as well to offer them wise counsel in the social and economic implications of their legal problems, to adapt to changing laws and client needs, to assume positions of political and community service and leadership, to evaluate critically and help improve the administration of justice? Are Canadian legal researchers, whether in universities, government or nongovernment areas, intellectually prepared to confront the tasks of understanding, systematizing, publicizing, criticizing, and reforming law?⁵

In a word, we were proposing to put our taxes to work for the benefit of the majority of citizens in the field of legal education, which had traditionally been provided to a privileged minority and for the advancement of particular interests.

In so doing, we consciously aimed directly at the heart of the social system and at questioning the law, not only by exposing it as a language whose principal function is to make a social reality oppressive to the majority and to legitimize the interests of the minority, but especially by proposing to use it as an instrument of advancement and political, economic and social change in our society.

Reaction on the part of the traditional and conservative elite in the legal and academic milieu was to be expected. Even certain liberals were surprised by our direct proposals and our "lack of tact". On the other hand, our project received unequivocal support from dozens of groups, progressive lawyers, professors from every university in Quebec and from student associations who responded enthusiastically and spared no effort to help us in our 16-month struggle to open the program.

In the end, we received approval from the University and we had enough leeway to make mistakes, to encounter difficulties and to work towards achieving our goals.

politique et le droit" in S. Brault *et al.*, *L'affaire des sciences juridiques à l'UQAM* (Montréal: Éditions québécoises, 1973).

5. *Supra*, note 1 at 4.

It is clear, as Professor Brierley notes, that the concept of “a law department does not exceed UQAM’s mandate.”⁶ Thus it is not surprising to read in an official document that UQAM:

. . . will be permanent and for the population, open to its milieu, modern and prospective, critical and creative; this latter in terms of content and its organization: it will be assured of a broad mandate, interdisciplinary, participatory and flexible in structure . . .

A critical university should concern itself with defining knowledge in accordance with the needs of society as a whole. It cannot be satisfied with advancing research only in those avenues defined by society’s privileged elements. The university should go on to a constant evaluation of knowledge, and rather than limit itself to an acquired power, should seek to develop new knowledge centered around the position of societal problems and solutions to them. (our translation)⁷

Unique in its orientation, UQAM was also to be so through its double structure, departmental and modular, and by the creation of six broad “families”.⁸ Given the context, it was natural for us to find ourselves in the family of Human Sciences along with History, Sociology and Political Science. Thus, contrary to some of our colleagues in other faculties, we found that we had much in common with and were proud to be integrated into Human Sciences.

The gestation period lasted three years (1971-1974) and was followed by two stages between 1974 and 1986. The first, implementation, lasted six years, during which all our energies and resources were devoted to the preparation of academic tools for the students.

Teaching law from a critical perspective, communicating the basic elements of positive law and integrating our double objective of *theory* (history, foundations and functions of law) and *practice* of law (use and techniques) represented a great challenge from both a scientific and ideological point of view.

One could thus say that from the beginning, we did not lack for ambition: training lawyers to be able to integrate theory and practice, to be critical and to use their knowledge within a perspective of social change — all this in 90 credits, with limited human and material resources and within a new educational framework.

It goes without saying that we had to make certain adjustments along the way, given ideological plurality, certain restrictions, requirements of professional training and pressure placed on professors and students by this new framework.

6. *Supra*, note 2 at 32.

7. Cited in P. Mackay, “L’enseignement du droit dans une perspective de changement social” (1980), 44 Sask. L. Rev. 73 at 74.

8. A “family” is more or less equivalent to a faculty in anglophone universities.

The first stage was thus marked by a general rallying to the program, by significant adjustments in direction and by substantial reforms. The following stage (1982-1986) was, as we will see later, especially characterised by opening up the program to the outside and by expansion and diversification of departmental activities.

III. *Characteristic Features of the Experience*

As pointed out above, the "Sciences juridiques" experience is broadly composed of two spheres of activity: an undergraduate Law Studies Program (literally, a "Specialized Baccalaureat in Law") and a Law Department. The first aims at educating lawyers and qualifies the graduate to enter the Quebec Bar Admission Program. The second is composed of the law professors and oversees the teaching of law courses for all the programs offered at UQAM. The law professors are also required by the Department to report on their research activities and to take on some administrative or community service responsibilities.

The Program and the Department reflect the typical UQAM institutional structure which recognizes the relative autonomy and the functional complementarity of the program entities ("modules") and the teaching resources entities ("départements"). This double structure may fairly be considered to be different from the more self-sufficient "faculty" structure. It encourages a multidisciplinary perspective in our Law Studies Program as well as in all the other undergraduate programs and allows our Law Department to contribute to other programs.

This double involvement is the key to understanding many of the distinctive characteristics of our experience.

1. *The Law Studies Program*

The project for the Program gave rise to the Law Studies Department much as problems necessitate solutions. The *raison d'être* of the program was its intention to set itself apart from other university legal education programs in Quebec. This desire to offer something more manifested itself in the formulation of the Program's socio-economic, scientific and pedagogical aims. In recalling these aims, we will attempt to describe the concrete forms which their realization has taken. This will be a selective description and will focus on those aspects which best illustrate their distinctive characteristics.⁹ One must not, then, conclude from this exercise that our program is completely different from those in other

9. For a systematic, descriptive presentation on the subject of the Program, see P. Mackay, *supra*, note 7.

faculties. In fact, we are well aware that we share many common characteristics with them.

In the same line of thought, it should be noted that in 15 years, certain gaps have become apparent between our aims on the one hand, and their realization on the other. These gaps are part of an ongoing process in the course of which the initial goals have been seriously questioned. In this respect, it is reassuring to note that they have been retained.

1.1 *Socio-Economic Aims*

It is intended that:

The socio-economic aims of the Law Studies Program are the training of jurists who will be able to intervene broadly (research-action, education, organization, consultation, litigation) in the sense of the defense and advancement of workers' democratic rights, wherever the law is involved and particularly in the areas affecting the interests of workers and union and popular organizations. (our translation)¹⁰

Such a pronouncement may have contributed to a "Marxist" image of the Program in certain milieux and thus to the creation of some confusion. It must be admitted, however, that the above-mentioned aims are tied to a particular conception of the role of the lawyer and of the social causes he is called to defend.

(a). *The Role of the Lawyer: Expansion vs Reduction*

The aims express an intention to move away from a model of legal education centered around training lawyers whose basic role is limited to litigation practice and whose work would be organized around files structured according to the application of existing law to fact situations ideally and in the last instance resolved by judicial decisions. This latter model is clearly oversimplified, the reality being more complex and detailed. It is, however, representative of the tendency of legal training which encourages the student more or less consciously towards obtaining a license to practice a profession controlled by a corporation. The Program considers this consequence as a reduction of the role of the lawyer, one which, in the end, risks bringing about a "paranoid" use of the law (that is, without regard to its assumptions and effects).

By way of demarcation, the Program proposes that the student acquire training which takes into account the ins and outs of the use of the law. More precisely, diverse types and levels of the lawyer's intervention and contribution are envisaged. Beyond litigation, which cannot be ignored,

10. Université du Québec à Montréal, *Annuaire 1986-1987*, at 115.

research-action, representation in a broad sense, consultation, popularization and education of non-lawyers are considered.

This expanded view of the lawyer's role illustrates a particular conception of law in action. Law is seen as one dimension among others of social reality, and as one instrument of intervening among others, one which varies according to the interests involved. In other words, legal intervention is placed at the service of and is conceived according to a cause rather than the inverse. This brings to mind an anecdote told by the reknowned jurist Jacques Vergès, himself a controversial figure.¹¹ In his view, "if Christ had been defended at his trial by a lawyer (a progressive one), in all probability Christianity would never have developed."

This expanded view of the lawyer's role in relation to legal intervention takes the following forms in the Program:

- The program being composed of six semesters (equivalent to three years of study), the first semester is largely made up of courses in legal history and analysis of the law aimed at situating it before learning the law as such.
- The second and third semesters are devoted to the study of the broad areas of positive law.
- Eighty per cent of the fourth semester is made up of a practical session ("stage") outside the University. This allows the student to become aware of and to analyse the use of law in a variety of socio-economic contexts.
- The fifth and sixth semesters consist of the study of law in relation to socio-economic problematics (for example, courses in housing law, youth law, women and the law, law of associations, etc.).

(b). *Identifying with the Cause of Defending and Advancing the Rights of the Disadvantaged and Their Organizations.*

The meaning of this characteristic of the Program has evolved with socio-political conditions. In this respect, all Canadians will have noticed a reversal of the situation in the course of the last ten years. There is, in effect, a considerable gap between the demands of the 1970s, such as the establishment of prepaid legal service plans, and the current attempts at saving the core of what has been gained from the waves of budgetary cutbacks.

The aim of defending and advancing the rights of the disadvantaged has, then, a variable content. Still, among the courses offered, the majority are devoted to branches of the law which more directly concern

11. Jacques Vergès, *De la stratégie judiciaire*, Editions de Minuit.

legal situations experienced by this part of the population. In this way, a real concentration in "social" and labour law has been developed.

This same aim has also led us to attempt to develop an analysis of the law in general from the point of view of these groups' interests. Such an approach entails the questioning and critique of the state of the law which we will deal with later.

It is important to keep in mind that the resources that a university structure can provide are employed in defending and advancing the rights of the disadvantaged. Moreover, the operation of the Program puts this orientation into concrete form:

- by admitting as students a clientele that is representative of these milieux and groups;
- by organizing practical sessions in these milieux or in legal firms that serve them;
- by using the services of lawyers working in these milieux for teaching purposes and
- by using the major files arising in these milieux within the context of courses.

1.2 *Scientific Aims*

(a). *Teaching Foundations and General Legal Principles*

Given the position accorded courses which place the law in context and the practical session, the program compresses legal teachings corresponding to the classic areas of law (that is to say, civil, criminal, commercial, constitutional, administrative law, *etc.*). All of these areas are studied in roughly 12 courses. Their content is thus reduced to essentials; that is, to fundamentals and general principles. However, this in no way means that the student's training in these areas is limited to these courses. They are studied in greater detail within the framework of thematic courses focusing on socio-economic problematics, examples of which we have already mentioned.

This sequence represents a significant change in perspective in the sense that the student enrolled in a thematic course will become aware of the contribution of a number of categories of law (for example, civil, criminal, administrative) to the control of an area of socio-economic activity. This approach encourages reflection on the functions of the law in relation to reality. It is clearly an eclectic method, but the intellectual risk outweighs that of the encyclopedic illusions of a strict positivist approach.

(b). *The Accent on Methodology*

The risk of eclecticism is also lessened by emphasizing methodological development. By methodology we mean, at an intellectual level, the development of the capacity to evaluate real situations legally, and at the concrete level, teaching the mastery of legal tools. At each stage of the sequence which constitutes the Program, we also attempt to develop research ability.

(c). *Integrating Human Sciences into Legal Training*

The Law Studies Program has called upon the History and Sociology Departments to provide certain compulsory courses in these subjects as they are related to the law. These courses are taught using the team teaching method by historians and sociologists possessing legal training and by law professors having had training in human and social sciences.

In addition, university regulations require students to take three of their 30 courses outside the Program's curriculum. From their course selection, it can be seen that students have a preference for human and social sciences.

Finally, the program includes a large number of courses in "social" and labour law. Social law as an area of the law has not, it is true, achieved a degree of systemization comparable to civil or administrative law. We have therefore worked to develop this. Since a positivist approach of examining innumerable laws, regulations and judicial decisions cannot give an adequate account of social law, it has been necessary to borrow methods and to develop social policy-type contents integrating the scientific contributions of other disciplines in order to constitute the legal domain.

(d). *Legal Critique*

This scientific aim is by far the most ambitious and difficult to put into practice. The context of an undergraduate program imposes clear limitations. Co-ordinating the teaching of law and legal critique is problematic. Moreover, the tools of legal education are ill-suited to legal critique.

Nonetheless, legal critique has been much practised within the Program and in a wide variety of forms. It can be divided into two broad categories. The first, which could be called "external criticism" of law, consists of demystifying the law and decoding its discourse by confronting it with the reality of social relations.¹² The second could be

12. For an example of this approach, see S. Brault *et al.*, *supra*, note 4.

categorized as “internal criticism” of law, wherein the gaps between principles which are put forth and the application or transformation which results are analysed from within the legal sphere.

These forms of legal critique have been practised particularly at the level of teaching. It is possible that within this framework we have developed a critical outlook with regard to the law more than we have contributed to the elaboration of a scientific critique of law. It is likely that such a critique will really develop with the opening of a graduate program.

1.3 *The Pedagogical System*

There is much to be said concerning the evolution of the pedagogical system of the Law Studies Program. In the beginning, it is probably this dimension of the program which differentiated it from programs of other faculties. On the other hand, the system has evolved considerably with its clientele. It has given rise to such a wide variety of practices that it would be difficult to characterize it globally.

The pedagogical dimensions of the project for the Program were the object of profound reflection. From its opening until 1980, the pedagogical system has accommodated what could be called a “pedagogical republic”. The most novel aspects of the system were:

- limiting the length of lectures in favour of weekly seminars given by the professor to small groups (9 to 15 students);
- compulsory group assignments (3 to 6 students);
- accent on written work requiring research and discussion in preference to the examination formula;
- establishing a process of continual reciprocal evaluation for each course and at the level of each “promotion” (a group of 5 courses involving the same group of students for one semester); and
- using the pass/fail system of grading.

During this period, approximately 80 students were admitted each year. The admission process set aside 50% of available places for “adults” (23 years of age or older) whose experience and orientation corresponded to the socio-economic aims of the program. As well, 10% of the places were reserved for students who wished to enroll part-time.

During the same period it would not be an exaggeration to say that the better part of professors’ energies were devoted to implementing the system. The democratic and representative character of the decision-making process and the constraints these decision imposed were strong incentives to participation.

Progressively, with the arrival of the 1980s and changes in a number of factors (conditions, increase in clientele, change in mentality toward

more individualist preoccupations, crises and loss of momentum within social movements, *etc.*), we have been witnessing a phenomenon of saturation with respect to education debates and practices. The system has thus become more relaxed, liberal and diversified.

The elements which gave the pedagogical system its original character in those first years have, for the most part, remained, but the system has lost its restrictiveness. The means for teaching and verifying of knowledge acquired are discussed within each course and are better adapted to the subject matter being studied. It is not, in fact, unusual to conceive of a different pedagogical approach according to whether one is studying civil procedure, freedom of association or applied legal research. UQAM's control remains flexible enough to allow appropriate and varied methods.

Additionally, the Program admitted 142 new students in September 1986. Efforts are now being made to ensure an equal representation of men and women and the access of "regional" candidates. There has also been an increase in the number of candidates already possessing a university degree, generally in social sciences. Finally, student preoccupations are tending more and more toward studying and seeking employment, making them more conscious of resources allocated to the Program.

2. *The Department*

Having balanced the undergraduate program, stabilized professor-student relations within the "Module" and standardized our relations with UQAM, the Department has been able to consolidate certain other teaching activities, and to direct its attention towards graduate studies.

As we have mentioned, the Department is the overlying structure for professors. It is run by a director and an executive, both elected by the assembly and who establish orientations and policies.

In spite of the fact that the average age is one of the lowest of all Canadian universities, the Department has 25 professors, ten of whom possess a PhD and seven with degrees in both law and human sciences. The majority of our colleagues are active within the scientific or professional community, sitting on administrative boards of socio-economic bodies or acting as counsel or experts for a variety of public research or enquiry groups. The Department also includes approximately 50 practising lawyers and sessional lecturers and benefits from the regular collaboration of colleagues in the History and Sociology Departments.

Let us mention lastly that the Department includes ten specialists in social and labour law, which places it at the forefront of Canadian Quebec universities in the area.

2.1 *Access to the Law Studies Program*

Beyond the responsibility for teaching within the Law Studies Program, the Department offers the university community a wide range of courses in the law, both general and introductory, and provides a significant series of courses requested by other programs in three particular sectors: social and labour law, computer science and management. We are also involved in two certificate programs in environmental studies and thanatology.

In addition, to meet the specific needs of certain non-legal interveners, the Department has established a certificate program with specialization in social and labour law. This para-professional program aims at a clientele associated with the groups UQAM is mandated to serve.

2.2 *Our Involvement in the Milieu*

Apart from the individual involvement of professors in different areas of the law: consumer, labour, immigration, unemployment, occupation health and safety, youth, women, the Department undertakes the regular organization of a number of practical and research activities as a community service.

Within the context of the undergraduate program, we oversee the practical sessions of our second-year students with certain firms or with associations or public bodies such as the Consumer Protection Office or legal aid offices. We also direct third-year groups doing applied legal research. This research, often taking place in the field, represents in certain cases a significant asset for the citizens' groups which do not have the specialized resources necessary to carry out such work. Some of the research has been published and some has served as the starting point for extensive research projects.

To this must be added the legal aid service provided to the university community. These activities have greatly contributed to realizing our aims and to developing new alternative practices in law.

Moreover, the Department is particularly involved in the training of union militants within the framework of a broad Agreement of Understanding signed in 1981 between UQAM and the Labour Associations of Quebec.

2.3 *Graduate Studies and Research*

One of the turning points in our development in the course of these last few years has undoubtedly been the adoption of the first three-year plan (1982-85) centered around research, the establishment of a Master's

program in social law and research infrastructures. This stage, which was to constitute a kind of revitalization, coincided with the publication of the Arthurs Report on research and legal studies which confirmed the accuracy of our position and vigorously encouraged us to pursue our work of reflection and specialization in a perspective of "scientific renaissance".

This first plan was, in large part, achieved. A Master's program specializing in social and labour law was presented to University authorities and awaits only final approval from the Quebec Council of Universities. Moreover, the organization of forums and research seminars has greatly stimulated professors to publish and to participate in many scientific activities in Canada and abroad.

During these years, the department initiated the legal section of ACFAS and the *Cahiers* which publish the Conference proceedings; it also participated with the family of human sciences in setting up an interdisciplinary centre for social evaluation of technology (CIEST) and created the *Cahiers de Sciences Juridiques* to publish our research. Finally, in 1983 we founded the *Groupe de Recherche en Informatique et Droit* (GRID) (Research Group in Computer Science and the Law), which for the last three years has carried out significant work concerning social use of technology, and which has just been accorded a \$1.6 million subsidy from the Government of Quebec for a joint venture with the *Centre de Recherche en Droit Public* (CRDP) (Centre for Research in Public Law) at the Université de Montréal. This subsidy will allow the project to remain at the leading edge of research in the field of law and new technology.

Realizing this first plan has motivated and encouraged us to pursue a second state (1985-88) which appears promising in terms of publications in the fields of social law, co-operatives, civil liberties, youth, aboriginals, occupational health and safety, history of the freedom of association in the 19th century and, of course, in law and computer science, an area in which we have already begun significant research.

Lastly, to clearly indicate our new beginning and to underscore our first 15 years, we have undertaken a collective work of analysis, synthesis and critique of the law in Quebec (1971-1986) which will involve approximately 30 collaborators and which will be published and released in September, 1987.

It seems, then, that after difficult years of experimentation, innovation and adjustment punctuated by controversy and inevitable growing pains, we have attained a level of maturity and a working rhythm which allow us to look optimistically toward the coming years.