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## Maximilien Bibaud, 1823-1887: The Pioneer Teacher of International Law in Canada

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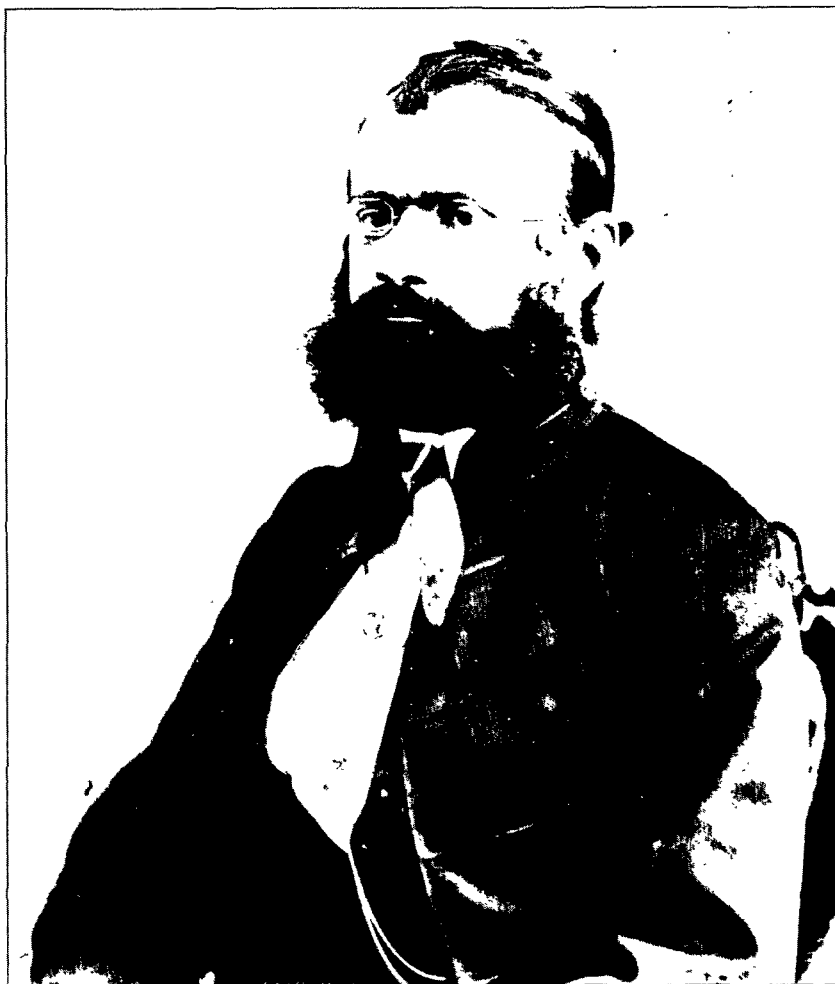
Maximilien Bibaud was a most unusual man: student of philosophy, history, and literature, teacher, author, chronicler and reformer of the law, founder of the first organized law school in Canada, true pioneer of the teaching of international law in this country. Insolently but exhilaratingly new in both his ideas and his techniques for legal education, Bibaud was far in advance of his time. As we mark the centenary of his death in 1987, his interests and achievements are as relevant today as they were when he opened his law school 136 years ago.<sup>1</sup>

To understand Bibaud's accomplishments, it is not necessary to become an investigative reporter of the spirit or to present the numerous selves and multiple lives of the subject or to search for some meaningful pattern in the ashes: that kind of *ad hominem* approach leads us away from the main work into byways that are both highly speculative and impossible to trace farther or to confirm. The most important evidence is represented by the facts themselves, that he was a pioneer in the field of legal education in Canada, that he introduced the teaching of international law, and that he set the level of what could be done as full-time teacher, writer, scholar, commentator, and active reformer of the law.

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1. Paul Desjardins, *Le Collège Sainte-Marie de Montréal — La Fondation — Le Fondateur*, vol. 1, 1940; *Le Collège Ste-Marie de Montréal — Les Recteurs européens — Les projets et les oeuvres*, vol. 2, 1945. See also: André Morel, "Maximilien Bibaud, fondateur de l'École de droit", *Themis: Revue Juridique*, vol. 1, No. 1, 1951, at 9-16; Georges Lahaise, "Centenaire de la Premier École de Droit Établie au Canada", *Themis: Revue Juridique*, vol. 1, No. 1, 1951, at 17-30; Arthur Perrault, "Bibliographie des oeuvres de Maximilien Bibaud", in *Themis: Revue Juridique*, vol. 1, No. 1, 1951, at 31-34; André Morel, "Bibaud, François Maximilien", in *Dictionary of Canadian Biography*, vol. 11, 1881-1890, at 70-72; Louis-Philippe Audet, *Histoire de l'Enseignement au Québec 1608-1971* (Montreal: Holt, Rinehart et Winston, 1971) 2 vols; Léon Lortie, "The Early Teaching of Law in French Canada" (1975), 2 *Dalhousie Law Journal* 521.



*Maximilien Bibaud*

I

The environment into which François-Marie-Uncas-Maximilien Bibaud was born and in which he lived out his life was one of the most notable in the history of French Canada and indeed all Canada. His private and professional life ran parallel to great public and political events that have shaped our destinies.

Bibaud spent most of his life in Montreal, a city of about 19,000 people at the time of his birth in 1823. He was there during the "troubles" of 1837 and the banishment of the rebels the following year. He was 16-years-old when Lord Durham's famous but flawed report was released in

1839. He would have heard of the opening of the Union Parliament in 1841. At some stage he probably joined the crowds to applaud Louis-Joseph Papineau, the most renowned orator in French Canada, who returned from exile in 1845. He may have seen the burning of the Parliament Building and the ransacking of the home of Louis-Hippolyte LaFontaine in 1849, and he must have crossed Victoria Bridge, the greatest single industrial undertaking in 19th-century Canada, when it was completed ten years later. Bibaud would have observed the emergence of the federalist concept, primarily the result of the survival of French Canada, which was enshrined in the Act of 1867; but by that time the establishment had closed in on him and his spirit had been broken. He was all but finished as a jurist at the age of 44.

By the time of Bibaud's birth, Montreal's thriving economic life had long since moved from furs to fish, wheat, lumber, and manufacturing, and the city's development continued apace throughout his life. The Bank of Montreal, destined to play an important role in the city's development and prosperity, had been established in 1822. In 1830 the Montreal Harbour Commission began construction of the great wharves that brought the old port to life. In 1833 the first municipal elections provided the city with its own efficient government. In 1836 the first Canadian train went into operation. By 1856 the Allan Line Steamships were in full operation and two years later Canada was linked with Europe by transatlantic cable. To the eyes of a traveller from England, Montreal in the mid-19th century presented itself as "one mass of glittering steeples, domes and massive stone wharves, fully a mile in extent, the most costly and substantial in North America. Shipping of every size and nation, crowds of steamers, American and English, bateaus, canoes, timber rafts, schooners in full sail, all covered the surface of the river; and the city, with its dark stone buildings and iron shutters, gave an impression of ancient grandeur."<sup>2</sup> By the time of Bibaud's death in 1887 it was crystal clear that the "trading post at the foot of the rapids" had become the indisputable metropolis of the new nation created by the Confederation of 1867.

But despite its growing population, increasing commercialization, and vast construction, the "new" Montreal of the 1830s and 1840s was no Shangri-la for most of its inhabitants: times were hard, people were poor, and socio-economic disparities between the ethnic groups were increasingly apparent.<sup>3</sup> For some dozen years, beginning in 1832, Asian

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2. B.W.A. Sleight, *Pine Forest and Hacmatack Clearings*, (London: 1853), as quoted by Alastair Sweeny, *George-Etienne Cartier: A Biography*, (Toronto: McClelland and Stewart Ltd., 1976) at 95.

3. In 1844 French Canadians were a minority in Montreal, 19,041 out of 44,093; young

cholera brought by immigrants swept British North America and took the lives of one-fifteenth of the urban population. Economic and social activity came to a standstill in Montreal: stores and commercial establishments were closed; fruit farmers abandoned the open market; friends bade *adieu* to one another when they met on the streets; and those who had the means fled to the countryside in the hope of avoiding contagion. Indeed, the population of Montreal actually decreased from 65,000 in 1842 to 58,000 in 1851. The Canadiens felt then, as they did 15 years later, that the wretched of the world — the starving, the disease-ridden, the destitute — were being dumped on their doorstep. The hapless immigrants were blamed for the plague and they were not thanked for it. Anyone who has seen Joseph Legaré's painting *Cholera Plague, Quebec*, can understand why.<sup>4</sup>

The years immediately preceding the launching of Bibaud's law school were thus far from rosy in Montreal. Cholera and other diseases were a constant threat in the city; commercial depression had set in; unemployment was high; and the youth were emigrating. On top of all that, Montreal had become something of an English city during the first half of the 19th century and Lower Canada was at the time dominated by Upper Canada. As the historian, E.R. Fabre, put it, times were hard and money was scarce.

It is thus remarkable in the circumstances of the late 1840s, when the general environment was marked by dissatisfaction, disorder, and depression, when financial resources were limited, and when the Bar was overcrowded and lawyers underemployed, that a 28-year-old student, who had himself been admitted to the practice of law less than two months earlier, possessed the courage to start a professional law school

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French Canadians were emigrating, and immigrants were flooding into the province. See Paul-André Linteau, René Durocher, and Jean-Claude Robert, *Histoire du Québec contemporain*, vol. 1, 1867-1929. (Ville St. Laurent, Quebec: Les Éditions du Boreal Express, 1979); Robert Rumilly, *Histoire de Montreal* (Montreal: Éditions Fides, vol. 2, 1970) at 289 *et seq.*; Alexandre Dupré, "Centenaire du Collège Saint-Marie" (Montreal: *Relations*, viii<sup>e</sup> année, No. 89, May 1948) at 137-138. Nathan Kayfitz, "Some Demographic Aspects of French-English Relations in Canada", in Mason Wade (ed.), *Canadian Dualism: La Dualité Canadienne* (Presses Universitaires Laval, 1960) at 129.

4. In this picture, thought to have been painted about 1837, Legaré shows us "from inside" the reality of life for the working people afflicted with the plague; *they* of course could not leave town for the relative safety of the countryside. See John R. Porter, "Works of Joseph Legaré (1795-1855)", in *The History of Canadian Art* (Ottawa: National Gallery of Canada) at 49-50, where the writer compares Legaré with Francisco Goya. But for a book about the immigrants themselves, which stirs the imagination and remains vividly in the mind long after it has been put down, see Terry Coleman, *Passage to America* (London: Hutchinson, 1972). For the general background on social conditions see Bertrand, *Histoire de Montréal*, vol. 2, at 93.

modelled, no less, on the law departments of the great German universities in Bonn and Leipzig.

## II

To study law in French Canada in 1851 was daunting; to organize law for teaching purposes almost an impossibility. There was no criminal code, no civil code, no code of procedure. The student, indeed the practitioner as well, was obliged to consult innumerable time-honoured authorities from metropolitan France, together with commentaries, as well as the prescriptions of Roman law, English common law, commercial law, and criminal law, the statutes and case law of Lower Canada, and, a little later, the Napoleonic Code. In short, the law of Lower Canada was in a chaotic state.<sup>5</sup>

Nevertheless, despite the state of the law — perhaps because of it — there appeared in the newspaper, *La Minerve*, on Thursday, April 17, 1851, a kind of press release: a letter addressed to intending law students in Lower Canada announced the opening of a law school on May 1. The school would be temporarily located at the School of Medicine and Surgery. During the first semester (May until August) there would only be three lectures a week, but thereafter the founder, Maximilien Bibaud, would teach every day. Interested students were invited to come to see him at his office at the firm of Peltier and Bourret.

Maximilien Bibaud himself tells us why he chose to become a professor of law. He explains that, after completing his theological studies at the Grand Séminaire, he articulated for four years with Toussaint Peltier, the first *batonnier* of the Ordre des Avocats. One day as he was heading for city hall he ran into Msgr. de Charbonnel (later bishop of Toronto) whom he had met while studying theology. Their conversation turned to the formal teaching of law and Msgr. de Charbonnel said that he had been surprised that there was none in Canada, in contrast to all civilized countries, and advised Bibaud to orient his studies in that direction. Bibaud then and there expressed his intention to give private instruction in law. However, it was only at the time of his admission to the Bar, when the idea was suggested to him on the very day of his examination, that he

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5. In commenting on the “*babel legale*” that the legal system of Lower Canada reflected just prior to the coming into force of the Civil-Code in 1866, J.E.C. Brierley observes that the schema of legal sources required “a massive consolidation”: John E.C. Brierley, “Quebec’s Civil Law Codification Viewed and Reviewed” (1968), 14 McGill L.J. 521. See also J.E.C. Brierley, “Quebec Legal Education Since 1945: Cultural Paradoxes and Traditional Ambiguities” (1986), 10 Dalhousie Law Journal 5; Stanley B. Frost, “The Early Days of Law Teaching at McGill” (1984), 9 Dalhousie Law Journal 150; Roderick A. Macdonald, “Understanding Civil Law Scholarship in Quebec” (1985), 23 Osgoode Hall Law Journal 573.

conceived the hope of giving public lectures. George-Étienne Cartier and Augustin-Norbert Morin, who were later joined by other prominent personalities, took the initiative: they spoke to the Jesuits who were then completing the construction of Collège Sainte-Marie, and Bibaud accepted the challenge and the honour.<sup>6</sup>

Bibaud was not the first to give public lectures in law in French Canada, but he was the first to do so on a full-time basis, and he was far more innovative and probably more dynamic than those who preceded him. In the domain of legal education in mid-19th century Lower Canada, he clearly shines alone.

During the French régime the public prosecutor in the colony, the celebrated Louis-Guillaume Verrier, had given lectures in law from 1733 until his death in 1758; however, the cession of Canada to Great Britain in 1763 put an end to this kind of teaching, and for 65 years thereafter students had no substantial instruction other than a few lectures given spontaneously and at long intervals by Louis Plamondon at Quebec and by Denis-Benjamin Viger, Michael O'Sullivan, and others in Montreal. In 1844 William Badgley, a prominent member of the Montreal Bar, was appointed lecturer in law at the Faculty of Arts of McGill College, but in the same month he was also appointed a circuit judge, an appointment that rendered his academic activities sporadic. In 1847 Mr. Badgley's appointment was raised from a lectureship to a professorship, but he still continued as a full-time judge.<sup>7</sup>

It was relatively easy to become a lawyer before the incorporation of the Quebec Bar in 1849, and there were indeed many complaints about overcrowding in the profession. A five-year articling period was required, and many students divided their time between French-and English-speaking lawyers in preparation for the required examination before their peers and in the presence of the chief justice and two judges of the courts. But there were no formally organized law schools with adequate

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6. Maximilien Bibaud, *Notice historique sur l'enseignement du droit au Canada* (Montreal: Louis Perrault et cie, 1862) at 111; Paul Desjardins, *Le Collège Sainte Marie de Montreal — Les Recteurs européens — Les Projets et les oeuvres*, vol. 2, 1945, at 66; Georges Lahaise, *supra*, note 1, at 18; Léon Lortie, *supra*, note 1, at 528.

7. Maximilien Bibaud, *supra*, note 6; Pierre-Georges Roy, *La Ville de Québec sous le Régime Français*, vol. 2, at 133; Joseph-Edmond Roy, *Histoire du Notariat au Canada*, Lévis: 1899-1902, vol. 1, at 220, referred to in W.R. Riddell, "The First Law School in Canada", *Bench and Bar*, April 1, 1932; Francis-J. Audet, "Les débuts du Barreau de la Province de Québec", *Les Cahiers des Dix* (1936-37), No. 2, 207, at 225; Paul Desjardins, *supra*, note 1, vol. 2, at 5; Maréchal Nantel, "L'étude de droit et le barreau" (1950), 10 *La Revue du Barreau* 97; Olivier Maurault, *Le Collège de Montreal 1767-1967*, Montreal, 1967; Louis-Philippe Audet, "Attempts to Develop a School System for Lower Canada: 1760-1840", in J.D. Wilson, R. Stamp, and L.-P. Audet, *Canadian Education: A History* (Prentice-Hall of Canada Ltd.: Scarborough, Ontario, 1970) at 163; Léon Lortie, *supra*, note 1, at 522, 526.

programmes of instruction. When the Bar was incorporated, the five-year articling period was maintained, but it could be reduced to four years for those who had completed a course of studies in an incorporated college or seminary and to three years for those who had in addition completed a regular course of studies in law in an incorporated institution, of which there was none.<sup>8</sup>

It seems that before 1851 no college had officially sought to avail itself of the provisions of the 1849 statute: although McGill had made a start with Badgley's part-time appointment in 1844, regular professional courses were not to begin until 1853 at McGill and 1854 at Laval. It was Maximilien Bibaud who recognized the opportunity and seized it. Within a year his institution had taken on the character of an established (if not legally accredited) law school within the meaning of the 1849 statute. In 1853 Bibaud had 11 full-time students, and by 1867, the year of the school's closure, nearly 300 students, many of them leading personalities in the profession and in the public life of the province, had acquired a part of their legal education at his institution.<sup>9</sup>

### III

It is startling to find that Bibaud chose the law departments at Bonn and Leipzig as the models for his new institution. Admittedly there was not much to inspire him in other parts of British North America: law as an academic discipline had not taken hold in the universities of Upper Canada, and Dalhousie Law School in Nova Scotia, which would have

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8. 12 Vict., c. 46 (30 May 1849); S.C. 1849, p.329. The situation is summed up by J.E.C. Brierley in his outstanding essay, "Quebec Legal Education Since 1945: Cultural Paradoxes and Traditional Ambiguities" (1986), 10 Dalhousie Law Journal 5, at 34. See also W.S. Johnson, "Legal Education in the Province of Quebec" (1905), 4 Canadian Bar Review 491; E.F. Surveyer, "Une École de Droit à Montreal avant le Code Civil" (1920), 6 *Revue Trimestrielle Canadienne* 140. For details on the earlier years see: J. Edmond Roy, *L'ancien Barreau du Canada* (Montreal: Theoret, 1837,) at 56; B.A. Testard de Montigny, *Histoire du Droit Canadien* (Montreal: Eusebe Senecal, 1869) at 567; André Sinclair, "L'avocat au Quebec: 209 ans d'histoire" (1975), *Cahiers de Dix* 689, at 690-696.

9. McGill College had been in the field first, but Badgley was part-time; Bibaud was full-time, and his vision of the role of a law school, especially as regards the relationship between theory and practice in legal education, was more broadly gauged. McGill's fame in law was to come later. As the university's historian observed, it was to be many years before the law school could be called a truly viable institution. See Stanley B. Frost, "The Early Days of Law Teaching at McGill" (1984), 9 Dalhousie Law Journal 150; Stanley B. Frost, *McGill University for the Advancement of Learning* (Montreal: McGill-Queen's University Press., vol. 1, 1980) at 158, 277-281; Stanley B. Frost and David L. Johnston, "Law at McGill: Past, Present and Future" (1981), 27 McGill Law Journal 31; G. Blaine Baker, Kathleen E. Fisher, Vince Masciotra, and Brian Young, *Sources in the Law Library of McGill University for a Reconstruction of the Legal Culture of Quebec, 1760-1890* (Montreal: Faculty of Law and Montreal Business History Projects, McGill University, 1987) at 271 ff.



been to his liking, had not yet been established.<sup>10</sup> However, his writings show that Bibaud knew a good deal about legal education at Oxford, Cambridge, Dublin, and London, and he must have known something about the situation in Paris and Brussels. He would also have been aware of the existence of the law schools to the south of him, at Harvard, Yale, Columbia, Fordham, and Pennsylvania.

Why then did he pass over Britain, where Blackstone's *Commentaries* had made sense and science out of the early common law; France and Belgium, whose language, culture, and legal systems he understood, and the United States, where Joseph Story had made Harvard Law School an institution to be envied as early as 1845?<sup>11</sup> Why Germany? Why Bonn (1818) and Leipzig (1409) in particular? Why not Gottingen (1734), which was by the end of the 18th century the most prestigious intellectual centre in Germany outside the Berlin Academy and the possessor of an outstanding law faculty? The choice of a German model seems to lie in Bibaud's admiration for Roman law and for German teaching methods which sought to integrate theory and practice.<sup>12</sup>

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10. Dalhousie Law School was not established until 1883. See John Willis, *A History of Dalhousie Law School* (Toronto: University of Toronto Press, 1979); Alex C. Castles, "One Hundred Years of Legal Education at Dalhousie" (1983), 61 *Canadian Bar Review* 491. The first law school at Osgoode Hall in Toronto, a professionally oriented, non-university institution, operated from 1873 to 1878, when it was abolished, only to be re-established in 1881 and placed on a permanent basis in 1889. See Brian D. Bucknell, C.H. Baldwin, and J. David Larkin, "Pedants, Practitioners and Prophets: Legal Education at Osgoode Hall to 1957" (1968), 6 *Osgoode Hall Law Journal* 141.

11. The year 1817 is usually taken as the year of origin of Harvard Law School. See Arthur E. Sutherland, *The Law at Harvard* (Belknap Press: Harvard University, 1967). Bibaud must also have been aware of the major contributions to legal education by Chancellor James Kent, whose inaugural address in law was delivered at Columbia College in 1794. See further: *A History of the School of Law Columbia University*, by the staff of the Foundation for Research in Legal History under the Direction of Julius Goebel, Jr. (New York: Columbia University Press, 1955). We know that Bibaud knew about Fordham. For the situation in the United States see: Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill: The University of North Carolina Press., 1983), reviewed by Paul D. Carrington in (1984), 72 *California Law Review* 477.

12. In *Mélanges Religieux*, 18 and 22 Avril, 1851, in outlining his proposed curriculum Bibaud expressed his admiration for German teaching methods. See his *Commentaires sur les lois du Bas Canada*, vol. 1, 1859, at 14. See also Georges Lahaise, *supra*, note 1, at 22. Perhaps it was not so remarkable after all that Bibaud should have looked to Germany. Reform was the spirit of the age in the Lower Canada of the 1830s and the influence of Prussian as well as English and American models was evident in the liberalization of the primary and normal schools until the trend was halted by the ultramontane reaction of the 1860s and 1870s: see generally Jacques Monet and Mason Wade, Supplementary Bibliography, below. What is interesting is the absence of even the slightest trace of an influence from Harvard, Yale, or Columbia in the field of legal education. I have been unable to determine why Bibaud was attracted to Bonn and Leipzig in particular. Perhaps the Americans were too "republican", and the French too "revolutionary", for the monarchy minded Canadiens. See note 17, below.

Major reforms were unfolding rapidly in the German universities during the early years of the 19th century, at the very time that educational change was becoming a matter of interest in Lower Canada itself. They were the first universities in the Western world to integrate research and teaching with, ultimately, advanced students studying and working along with their professors on the frontiers of scholarly knowledge. The goal was not “the mere transmission of a definite body of accepted truths, but rather the independent acquisition and augmentation of knowledge.”<sup>13</sup> The German universities were thus pioneers in research-oriented teaching methods through the use of seminars, *conversatoria*, *disputatoria*, and *repetitoria*, in a spirit of academic freedom; they were becoming the fountainhead of much modern scholarship and science; and they were also achieving their breakthrough to modernity in a country that was distinctly unmodern in many other ways.<sup>14</sup>

All this appealed to Bibaud’s sense of the scholarly and philosophical and to his deep appreciation of historical knowledge, a subject in which extraordinary advances were being made in the Germany of his day. He would have been fascinated by the obvious fact that in the field of law the German universities were in the 19th century what Bologna had been in the 13th century. However, what seems to have appealed to him most was the significance that the German universities attached to Roman law, which had served since the 15th century as the basis of instruction in their law faculties, a fundamental system to which he attached the highest importance.

To understand Bibaud’s interest in the developments in Germany for his own objectives, let us look for a moment at the University of Bonn, which was created in 1818 to promote “true piety, profound science and good morals among the studying youth.” The stress was on spiritual formation which, it was thought, would become the catalyst for scientific education. The five departments of the University of Bonn were more or

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13. Friedrich Paulsen, *The German Universities and University Study*, Trans. by Frank Thilly (New York: Charles Scribner’s Sons, 1906) at 63.

14. The “Humboldtian ideology”, laid down by Humboldt, Fichte, and Schleiermacher, stressed creativity, discovery, research, and a growing organismic concept of learning. See R. Steven Turner, “University Reformers and Professional Scholarship in Germany 1760-1806” in Lawrence Stone (ed.), *The University in Society* (Princeton University Press, 1974, vol. 2) at 495. It will be remembered that the reorganization of the German universities in the first two decades of the 19th century did not follow the French plan that was being put into operation contemporaneously by Napoleon. See further Charles E. McClelland, *State, Society, and University in Germany 1700-1914* (Cambridge University Press, 1980); Jacques Verger (ed.), *Histoire des Universités en France* (Toulouse: Editions Privat., 1986); George Weisz, *The Emergence of Modern Universities in France* (Princeton University Press, 1983).

less autonomous and each was free to establish its own curriculum. The admissions procedure was in no way dependent upon academic achievement: the applicant was questioned about his moral behaviour and his criminal record; if his answers were satisfactory, he was asked to abide by the rules of the university and he was then accepted by the director with a handshake. The members of the faculty at Bonn took special responsibility for the behaviour of the students. The dean questioned each student every half-year about the lectures attended and the professors kept lists of their audience. If a student was convicted of a criminal charge he could be expelled not only from the university but from the town of Bonn itself. Civil servants, soldiers, merchants, and members of other educational institutions were not admitted as students to the University of Bonn.

The law faculty at Bonn comprised seven full-time professors: one for Roman law and the history of Roman law; one for German private law and the history of German private law; two for ecclesiastical law, one being Protestant, the other Catholic; one for state law, the law of nations, philosophy of law, encyclopaedia of law, and methodology of law; one for criminal law and criminal procedure; and one for Prussian law, procedure, and practice.

The method of teaching was the public lecture. Each professor was required to give at least one two-hour lecture every semester. The lectures were listed in a catalogue and as soon as more than four students registered for them they had to be given. Additional lectures were offered privately by professor aspirants, *privatdozenten* and *privatissima*. These lectures, similar to seminars, were intended for a small circle studying with a faculty member. Examination questions were posed and answered in Latin.

To provide the students with an opportunity to apply their theoretical knowledge in practical exercises and to prepare them for practical life, every student was required to participate in *Collegia practica*. These were civil and criminal procedure workshops (*Zivilprozess und Kriminal Praktikum und Relatorium*) for state law and international law in state practice (*Staatspraxis*) and diplomacy.

The curriculum at Bonn included the following: *Roman law* — the history and ancient institutions of Roman law, Roman private law with special emphasis on its applicability and contemporary usefulness, sources of Roman law; *German law* — the history of law and state and ancient institutions, German common law and special parts thereof, the German feudal law with regard to differences with Prussian feudal law, exegetic lectures on German legal texts and statutes; *French civil law*; *public law* — the state law of the German federation and the German

federal states in general and of the Prussian monarchy in particular, the common German and Prussian civil procedure, the common German and Prussian criminal law and criminal procedure; *the law of nations; canon law of the Catholic and Protestant churches*.<sup>15</sup>

At Leipzig University, now Karl-Marx Universität, the curriculum for law would have been similar to that at Bonn. In the 18th century Leipzig, the seat of the famous Saxonian tribunals, had won a high reputation through the activities of such teachers as Chr. Thomasius, Chr. Wolff, and the great Theodor Mommsen, who taught Roman law. In the first half of the 19th century the best known professor was the well-known representative of the historical school of law, G.F. Puchta. As well, there was Friedrich Bülow, the author of a well-known encyclopaedia of constitutional law, who taught one course on practical European (public) international law and another on the public institutions of the European states, and Professor Schilling who gave a course on the philosophy of international law.<sup>16</sup>

Although working on his own, Bibaud set out to provide his students with the same broad knowledge as the German curricula provided. His opening lessons thus constituted a mini-course on the basic legal system in which the fundamental conceptions and principles of law were set forth in a logical system and lucid manner intelligible to the novice in jurisprudence. Bibaud spoke of the history of Roman, English, French, and Canadian law and then proceeded to a discussion of questions of terminology, methodology, legislation, obligation, and contracts. From there he moved to an overview of the state of the law in Lower Canada, including a comparison with the common law of England, and he concluded with procedure, a subject on which the lecturing lasted for 80 to 100 days. At the end Bibaud closed the circle, so to speak, by offering a series of lectures on jurisprudence to provide the students with an appreciation of the legal system in the round, in the light of the mass of detail with which they had been wrestling during the preceding two years.

To stimulate the students and to enable them to have an idea of where they stood in the way of preparedness, Bibaud devised a number of

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15. I am grateful to Professor Dr. Gerd Kleinheyer, of the Institut für deutsche und rheinische Rechtsgeschichte der Universität Bonn, for his kindness in examining the Statutes of the University of Bonn of the 1840s and sending me the information that is summarized in the text above. I am also grateful to my friend and colleague of many years Professor Dr. Karl Jos. Patsch, former Rector of the University of Bonn, for wise counsel and much additional information.

16. I am grateful to Professor Dr. Sc.G. Baranowski, der Direktor, Sektion Rechtswissenschaft, Karl Marx Universität, for providing this information in his letter of March 18, 1987.

teaching techniques, the principal one being the weekly tutorials, which he called *repetitoria*. At these meetings, which were accompanied by moots and debates, the students were required to defend theses on fundamental juridical problems of the day. If the first public *repetitoria*, held on December 12, 1851, is an indication of their quality, we can conclude that they must have been formidable indeed: one student was required to answer questions on Roman law posed by Louis-Hippolyte LaFontaine, and another to respond to questions on obligations and contracts put, no less, by George-Étienne Cartier! Bibaud urged his students to attend hearings and proceedings in the courts of justice regularly, and he went with them to attend the examination of candidates seeking admission to the bar, so that students could judge for themselves, on the spot, what level of knowledge would be required of them later on.<sup>17</sup>

The academic degrees available from Bonn in law were the *licenciat* and the *Doktor*. The first degree required three years of study, which could be started right after the successful completion of high school. At the end of the period the candidate was required to apply for admission to the final (oral) examinations: he had to submit a *curriculum vitae* in Latin together with his academic transcripts. If successful on the examinations he was admitted to the "Promotion". His thesis, which would have been approved by the dean beforehand, would be defended in a Latin disputation, arranged by the dean and the faculty. The opponents in these debates could be volunteers or invited persons, but at least one of them had to be a professor, and it was up to the candidate himself to find them. Following the disputation, the chairman extracted a promise from the candidate that he would dedicate himself to the science of law. The candidate was then pronounced *Licentiatius juris*; he thanked those in attendance and the session was closed.

#### IV

Turning to public international law, of which Maximilien Bibaud was Canada's first full-time teacher, we find that in the first volume of his commentaries on the laws of Lower Canada, which were published

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17. See note 12, *supra*. I do not know how Bibaud learned about legal education in Germany. He may have read about it in the newspapers; he might have been told about it by friends; he might have heard about it from his father, a life-long apostle of education and culture; he might even have seen it in his father's encyclopedia (1842), which presented a summary of news from abroad. Bonn and Leipzig might have been suggested to him by French-speaking Swiss Protestants, many of whom had been brought to Montreal with the British Army and had kept up their German contacts through Zurich. In other words, it is not impossible that Bibaud might have heard of Bonn and Leipzig purely by accident.

between 1859 and 1862, Bibaud discussed the authority of envoys to negotiate treaties, the power of sovereigns to ratify treaties, the applicability of the doctrine of rescission in cases of breach of treaty, and the resort to third-party guarantors under customary international law to facilitate the execution of a treaty.

Bibaud thought that treaties were analogous to contracts in civil law: a treaty was a formal agreement made for the common good of nations, elaborated by superior powers, intended to last forever or for a considerable period of time. Following Grotius, he divided treaties into two broad classes: those that seemed to confirm a nation in the rights that it held from nature and those that functioned so as to change natural rights into positive rights. Relying on de Martens, he went on to consider equal and unequal treaties, real and personal treaties, treaties concluded in times of war, and the duration and termination of treaties. He invoked Vattel as well as Grotius to argue both sides of the proposition that non-fulfilment of only one article renders a treaty null and void.

Equal treaties, according to Bibaud, were those in which the contracting parties promise one another the same or equivalent things: where, for example, an alliance was created and it was stipulated that the parties would give each other the same assistance. Equal treaties were also found when it was stipulated that the contracting parties undertook to help each other to the full extent of their capacity, even though their respective powers might not be exactly equal. Unequal treaties were those in which the parties did not promise one another the same or the equivalent assistance. Accepting the opinion of de Martens, Bibaud said that unequal treaties were those treaties in which a power undertook to accord another power greater honour and service than it receives in return. Such a situation arose where one sovereign gave a province in vassalage to another sovereign. Unequal alliances also existed when, for example, a state promised not to have a fortress built in a certain area in order to avoid the threat of a war or when the parties undertook to have the same friends and enemies.

These ideas may be far removed from the provisions of the 1969 Vienna Convention on the Law of Treaties, but the great wonder is that anybody anywhere in the Canada of 1851 was thinking about the technical aspects of treaties. What kindled Bibaud's commitment to public international law?

A general interest in the subject might have grown naturally out of his philosophical and theological training at the Grand Séminaire, with its heavy emphasis on Thomas Aquinas, the doctrines of natural law, the nature of relations between European explorers and the native peoples of North and South America, and other ideas of universalism. As one born

into a household of books and as a voracious reader of history as well as law, Bibaud would also have been intrigued by the legal controversies and ideological conflicts raging in the Europe of his day. For Montreal had always maintained close links with the metropolitan centres of Europe, and though rooted in Montreal, Bibaud roamed widely in the domain of the intellect.<sup>18</sup>

It was clearly Roman law, however, which he described as “the masterpiece of human prudence,” that gave Bibaud his window onto the world at large. Roman law was a vast cultural phenomenon of importance to the whole world: it was to be conserved, renewed, extended, and handed on. For Bibaud it was the source of and inspiration for general principles of law, international as well as domestic.<sup>19</sup>

Today’s scholars pay a good deal of attention to the history of the book — to the vital role that the analysis and description of the book plays in the study of the transmission of texts and the spread of ideas and to the impact of the book as a force for change.<sup>20</sup> It is worth noting, therefore, that, with the exception of de Martens’ *Nouvelles causes célèbres de droit des gens*, published in 1843, Bibaud makes no significant reference in his works to any of the texts on international law then in use in France. Nor does he refer extensively to any of the materials on international law in use in Belgium, Switzerland, or Germany. Bibaud might have had access to de Félice’s *Leçons de droit de la nature et des gens* (1830) or to Barreau’s *Principes du droit de la nature et des gens* (1831) or to de Rayneval’s *Instituts sur le droit de la nature et des gens* (2nd edition 1832), but since the most influential works of the 19th century, such as those by Bluntschli, Wheaton, Funck-Brentano, Pradier-Fodéré, Bry, Chrétien, and Bonfils did not appear until much later, it is likely that he relied almost exclusively on the classics (Vitoria, Gentili, Grotius, Bynkershoek), as well perhaps as on the many publications on diplomatic history and the philosophy of international relations that were readily

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18. Maximilien Bibaud was the intellectual heir of his father Michel who had been a teacher, a journalist, the founder of *La Bibliothèque Canadienne* in 1825, a magistrate, and, in the last years of his life, a civil servant with the Department of Agriculture and Geology. Michel Bibaud was at one time regarded as a leading French Canadian historian and the restorer of the press in Montreal: he founded two newspapers and four reviews. *See further*: Benjamin Sulte, *L’Histoire des Canadiens Français 1608-1880* (Montreal: Société de publication historique de Canada, 1884, vol. 3) at 102; *The Macmillan Dictionary of Canadian Biography*, at 54; *Dictionary of Canadian Biography*, vol. 9, (University of Toronto Press, 1976) at 300; Mason Wade, *The French Canadians* (Toronto: Macmillan of Canada, 1955) at 290; B. Bujela, “Michel Bibaud’s *Encyclopédia Canadienne*” (1966), 21 *Culture* 117-132.

19. Paul Desjardins, *supra*, note 1, vol. 2, at 70.

20. G. Thomas Tanselle, *The History of Books As A Field of Study*. The Second Haves Lecture (Chapel Hill: University of North Carolina Press, 1981) and “The Evolving Role of Bibliography”, in *Books and Prints: Past and Future* (New York: Grolier Club, 1984).

available in the private libraries of Montreal. Vattel's influential text, to which Bibaud does refer, would have been regarded as "modern," since it was published in 1829, the same year in which the first chair in public international law was established at the University of Paris.<sup>21</sup>

Every time an individual textbook crosses national boundaries it becomes an international commodity and the sensitive reader, scholar, and librarian wants to know something about it. Such knowledge is gained by describing and analysing books as they appeared in their different formats and were used in different environments. From the point of view of acquiring a fuller appreciation of the intellectual and cultural climates in the legal and scholarly community of mid-19th century Montreal, and of the links between Montreal and Europe, it is a pity that we do not know more precisely what materials Bibaud was drawing on for his lectures on public international law. Having regard to his interest in German scholarship and the likelihood of his familiarity with the German language, it is not improbable that, like Richard Chapman Weldon of Halifax later in the century, he consulted a few of the major German texts, at least for his own classroom preparation.<sup>22</sup>

But what about Kent's four-volume *Commentaries on American Law*, undoubtedly the most important American law book of the 19th century, which contained the first ordered treatise on international law in the English language? Kent anticipated Wheaton's *Elements of International Law* by ten years. His work recognized for the first time the place of decisions of the courts in international law. Since the sixth edition had been published in 1848, three years before the Bibaud's school opened, the volume would have been available in Montreal. Was it used? We do

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21. See A. Grandin, *Bibliographie Generale des Sciences Juridiques Politiques, Economiques et Sociales 1800-1926* (Paris: Recueil Sirey, 1926); Philip F. Cohen, "Publishing in International Law: History and Contemporary Analysis" (1978), 71 *Law Library Journal*; and for the modern situation in Canada see the admirable work by Christian L. Wiktor, *Canadian Bibliography of International Law* (Toronto: University of Toronto Press, 1984) being the first comprehensive and retrospective Canadian bibliography on the subject. The first chair in public international law in the Faculty of Law at Paris was created in 1829 and held by Royer Collard from 1830 to 1864. He was followed by Charles Giraud (1865-1874) and Louis Renault (1874-1918). In the opinion of Charles Rousseau, the latter was the true founder of the scientific study of international law in France. See further, Paul Fauchille, "Louis Renault", *Revue générale de droit international public*, 1918, at 1-253.

22. Weldon, the founding Dean of Dalhousie Law School in Halifax, had studied international law under the famous Swiss constitutionalist Johann Caspar Bluntschli in Heidelberg in the 1870s. He used German textbooks when preparing his courses in constitutional and international law at Dalhousie in 1883. As far as I can determine, Weldon and Bibaud remain the only full-time professors of international law in Canada who were able to use German materials, which were then of such great importance in the scientific study of the subject.



not know. Perhaps Bibaud felt that he had had enough exposure to the disorderly and unmethodical appearance of the common law, many aspects of which he may have regarded as objectionable, to have lasted him, as old Father William said, for the rest of his life. Moreover, we need to remember that wide though his interests were, international law was but one of them.<sup>23</sup>

What is surprising in a natural teacher is that Bibaud's written lectures made little reference to 19th-century historical experience. He made no use of the international legal problems thrown up by the War of 1812, the *Caroline* Incident (destined to become one of the most celebrated cases in all of international law)<sup>24</sup>, or, most intriguingly perhaps, the declaration of independence issued in 1838 by Robert Nelson, president of the Provisional Government of Lower Canada, announcing that the colony had been relieved of its British allegiance and had become a republic. He passed over French interventions on behalf of the papacy in 1859 and in Mexico in the 1860s, even though volunteers from Quebec had participated in both of them.

Nor did Bibaud refer at any length to the issues raised by the American Civil War, in which French Canadians served in the Northern cause. He did write an opinion on the surprise raid by Southern agents on the Vermont town of St. Albans in 1864, when Montreal served as a Confederate refugee centre and staging area for attacks on the United States, but he did not examine the notorious violations of American neutrality laws by Britain and France or the *Trent* Affair of 1861, which caused a wave of anti-American feeling to sweep over Lower Canada.<sup>25</sup>

Bibaud was a man of doctrine, preoccupied with the classical tasks of rule identification and clarification. He seems to have been less interested in the concrete contemporary examples which might have been used to illuminate the application of the rules. However, it must be emphasized

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23. On *Kent's Commentaries*, see: *A History of the School of Law, Columbia University, supra*, note 11. See also A.W.B. Simpson, "The Rise and Fall of the Legal Treatise: Legal Principles and the Forms of Legal Literature" (1981), 48 *University of Chicago L.R.* 632.

24. The steamship *Caroline* was destroyed on December 29, 1837. "No other incident during the entire period of border troubles from 1837 to 1842 produced a comparably electrifying effect upon Americans, Canadians and Britishers. It remained to bedevil relations between all three peoples." Albert B. Corey, *The Crisis of 1830-1842 in Canadian-American Relations* (New Haven: Yale University Press, 1941) at 37.

25. Maximilien Bibaud, *L'affaire Saint-Albans, opinion donnee dans cette affaire*, 1865, at 12. For the background see: Gary Earl Heath, "The St. Albans Raid: Vermont Viewpoint" (1965), 23 *Vermont History* 250; J.D. Kazar, "The Canadian View of the Confederate Raid on Saint Albans" (1965), 23 *Vermont History* 255. It was a time of tense relations between Canada and the United States. During the *Trent* Affair, which revived American distrust and dislike for England, Canada expected invasion from day to day.

once again that international law played only a small part, a very small part, in his overall programme of study and activity: the remarkable fact is that Bibaud had an interest in the subject at all.

## V

In many ways, then, Bibaud was a man of the Tower rather than the Arena: the great events of public life had little impact on his activities. Actually as well as psychologically, he was not drawn to active participation in the contemporary world of the constitution, the language, the nation, and the possibilities of independence, even when that particular world was especially theatrical and intriguing. The struggle to maintain and develop his own institution, which became an extension of his very being, left him little time or psychic energy for engagement in the larger issues of the day. As a professional, full-time teacher-scholar, the *only* full-time professor of law in Canada, Bibaud was preoccupied with the immediate tasks at hand. He expected to continue teaching until the day he died and to leave a flourishing institution behind as his great monument. When that did not happen his professional activities declined and his disappointment showed itself in open displays of bitterness and spite.

Nevertheless, Bibaud was not uninterested in the great questions of his time. As we see in his letter to *L'Ordre* of February 25, 1859, in which he urged the editors to return to their role as "sentinels of the *patrie*," he was opposed to Confederation, an anglophobe, and critical of George Étienne Cartier, the apostle of Confederation and a dominant figure in the public life of French Canada during the years when Bibaud's law school was operating. Bibaud's journalistic activities show how involved he was as a reformer, how active his mind, how wide his range of interests. In this regard he was something of a precursor, for, with a few notable exceptions, the average law professor in Canada only began to achieve such a role in the mid-20th century. It is instructive to recall a few examples.

On May 19, 1851, Bibaud published the first of a long series of letters and articles in *La Minerve* on the codification movement in Lower Canada. Commenting on the nature of the criminal law in Germany and France, and on its reform in Italy and Canada, he offered specific criticisms of the choice and organization of words and phrases employed in Badgley's Code, a draft criminal code that never reached the legislative stage. In June and July 1851 he is writing letters on high treason and other crimes against the state, on offences against the administration of justice, on homicide, arson, theft, robbery with violence, offences against commerce, offences against public sanitation, and on the law of attempts.

On July 5, Bibaud observes that any major provision in a statute or code should refer back to a fundamental principle so that, in cases whose details were not foreseen by the law, the interpreter can look to the former rather than be left with a sense of uncertainty as to which is indeed the applicable root principle. The following year, on July 31, 1852, he published in *La Minerve* an excerpt from his unpublished treatise on “the police” and “policing” as a sovereign right. Policing, he says, is a sovereign right that is connected not only with the maintenance of public order but also with public health, comfort, and the manner in which cities and towns are built. It is the duty of the state to protect the community as a whole, as well as to protect private individuals, and, in so doing, the public’s interests are of paramount importance. Compensation will not always follow from an interference with private property. This treatise was published in the aftermath of the great Montreal fire which had occurred shortly before.

In 1862 Bibaud returns with vigour (in *Le Colonisateur*) to his attack on the proposed civil code. He is critical of the structure of the code, of the use of anglicisms, of the commissioners’ constant citing of authority when it is unnecessary and of the lack of such citation when it is necessary. He comments critically on the wife’s incapacity to contract independently of her husband, citing Roman law and Spanish authors; he attacks the admissibility of evidence by witnesses whose testimony is tainted by interest in the outcome; and he discusses the burden of proof. In a revealing passage he says that it is absurd to try to codify the law when it is changing every year. Laws, he argues, are grounded in custom: they reflect the mores of a nation; they must be understood by the people and given effect by a mutual consensus of governors and governed rather than through the formal apparatus of state coercion. In 1863 he is discussing usury and congratulating the newspaper editors for taking a stand against injustice in a manslaughter case where the judge showed obvious bias.

It is apparent that Bibaud was not a conservative, that he was indeed a reformer. But he was a reformer with a cautious cast of mind: he cared deeply about the preservation of the legal resources and the worthwhile achievements of the past. He cared about continuity and the type of structure within which human beings and societies could best live and grow; he was unconsciously if not consciously interested in tradition, in modes of practice and activity that have been worked out over time, in how peoples and societies became or remain historically aligned; in short, he was interested in the capacity to hand on and hand over. Like Savigny, he lived in a legal universe that welcomed systematization and consolidation but was not prepared to jettison the past.

It is also apparent that Bibaud had a heightened sense of professional responsibility in relation to the improvement and development of the law around him. In his admirable review of the codification movement in Lower Canada in the 1860s, J.E.C. Brierley has shown not only that the commission itself was relatively uninterested in seeking out expressions of general public or professional opinion as to the suitability of the code (how different the situation today!) but that contemporary professional comment upon the draft was “not abundant.”<sup>26</sup> It is noteworthy that Maximilien Bibaud, whether right or wrong, was one of the few professionals of the day to take the time and make the effort to give the commissioners the benefit of his opinions.<sup>27</sup>

In matters of legal education, Bibaud was far in advance of his time. He was the first person in Canada to set seriously about the task of trying to convince the members of the legal profession that study in an academic law school was a proper preparation for practice. He was the first to address the subject that is still at the heart of the debate over the role of the modern law school, namely, the balance between theory and practice. And he was the first to try to ensure that the professional training given in the law school would be the best that it is possible to give.<sup>28</sup>

Bibaud was also a ferocious competitor and an aggressive promoter of his own institution. In 1861 we find him criticizing the law faculties at Laval and McGill for having more professors than students. At Laval the courses that had been announced were not in fact taught, to the detriment of the students; at McGill, where some of the pupils had “defected” to the College Sainte-Marie, the curriculum was based on Blackstone and the laws of England, rather than on the laws in force in Canada; at both institutions the teachers were part-time, which meant that the instruction was irregular and superficial. It was only at his own school, “a true debating society where students could raise any objections they wished,” that a serious law student of the day could acquire an adequate professional formation.<sup>29</sup>

But if Bibaud was a pugnacious promoter, with an oversized ego, he was also fiercely loyal to his students. For example, on May 9, 1862, he writes to *Le Colonisateur* about the Bar’s refusal to allow one of his

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26. J.E.C. Brierley in 14 McGill L.J. 527, *supra*, note 5.

27. For discussion that is still fresh and relevant see Horace E. Read, “The Public Responsibilities of the Academic Law Teacher in Canada” (1961), 39 Can. Bar Review 232.

28. On the current debate in Canada see the Arthurs Report, Social Sciences and the Humanities Research Council of Canada, *Law and Society* (Ottawa: Ministry of Supply and Services, 1983). See also: H.W. Arthurs, “Paradoxes of Canadian Legal Education” (1977), 3 Dalhousie Law Journal 639; Neil Gold, “The Role of University Law Schools in Professional Formation in Law” (1986), 4 Journal of Professional Legal Education 15.

29. Maximilien Bibaud, *Commentaires*, vol. 2, 1861, at ix.

students to write the examinations because he was a few days short of the required twenty-one years. Bibaud raises the question of whether the Bar Committee was a judicial body and he threatens the committee with a writ of mandamus. The following year, on February 6, 1863, he writes a blistering attack on the Examiners' Committee for its refusal to admit to practice one of his students on benefit of doubt where the committee was split three to three and only three signatures were required. In return, the students showed their appreciation and loyalty: on three occasions they attempted to have the school reopened after its closure in 1867.<sup>30</sup>

Of course not everyone approved of Maximilien Bibaud.<sup>31</sup> He was authoritarian and adversarial. He was not a man of modesty. He could not tolerate criticism or contradiction, though he openly sought praise. His absurd vanity and excessive stubbornness made enemies of many who would have liked to support him. He fought with just about everybody in sight: the Bar, the universities, the Church, and eventually with the student Gonzalve Doutre, in whom he may have recognized himself. Insolent, arrogant, and vain, he was his own worst enemy. But he was too self-absorbed, too combative, too full of corroding ambition to understand any of that. In the words of Léon Lortie, Bibaud was his own credo.<sup>32</sup> Nevertheless, fate has been unkind and a little unjust to the man. He was energetic, vitalizing, and exhilaratingly new.

How different the profession would have been — perhaps in Ontario as well as Quebec — had Bibaud's institution survived and flowered as he hoped. In the first place, competition between the law faculties and interaction between the faculties and the Bar, which there most assuredly would have been, would have accelerated the rate of change in legal

30. Paul Desjardins, *supra*, note 1, vol. 1, at 152; Olivier Maurault, "L'Université de Montréal" (1952-53), *Les Cahiers des Dix* No. 17, at 13-14. The students liked him.

31. He was criticized for sacrificing practice to theory, for being the only professor at the school, for limiting the number of his courses, for not teaching commercial and maritime law, and even on the ground that he used his school as a diploma factory. Like Cecil Augustus Wright of Toronto in the late 1940s, with whom he might be compared, Bibaud raged against the articling system because it provided no theory. See Bora Laskin, "Cecil A. Wright: A Personal Memoir" (1983), 33 *University of Toronto L.J.* 148; C. Ian Kyer and Jerome E. Bickenbach, *The Fiercest Debate: Caesar Wright, The Benchers, and Legal Education in Ontario* (Toronto: University of Toronto Press, 1987).

32. At a meeting on April 22, 1982, Dr. Lortie, a lifelong student of post-secondary education in Québec, informed me that he "fully agreed" with André Morel's assessment of Bibaud. In his 1951 article in *Themis*, Morel quotes *Le Nouveau Monde* of September 9, 1872, which said of Bibaud that "the infallibility which he denies the Councils and the Pope he has no scruples whatsoever in ascribing to himself." Dr. Lortie believes that Bibaud would not take advice — "on anything" — and that "his degree of independence cost him everything." In my opinion, that puts it in a nutshell. But observe that in his admirable article in the *Dictionary of Canadian Biography*, Professor Morel rightly concludes that on balance we must take a very positive view of Bibaud.

education in 19th-century Quebec. Secondly, there would have been more experimentation with pedagogical methods and techniques, and there might even have been a somewhat earlier movement away from the traditional concentration on private law. In the third place, the professional associations might have come to exert less influence on the law faculties. Indeed, if Quebec had changed earlier, Ontario too might also have been persuaded to moderate its own (overly cautious) approach to the academic study of law. In short, a modern law school, though perhaps not exactly of the British, French, or American variety, might have made its appearance in Montreal half a century earlier than it did. Whether that would have reduced, in Quebec private law, the importance of the conception of “judicial decision as only exemplification” of codal texts is another question.<sup>33</sup>

As it is, even though Bibaud may not have succeeded in transforming legal education and the legal profession in Quebec or in Canada, he continues to convey a sense of contemporaneity. His struggles over the relatively short 16 years from 1851 to 1867 are vivid reminders of the centrality of the relationships between the law schools on the one hand and the universities, the governments, the practising bar, and the judiciary on the other. It is on the understanding and support of the latter that the law schools depend.

Bibaud is also strikingly contemporary in the choice of his specific professional concerns. For example, statutory interpretation, reform of the criminal law, improvements in the plight of the native peoples, and treaty violations at the international level are as important for the lawyer today as they were at the time that Bibaud was writing about them 100 years ago. By remembering him we pay tribute to his achievement and at the same time we acquire a vision of today’s problems through the lenses of yesterday.

Bibaud’s recognition of the importance of international law may have had an influence on the Bar, because in 1866 the General Council included international law in the list of subjects on which candidates for admission to practice would be examined. Furthermore, several of

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33. See Roderick A. Macdonald, *supra*, note 5, at 583. My own interpretation is that Bibaud was simply unwilling or unable (or both) to work with the many constituencies on which the success and survival of his project depended, namely, the more flexible elements within the Bar, the Bench, the Church, the government, and the universities, especially Laval. He provided the legal community in Montreal with a much-needed service, which was an important reason for his initial success, but he failed to adapt and he failed to get the other players on his side: when someone else (Doutre) came along and declared that the job could be done better, Bibaud had no one to turn to for support. He had alienated them all. The lion, it is true, fights alone, but he does not always win! Note though that Professor Morel places the closing of the school in the wider context of a conflict between Bishop Bourget and Université Laval.

Bibaud's students later joined the teaching staff at the Université de Montréal and they may have had something to do with the inauguration of a course on the subject in that institution.<sup>34</sup> The glimpse that Bibaud offers of the place of international law in the curriculum is an invitation to reflection on the question at a time of current concern over the role of international law in professional law schools.<sup>35</sup>

Apart from the emergence of the major law faculties themselves, three great events have marked the history of legal education in Quebec during the last 136 years: the founding of an organized law school at the Collège Sainte-Marie in 1851; the establishment of a national programme, that is to say, an integrated curriculum in civil law and common law studies at the undergraduate level, at McGill University in 1968; and the pioneering of a "new kind" of legal education at the Université du Québec à Montréal in 1972. The first of these innovations still has something vital to offer us as we seek to redefine the role of the modern law school and the place of international law within it in preparation for the challenges of the 21st century.<sup>36</sup>

For the members of the international law community to Canada it is nourishing to know that 16 years before Confederation, 80 years before the Statute of Westminster, 94 years before Canada entered into the fullness of modern international relations at San Francisco, a serious young student in Montreal was worrying about the interaction between customary and conventional international law and about how the doctrines of the great Grotius could be reconciled with the new learning of Emmerich de Vattel.

In 1987 we are commemorating the 100th anniversary of the death of Maximilien Bibaud, founder of the first organized law school in Canada and first full-time exponent of public international law in our country. Let us hope that in the very near future his status as a Canadian educator and international lawyer will be more fully acknowledged. Both at home and abroad he deserves our recognition and appreciation.

34. It is thus most appropriate that, since 1983, an annual Conference Maximilien Bibaud has been held at the Université de Montréal. See further R. St. J. Macdonald, "An Historical Introduction to the Teaching of International Law in Canada" (1974), 12 *Can. Y.B.I.L.* 67; and for recent developments see Daniel Turp, "The Teaching of International Law at the Université de Montréal: The 1971 to 1985 Period" (1987), 11 *Dalhousie Law Journal* 325.

35. See the challenging paper by John E. Claydon and D.M. McRae, "International Legal Scholarship in Canada" (1985), 23 *Osgoode Hall Law Journal* 477; Maxwell Cohen, "The Canadian Yearbook and International Law in Canada" (1987), 25 *Can. Y.B.I.L.*, and the very stimulating study by Judge Manfred Lachs, *The Teacher in International Law* (The Hague: Martinus Nijhoff, 1982).

36. On the national programme at McGill see J.E.C. Brierley, "Developments in Legal Education at McGill University 1970-1980" (1983), 7 *Dalhousie Law Journal* 364. On U.Q.A.M. see Robert D. Bureau and Carol Jobin, "Les Sciences Juridiques à L'Université du Québec à Montréal: Fifteen Years Later" (1987), 11 *Dalhousie Law Journal* 295.

*Bibliographie Selective Additionnelle*

For an admirable discussion of the political, social, and cultural situation, the reawakening of energies and the “new mood” in Canada East on the eve of the founding of the College Ste. Marie, see the splendid study by Jacques Monet, *The Last Cannon Shot. A Study of French Canadian Nationalism 1837-1850* (University of Toronto Press, 1969). See also: Fernand Ouellet, *Lower Canada 1791-1840: Social Change and Nationalism* (Toronto: McClelland and Stewart, 1980); Paul-Andre Linteau, Rene Durocher and Jean-Claude Robert, *Québec: A History 1867-1929*. Trans. by Robert Chodos (Toronto: James Lorimer, 1983); Susan Mann Trokimenkoff, *The Dream of Nation: A Social and Intellectual History of Québec* (Toronto: Gage Publishing Ltd., 1983); A.I. Silver, *The French-Canadian Idea of Confederation 1864-1900* (University of Toronto Press, 1982); Joseph Schull, *Rebellion: The Rising in French Canada 1837* (Toronto: Macmillan of Canada, 1971); Elinor Kyte Senior, *The Rebellions in Lower Canada, 1837-38* (Ottawa: Canadian War Museum and Canada's Wings Inc., 1985); W.L. Morton, *The Critical Years: The Union of British North America 1857-1873* (Toronto: McClelland and Stewart, 1964); Donald G. Creighton, *The Empire of the St. Lawrence* (Toronto: Macmillan of Canada, 1956); Mason Wade, *The French-Canadian Outlook* (New York: The Viking Press, 1946); Mason Wade, *The French Canadians 1760-1967*, 2 vols. revised ed. (Toronto: Macmillan of Canada, 1968); Benjamin Sulte, *A History of Québec — Its Resources and People* (Montreal and Toronto: The Canada History Company, 1908) vol. 1.; D.A. Muise (ed.), *A Reader's Guide to Canadian History: Beginnings to Confederation* (Toronto: University of Toronto Press, 1982) at 45-78 (essay by Bernard Ouellet).