The National Law Programme at McGill: Origins, Establishment, Prospects

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I. Introduction

This article is about the history of an idea, and about the curriculum of a Faculty of Law within which that idea has been pursued for more than a century. Its purpose is to explore the intellectual origins of the current National Programme of legal education at McGill University, to review the circumstances of its establishment and evolution over the past two decades, and to evaluate its prospects as the Faculty’s sesquicentennial celebrations approach.¹


There have also been two short popular histories of the Faculty of Law written to commemorate the official centenary of the B. C. L. programme. See J. I. Cooper, “The Law Comes to McGill,” The McGill News, (summer, 1948) at page 6; and Paul Hutchinson, “McGill Faculty of Law 1848-1948”, McGill Daily, December 18, 1948, at page 1.

In addition to the above “official” sources, a number of studies have been published about the aims and objectives of McGill’s law programme, or about the aims and objectives of legal education generally, but written by McGill professors and former students in a manner which
Officially, the modern National Programme was established in 1968 when the Faculty of Law again began teaching a three-year accredited LL.B. degree course, and offered students the opportunity to obtain both B.C.L. (civil law) and LL.B. (common law) degrees in a systemically integrated, bilingual programme of legal studies spread over four years. Unofficially, however, one might say both that McGill's "national programme" has always existed, and that it has never existed: always existed in the sense that the curricular and scholarly concerns that led to its formal re-establishment in 1968 have characterized legal education at McGill since at least 1848; and never existed in the sense that the actual curriculum presupposed by the ambitions of the programme, by definition, can never be fully realized or even fully described in transcendent terms.  

Because this is primarily the story of a curriculum, I have tried not to concentrate on personalities (especially students and alumni) or other non-curricular developments within the Faculty (such as relationships with the Bar and Board of Notaries, tendencies in legal scholarship, and University politics) except to the extent that any of these elements bear directly on the story told here. And because I focus on a single Faculty of Law, I have not made a great effort to situate the McGill teaching programme at any given time in the broader context of contemporaneous Canadian intellectual currents or trends in legal education, unless, once again, this context appears to have been directly relevant to curricular issues at McGill. Finally, because my purpose in writing is to exhume the

unnostakably reflects the concerns animating the National Programme. Most of these references appear in later footnotes to this article.


2. In writing this essay, and especially its first part dealing with the period 1843-1968, I have relied heavily on Law Faculty Annual Announcements, minutes of the meetings of the Board of Governors and of the Law Faculty Council, and other written statements by University administrators, all of which can be found in the McGill University Archives. These latter documents include letters to newspapers, annual reports, internal memoranda and committee reports, law review articles, etc. For the most part I have taken these archives at face value, except where the secondary research of others casts considerable doubt on the official record. Obviously, until detailed studies of the main events reported here are undertaken it will be difficult to assess the fidelity of this literary record with confidence.
intellectual history of the idea of the National Programme and to trace its various curricular reflexions over the past 150 years, I have consciously left aside consideration of developments in legal theory, except where these seem to have driven the concept of the National Programme itself. To state the details of the curriculum of the McGill Faculty of Law (in effect to specify what “National” has meant and now means) as if these details have remained constant for the past century and one-half would be naive. After all, the adjective “National” is itself a presentist recharacterization of the Faculty’s earlier undergraduate curricula. Moreover, that epithet is a doubly misleading title for the McGill law programme. First, it suggests falsely that the curriculum has been tied to some abstract concept of nation and to the explicit product of the institutions comprising its political reflexion — the nation state. Second, it implies (again falsely) a curricular goal of educating lawyers to practice, or to work towards achieving, some uniform “national” law. Neither of these implications, I believe, has ever been part of the dominant ideology of the Faculty, even if both do accurately capture the personal commitments of at least some McGill professors and former professors.

Yet certain ideas about legal education and certain features of the teaching programme do appear to have been present throughout the Faculty’s history. These ideas and features, whatever their precise impact upon the curriculum at any particular moment, I take to be the defining characteristics of the McGill National Programme. They are: a view of legal education as more than a strictly professional endeavour tied to the study of local legislation and judicial decisions; an emphasis on what today we would call courses in legal theory, but which initially were seen as comprising the core subjects of the curriculum — Roman Law, international law, philosophy of law, legal history, legal bibliography, and principles of government; a vocation to law teaching and scholarship in both the English and French languages; the goal of teaching some concept of non-jurisdictional and non-temporal juridicity comprising both western legal traditions, as a model of a complete legal education; the desire, through the publication of English-language scholarship, to proselytize across common law North America the virtues of the civil law

3. In making these three caveats explicit, I am especially sensitive to the concerns expressed in A. S. Konefsky and J. H. Schlegel, “Mirror, Mirror on the Wall: Histories of American Law Schools” (1982), 95 Harv. L. Rev. 833 and in J. P. S. MacLaren, “Review of The Fiercest Debate” (1989), 68 Can. Bar Rev. 193. Thus, even though I do not claim to offer here a comprehensive interpretation of the history of law teaching at McGill, I recognize that any such interpretation could not ignore the questions raised by these authors. For this reason, I have attempted, in many of the footnotes to this essay, to canvass in greater detail the background conditions to the Faculty’s teaching programme at any given time.
tradition, and through the publication of French-language scholarship, to keep the Quebec legal community informed of developments elsewhere on the continent; and, the ambition to design a teaching programme which would inculcate in students a strong commitment to public service.

How each of these generative ideas and intellectual ambitions has been understood and accommodated in the curriculum of the Faculty of Law since the 1840s — rather than how much either the civil law of Lower Canada and the common law of Upper Canada have featured in the courses taught at McGill over the years — is, I believe, the story of the National Programme. In other words, that these ideas and ambitions are now reflected and arranged in a curricular configuration which is captured by the expression National Programme should not be taken to imply either that the configuration has been identical since 1843, or that it must necessarily continue in its current pattern.4

One of the principal themes to emerge from this story is the conflict between polyjurality and monojurality as attitudes towards legal authority.5 Indeed, much of the disagreement about the undergraduate curriculum between the Faculty and the leadership of the Bar (and to a lesser extent of the Board of Notaries) of Quebec during the past century

4 In order to explore this theme of curricular contingency more fully, I have changed the nature of the exposition between Part I (the origins), Part II (the 1968 Programme) and Part III (the prospects) of this article. The first part is mainly constructed from archival materials and focuses at a higher degree of abstraction (and without great attention to detail about how courses were taught, their actual as opposed to advertised content, and the interpersonal dynamic of students and professors) on larger themes over a longer period. The second part is written in the present tense and pays detailed attention to the special contexts — both inside and outside the Faculty — within which the National Programme was formally established and has since evolved. The third part, being largely speculative about the national programme idea, is directed to anticipating how social, economic and political forces in Canada and elsewhere are likely to bear on our late 20th century conceptions of political organization, of law and legal ordering, and of the university as legal educator.

can be written around these competing intellectual attitudes about the sources of law, the methods of judicial argument, and the nature of legal knowledge.

Even within the Faculty this conflict was occasionally manifest, dominating curricular debates during the twenty-year period following codification, during the second and third decades of the twentieth century, and during the 1950s and early 1960s. At these three moments differences of professorial opinion about legal bilingualism, the relative merits of oral and literary pedagogy, the centrality to undergraduate legal education of subjects such as Roman law, legal history, and international law, and the importance of promoting professionalism over scholarship in the curriculum served as partial surrogates for this dispute. At these moments also the conflicts between members of the teaching Faculty who were McGill law graduates (and who, during the twentieth century especially often did not understand or sympathize with the ambition to polyjurality), and those professors who were attracted to McGill from elsewhere precisely because of the opportunities to develop a polyjural approach to law teaching and scholarship, tended to be most evident.

A further theme in the story of the National Programme is that even among those professors who were committed to polyjurality and to an eclectic undergraduate curriculum, there emerged two distinct ways of pursuing this diversity. For some, the coexistence of civil law and common law traditions — first in Canada (East and West) and later in the province of Quebec — was not problematic either theoretically or in practice; they believed that the study of law should embrace as many different systems of jurisprudence (both contemporary and historical) as possible in its quest for the underlying themes of legal ordering. This non-instrumentalist and nomadic intellectual disposition I have characterized as a "universalist" polyjural vision. For others, the study of different legal traditions (and especially the systems of French and English jurisprudence) was to be undertaken in order to assist in deducing the "best" legal rule for all situations whatever the jurisdiction; even though the horizons of legal analysis were to remain open, adherents of this view held that the additional data about legal normativity elsewhere was collected only to serve the instrumental purposes of "legal science". This academic analogue of the profession's uniform law movement I have called a "unificationist" polyjural vision.6

In my view, it is how these two conceptions of polyjurality were played out during three key five-year periods of the Faculty's history — 1850-1855, 1920-1925, and 1964-1968 — perhaps even more than the tension between monojurality and polyjurality itself, which has determined the ambitions and curriculum of the National Programme idea.

Given the particular focus of this essay, I have periodized the history of the undergraduate curriculum at McGill to respond more or less to notions of the past (1843-1968), the present (1968-1989), and the future (1989-). While this structure highlights the current National Programme and its underlying assumptions, it does not, however, properly capture what I perceive as the dominant cycles in the intellectual history of the Faculty’s undergraduate programme — that is, in the history of the “national programme” idea. Taking the concepts of polyjurality and universalism as directing themes, the curricular history of the Faculty appears to have had three different cycles: a classical cycle lasting from 1843 until the decade 1885-1895; a scientific cycle lasting from 1885-1895 until the end of World War II; and a modern cycle lasting from 1945 to the present. Moreover, as the detail of this narrative I hope makes clear, within each of these fifty-year cycles different curricular sub-themes ebbed and flowed as Faculty preoccupations, and certain of these sub-themes — bilingualism, scholarship, public service — seemed even to cross the cycles as much as to follow them. Finally, at the risk of falling victim to the conceit of the present, I suggest in Part Three of this essay how the 1990s may well signal for the National Programme idea the beginning of a fourth developmental cycle.

1. Origins of the National Programme: 1843-1968


7. There is some evidence that occasional lectures in law were delivered at McGill at early at 1829. See W. S. Johnson, “Legal Education in the Province of Quebec” (1905), 4 Can. Law
Montreal advocate and politician, who had been awarded an honorary D.C.L. by McGill in 1843 and who had been offering occasional classes to intending lawyers from his Chambers, was appointed Lecturer in law. Even though Badgley was given no formal teaching position in the Faculty of Arts, he styled himself pretentiously as Lecturer in Roman and International Law and prepared a series of classes on these two topics. Shortly thereafter, Badgley was named as a circuit judge for Judicial District of Montreal, and his commitment to maintaining a regular schedule of lectures at McGill apparently waned, to the extent that the College's academic council threatened, in February 1846, to terminate his appointment. Nevertheless, presumably to renew his interest in his courses and to pave the way for the creation of a separate Faculty of Law at some future date, Badgley was promoted to the rank of Professor in March 1847.8

In the spring of 1848, a group of twenty-three young men reading law for the Bar of Canada East and intermittently attending the lectures Badgley was giving from his Chambers, petitioned McGill's Vice-Principal to grant them a complete course of instruction leading to a degree in law, and to permit them to reside in the College.9 By this

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8. For a more detailed treatment of this initial phase of legal education at McGill see S. B. Frost, “Vol. 1”, supra, note 1, at 118 and 158; S.B. Frost “Early Days”, supra, note 1, at 153-154; and Frost and Johnston, supra, note 1, at 31-32. See also, G.-E. Rinfret, supra, note 1, at 33-39 for the general context of legal training at this time.

9. In their petition, dated June 19, 1848, these aspiring advocates described themselves as “students comprising the Law Class of McGill College”. This informal group, of which neither the University nor the Bar of Montreal has any record, may have been the successor to the Brothers-in-Law (1827-1833), a dinner and debating club which counted among its members Samuel Gale, John McCord, Frederick Griffin, and William Badgley. See A.W.P. Buchanan, The Bench and Bar of Lower Canada (Montreal: Marchand, 1925) at page 128. See also the J.S. McCord papers, McGill University Archives, Box 2065, sheet 5700-5701, and M. Nantel,
petition, they pledged "faithfully" to attend any series of lectures offered at the Courthouse by Judge Badgley which the College might establish. Partly in consequence of this request, and partly in an attempt to resuscitate the teaching programme of the Faculty of Arts, on July 15, 1848, the Board of Governors of McGill College established, within the Faculty of Arts, a programme of instruction in law leading to the Bachelor of Civil Law (B.C.L.) degree. This programme, which required students to spend three terms (one year) in Arts and six terms (two years) studying law, was also initiated for two pragmatic reasons. The recent legislative constitution of the Board of Notaries as a professional corporation in 1847, and the impending reorganization of the profession of advocate — ultimately brought about by the formal incorporation of the Bar of Quebec two years later — suggested significant educational opportunities for a law programme in the fledgling College. These opportunities were confirmed by the initial Bar Act of 1849, and an amendment to the Notaries Act in 1852, both of which provided that the five-year period of articles required of students seeking admission to the qualifying examinations of the two professions would be reduced to four years for college graduates.


The leader of the group appears to have been Alexander Morris, who had just graduated with McGill's first B. A. earlier that month. Morris was the son of William Morris, a prominent Upper Canadian politician who, in 1848, held the position of President of the Executive Council. Other signatories of the petition included a Papineau, two Abbotts, two Molsons, a Stephens, a Démonay, and a Lambe.

10. The response of Vice-Principal Leach to the petitioners both anticipated the initially favorable reaction to university legal education of Quebec's two legal professions, and set the tone for the programme of law study which the College sought to see established. He wrote: "... the present system ... [of apprenticeship] ... is all very well if the student is to become a mere scrivener, but if he is to be a lawyer, it would surely be infinitely better ... to devote two years to an acquaintance with classical literature."

11. Pressure for the establishment of a law programme also came from the English-speaking merchant class in Montreal. There were several merchants among the members of the Royal Institution who "visited" the College in 1847, and subsequently reported to the Board in April 1848. They noted the moribund character of the Faculty of Arts, and drew particular attention to the sporadic nature of law teaching. As a remedy they recommended the creation of a full-fledged law programme, the nomination of Badgley as Dean, and the appointment of one or two professors as his assistants. See Frost, "Vol. I", supra, note 1 at 158-159. The two visitors most responsible for convincing the Board of the need for a law programme were Charles Dewey Day and Christopher Dunkin, both prominent English-speaking members of the legal establishment in Montreal at the time.

12. The Barreau du Quebec was incorporated in 1849 by 12 Vict. c.46 (May 30, 1849). An amendment to that act in 1853, 16 Vict. c.130 (May 23, 1853) provided for a further reduction
While little is known of how the law programme as first established in the Faculty of Arts was taught, the documentary record suggests that, for all intents and purposes, Badgley’s post-1848 syllabus constituted the initial attempt to create a “polyjural” course of legal studies at McGill. Legal history and bibliography joined Roman Law and International Law as principal lecture topics. It is, however, difficult to analyze the content of this programme since many of the legal distinctions we now take for granted cannot readily be applied to the law as then practised or to the courses then taught. Indeed, it is doubtful that the modern criteria we deploy for distinguishing between polyjurality and monojurality could even be identified in mid-19th century Canadian legal discourse. This is especially the case in connexion with the meaning of the expression “law in force” (positive law), since neither of our 20th century limiting (or boundary) notions of jurisdiction and temporality were generally accepted as relevant to the study of law. Yet, the new B.C.L. curriculum stood as a further development of what is known of Badgley’s informal and occasional course of lectures between 1843 and 1847. It appears that the curriculum and teaching programme after 1848 were not dominated by local vernacular, or by the purely technical concerns of the profession (at least as these central concerns would be conceived of today).13

in the clericulture to three years for graduates in law of a recognized collegiate institution. The text of the relevant provision of this Act is reproduced infra, footnote 19. For a summary history of legal “education” for advocates prior to 1849, see W.S. Johnson, supra, note 7; A.W.P. Buchanan, supra, note 9, at pages 122-126; M. Nantel, supra, note 1, at 97-100; and Léon Lortie, “The Early Teaching of Law in French Canada” (1975), 2 Dal. L.J. 521.

The regular courses taught by Badgley, commencing with the Michelmas Term, 1848, were the first to qualify under the initial Bar regulation. The McGill law course taught in the fall 1853 was also, apparently, the first to be approved under the revised regime. See M. Nantel, supra, note 1, at 98, 102; G.-E. Rinfret, supra, note 1, at 50; contra, semble, R. St. J. Macdonald, “Maximilien Bibaud (1823-1887): The Pioneer Teacher of International Law in Canada” (1988), 11 Dalhousie L.J. 721, at 727.

Although the notarial profession was officially organized in 1847, by 10-11 Vict. c. 21 (July 28, 1847) and although that Act gave the corporation authority to pass regulations concerning admission to the profession, it was not until 1849, by 11-12 Vict. c.47 (May 30, 1849) that formal pre-admission requirements were established. In 1852, by 16 Vict. c.3 (October 7, 1852) a formal regime of five and four year clericulture similar to that adopted by the Bar in 1848 was instituted, although it was only in 1858, by 22 Vict. c.8 (June 30, 1858) that the articling period was reduced to three years for graduates of a recognized law course. For a history of the notarial profession from 1678 through 1879, and especially for the circumstances surrounding the enactment of the 1847 legislation, see J. Mackay, supra, note 1.

The twenty-two pioneering law students who ultimately enrolled in Badgley's course, and those who followed them during the next few years, were exposed to organized lectures on criminal law, civil law, English government, and French law, as well as the core curriculum of Roman law, international law, legal history, and legal bibliography of England, France, and Canada. Moreover, these students were drawn from, and upon graduation they dispersed to, all regions of British North America. One of the five members of the programme's initial graduating class in 1850, for example, was Alexander Morris, a native of Perth, Upper Canada, who later was elected member of Parliament for South Lanark in Ontario, served in John Alexander Macdonald's initial federal cabinet, was appointed the first Chief Justice of the Manitoba Court of Queen's Bench, and ultimately became Lieutenant-Governor of that Province, prior to retiring to the practice of law and to provincial politics in Toronto. Despite the programme's scope and potential, however, in these early years Badgley was not self-consciously committed to the scholarly ideals we now associate with university education. Law teaching at McGill remained essentially a loose assemblage of occasional of what we might today consider as peripheral (or tangential) to real legal practice, was a main occupation of 1850s advocates. If this thesis is correct, then presumably similar conclusions might be drawn about the content of legal education.

14. See J. Friesen, “Morris, Alexander” in Dictionary of Canadian Biography, vol. XI, 1881-1890, at 608-615. See also S. B. Frost, “Vol. I”, supra, note 1, at 146 for details of Morris' contributions to McGill. Morris, who had articled with Oliver Mowat for John A. Macdonald in Kingston, Canada West also attended the University of Glasgow prior to settling in Montreal in 1848. In 1854 he was elected a graduate fellow of McGill for Arts and in 1857 was named to the Board of Governors. He was awarded a D.C.L. in 1862. The Faculty's first endowed prize, the Alexander Morris Exhibition was founded in his honour at the turn of the century by a legacy from the estate of his brother and partner in law practice John. It is now awarded to the student standing first overall in second year.

Other members of the class of B.C.L. 1850 were W.B. Lambe, Brown Chamberlin and Romeo Stephens, each of whom also signed the 1848 petition, as well as Christopher C. Abbott — the son of the College's bursar and professor of classics, and younger brother of future Law Dean J. C. C. Abbott — who did not. Lambe, it seems, married Alexander Morris' sister, was called to both Quebec and Ontario Bars, and practised law in Montreal until he was appointed Collector of Provincial Revenue for Quebec in 1882. Chamberlin was called to the Quebec Bar in 1852 and served as publisher of the Montreal Gazette from 1853-1867, when he was elected M. P. for Mississquoi. He was elected a graduate fellow of McGill for Law in 1854 and was awarded a D. C. L. in 1867. In 1870 he was appointed Queen's Printer in Ottawa, a position he held until 1891 when he retired to Lakefield, Ontario. See S. B. Frost, “The Abbotts of McGill” (1978), 13 McGill J. of Ed. 253.
All this began to change shortly after (and probably in some measure because) Maximilien Bibaud opened a competing *École de droit* at the Jesuit College Ste-Marie in 1851. Early in 1852, the Governors of McGill College determined to proceed with the appointment of the two additional lecturers in law which had been recommended at the time of Badgley's promotion in 1847, and to set about creating an autonomous Faculty of Law. That same year Charles Dewey Day assumed the presidency of the Royal Institution for the Advancement of Learning and, when he also became Principal of McGill College the following year, he moved immediately to establish the long-awaited law faculty.

When the Board was formulating its plans for the new law faculty, it was mindful of the fact that B.C.L. courses at McGill were in some respects already widely recognized as being superior to those in other universities. Indeed, by the time of Badgley's retirement from active teaching, the McGill course in law was attracting students from as far afield as the United States and even Britain. This was not simply a matter of reputation; the evidence suggests that the content of Badgley's lectures probably was not much different from that which articled students would receive informally from Montreal's most thoughtful and conscientious principals. That is, even though Badgley held a McGill appointment, the evidence suggests that he was not devoting much energy to developing a distinctive course of lectures for the B.C.L. degree, or to the various non-classroom elements of the law tuition.

Badgley himself is a most interesting figure. In addition to serving as professor and judge, he was also a successful politician. During the 1840s and 1850s he was elected as a member of Parliament for Missisquoi and Montreal, and held the position of Attorney-General of Canada in 1847-1848. He also served as Bâtonnier of the Bar of Montreal from 1853-1855, and over that same period prepared a draft Criminal Code, the first ever in a common law jurisdiction. Between 1840 and 1844 he was Bankruptcy Commissioner of Montreal, and from 1844 to 1847 served as a circuit judge. Appointed to the Superior Court in 1855, he was promoted to the Court of Appeal in 1862, retiring in 1874. See E. Gibbs, "Badgley, William" in *Dictionary of Canadian Biography*, vol. XI, 1881-1890, at 40-41.

During his articles, Bibaud was already well known among francophone members of the Bar of Montreal, and at his Bar Admission exams he so impressed George-Etienne Cartier and Augustin-Nobert Morin that they suggested he found a law school. See, in particular, G.-E. Rinfret, *supra*, note 1, at 46-47 for the "nationalist" account of the circumstances surrounding the establishment of the *École de droit*.

15. A measure of Badgley's inability to consolidate the B.C.L. course as a university programme is the fact that, apart from the five initial graduates in 1850, only five other students, Alexander Molson in 1851, Frank Badgley in 1852, John Abbott and John Barnston in 1854, and Edward Hemming in 1855 were awarded degrees during the time he headed the law programme. From these figures, and from minutes of the meetings of the McGill Governors, one can deduce that the content of Badgley's lectures probably was not much different from that which articled students would receive informally from Montreal's most thoughtful and conscientious principals. That is, even though Badgley held a McGill appointment, the evidence suggests that he was not devoting much energy to developing a distinctive course of lectures for the B.C.L. degree, or to the various non-classroom elements of the law tuition.


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17. Charles Dewey Day was the dominant figure in the Faculty's first quarter-century. He had a profound influence on the McGill Programme in law, and especially on the initial definition of its mission. Day also had a high profile in legal circles in Canada and Quebec. In addition to serving as both Principal (between 1853 and 1855) and Chancellor of McGill (between 1864 and 1885), Day led an active political and judicial life. He served in the Legislative Assembly between 1831 and 1842 and was involved as judge advocate in the Patriote trials following the 1838 uprising. He held the position of Solicitor-General in the Draper-Ogden
Bar Act was amended in 1853 to reduce the period of articles to three years for students who followed a regular course in law at a university or college which had a "Chair" in law, Day informed the Bar, on July 17, 1853, that McGill had established both a Faculty of Law and a Chair of Law. This Chair was to be held by none other than William Badgley who, not coincidentally, had been elected Bâtonnier of the Bar of Montreal that spring.

While he was never explicit about the purposes of the new Faculty, Day did note, in a manner which foreshadowed his later work with the Codification Commission, that the diversity of sources of the law of Lower Canada was not an inconvenience for law teaching but an opportunity. In the University's 1853 prospectus he announced the formation of a separate "Faculty of Law", to comprise two professors "to which such lectureships and aids will be added as may be found necessary for affording liberal and thorough instruction to students in that profession."

Thus, it would appear that both Day and Badgley were committed to an eclectic and polyjural vision of legal education and of the content of the restructured B.C.L. programme. But they had sharply differing views as to the curricular orientation which the Faculty should assume. Day was a universalist who saw in the confluence of legal traditions — common law, civil law, commercial law, canon law — in Montreal great intellectual richness, and an unparalleled opportunity for crafting a new Canadian legal order; Badgley was a unificationist, whose avowed mission in teaching disparate systems of jurisprudence at McGill was to facilitate the integration of Upper and Lower Canadian law.18

ministry of 1841-42 prior to joining the Court of Queen's Bench (Crown Side) in June 1842. He was appointed one of the original ten judges of the Superior Court of Quebec in 1850, and while McGill Chancellor, served successively on the Commission established to determine commutation duties to be paid consequent upon the abolition of the seigneurial regime (1854), the Codification Commission (1859-1865), and the Commission of Inquiry Into Railway Subsidies (1865). He was also the Quebec nominee to the panel struck to arbitrate debts and credits as between the new government of Canada, the government of Quebec and the government of Ontario (1868), prior to serving for several years as a Justice of the Quebec Court of Queen's Bench (Appeal Side), during which time he was also a member of the Royal Commission established to investigate connexions between the C.P.R. and the federal Conservative government (1873). For a brief review of Day's career see C. Millar, "Charles Dewey Day" in Dictionary of Canadian Biography, vol. XI, 1881-1890, at 237-238. A much understated sketch of Day's contributions to McGill and to the Faculty of Law may be found in Frost, "Vol. I", supra, note 1 at 155, 157 and 292-295. For a suggestive discussion of Day's legal thought, see B. Young, "Charles Dewey Day: Lawmaker par excellence", (unpublished, 1989) a paper presented to the Fédération des sociétés d'histoire du Québec, May 6, 1989. 18. In many respects Day and Badgley were both traditional Lower Canadian Conservative anglophiles. Yet Day, like A.T. Galt and John A. Macdonald, was able to accommodate himself to the French-Canadian élite of Lower Canada, and to the "great construction" of legal
The new Faculty was formally constituted with a teaching corps of three — Badgley being appointed its first Dean. John Joseph Caldwell Abbott, who was Badgley's junior partner in practice and one of Canada's promising young commercial lawyers (as well as secretary to the McGill Board of Governors), and Frederick William Torrance, a respected young barrister and real estate lawyer, who held an M.A. in jurisprudence from the University of Edinburgh and who had been formally called to the Bar in 1848, were also named lecturers. Like similar appointments in medicine, these appointments were taken up largely for reasons of professional publicity and initially demanded little commitment of time. The remuneration of these early members of the teaching faculty was to be derived principally from student fees, although the University also made a grant of 500 pounds per annum to each lecturer.

Following these three appointments, McGill's law classes became somewhat more regular, even though they continued to be given first at the downtown offices of Badgley et al., and later in rented premises at the St. James Street Branch of the Molson's Bank. The larger professorial complement also permitted the style of pedagogy to depart from the exclusively lecture format which Badgley had deployed previously. The Academic Regulations of the Faculty for 1854 provided, inter alia:

4th. Instruction will be given by recitations, examinations, and oral lectures and expositions, daily, during the terms, and questions for discussion will be occasionally submitted to the students to be decided by the Professor or Lecturers.

As far as can be determined, then, the early programme not only continued to comprise courses in a variety of comparative and historical subjects, but also straddled the line dividing oral and literary traditions in law teaching.

In 1855, the pressures of Badgley's duties in drafting and promoting the Province of Canada's proposed Criminal Code and his nomination to the Superior Court of Quebec led to his resignation from the Faculty.
Thereupon the Board named Abbott, who completed his B.C.L. in 1854 while lecturing in the Faculty, as Dean and Professor of Commercial and Criminal Law, and promoted Torrance to the rank of Professor of Roman and International Law. Shortly after assuming the deanship, Abbott secured the appointment of Justice Thomas Cushing Aylwin as Professor of Criminal and Constitutional Law (a post he held until Badgley's return to the Faculty in 1859). The following year Abbott confirmed the nomination of Torrance, who received his B.C.L. that spring, as Faculty secretary, and arranged the promotion from lecturer to professor of two other young, but well-known Montreal practitioners and 1856 graduates of the Faculty, Toussaint Antoine Rodolphe Laflamme and P. R. Lafrenaye.¹⁹

These latter appointments initiated an era of regularly scheduled and systematic instruction, of curricular development and reform, of professorial scholarship, and of the teaching and examination of law in the French language at McGill. Twenty (1856) students enrolled in the Faculty for the 1856 session, up from six in the previous year. After the Faculty moved from the downtown Molson's Bank building to Burnside Hall, adjacent to the McGill College campus, Abbott sought to develop a clercature system as a formal feature of the curriculum. For several years he was able to place students with the best Montreal advocates. Indeed, many entered into partnership with their principals immediately upon graduation.²¹ The Annual Announcement for 1856 indicates the —

¹⁹. The B.C.L. degrees obtained by Abbott, Torrance, Laflamme and Lafrenaye are of dubious academic merit since they themselves taught and examined the degree courses, and were already members of the Bar. The Faculty seems to have had a banner year in 1856 since, in addition to three professors — Torrance, Laflamme, Lafrenaye — four other students were awarded the B. C. L. degree. Laflamme and Lafrenaye were initially appointed as lecturers in 1854, and remained at McGill until 1889 and 1874 respectively. Torrance left the Faculty for the Bench in the late 1860s but continued teaching until 1872. A sense of the early curriculum can be gained from Torrance's lecture on "Roman Law" published in [1854] The Law Reporter 52. For further details on the careers of these professors see the relevant entries in: W. S. Wallace and W.A. McKay, The Macmillan Dictionary of Canadian Biography (4th ed.) (Toronto, Macmillan 1978).

²⁰. The Faculty Announcement for 1861, the first in which examination questionnaires were reproduced, indicates that in that year five courses were taught in English and two in French. Moreover, class lists, which began appearing in the Announcement in 1858, reveal that between then and 1861 there were 26 students with English surnames and 19 students with French surnames enrolled in the Faculty. See the address by Désiré Girouard (B. C. L. 1860) entitled, "Le droit canadien et la faculté de droit de l'Université McGill" (M. U. A., Dept. of the Registrar, Scrapbook #1). This bilingual character of the early law programme is confirmed by explicit references in the official biographies of Wilfrid Laurier (B.C.L. 1864) by O.D. Skelton, Life and Letters of Sir Wilfrid Laurier (Toronto: McClelland and Stewart, 1965), at pages 6-7, and of Pierre-Basile Mignault (B.C.L. 1872) by A. Morin, L'honorable P.-B. Mignault (Montreal: Fides, 1946), at pages 18-19.

²¹. Examples include John Morris, who clerked with Torrance; Wilfrid Laurier, who clerked
extent of Abbott's revisions to the teaching programme, and his embrace of Day's rather than Badgley's view of the Faculty's mission. The following courses were listed as offered:

On public and constitutional law (Aylwin); On obligations (Abbott); On the Civil Law, the rights of persons under the Roman Law, property in possession, *jus in re* (Torrance); On the Origin and History of the Laws of France, of England, and of Lower Canada (Laflamme); On the Law of Real Estate and Customary Law (Laflamme); On Commercial Contracts (Abbott); On Legal Bibliography (Lafrane); On Criminal Law (Aylwin); On International Law (Torrance); On leases, Deposits, Sequestrations, pledges, Suretyships, Compositions, Imprisonment (Lafrane).

Thus, by the late 1850s, the major elements of McGill's first polyjural, universalist and bilingual curriculum were in place. Throughout the 1850s and 1860s the *Institutes* of Justinian, the *Coutume de Paris*, and William Blackstone's *Commentaries* were basic components of the B.C.L. tuition. There is no better evidence of the Faculty's curricular ambitions than Lafrane's "Programme du Cours d'histoire de la jurisprudence (en bas-Canada) et la Bibliographie du droit", a course syllabus which comprised sixteen printed pages of outline and bibliography of English, French, and Canadian Law.22

with Laflamme; and Edward Carter, who clerked with Abbott himself, and served for many years on the Faculty's teaching staff. The extent to which the McGill law programme at this time was merely an adjunct to its professors' professional practice is difficult to determine. An amendment to the *Bar Act* in 1853 (16 Vict., c.130, s.6, May 23, 1853) provided:

VI. And be it enacted, That if any Student at Law duly articled and otherwise duly qualified, shall in any incorporated University or College in which a Law Faculty is established, have followed a regular and complete course of Law as provided by the Statutes or regulations of the said University or College, and shall have taken a Degree in Law in such University or College, three years of Clerkship shall be sufficient, and such course of study shall and may be followed simultaneously with his time of service with a practising Attorney under his Articles.

An equally plausible explanation of the clericature programme, therefore, is that Abbott, faced with the desire of the Bar to impose concurrent study and articles, chose to make the articles part of the curriculum and to ensure quality placements for McGill students. I have not been able to determine, however, how this system functioned in practice, or whether it had a major impact on the content of the teaching programme. What is clear, however, is that the Faculty owned no library at this time, and that the law books of their principals served in the stead of a university collection. For a brief discussion of the clericature régimes of the professional corporations, see Nantel, *supra*, note 1, at 101-103; and Mackay, *supra*, note 1, at 437-444.

22. In other words, it is erroneous to see the early B.C.L. programme as merely derivative of contemporary legal education in the United Kingdom. In particular, Bibaud's claims, published in his *Notice historique sur l'enseignement du droit en Canada*, that McGill taught only Blackstone's *Commentaries* (page vii); that Laval and McGill taught only by lecture method (page vi); that McGill students were "muet" at the oral Bar Exams (page vi); do not stand up to scrutiny, despite their appeal (in intellectual terms) to certain modern day commentators. See, for example, D. Howes, "Origins", *supra*, note 5.
In the introduction to the Law Announcement for 1857, Abbott proclaimed the Faculty’s animating themes of heterogeneity and universalism:

The Educational officers of this Faculty have felt that the Law of Lower Canada, though in many of its details purely local, retains, as its leading characteristics, the noble and imposing features of the civil law, and that the principles established in the Roman jurisprudence, still form the groundwork of many of its departments. The lectures, therefore, though prepared with especial reference to the law of Lower Canada, have been as far as consistent with their primary object, divested of any purely sectional character, and are made to inculcate such comprehensive principles, as form, to a great extent, the basis of every system of jurisprudence.

It is considered that this system will afford to students of the laws of Lower Canada, a better foundation for their subsequent studies, and tend to give them a more extended and comprehensive grasp of legal subjects, than a course of instruction conducted solely with reference to local law; while it is hoped, in view of the increased importance which the study of the civil law is everywhere assuming, that the advantages offered, and the mode of education adopted by this Faculty, will open to it an extensive field of usefulness.

At least until the codification of the private law of Lower Canada in 1866, the Faculty’s mission and principal pedagogical objective was to offer a general education which would prepare students for admission to the practice of law and for public service in all regions of British North America. In doing so it was attempting to provide what would today be characterized as a liberal legal education, and was probably one of the first North American university-affiliated faculties of law to develop an academically oriented programme based on the European model.  

Among its published degree requirements was the obligation to submit to a special, comprehensive final examination and to prepare a twenty-five page “Thesis, either in Latin, French, or English, upon some subject previously approved by the Dean of the Faculty.”

23. Citing contemporary statement of the Faculty’s self-image, W.S. Johnson, supra, note 7, observes at page 493:

“The ideal has been, not to cram a man for three years with all that is essential to a successful Bar examination, but to acquaint him with fundamental principles, to quicken in him an appreciation of the finer spirit that is behind all law, to make him something of a critic of principles, a lover of justice for its own sake, a student of elemental processes of law applied for ages to the needs and vicissitudes of life.”

24. The exact date of the imposition of the undergraduate thesis requirement is not known, although it appears that the first such theses were submitted pursuant to academic regulations published in 1866. In 1862 the Faculty conferred its first graduate degree. Both Christopher Abbott and Alexander Morris were awarded the D. C. L. that year. While the D. C. L. could be earned through a combination of twelve years public service following the B. C. L. and the
The Faculty attracted a respectable number of students each year, between twenty-four and forty-six in every session between 1858 and 1866. Many future leading figures in Canadian public life, both francophone and anglophone, were graduates of the programme during the pre-codification decade. Wilfrid Laurier, who was later to become the second Canadian prime minister to hold a McGill B.C.L. (J.J.C. Abbott being the first), in delivering the convocation address of 1864, captured the Faculty's ambitions in these terms:

Les prérogatives et les devoirs du peuple et de l'exécutif doivent être maintenus dans les limites de la constitution, et l'homme de loi, par le fait même de ses études, se trouve le mieux placé pour répondre aux urgences de cette situation. . . . En passant dans le domaine de la politique, l'homme de loi ne change pas de mission; là encore il aura à rendre à chacun selon ses œuvres, à faire régner la justice; il ne fait qu'agrandir la sphère de son action: . . .

Deux législations différentes régissent ce pays: la législation française et la législation anglaise. Chacune de ces législations n'oblige pas seulement la race à laquelle elle est propre mais chacune régit simultanément les deux races — et chose digne de remarque, cette introduction dans le même pays de deux systèmes de législation entièrement différents, s'est fait sans violence, sans usurpation, mais par le seul effet des lois et de la justice. . . .

L'étude des lois a continué ce rapprochement, nous nous sommes familiarisés avec les jurisconsultes de la France et de l'Angleterre nos mères-patries; nous allions ensemble les génies de ces grandes nations; nous prenons la raison et la sagesse partout où elles se trouvent, peu importe dans quelle langue elles soient exprimées. . . .

La mission de l'homme de loi au Canada embrasse en résumé: la justice la plus noble de toutes les perfections humaines; le patriotisme, la plus noble de toutes les vertus sociales; l'union entre peuples, le secret de l'avenir. Maintenant, Messieurs, nous voyons le but; nous de faire que nos efforts en soit à la hauteur.

25. By the time of codification over 100 B.C.L. degrees had been awarded. Between 1860 and 1866 alone, the following notables graduated from the Faculty: Gonzalve Doutre, Désiré Girouard, D'Arcy McGee, Charles P. Davidson, Charles Wurtele, Antoine Aimé Dorion, Leonidas Heber Davidson, Arthur Taschereau, Christophe Geoffrion, and Wilfrid Laurier. The foundation in 1865 of the Elizabeth Torrance Gold Medal, to be awarded each year to the Faculty's top student, was intended not so much to reward academic performance (as is now the case) as to encourage students to engage in public-minded endeavours.
Between 1866 and 1896 many of the Faculty's professors and students strove consciously to develop this unique conception of a polyjural, universalist and bilingual programme of law studies, and its achievement was held to be the distinctive feature of the McGill curriculum.

Unfortunately, however, a variety of political and legal events conspired against this ambition. Confederation itself, with its attendant enforced separation of the civil law and common law traditions, and the insularity of national institutions implied by the removal of the capital to Ottawa, worked directly against the Faculty's stated purposes. In addition, the codifications of Civil Law in 1866, and Civil Procedure in 1867, had the nefarious (and certainly unintended by Charles Dewey Day, the leading member of the codification Commission) effect of narrowing the Bar's legal horizons. Together with amendments to the Bar Act enacted in 1866, which purported to give the Bar control over the curriculum of the province's law faculties, these two events soon generated calls for revisions to the orientation of the undergraduate

26. From 1848 through 1867 several of the Faculty's students were sons of politicians, public servants, and businessmen attracted to Montreal for career reasons. With Confederation many of these families moved to Ottawa. Further, the dissolution of the Province of Canada into Quebec and Ontario, the assignment of legislative jurisdiction over “property and civil rights” to the provinces, and the localization of legislative and administrative authority hastened the juridical separation of Canada East and Canada West and the provincialization of their legal institutions — including bench and bar. Finally, the removal of the capital to Ottawa hastened the capture of federal commercial law by common lawyers and facilitated legislative monojurisdiction in the new Canadian Parliament.

27. Many commentators see codification as having been a boon to legal education, presumably because it rationalized the “chaotic state of the law” and made doctrinal teaching easier. See, for example, the documents collected in J. Boucher and A. Morel, De l'ordonnance criminelle au code pénal (Montreal: Université de Montréal, 1974), at 152-155. Indeed, in their Sixth Report at page 262, the Codifiers themselves expressly foresaw that the Code might make law teaching easier.

Another view of codification, which seems to reflect Day's own hopes and apprehensions more closely, and which supports the view taken in this text, is presented in D. Howes, “Origins”, supra, note 5. John Brierley observes in “La notion de droit commun”, supra, note 6, at page 115 that Day developed his views of codification as early as 1859 or 1860, in a passage which ultimately appeared in the Introduction to the Codifiers' Report. Using language remarkably similar to Portalis' “Discours préliminaire prononcé lors de la présentation du projet, 24 thermidor, an 8” of 1804 (see P. A. Fenet, Recueil complet des travaux préparatoires du Code civil, T.I. p. 463, Paris, 1827), he wrote:

"Every Code of Laws however full and complete it may be necessary pre-supposes not only the existence but also the knowledge [...] of certain primary and fundamental principles. There are laws of God, of Nature and of common sense which must underlie and sustain all positive legislation. There are also general [maxims] and rules which have acquired a prescriptive authority and enter into the habits of thought and mode of reasoning of educated lawyers and constitute a kind of universal legal education ..."

teaching programme at McGill. In the Faculty Announcement for 1868 such changes were reflected in the following observation, which appeared immediately after the paragraphs from the 1857 Announcement quoted earlier:

The enactments of these Codes as law, it is believed, will lighten much the labours of professors and students, who need no longer view the study of the profession as a vast and ill-digested whole, wanting coherency and certainty. On the contrary, the study of the texts will afford a good standpoint from which the subtile (sic) questions of jurisprudence will be the most easily and satisfactorily discussed and finally settled.

Over the next five years, technical exercises of Code parsing and exegetical pedagogy became more dominant within the curriculum, as professors, students and practitioners comforted themselves with the delusion that the Code comprehensively presented "the law in force".

Following the demise of Bibaud's École de droit in 1867, a young McGill graduate, Gonzalve Doutre, (B.C.L. 1861), who had been a vociferous critic of legal education in Quebec since 1863, organized a new school of law at the Institut Canadien. When the Bar Regulations he

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28. The Bar seized on its newly granted statutory power to enact a Regulation in 1866 by which it compelled each: ... candidat à la pratique, en outre de toutes questions sur la procédure, le droit roman, international, civil, criminel, statutaire, public et administratif, qu'il fasse des résumés par écrit de documents qui lui seront soumis et qu'il rédige par écrit tout acte de procédure. This regulation was followed, a few years later, by another, which required that all approved law faculties be affiliated with a University, and that students have completed a "cours classique" prior to admission to the Bar. See M. Nantel, supra, note 1.

29. Abbott's role in this pedagogical reorientation is unclear. By the late 1860s he was becoming heavily engaged in his law practice and in Conservative party politics, and was less involved in administering the Faculty. See S. B. Frost, supra, note 14, at 257-260. On the other hand, it is noteworthy that Laflamme, LaFrenaye, and Torrance all served on the Bar Committee which reviewed the Draft Code with a view to preparing a Code of Civil Procedure.

The impact of codification on teaching can be traced in several other modifications to the Annual Announcement. Between 1867 and 1871 the curriculum for the Faculty's private law courses was increasingly described by reference to the relevant articles of the Code rather than by its subject matter. Between 1868 and 1872 the course on International Law was not offered, and by 1872 Blackstone and Justinian were consigned to the courses devoted to public law and legal history, respectively. Thus, far from the Code serving as "a good stand-point from which the subtile (sic) questions of jurisprudence will be the most easily and satisfactorily discussed", it soon became the main object of law teaching at McGill. See also Wurtele, "Faculté de droit à l'université McGill" (1872), 4 Revue légale 150, at 151-152: "Law is a perfect science, and you can never be a profound jurisconsult until you thoroughly understand its principles and know its original sources . . ." This convocation address of 1872 is the earliest record I have found of an appeal to a post-codification "legal science" in Quebec. But see J. Sewell, Chief Justice of Lower Canada, who wrote, in arguing for the establishment of a law school in lower Canada, of the need for "some Institution of a public description, in which Law may be taught as A SCIENCE", a speech delivered on May 31, 1924 and reprinted in (1846), 1 Rev. de Lég. 477.
himself had championed required that law schools be attached to degree granting institutions, he sought affiliation of his programme with the Methodist Victoria College in Cobourg, Ontario. Doutre’s project lasted only four years, and in 1871 he was welcomed to McGill as a Professor of Law, along with his colleague from the Institut Canadien, William Kerr. Doutre’s teaching career at McGill remains an enigma. From changes to the course descriptions in the Announcement it can be inferred that he and Kerr arrested, temporarily, the Faculty’s alienation from its initial polyjural vision. But by the time of his departure after the 1874 academic year it was apparent that the Faculty was having difficulty maintaining its universalist orientation. For example, the 1873 Faculty Announcement was purged of all its statements concerning the high ambitions of the law programme, and in 1874 Doutre was obliged to give up his courses entitled “Judicial Logic and Professional Etiquette” and “Medical Jurisprudence (in its legal relations)”. Finally, there is evidence that by the mid-1870s Doutre himself was groping towards “legal scientism” as the model for post-Codal law teaching.

Between 1870 and 1873, several new professorial positions in the Faculty were established and by 1875 the Faculty complement stood at eight — all, of course, holding part-time appointments. When Burnside Hall was sold that year by McGill, the Faculty was established once again in the Molson Bank on St. James Street. This relocation was a mixed blessing because, while it made the law courts more accessible, by ending the physical separation between the College and the courts, it facilitated increased involvement in the practice of law by professors. No doubt

31. Doutre had become president of the Institut Canadien in 1871, leading it into an out-and-out confrontation with Bishop Bourget. For a brief history of the conflict, see P. Sylvain, “Bourget, Ignace” in Dictionary of Canadian Biography, vol. XI, 1881-1890, at 94-105. Following this confrontation, the Institut was closed and Doutre sought the affiliation with McGill that eventually led to his appointment as a professor of law. Doutre remained as a professor at McGill for only two years, receiving a D.C.L. in 1873. From 1874 to 1877, however, he served as a member of the Corporation of McGill University and lectured on a part-time basis on legal subjects. See J.-R. Rioux, “Doutre, Gonzalve” in Dictionary of Canadian Biography, vol. X, 1871-1880 at 249-253.

The conflict between Bourget and the Institut Canadien was more than a personal dispute between Doutre and Bourget. Besides Doutre and Kerr, two other McGill professors, — Edmond Lareau, who taught from 1874 to 1890, and Rodolphe Laflamme, who taught from 1854 to 1872 — had affiliations with the Institut and were leading members of the “rouge” faction. See S. Gagnon, “Lareau, Edmond” in Dictionary of Canadian Biography, vol. XI, 1881-1890 at 488-491, and W. S. Wallace, supra, note 19, for a brief biographical note on Laflamme. This conflict between Bourget and the Institut and later between Bourget and the Archbishop of Quebec was to have profound consequences for McGill until the late 1880s. See, infra, text at notes 36-52.
largely because of such professional and political activity, by the mid-1870s several lecturers (including Abbott himself) appeared to be neglecting, or at least downplaying, their teaching duties. Classes were being cancelled regularly. More importantly, a less demanding style of pedagogy began to be employed by professors: following codification, law teaching at McGill became less dialogic, more magisterial; less oral and active, more literary and passive; more methodological, less eclectic. Finally, the Faculty began to pay less attention to students under pupillage. Abbott's original idea of placing students with leading advocates was allowed to lapse and, even though the size of the student body remained modest, no effort was made to integrate the clericature into the teaching programme.

In 1876 William Kerr, who seems to have been the most energetic professor at the time, and who, between 1871 and 1875 edited Quebec's only law journal, La revue critique de législation et de jurisprudence du Canada, was named Acting Dean. Kerr was a diligent promoter of the Faculty and of its scholarly vocation. He was also one of Quebec's leading counsel during the 1870s and 1880s, serving as Bâtonnier of the Bar of Montreal from 1875 to 1879 and Bâtonnier of the Bar of Quebec from 1876 to 1878. His first year as Dean saw substantial revision to the D.C.L. requirements, which thereafter required students to submit to an oral examination in International Law, Roman Law, Constitutional Law and Legal Philosophy as well as in Civil and Commercial Law. Moreover, between 1877 and 1882 Kerr secured the first donations of books which were later to form the basis of the Faculty's library.

Nevertheless, Kerr's appointment seems to have had little immediate impact either on the development of an undergraduate curriculum which would accommodate codal teaching within the universalist tradition previously pursued, or on the commitment of his professorial colleagues to their courses. A formal complaint about the irregular teaching of

32. The history of legal publishing in nineteenth century Quebec (and McGill's role in promoting legal scholarship) is fascinating. Kerr's Revue seems to have originated while he taught at the Institut canadien. It lasted for only four years, publishing articles and commentary (mostly by McGill professors or graduates) in both English and French. See, for further details of Quebec's legal literature in the 19th century and the role of McGill professors in its production, R.A. Macdonald, "Understanding Civil Law Scholarship" (1985), 23 O.H.L.J. 573, at pages 592-596; S. Normand, "Une analyse quantitative de la doctrine en droit civil québécois" (1962) 23 C. de D. 1009; and each of the previously mentioned Dictionary of Canadian Biography and Macmillan Dictionary of Canadian Biography entries.


34. While Kerr personally took responsibility for the Faculty's most eclectic course, International Law, as Acting Dean he remained powerless to effect major changes to the B.C.L.
classes for the B.C.L. programme was made in 1877, and the following year a further complaint prompted the Graduates Society to take up the matter.\textsuperscript{35} Again, while the Faculty was in many respects a bilingual institution — with Professors Doutre, Rainville, Lareau and Geoffrion examining in French, and Professors Abbott, Wurtele, Archibald and Kerr examining in English — throughout the 1870s this bilingualism apparently was asymmetrical. The Minutes of the Faculty for December 1875 record:

A petition was read from a number of the French students setting forth that some of the French professors give a resumé of their lectures and praying that the English professors would take the same course with regards to translating into French. Upon this petition the Faculty without laying down any rules gave expression to the opinion that the students were to be presumed to understand both languages and that lectures ought not to be repeated further than to explain questions asked in the language of the questioner and it was resolved to recommend all the professors to adopt this course.

Unfortunately for the promoters of legal bilingualism at McGill, the controversy continued to simmer for several years.\textsuperscript{36} Moreover, the opening of a Montreal branch of the law school of the Université Laval in 1878 attracted many francophone students away from McGill and soon was to create an even greater linguistic asymmetry at the Faculty.\textsuperscript{37}

programme, or to the standard of performance of his several colleagues. Part of Kerr's difficulty flowed from the precedent set by Abbott himself. During his Deanship Abbott served as an M.P. (1857-1874), (1878-1891), drafted the first Insolvency Act, organized the C.P.R. syndicate, and drafted its contracts with the government. See, S.B. Frost, \textit{supra}, note 14.

35. Despite these complaints, the demand for legal education was strong, and in 1877 enrolment in the Faculty rose to an all-time high of seventy-eight. See Frost, "Vol. 1", \textit{supra}, note 1, at 278; Frost and Johnston, \textit{supra}, note 1, at 33.

36. During the academic year 1876-77 French-speaking students complained that Professor Doutre was not giving his lectures in French. At the Faculty meeting of January 10, 1877 Doutre was requested "to cause his lectures to be delivered in French and to report to the Faculty what means he can recommend to attain that end." At the Faculty meeting of February 17, 1877 a disagreement between Professors Lareau and Trenholme over the desirability of translating examination questionnaires was discussed. Despite a student petition requesting bilingual examinations the Faculty "resolved that inasmuch as it must be inferred that students matriculated in the Law Faculty of this University are conversant with both French and English, that the Faculty cannot vary the rule relating to explanations of questions, but Professors may in their discretion translate technical terms or other phrases of which they consider a translation might reasonably be asked." This policy remained in force until February 21, 1881 when, once again upon student petition, the Faculty reopened the question and ultimately reversed its position. Notwithstanding this new policy, however, it appears that not all examinations questionnaires were produced bilingually after 1881, and indeed law teaching in the French language seems to have petered out within a few years.

37. For the circumstances surrounding the establishment of the Laval faculty in Montreal see H. Hétu, ed., \textit{Album souvenir 1878-1978, Centennaire de la Faculty de droit de l'université de Montréal} (Montreal: University of Montreal, 1979).
Much of the history of the undergraduate curriculum between 1875 and 1890 can be understood as the struggle between certain factions within the professional corporations — Notaries and Advocates — and the University for control of legal education. McGill had never been fully reconciled to the 1860 Notarial Act or to the 1869 Bar Act which made a “cours classique” a prerequisite for admission to the legal professions, and hence, a matriculation requirement for its Faculty of Law.38 In 1877 the College unsuccessfully sought to petition the Quebec legislature to recognize that the dissentient education clause of the British North America Act protected its programmes in law from professional control either as to matriculation requirements or as to content, and exempted its law graduates from further professional examination prior to admission.39 That same year the Faculty resisted an attempt by the Board of Notaries to require it to appoint a separate professor of Notarial Law, arguing that no such subject really existed. This latter struggle was shortly lost, however, and when Kerr was officially appointed Dean in 1881, a notary, Lewis A. Hart, was also named Lecturer in Notarial Law.40

The much more important dispute with the Bar over conditions of admission to the profession was ultimately lost as well. Three times

38. The Acte pour amender les lois concernant la profession de notaire, 23 Vict. c.66 (May 19, 1860) specified in detail the “cours d’&lucation classique,” although it was not until 1870, 33 Vict. c.28, (February 1, 1870) that a precise content for this “cours classique” was settled. The Bar instituted a similar requirement in 1869 by an amendment, 32 Vict. c.27, s.18, (April 5, 1869), which provided: 18. The liberal education required for admission to the study of the law, shall include a complete course of classical study, namely: Latin rudiments, Syntax, Method, Versification, Belles-lettres, Rhetoric and Philosophy inclusive, or any other complete course of classical study taught in incorporated colleges, seminaries or universities. The province’s first “cours classique” was only created in 1850 as a consequence of a gift to the Bishop of Joliette by a wealthy notary, Barthélemy Joliette. Joliette stipulated the course content as: éléments, syntaxe, belles-lettres, sciences, philosophie. See J. Mackay, supra, note 1, at 443-444.

39. This battle for control of matriculation requirements was fought and won in 1835 by the Faculty of Medicine, and the University was fearful that the Bar’s insistence on the “cours classique” would undermine its own B.A. degree. See Frost, “Vol. I”, supra, note 1 at 281. Unfortunately, like many other political disputes of the last third of the 19th century, this controversy soon focussed on religious and racial matters as a surrogate for substantive disagreement.

40. The dispute with the Board of Notaries was as much a conflict about the make-up of the teaching staff as it was about curriculum. Until 1881 no notary had held a teaching appointment at McGill. Even when Notary Hart was appointed that year he was not given a professorial position, but was named the Faculty’s sole law lecturer. The first notary named as a professor was William de M. Marler, some ten years later, who was formally designated as “Professor of Notarial Law.” The exchange with the Board of Notaries also reflected conflicts about the ambitions of the McGill law programme — with the Board arguing that “practice and procedure” in Quebec should animate legal education, and Kerr insisting that the Faculty maintain its traditional vocation. A compromise was reached on this issue also, by which the Notarial course would be obligatory only for intending notaries, and would be styled “Theory and Practice of Notarial Deeds and Proceedings.”
during the 1880s the provisions of the *Bar Act* concerning legal education were amended. In 1881, the formal requirement of the "cours classique" was dropped, to be replaced by the formula "éducation libérale et classique" (which, when detailed matriculation regulations were passed the following year, turned out to be almost the same thing). In 1886 matters came to a head with a further amendment to the Bar Act which gave the corporation (and not the Lieutenant-Governor-in-Council as was previously the case) ultimate control over the university law curriculum. McGill's Principal, William Dawson, already sensitive to criticism of the Arts degree and of teaching within the Faculty of Law, devoted a considerable portion of his Annual Report for 1886 to this question. He delivered a passionate defence of the McGill B.A. and the right of the University to control its law curriculum:

It might almost be inferred, from some statements which have been circulated, that students can enter into the classes of the faculty without any matriculation examination. On the contrary, every student must pass an examination before entering into the first year. As stated in the calendar, to which its details are annually advertised, this includes Latin, English and French, mathematics, history, and even a certain amount of rhetoric, logic and ethics, which take the place of 'philosophy,' respecting which so much has been said. Graduates in arts are, of course, received without examination.

All this can and will be done quite independently of the Council of the Bar, and without any legal compulsion on the part of that body. I may add that while I object on every principle of sound education and of civil right to place the curricula and examinations of our Protestant education in the hands of the professional councils, I feel confident that their interference in the manner indicated in the recent regulations of the Council of the Bar, will degrade and not elevate the legal profession.

41. The 1882 regulation passed under 44-45 Vict. c.21 (June 30, 1881) was virtually identical to that adopted in 1869. It provided: Il comporte, dans un cadre forcément restreint, les matières du cours classique: le latin, l'histoire, la géographie, la littérature, la philosophie (logique, métaphysique et morale), l'arithmétique, l'algèbre, et les éléments de la géométrie, de la trigonométrie, de la physique et de la chimie. See Nantel, *supra*, note 1 at 101 and 108.

42. Section 49 of this Act, 49-50 Vict. c.34 (June 21, 1886) provided, *inter alia*:

- The general council may, from time to time, determine the subjects which shall be studied, and the number of lectures which shall be followed upon each subject in universities and colleges to constitute a regular law course. The curriculum once adopted shall nor be altered except by a vote of two-thirds of the members of the general council.
- The law course given and followed in a university or college, and the diploma or degree in law granted to students, shall avail only in so far as the said curriculum has been effectually followed by the university or college and by the holder of the diploma conferring the degree.

43. See W. Dawson, "The University in Relation to Professional Education" *Addresses*, (1887) at pages 8-10.
Yet the Council of the Bar which is supposed to represent these men has at its last meeting absolutely refused to grant the fair demands of the university for its educational autonomy, and for the fulfilment of the guarantees solemnly given by the whole Dominion at the time of Confederation, and has even passed a resolution pledging it to resist all legislation in vindication of the educational rights infringed by its own acts.

This plea for McGill's educational autonomy drew a caustic reply from Siméon Pagnuelo, a former student at McGill, a graduate of Bibaud's *École de droit*, and secretary of the Conseil Général du Barreau. Pagnuelo argued, in a series of three letters to the editor of the Montreal *Gazette*, that the study of philosophy as well as other components of the "cours classique" — syntaxe, méthode, versification, rhétorique — should be obligatory for all intending law students. Further, citing the opinion of a correspondent barrister in the United Kingdom, he insisted on the right of the Bar to set the curriculum of the law faculties and to control admissions to the profession, and he decried the McGill B.A. as an insufficient substitute for the Bar's own matriculation examination.44

Dawson's defence of the B.A. and of the Faculty of Law was not particularly well argued and, like Pagnuelo's defence of the resolutions of the Bar Council, was replete with racial and religious stereotypes.45 In addition, his claims were compromised by the fact that the performance of the teaching staff at McGill in the decade prior to 1885 was not above reproach. Nevertheless, various curricular and administrative adjustments between 1885 and 1890, and the publication in 1888 of a list of all


45. Pagnuelo, the Quebec Bar's principal salaried administrator, was a confederate of Bishop Bourget who was deeply suspicious of Doutre, of the *Institut canadien*, of all liberal causes, and of protestantism. For an outline of his political and religious projects see S. Pagnuelo, *Etudes historiques et légales sur la Liberté Religieuse en Canada* (Montreal: Beauchemin & Valois, 1872). The political environment of the day, especially the sense of mistrust between English and French-speaking communities provoked by Louis Riel's NorthWest Rebellion and Honoré Mercier's continuing disputes over provincial legislative jurisdiction with Sir John A. Macdonald, no doubt also played a part in this conflict. For a brief synopsis of Pagnuelo's career, see the entries in P-G. Roy, *Les juges de la province de Québec*, (1933), and Ignace-J. Deslauriers, *La Cour supérieure du Québec et ses juges* (1980). See also P. Sylvain, "Bourget, Ignace", *supra*, note 31.
graduates of the Faculty — which indicated a high proportion of French-speaking alumni — resulted in a compromise. The Bar Act was amended a third time in 1890 so as recognize the McGill B.A. degree as a matriculation requirement in lieu of a formal examination by the Bar. But the profession retained its right to approve the law curriculum of any university, and the right to set professional entrance exams for all law graduates.46

What is paradoxical in this conflict between McGill and certain leaders of the Quebec Bar is that the parties really did not disagree about the issue that was the ostensible basis of the dispute. The Law Faculty's 1885 matriculation requirements for those not holding a McGill B.A. degree were almost identical to those required by the Bar Examination. Subjects included Latin, French, English composition, mathematics, history, literature, rhetoric, and philosophy. Furthermore, there is no evidence of a generalized mistrust between the Faculty and the profession. McGill professors had always played an active role in the Bar, several serving as Batonnier of Montreal — Badgley (1853-55), Laflamme (1864-66), Kerr (1875-79), C.-A. Geoffrion (1883-85) — and Kerr even acting as Batonnier général du Québec (1876-1878). Given that during this period the Bar of Montreal made several attempts to secure its independence from the Bar of Quebec, there must have been elements of a dispute within the Bar behind McGill's continuing difficulties with the province-wide organization.

The record also seems to indicate that the manoeuvring between McGill and the Bar was in part a consequence of the desire of the law school at Laval University in Montreal to assert its authority as the only French-language law school for Montreal, as well as of the effort of certain nationalist elements within the Bar to erect the law (and especially the Civil Code) as the guarantor of French-Catholic culture in Quebec.

In retrospect, it is obvious that this decade-long struggle over the respective role and responsibilities of the University and the Bar for legal education in Quebec marked the first stage in the nationalist attempt to rewrite the history of codification as the establishment of a bullwork against the common law, in the parochialisation of the civil law, and in the marginalization of McGill's curriculum as being an intellectual trojan horse which threatened the integrity of the true civil law of Quebec.47

46. 53 Vict. c.45 (April 2, 1890). This statute also applied to the Board of Notaries and the Corporation of Physicians. The struggle between the professional corporations (especially the Bar but also the Board of Notaries) and McGill had many facets — legal education being only one. See S.B. Frost, vol. 1, supra, note 1 at 281.
47. See L. Lortie, supra, note 12, and G.-E. Rinfret, supra, note 1, at 47-48 and 61-62. Among numerous articles on the theme of the Code being the key to preserving French-Catholic
For a number of reasons then, throughout the late 1870s and early 1880s, the Faculty of Law seemed to be demoralized and largely in disarray. It was facing strong competition from Laval University's branch faculty in Montreal, and from a new English language law school which had been established in 1880 at Bishop's University in Lennoxville. Lingering suspicion from the hierarchy of the Catholic church over the appointment of Kerr and especially Doutre, Laflamme and Lareau as professors a decade or so previously contributed to a drop in enrolments among even English-speaking Roman Catholics. Criticism from students about the infrequency of lectures and their "low" quality, and repeated attempts by the Bar to take control of all facets of legal education also led to morale problems within the Faculty. Finally, a culture in Quebec, the most revealing (although one of the very last in time) is P. Azard, "Le droit Québécois, pièce maîtresse de la civilisation canadienne-française" (1963), 5 Cahiers de droit 7. See also S. Normand, "L'intégrité du droit civil" (1987), 32 McGill L.J. 559, and bibliography cited therein. For a contrasting position on the origins and purposes of the 1866 codification see J.E.C. Brierley, supra, note 6; J.E.C. Brierley, supra, note 25; and J.E.C. Brierley, "The English Language Tradition in Quebec Civil Law" (1987), 20 Terminology Update 16.

48. D.C. Masters, Bishop's University. The First Hundred Years (1950) at pages 75, 95. See also W.S. Johnson, supra, note 7, at page 498. Interestingly, the Chancellor of Bishop's University, R.W. Heneker, worked closely with Dawson in preparing the case for Protestant education during the dispute with the Bar, and this even after the Bishop's faculty of law ceased operation. See S. Pagnuelo, supra, note 44. Johnson notes that one of the main reasons for the closure of the Bishop's law programme in 1887 was the inability of the University to find advocates qualified to teach the curriculum imposed by the Bar.

49. See Frost, "Vol. I", supra, note 1, at 278. Doutre and his brother, Joseph, carried on a vitriolic battle with Bourget over "liberalism" (in which McGill was indirectly implicated) until the latter's death in 1885. See P. Sylvain, "Doutre, Joseph" in Dictionary of Canadian Biography, vol. XI, 1881-1890, at 272-277. See also J.R. Rioux, supra, note 31, and P. Sylvain, supra, note 31. It was also the case, apparently, that Roman Catholic students wishing to enroll at McGill required a letter of permission from the Bishop of their home diocese. This requirement remained in place until the mid-1960s.

50. It is always difficult to assess the validity of student complaints about teaching when one works only from archival materials. It appears from Dawson's response to Pagnuelo that most lectures were given, although, it is true, the total curriculum did not comprise the number of teaching hours wished by the Bar. As for observations about quality, those made at the time stand in sharp contrast to the retrospective of Maxwell Goldstein. See M. Goldstein, "The Faculty of Law of Fifty Years Ago", The McGill News (1932), at page 13, who describes student life at that time, the curriculum, the faculty and pedagogical methods, and who lists the distinguished graduates of the era. Goldstein, who graduated in 1882 at age 18 as McGill's youngest B.C.L. recipient, appears also to have been the Faculty's first Jewish alumnus. Absent a careful analysis of the content and pedagogy of the several law courses it would be futile to attempt an assessment of these complaints. For all one knows, students may have been upset with a style of pedagogy and course content which would today be considered good teaching. What is certain, however, is that these complaints were made.

51. In 1887, the Secretary General of the Bar (Pagnuelo) wrote, in justification of Bar Regulations which stipulated the curriculum as 103 lectures in Roman Law, 413 lectures in Civil, Commercial and Maritime Law, 103 lectures in Civil Procedure, 21 lectures in...
general decline in attendance at McGill due to the economic depression,\textsuperscript{52} and the inability of the University to offer remuneration sufficient to attract full-time professors, or at the very least a full-time Dean, made even the survival of the Faculty doubtful. At the time of chancellor Day's death in 1885, the curriculum, which had not been formally revised since the late 1860s, was \textit{desuet}; and worse, there seemed to be little professorial interest in pursuing the polyjural, universalist and bilingual educational mission to which the Faculty had earlier committed itself. Even though the members of the teaching Faculty were all well-known and well-respected advocates or notaries who ought to have been able to sustain the undergraduate programme,\textsuperscript{53} by 1887, the total enrolment of the Law Faculty had dropped to only fifteen students.

Despite this gloomy picture, however, beginning in 1885 there were signs that the situation of the Faculty would begin to improve. Several important initiatives were taken that year. First, the Faculty returned to the larger and more proximate premises at Burnside Hall, when this building was sold to the Fraser Institute.\textsuperscript{54} There students had ready access to the law library of Justice Torrance, which had been left to the

International Law, and 41 in Administrative and Constitutional Law: "What we require is that the professors give the prescribed number of lectures, and that the students attend them. Afterwards, our examination will show what they know."

It appears that some leading members of the Bar were interested in more than just imposing matriculation requirements, a "profile obligatoire", and a Bar Admission examination. Rather, in a manner similar to the Law Society of Upper Canada at that very same time, they wished to establish their own law school and vest it with a statutory monopoly. See, for a discussion of the Ontario situation, G.B. Baker, "Legal Education in Upper Canada 1785-1889: The Law Society as Educator" in D. Flaherty, ed., \textit{Essays in the History of Canadian Law} (Toronto: The Osgoode Society, 1983) at 49. For a partisan (and edited version) of the story in Quebec see Nantel, \textit{supra}, note 1, at 107-110.

52. See Frost, "Vol. I", \textit{supra}, note 1. It is also to be noted that throughout this period, and indeed until the late 1940s for the Bar, and until 1937 for the Board of Notaries, it was possible to gain admission to the professional examinations without a law degree, providing a student passed the matriculation examination and then served five years under articles. During the depression of the 1880s this alternate route to the legal profession was chosen by an increasing percentage of students. See M. Goldstein, \textit{supra}, note 50. Compare also the names of graduates set out in the 1888 Announcement with the list of advocates called to the Bar of Quebec between 1850 and 1898 published in (1961), 21 \textit{R. du B.} 314 and (1962), 22 \textit{R. du B.} 344. See also M. Nantel, "Les avocats admis au Barreau de 1849 à 1868" (1935) \textit{Bulletin des recherches historiques} 686-700 and 712-719.

53. Besides Kerr, the professoriate during the 1880s comprised such notables as N.W. Trenholme, J.E. Robidoux, J.S. Archibald, Matthew Hutchinson, J.S.C. Wurtele, Leonidas Heber Davidson, Edmond Lareau, Rodolphe Laflamme, P.F. Rainville and Lewis Hart, the first five of whom were later appointed judges of the Superior Court.

Institute, as well as to the earlier collections which Dean Kerr obtained as legacies to the Faculty in 1877 from Frederick Griffin, Q.C., in 1881 from Justice Robert MacKay, and in 1885 from Chancellor Charles Dewey Day.

Second, after several false starts, Kerr was able to revise the teaching programme, principally so as to take advantage of the legal literature provoked by the Civil Code, and to ensure that advertised courses were being delivered. By combining second and third year classes and offering courses in alternate years he was able to decrease the class cancellation rate. By establishing a working library he was able to insist that professors not simply lecture at their students. And by himself assuming responsibility for teaching International Law (and occasionally Roman Law) he was able to keep these two universalist subjects at the centre of the curriculum. Kerr also was able to maintain a viable D.C.L. programme throughout this period, with some twenty-seven degrees being awarded between 1866 and 1888.

Third, the initial step was taken to place the Faculty on a firmer financial basis. In 1883, Mrs. Andrew Stuart, the daughter of Justice Samuel Gale, left the sum of $25,000 to the University in order to establish a Chair in Law to be named the Gale Chair. The professoriate immediately proposed that the Dean be named Gale Professor, but that the income be proportionately distributed to all members of the teaching staff. This proposal was rejected by the Board of Governors, however, and Kerr was appointed to the Chair in 1885.

Sadly, even though Kerr struggled for more than a decade to establish the Faculty as a true university department, and succeeded in putting many of the material pieces for doing so into place — premises, library, endowment — he was never able to reestablish the teaching programme along its projected lines. In 1888, he died, to be replaced as Dean by Norman William Trenholme (B.C.L. 1865, and first recipient of the Elizabeth Torrance Gold Medal). Trenholme also succeeded Kerr as Gale Professor of Law, but initially he retained a full-time private practice. Upholding Kerr’s precedent that the Dean should take responsibility for the Faculty’s most eclectic subjects, he assumed the teaching of

55. For an assessment of this literature see R.A. Macdonald, supra, note 32, at pages 592-593 and 595 and bibliography therein.
56. This endowment attracted the notice of the profession. See (1883), 6 Legal News 145.
57. The proposal to distribute the endowment income was understandable, given that at this time lecturers in law were paid only a modest stipend, and were expected to derive the bulk of their teaching income from the fees of students enrolled in their classes. Nevertheless the difference of opinion between the Faculty and the Board had no practical significance for a number of years since the promised endowment was not fully paid by Mrs. Stuart’s executors until the mid-1890s.
International Law in addition to Roman Law. Trenholme kept up this teaching load despite holding the positions of Crown Prosecutor for Montreal in 1888 and 1889, and Baconnier of the Bar of Montreal for 1889-90. Not surprisingly, the Faculty was unable to recruit any other full-time professor, and between 1887 and 1890 the B.C.L. course was never attended by more than eighteen students. Moreover, during those same years, three of the regular teaching staff — Laflamme, Wurtele, and Rainville — were largely inactive emeritus professors.

The precarious state of the Faculty’s finances and the problems associated with maintaining its distinctive teaching programme attracted especial notice at the ceremony marking the inauguration of Donald Smith as Chancellor of the University on October 31, 1889. In their speeches on that occasion both the new Chancellor and the Principal emphasized the Faculty’s need for an endowment sufficient to finance two full-time Chairs in Law. Both speeches, and an editorial published in the Montreal Gazette the same day, noted the various factors contributing to the Faculty’s precarious position.

The editorial was quite specific. The fact that the law faculty at Laval University (and especially the law faculty at Laval University in Montreal) had received the Pope’s blessing was held out as a major reason for declining enrolments from “French Canadians”. Moreover, the editorial continued, the specificity of the Civil Code was a disincentive for students from other “English-speaking” provinces to study at McGill. The Faculty of Law, therefore, could not be expected to attract a large number of students under the present circumstances. Yet its maintenance was, according to the editorial, vital to the interests of the “English Bar in Montreal.” Already one sees in these observations a hint of the changing ambitions which the Governors had for the Faculty, in which service to the local English-speaking profession in Quebec would predominate over the earlier view that the Faculty should serve all British North America, and both linguistic communities in the province. The Gazette editorial concluded by echoing Dawson’s and Smith’s call for endowments and suggested that the Faculty needed:

Primarily, ... one or two men of standing and energy who can devote their whole time and attention to perfecting its system, supervising its

58. According to his newspaper obituary in the Montreal Gazette, beginning in 1890 he sharply curtailed his legal practice in order to devote more time to his duties as Dean. Trenholme was also the first Dean to claim expressly, following Day, that the Civil Code could be a model of private law to be followed elsewhere in Canada. See N.W. Trenholme, “The New Chief Justice” (1890), 13 Legal News 44. For an appreciation of Trenholme’s election as Baconnier see the notice published in (1889), 12 Legal News 297.

59. See the report in the Montreal Gazette, November 1, 1889.
operations, and bringing its work into suitable prominence as well as efficiency. Next, scholarships and exhibitions ... [prizes] ... should be provided for deserving students.

The following year, this appeal was answered when Sir William Macdonald gave the University the sum of $150,000 to serve as a Foundation for the Faculty of Law.

Macdonald wished to see two leading lawyers appointed as professors, both of whom would be required to devote themselves "zealously to the management and continuous advancement of the Faculty, and instruction therein". The remainder of the endowment income was to be used to improve the library holdings of the Faculty. Obviously, the University hoped that these new positions would be full-time, but of the first two professors supported under the Macdonald endowment — Dean Trenholme and Professor Archibald McGoun (B.C.L. 1878) — only the former reduced his legal practice in consequence. McGoun was appointed Secretary of the Faculty and Professor of Legal Bibliography. He was also McGill's first law librarian, a position he held until the early 1920s. Almost immediately the Faculty began to describe itself in terms not heard overtly since prior to Codification in 1866. The Annual Announcement for 1890 stated clearly the new course the Macdonald endowment was expected to set for the Faculty:

... This endowment places the Faculty in a position to offer to those who desire to study the law, either with a view to its practice as a profession or as a means of culture, or as a qualification for the discharge of the higher duties of citizenship, a comprehensive and complete course of legal study, with the use of library, reading room and other aids which have not heretofore been at the command of the Faculty. The course of study to be pursued, extending over a period of three years, and the instruction to be imparted, while designed thoroughly to qualify professional students for the practice of their profession, will also fully recognize the important fact, ... that upon the character of the Bar depends that of the Bench and of the administration of justice, and to a great extent also the character of the public men and public life of the country; that, in fact, from the ranks of no other profession, are so many called to fill high positions of trust and to perform duties, the efficient and upright discharge of which is of vital importance to the community.

At this time also, Trenholme harkened back to many polyjural and universalist themes as its raisin d'être. The Announcement continued:

60. Macdonald calculated that his endowment would produce an annual income of $3,000 for the Dean of Law and $2,500 for the Faculty Secretary, both stipends sufficiently attractive, he believed, to induce a leading practitioner to devote his principal loyalty to the Faculty. Macdonald did not insist that these two positions be constituted as "Chairs", and it was not until 1955 that two named Sir William Macdonald Professorships were established.
As a place for the study of Law by professional students, Montreal affords undoubted advantages, among other reasons, on account of the great variety and extent of the legal business done there, the constant sitting of all the principal courts of the Province, and the large number of first-class law offices open to students; while for all students, and especially for students of historic and philosophic jurisprudence, no more interesting or attractive legal system exists than that prevailing in this Province, where may be daily seen and studied, not simply theoretically, but in active operation as parts of our law, the three famous systems of jurisprudence, — Roman, French, and English, with additions and modifications introduced by our own legislatures and courts. The imposing features of the Roman Law may be recognized throughout the greater portion of our Civil Code, often combined with or incorporated into that noble system elaborated and perfected by Pothier and other great French jurists, both of the ancient and modern epochs, which is the direct source of most of our civil law; while nearly the whole body of English Criminal and Constitutional law and large portions of English Commercial law are equally parts of the law of this Province.

A spirit of optimism began to pervade the Faculty for the first time since Doutre's arrival in the early 1870s. With Trenholme working to improve relations with the Quebec Bar and with the now anti-nationalist rouge party under the leadership of a former student, Wilfrid Laurier, showing signs of forming the next federal government, various circumstances both internal and external to McGill, the early 1890s seemed to suggest that the Faculty's initial curricular vision could be resurrected in a late 19th century variant.61

Evidently pleased with the direction Dean Trenholme was taking the Faculty, Macdonald made a further grant to the University in 1895 to permit the remodelling of the East Wing of the Arts Building for the Law Faculty, and to establish a law reading room in the Redpath Library.62 The fortunes of the Faculty steadily improved during Trenholme's Deanship. Enrolment increased from fourteen to forty-eight over this period. Several new and energetic professors were recruited: Christophe-A. Geoffrion (B.C.L. 1868); William de M. Marler (B.C.L. 1872); Mr. Justice Thomas Fortin; the Hon. Charles J. Doherty (B.C.L. 1876);

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61. In the same Announcement, however, and perhaps in consequence of the compromises needed to secure passage of the 1890 legislation relating to professional matriculation exams the Faculty stated an amendment to its Regulations by which the Notarial course taught by Professor Marler was made obligatory for all students.

62. This, the Faculty's first home on the University campus, was to remain its location until 1942. Unfortunately, however, when the Faculty left the Fraser Institute and Burnside Hall it lost a large portion of its library collection, and the remainder was integrated into the general university holdings in the Redpath Library. While the Law Reading Room held a collection of some 1200 volumes it apparently was rarely used, given its lack of proximity to the Lecture Rooms in the East Wing of the Arts Building. See Peter F. McNally, "A Chronology of Events in the History of the Faculty of Law Library" (unpublished manuscript dated March 27, 1975).
Harry Abbott (B.C.L. 1878); and Eugene Lafleur (B.C.L. 1880). Moreover, after several years in which no teaching was undertaken in French, commencing in 1893, courses again were offered regularly in that language. Finally, many of the remaining problems about control of the curriculum which had soured relations with the Bar and Board of Notaries were quietly resolved with a further revision to the Bar Act in 1894 which shortened the articling period for law graduates to three years.63

Nevertheless, the undergraduate curriculum itself remained dominated by the professional concerns of the local bar, and when Trenholme resigned in 1895 to return to private practice the Governors of the University realized the need to attract a full-time scholar as his replacement, if the Faculty were ever to join the ranks of the great European law faculties. In 1897 Macdonald was persuaded to give yet another $50,000 to McGill in order to finance the appointment of the Faculty's first non-practising professor, the Glasgow Romanist, Frederick Parker Walton.64

Walton accepted an appointment as Dean and Gale Professor of Law on the understanding that he was to serve in a full-time capacity. During the first two years of his tenure he imported many ideas from Europe, thoroughly “modernizing” the Faculty’s curriculum and examination procedures. Walton compelled lecturers to provide detailed course descriptions (supplemented by bibliographies and reading lists), and to make greater use of problem-method examinations. He also secured a commitment from the University that the new extension to the Redpath Library would contain a Law Reading Room capable of housing a collection of 20,000 volumes, and seating 80 students. Most importantly, he convinced the Board of Governors that law professors and lecturers should be obliged to deliver a certain minimum number of classes in each session, and in exchange should be paid on the same basis as their colleagues in other Faculties. Thus, lectures were to be given in the mornings between 8:00 and 9:30 and in the evenings between 4:00 and 6:30. Professors were to receive $750 for giving a minimum of 50 lectures; lecturers would receive $500, $400 or $250 for 50, 40 or 25 lectures respectively.65

63. 57 Vict., c.45; January 8, 1894.
64. In recognition of these several benefactions (and in the hopes of attracting others) the Law Faculty Council — at Walton's initiative — proposed to the Board of Governors in 1897 that the Faculty should thereafter carry the name “Faculty of Law — Macdonald Foundation.” This designation was retained until 1921, shortly after Macdonald's death.
65. See Frost, “Vol. II”, supra, note 1 at 41. In each of these initiatives Walton was applauded by the Bar, who saw his new “regularized” curriculum as confirming their earlier concerns about university law teaching. See G.-E. Rinfret, supra, note 1.
Paradoxically, while Walton became McGill's and Quebec's first full-time university law Dean, and while he presided over the complete integration of the Faculty of Law into the University, his model of legal education was highly professional, scientific, and directed primarily to the training of advocates for the local jurisdiction. In one sense, there is no paradox, for at this time the term "modernization" meant precisely imposing the discipline of scientific professionalism on an amorphous curriculum lacking in "intellectual rigour". In another sense, however, there is a profound paradox. During its first half-century, lawyers and judges teaching part-time at the Faculty typically did so both to improve their professional standing and because of a desire to escape the limitations of practice; Walton, not a member of the Quebec Bar or Board of Notaries, had to gain his professional credentials through his academic work. This he did by promoting the view of law as an exact science which only he (and by implication other full-time teachers), with the bibliographic resources of the University at their disposal, could synthesize for the benefit of the profession. Moreover, the three Codes in force in Quebec — civil, criminal, and procedural — generated exegetical commentaries and glosses which emphasized the literary and vernacular tradition of legal epistemology, an emphasis that University law faculties were especially able to exploit. In each of these respects, Walton's vision for the undergraduate programme represented an important and conscious break from that theory of the curriculum which, at least nominally, had until then been pursued at McGill.66

A comparison of the first Faculty Announcement Walton drafted with the previously quoted versions produced by Abbott and Trenholme is revealing of this new professional orientation:

The curriculum extends over three years. It includes courses of lectures upon all the branches of the Law of the Province of Quebec, and also upon Roman Law, Legal History, and the Constitutional Law of the Empire and of the Dominion. Its primary design is to afford a comprehensive legal education for Students who intend to practise at the Bar of Lower Canada. In all the courses the attention of Students will be directed to the sources of the Law, and to its historical development. During their first year the students will attend a course of one hundred lectures on Roman Law, from which the Law of the Province is in great part derived. In the lectures on Legal History the relations of our Law with the Law of France and its History since the Cession will be explained. First

Year Students will also attend courses on the Law of Persons; the Law of Real Estate; the Law of Obligations; the Law of Successions, Abintestate and Testamentary; and the Elementary rule of Procedure. The remaining branches of the law, civil, commercial and criminal, will be dealt with in the Second and Third Years. During the three years’ course the civil code, the criminal code and the code of civil procedure will be covered and lectures will also be given upon subjects such as Bills of Exchange, Merchant Shipping, and Banking, which are regulated mainly by special statutes.

For Walton, law was neither a transcendent norm of nature nor a dictate of reason, but rather consisted solely of the authoritatively enacted “law in force” in any given jurisdiction; in Quebec this law was meant to be found exclusively in the Code, in statutes and, as concerns public law fields, in the decided cases.  

The Faculty’s mission was, consequently, to serve the profession by uncovering, synthesizing and teaching only the rules and principles of the law actually in force. This scholarly objective found especial favour among those leaders of the Bar seeking to promote the 1866 Code as the rational elaboration of French-Catholic culture and as its principal icon. It was also entirely consistent with and largely complementary to the goal pursued over the same two decades by his colleague at McGill, Pierre-Basile Mignault, through the publication of his treatise *Droit Civil Canadien*.  

Both Walton and Mignault set out to generate the rules and techniques for elaborating a strictly defined, positive civil law which could be analysed and elaborated scientifically. To be sure, Walton believed in the study of Roman Law, of legal history, of the sources of law, and of the newly emerging discipline of comparative law. But such study was no longer to be undertaken in the service of abstract or universal principles of justice; rather it was offered as the handmaiden of legal science.  

67. It is noteworthy that while Walton continued to teach Roman Law — that “perfect” system of jurisprudence — in the tradition of Kerr and Trenholme, he did not also offer International Law course. In preferring to teach Obligations over International Law in my view Walton was showing his commitment to a view about the nature of law quite at odds with that of his predecessors. The International Law course, which continued to comprise both public and private dimensions, was taken over by Eugene Lafleur. See R. St. J. Macdonald, *supra*, note 1 at 70-72 for a brief discussion of Lafleur’s McGill career.  

Walton was a great admirer of the German Civil Code (having studied at Marbourg University in Prussia) and throughout his almost twenty year tenure at McGill he relentlessly pursued his ambition to elaborate a rational methodology for legal study in Quebec. His monograph, *Scope and Interpretation of the Civil Code of Lower Canada* 69 was intended both to delimit the law in force and to set out an exhaustive list of lexically ordered rules for its interpretation and application. Thus, while Walton and Mignault had many similar intellectual commitments, Mignault was primarily concerned with preserving the purity of the civil law against the corrupting influences of the common law. Walton, by contrast, was interested in the scientific study of the civil law not to preserve its purity, but rather to achieve its perfection. 70

On the other hand, Walton's scientism and professionalism were not inconsistent with other longstanding elements of the Faculty's curricular mission, and led to several remarkable initiatives and innovations. He was, for example, committed to post-graduate education (at least to post-graduate education in England and France). In 1902 he convinced Sir William Macdonald to make even further investments in the Faculty by establishing two Travelling Fellowships to permit English-speaking graduates of the Faculty to study the Civil Law in France. 71 He also supported the establishment of the Law Undergraduate Society in 1904 as a professional society for law students, and succeeded in upgrading the Faculty's entrance requirements. 72 Furthermore, Walton vigorously

69. (Montreal: Wilson and Lafleur, 1907). This long out-of-print work was reissued by Butterworths in 1980, complete with a provocative introductory essay by Professor Maurice Tancelin of Laval University (hereinafter “Introduction”). Tancelin sees Walton in a positive light, holding him out as an exemplar of the comparative method, in which the search for the “perfect” legal rule is the object of the comparative exercise. Compare, however, H.P. Glenn, “Droit comparé” supra, note 5.


71. These were initially funded by annual grants of $600 each, but were endowed in 1919 by a legacy of $20,000. For early comment on the Macdonald Travelling Fellowship, see (1901), 1 Can. Law Rev. 559 and (1903), 3 Can. Law Rev. 394. For a later appreciation see J.L. O’Brien, “Une visite à l’Université de Dijon” (1924), 2 Rev. du Droit 332.

72. Walton also re-introduced oral répétitions into the curriculum by means of a Moot Court
promoted the French language as a professional necessity for law graduates. He insisted that some undergraduate law teaching continue in French, and in 1898 he inserted into the Announcement a notice that:

the Faculty desire to impress upon English students the great importance of obtaining a familiar knowledge of French. In the practice of the profession in this Province it is almost indispensable that a lawyer shall be able to write and speak French, and to understand it when it is spoken.

By 1904 a formal matriculation regulation set out in the Announcement required an adequate knowledge of French — spoken fluency and the ability to translate with ease a passage of English into French — as a condition of admission to the Faculty. Finally, Walton was a vigorous campaigner for women’s rights, composing several articles and pamphlets on the subject, securing the admission of Annie Macdonald Langstaff to the Faculty in 1911 and becoming vice-president of the Montreal Suffrage Association in 1913.

Walton’s tenure as Dean coincided with several developments in Canadian intellectual and political life, with McGill’s own emergence as a modern university, and which deep changes to the self-image and ambitions of the Quebec Bar.

While he moved the Faculty’s curriculum away from the course of internationalism, legal theory, polyjurality and non-professional public service previously charted by part-time Quebec-trained professors and Deans, he reinforced its intellectual ties with the University, enhanced McGill’s reputation as a centre of civil law scholarship, and reiterated the centrality of French-language instruction within the Faculty. Most

requirement. As early as 1878 the Faculty had organized occasional moots (see (1878), 1 Legal News 553 but these do not appear to have become formalized until Walton’s initiative in 1903. Once again his stated rationale for this new requirement was the better preparation of students for the practicing profession. On this development see W.S. Johnson, supra, note 7, at 495.

73. Walton’s view of the need for a mastery of French, like his other beliefs, however, seems to have been founded on his legal scientism. Compare the paragraph quoted in the text with the justifications implicit in Laurier’s 1864 valedictory address, supra, text following footnote 25. See also the report of Walton’s remarks at the Annual Dinner of the Bar of Montreal, October 25, 1902 as reported in (1902) 2 Can. Law Rev. 188.


75. Although Walton was genuinely committed to the cause of legal education at McGill, he had much less success than the Board had hoped in attracting full-time professors and students. While the Faculty enrolment rose to 63 in 1900, five years later it stood at only 26. In 1910 fewer than ten students graduated, and when Walton left the University in 1914 only eighteen degrees were awarded. The minutes of the Board between 1905 and 1914 also indicate
importantly for the future evolution of the McGill teaching programme, Walton was able to demonstrate that the comparative study of different legal systems was compatible with the scientific study of law, and in doing so provided an initial counterpoint to the current of monojurality and legal insularity then sweeping the province. Indeed, he can be seen as a key figure in keeping legal education in the province grounded in the universities when the self-definition of the legal professions in Quebec was collapsing into the same technicity and responsive advocacy which characterized law societies in North America generally at the turn of the century. Walton, then, occupies a curious place in the Faculty's intellectual history. While not a partisan of the eclectic polyjural and universalist vision first developed in the 1850s, he nevertheless laid the groundwork for its principal twentieth century reflexion at McGill — the teaching of the common law — through his interest in the emerging field of comparative law.

When Walton resigned the Deanship in 1914 to become Director of the Royal Law School in Cairo, once again the McGill Board went outside the Bar of Quebec to hire an English Romanist to head the Faculty. Robert Warden Lee of Oxford, a career law professor since 1896, was appointed Dean and Gale Professor of Roman Law in 1915, and was given the mandate to resurrect the Faculty's earlier curricular and scholarly vocation. It is doubtful that the Board had a clear idea of the potential of the Faculty or of the problems it was facing. And yet, by contrast with the Board of 1889, one sees at least some evidence that it understood the kinds of improvements to the teaching programme that dissatisfaction with the quality of the teaching dispensed by several professors, although there is no direct evidence of displeasure with Walton. See S.B. Frost, "Vol. II.", supra, note 1, at 41-43.

76. One measure of Walton's success in making the scientific study of law a central concern of the Bar was the amendment to the Bar Act in 1903 (3 Edw. VII, c.34, April 25, 1903) which required that University professors sit as full members of the Bar Admission Examination Committee. This idea Walton no doubt borrowed from Germany. Moreover, during his Deanship several McGill professors, J.-E. Robidoux (1895-1897), Eugene Lafleur (1905-06), P.B. Mignault (1906-07) and R.C. Smith (1909-1910) served as bâtonniers of Montreal. Other professors he engaged followed as bâtonniers shortly thereafter, Aimé Geoffrion (1918-19), Gordon W. MacDougall (1921-22) and John W. Cook (1924-25). Walton was also given the distinct honour of being called to the Bar in 1907 without submitting to either a matriculation examination or a Bar Admission examination. He was made a K.C. in 1912.

77. As early as the turn of the century Walton argued that the Faculty should establish a Chair of English Common Law in order to attract students from across Canada and to offer training under a "dual and comparative system". See W.S. Johnson, supra, note 7, at 496. In this ambition to promote the comparative study of law (even as a scientific discipline to engender law reform) Walton seemed to encounter resistance from the McGill Board of Governors, who initially remained committed to viewing the Faculty of Law as a servant of the English-speaking Bar of Montreal.

were needed. The McGill Annual Report for 1914-15 records that the newly appointed Dean submitted (at the invitation of the Board) the following minute to the April meetings of the Senate:

With regard to the general scope of the Curriculum provided by the Faculty, the Faculty took note that the report of the University for the year 1913-14 contemplates the enlargement of the Faculty's activities as an event of the immediate future. The course at present prescribed for the B.C.L. degree, while excellently adapted to its professed object of providing for the needs of students who intend to practise at the Bar of the Province, makes no direct appeal to students who do not intend to practise at the Bar of the Province, and even as regards those who do so intend, leaves something to be desired in respect of the more abstract and theoretical branches of legal science, which are pre-eminently fitted to form part of a course of study in a University.

The Faculty, therefore, has set before itself two objects. The first is to provide a two years' course of a wholly non-professional character, which would deal rather with general principles than with the concrete rules of any one positive system. It would embrace the study of analytical and historical jurisprudence and of the fundamental principles of the Roman and of the Common Law. It would seem desirable also, as part of the projected course, to give students the opportunity of following lectures in Political Science and Moral Philosophy. With this object in view, the Faculty has approached the Faculty of Arts with the suggestion that it should admit to the list of Arts Subjects for the Third and Fourth Years, Jurisprudence, Common Law and Public International Law. The result would be to provide a specialized course, mainly legal in character for third and fourth year students in Arts, which might be taken both as an avenue to the B.A. degree alone and also as part of a combined course in Arts and Law. In the view of the Faculty of Law, the study of the abstract principles of Law is better suited to form part of an Arts Course, then of a course culminating in the B.C.L. degree, which has heretofore been associated with the more technical branches of legal study.

The second object of the Faculty will be to make the degree of B.C.L. available to students who do not intend to practise Law in the Province as well as to those who do. This object will probably be best obtained by making provision for alternative courses. The working out of this scheme will require careful adjustment of subjects and will be the task of a Committee to which the Faculty has referred it.

As this report makes clear, Lee had precise ideas as to how the law programme should be developed. These he attempted to implement first through a restructuring of the B.C.L. programme, and later through various proposals relating to the recruitment of full-time professors. An admirer of legal education in the leading law faculties of the United States (although not of the contemporary manifestations of Christopher Columbus Langdell's scientism which their teaching programmes usually reflected), he sought to convince the Bar that the mission of the Faculty
was not primarily to train students to practice law, but rather to train them in law.  

In 1916 the Faculty introduced a new “Course B” in the B.C.L. programme, under which it embarked upon the teaching of the common law as a complement to its programme of civil law studies, thereafter to be known as “Course A”. Yet the new common law programme proved difficult to maintain merely as a secondary stream within the B.C.L. curriculum, and Lee shortly secured a promise from the university to proceed with the appointment of a full-time lecturer in common law, which Walton had first sought in 1900.

During these initial years Lee appeared to be uncertain as to whether the common law should be taught simply as part of the B.C.L. tuition — that is, as one element of an eclectic, polyjural education (in a modern version of the Faculty’s precodification universalism), or as a separate professional degree programme for non-Quebec students (in a modern version of Lower Canadian Tory unificationism). The decision to designate the programme as Course B of the B.C.L., and the requirement that common law students take civil law subjects in Course A, he saw as two means of postponing the inevitable structural decision until the principle of McGill teaching the common law could become well established. While Lee was firmly convinced of the value of comparative law and of the new “Course B”, he must have sensed public resistance to the idea, for no detailed course descriptions of the common law programme were ever provided in the Faculty’s Annual Announcement and no special lecturer in common law was appointed until 1920.

Consequently, and also in response to declining numbers of students during the war years, as well as the opportunity to attract women students to a non-professional programme presented by the refusal of the Quebec Bar to admit them to practice, in 1918 Lee embarked on a


80. The first-year programme of common law courses comprised, in addition to joint classes with “Course A” students in public and constitutional law, a number of separate offerings: Legal History, Jurisprudence, and Elements of Contract and Tort. In second and third years the programme comprised (as additional subjects) courses in Common Law, Equity, and Procedure.

second curricular innovation. The Faculty determined to broaden its catchment by establishing a four-year LL.B. programme as a business and commerce course of studies. According to the Announcement that year, this programme was:

- designed to supply a wide and sound education in law, both for those who do not intend to follow the profession of Law, and for those who do. . . .
- It is anticipated that the course will prove particularly attractive to students who are looking forward to a career in business, journalism or public life.

Students in the LL.B. would spend two years in the Faculty of Arts and two in Law. Upon graduation they would be able to transfer into second year of Course A (civil law) of the B.C.L. programme. The LL.B. courses were not professionally oriented, although two courses, Legal History (common law) and Elements of Contract and Tort were taken from the curriculum of Course B (common law) for the B.C.L. degree, and one, Obligations from Course A (civil law) of the B.C.L. programme.

Lee's curricular innovations did not stop with the creation of the LL.B. degree course. That same year the B.C.L. programme was opened, as a four year course of studies (Course C), to students not having completed two years in Arts but entering the Faculty directly from high school. A year later the curriculum was further enriched by the development of a combined six-year LL.B. and B.C.L. programme under which students

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Lee was quite successful in continuing Walton's pioneering work in recruiting women to the Faculty. Between 1920 and 1925 the following women also were McGill law graduates: Adella Currie, B.C.L. 1920; Florence Seymour Bell, B.C.L. 1920 — the first Quebec woman called to the bar of any province (Nova Scotia 1921); Clara Goodman, LL.B. 1921; Louise Weibel, LL.B. 1922, LL.M. 1923 — the first woman to obtain a graduate degree in law; Elizabeth Carmichael Monk, B.C.L. 1923 — second (by minutes) woman called to the Bar of Quebec (1943); Frances Douglas, LL.B. 1923; Margaret McEwan Sim, LL.B. 1923; and Dorothy Heneker, LL.B. 1924, B.C.L. 1925 — the first woman to obtain both common law and civil law degrees. Lee's (and later H.A. Smith's) role in encouraging women to study law in discussed in an oral history taped by McGill Professor Jeremy Webber on June 6, 1988 with Louise Weibel.

82. This programme was the initial curricular reflection of an idea first announced by Dean Trenholme in 1890, and repeated every year since. Trenholme's 1890 Announcement stated:

- With a view to extending as far as possible the usefulness of the Faculty, the courses of lectures on commercial subjects have been so arranged, that young men engaged in banks or other business houses can attend them without interference with their regular duties. Students of other departments of the University, and, in fact, all who may desire to do so, may attend such particular courses as they may see fit to select.
graduating with the LL.B. could be admitted to the third year of Course C for the B.C.L. Lee's final curricular initiative was the establishment of an M.LL. degree in 1917 (changed to LL.M. in 1918 and thereafter) as an earned graduate degree. This master's degree was intended to complement the D.C.L., which until that time had been the Faculty's only graduate degree, and which since the mid-1880s had often been awarded on an honorary basis.

Lee was a committed full-time scholar who sought to recapture McGill's role as a law school for all "British North America". In this ambition he was influenced not only by Roscoe Pound's model of a national law school at Harvard, but also by a broader dream of an international legal order — a dream not surprising from a Romanist familiar with the *jus gentium* and Justinian's universal codification — and by his belief, nurtured while he was in the civil service in Ceylon (a Roman-Dutch law jurisdiction) that Montreal was an ideal location for a centre of comparative legal studies. Of course, Lee's curriculum was shaped by the prevailing ethic of law as "national legal order", and initially it paid only minor attention to universalist themes — primarily through the Roman Law, International Law, and Legal History courses. After four years of experimenting with a programme structure through which he hoped to be able to avoid separating common and civil law studies, by 1921 Lee began to feel compelling pressure from his teaching colleagues to build the private law curriculum through explicit comparison of two legal realities sharply distinguished for the purposes of such comparison. Thus, during its first curricular manifestation at McGill, the theory of comparative law (and the type of law teaching it justified) underwent the same "scientific" metamorphosis which affected other aspects of the undergraduate programme.

Lee was also a leading figure in the struggle to establish university-based legal education throughout Canada. In 1918, he served as

83. Despite some suggestions otherwise (e.g. Frost, "Vol. II", supra, note 1, at 155-156; Frost and Johnston, supra, note 1, at 35), from 1915 through 1922 the LL.B. was not a common law degree *per se*, and the six-year combined B.C.L./LL.B. was only a remote ancestor of the Faculty's current conception of an integrated four-year civil law/common law programme of legal studies. In fact, throughout Lee's tenure as Dean it was not possible to obtain a simultaneous qualification in both civil law and common law by taking Course A and Course B. For a discussion of the first joint B.C.L./LL.B. programme involving civil law and common law studies, see text following footnote 94.

84. An overall assessment of Lee's contributions to comparative law is presented in Anon., "In Memoriam: Robert Warden Lee" (1958), 7 American Journal of Comparative Law 659. For a discussion of the alternative approaches to comparative law with which Lee struggled, see H.P. Glenn, "Le droit comparé et la cour Suprême du Canada" supra, note 5, and sources cited, especially the remarks of McGill professor Eugene Lafleur in 1915 as quoted in footnote 3 of that article. See also J. Hill, supra, note 5, at pages 106-107 and 111-114.
Convenor of the Canadian Bar Association Committee on Legal Education, in which capacity he drafted a report critical of Ontario's scheme of concurrent articling and study.\(^{85}\) This pan-Canadian struggle for acceptance of full-time university-based legal education was crucial to Lee's efforts to build a national Faculty of Law. Without access to the Ontario market for McGill graduates (which could be achieved by an offshore Faculty only in a concurrent regime of articles and classroom instruction) he knew that the project would never attract enough students from outside Quebec to be viable in the long term.\(^{86}\) Throughout 1919 and 1920 there seemed to be considerable progress in convincing provincial law societies (including the Quebec Bar and the very reluctant Law Society of Upper Canada) of the merits of the C.B.A. Report on Legal Education.\(^{87}\) This sense of progress prompted Lee to expand upon his proposals for the McGill curriculum. In a comprehensive and far-sighted memorandum, a draft of which was dated October 30, 1919 and addressed to Principal Frank Dawson Adams, and the final version of which was dated November 4, 1920 and sent to Principal Arthur Currie, he set out an elaborate programme for making the Faculty a full-time teaching institution with full-time scholars (not practitioners) as its professors, and with a student body and curriculum reflecting both a national and international orientation.\(^{88}\)

Yet Lee was viewed with suspicion by many members of the Quebec Bar and Board of Notaries, and by their representatives on the teaching faculty at McGill. Lee worried the practising profession on several accounts. First, he believed in "legal" rather than "lawyer" education; he neither saw the practice of law in Montreal as the only career opportunity for B.C.L. graduates, nor did he wish to discourage students from

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85. For an overview of Lee's efforts to promote the model of full-time legal education, see Kyer, et al, supra, note 1 at 66-69. See also J. Willis, A History of the Dalhousie Law School (Toronto: U. of Toronto Press, 1979) at 78-83.
87. The battle for full-time education which Lee initially led, resulted in a second and revised report to the C.B.A. presented in 1920. See (1920), 56 Canadian Law Journal 201 et seg. At one level the conflict in Ontario was also a conflict between the Ontario Bar Association (and its unofficial journal the Canada Law Times) and the new Canadian Bar Association (and its unofficial journal the Canadian Law Times). See Kyer, et al., supra, note 1, at 68-69.
88. See R.W. Lee, The Law Faculty at McGill University: Its Past, Present and Future, MUA 641/293. As a Romanist, Lee was also committed to that subject as a vehicle for teaching law in this broader manner. See R.W. Lee, "The Place of Roman Law in Legal Education" (1923), 1 Can. Bar Rev. 132. In this ambition he took a radically different view of the subject than Walton who saw the course as an exercise of legal science. For a brief assessment of the teaching of Roman Law in Quebec, see J.E.C. Brierley, "Paradoxes", supra, note 1, at 18-20.
graduate study and careers in the just emerging public service. Second, he was too active in "pan-Canadian" (read common law) institutions, such as the Canadian Bar Association; he was thus suspected (wrongly) of being a partisan of the Uniform Law Movement, and of harboring assimilationist ambitions. Third, his view of a legal meritocracy to which women, recent immigrants, and Jews should be admitted without limitation or qualification was considered "socialistic" in certain professional circles. As a result, while several innovative ideas and curricular structures (many of which were first proposed by Trenholme and Walton) were put into place during Lee's Deanship, little implantation was achieved by 1921, when he left McGill to take the Rhodes Chair of Roman-Dutch Law at Oxford.

Unfortunately, the end of Lee's Deanship was marred by controversy, which served well the ends of those opposed to his view of McGill's role in legal education. At the Quebec Bar exams of 1921 a high percentage of McGill students (most of whom were returned World War I veterans) failed, provoking outrage among alumni and suggestions that the "common law" and LL.B. programmes were to blame. Several outstanding students were unsuccessful, and the matter was even raised in the House of Commons by General Smart. Principal Currie's response to this crisis was supportive of the Faculty, and he did not hesitate to note

89. This misapprehension of Lee's motives likely arose from the activities of a number of McGill professors over the previous two decades, and from an early article in which Lee argued for uniformity of the common law throughout the British Empire. See R.W. Lee, "Uniformity of Law in the British Empire" (1916), 36 Can. Law Times 298. For an implicit critique of the uniform law position (and the first salvos in a twenty-five year rhetorical struggle between McGill professors and certain members of the francophone élite at the Bar) see F. Roy, "Unification des Lois" (1919), 22 R. du N. 225; and J.-E. Prince, "Éssai sur la pensée et les tendances de notre droit civil" (1923), 1 R. du D. 399. Compare Morse, "Case and Comment" (1923), 1 Can. Bar Rev. 12.

One of the major proselytizing organs for, and vehicles by which, the uniformity of laws was to be achieved was the Canadian Bar Association. For a review of this theme see E. Fabre-Surveyer, "L'Association du Barreau canadien et l'uniformité des lois" (1921), 23 R. du N. 283; L. Pelland, "Congrès de l'Association du Barreau Canadien" (1924), 2 R. du D. 84. There is no question that the idea of a Canadian Bar Association had its origins among McGill educated leaders of the Quebec Bar. In the 1890s a McGill Professor and Bâttonnier-General of Quebec, J.-E. Robidoux, promoted the idea and was able to convene a preliminary meeting of the Canadian Bar Association in Montreal on September 15, 1896. Somewhat later, between 1911 and 1914 the federal Minister of Justice (and McGill law graduate — B.C.L. 1876 — and professor Charles J. Doherty) actively pursued the establishment of such a national association. See (1913), 33 Can. Law Times 1027 and (1914), 34 Can. Law Times 185. He was named first Honorary President of the Association — see (1914), 34 Can. Law Times 297 — which held its first meeting in Montreal on March 19 and 20, 1915. Given the stated ambitions of the Association, it is not surprising, therefore, that McGill itself came to be seen as a prime mover of the uniformity of laws.

the fact that only English-speaking students failed, among them the very best students in the class. This public observation by the Principal, combined with the uniform success of all McGill candidates six months later on the Bar’s supplemental examinations, temporarily defused the crisis as it affected the common law programme. In a letter dated September 13, 1921 sent during the height of the crisis to J.J. Creelman, K.C., a concerned graduate who presumably had inquired about the health of the civil law programme, Principal Currie concluded as follows:

I know that our Law Course has excited the suspicion of some members of the Bar and others in this province. Grounds for suspicion, I believe, there are none. The first function of the McGill Law School is to prepare students for the practice of Law in this Province, and that function we must fulfill to the best of our ability. At the same time I am in sympathy with extending the functions of our law school in order that we may give anyone, whether he intends to practise Law or not, a good legal education.

Yet, permanent damage was done to the ambition of those who wished to see McGill remain a national law faculty, with both a common law and a civil law curriculum. Thus, while Lee was one of the most energetic and thoughtful professors ever to teach at McGill, given his short tenure it is difficult to assess his long-term contribution to the undergraduate programme of the Faculty. For present purposes, one would have to count his establishing the common law course, his constant promotion of comparative law, his support of legal scholarship and graduate study, his efforts to convince the Bar of the merits of university education, and his international vision of the Faculty's undergraduate curriculum as ranking him among McGill law professors till that time as most committed to a polyjural and universalist law teaching programme.

During the latter part of his tenure, Lee increasingly turned his attention to the library and to professorial recruitment, seeking endowments to support the additional full-time professors which he believed were a prerequisite to establishing the type of Faculty he envisioned. The influx of returned veterans in 1919 and 1920, many of them coming from provinces other than Quebec, swelled the first-year student population to almost ninety and gave Lee the opening he needed. He pressed the Faculty’s case for a major share of the six million dollar endowment Principal Currie was seeking for the University.\footnote{See Frost, “Vol. II”, supra, note 1, at 119-124, and 155-156.} Between 1919 and 1922 he succeeded in developing first a separate Law Reading Room in the Redpath Library, and later an independent Law Library within the Faculty’s premises in the Arts Building. This was the genesis of the modern collection and although the facilities remained inadequate
for the next three decades, Lee’s efforts ensured that the Law Library did not become absorbed into the general university system.

Over this same period Lee hired two brilliant young teachers who shared his views of legal education and of McGill’s role in Canadian public affairs. Herbert Arthur Smith, an Oxonian who had spent several years in the United States, joined the Faculty as professor of Jurisprudence and Common Law in 1920. The following year Lee recruited another common lawyer, Ira Allen Mackay, a law teacher and philosopher from the University of Saskatchewan who was engaged as professor of Constitutional and International Law. Both these new positions appear to have been privately funded, in part by the Macdonald endowment, and together they constituted the Faculty’s first full-time, non-decanal appointments.

Almost immediately upon his appointment Smith began to assert himself as Lee’s deputy. His commitment to most aspects of Lee’s vision of the McGill curriculum is clearly reflected in his celebrated article, *The Functions of a Law School*. Following Lee’s resignation Smith took the initiative in continuing Lee’s work. In the Historical Statement reproduced in the Introduction to the Faculty Announcement of 1922, he wrote:

Dr. Lee’s chief contribution to the history of McGill lies in his initiation of the policy which aimed at developing the Law Faculty from a purely provincial into a national law school, undertaking to provide the best possible legal education for students from all parts of Canada and elsewhere, while continuing to provide professional education of the highest standard for students intending to practise law in the Province of Quebec. During his tenure of the Deanship a new chair of “Jurisprudence and Common Law” was established in 1919, and this was followed in 1920 by the foundation of a third whole-time chair, with the title of “Constitutional Law”.

As early as 1922, then, it became apparent that Smith, while nominally only Professor of Common Law and Associate Dean, was the intellectual driving force within the Faculty. At this time, however, relations with the Bar of Quebec were deteriorating rapidly. For the local legal community,

92. (1921), 41 Canadian Law Times 27. This article contained a powerful and succinct restatement of Lee’s philosophy, unfortunately argued in a slightly polemical and patronizing tone. Smith also took up Lee’s efforts to establish a common law curriculum at McGill, and even set out a detailed “curriculum plan” for a full-time course which was published under the title “The Arrangement of English Law” (1919), 39 Can. Law Times 677. Unfortunately Smith had none of Lee’s political and diplomatic skills, and while his ideas were parroted across the country (see especially his article “Legal Education in Canada” (1921), 4 A.A.L.S. Review 734), many of his law teaching colleagues both at McGill and in other Universities resented his “imperialistic” attitude towards mere colonials, and his uncritical “anglophilia”. See Kyer, et al., supra, note 1, at 77-78.
"purely academic initiatives", such as the crusade to establish university-based legal education and to put an end to concurrent lectures and articles, became confused with "political initiatives", such as the establishment of the "common law" programme and the LL.B. degree. Coupled with the high failure rate at the 1921 Bar Examinations, Smith's constant trumpeting of the U.S. model of legal education and his apparent support of the Uniform Law Movement, precipitated among alumni and members of the McGill Board of Governors, a crisis of confidence in the Faculty.\(^9\) Primarily for this reason, but also because he had undertaken advanced training neither in the civil law, (like Walton), nor in Roman Law (like Lee), Smith was denied both the Gale Chair and the Deanship upon Lee's retirement.

For several months the University sought to find a replacement for Lee. McGill alumni put substantial pressure on Principal Currie to appoint a Quebec lawyer as Dean, but none could be found who would take the position on a full-time basis. By contrast, the Governors of the University wished the Principal to seek an Englishman, but Currie was reluctant (for political reasons) to appoint yet another common-lawyer to the Faculty in addition to Smith and Mackay. During this period of uncertainty, the Quebec-trained members of the Faculty favoured the nomination of Justice R.A.E. Greenshields, (B.C.L. 1885), who had held a Faculty appointment since 1915. The search for a full-time Dean proved fruitless, and after a short period, during which time he served as part-time Acting Dean, Greenshields was appointed to succeed Lee.\(^9\)

Despite these problems and disappointments, Smith continued to dominate the Faculty. The early 1920s were a period of great intellectual fervour as Smith sought not only to consolidate McGill's acknowledged leadership in Canadian legal education, but also to increase its involvement in major North American developments. McGill was elected to membership in the American Association of Law Schools in 1921 and was registered by the New York State Department of Education as an accredited law school the following year.\(^9\) By 1923


\(^9\) See Frost and Johnston, supra, note 1, text at footnotes 13-15. It appears that there was no little backroom maneuvering to secure this goal. See a letter dated November 28, 1921 and forwarded by Principal Currie to all members of the teaching Faculty. In retrospect, one is surprised that no effort was made to seek a full-time Dean in France. Indeed, it appears as if the idea was never even considered.

Smith had reorganized the curriculum so that the LL.B. programme was transformed into an orthodox common law degree on the U.S. model, and the former “Course A” and “Course B” designations for the B.C.L. degree were dropped. Smith actively promoted McGill as Canada’s “national” law school. In his statement of Faculty goals as they appeared in Faculty Announcements throughout the early 1920s, he proclaimed:

The Faculty now aims at giving a sound practical and scholarly education in the principles of: — The Civil Law of Quebec; The Common Law and Statute Law of Canada; Constitutional and Municipal Law; Public and Private Institutional Law; Institutes of Roman Law; Theoretical and Comparative Jurisprudence. The courses selected by students will largely depend upon whether they wish to practise law in the Province of Quebec or in some common law jurisdiction.

In addition to these curricular and institutional advances, Smith also worked on improving the Faculty’s finances. He was able to secure from Principal Currie a reconfirmation of his promise to Lee of funding from the capital campaign for yet another full-time Chair, in Commercial Law. In theory, therefore, as of 1923 the Faculty was to have a complement of four full-time professors. Funding for this fourth Chair apparently was not fully forthcoming, however, for the following year it was announced as a Chair in Quebec Law and Procedure, and no incumbent seems ever to have been named.

Lee’s other full-time recruit to McGill, Ira Mackay, proved no less visionary. A graduate of the Dalhousie Law School, Mackay also held a Ph.D. in philosophy from Cornell. He was a founding member of both the Faculty of Arts and the College of Law at the University of Saskatchewan, and delivered a celebrated address, *The Education of a Lawyer* long before coming to McGill. Like Smith, Mackay was formally trained only in the common law and, once again for this reason, his appointment was viewed with some suspicion by alumni, by his part-time practitioner colleagues, and by the local Bar. Especially

96. Smith first urged such a curricular reorientation on Lee as early as 1921 but the latter demurred. Even after two years of planning, this was an audacious, and ultimately (as it transpired) mistaken, move. To begin, it made the common law programme more vulnerable; that is, while it gave profile to the common law course in the United States, it also gave a precise label to the English law programme, and separated the two streams of the B.C.L. in a way that Lee had sought to avoid. Second, while it promised to open the door to Ontario accreditation (which it did not), it immediately gave the Faculty’s two undergraduate courses a professional/jurisdictional character they had previously avoided, and undermined the universalist objectives of Lee’s curriculum.

97. This speech, delivered to the Third Annual Meeting of the Law Society of Alberta in December, 1913 and published as a pamphlet, was ultimately reprinted in (1940-2), *4 Alberta Law Quarterly* 103.
disconcerting were his views on teaching methodology — case method, problem method, mooting, répétitions — his belief in full-time legal study within the university, his commitment to international law was a transnational legal order\(^9\) and his interest in aspects of the uniform law movement in Canada.\(^9\)

A firm advocate of the Lee Report to the Canadian Bar Association, Mackay seems, nevertheless, to have been even less successful than Smith in promoting his pedagogical and curricular ideas among his part-time colleagues and more generally in the Quebec legal community. After only three years, he left the Faculty for the more receptive atmosphere of McGill's Faculty of Arts, and the Frothingham Chair of Logic and Metaphysics. Yet, his views on the need for a full-time programme, for an adequate research library, and for a curriculum in which the study of law would be undertaken as both a liberal and a professional discipline upon completion of an arts programme, found a receptive audience in Principal Currie. Ultimately they were accepted (at least in general terms) by the University, although not, it seems, by many McGill alumni at the Quebec Bar. From his position as Dean of Arts — to which he was appointed in 1925 — he continued to struggle for his academic view of legal education until his retirement from McGill in 1934.\(^10\)

For obvious reasons the educational ideas of Lee, Smith, and Mackay were not well received in most quarters. By 1924 it was clear that the attempt to establish a national programme of legal education was falling into particular disfavour. Many of the concerns expressed during the 1914-1924 period track those of the 1880s and 1890s. The part-time, civilian, "judge and practitioner" professors were resentful of Smith's and Mackay's ambition to make law a full-time programme, to require professors to become full-time scholars, and to broaden the intellectual

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98. Mackay taught international law from 1921-1924 although he published no works in this area while at McGill. For a brief history of some of the Faculty's contributions to international law at this time, see R. St. J. Macdonald, supra, note 1, at 72-74.

99. Again, like Lee, Mackay did not argue for uniformity of common law and civil law. Rather he sought to make uniform across Canada was a high standard of legal education at what he called "independent" rather than "auxiliary" law schools. See Mackay, supra, note 97, at pages 110-111.

100. Mackay was a gifted scholar who should have made a significant mark on the curriculum of the Faculty. Yet he appeared to remain suspicious of the civil law (and non-socratic teaching methods), and his only lasting contribution was his insistence on the centrality of international law, which he saw a vehicle for the achievement of world government. In this endeavour, moreover, he seemed to be advancing a unificationist conception of polyjurality. Thus, in a manner not dissimilar to Walton, he promoted a liberal and professional vocation for legal education, but was unable to develop a theory of the undergraduate curriculum which exploited the comparative study of civil law and common law in a universalist framework.
orientations of the curriculum. The elite anglophone Bar of Montreal was hostile to any development which, by facilitating the dispersal of McGill graduates across the country, might lead to the weakening of its representation in the Quebec legal profession. Other law societies, and especially the Law Society of Upper Canada, strenuously resisted university based legal education, and even as McGill's common law degree was achieving official recognition in the U.S. it was scorned in Ontario. After the wave of returned veterans passed through the Faculty, enrolments began to decline and the Governors of the University were concerned about being able to finance a law programme of the dimensions proposed by Smith. Finally, Smith's notorious anglophilia and imperialism, as well as his hostility to what he perceived as the provincialism of various law societies marginalized him, even within the relatively cohesive Canadian law-teaching community.

To meet the various concerns stirred up by the proposals advanced by Lee, Smith and Mackay (and to reassure the Quebec Bar as to the general direction of legal education at McGill), the Board of Governors decided to take a more active role in the management of the Faculty beginning in 1923. As already noted, it elevated Justice Greenshields from part-time Acting Dean to part-time Dean. This proved to be a momentous decision. In the 1924 Announcement, the first prepared by Dean Greenshields, the lofty ideals expressed only a year earlier were abandoned: the Faculty explicitly committed itself to training English-speaking advocates for the practice in Montreal. Furthermore, over the public opposition of Principal Currie, (who had also resisted the appointment of Justice Greenshields as Dean), both the LL.B. and LL.M. programmes were abolished that same year.

101. During his time at McGill Smith published seven books (one per year) and several articles. See R. St. J. Macdonald, supra, note 1, at 74. Even more than Walton and Lee he demonstrated the contribution which full-time professors could make to legal scholarship through the production of monographs not specifically directed to the practising Bar. He also seems to have been a very popular teacher, and at least one of his students, F.R. Scott, claims to have been profoundly influenced by his courses and ideas.


103. See, on Smith's role in promoting the idea of a Harvard for the Empire to be located in England, J. Greenshields, "Is it desirable to Establish in London a School of Advanced Legal Studies?" (1926), 4 Can. Bar Rev. 639. For Smith's patronizing tone, even while at McGill, see "Law in the Empire" (1926), 4 Can. Bar Rev. 322, and ibid., at 483, 497, 577, and 599. The following year he stated his views even more forcefully. See H.A. Smith, "An Imperial School of Law" (1927), J.S.P.T.L. 11, in which he outlined a model for the project, and offered as a justification the inferior level of professional education in the colonies.

104. See Frost, "Vol. II", supra, note 1, at 119. Currie was a remarkable Principal who, alone among those serving between 1843 and 1968, appears to have understood the potential of the Faculty of Law and the differences between the monojural (or vernacular) and the two polyjural — unificationist and universalist — visions of its curriculum.
accordingly, cut back and the Announcement stated that, beginning in 1926, the common law and statute law of Canada would be taught only in so far as they were in force in Quebec.\(^\text{105}\) By 1927, Smith (like Mackay three years earlier) despaired of the Faculty's future, and he returned to England as Professor of International Law at the University of London.\(^\text{106}\) The brief renaissance and return to the Faculty's intellectual sources initiated by Lee thus petered out in the "normalcy" and only thinly disguised xenophobia of the 1920s,\(^\text{107}\) in much the same fashion that the original polyjural and universalist vision of the Faculty's curricular mission was gradually transformed first by codification, then by the conflict with the Bar in the 1880s, and finally by Walton's scientific professionalism at the turn of the century.

Nevertheless, not all the ideals and ambitions of the period were abandoned. Beginning with the 1926 academic year the Faculty arranged

\(^{105}\) The following notice appeared in (1924), 4 Can. Bar Rev. 282-83:

Speaking of educational matters, we learn that the LL.B. course will be dropped in the Faculty of Law at McGill University next session, and in its place it is proposed to develop advanced legal teaching for special students along certain special lines. This will begin with advanced teaching in constitutional and international law. The dropping of the LL.B. course has been deemed advisable owing to the fact that Bar regulations in other provinces make it very difficult for Common Law students to study outside of their own province, students wishing to practice law being compelled to serve an apprenticeship in a law office, and to attend lectures in some local law school of the province in which they intend to practice. The recommendation that the LL.B. course be dropped, and that no students be registered for this degree after the close of the present session, was formally approved at a meeting of the Corporation held during the current month. The Faculty of Law, in submitting the recommendation, adopted the attitude that the chief aim and duty of the Faculty of Law is the effective and scholarly training of law students in the existing law of the Province of Quebec.

\(^{106}\) Throughout his tenure Smith had been a powerful figure in the Faculty. He was a prolific scholar, and had a remarkable range of teaching interests: contracts, torts, property, domestic relations, trusts, wills, criminal law, constitutional law, negotiable instruments, comparative law, jurisprudence and (after Mackay's resignation) international law for one year. See R. St. J. Macdonald, supra, note 1, at 72-74 for a review of his McGill career. In most respects he and Ira Mackay had similar views about the McGill curriculum, and it is doubtful that he shared Lee's universalist vision. Certainly his support of the Uniform Law Movement and of the concept of an Imperial Law School, and his enthusiastic embrace of the League of Nations as a vehicle for achieving "world government" would suggest a unificationist perspective.

\(^{107}\) The Report of the Corporation of McGill University for 1924 concerning the Law Faculty is revealing in that the hostility of some Governors to the "corrupting influence" of the common law actually surfaced. The Report stated:

No students registered on the civil law side have attended any lectures or instruction in English law, while all students on the English side have regularly attended the usual lectures on all subjects common to both systems given under the regular instructors trained in the law of this province.

The general tenor of Quebec legal culture at this time — narrow, defensive, fearful of assimilation — is perhaps best captured by the articles published in the Laval-edited Revue de droit, which appeared between 1922 and 1939. For a review of this literature, see Sylvio Normand, supra, note 70.
its curriculum and timetable "on the assumption that a student is devoting his entire time to his university work". Courses were no longer taught only from 8:30 to 9:30 and 16:00 to 18:30, but were scheduled throughout the day. Students flocked to the library between classes and the already overcrowded facilities proved inadequate to sustain this increased usage. Greater expectations were also to be placed on the teaching faculty. While the number of full-time professors remained at three, the four other part-time professors — Greenshields, Howard, Chipman, and Surveyer — sensed the need to devote more energy to their lectures, and to legal scholarship. In fact, Dean Greenshields himself found these expectations too onerous and resigned his position as Dean in 1928. The Faculty also maintained its commitment to French-language education through several initiatives which also survived the Lee-Smith-Mackay period: courses were offered in French; the Macdonald Travelling Fellowship for post-graduate study in France — sustained by annual gifts since 1902 — was placed on firm footing in 1920 with a $20,000 endowment; and the Thomas Alexander Rowat Scholarship "for proficiency in the old French law and in the French language" was established in 1923.

The most enduring legacy of the mid-1920s was, however, in professorial recruitment. Between 1922 and 1927 the Faculty engaged, on a full-time basis, three young professors who were to become future Deans of the Faculty and whose combined teaching career at McGill was to total 106 years: Stuart Lemesurier, Percy Corbett, and one of Corbett’s best students, F.R. Scott. Of these only one, Lemesurier, (who was also

108. This development was made possible by yet another McGill-engineered modification to the Bar Act, accomplished while John W. Cook (B.C.L. 1895) was Bâtonnier of Montreal and Bâtonnier of Quebec. In 1925, by 15 Geo. V, ch. 56, (March 4, 1925) the Act was amended so as to enable a student to replace a three-year part-time period of articles concurrent with university studies, by a one-year full-time articling period subsequent to graduation from a three-year full-time law programme. See Nantel, supra, note 1, at 110; and J.E.C. Brierley, "Paradoxes", supra, note 1, at 34.

109. While not particularly sensitive to the potential of the McGill undergraduate programme, and while pre-occupied with keeping the curriculum focussed on professional concerns, Greenshields was nevertheless an excellent jurist who was able to allay the fears of those alumni and officials of the Quebec Bar who felt the Faculty was abandoning the civil law. Throughout his Deanship he was also a Justice of the Quebec Court of Queen’s Bench, and shortly after resigning the Deanship was appointed Chief Justice of the Quebec Superior Court.

110. In a letter to F.R. Scott dated November 19, 1969, Reverend Ronald Rowat noted that the prize was endowed by his father in memory of his uncle, who was killed in W.W. I. The donor, Donald Rowat, was a Notary in the Eastern Townships who was the first recipient of the Macdonald Travelling Fellowship for study in France in 1901, and who later taught briefly at the Faculty.
the first to be appointed) had been a practising advocate in Quebec. He was named Lecturer in 1922, promoted to Assistant Professor in 1923, and to Associate Professor of Commercial Law in 1924. From the University records it appears that he took over the full-time slot vacated by Lee, although as a junior professor of civil and commercial law at that time he was not named to the Gale Chair.

The first of these young recruits to make a mark in the Faculty was Percy Corbett. Corbett, who held both a B.A. and an M.A. — although not a B.C.L. — from McGill, was initially hired in 1923 to replace Ira Mackay as professor of International Law and to resume the Roman Law course previously taught by Lee. A Rhodes scholar and a promising Roman and International lawyer as a Fellow in Law at All Soul's College, Oxford for seven years, he also had served as Assistant Legal Adviser in the International Labour Organization in Geneva. In a meteoric rise, he was named to the Gale Professorship in 1925 and was appointed Dean of the Faculty in 1928.111

Despite his background and interest in Roman Law and International law, Corbett did not immediately attempt a radical reorientation of the curriculum to reflect the broader approach to legal study which such interests presumably presupposed. Like Trenholme, who was also a Romanist and an international lawyer, Corbett saw little advantage in pursuing structural change to the undergraduate programme against professorial and alumni opposition. Throughout his decanal tenure the professional model of the Faculty's mission established by Dean Greenshields seemed to predominate: the Faculty gave the appearance of being largely a civil law institution training students for the local Bar. The Annual Announcements for this entire period indicate the influence of the Bar and the centrality of instruction in the civil law. Notwithstanding significant developments in commercial law and public law over the previous twenty years, the undergraduate programme mandated by the Bar in 1887 remained unchanged: the civil law received 413 lectures of a total B.C.L. course of 750 lectures; and of the additional 337 lectures, 206 were devoted to civil procedure and other private law subjects. The influence of the Bar can also be seen in the fact that the Announcements reproduced at length various Bar regulations, and in the fact that the

111. See, for a brief sketch of Corbett's career at McGill, K.E. Fisher, "Percy Corbett and the Recognition of the Individual as a Subject of International Law" (unpublished manuscript, dated 13 April 1983). See also R. St. J. Macdonald, supra, note 1 at 74-75. Corbett was the third Oxford Romanist to serve as Dean and Gale Professor, the first two being Walton and Lee. Yet all three had more or less abandoned scholarship in Roman Law prior to coming to McGill, even though they continued to teach the course throughout their tenure. See J.E.C. Brierley, "Paradoxes", supra, note 1, at 18-20.
description of the programme clearly envisioned that students would seek
to qualify as either advocates or notaries.\textsuperscript{112}

Yet Corbett was a subtle administrator, and within these constraints he
was still able to make priorities of curricular innovation and professorial
recruitment. The inauguration of a full-time course of studies taught
primarily by full-time professors, was complemented by an attempt to
forge scholarly links with European civil law faculties and with the other
Canadian common-law faculties at Toronto, Dalhousie, and Saskatchewan. Corbett was the founder and guiding hand of the first university-
based national organization for the promotion of legal education — the
Canadian Association of Law Schools. The membership of this
Association, which was based on the model of the American Association
of Law Schools, consisted of law faculties at Dalhousie, McGill, Toronto,
Saskatchewan, and Alberta, but not the faculties at Laval and Montreal
which saw the organization in much the same light as the Canadian Bar
Association: as an assimilationist endeavour. Corbett also arranged,
beginning in 1930, for professorial exchanges between Dalhousie, McGill
and Osgoode Hall. Given the professional cast imposed on the teaching
programme by the Quebec Bar Regulations, he was particularly
concerned to enhance the quality (if not the quantity) of teaching in those
fields of domestic interest or application which necessarily transcended
provincial boundaries.\textsuperscript{113} Legal history, Roman Law, Canadian federal
subjects, such as constitutional and, later, administrative law, and
especially international law became the vehicles by which he sought to
ensure that the spirit, if not the substance, of the Faculty’s universalist
vision was preserved.\textsuperscript{114}

\textsuperscript{112} The Faculty’s overweening commitment to the profession can also be seen in its
interpretation of the terms of the Macdonald Travelling Fellowship. Macdonald’s will provided
that the Scholarship was founded to enable “English-speaking law students to take a course of
study in France,” because he deemed it “of great importance that the English-speaking
members of the legal profession should be proficient in the French language”. These laconic
directions were interpreted to mean that the recipient: (i) must have already graduated from the
Faculty; and (ii) must be eligible for, and indeed preparing for, admission to the Bar. On this
basis the Faculty denied eligibility to intending notaries and to women (who throughout the
1930s were not permitted to join the profession).

\textsuperscript{113} Further, like Smith, he was an active scholar, publishing several books while at McGill,
and encouraging others to publish their research. Unfortunately, just as these pan-Canadian
initiatives were taking root, McGill was obliged to resign from the A.A.L.S. (1933) and lost
its N.Y. State accreditation (1934), in both cases for want of a sufficient number of full-time
professors, and an inadequate library collection. The regulations of the A.A.L.S. required a
library of at least 10,000 volumes housed in a separate collection, and annual acquisitions
expenditures of at least $1500, neither of which target McGill came remotely close to meeting.

\textsuperscript{114} Corbett’s contributions as Dean to maintaining the universalist curricular programme for
McGill, like those of Dean Walton and Acting Dean Smith, is difficult to evaluate. While he
promoted international law as a subject which would enlarge the Faculty’s intellectual
Percy Corbett was thus the animating force behind several developments in legal education, both on the national and on the local stage. Recognizing the reasons for the failure of Lee’s experiment, and conscious of his own lack of training in the civil law of Quebec he avoided direct confrontations with the Bar and the alumni by confirming the Faculty’s “law in force” curricular policy. At the same time, however, he sought to upgrade the quality of the professoriate by taking special interest in gifted students. In addition to renewing the part-time teaching staff by making several appointments — Douglas Abbott, A.D.P. Heeney, and George Owen for example — from among recent graduates,115 he was instrumental in recruiting as full-time professors two exceptional protégés: F.R. Scott, who initially joined the Faculty as a lecturer in Constitutional Law in 1928 to replace Smith; and John Humphrey, who returned to McGill to teach Roman Law and International Law in 1936, when Corbett briefly became Chairman of the University Senate and de facto Acting Principal of McGill.116

A number of para-curricular developments of the late 1920s and early 1930s also bore the mark of Corbett’s academic and scholarly orientation. In 1928, when the heirs of Justice Wurtele (B.C.L. 1870), sometime professor of Real Estate at McGill, proposed a donation to the Faculty in his honour, Corbett immediately suggested a fund for the publication of faculty research. In a memorandum to the Board of Governors, who accepted his proposal almost immediately, he wrote:

The general plan of the Faculty is to set to work on a series of treatises on the Civil Law of this province. There is no such general treatise in English, with the consequence that lawyers in other parts of Canada and in the horizons, he was, in fact, one of the early promoters of the “world peace through law” movement, a movement which sought to replicate on the international scale the institutional features of national legal systems. Regardless of his own views on the desirability of an undergraduate programme which advanced a universalist polyjurality, he left the Faculty a teaching vehicle — international law — which could be easily adapted to promoting the universalist aspirations of McGill’s curriculum.

115. Many of these later became key actors in Canadian public life — for example, Abbott in politics, Heeney in the civil service, and Owen in the judiciary — as did several other McGill students from the early 1920s — notably, Graham Towers, Dana Wilgress and Brooke Claxton. See J.L. Granatstein, The Ottawa Men (Toronto: Oxford U. Press, 1982), and McCaffrey, supra, note 90. It is also noteworthy that even these part-time appointments were of an entirely different character than most of those previously made. For these new part-time lecturers were all young practitioners who had themselves experienced first-hand the heady days of the Lee-Smith-MacKay programme.

116. Corbett was thus the first Dean who consciously strove to build the Faculty’s professoriate (full-time and part-time) on the Harvard model. In the 1983 interview Corbett stated, “I set about . . . establishing a full-time faculty — the members of which were dependent economically and intellectually and morally on their position in the university, and not at the Bar.” See Fisher, supra, note 103.
United States have no means, unless they possess a good knowledge of French, of acquainting themselves with the law and jurisprudence of Quebec. The study of comparative law is receiving increasing attention, and it is a study of great value not only in the solution of problems arising in the conflict of laws but for the thorough understanding of fundamental legal principles. It is thought, therefore, that anything which would render the legal system of this province, which is unique on this continent, more available for comparative study, would be a worthy contribution by this Faculty to the advancement of legal learning.

Again, the enhancement of legal scholarship lay behind the decision in 1932 to reinstitute, as a complement to the Faculty's only graduate degree — the D.C.L. — a new master's programme leading to the M.C.L. degree. In 1935, Corbett continued this policy of promoting research by convincing the Faculty to reintroduce the requirement (abandoned since the turn of the century) that all candidates for the B.C.L. submit an undergraduate thesis of five to ten thousand words as a degree prerequisite. At least four of these undergraduate theses were later revised for publication with the support of the Wurtele Fund. Finally, Corbett was able to institute two new scholarships and awards designed to encourage legal writing and graduate study. In each of these initiatives to promote legal research, Corbett was also pursuing a hidden agenda. He hoped that increased professorial and student scholarship would put enough pressure on the Law Library as to compel the University to expand its collection sufficiently that the Faculty could be readmitted to the American Association of Law Schools.

Yet the depression left a real mark on privately-supported universities such as McGill. Not only were no expenditures forthcoming for the Law

117. This was a thesis master's programme requiring the submission of a major scholarly paper. It replaced the LL.M. degree which was abandoned along with the LL.B. programme in 1924. Like Lee and Smith, Corbett saw professorial scholarship as a means for enlarging the Faculty's intellectual horizons. His book, co-authored with H.A. Smith, *Canada and World Politics* (1928), and his later monograph *Fundamentals of a New Law of Nations* (1934) were both major contributions to the literature of international law published during his early years at McGill.


119. The first of these initiatives was the Charles Albert Nutting Price, created in 1930 and to be awarded to the student "submitting the best essay on a topic related to legal history..." In 1933, Corbett also secured the foundation of the Edwin Botsford Busted Scholarship, established to permit a graduate of the Faculty to carry out research "on some subject connected with the law of Quebec". The terms of reference for the scholarship continued: "... whether or not he registers for the degree of M.C.L,...[the recipient]... will be required...to prepare a thesis..."
Library, but several of Corbett's other plans for enlarging the professoriate, developing the curriculum, and broadening the Faculty's intellectual horizons were put into abeyance. Even by the time he left the Deanship in 1936 there were signs that the Faculty would be unable to sustain its newly charted course of internationalism, inter-Faculty exchange, and legal scholarship.

In fact, during much of the Deanship of Corbett's successor, Stuart Lemesurier, the Faculty was characterized by a scholarly and curricular routine. This lethargy was due, in large part, to Lemesurier's personal commitment to Dean Greenshield's model of professional education, but it could also be attributed to his lack of imagination about the possibilities for legal education in promoting economic reconstruction, and the achievement of Canadian nationhood. Lemesurier was the Faculty's first Dean since Trenholme who had joined McGill from the practice of law in Quebec, and only the second McGill graduate to hold the position since the turn of the century. While he served in a full-time capacity (unlike Justice Greenshields), he was not a scholar and did not see either academic writing or the graduate programme as central to legal education. Nor did he have Corbett's optimism about the potential of non-jurisdictional courses such as international law and the merits of inter-Faculty exchange. Lemesurier's primary intellectual loyalties were to the Bar and to the notion that the Faculty's overriding mission was to train future advocates.120 But the Faculty's decline during Lemesurier's Deanship was also due to his inability to energize his colleagues about Faculty rather than extra-Faculty concerns, and to the uncertainties about matriculation requirements and curriculum flowing from a series of proposals for revisions to the Quebec Bar Act commencing in the mid-1930s.121

In 1934, the Conseil général of the Bar struck a Committee to examine legal education. This Committee recommended the retention of "philosophy" as a matriculation requirement, and the establishment of an

120. During his initial tenure between 1936-1946 Lemesurier neither sought out nor made any professional appointments. He also seemed content with the status quo insofar as student enrolments, the collection in the law library, the curriculum, and faculty research were concerned. Thus, in 1937-38 fewer students were enrolled in the Faculty than in 1913-14 and only 7 B.C.L. degrees were awarded. For the next ten years the graduating class varied between a low of 6 (in 1945) and a high of 15 (in 1942 and 1947). Over the same decade the collection of the Law Library grew by less than 5000 books.

121. Each year during the decade 1934-1943, the Annual Announcement of the Faculty contained the following notice, printed immediately following the outline of the curriculum: "NOTE: Changes in the by-laws of the Bar of the Province of Quebec governing legal education may necessitate some modifications in the curriculum." Yet, throughout the decade the advertised courses remained almost unchanged, as the Faculty declined to revise its programme until the Bar instituted its proposed reforms.
obligatory consecutive rather than concurrent articling regime. Between 1936 and 1947 four different amending statutes were enacted, as the suppression of admission to the profession by articles became the subject of long and difficult debate.\textsuperscript{122} Even when the question was finally settled in 1949, certain vestiges of the historical dispute between McGill and the Bar remained. The Bar refused to recognize the McGill B.Comm. degree as a matriculation requirement, maintained the additional requirement that students complete “a regular course in philosophy” and, as a consequence of abolishing articles outright, maintained its relatively strict control over the substantive content of the undergraduate curriculum taught by all Quebec faculties.

The special bearing of the Bar’s hesitations about legal education on McGill can be attributed to the differing intellectual universes inhabited by the two disputants. Between 1915 and 1950 the strongest advocates of the Bar’s position — Léo Pelland and Maréchal Nantel — were active in the \textit{Revue de droit}, the self-proclaimed “guardian of the faith” of the pure civil law tradition against corruption by heresies such as the common law, international law, and later, statutory law. The Bar’s unwavering position on the questions of matriculation requirements and detailed course syllabi, even after the 1949 regime was put in place, is captured succinctly in Nantel’s 1950 study of Quebec legal education.\textsuperscript{123} Nantel concluded, in terms eerily reminiscent of Pagnuelo’s response to Principal Dawson in 1887:

\begin{quote}
Il ressort nettement de cet exposé que le Barreau n’a jamais abandonné les prérogatives ni les droits … il en a simplement délégué l’exercice à l’université … la base de cet enseignement doit rester conforme au programme dicté par le Barreau … les examens professionnels … sauvegardent par là, les institutions juridiques qui sont propres au Québec.
\end{quote}

This half-century long conflict of perception was, of course, exacerbated by the political and jurisdictional conflict between federal and provincial

\textsuperscript{122} See Nantel, \textit{supra}, note 1 at 110-119. See also L. Pelland, “Etudes légales universitaires” (1930-31), 9 \textit{R. du D.} 193; M. Nantel, “Note”, (1934-35) 13 \textit{R. du D.} 466, 577; J.P.A. Gravel, “Note” (1935-36), 14 \textit{R. du D.} 90. Brierley, “Paradoxes”, \textit{supra}, note 1, at 8 suggests that these efforts to “improve” the quality of candidates for admission to the Bar may also have been motivated, as were those undertaken in the 1860s, by the desire to make access to the profession more difficult. The Quebec law faculties reached an accommodation relating to the content of the undergraduate programme with the Board of Notaries much earlier, in 1936. See J. Mackay, \textit{supra}, note 1.

Interestingly, the absence of a Law School run by the professions enabled the initial debate over control of legal education to be resolved sooner in Quebec than in Ontario, and later enabled McGill professors to play an important supporting role in Cecil Wright’s vendetta against the Law Society of Upper Canada during the late 1940s and 1950s. See Kyer, \textit{et al.}, \textit{supra}, note 1, at 209-214.

\textsuperscript{123} See M. Nantel, \textit{supra}, note 70.
governments during the 1930s, when McGill law professors tended invariably to support the "centralist" position,124, and generally by McGill University's wartime identification with the federal government and its regulatory (i.e. public law) initiatives.

Despite the impact of the scholarly and extra-curricular involvements of Corbett and Scott, throughout the late 1930s and very early 1940s the Faculty's undergraduate programme remained focussed on the law of Quebec (indeed, on those private law aspects of Quebec law determined by the Bar). This meant that as an institution, McGill ceased to be a major force in Canadian legal education,125 even though its full-time professorial complement of three — Lemesurier, Scott, Humphrey (and irregularly, Corbett) — was still the largest in the country. As noted, Humphrey was initially engaged in 1936 to replace Corbett on a temporary basis. But he acceded to a permanent appointment one year later when, following his service as de facto Principal, Corbett decided to

124. Both Percy Corbett and Frank Scott acted as consultants to the Rowell-Sirois Commission, and both prepared background papers urging greater federal control over the economy. See, in particular, Scott's brief on behalf of the League for Social Reconstruction entitled Canada — One or Nine? The Purpose of Confederation. Moreover, the continuing series of articles penned by F.R. Scott in the 1930s were often held out by nationalists as evidence that McGill professors wished to undermine provincial jurisdiction and the Civil Code (which by then they had appropriated as the icon of French-Catholic culture in Quebec). See F.R. Scott, Essays on the Constitution (Toronto: U. of T. Press, 1977) especially chapters I, II, VI, IX, X and XI, each of which appeared as an article between 1931 and 1945, and each of which was strongly centralist in orientation. For an evaluation of Scott's extra-Faculty activities during the 1930s and 1940s, see M. Horn, "F.R. Scott, The Great Depression and the League for Social Reconstruction" in S. Djwa and R. St. J. Macdonald, On F.R. Scott (Montreal: McGill-Queen's U. Press, 1983) at page 71, and K. McNaught, "Socialism and Canadian Political Tradition" in ibid., at page 89.

125. There was, in fact, no main player in Canadian legal education because there was no national organisation or forum apart from the Canadian Bar Association. The Association of Canadian Law Schools was wound up in the late 1930s, as each Faculty seemed to concentrate its energies on battling its local law society. See Kyer, et al. supra, note 1, at 134-162. Moreover, the intellectual fervour which accompanied the 1930s "realist" revolt in the 1930s in the United States and which gave focus to law teaching there never crossed the border, largely because no federal New Deal agencies survived the Privy Council's constitutional jurisprudence, and because "progressive" Canadian law professors concentrated their energies on the political process and on associations such as the League for Social Reconstruction and the Canadian Institute for International Affairs. See M. Horn, ibid., and D. Sanders, "Law and Social Change: The Experience of F.R. Scott" in S. Djwa and R. St. J. Macdonald, supra, note 124 at 121. As a consequence of this focus on direct political action in Parliament rather than on executive initiative, the depression in Canada had no national galvanizing effect on legal education and did not stimulate the creation of legal realist "lawyer-technocrats" who believed legal science could overcome social inequality. See, generally, R.A. Macdonald, "Understanding Regulation by Regulations" in I. Bernier and A. Lajoie, Crown Corporations, Regulations and Administrative Tribunals (Toronto: U. of T. Press, 1983) at page 47; R.C.B. Risk, "Lawyers, Courts and the Rise of the Regulatory State," (1984), 9 Dalhousie L.J. 31; and R.C.B. Risk "Volume I of the Journal: a tribute and a belated review" (1987), 37 U.T.L.J. 193.
retain only a loose connexion with the Faculty of Law. From 1938-1940 Corbett was engaged in various official missions — first to the Commonwealth Conference in Australia, and later to the United States. While he nominally held a professorial position in law, his teaching of international law and legal theory was concentrated in the Department of Political Science until his final departure for the United States in 1943. Like Ira Mackay fifteen years earlier, he found the Faculty too much in the hands of the legal professions, too provincial in outlook, and too anti-intellectual to be a congenial base for his scholarship; and, like Mackay, he sought refuge in the Faculty of Arts.126 Essentially, during Lemesurier's tenure as Dean the Faculty lacked intellectual focus and did not really function as an academic unit. Humphrey was a junior lecturer, Lemesurier was preoccupied as Dean with relations with the Quebec Bar, and the attention of F.R. Scott was concentrated on matters outside the Faculty, such as the Canadian Penal Association, the League for Social Reconstruction, the C.C.F., the abolition of appeals to the Privy Council, and campaigns to end Canada's colonial servitude.127

Moreover, at a time when the University was dependent on the personal largesse of its Board of Governors, Scott's iconoclastic political views and Corbett's espousal of the cause of neutrality left the Faculty without money or support for new programmes and other curricular innovations.128 In 1936 Scott, who had vigorously defended the Toronto communists four years earlier, first attracted the attention and scorn of Sir Edward Beatty, the President of the C.P.R. and Chancellor of the University, for an article he wrote about politicising the unions; by the late 1930s, Scott had become heavily involved in left-wing politics, and in the cause of asserting Canada's sovereignty from the U.K., thereby provoking further estrangement between the Faculty and the Board.129

126. When Corbett finally left McGill, it was said that he did so because he felt the need for a larger environment in which to maximize his intellectual development. See R. St. J. Macdonald, supra, note 1, at 74-76. See also Fisher, supra, note 111. Yet some aspects of the record also suggest that he may have been one of Cyril James' first victims, being squeezed out of McGill at the behest of the Board because of his supposedly radical political views.

127. For a detailed treatment of Scott's political activities during the 1930s, see S. Djwa, The Politics of the Imagination: A Life of F.R. Scott (Toronto: McClelland and Steward, 1987), chapters 7-11. What is remarkable in this semi-official biography is that in over 150 pages of text covering this decade there are only three references to Scott's legal work within the Faculty. Certainly this shows where Scott's attention was directed at this time. For a further elaboration of some of Scott's extra-Faculty involvements over this period see D. Owram, The Government Generation (Toronto: The U. of T. Press, 1986), c. 9-11.

128. For an authoritative account up to 1939 see especially J. King Gordon's unfinished but very important review of Djwa in (1989), 12 Dalhousie L.J. 567.

129. See F.R. Scott, "The Trial of the Toronto Communists" (1932), 39 Queens' Quarterly 512; F.R. Scott, "Freedom of Speech in Canada" reprinted in Essays on the Constitution:
The failure of the Governors to take seriously Corbett’s candidacy for the McGill Principalship (despite his having served as Chairman of the Senate in 1937) reflected their suspicions of his politics as well. In 1939 Corbett received a distinctly hostile response from the Chancellor for a speech he delivered on neutrality, and on the need for closer defence ties with the U.S., rather than the U.K. His publications on the subject of international affairs also caused him difficulty at McGill, where the whole subject of a post-colonial Law of Nations was viewed with suspicion by members of the Board. 130 Between 1936 and 1946, Scott and Corbett clashed publically with Chancellor Beatty and with Board Chairman J.W. McConnell over socialism, over neutrality, and even over the advisability of establishing a Faculty of Divinity at McGill.

While the depression no doubt contributed to the Faculty’s impoverishment, and while Lemesurier’s lack of leadership may have given the Governor’s little reason to make special fundraising efforts on the Faculty’s behalf, the record indicates that this was the decade when the comparative external funding of law and medicine at McGill began to diverge sharply.131 Moreover, the fact that McConnell, who owned the Montreal Star, refused to permit Scott’s name to appear in its columns after Scott’s election as National Chairman of the C.C.F in 1942 gives some credence to the claim that the Faculty financially suffered for Scott’s and Corbett’s politics.

The first signs of real development in curriculum, teaching methods or professoriate since the late 1920s occurred in 1943, when Scott and Humphrey finally succeeded in convincing Lemesurier that the war effort was changing the nature of legal regulation and that Faculty would have to take concrete steps to reassert its scholarly and non-vocational orientation if it wished to avoid total domination by traditionalist elements within the Bar. The Annual Announcement for that year proclaimed:

The Faculty offers a three-year course, preparing students for admission to the legal professions in Quebec and for public service and business. In the field of private law, the course is based mainly on the Roman and Civil systems. The curriculum has recently been revised and now provides students with better opportunities to study the broader purposes of


130. See, notably, Corbett’s two monographs Fundamentals of a New Law of Nations (1935), and The Settlement of Canadian-American Disputes (1937). For a brief review of these hostilities, see Frost, “Vol. II”, supra, note 1, at 193, 203, 205, 217 and 423.

131. For an analysis of these funding disparities, see F.R. Scott, “Report of the Committee on Legal Research” (1956), 34 Can. Bar Rev. 999, at 1004.
government and to acquire skills in the management of the new
institutions and procedures resulting from the increased role of
government in the economic and social life of the nation.

In retrospect, it appears that Scott's commitment to the idea for a liberal
arts, public administration and international law orientation in the
programme (the latter theme especially being championed by Corbett's
disciple Humphrey), probably was not grounded in any deep-rooted
transcendental belief about the nature of law or legal ordering. Scott
adopted an essentially pragmatic and instrumental stance which some
commentators view as analogous to Pound's concept of law as "social
engineering". He saw law (and especially regulatory legislation), if it
could only be separated from its conservative tendencies imparted by Bar
and judiciary, as an instrument of social progress to be wielded by the
democratic state. Whatever the best explanation of Scott's support of
curricular revision in the early 1940s, it is clear that his immediate goal
was to dissociate law and legal institutions (and especially legal
education) from their role in buttressing a capitalist economy.132
Changing the focus of undergraduate teaching in the Faculty towards
federal and international subjects, he believed, would free the McGill
curriculum from political interference by a Bar he saw as committed to
the pre-War "old order", and would allow the teaching of a greater
variety of public law and government regulation courses out of which a
post-War "redistributive state" would emerge.133

Several minor changes to the curriculum followed over the next five
years, stimulated by further revisions to the Bar Act,134 by a temporary

132. In my view, Scott's later career is clear evidence that he did not believe in polyjurality
or in law as a liberal arts subject, as that term is understood now. This view is obliquely
supported by S. Djwa, supra, note 127, at pages 234-235, although no additional sources are
given. See also W.R. Lederman, "F.R. Scott and Constitutional Law" in S. Djwa and R. St.
J. Macdonald, supra, note 124 at page 117. But see, G. LeDain, "F.R. Scott and Legal
Education" (1981), 27 McGill L.J. 1, at 4-6 who argues that Scott had a genuine commitment
to teaching and understanding law in its social context. See also W. Tarnopolsky, "Frank Scott —
Civil Libertarian" (1981), 27 McGill L.J. 14 for a similar interpretation of Scott's views of
legal education.
133. See F.R. Scott, supra, note 124, chapters I, II, IV and XIII. A brief treatment of this
aspect of Scott's constitutionalism is given by J.S. Ziegel, "Review of S. Djwa, The Politics of
the Imagination" (1990), 40 U.T.L.J. 426 at 429-431. The point here is that, while Scott did
like to see "law in the round" (see LeDain, supra, note 132, at 6), he also believed that law was
a product of the political state. Like his McGill-trained colleagues who preceded him he was
perfectly happy with the "law in force" thrust of the curriculum, and sought only to charge the
emphasis within the undergraduate programme on what "law in force" was to be taught.
134. Nantel, supra, note 1, at 116. Among developments to Bar Regulations not highlighted
in Nantel's article was the decision in 1943 finally to permit the admission of women to the
profession. At this time, there were some 20 female graduates of McGill employed as
para-legals in Montreal. Two of the first three women admitted, who both later had
distinguished careers, were Elizabeth Carmichael Monk (B.C.L. 1923) and Constance Short
(B.C.L. 1936).
influx of returned veterans after the war, and by the rapid development of public and administrative law. In anticipation of a new world order emerging from the peace settlements of World War II, Humphrey reoriented Percy Corbett's first-year international law course to focus more directly on emerging international institutions, and retitled it International Law and Organization; and in recognition of the wartime expansion of government regulation, he also developed a new course, Introduction to Public Law. In establishing these two courses, Humphrey became Canada's first "institutionalist", and by doing so furthered the interdisciplinary links with the Faculty of Arts which Corbett initiated. Yet, the budget of the Faculty at this time was such that no joint programmes ever developed, and Humphrey left McGill before much post-War curricular reform in this direction could be undertaken.

For his part, Frank Scott created a second-year advanced Constitutional Law course (treating matters such as federalism, administrative law, civil liberties, and distribution of legislative power) to complement that which he taught in first year; he also established Canada's first labour relations course under the rubric Industrial Law.

Finally, in 1944, the Faculty began to teach more broadly in the Corporate area, with separate courses in Taxation, Bankruptcy, Insurance and Mercantile law, offered by leading Montreal practitioners.

Immediately after the war, the composition and character of the student body and the professoriate began to change from that of the previous decade. In 1946, over eighty students enrolled in the first year of the B.C.L. course, up from less than twenty only one year earlier. That

135. In 1941-1942, Board Chairman McConnell presented the University with a large house at the corner of Peel St. and Pine Ave. This building was to house both the Faculty of Law and the School of Commerce (which included economics). McConnell apparently felt that the socialist tendencies of the Law Faculty could be tempered by its association with the School of Commerce, and by removing it from the East Wing of the Arts Building and from left-wing elements in that Faculty.

136. See G.E. LeDain, supra, note 132. It seems that these two courses resulted from ideas picked up during his visiting year at Harvard in 1940-41, from his experience in early 1940 in adjudicating a coal-miner's dispute in Nova Scotia, and from his experiences as National Chairman of the C.C.F. See S. Djwa, supra, note 127 at 230-236.

137. These developments constituted the Faculty's second attempt to find curricular and scholarly extroversion primarily in fields other than private law, the first being Corbett's tentative initiatives to develop international law studies in the 1928-1936 period. See J.E.C. Brierley, "Paradoxes", supra, note 1, at 31-32 for a discussion of how these initiatives were to influence the McGill curriculum during the 1950s. As was the case with the common law programme in the period following World War I, these curricular innovations initially attracted a measure of support from the University Principal. The Board of Governors remained skeptical, however, fearing that some left-wing (and pacifist) political agenda lay behind courses in administrative law, industrial law and international organization. See, for an intimation of these fears, Frost, "Vol. II", supra, note 1, at 217, 244, 289 and 423; see also S. Djwa, supra, note 127, at 230-243.
same year, John Humphrey, by then Gale Professor of Law, left McGill to become first director of the Human Rights Division in the United Nations Secretariat.\textsuperscript{138} He was replaced by another international lawyer, Maxwell Cohen, the Faculty’s first Jewish full-time professor.\textsuperscript{139} In 1948, Cohen, who held an LL.B. from Manitoba and an LL.M. from Northwestern but who, unlike Humphrey, had no civil law training, developed two new courses of a liberal arts character: Introduction to Law, and Jurisprudence. That same year, the long-promised fourth full-time professorial position in law was created, to be filled by Louis Baudouin, the first French civilian recruited by McGill. Baudouin, a former magistrate, brought several continental curricular ideas to McGill. He was, moreover, the first civil law teacher since Walton to elevate the subject above simple exegesis of Codal texts, and to seek out its underlying themes. Surprisingly, many of Baudouin’s ideas coincided with Cohen’s views of legal education and the two often found themselves allied in their pursuit of a polyjural undergraduate curriculum against their McGill-trained colleagues Scott and Lemesurier.\textsuperscript{140} By the end of the decade important curricular changes were being debated, and in 1949, for the first time in twenty-five years, the Faculty formally advertised itself in the Annual Announcement as providing “a liberal education in legal principles and theory”\textsuperscript{141}

\textsuperscript{138} As with Ira Mackay, another young scholar who left the Faculty without ever having served as Dean, it is difficult to assess Humphrey’s long term impact on the curriculum. There is no doubt that he believed in the importance of teaching Roman Law, and that he saw international law much as Corbett did. He wrote in 1972 that he had always taught the latter subject as an exercise in legal science (see R. St. J. Macdonald, \textit{supra}, note 1, at 76) by which, he has told me, he meant that he was most interested in process, structures and institutions. Yet the concept of “legal science” is probably mischosen as a label since it is, presumably, one of the intellectual bogeymen a course in International Law is designed to exorcise. For a brief bibliography of Humphrey’s scholarship over this period, see R. St. J. Macdonald, \textit{supra}, note 1, at 77, footnote 26, and for Humphrey’s later views on law and on university education see his address upon accepting a D.C.L. (\textit{honoris causa}) on June 9, 1976.


\textsuperscript{140} The collaboration between Cohen and Baudouin in curricular matters seems to have been fortuitous. For although they shared several attributes — \textit{i.e.} both were outsiders to McGill and to Quebec; both had strong views as to the university vocation of law teaching; and both sought to enhance legal scholarship at the Faculty — their scholarly backgrounds and interests could not have been more divergent. Cohen was a North American, common law trained, anglophone, public lawyer; Baudouin was a European, civil law trained, francophone, private lawyer.

\textsuperscript{141} While not all the curricular ideas mooted in the late 1940s were adopted, several did eventually find their way into the programme. Most of the Faculty’s internal debate about the appropriate vocation of legal education is captured in Cohen’s 1950 article “The Condition of Legal Education in Canada”, (1950), 28 \textit{Can. Bar Rev.} 267, which helped to trace a rough blue-print of ambitions for the next decade of law teaching and scholarship at McGill.
But even during this post-war period of innovation several factors conspired against a radical transformation of the undergraduate teaching programme, or even against a rapid expansion in the curriculum. Controversy over the Deanship afflicted the Faculty from 1946 through 1950. Since 1946, Dean Lemesurier had been seeking to retire but the McGill Governors continued to be unhappy with what they considered to be the left-wing elements in the Faculty, and were especially concerned to thwart the appointment of F.R. Scott as his successor. Consequently, in 1949 and 1950 the Faculty had three Deans — Justice Gérard Fauteux of the Quebec Superior Court, A.S. Bruneau and W.C.J. Meredith (the first two of whom held only part-time appointments) — and, not surprisingly, little academic leadership.

Moreover, the final resolution of the Bar’s fifteen-year struggle to develop regulations relating to legal education was a mixed blessing. Between 1947 and 1951, the Bar settled on a régime pedagogique which suppressed the option previously open to students of obtaining admission by articling for five years, but which dictated an extensive profile obligatoire for undergraduate legal education and which added a fourth year of practical training within the Faculties themselves. Even though this fourth year was not a part of the McGill B.C.L. curriculum, the presence of Bar Admission Course students (taught exclusively by part-time lawyers and judges) gave a distinctly “careerist” and “professional”

142. Lemesurier first asked the Principal to seek a successor in June 1946, after he had served ten years. F.R. Scott expected to be named Dean but his appointment was blocked by the Board, which apparently offered the positions to the Faculty’s only other full-time professor, John Humphrey. Before actually taking office, however, Humphrey resigned from the Faculty and Lemesurier reluctantly remained in the Dean’s chair. See J.P. Humphrey, “The Dean Who Never Was” (1989), 34 McGill L.J. 191 at 196. The following January Principal Cyril James informed Scott that he would never be named Dean on account of his political views. In part due to this “ingränce” into Faculty governance and in part to promote a less authoritarian and less professional approach to legal education, Scott determined in 1947, to organize an Association of Canadian Law Teachers, an organization of which he was eventually elected the first president in 1951. See G. LeDain, “F.R. Scott and Legal Education” (1981), 27 McGill L.J. 1, at 10. It was also to compensate for the loss of extra income flowing from the Deanship that Scott first began to build a consulting practice — taking on both the Switzman and Roncarelli cases that year. See S. Djwa, supra, note 127, at 240.

touch to the Faculty's ambiance and curriculum. Finally, the Board's appointment in 1950 of W.C.J. Meredith, a prominent Montreal lawyer, as the Faculty's fifth full-time professor and as Dean, once again imposed upon the Faculty a Dean with no pretension to scholarly ability or interest.¹⁴⁴ This appointment, it was felt, would pre-empt ill-considered academic reforms (which some of the new courses developed during the 1940s suggested were on the horizon), would usher in a less ambitious and more vocational curricular and scholarly agenda, and would signal a less politically active future for the Faculty of Law. To follow up on ceremonies marking the official centennary of the formal teaching of law at McGill,¹⁴⁵ J.W. McConnell, the Chairman of the Board, apparently satisfied with Meredith's plans for the Faculty, presented it with a new home — Old Chancellor Day Hall — which (like its previous location, Purvis Hall) was acquired and refurbished at his own expense the previous year.

Yet, just as in 1923, the attempt by the Board and the Quebec Bar in 1950 to impose a professional vernacular on the Faculty through the decanal selection process and through an elaborate régime pédagogique was only partially successful. While no new left-wing or non-professional "aberrations" dominated the curriculum, during the following decade four of McGill's traditional intellectual (and polyjural) extroversions either re-emerged, or in the case of international law, flourished. More significantly, each of these developments occurred less as a result of conscious decanal or Faculty Council policies than in consequence of individual professorial interest.

To begin, the commitment of the Faculty to international law — first crystallized by Torrance, Kerr, and Trenholme in the nineteenth century,
and consolidated by Lafleur, Smith, Corbett, Humphrey, and Cohen in the twentieth\textsuperscript{146} — was enhanced in 1951 with the creation (at the instigation of John Cobb Cooper) of the interdisciplinary Institute of International Air Law, and the resurrection of the LL.M. as a second master's level degree, in Air Law.\textsuperscript{147} Even though the teaching programme of the Institute was concentrated at the graduate level, its presence in the Faculty served as a counterpoint to the Bar's fourth-year professional training course, and was instrumental in strengthening the undergraduate teaching of public as well as international law.\textsuperscript{148}

In 1953, the public law curriculum was further developed by the introduction of two new seminars\textsuperscript{149} — the Faculty's first optional courses — taught by Maxwell Cohen: "The Law and Constitution of the United Nations", and "Government Control of Business".\textsuperscript{150} The

\begin{enumerate}
\item[146.] The role of the Faculty in promoting the study international law is documented in R. St. J. Macdonald, supra, note 1, at 69-81.
\item[147.] John Cobb Cooper was a retired Vice-President of Pan-American Airlines who had come to Montreal following the establishment of the International Civil Aviation Organization. For a history of the Institute, which was renamed the Institute of Air and Space Law following the launching of Sputniks I and II, see \textit{The Institute of Air and Space Law: A Brief History and Bibliography}, 1951-1970 (Montreal: McGill U., 1970).
\item[148.] Given the ambitions and potential of the Institute, it is surprising that its establishment was strongly opposed by Frank Scott. Most professors held the opposite view. Meredith, who was attracted by Cooper's professional credentials, Cohen, who saw the Institute's potential in International Law, and to a lesser extent Baudouin, like Cooper well versed in diplomatic circles, supported the initiative and backed Cooper's appointment to the Faculty as McGill's sixth full-time professor. Scott advanced three reasons (the first two of which were to become his standard refrain over the next fifteen years) for rejecting the creation of the Institute. He felt that the Institute would deflect the Faculty away from its primary teaching mission — which he, like Meredith and Lemesurier — saw as the training of advocates for the Bar of Quebec; he argued that would drain valuable resources from the library, and that it would require to heavy an expenditure on teaching salaries; and he maintained that there would be insufficient demand for such a specialized programme.
\item[149.] See Frost and Johnston, supra, note 1 at 39-40. These optional courses, to be evaluated by means of a 5000-word term essay, could be taken in lieu of the graduating essay, which by 1950 had become a 10,000-word requirement. By 1957 students were obliged to submit an undergraduate essay and take a seminar, although editors of the \textit{McGill Law Journal} were exempted from the requirement to enroll in a Third Year Seminar.
\item[150.] Cohen was already emerging as a scholar with a national reputation at this time, having published "The Role of Law and Lawyers in Industrial Relations" (1951), 11 \textit{R. du B.} 477; "The MacQuarrie Report and the Reform of Combines Legislations" (1952), 30 \textit{Can. Bar Rev.} 551; "Comment on N.S.L.R.B." (1952), 30 \textit{Can. Bar Rev.} 408; "The United States and the United Nations Secretariat" (1953), 1 \textit{McGill L.J.} 169. This emergence also signaled, along with their disagreement about the Institute of Air and Space Law, the beginning of the estrangement between Scott and Cohen — an estrangement which at times verged on outright meanness directed against Cohen by Scott, and the superiority bred of insecurity directed by
following year F.R. Scott’s “Basic Problems in Canadian Constitutional Law” was added as a further public law option.\textsuperscript{151} At a time when the Civil Code (and private law generally) still dominated the curricular horizon of law teaching in Quebec law faculties, this activism in public and international law was a noteworthy (and noted) feature of the McGill programme.\textsuperscript{152} In stressing subjects which had no codal text, nor (in the case of international law) no authoritative legislative or judicial organ, the Faculty was taking the first curricular steps to countering the stasis which generally afflicted large segments of legal life in Quebec throughout the 1950s.\textsuperscript{153}

At this same time, a second curricular foundation of legal education at McGill — the polyjural private law tradition — reappeared in the Faculty in a form more palatable to McGill alumni and to the Quebec legal professions: scientific comparative law. As early as the turn of the century, when Walton redesigned the teaching programme, the potential of comparative legal study was noted. Two decades later R.W. Lee formally proposed such a programme in conjunction with the “course in English law”. Yet because the idea of national legal orders was only just emerging, the role that comparative law could play in promoting universalist rather than unificationist goals was unknown. By the 1950s, however, comparative legal study had begun to develop its own methodology, and Louis Baudouin was able to teach the subject in a manner which did not appear to threaten the “integrity of the civil law”.\textsuperscript{154} Baudouin’s seminar, “Le rôle de la volonté dans le domaine des

\textsuperscript{151} This seminar became an important vehicle for Scott’s developing views of federalism and the desirability of a Bill of Rights. See W. Tarnopolsky, \textit{supra}, note 132. It also provided Scott with a means to weave his consulting — in cases as divergent as \textit{Roncavelli v. Duplessis} and \textit{Brodie, Dansky and Rubin v. The Queen} — into his scholarship and teaching.


\textsuperscript{153} See R.A. Macdonald, \textit{supra}, note 33, at 592-599. It is also noteworthy that it was a McGill professor, F.R. Scott, who challenged, through public law litigation, the political power of the premier of Quebec, Maurice Duplessis. Scott saw earlier than most the potential of public law litigation (as a complement to public law legislation) in advancing a social agenda. See S. Djwa, \textit{supra}, note 127, chapter 18; and W. Tarnopolsky, \textit{supra}, note 132, at 23-25.

\textsuperscript{154} By the 1950s a similar reorientation of comparative law teaching was occurring in France. See, for example, R. David, \textit{Traité élémentaire de droit civil comparé} (1950). But comparative law was still viewed with suspicion in some circles as late as the 1960s. See P. Azard, “Le problème des sources de droit civil dans la province de Québec” (1966), \textit{44 Can. Bar Rev.} 417, and the discussion by Tancelin, “Introducing”, \textit{supra}, note 69. For a superb
obligations en droit québécois, français et anglais”, out of which grew his pioneering study *Le droit civil du Québec: mod le vivant de droit comparé*;155 also marked the return of French language teaching to the Faculty.

This rediscovery of McGill’s vocation to comparative law and to legal bilingualism was complemented by the hiring in 1953 and 1954 of two further full-time professors — the Faculty’s seventh and eighth — both of whom had graduate degrees from French universities. These new professors were the Faculty’s 1949 Elizabeth Torrance Gold Medal winner, Gerald LeDain, and a young comparativist from Paris, Jean-Gabriel Castel. While LeDain initially taught mainly private law courses, his subjects were commercial and mercantile law — banking, negotiable instruments, security on property — in respect of which, given federal jurisdiction over most of these matters, a comparative law perspective was at least implicit. Moreover, beginning in 1956, Professors Baudouin and Castel formally established a bilingual Comparative Law Seminar. As at the end of World War I, when Lee and Smith sought to promote the study of comparative law as a vehicle for pursuing the Faculty’s polyjural ambition, during the 1950s it was primarily Europeans (this time from France, not England) — Baudouin and Castel — and not McGill’s own graduates, who realized and acted upon the Faculty’s potential for comparative law studies.156

A third traditional Faculty ambition, to research and scholarship, also re-emerged in the 1950s. National debate on the role of the law faculties was promoted by Maxwell Cohen’s and Frank Scott’s devastating commentaries on the state of Canadian legal research and legal


156. Once again Cohen sided with Baudouin in promoting this curricular extroversion, and once again Frank Scott led Faculty opposition to developing a full-blown comparative law programme. Cohen later suggested that Baudouin’s comparative law efforts first gave him the idea of establishing a formal pan-Canadian graduate programme in the field. Scott, by contrast, while firmly committed to the bilingual reality of Canada (see F.R. Scott, “Canada, Quebec and Bilingualism” (1947), 54 Queens Quarterly 1) he was never able to see the parallel between bijuridicism and bilingualism. I believe that this dissociation of culture and law was a consequence of his passion for the Rule of Law and the unitary, hierarchical order necessarily implied by Dicey’s constitutional vision. See S. Djwa, supra, note 127, chapter 12; W. Tarnopolsky, supra, note 133, at 23-25; and M. Oliver “F.R. Scott: Quebecer” in S. Djwa and R. St. J. Macdonald, supra, note 124, at page 165.
education.¹⁵⁷ This leadership was also reflected in concrete action. Just as a McGill professor, Percy Corbett, had founded the Association of Canadian Law Schools in the 1930s as a vehicle for promoting legal scholarship and university-oriented law teaching, so too Frank Scott was the driving force behind the establishment of the Association of Canadian Law Teachers in 1951.¹⁵⁸ During the nineteenth and early twentieth centuries, when it was one of only a handful of Canadian law faculties, McGill attracted a large number of professors — Abbott, Lareau, Torrance, Doutre, Kerr, Wurtele, Trenholme, Marler, Lafleur, Walton, Mignault — who were active in the production of legal literature. And during much of the twentieth century, when the chronic lack of support from the profession and from within the universities meant that Canadian legal scholarship generally lagged behind that in the United States, McGill professors, such as Johnson, Lee, Smith, Fabre-Surveyer, McDougall, Corbett, Rinfret, and Scott continued to make major published contributions to the advancement of Canadian law. During the late 1940s and 1950s, Scott, Cohen, Baudouin, LeDain and Castel generated a voluminous amount of excellent legal writing in both public and private law fields.¹⁵⁹ Moreover, the Faculty’s ambition was replicated by its students, who founded in the fall of 1952, the McGill Law Journal.¹⁶⁰ The Editor’s Preface to Volume One, written by Jacques-Yvan Morin (later a teacher of International Law and successful politician), clearly recognized the role which the Journal could play in promoting the McGill vision of law and legal scholarship:


¹⁵⁸ See S. Djwa, supra, note 127, at 263-264.

¹⁵⁹ My survey indicates that during the 1950s, the eight McGill professors (which number includes non-scholars Meredith and Lemesurier and the Institute of Air and Space Law Directors, John Cobb Cooper and Eugène Pépin) published over a dozen books and 50 articles, by far the highest gross and per capita productivity in Canadian law faculties. For Scott’s complete bibliography see L. Piatti, “Bibliography of the Works of F.R. Scott” (1985), 30 McGill L.J. 635-643. For Maxwell Cohen’s work during the 1950s, see R. St. J. Macdonald, supra, note 1, at 79, footnote 29, and R. St. J. Macdonald, supra, note 139. Louis Baudouin’s bibliography is published in Popovici, ed., Mélanges Louis Baudouin (Montréal: Presses de l’Université de Montréal, 1974) at xiv-xvi. To date, no comprehensive bibliographies have yet been published for Professors LeDain or Castel.

¹⁶⁰ The founding of the Journal was almost entirely a student initiative. Until 1955 students received no credit for journal work and there was no Faculty adviser. The early Faculty supporters of the Journal were F.R. Scott, Max Cohen, Louis Baudouin and Dean Meredith, joined later by LeDain and Castel (who became adviser in 1955). The Journal also captured another longstanding Faculty ambition dating back to Day and Trenholme. In the Annual Announcements of the late 1950s it was stated: “The Journal . . . is designed particularly to promote understanding in the common law world of the Quebec civil law system . . .”
There is one specific aspect about McGill's Faculty of Law which is too frequently forgotten: it is the only law school in Canada where the Civil Law is taught in an English-speaking atmosphere. The fact that Quebec stands at the confluence of two great systems of Private law makes McGill's potential contribution to a better mutual understanding unique. We feel that a great opportunity, in fact a challenge, lies before us.... The Journal is devoted to discussion of all legal problems, public or private, with emphasis on issues peculiar to the Province of Quebec.

The bilingual journal quickly established a reputation as a forum for legal research in both private and comparative law, as well as in Air Law, to which one number was devoted each year. The ambition to scholarship in French and English in the B.C.L. programme was quickly reflected in the formal curriculum through academic credit given to journal editors, through the 10,000 word graduating essay requirement, and through an enhanced first-year legal writing and legal bibliography course.

A final aspect of the Faculty's historical extroversions, its explicit commitment to public service, began again to bear on the undergraduate programme in the late 1950s. This commitment, although not necessarily its pedagogical consequences, was particularly evident during the 1950s in the extra-mural activities of F.R. Scott and Maxwell Cohen.

Scott's activities with the C.C.F. since the 1930s, his constitutional challenges to several initiatives of Maurice Duplessis' government, his prozelytizing for Canadian bilingualism, his service with the United Nations in Burma in 1951, his role in founding the Canadian Association of Law Teachers, and his Report on Legal Education for the Canadian Bar Association were only some of his extra-Faculty public service contributions. Over the same post-War period Cohen served in the

161. See Editor's Preface, ibid. The Faculty's presence in the Canadian scholarly community was also enhanced (briefly) when Professor Castel was appointed Editor of the Canadian Bar Review in 1958 to succeed G.V.V. Nichols (B.C.L. 1938). Shortly after accepting the Editorship, however, he resigned his McGill teaching position.
162. From the Faculty's origins in the 1840s its professors played an active role in Canadian public life and, indeed, saw this role as central to the undergraduate curriculum. As politicians, diplomats, and judges a succession of McGill teachers — Badgley, Abbott, Torrance, Laflamme, Wurtele, Kerr, Trenholme, Mignault, Doherty, Walton, Lee, Greenshields, Rinfret, Corbett, Abbott, Heeney, Humphrey — made major contributions to Quebec and Canadian public life during the Faculty's first century. See the Bulletin of the Comité général des juges de la Cour supérieure for March 1979 in which McGill contributions to the Quebec magistrature are catalogued. Only F.R. Scott seemed reluctant to let such public service interest impinge on the undergraduate curriculum. His courses were, of course, inflected with his politics, but (perhaps in a futile attempt to appease Beatty and McConnell) he kept a sharp distinction between his public and professorial lives, at least as this bore on curricular design.
163. See D. Djwa, supra, note 127, chapters 15-20; G. LeDain, supra, note 132; and the previously cited essays by M. Horn, K. McNaught, D. Sanders and M. Oliver in S. Djwa and R. St. J. Macdonald, supra, note 124.
technical assistance programme of the United Nations, as Chairman of the Zionist Federation Public Relations Committee, as a member of the Canadian delegation to the 14th General Assembly of the United Nations, as president of the Canadian Branch of the International Law Associations for six years, as director of the study of the External Affairs Department for the Glasco Royal Commission, and as a member of several other commissions. Under Meredith's prodding, the Faculty also sought to serve the scholarly needs of the practising profession in Quebec, and to end the isolation between the Bar and McGill. In the late 1940s, it established the Quebec Bar Extension Lectures (now the Meredith Memorial Lectures) — an initiative copied by the Law Society of Upper Canada some years later — as a means of involving McGill in continuing legal education. The growing role of the Institute of International Air Law in training third-world students was another example of the public service vocation in the Faculty's curriculum.

Yet at the same time that this extensive extra-mural involvement by senior professors helped open the Faculty's intellectual horizons, it also meant that little effort was devoted to re-examining the B.C.L. tuition. For most professors, courses in topics such as legal theory, public policy, civil liberties, law reform, government regulation, the practice of federalism, international organizations, etc., — all of which would have been curricular reflexions of their extra-Faculty activities — had no place in the undergraduate programme. In other words, while the development of seminar courses, and extensive professorial activity in legal scholarship and public service was evidence that the routine and insularity of the previous two decades were being overcome, in no way could it be said that the teaching programme of the 1950s was self-consciously responsive to the Faculty's historical curricular mission of polyjurality and universalism. Indeed, it would be an exaggeration to say that these themes were even the subject of ongoing debate. No doubt, some of the

164. See Frost and Johnston, supra, note 1, at 39; R. St. J. Macdonald, supra, note 1, at 78; R. St. J. Macdonald, supra, note 139.
165. During the 1950s McGill professors were also active in national debates about legal education and legal scholarship. See the various articles by Cohen and Scott, supra, note 157, and LeDain, supra, note 143. Moreover, McGill professors were occasionally enlisted in the struggle between the Ontario universities and the Law Society of Upper Canada. See Kyer, et al., supra, note 1, at 216, 271. From the perspective of this story, what is most startling about Wright's dispute with the Law Society is that he lacked any positive theory of legal education such as that held by Lee, Corbett and his own predecessor, W.P.M. Kennedy. His enlistment of the McGill and Dalhousie faculties was not, it appears, in aid of any grand vision such as that traced by Cohen and Scott in their 1950s articles, but was simply to get more weight in a petty power struggle with the Bar.
166. See A.B. Rosevear, supra, note 147; G.N. Pratt, supra, note 147.
167. Throughout this period, the Faculty's self-image (which I believe was consciously chosen by it's senior McGill law graduates — Meredith, Scott and Lemesurier) as reflected in its
blame for this failure of ambition can be traced to inadequate financing of McGill University by a hostile provincial government, by the low priority afforded to the Law Faculty within the University,\textsuperscript{168} and by the generally unsatisfactory state of legal education across Canada. But apart from Cohen, LeDain and Castel, the professoriate itself showed little initiative in rethinking its teaching programme. Of course, McGill also had no great inducement to ambition since it was not exposed to external competition (especially from Ontario), either for students and professors. It enjoyed a largely captive anglo-Montreal student population, a comfortable role in national legal bodies, and, until the late 1950s, a stable professoriate not susceptible to being raided from Ontario or elsewhere in Quebec.

Towards the end of Meredith's tenure as Dean, however, significant morale problems seemed to have developed at the Faculty, both among students and professors. Conflicts over the direction which the undergraduate curriculum (and by implication the Faculty) should take broke out between traditionalists led by Scott, who saw the primary mission of the teaching programme as the training of lawyers, and progressives led by Cohen, who favoured the more liberal model of legal education then being developed in the United States.\textsuperscript{169} Students also had

Annual Announcement, was simply that of a high quality trade-school. There are several indicia of this. Two will suffice to make the point. During Corbett's Deanship, all new prizes and awards were directed to legal writing and scholarship. From 1950-1960 the Faculty added nine such awards, all but one of which were class-standing prizes (by course or by year) and two of which were awarded to intending advocates and notaries (the John Crankshaw Prize and the H.E. Herschorn Prize, respectively).

A second indication is that the introductory description of the course of study did not square with the content of the Announcement. While the sentence "The degree course provides a liberal education in legal principles and theory, and prepares students for the legal and notarial profession, as well as for public service and business" remained unchanged from the 1940s, the subsequent text during the 1950s was dominated by Bar-oriented admission requirements, professional course lists (including the fourth year programme), and entrance requirements for the Bar itself. To be fair, it should be noted that Bar itself continued to insist on a rather detailed regulations of the undergraduate curriculum of Quebec law faculties. On the other hand, the McGill Annual Announcement typically gave these Bar Regulations pride of place, rather than consigning them to the end of the Announcement or to an Appendix.

168. In both these funding inadequacies, the persona of F.R. Scott looms (in my view to his credit) large. McGill's comparative disadvantage \textit{vis-à-vis} other Quebec universities was in part attributable to Scott's involvement in the Switzman and Roncarelli cases. The Law Faculty's comparative disadvantage \textit{vis-à-vis} other units at McGill was in part due to Scott's continuing conflicts (he became active in the C.A.U.T. in the early 1950s and was President of the McGill Association of University Teachers in 1953-54) with the Board of Governors and the University administration. See, on this latter point, S. Djwa, supra, note 127, at pages 264, 301.

169. The conflict between Scott and Cohen was more than a disagreement about curriculum. Scott was an austere traditionalist in his view of law and the mission of the law teacher; he was impatient with those who would reduce "legal analysis" to what he felt were off-the-cuff musings more appropriate to introductory Political Science courses in the Faculty of Arts.
mixed feelings about the professoriate. They adored Scott as a teacher, but not his ideas and demeanour as a professor; they generally were receptive to Cohen’s ideas, but many did not take him seriously as a teacher; LeDain was admired, but Baudouin often ridiculed; Meredith was feared, and Castel generally disliked.170

Moreover, during the last three years of the 1950s the Faculty suffered a considerable turnover among its staff. In 1958 Stuart Lemesurier retired (becoming an emeritus professor), to be replaced by two young recruits, Ronald Cheffins, a graduate of U.B.C. and Yale who was attracted to McGill by Scott’s work in constitutional law, and Charles Bissonnette (B.C.L. 1955), a young Montreal practitioner. The following year, both Professors LeDain and Bissonnette returned to practice, and Professor Castel resigned to accept an appointment at Osgoode Hall Law School in Toronto. In so doing, he became the first of a large number of McGill professors over the succeeding twenty-five years to take up teaching positions in Canada’s rapidly expanding common law faculties. As their replacements, the Faculty hired Professor Paul-André Crépeau, a promising young scholar at the Université de Montréal, and John W. Durnford (B.C.L. 1952), yet another young Montreal practitioner, to teach basic courses in the civil law. In addition, in 1958 the Institute of Air and Space Law was compelled to find its second Director in three years. Dr. A.B. Rosevear, a prominent Winnipeg transportation lawyer, was appointed as a replacement for Eugène Pépin, who himself had only succeeded John Cobb Cooper in 1956. In 1960 Dean Meredith died suddenly, and the following year the Faculty hired Alan Karabus, a South African Romanist, to fill his teaching slot. Thus, while the teaching complement in 1961 remained at eight, five of its members, Professors Cheffins, Crépeau, Durnford, Rosevear, and Karabus had been at McGill less than four years.

At this time of uncertainty the University finally invited Frank Scott to serve as Dean of the Faculty, a position he accepted only after asking that he be committed initially to no more than a two-year term.171 Yet, even

Cohen, by contrast, was a “big picture” type who had a magnificent rhetorical style, but who, in Scott’s eyes, was not sufficiently dedicated to “law” as such. At a distance of thirty years, subjective claims about morale and like matters are hard to document, although both S. Dywa, supra, note 127, and Jacob Zieg, supra, note 133, offer evidence of sharp conflict and morale problems during this period.

170. Each of the caricatures of student opinion is constructed from conversations and correspondence I received from graduates of 1951 through 1959 on the occasion of their 30th or 35th class reunions. With few exceptions students of that period indicate that the Faculty was far from a happy environment during the late 1950s, and that they felt several inadequacies in their legal education.

171. When Dean Meredith died, Scott was in South-East Asia on a Canada Council
after 1961, with F.R. Scott firmly settled into the Deanship, with the reign of the Union Nationale in Quebec City ended, with the domineering and unsympathetic Cyril James no longer Principal of the University, and with the composition of the McGill Board of Governors beginning to change, the situation of the Faculty remained uninspiring: its budget did not immediately improve, its teaching complement remained at a very modest eight professors, and its physical plant was severely overtaxed. Scott also faced inflated expectations from students and from his colleagues — both at McGill and elsewhere. As legal education in Ontario was escaping its “grande noirceur” in the post-1957 years, great hopes were visited upon Scott as the saviour who could lead Quebec legal education out of its condition of intellectual torpor. This was not to be, however, even at McGill. The influence of professional corporations — over courses taught, their content and their duration — remained so pervasive that one observer characterized the law faculties of the period as no more than antechambers of the Bar. While Scott tried to stimulate professorial research and to reshape many of the Faculty’s non-curricular objectives, throughout his Deanship the curriculum was neither revised, nor indeed was the image of the Faculty as presented in the Annual Announcement modified to reflect his concern for enhancing legal scholarship at McGill.

Shortly after taking office Scott wrote other Quebec law Deans suggesting that “with the new wind blowing in the province, perhaps we could make some progress toward a more liberal program of studies, and one less dominated by Bar regulations.” Yet within a year he was citing these same Bar regulations as an excuse to resist even minor changes to the curriculum being proposed by his own colleagues. The paradox of Scott’s apparent transformation from radical to conservative has been noted by others, who conclude that at the age of 62, and having at last

fellowship. Maxwell Cohen served as Acting Dean in 1960-61. Following Cohen’s one-year Acting Deanship, Scott was formally offered the position in 1961. See S. Djwa, supra, note 127, chapter 21; see also G.E. LeDain, supra, note 132, at 10-11.


173. For a sense of the intellectual climate of legal education prevailing in the two central Canadian provinces, contrast Kyer, et al., supra, note 1, with J.E.C. Brierley, supra, note 1, at 34 et seq. A sense of the anticipation of Scott’s Deanship (both among alumni and professors) can be gained from the enthusiasm expressed at a party for law graduates held in his honour on November 30, 1961. See S. Djwa, supra, note 127, at pages 360-361. See L. Gagnon, “Le droit vit-il à l’heure de la société?” (1978), 13 R.J.T. 231 at 262. From 1961 the Faculty course list — with the exception of Jurisprudence and the five third-year seminars — tracked precisely the Bar requirements, and in fact was stated in the Announcement as being so designed in fulfillment of Bar Regulations.
acceded to the Deanship he had coveted since the late 1940s, he was no longer interested in making over the Faculty. These observers believe that, by and large, Scott was satisfied with McGill's role in the Quebec and Canadian legal universes, and saw really no need either to make major adjustments to the undergraduate curriculum or to broaden the Faculty's intellectual horizons by recruiting new professors and a different student constituency.\footnote{175}

A more positive picture of Scott's initial view of the Faculty's future, however, and of the difficulties he confronted at the outset of his Deanship is presented in his 1961-62 Annual Report to the Principal. This Report, which was circulated in a revised form to all alumni, suggested the need to establish a Planning Committee which would examine the various challenges facing the Faculty and its library, and which would draw up a blueprint for its future development. Scott wrote, by way of introduction:

Part of the problem lies in the conflicting ideas about the function of the McGill Law Faculty. It may be viewed as technical school primarily designed to train English-speaking members for the legal and notarial professions in the Province of Quebec; on this view the test of its success might be gauged by the success of its students in passing the annual Bar examinations. Incidentally, McGill's record here is second to none. Or it may be seen as both a professional school and a university Faculty in the sense that its students are soundly trained in basic principles of law as well as in professional skills, and are brought to appreciate what is meant by saying that the law is a learned profession. It would seem that to many, both inside and outside McGill, this image would be thought of as adequate; certainly the Faculty is provided with facilities and staff for little else at the moment. Both these images concentrate upon the Faculty as existing for law students only; fundamentally both imply that the legal profession consists of Bench and Bar, the few full-time teachers being seen as useful assistants to students in their undergraduate years. Both exclude the concept of the law school as a live centre of legal research and writing, and of the professor of law as an obvious partner in the legal order with the lawyer and the judge.

It is comforting to believe that a more attractive and contemporary image of the Faculty is now gaining acceptance. In this view, comparatively new in Canada though ancient in France and well established in the United States, the Law Faculty is an institution where a group of full-time

\footnote{175. In my view, however, there is a better explanation for Scott's conservatism. Scott had an impoverished view of rules. His version of the Rule of Law became, during his Deanship, the Rule of the existing rules. In order to manage the Faculty (rather than play the oppositionist) he had to master the rules; once they were mastered he was reluctant to modify them. The story of Frank Scott's unfortunate Deanship is partly told in a series of vignettes — by Gerald LeDain, Max Cohen, John Brierley and Irwin Cotler — reproduced in a special Faculty Newsletter published in 1985 to commemorate his career, and is treated at length in S. Djwa, \textit{supra}, note 127 at 360-364.}
professors and research workers, with some part-time help, fulfill all the teaching duties expected in the first two approaches described above, and at the same time contribute to the body of legal learning, that research and writing which is the hallmark of a university. As put by Professor Cohen in his Report as Acting-Dean for 1959-60, "It is the high duty of law schools that have had full-time staffs for a sufficient length of time to create a scholarly research and teaching tradition, to further that tradition, to expand it and to continue performing the deeply social and public rôle." Naturally for the attainment of these ideals certain minimum needs in staff, building and library must be met which simpler views of the Faculty do not require. Perhaps to these three images may be added, if not a fourth, then a refinement of the third, which sees the McGill Law Faculty as a place where the research programme is concentrated in those areas where by position and tradition the Faculty is peculiarly endowed, namely Comparative Law, Air and Space Law, and in the training of leaders for the Bar, for government and business in Canada who are bilingual and conversant with the culture and outlook of the main ethnic groups that make up the country's population. No other law school in Canada is given all these special opportunities.

This Annual Report also traced out several changes which the Faculty thought were desirable for the Bar Admission Regulations (including the implications of these changes for the undergraduate curriculum), and noted the Faculty's plans to reorient undergraduate pedagogy away from the strictly lecture format.

Yet in overall direction Scott's was a remarkably conservative prescription, although it may intentionally have been written as such, given its audience. The only changes to the curriculum suggested in the Report to alumni were the removal of the fourth year practical training course from the Faculty, and the relaxation of the Bar's regulations controlling course titles, course content and hours of instruction allotted to each subject. Apart from adding more public law options to the programme in consequence of modifying the pedagogical regime imposed by the profession, Scott seems to have had no other objectives for the B.C.L. programme.  

As for teaching methods, his pleas for socratic teaching, problem method exams, more essays, and mooting exercises were all justified not on the basis of liberal experimentation and the desire to root the undergraduate curriculum firmly in its university context, but, as were Walton's similar prescriptions some sixty years earlier, advanced on the basis that they would contribute to improving "lawyership" among students.

176. During his year as Acting Dean, Cohen set an ad hoc Curriculum Review Committee into motion, with a view to expanding the number of upper-year optional seminars. In 1962 Scott allowed this Committee to expire without submitting a Report.

177. Unlike Walton, however, who was a strong promoter of French within the Faculty, Scott saw no need to offer courses and seminars in that language. He assumed that all anglophone
In other matters addressed in his Annual Report to alumni, however, Scott proved somewhat more ambitious. In describing new directions for professorial research, he indicated how the Faculty would continue to fulfill its role as a leading civil law school, but would also seek through detailed research studies to influence the policy agenda of various governments. As an example he cited the work which was expected to emerge in consequence of the $250,000 grant from the Ford Foundation for research in air and space law which Maxwell Cohen had engineered shortly after assuming the Directorship of the Institute of Air and Space Law. Most importantly, the Report announced a project that Scott had held dear for over a decade: the University had established a planning committee for the construction of a new library and classroom building, large enough to accommodate 275 B.C.L. students, twenty LL.M. students in Air and Space Law, a further dozen or so M.C.L. and D.C.L. students, seven full-time research professors and a library collection expected to more than double, by 1990, to 75,000 volumes. Scott made a remarkable contribution to the Faculty in pressing the case for a new library tower, and when the architects (and many professors) suggested demolishing the Ross House, in saving Old Chancellor Day Hall as part of the redesigned law complex. From the perspective of the late 1980s — when the Faculty has over 500 undergraduate, 75 graduate students, 35 professors and a library collection of 200,000 volumes (in every respect a doubling of Scott's projections) — the ambitions he held for the library must seem naive. But, at the time he was writing — when the Faculty housed a student body of 125 B.C.L. students, 10 graduate students, 8 professors and a library collection of just over 30,000 volumes — they were looked upon by many alumni as a financially unachievable fantasy.

Even though Scott resisted all proposals for revising the undergraduate programme during his Deanship, he nevertheless oversaw a continuing renewal of the Faculty's professoriate. When A.B. Rosevear retired as Director of the Institute of Air and Space Law in 1961, an eminent Scots civilian, J.J. Gow, was recruited by the Faculty to hold this professorial position, and Cohen was named Institute Director. In 1963 Perry Meyer students would be at least passively bilingual and that there would always be a major role for the English-speaking Bar of Quebec. Offering courses in French thus would only serve francophones, who presumably came to McGill, Scott reasoned, to learn English. It would also, he argued, overtax the Faculty's already thin resources.

178. The Report observed that this five-year grant would be deployed to support graduate studies in that Air and Space Law, to permit the hiring of three additional research associates, and to acquire new library titles in comparative law and international law. Yet Scott also wrote "contrary to what was feared at its foundation, the Institute shows no sign of flooding the marker (sic) with lawyers trained in Air Law . . . ." a complement to Cohen's efforts to raise sufficient outside monies as to give the Institute a measure of financial security.
(B.C.L. 1953), an Elizabeth Torrance Gold Medalist and successful Montreal practitioner, joined McGill to teach civil procedure and evidence, and the following year the Faculty hired John Brierley (B.C.L. 1959) to replace Alan Karabus, who had resigned after only two years. By 1964, when he reached normal retirement age and was obliged to leave the Deanship, Scott could boast that the process of planning and development he initiated in 1962 had begun to bear fruit; construction on the new library building had commenced that year. At the same time, however, Scott wrote to friends that he feared for his alma mater now that Maxwell Cohen, his longtime intellectual adversary, was assuming the Deanship of the Faculty.179

Almost immediately upon taking office Cohen set about reorganizing the undergraduate curriculum. Having given the graduate programme of the Institute of Air and Space Law, of which he remained pro tem Director, a more international and scholarly direction,180 he then sought

179. It is very difficult to write an assessment of F.R. Scott's contributions as professor and as Dean to the McGill undergraduate law programme. He was a scholar and a dedicated teacher who stood above his peers for most of his career. He was a leader in Canadian university affairs and a crusading reformer who taught generations of adoring students. Yet he appeared not to understand or approve either of polyjurality or of universalism as curricular goals for the Faculty. This "statist-positivist" facet of Scott's view of law is often ignored by commentators (who focus rather on his civil libertarian achievements), even though it profoundly shaped his view of legal education and law itself. When I asked him in 1979 about the natural law background of the Roncarelli case, and the implied Bill of rights argument in Switzmaz, he replied, roughly: "These are Rule of Law cases; Duplessis acted illegally and we sued him; the law is the law." Yet, in his well-known essay "Dominion Jurisdiction of Human Rights and Fundamental Freedoms" (1949), 27 Can. Bar Rev. 497 he, in fact, argued for the recognition of an implied Bill of Rights. Moreover, Scott was aware of the power of international law, for in the same article (page 499-500) he argued that the Dominion government had the authority and duty to ratify the Universal Declaration of Human Rights. Unfortunately, until Scott's legal theory is exhaustively analyzed it will not be possible to account for these seemingly opposed positions.

What is clear, however, is that he systematically opposed most curricular proposals of the 1950s and early 1960s — to the point where many younger professors sought in 1963 to deny him a third year as Dean. At the end of his Deanship he was especially hostile to the Faculty's emerging flirtation with a common law programme, seeing it as a threat to his efforts to build up the civil law and the library collection. See S. Djwa, supra, note 127, at 365-366, and especially 368. See also the observations supra, note 156. Ironically, Scott joined the Faculty in 1927 immediately after the demise of the first common law programme (which he welcomed), and at a time when a particularly narrow French-canadian nationalism against which universalist polyjurality stood in opposition began to reach full-flower; and he was to reach formal retirement age in 1964, immediately before the initiation of the second (which he opposed), and just after agreeing to serve on the Royal Commission on Bilingualism and Biculturalism which sought to respond to the challenges of Quiet Revolution economic nationalism in Quebec. To my knowledge Scott never acknowledged the paradox represented by the divergence in his legal and non-legal activities.

180. During his five-year tenure as Director of the Institute of Air and Space Law, Cohen used the Ford Foundation money to hire six air and space law (including international law) specialists as research Associates: Ivan Vlasic (1962); Peter Sand (1962); Geoffrey Pratt
to do likewise with the B.C.L. programme. Two major steps in pursuit of this goal were taken during the 1964 and 1965 academic years. First, the Faculty enriched its upper year curriculum by reducing the number of obligatory courses, and by developing additional third year options. New seminars for 1964 included a formal offering in Criminology (which had been taught sporadically as a research seminar during the 1950s), Principles of Soviet Law, and Civil Responsibility. The major revision to the programme, however, took place in 1965 when six elective courses and five other seminars were instituted, and when the Faculty's degree requirements were amended to oblige all undergraduate students to take one offering of each type. That same year, the Faculty further liberalized the curriculum by permitting students to take one course in the Faculty of Arts and Science as a non-law credit towards the B.C.L. degree. 181

Cohen's second initiative was even more ambitious. Once again he put together a major application to the Ford Foundation for research funding, on this occasion to create another graduate institute — the Institute of Foreign and Comparative Law. In Cohen's view this Institute was to be the vehicle by which McGill rejoined the vanguard of North American legal education; it would do so both by giving a less professional cast to the curriculum and by exposing students and professors to intellectual winds blowing south of the border. When the Ford Foundation granted the Faculty $425,000 over five years in 1965, the Institute was established under the Directorship of Professor J.J. Gow, who had been named Gale Professor of Roman Law in 1964. 182


181. Cohen's general views on undergraduate legal education were set out in the two articles published in the early 1950s (see supra, note 157), and in three other pieces published just prior to his assuming the Deanship. See Maxwell Cohen, “Lawyers and Learning: The Professional and the Intellectual Traditions” (1961), 7 McGill J. 181; Maxwell Cohen, “The Academic Lawyer's House of Intellect” (1961), 14 J. of Leg. Ed. 141, and Maxwell Cohen, “The Condition of Legal Education in Canada — Fifteen Years Later” (1964), Can. Bar Papers 116. It is especially noteworthy that Cohen seemed less troubled by the Bar than most of his civil law colleagues, and was able to implement these modifications to the Faculty's degree requirements three full years before there was a corresponding change to the Bar Regulations. See J.E.C. Brierley, “Paradoxes”, supra, note 1, at 36.

182. It is not clear whether Cohen's decision to develop comparative law by means of a graduate Institute was influenced by the development, at the University of Ottawa, of a similarly named research centre. See P. Azard and T.G. Feeney, “Canadian and Foreign Law Research Centre at the University of Ottawa” (1963), 15 U.T.L.J. 186. In all events, Cohen
By December of 1965, however, it became clear to his colleagues (many of whom thought he was moving much too fast) that Cohen was already concocting further curricular innovations for the Faculty. In two memoranda circulated to all professors, he and Gow mooted the first proposals for developing an optional undergraduate teaching programme in the common law as a component of the regular B.C.L. course. In these memos neither Cohen nor Gow raised the possibility of establishing an accredited LL.B. course. Yet this ambition was already present in Cohen's mind, for as early as the fall of 1964, at the very same time he was marshalling the Institute of Foreign and Comparative Law application to the Ford Foundation, he wrote to the Law Society of Upper Canada concerning course requirements for accreditation of non-Ontario common law programmes. For the moment, Cohen and Gow concentrated on arguing for the courses needed to complement the Institute's comparative law curriculum. To illustrate the advantages for the new graduate programme in establishing an optional common law curriculum, Gow prepared a follow-up report to the Law Faculty Council in which he explained his view of the mission of the Institute of Foreign and Comparative Law in the following terms:

The theory behind the teaching function of the Institute is that the potential investigator does not learn "comparative law" but the technical law which is foreign to him in courses which are not cut down versions of the other, or feeble exercises in pallid comparison but are authentic professional offerings by teachers who are not "comparativists" but soaked in their speciality... To help him towards his goal, some training in the comparative technique is desirable and this is, or will be, done by a "comparative course" or "courses" which is or are not "courses" but exercises in the application to the aggregate information of the student of the comparative technique.

Gow was especially far-sighted and saw as early as 1966 that, given the political and intellectual climate then prevailing in Quebec, the research programmes of the Institute could not be carried out successfully within an institution whose undergraduate teaching of private law was only in the civil law tradition. In a different political context, it might have been feasible to develop the Institute without a parallel undergraduate common law programme of whatever description. But the pressures of Quebec juridical nationalism of the early 1960s meant that any attempt at establishing a truly universalist B.C.L. curriculum would be seen in unificationist terms — as the corruption of the civil law by the common

departed from the Ottawa model in that he was determined to establish the Institute of Foreign and Comparative Law at McGill as a teaching unit with graduate students, and not merely as a non-teaching research centre.
law. Hence, to provide the intellectual basis for comparative legal study, Gow argued that it was necessary (in contrast with Lee’s initial plan during the 1915-1924 common law experiment) to establish a panoply of separate common law courses and seminars.183

Gow presented his case in a detailed memorandum circulated to Faculty members in November 1966:

The existence of the Institute requires to be brought into being by the Faculty a variety of courses described as “common law options or electives”... Indeed with B.C.L. students taking some “common law” courses and “LL.B.” students taking civil law courses, in a sense the teaching work of the Institute would, up to about the Master’s level, be done by the Faculty in its undergraduate teaching, leaving the Institute free to work with a few doctoral candidates who, in turn would tend to be identified with the research programmes of the Institute.

As a result of Gow’s lobbying, it soon became conventional wisdom in most quarters within the Faculty that a successful graduate Institute of Foreign and Comparative Law at McGill would need the sustenance of a dynamic undergraduate common law curriculum (whether accredited as an LL.B. degree programme or not). Moreover, Gow also argued that the private law component of the B.C.L. programme needed revitalization. Without a dynamic, North American orientation to the teaching of the civil law, he feared that the common law would eventually come to dominate the Faculty’s private law curriculum, and that the civil law would be relegated (as in Louisiana) to a position of folklore.

In pursuit of the first of these two goals, Gow and Cohen immediately deployed much of the Ford Foundation grant to bring a number of common lawyers to the Institute and Faculty,184 as well as a leading civil-

183. Even then, however, there were dissenting voices in the Quebec legal community. See, for example, the caution against comparative law expressed by the Dean of Law at Ottawa, P. Azard, supra, note 154. See also P. Azard, “L’organisation d’un Centre de droit comparé” (1964), 2 Can. Leg. Stud. 99, for an expression of continuing doubts about the viability (and appropriateness) of comparative law teaching within a single Faculty. From the documentary record it is unclear whether Gow initially believed that the Institute required only the teaching of a panoply of common law courses (as for example existed between 1915 and 1921 in Lee’s “Course B” for the B.C.L.) or whether he was committed like Cohen to establishing a separate accredited LL.B. programme. By the end of 1966, however, Gow was clearly on the record as favouring an accredited LL.B. undergraduate curriculum in parallel to the existing B.C.L. programme.

184. In 1966 three common lawyers were recruited to McGill: Richard Arens, Brian Grosman and Jacob Ziegel. The first two were, however, public and criminal law specialists and not private lawyers. In 1967 a second private lawyer, Donovan Waters, joined the Institute and Faculty. The impetus to hire common lawyers also came from the Faculty’s other graduate Institute. By the mid-1960s it was becoming apparent that the new research programmes financed under Ford Foundation grant in the Institute of Air and Space Law would demand
law trained comparativist, Herman R. Hahlo, from South Africa. Moreover, to balance the increasing importance which public law and international law subjects seemed to be acquiring in the curriculum, the Faculty also determined to promote the goals of the Institute further by recruiting additional professors to teach private civil law courses in the undergraduate curriculum. But, of the ten new positions created between 1965-66 and 1967-68 and financed largely by the money flowing to the Faculty from the two Ford Foundation grants, just three were filled by professors who taught private civil law, and only one of these was given to an experienced comparativist.

The Faculty's difficulties in recruiting civil law scholars (in part given Cohen's general orientation towards legal education in North America rather than Europe) convinced Gow of the need to develop a special research concentration in the civil law. This concentration was officially established the following year as the Civil Law Studies Programme, and was placed under the leadership of Professor Paul-André Crépeau, by then the Faculty’s senior francophone civil law scholar (Louis Baubouin having retired the previous year).

The origins of the Civil Law Studies Programme as a separate Faculty teaching and research centre, with a formal designation and independent budget, lay in two separate threats to the Faculty's private civil law programme. The first, noted in the previous paragraphs, was the progressive displacement of the civil law from the centre of the B.C.L. teaching programme by public law electives and various specialized seminar courses, and the diminishing voice of the “civilistes” in Faculty decision-making flowing from the extensive recruitment of both public and common lawyers to the two graduate Institutes. The second was the attempt by the University of Montreal to recruit Professor Crépeau as Dean of its law faculty. Seeing an opportunity to generate a firm financial commitment for the civil law — both to pay for research associates and to purchase library materials — from the University administration, Professor Crépeau was able to bargain for the formal establishment of the Civil Law Studies Programme as a condition of his remaining at McGill.

...that at least some of its associates and research staff be trained in the common law. Indeed, between 1964 and 1968 two common lawyers — Martin Bradley and Edward McWhinney — who were hired initially to teach in the Institute on Ford Foundation money, took up Faculty positions as well.

185. See J.E.C. Brierley, "Paradoxes", supra, note 1, at 26-28; R.A. Macdonald, supra, note 32, at 602-608 on this phenomenon in Quebec law faculties generally. In 1966, Gerald LeDain and John Humphrey returned to the Faculty to teach public and international law, respectively. Recruitment to the Institute of Air and Space Law also increased the number of public lawyers: Edward McWhinney, Ivan Vlasic and Richard Arens were all I.A.S.L. or I.C.L. public lawyers who later took up Faculty positions.
This new programme had the further advantage of permitting the Faculty to set up a research unit in a specialized field of Quebec law which could serve as a counterpoint to the newly established Centre de recherche en droit public at University of Montreal. Since Professor Crépeau had just assumed, at this juncture, the Chairmanship of the Civil Code Revision Office, he was soon able to recruit to McGill a dynamic young francophone scholar, Yves Caron, to participate in these two projects.\(^{186}\) Together Crépeau and Caron worked very effectively to promote McGill’s bilingual, private civil law teaching programme in the Institute and at the undergraduate level.

Whether by accident or design it was apparent by early 1967, that is, in less than two years from its founding, that the needs and ambitions of the Institute of Foreign and Comparative Law were to be central to curricular planning within the Faculty.\(^{187}\) Moreover, it was also clear that major changes to the undergraduate programme were inevitable. In the 1966-67 academic year, the Institute began teaching seminars in the common law, and the following year it mounted an extensive series of graduate electives open to undergraduates. The offerings included six advanced comparative law courses and eight basic common law courses in the following subjects: contract, torts, trusts and real property, evidence, family law, personal property, sale of goods and restitution. Yet some colleagues were suspicious of the curricular changes being wrought through the Institute. Because Cohen and Gow were working with the graduate programme, the professorate as a whole often was not fully consulted on the changes to the teaching syllabus or on their financial implications for the Faculty.

Moreover, the civil law teachers and other members of the Quebec Bar were concerned since, as in 1965, this renovation of the curriculum occurred prior to the Bar actually revising its Regulations relating to accredited programmes. Nevertheless, by 1967 it was apparent to all

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186. Caron had just completed a doctorate at the University of Oxford and almost immediately had a major impact of the Faculty’s civil law programme. For an early expression of his views about undergraduate law teaching, see Y. Caron, “Gilt-Edged Legal Education: A Comparative Study” (1968); 14 McGill L.J. 371. While the Faculty also hired two other civil law trained full-time professors — Robert Sauvé and Peter Sand — the former was primarily a labour and public lawyer, and the latter had a special interest in Air and Space Law. Thus, notwithstanding the recruitment of Hahlo, Caron and Sand, between 1965 and 1968 the Civil law teaching component of the Institute was comprised primarily of Visiting Professors from other Quebec law faculties.

187. See the statement by Dean Cohen, “Toward Understanding Canada’s Two Great Legal Systems” in Chancellor Day Hall, Faculty of Law, McGill University, pages 6-7, a special insert in the McGill News, December 1966. In this statement, Cohen rewrites much of the Faculty’s curricular developments since the late 1940s as a logical progression towards the establishment of the Institute, and the re-establishment of a teaching programme in the common law.
those involved in Quebec legal education that amendments to the fourthyear programme and to the Regulations governing the content of the undergraduate law curriculum were immanent. That Gow and Cohen should have thought to deploy the Ford Foundation grant to develop through the graduate Institute of Foreign and Comparative Law an LL.B. programme in waiting attests both to their creativity and to their foresight about the contest of Quebec legal education in the mid-1960s.

The first years of the 1960s thus saw important developments at McGill not only in relation to the graduate and undergraduate curriculum but also in relation to professorial recruitment. Between 1961 and 1967 Cohen was able to redirect (first through international law and later through comparative law) much of the Faculty's academic endeavours towards a less insular and monojural curricular and scholarly vocation, and away from a strictly professional orientation. At the same time, he presided over the resurrection of the Faculty's doctoral programme, which had been dormant for fifty years, and recruited ten new professors to the Faculty, most of whom shared his views of legal education. Finally, when the University suggested scaling down the new Law Library building to reduce construction costs, Cohen successfully managed a major fund-raising campaign among alumni which ensured that the Library was actually built according to the plans initially approved. F.R. Scott's dream of a modern library and classroom complex, and of an enhanced research collection, became a reality in the fall of 1966. A new building, styled New Chancellor Day Hall, and then containing a library of 40,000 volumes, as well as seven new classrooms, permitted the Faculty to convert its former premises in the mansion refurbished by J.W. McConnell in 1951, into a bank of offices sufficient to accommodate the two graduate Institutes and a full-time complement of up to nineteen professors. During the initial years of his Deanship, then, Cohen refinanced and rejuvenated the Institute of Air and Space Law, established the Institute of Foreign Comparative Law, resurrected
the Faculty’s doctoral programme, oversaw the construction of a new Law Library, revamped the upper-year curriculum of the B.C.L. programme, and doubled the size of the Faculty’s professorial complement.191

Taken together, these developments meant that, for the first time in the 125 year history of law teaching at McGill, the Faculty had a reasonable complement of full-time professors, adequate classroom space, and a respectable library collection. Moreover, for the first time in fifty years it had at the same time both the financial means and the intellectual leadership to consider explicitly the extent to which a polyjural and bilingual curricular vision should have any continuing relevance for legal education at McGill; and, on the assumption that it did, to reflect upon the type of undergraduate programmes which would be needed to promote it.192 To this end, and in response to Gow’s challenging memos of 1965 and early 1966, as well as to increasingly vocal dissent from many of the Faculty’s less rambunctious professors, in November 1966 Cohen established within the Faculty an Ad Hoc Resources Committee chaired by Professor LeDain. This Committee was charged with examining what further changes, if any, should be made to the undergraduate curriculum and degree programmes, and with assessing what additional material and financial resources would be required were the Faculty to attempt to launch an accredited LL.B. degree programme.


Given the antecedents described in Part One of this essay, it is easy to see how the emergence in 1968 of the bilingual and polyjural undergraduate curriculum that is now known as McGill’s National Law
Programme can be understood not as constituting a radical discontinuity in the Faculty's intellectual history (as some other commentators have suggested), but rather as comprising yet another curricular vehicle for the Faculty to pursue the vision of legal education which it first developed in the mid-nineteenth century. Similarly, it is not difficult to see how, like so many developments in the teaching programme at McGill over the years, the establishment of the National Programme was the result of a fortunate conjuncture of circumstances, and a skillfully managed compromise of ambition and personality. While institutional histories often overemphasize the role of one or two individuals, particularly individuals holding positions of authority, in at least the first part of this story no such overemphasis is possible.

193. There are two distinct aspects to this observation which require explicit elaboration. First, it is important to distinguish intention (or ideology) from object, and to counter the tendency of some contemporary observers (e.g. Frost, "Vol. II", supra, note 1; Frost and Johnston, supra, note 1) to see in the creation of the common law programme the first awakening of the Faculty to the possibilities of a non-"trade-school" concept of legal education. If anything, the creation of a new programme (or a new Faculty) carries a burden of establishing "legitimacy" and, therefore, is more likely to engender rather than counter a trade-school approach to the curriculum. Certainly the early history of the LL.B. programme (and the descriptions of its purposes as set out in the Faculty's Annual Announcements during the late 1960s) cannot be cited as clear evidence for the awakening that Frost suggests. Moreover, this "liberation from the profession" theme (which also seems to drive other "evolutionary" interpretations of the Faculty's history) both understates the extent to which at various earlier times the Faculty tried to develop a non-professional approach to legal education, and also fails to give adequate expression to other themes — bilingualism, scholarship, polyjurality, universalism, public service — which have shaped the curriculum of the Faculty.

Second, it is important to emphasize the contingency of any given curriculum, and by doing so to avoid a view of the 1968 programme as the "natural consequence" of a series of evolutionary developments. Since Day's time there has always been present in the Faculty's official documentation references to the logic of teaching both the old French civil law and the English common law at McGill. Compare, for example, the various extracts from the Faculty's Annual Announcements cited in Part One with the following quotation from the 1989 version: "McGill occupies a unique position... to pursue its dual mission... The Faculty... has a long tradition of teaching and scholarship in both the English and French languages... McGill has also long been a meeting ground for Canada's legal traditions, the civil law deriving from the law of France and even more remotely from Roman Law, and the English common law." To find a way of expressing the opportunity to develop, and importance of, any given teaching programme without implying or committing oneself to its inevitability is, of course, a continuing curricular challenge at McGill as elsewhere.

194. In fact, some such critique could be advanced against the narrative of Part One of this essay, where many of the curricular themes discussed have been periodized according to who occupied the Dean's chair. Yet, at least until the 1960s, the tiny size of the Faculty, coupled with the even smaller size of the full-time professoriate, meant that the story of its Dean and professors (and their relationships with the Bar, Notaries, and McGill's Board of Governors) was, in large measure, the story of its undergraduate programme. See, however, Howes, "Origins", supra, note 5, and J.E.C. Brierley, "Paradoxes", supra, note 1 for less "individualistic" accounts of the history of legal education and law school curricula in Quebec generally. In any event, I attempt to address the historiographical issues canvassed in this and in the previous footnote in the introductory paragraphs to Part Three of this essay.
The restructuring of McGill's undergraduate law curriculum in 1968 resulted mainly from the efforts of four people: Maxwell Cohen, the visionary, publicist, and fundraiser — who for more than a decade promoted the idea of a “Canadian” programme of legal education within the Faculty and who piloted the 1968 proposal through the University Senate; J.J. Gow, the hard-headed and pragmatic realist — who developed the initial rationale for an LL.B. course as a complement to the graduate programme in comparative law, and who worked out many of the details of the new undergraduate common law curriculum; Gerald LeDain, the enthusiastic younger colleague with a thoroughly modern understanding of legal education — who saw the new programme's potential and who patiently guided the deliberations of the Faculty's Resources Committee over the critical period when professorial resistance to the idea appeared substantial; and, Paul-André Crépeau, McGill's leading civil lawyer and senior francophone scholar — who proposed the establishment of a complementary French language programme in 1966 and then (in a reversal of his former position) threw his support behind the LL.B. project, thereby helping to legitimate the idea of bilingual and bijuridical undergraduate programme both within the Faculty and more broadly within the Quebec legal community.195

Yet without a political, social, and financial context favourable (or at least not hostile) to this initiative, the establishment of an undergraduate LL.B. course would not have been possible. That is, in addition to the leadership of the four individuals just mentioned, and to an evolution of thinking among many other professors about the object of undergraduate law teaching at McGill and about opportunities presented by the construction of New Chancellor Day Hall,196 several developments in the

195. In highlighting the role of these four individuals, I do not mean to suggest that other professors were not important to the success of the project. In particular, the members (besides Professors Crépeau, LeDain and Gow) of the Faculty's Ad Hoc Resources Committee struck in November, 1966 — Professors McWhinney and Durnford — provided much of the detailed background material necessary for selling this curricular proposal within the University. The Report of that Committee in April 1967 (a document of about 100 pages covering everything from specific library titles to be acquired to the teaching timetable) served as the basis for Dean Cohen's presentations to the University Senate the following month, and to the Law Society of Upper Canada in January, 1968.

196. These changes in professorial thinking between 1964 and 1968 — changes whose antecedents can be traced to the Faculty's re-embrace of international law and comparative law in the 1950s and early 1960s — was not shared by all members of the teaching staff. As noted, Frank Scott was sceptical of the two graduate Institutes (in International Air Law and in Foreign and Comparative Law) and throughout his Deanship (1961-1964) was reluctant to engage in any substantial reflexion about the Faculty's teaching programmes. Interviews with several professors who were then members of the teaching staff indicate that in 1964 only Dean Cohen and Professors Gow and Cheffins were in favour of launching an accredited common law programme. Professors Scott, Crépeau and to a lesser extent Durnford and
mid-1960s external to the University were conducive to the Faculty reexamining its curricular foundations. Three such developments, all of which also bear on one or more of the traditional themes in the history of the Faculty's teaching programmes as signaled in Part One, stand out.\textsuperscript{197}

First of all, McGill was confronted with projections of an expansion of demand for legal education flowing from the post-war baby-boom. It was, at the same time, challenged by the political and ideological initiatives of the Quiet Revolution in Quebec. These latter stirrings produced, between 1963 and 1966, a Royal Commission Inquiry on Education.\textsuperscript{198} Several of the Commission's recommendations, when later adopted by the provincial government, were to affect law study profoundly — not always, to be sure, in ways supportive of the Faculty's traditional view of its educational mission or of its plan to pursue that mission by establishing a bilingual and bijuridical undergraduate programme. Perhaps the Commission's most controversial recommendation was its proposal to establish the \textit{Collège d'enseignement général et professionnel} (CEGEP) network as a junior college system straddling secondary school and university education. A key element of this proposal, which most Quebec universities and the government formally implemented by contract in 1970, was the requirement that CEGEP graduates be admissible directly into the first year of the law programme.\textsuperscript{199} This requirement soon was to cause special problems for the new LL.B. curriculum at McGill not only because the Law Society of Meyer were opposed. The position of Professors Baudouin and Brierley apparently was neutral, while Professors Vlasic and Sand in the Institute of Air and Space Law were more or less favourable. When Cohen became Dean in 1964, Professor LeDain was still in the practice of law, although he was shortly to rejoin the Faculty and become (through his ability to conciliate divergent factors within the professoriate) a key actor in the plan to establish a common law programme.

\textsuperscript{197} Because these developments, and their challenges, reflect these familiar themes, I treat them at length in the following paragraphs, and attempt to use the discussion of this Part to complete (or at least to flesh out) much of the story told in Part One. That is, the establishment and evolution of the National Programme over the past two decades is explored in detail in this Part because its principal stages illumine the ambitions of earlier curricula of the Faculty, and the context within which these curricula were pursued.


Upper Canada would not recognize the CEGEP Diplôme d'études collégiales (D.E.C.) as meeting its two-year post-secondary education pre-law matriculation requirement, but more importantly because it led to divergences in the educational background and maturity of the first-year class.

A further, and complementary, proposal of the Parent Commission was its plan to "deprofessionalize" and "democratize" legal education (and ultimately the two legal professions themselves) through a recharacterization of law study as an ordinary undergraduate discipline in respect of which no artificial enrolment restrictions would be permitted. The later establishment of the Office des Professions in 1973, whose several attempts to control the process and content of professional education changed the dynamic of the relationship between the Bar and Quebec's law faculties, was a further reflexion of this objective. Yet the several attempts by the Office, in pursuing the Parent Commission goal

200. In September 1973, the first cohort of CEGEP entrants to Quebec civil law faculties sought admission to common law programmes (both at McGill at elsewhere in Canada). In anticipation of their arrival, and at the request of Dean Albert Hubbard of the Common Law Section of the Faculty of Law of the University of Ottawa, the Law Society of Upper Canada considered the question whether CEGEP entrants to (and graduates of) a civil law programme might ultimately become eligible for admission to the Ontario Bar upon completion of a fourth year of common law studies. Dean Hubbard noted that the CEGEP course covered the former Grade 12 in Quebec (the last year of secondary school) and the first year of University studies. He argued in favour of admitting such students on the basis that when combined with a four-year law programme this would mean that CEGEP entrants would have completed five years of post-secondary education — an identical number of years to that completed by two-year LL.B. entrants at Ontario law faculties.

On November 2, 1973 Kenneth Jarvis, Secretary of the Law Society of Upper Canada, wrote to Dean Hubbard advising him that that body’s Convocation had approved a report of a sub-committee of the Committee on Legal Education which recommended that CEGEP entrants not be considered eligible for admission to the Law Society. While the Law Society, by letter of November 21, 1973 to Dean John Durnford of McGill, acknowledged that this ruling would apply only to those candidates commencing their legal education in 1974 and subsequently, the effect of the Law Society ruling was to create two classes of B.C.L. student at McGill and to compel CEGEP entrants to engage in such artifices as completing one year of a B.A. degree on a part-time basis during the summers following each of their first three years of law study, or taking a full year of a B.A. programme after graduating with a B.C.L. but prior to entering their fourth year at the Faculty. This regime prevailed (subject to special petition in individual cases) until 1988, when the Law Society amended its earlier ruling. It now considers CEGEP entrants to civil law faculties to have met its two-year pre-law matriculation standard.

201. See, on the differences between degree-holding students and CEGEP entrants, and on the pedagogical difficulties this created even in the French-language law faculties, Y. Ouellette, supra, note 199. While the majority of McGill professors were opposed to the direct admission of CEGEP entrants, practical politics (including competition from other law faculties for the best such students) meant that a significant number — by 1972 almost one-third of the class — were enrolled in the first year of the B.C.L. programme. See H.P. Glenn, McGill Law School: A Summary of Its Operations, (a Faculty working paper dated April 30, 1974).

of deprofessionalizing legal education, to impose a rigid separation of university education and professional training, had the opposite effect; the deprecation of the role to be played by the Bar and Board of Notaries in completing a broad-based university legal education with professional training courses, in fact increased pressures on all Quebec law faculties to teach a *profile obligatoire* of largely utilitarian and practice-oriented courses. Once again, this development had a special impact on the McGill curriculum. In promoting a professional model of undergraduate legal education, the Parent Commission and the *Office des Professions* created an intellectual climate which was not conducive to the development of the comparative and theoretically grounded substantive courses which the Faculty's new programme implied.203

A final theme emphasized by the Parent Commission was the underfunding of post-secondary education. Its recommendation of increased financing for Quebec universities through the recently created Ministry of Education led not only to the secularization and the rapid growth of French-language universities and law faculties, but also to better support for post-secondary education generally.204 The immediate improvement in government grants, while certainly not on the magnitude seen in Ontario, nevertheless contributed to enhancing the Faculty's capacity to admit more students, to hire more full-time professors, to finance the construction of a better physical plant, and to build a moderately larger library collection.205 On the other hand, given that

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204. The true impact on the McGill programme of the various "Avis" of the *Office* released between 1978 and 1984 is difficult to measure since the Bar itself was constantly tinkering (or threatening to tinker) with its *Cours de formation professionnelle* over this same period, and since the *Conseil des universités* also began to issue statements on legal education which did not enjoy the support of Quebec law faculties. For a full discussion of the role of these various players in Quebec legal education of the past twenty years see J.E.C. Brierley, "Paradoxes", *supra*, note 1, at 39-41. What is clear, however, is that the "deprofessionalizing" agenda of the Parent Commission — however and by whomever it was pursued — produced pressures on the curriculum which were at odds with the ambitions of the Faculty as reflected in the emerging common law programme.

205. From 1960 through 1964 the graduating class at McGill numbered approximately 50; by 1972 it was almost 150. Over the same period the professorial complement grew from eight to twenty, and the Library collection doubled, to 80,000 volumes. See H.P. Glenn, *supra*, note 201. Of course, a substantial amount of this programme and library development was also financed by the two Ford Foundation grants — in 1961 to the Institute of Air and Space Law, and in 1965 to the Institute of Foreign and Comparative law — and by the annual contributions of McGill graduates to the Alma Mater Fund.
Ministry allocations were thereafter to be determined by overall enrolment and especially by increases in enrolment, this policy (accompanied by a freeze on student tuition fees) was to create major long-term difficulties for the relatively small (and stable) McGill Faculty of Law.\footnote{206}

The second external development which opened the possibility of the Faculty contemplating a significant reorientation of its undergraduate teaching programmes was the decision of the Law Society of Upper Canada in 1957 to relinquish its monopoly on legal education in Ontario. By permitting that province’s universities to launch accredited law faculties in competition with its own school at Osgoode Hall, and by severing the university education and professional training components of legal education, the Law Society implicitly also accepted that graduates of accredited faculties in other provinces might apply directly for admission to the profession.\footnote{207} For McGill this decision meant that the Faculty could at last establish an LL.B. programme which would give its graduates direct access to the Ontario bar — an opportunity denied to students in its original common law programme between 1915 and 1925.\footnote{208} While some professors urged the Faculty to seek Ontario accreditation as early as 1958, it was not until Cohen assumed the Deanship that this idea came to the fore.

Between 1964 and 1968 the establishment of a common law programme attracted, for a variety of reasons, the support of an increasing number of McGill professors. Many thought this initiative

\footnote{206.} By 1988, some twenty years after the new funding formula went into effect, the per capita student grant to McGill ranked 17th in Canada. See E. Hayek, ed. Annual Law School Statistical Survey (1988), an annual compendium of statistics relating to Canadian law faculties prepared for the Council of Canadian Law Deans. Moreover, because of the need to build up a French-language university network, the vast bulk of the Ministry of Education's capital grants over this period went to Laval, Montreal, Sherbrooke, and especially, the Université du Québec system.

\footnote{207.} For a detailed review of the twentieth-century struggle for university-based legal education in Ontario see Kyer \textit{et al.}, supra, note 1. As noted in Part One, the role of McGill professors in this struggle was not negligible. See, especially, Kyer, \textit{et al.}, supra, note 1, at pages 51, 64-77 and 209-216.

\footnote{208.} In a letter to Dean Cohen dated November 30, 1964, the Chairman of the Legal Education Committee of the Law Society of Upper Canada, William Howland, set out the accreditation requirements of the Law Society and indicated that should these be met, an application from McGill would likely receive favorable consideration. The McGill LL.B. degree was formally recognized by the Law Society of Upper Canada (despite a written protest by one Ontario law Dean) on February 16, 1968. During the spring of 1969, following petitions brought to every other Canadian law society that February, the McGill LL.B. degree was also recognized by the law societies of Alberta, Saskatchewan, Manitoba, British Columbia and Newfoundland. Formal recognition in New Brunswick, Nova Scotia and Prince Edward Island was not granted, however, until the late 1970s.
would lead by ricochet to a desirable tightening of admissions criteria.\textsuperscript{209} Others believed that it would help to keep the student population stable during a time of potential political disruption; these professors saw the LL.B. as permitting the Faculty to broaden its catchment by increasing extra-provincial student recruitment, and by attracting more current McGill arts and sciences undergraduates originally from other provinces into the law programme.\textsuperscript{210} Still others suggested that an accredited common law degree would also enable the Faculty to attract even more English-speaking Quebecers; these advocates argued that with an LL.B. programme the Faculty would be able both to recapture some of those Quebec-born students who were taking all their legal training in Ontario, and to retain within the programme the many McGill B.C.L. graduates who subsequently enrolled in one-year LL.B. degree programmes at Dalhousie University and at the University of Ottawa.\textsuperscript{211}

The third external factor suggesting an opportunity for curricular innovation at McGill was the reorganization of the Professional Training Programme of the Quebec Bar in 1968.\textsuperscript{212} Beginning in the early 1960s, the fourth year programme of professional training which had been given within the faculties since 1951 came under sustained attack from both law professors and students.\textsuperscript{213} At a time of increasing enrolments in Quebec law faculties, the presence of fourth year students taxed both

\textsuperscript{209} Until the mid-1960s the Faculty accepted all applicants resident in Quebec who met its minimum admissions requirements. The rationale for this policy lay in the fact that McGill offered the province's only English-language law programme, and should continue to serve its traditional clientele above all others. This approach to the B.C.L. course had significant support in the Faculty even as late as 1967. But the unpredictable and uneven first-year classes it threatened to produce as the first baby-boom students entered McGill became a reason (in the eyes of other professors) to fix (i.e. limit) the number of first-year places in the B.C.L. class.

\textsuperscript{210} While there had always been three or four students (i.e. about 10\% of the class) from other provinces enrolled in the B.C.L. programme during the post-WW II period, most of these non-Quebec students had been McGill undergraduates. This meant that, between 1960 and 1967, for example, less than 3\% of the B.C.L. class was not domiciled or currently resident in Quebec. Proponents of the common law programme such as Cohen wanted to recapture McGill's place as a "national" faculty of law and sought to emulate the regional mix at Harvard (and to a lesser extent at Dalhousie) by raising these two percentages to about 33\% and 10\% respectively.

\textsuperscript{211} Statistics compiled by Professor Crépeau in 1966 for the Faculty Resources Committee indicated that between 1960 and 1965 approximately 35 Quebec anglophones per year either enrolled in three-year LL.B. programmes outside Quebec or sought to obtain a one-year LL.B. at Dalhousie or at Ottawa following completion of a McGill B.C.L. degree.

\textsuperscript{212} On the background to these reforms see J.E.C. Brierley, "Paradoxes", \textit{supra}, note 1 at 35-37; for the Bar documents see "Comité des études universitaires et de formation professionnelle" (1967), 27 \textit{R. du B.} 338; see also (1967), 27 \textit{R. du B.} 425, and (1968), 28 \textit{R. du B.} 276, 387.

\textsuperscript{213} See F. LeBrun, "L'examen du barreau: une réforme est-elle souhaitable" (1963), 13 \textit{Thémis} 157. For the position of Quebec law teachers see "Mémoire de l'Association des professeurs de droit du Québec" (1964), 14 \textit{Thémis} 179.
teaching and library resources; when combined with the Bar's detailed regulation of the undergraduate law programme, the fourth-year course gave an unduly careerist and professional orientation to the B.C.L. curriculum.\textsuperscript{214} As of June 1, 1968, however, the Bar itself assumed responsibility for the professional training component of legal education, establishing teaching centres in Montreal, Quebec City, Ottawa, and, some years later, in Sherbrooke. That same year it relaxed its control both over the content of the undergraduate teaching programme and over the admissions requirements of its accredited faculties. Thereafter, all Quebec faculties began to assert their curricular and scholarly independence, each in a slightly different way.\textsuperscript{215} For McGill, the promise of these two initiatives made significant curricular innovation in the B.C.L. course possible. As noted earlier, commencing in 1965 the Faculty seized the initiative (in anticipation of the 1968 reorganization) with the development of its comparative law programme and with a further expansion in the number of optional seminars it offered.\textsuperscript{216}

No doubt the external context of Quebec legal education in the mid-to-late 1960s presented an excellent occasion for the Faculty to reassess and redefine its undergraduate curriculum. But this context was not without its immediate challenges to the McGill law programme. Two of these seemed particularly threatening to the B.C.L. course as then constituted. The rapid expansion of the French-language law faculties and a renewed Quebec nationalism created a fear that, just as in the 1880s, the Faculty would have difficulty in maintaining its francophone catchment.\textsuperscript{217} Moreover, the social and political uncertainties associated

\textsuperscript{214}. See F.R. Scott, \textit{Annual Report to Alumni, 1961-1962} for a discussion of these problems. The fourth year programme was not, however, without some advantages to McGill. Students were not obliged to take their fourth year in the same faculty from which they graduated. Not surprisingly, in view of its location in downtown Montreal and given that its course was offered in English, the McGill fourth year attracted a large number of francophone “transfer students”, especially from Laval and the University of Montreal. Thus, while this influx of bar students exacerbated the twin problems mentioned in the text, it also permitted the Faculty to broaden its base in the French-speaking legal community.

\textsuperscript{215}. This assertion of independent was particularly helpful to McGill which, until that time, often found itself alone opposing a “front commun” of the Bar and its sister faculties on issues relating to the content of and ultimate control over the curriculum. See J.E.C. Brierley, “Paradoxe” \textit{supra}, note 1, at 30-32. The Board of Notaries declined to make (and still has not made) similar changes to the fourth year Notarial programme (see. J.-G. Cardinal, “La Faculté de droit et le Notoriat” (1967), 2 \textit{R.J.T.} 151). But the fact that McGill never established a \textit{Cours de perfectionnement du Notariat} at Chancellor Day Hall — there being only a handful of McGill students each year entering that profession — meant that the continuation of a professional training regime for the Board of Notaries based in the law faculties would not have the same impact on the undergraduate curriculum as a similar regime organized by the Bar.


\textsuperscript{217}. This apprehension was not without foundation. From the end of the second World War
with the Quiet Revolution suggested to many professors that the Faculty's historical population base in anglophone Quebec (already showing signs of decline) would soon be insufficient to sustain a strictly English-language, civil law faculty. Faced with the possibility of a shrinking francophone undergraduate enrolment and an uncertain future of its English-speaking clientele the Faculty lived a period of no small apprehension in the mid-1960s.

Thus, for the academic reasons advanced by Gow and Cohen, for the opportunistic reasons reviewed earlier, and in response to the challenges to the Faculty's capacity to attract qualified students to the B.C.L. programme just identified, the establishment in November, 1966, of the Ad hoc Resources Committee to reflect on the aims and objectives of the undergraduate curriculum (and the very future of the Faculty), was seen as quite desirable by most members of the teaching staff. This Committee submitted an extensive Report (drafted largely by its Chairman, Professor LeDain) to the Law Faculty Council in the spring of 1967. This Report proposed the formal establishment of a bijuridical (bисystemic) and bilingual undergraduate teaching programme. Two distinct modifications to the curriculum were mooted: the creation of a complete common-law programme leading to the award of an accredited LL.B. degree; and, the establishment of a French-language stream in the B.C.L. curriculum. While as late as 1966 the majority of professors opposed the idea of a common law programme, within six months of his Committee's creation, LeDain had marshalled a Faculty consensus in favour of its adoption, until the early 1960s the law class at McGill was comprised, approximately, of two-thirds anglophone (of whom about one-half were Jewish) and one-third francophone students. By 1967 the ratios were, again approximately, two-thirds anglophone (of whom one-half were Jewish, one-fifth francophone and one-seventh allophone. After 1968 the University discontinued its policy of asking applicants to identify themselves by religion, maternal language and racial origin, so that comparative statistics for the past twenty years must necessarily be cruder approximations. Yet conversations with students and faculty from the late 1960s and early 1970s suggest that recruitment of francophones continued to be seen as problematic during that period. Moreover, the direct entrance opportunity afforded to CEGEP graduates at other law faculties was also believed to also discourage many top French-speaking students from applying to McGill, where the Faculty's clear preference for degree-holding students was generally known.

218. The decline in quality applications from Quebec anglophones is evident from the statistics marshalled by Professor LeDain and submitted to the Faculty in a memorandum of November 22, 1966. The correct interpretation of these figures was, however, a matter of debate at the time, as some professors argued that the reason for the decline was the Faculty's increasing admissions standards rather than a dropping birthrate in the province's English-Speaking community. Nevertheless, long before the "McGill français" demonstrations of 1968, at least certain pessimistic members of the Faculty privately were predicting that, either because of a falling birthrate or the flight of anglophones from the province, there would soon be no future for English-language post-secondary institutions in Quebec.
partly by engrafting the establishment of a French-language B.C.L. stream onto Cohen and Gow's original plan.219

In a brief to the McGill Senate dated May 17, 1967, Dean Cohen presented the Faculty's proposals for curricular innovation. When the Senate approved the two new programmes that September, it explicitly adopted Cohen's rationales as advanced in his May brief, namely:

As the years go by we will know what student response there will be to these . . . [two new] . . . programmes, but it is the Faculty's view that without such a programme we would be in danger on two fronts: on the one hand we would be losing English language students to other provinces, and on the other we would remain essentially an English language Civil Law school and losing students as well to the rapidly developing French-speaking law schools, notably Montreal and Laval. Both for reasons of survival and of effective development, the Common Law programme and the French language programme are essential. It is the Faculty's belief that the resources are available and that the quite modest price to be paid for this programme will more than justify itself in terms of the contribution that legal education at McGill can make to Canada as a whole, to the scientific development of the law, and in particular to the inter-penetrating of Civil and Common Law which is so much part of the public and commercial life of Quebec.

After a more than forty-year hiatus, then, beginning in the fall of 1968 a programme of instruction in the common law was to reappear in the Faculty's undergraduate curriculum; and after an absence of almost a century French language instruction in basic civil law courses was to figure officially in all years of the B.C.L. programme.

Despite the opportunity which Senate approval seemed to present for those seeking to develop a single, obligatory, bilingual, four-year programme leading to the B.C.L. and LL.B. degrees for all students, the

219. Some idea of the controversial nature of the initial proposal for a common law programme within the Faculty can be gleaned from the fact that Gow and Cohen first publicly mooted its establishment in December 1965 but that the Ad Hoc Resources Committee to consider the plan was struck only in late 1966. The reasons for the Committee were several, and it was not without its detractors. Some professors saw the establishment of the committee as a final defeat for the idea of McGill as a civil law faculty. Other sceptics demanded that such a committee be struck because they finally realized that Cohen was prepared to proceed with an LL.B. programme over their opposition and without any real study of resource implications for the library, the physical plan, or the budget. By the spring of 1967 the consensus of Faculty opinion had changed considerably, as has its composition. New recruits to McGill since 1964 included Richard Arens, Gerald LeDain, (who had returned from five years in practice), Edward McWhinney, René Mankiewicz, Herman Hahlo, Jacob Ziegel, Ivan Vlasic, Martin Bradley, and Brian Grossman — most of whom were supportive of the plan to establish a common law programme. Moreover, both Louis Baudouin and Frank Scott had reached retirement age, and while Scott was renewed for a three-year post retirement period until 1968, following his difficulties in the Deanship he ceased to have a major influence on Faculty academic policy.
Faculty declined to take such a radical step in 1968. The exigencies of university financing, Quebec politics, and professional accreditation counselled caution in legislating any kind of compulsory polyjural curriculum for the Faculty's undergraduate programme. Moreover neither Gow nor Cohen seemed moved to elaborate the theoretical justification or practical mechanics for such a development. Consequently, the first years of the two new post-1968 teaching ventures could be characterized more as a struggle for legitimacy than as the continuing development of their potential for recreating a universalist polyjural curriculum.

Initially, the term National Programme itself had no official status (let alone currency) within the University. “National Programme” appears neither in the Faculty’s presentation to the McGill Senate of May 1967, nor in the accreditation letters exchanged between Dean Cohen and the Law Society of Upper Canada. Rather the term seems to have resulted

220. In the Faculty’s presentation to Senate, the possibility of developing a single joint programme was not even mooted, although Dean Cohen was at pains to point out (i) that all students would have to take some courses in each stream, and (ii) that both B.C.L. and LL.B. students would be able to acquire the second degree in one further year’s study. In other words, while the possibility of a fully integrated four-year joint-degree programme was not excluded in 1968, it certainly did not form the basis of the Faculty’s proposal to Senate; nor did the idea of an obligatory four-year course appear as a feature of the new programme.

221. In retrospect, it appears that both Gow and Cohen shared Smith’s, rather than Lee’s view of the undergraduate curriculum. Gow clearly did not believe in the desirability of establishing a polyjural undergraduate curriculum; Cohen probably never worked through his own position on the point, being content to see the two undergraduate degree programmes primarily for their professional interest. See the rationales offered in M. Cohen, supra, note 187; M. Cohen, supra, note 188; and M. Cohen, supra, note 216.

222. From the vantage point of the late 1980s it is perhaps difficult to appreciate how precarious the common law and French-language programmes were, even within McGill, during their first few years. Two unrelated events, both with considerable financial implications, reveal the difficulties. When the new Library building was partly erected it became apparent that the University did not have the money to complete it. Rather than accede to the administration’s suggestion that it be downsized to five stories from the six originally planned, Dean Cohen set about raising the needed money from alumni. In this fundraising endeavour he not infrequently was told by Montreal-based graduates that no money for the library would be forthcoming if any was to be spent on a common law programme. Hostility to the LL.B. degree remained strong among alumni throughout the late 1960s and well into the 1970s, largely on the basis that it was providing a vehicle by which English-speaking law students could leave Quebec (and as a result, was facilitating the demise of the English-speaking civil law Bar in the province).

The second event revealing the programme’s precarity concerns the University administration. As a number of professors hired on Ford Foundation money reached the end of their contracts, the University initially refused to pick up the cost of their salaries through increases to the Faculty budget, notwithstanding the additional students which they permitted the Faculty to admit, and notwithstanding promises to do so when these professors were first given tenure-stream positions. Thus, from two of McGill’s three main financial sources — base budgets and alumni donations — the new programmes were facing a major budgetary squeeze in the years immediately after their adoption.
from the slippage of usage in relation to McGill being a "national" law faculty offering "national" (i.e. pan-Canadian) courses in public and commercial law.\textsuperscript{223} For at least two years after the fall of 1968, the expression "National Programme" signaled no particular unified B.C.L./LL.B. programme and certainly did not have the connotation of universalist polyjurality. It was, rather, really only the code name deployed by certain professors for a loose integration of four of the 1960s curricular developments at the Faculty: the graduate and undergraduate programmes in comparative law offered through the Institute of Foreign and Comparative Law; the Civil Law Studies Programme; the accredited LL.B. programme; and, the French-language B.C.L. programme.\textsuperscript{224}

The structure and objectives of the first two of these initiatives to be established — the Institute of Foreign and Comparative Law and the Civil Law Studies Programme — have already been briefly discussed. It bears mention, however, that neither of these innovative components of the McGill curriculum flourished as intended during the late 1960s or thereafter. Once the undergraduate common law programme was created, much of the energy went out of the Institute of Foreign and Comparative Law. There are several reasons for this. To begin, most of the newly-recruited common law professors devoted the bulk of their

\textsuperscript{223} The expression "National Programme" first appears in a memo drafted by Dean Cohen, and circulated on August 15, 1967 to all Faculty and the McGill law graduates serving on the Board of Governors — A.D.P. Heeney, Mr. Justice Miller Hyde and Peter M. Laing. It also appears in the 1968-1969 Faculty Announcement which was drafted in the spring of 1968. Sometime between May 1967 and July 14, 1967, when Dean Cohen met with the Vice-Principal (Academic) to discuss the Faculty's curricular proposals, the term "Canadian Programme" came to designate the possibility represented by the joint B.C.L./LL.B. course. This "Canadian Programme" designation itself did not originate with the Report of the Resources Committee in May 1967, but was recommended in a document prepared jointly by the Resources Committee and the Civil Law Studies Programme Committee in June 1967. One can only assume that over the summer of 1967 (perhaps in part due to the patriotic fervour arising from Expo 67) it was decided to appropriate the term "National" for the four-year undergraduate programme. In any event, the name did not immediately gain great currency, for in an epilogue to the brochure commemorating the Special Convocation at which New Chancellor Day Hall was opened, dated May 9, 1968, Dean Cohen described the LL.B. course and the new joint programme at length, but did not once employ the expression "National Programme". See M. Cohen, \textit{supra}, note 216.

\textsuperscript{224} It is particularly noteworthy that one of the Faculty's key intellectual and curricular orientations between the early 1860s and the early 1960s — International Law — did not figure directly in the planning of the new programme. This is all the more surprising since Cohen was, himself, an international law teacher. While the point is not free from controversy, I believe that the absence of this traditional McGill extroversion is further evidence that, for many professors, the two new undergraduate programmes were not intended to promote or to reflect the entire panoply of traditional Faculty intellectual ambitions which they have since come to represent. In other words, if today there is a direct association of National Programme and universalist polyjurality, this has occurred only as a consequence of post-1968 developments in the undergraduate curriculum.
efforts to building the LL.B. course rather than to teaching and research in comparative law. Second, the demands of the undergraduate common law programme were so extensive that, with one exception, the Faculty was unable to finance the recruitment of either true comparativists or even research associates for the Institute. Third, the research programme of Professor Crépeau's Civil Code Revision Office was so extensive that the Faculty's private civil lawyers associated with the Institute had little time for academic comparative studies. Finally, the driving force behind the conception of the Institute as the intellectual centre of the Faculty, J.J. Gow, resigned his professorial position in 1968, leaving the Institute without a dynamic, young successor who shared this vision of the Institute's role.  

A similar fate befell the Civil Law Studies Programmes. Even though Professor Crépeau initially was able to use it as a vehicle to recruit young francophone civilians to McGill, the Civil Law Studies Programme never developed as a separate civil law teaching and research centre along the model of its contemporary analogue at the University of Montreal, le Centre de recherche en droit public. The demands of the Civil Code Revision Office were such that almost all the scholarly efforts of civil law professors (both at McGill and elsewhere in Quebec) were devoted to researching and writing the Reports of the Office's various Sub-Committees rather than to primary research, and to the innovative teaching of Quebec private law. Again, despite the significance ascribed during the twentieth century to the Civil Code as a vehicle of French-Canadian culture, the new nationalism of the Quiet Revolution in Quebec was a nationalism of public and constitutional law, in which the civil law was viewed more as an impediment than a stimulus to legal progress. Compounding this difficulty was the ideology of codification itself which, some have argued, led to an intellectual cleavage between private lawyers and public lawyers, the former group adopting a more didactic and non-functional perspective on legal scholarship, undergraduate teaching, and even law itself which seemed out of place in the

225. The Faculty was fortunate in having engaged the eminent (but almost retired) South-African jurist, H.R. Hahlo, the year before, and is being able to prevail upon him to succeed Gow as Director of the Institute. Yet, Hahlo had a different view of the Institute's mandate, seeing it primarily in relation to graduate studies and research. In the first years after Gow’s resignation, consequently, the Institute played no leadership role in the undergraduate curriculum, becoming rather de facto the vehicle for the Faculty's non-Air and Space Law graduate programme. See J.E.C. Brierley, "Developments", supra, note 1, at 371-372.  

226. On the Centre de recherche en droit public, see L. Patenaude, "L'institut de recherche en droit public de l'Université de Montréal" (1964), 15 U.T.L.J. 185.  

227. For a discussion of the contribution of the Civil Code Revision Office to the isolation of private law scholarship in Quebec, see R.A. Macdonald, supra, note 32 at 602-603.
modern law faculty. Furthermore, the precarious position of the LL.B. programme meant that the bulk of Faculty energy in the late 1960s was devoted to ensuring its continuation rather than to developing the B.C.L. curriculum. Consequently, the Civil Law Studies Programme also did not succeed in animating to any significant extent the McGill undergraduate curriculum in the years following the establishment of the common law programme.

By contrast, the two initiatives approved by the McGill Senate in 1967 were to have a much larger impact on the undergraduate teaching programme. Notwithstanding that courses had been offered (albeit sporadically) in French since 1857, the Faculty formalized its policy on the language of instruction for the first time only in 1968. It was decided, as a matter of principle, and where resources permitted, to offer French-language sections of all first year courses and most basic upper-year subjects in the B.C.L. curriculum, in addition to the regular English-language sections; it was also decided to formalize the practice by which certain upper-year elective courses and seminars might be offered in the French language only. While there was some uncertainty within the Faculty about whether this enhanced programme of French-language teaching was to be provided as a service to anglophone students — to assist them in their preparation for the Quebec Bar examinations, or as a service to francophone students — to assist in their integration into the Faculty, it is clear that the development of a bilingual curriculum (at least in civil law and federal subjects) was the fundamental object which many proponents of the French-language programme had in view.

228. On this traditional civilian approach to law teaching, see J.E.C. Brierley, “Paradoxes” supra, note 1 at 21-24; Y. Caron, supra, note 186; and L. Baudouin, “Comparaison”, supra, note 143.

229. The decline in the centrality of civil law teaching to Quebec law faculties generally is reviewed in Brierley, “Paradoxes”, supra, note 1 at 26-28. Ironically, at about the same time that the teaching of private civil law went into eclipse, the Faculty received a legacy of almost $750,000 to promote its study. Yet, for a variety of reasons, the Wainwright Trust was not deployed effectively within the Faculty to stimulate fundamental civil law research, and the hoped-for renaissance of civil law scholarship at McGill did not immediately materialize.

230. Certain decisions relating to class readings and examination questionnaires were taken, however, in the late nineteenth century. See supra, note 36. Moreover, even during those periods when no formal instruction was offered in the French language, students were permitted to write examinations, prepare essays, undertake mooting exercises, and ask or answer questions in class in either French or English. Finally, as Part One of this essay illustrates, with only periodic exceptions, since 1853 (and especially since 1897) the Faculty sought to promote the French language legal education, and frequently required fluency in French as a matriculation requirement.

231. There was no intention (it appears) by any promoter of the French-language programme to make the Faculty a bilingual institution. Rather, the programme was developed uniquely as a curricular idea and was adopted by the law Faculty Council on that understanding. In a study prepared for the 1966 Resources Committee, Professor Crépeau was able to demonstrate that
in the fall of 1968, the teaching of first-year subjects in French was resumed, for the first time since 1899. Nevertheless, while systematically including notices pertaining to French-language sections in its undergraduate syllabus, by 1970 the Faculty still was offering only two heavy-enrolment courses in French.\textsuperscript{232}

The final piece of the curricular plan put together in the mid-1960s was the establishment of the LL.B. course itself. Following formal accreditation of its proposed programme by the Law Society of Upper Canada in the spring of 1968, the Faculty announced a three-year common law degree course offered in parallel with its B.C.L. degree programme, to commence with the fall term that year.\textsuperscript{233} Despite the potential political fall-out of such a decision, it appears that the new LL.B. was conceived (and organized) as a more or less free-standing common law course, and not as an element in a compulsory four-year civil law and common law tuition.\textsuperscript{234} That is, in their initial design, the curricula of the three-year undergraduate civil law and common law programmes were perfectly symmetrical, not differing significantly in organisation and content from those offered at the University of Montreal (or the University of Toronto, as the case may be). Far from appearing

some dozen or so anglophone students per year who were admissible to McGill attended the Universities of Ottawa, Montréal, Sherbrooke and Laval, presumably in order to perfect their "legal French". In retrospect, it seems that it was as much to recapture this clientele as to regain francophone students that the French-language programme was adopted. For a suggestion that both these objectives were being pursued, see J.E.C. Brierley, "Developments", \textit{supra}, note 1, at 369-370.

\textsuperscript{232} The change in ambition (if not in result) is reflected in the Annual Announcement. In 1968-69 the Faculty stated: "A number of Civil Law courses offered by the Faculty, on an optional basis, are given in the French language". By contrast, the Annual Announcement for 1970-71 provided: "One or more French language, optional civil law courses are generally offered by the Faculty . . . Commencing 1971/72, one or more basic courses in the civil law in other than the first year programme may be given in the French language only." Nevertheless, in 1971-72 only Obligations I and Family Law were listed as having both French and English sections. There was, in addition, only one optional seminar taught in French.

\textsuperscript{233} With the establishment of the LL.B. course the eight basic common law seminars offered through the Institute of Foreign and Comparative Law were discontinued, to be replaced by several comparative law courses in private law subjects. Thereafter, LL.M. students pursuing comparative studies at the Institute were required to take basic common law or civil law courses from the undergraduate syllabus.

\textsuperscript{234} For a discussion of the various arguments both for and against making the LL.B. a four-year course comprising the full panoply of civil law courses as well, see the minutes of the Curriculum Committee of November 9, 1971 (reproduced in H.P. Glenn, \textit{supra}, note 201). These minutes rehearse in detail the initial debate in 1968. In retrospect, it is obvious that the political risk, at a time of general student unrest culminating in the "McGill français" movement of December 1968, was substantial (see Frost, "Vol. II", \textit{supra}, note 1, at 443-464 and especially at 458). Nevertheless, at the time (and perhaps because of the remembrance of the demise of Lee's earlier common law curriculum), the greatest threat to the programme was seen as coming from alumni at the Bar of Quebec, not from the Quebec government.
as a contemporary version of Day’s universalist polyjurality, the new curriculum (with its insistence on maintaining two distinct undergraduate degree programmes) seemed to have more in common with the Badgley/Walton/Smith model of professional or unificationist polyjurality. In Cohen’s eyes especially the primary purpose of the LL.B. programme was simply to permit students to acquire formal qualification for membership in various Canadian common law bars.

Yet, for a number of reasons, no deep cleavage between civil and common law streams developed. The Faculty was not divided into two distinct sections, nor was it departmentalized into smaller programme units each with a high degree of autonomy. Undergraduate students in each of the B.C.L. and LL.B. streams were required to take a minimum of six credits of private law subjects from the other degree stream, as well as to take all public law and most commercial law courses together. Moreover, after 1968 the Faculty took the decision to emphasize in its literature (admissions brochures, calendars, alumni newsletters, etc.) the common features of the two streams, and to stress the idea of a joint B.C.L./LL.B. programmes comprising them both. Nevertheless, while the undergraduate curriculum demanded that all students follow some courses in both private law streams and while it retained a common core of subjects taken by all students together, the new LL.B. programme remained essentially that: a separate programme in the common law. The teaching possibilities (and indeed the intellectual ambitions) of a four-year joint degree programme were, underdeveloped at this time, and really consisted only of the possibility of adding an extra year of studies in the other system onto a regular three-year law degree.

In these respects the programme followed Lee’s precedent of 1915 rather than the contemporary model of the University of Ottawa, where separate sections (common law and civil law) of the Faculty were instituted and where courses in federal subjects (e.g., Constitutional Law, Criminal Law) and pan-Canadian public and commercial law subjects (e.g., International Law, Administrative Law, Banking, Bankruptcy) were taught separately to each section. Lee’s curriculum, it will be recalled, had students in both Course A and Course B take these pan-Canadian subjects together, and in addition required Course B (common law) students to take Obligations with Course A (civil law) students.

In the 1968 Annual Announcement, for example, it was noted that (i) a student becomes a B.C.L. or an LL.B. student only when taking private law courses, and that (ii) the cross-stream course requirements are considered crucial to a proper, liberal education in either stream. In view of these affirmations in the Announcement, it is revealing of the indifferent attitude of most professors towards the concept of universalist polyjurality, that there was no great pressure within the Faculty to establish (at least as a third option) a separate, totally integrated four-year curriculum.

In other words, it seems that those few members of the teaching staff who understood the potential of a universalist polyjural programme — by my calculation only Gerald LeDain, John Brierley and to a certain degree Paul-André Crépeau — either felt that the idea would not attract the support of their colleagues or of students, or were gambling that the idea would eventually take hold on its own merit without the need for a revised curriculum promoting
These, then, were the steps and compromises by which the Faculty was able, over the period 1964-1968, to launch the various curricular initiatives which collectively came to be known as the National Programme. While the rhetoric of the proposals to the McGill Senate suggested the immanence of a full-blown new curriculum — comprising at the same time a French-language programme, a common-law programme, an enhanced civil law studies programme and a graduate comparative law programme — such a comprehensive National Programme did not soon emerge. For many professors, the concept of the National Programme meant little other than the opportunity to offer students professional training in the civil law and the common law; and this perspective, as complemented by the possibility of obtaining both the B.C.L. and the LL.B. degrees in four years, in fact was dominant within the Faculty for many years.

Only a minority understood the National Programme in its broader context of capturing McGill's overall approach to law study — whether for students in either of the single degrees or for those in the joint degree programme. Indeed, notwithstanding a constantly increasing number of professors (and higher percentage of students) who came to share a somewhat more extensive view of the undergraduate programme over the following two decades, neither the initial curriculum established in 1968, nor its second generation model put into place in the early 1970s, nor even its third generation model of the 1980s, was a fully bilingual and intellectually integrated, polyjural four-year tuition rooted in a universalist model of legal education. Because the curricular opportunities presented by the programme — and even its underlying theory — have been in flux, it is instructive to review in detail the major metamorphoses of the National Programme over the past twenty years, as well as the changing professorial perceptions of its potential and practice.

such a four-year programme. Yet the expectation that the opportunity of adding a fourth year of civil law studies onto a three year common law degree would prove attractive to students (it being assumed that anglophone civil law students would see the obvious advantages of acquiring a common law qualification) proved mistaken. Very few students in the early LL.B. cohorts also took the B.C.L. degree. See H.P. Glenn, supra, note 201.

238. For this minority it was the whole panoply of systemic interactions in the undergraduate curriculum, rather than the degree options themselves, which defined the National Programme. Thus, the compulsory cross-stream private law requirement, the fact that students took public and commercial law subjects together in courses which were organized so as to reflect both civil law and common law perspectives and the opportunity to study in French and English were seen as being as much elements of the National Programme as the joint-degree option itself.

239. One of the difficulties of attempting to describe the theory of the curriculum of any Canadian law faculty in the post-1960 period is the diversity of professorial opinion which
In its first few years (i.e. 1968-1972), the idea of the National Programme (and indeed the common law programme itself) had an uncertain future. Having devoted his five years as Dean to developing and promoting the LL.B. course, Maxwell Cohen left the Deanship in June 1969.240 His successor, John Durnford, was immediately confronted with logistical and financial problems of the first order. Moreover, two of the key players who supported Cohen in establishing the LL.B. programme were no longer at McGill: Gerald LeDain had accepted the Deanship of Osgoode Hall Law School in 1968, and J.J. Gow resigned his professorial position to enter the practice of law in British Columbia. Finally, as the political situation in Quebec began to heat up, McGill became a highly visible symbol of the anglophone establishment and was particularly the target of nationalist scrutiny.

Not surprisingly, therefore, during this initial period the bijuridical and polyjural aspect of the undergraduate programme did not really have the chance to flourish. The number of common law students enrolled in the Faculty was small, and the first graduates of the three-year LL.B. course received their degrees only in 1971. Until that time registration in the various private law courses of the common law programme came mainly from third and fourth-year B.C.L. entrants who had begun their civil law studies before the LL.B. course was even established.241 Moreover, until

resulted from the rapid growth in teaching complements. At a time when the total number of professors — both full-time and part-time was less than ten — it was easier both to generate consensus and to describe dissensus on curriculum and pedagogy. With a full-time staff of twenty or more, divergences in opinion could not always be overcome, and frequently were difficult to discern clearly. In addition, during the late 1960s and 1970s the rate of turnover of professors at McGill was substantial, a turnover which, once again, inhibited the forging of consensus even about the course requirements, let alone the aims and ambitions, of the National Programme. Hence, the analysis set out in the next dozen paragraphs may not always accurately portray the full range of professorial opinion on any given point. Where appropriate, however, non-dominant cross-currents will be examined in the footnotes.

240. As this narrative makes clear, Cohen's contributions to the undergraduate curriculum from 1947 through 1969 were enormous. See supra, note 191. But paradoxically, while he internalized many of the specific features of the Faculty's initial curricular mission — scholarship, liberal approach to law study, polyjurality, public service — he never worked out a theory of how the National Programme could serve universalist rather than professional ends. In many respects Cohen stood in the same relation to his predecessor, Scott, as R.W. Lee stood in relation to his predecessor, Walton. On any account, then, Cohen would have to rank with Lee as a professor and Dean who came closest to understanding how a universalist polyjurality could be re-established within McGill's undergraduate law curriculum.

241. In 1968-69 there were 9 first-year LL.B. students, and 10 fourth-year LL.B. students; in 1969-70 the figures were 19 and 6; in 1970-71 they were 57 and 15. Throughout this period there were never less than 90 students in the civil law stream, each of whom was required to take one of property, contracts or torts as a B.C.L. degree requirement. In 1971 only four students of the 1968 entering class graduated with the LL.B.
1971, no common law entrants (except transfer students) were in a position to pursue the B.C.L. degree, so that prior to that spring it was impossible to gauge the success of the joint-degree course as an option for all undergraduates. After 1971 the enrolment figures for the joint programme were disappointing, both among B.C.L. and LL.B. entrants, to the extent that some civil law professors even anguished publicly about whether the common law programme was worth its cost. 242

The lack of interest in the joint degree course (especially among the B.C.L. class) may have reflected the relatively low priority which it had in early curricular planning. Only four new National Programme courses — Law and Society, Foundations of Canadian Law, and Public International Law in first year, and Private International Law in third or fourth year — were established. None, moreover, actually functioned as intended. While Private International Law was designed (once common law students reached third year in 1970-71) to be a supra-national comparative law course taught to both civil law and common law students, from 1968 until 1973-74 the course was taught in two sections advertized as directed to one or the other of the B.C.L. and LL.B. streams. Further, at least initially, the courses Foundations of Canadian Law and Law and Society — created in 1969 and 1970, respectively, out of earlier courses in Legal History, and a two-week Introduction to Law programme — were largely failures. 243 While the Foundations of Canadian Law course survived in a modified form, within two years the Law and Society course was dropped from the first-year curriculum and

242. Graduation figures for these early years were as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>B.C.L. Entrants</th>
<th>LL.B. Entrants</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B.C.L. III</td>
<td>LL.B.IV</td>
</tr>
<tr>
<td>1968</td>
<td>58</td>
<td>10</td>
</tr>
<tr>
<td>1969</td>
<td>55</td>
<td>6</td>
</tr>
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<td>1970</td>
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<td>1971</td>
<td>59</td>
<td>25</td>
</tr>
<tr>
<td>1972</td>
<td>59</td>
<td>25</td>
</tr>
<tr>
<td>1973</td>
<td>65</td>
<td>15</td>
</tr>
</tbody>
</table>

See H.P. Glenn, supra, note 201.

243. The Law and Society course was established on the initiative of first-year students in the LL.B. course who set up a student-run non-credit seminar under that name in 1969. It was abandoned in 1972. In a memorandum to the Curriculum Committee dated November 6, 1969 and urging consideration of the proposal, Dean Durnford wrote that the imperative of "relevance" — not the National Programme idea — seemed to be behind the call for such a course. He hoped that the Curriculum Committee could come up with a means to reform the student proposal so that it supported the National Programme, rather than offered a competing pole of attraction for undergraduate students.
transformed into an upper-year Law and Poverty option.\textsuperscript{244} Public International Law was added to the first-year curriculum in 1970 as the pendant of Private International Law and was also conceived as a supranational course in legal ordering. This innovation, which was the brain-child of (by then) Professor Cohen was the first reflection in the National Programme of the Faculty's other traditional curricular extroversion — to international law. Yet this change (which reinforced the theme of polyjurality, and which should have captured the imagination of students) nevertheless also proved not to be a success and International Law was dropped from the first-year curriculum in 1972.

The image of the joint degree programme was harmed not only by the failure of these new “national” courses, but also by the structure of the ordinary curriculum of the B.C.L. and LL.B. streams. Little systemic exchange in private law fields beyond that imposed in third year as degree requirements was encouraged. For example, despite the potential for doing so through the Institute of Foreign and Comparative Law, no upper-year private law options such as Family Property Law or Remedies were taught comparatively. In other words, for most undergraduate students exposure to the assumptions and methodologies of the other legal tradition was restricted to one six-credit course taken in third year. Between 1968 and 1972 — the first phase of the National Programme — then, the basic common law course was becoming established, but the bijuridical and comparative opportunities it presented remained more or less unexploited.\textsuperscript{245}

As for the French-language programme, potential and practice were also divergent during the period 1968-1972. For several years few first-year courses for the B.C.L. and even fewer upper-year courses were offered in French-language sections. Moreover, with one exception, no optional seminars were given in that language. Prior to 1973, only Obligations, Family Law, Criminal Evidence, and Taxation were taught

\textsuperscript{244} See, C. Stairs, “Robert Cooper: Man in the Middle” in \textit{The McGill News}, fall, 1975 for a review of the rise and fall of Law and Society and Law and Poverty courses in the early 1970s.

\textsuperscript{245} It bears repeating, however, that even though the bijuridical aspect of the programme was not fully developed in private law subjects, the attempt to establish “pan-Canadian” public and commercial law courses for students in both streams, the creation of four new theoretical courses at either end of the undergraduate curriculum, and the modest third-year cross-stream requirements gave the McGill curriculum a polyjural character not evident in the analogous programme at the University of Ottawa. More significantly, between 1968 and 1972 this bijuridical vision of the curriculum attracted a number of younger professors to the Faculty who expressed keeness to develop the programme's potential (e.g., William Foster, Jane Glenn, H.P. Glenn, Michael Trebilcock, Philip Slayton, David Cayne and Brian Slattery). See J.E.C. Brierley, “Developments”, \textit{supra}, note 1 at page 368; H.P. Glenn, \textit{supra}, note 201.
more than once in both English and French sections. Because the Faculty imposed no second-language requirement on undergraduate students, and because no obligatory courses for either the B.C.L. or LL.B. were taught either in French only or in a bilingual format, the overwhelming enrolment in these French-language sections was from francophones; very few anglophone students (even B.C.L. candidates from Quebec who would later face the French-language examination of the Office de la langue française) took up the challenge of studying law in their second language. During these first years, then, the French-language programme — as a vehicle for recruiting francophone professors, as an inducement to francophone students, and as an enrichment for anglophone students, and as a feature of a universalist, polyjural undergraduate curriculum — cannot be counted a successful component of the National Programme.

It follows that, while certain members of the Faculty may have supported the concept of a bilingual, polyjural four-year joint degree programme as early as 1968, neither the structure nor the practice of the undergraduate curriculum during its initial period reflected this ambition. Essentially, the Faculty offered an English-language curriculum built on a “sequential” model of the course requirements for the two bachelors’ degrees. Until 1972 students were not even permitted to receive both the B.C.L. and LL.B. degrees together at the end of four years’ study. But over this same four-year programme infancy, many new professorial recruits to McGill attempted to work out a theory for the teaching of private law courses in both degree streams during the first two years of the undergraduate programme. In this endeavour, they became the first faculty members to articulate how the combination of “national” courses and a structured exposure to both private law traditions could serve the ends of a universalist polyjurality even for students pursuing only one of the B.C.L. or LL.B. degrees.

246. To some francophone students the Faculty’s commitment to French language courses seemed to be so weak in the period leading up to the enactment of the linguistic requirement in the Code des professions that they presented a petition to Professor Crépeau in which they demonstrated the existence of French-language courses in the 1860s, as an argument for maintaining (and enhancing) the Faculty’s bilingual character. See F. Tremblay, “Memorandum to Professor Crépeau” dated November 1, 1973.

247. See H.P. Glenn, supra, note 201 for statistics on enrolments in French language courses.

248. But see Glenn, supra, note 201 for a table indicating that enrolments from French-speaking students — most entering directly from C.E.G.E.P. — increased in 1968 and 1969 (to about one-half the B.C.L. class) before dropping steadily (to about one-quarter of the class) in 1972 and thereafter.

In the fall of 1971 a number of circumstances coincided to impell the Faculty to charge its Curriculum Committee with examining how to enhance the fourth-year programme for common law entrants. These circumstances were: the failure of the four new “national” courses, the inability of the Faculty to develop a French-language programme, a very low enrolment rate in the fourth-year B.C.L. course by common law entrants, and the arrival at McGill of several young common law professors enthused about the potential of the National Programme. In November 1971, a sub-committee of the Curriculum Committee reported to Faculty Council that several modifications to the teaching programme, and to the degree requirements for the LL.B. were in order. However, even when these amendments — which created the second generation model of the National Programme — were initiated, a number of structural impediments and political apprehensions slowed their full implementation and made further development of both the B.C.L. and the LL.B. curriculum difficult. For this reason they can be best understood in the context of the external conditions which coloured their application and transformed their objects.

The second stage in the evolution of the National Programme (i.e. 1972-1982) coincided with a decade of social and political uncertainty in Quebec, and with financial restraint at McGill. Moreover, two very specific academic concerns which loomed large in Faculty planning from the outset of the common law programme, continued to do so throughout the 1970s. An initial apprehension was that the LL.B. tuition for students entering the Faculty through in the B.C.L. stream might not be seen to be as “robust” as that offered by other common law Faculties and, therefore, not acceptable to the Law Society of Upper Canada. For this reason the LL.B. degree requirements established in 1968 for B.C.L. entrants included a large number of obligatory courses which closely tracked the list of thirty-one obligatory and recommended courses published by the Ontario Bar. The second concern was that the distinctiveness of the civil law tradition at McGill would be lost if B.C.L. students were obliged to take too many courses in the common law and public law (with its presumed common law methodological orientation), without also being

250. The Faculty Council adopted the Report of this Sub-committee on November 11, 1971, but due to an error in the 1972-73 Faculty Announcement, the revised requirements did not come fully into force until the 1973-74 academic year.

251. For a review of these various difficulties during the 1970s, see J.E.C. Brierley "Developments", supra, note 1. Interestingly, just as the first generation model of the National Programme took shape not during Maxwell Cohen’s Deanship, but during that of his successor John Durnford (1969-1974), the evolution of the second generation model established at the end of Dean Durnford’s tenure, was guided by his successor, John Brierley (1974-1984).
required to take a significant number of private civil law courses. To meet this concern the Faculty retained in 1968 a large number of obligatory private law courses in the curriculum for the B.C.L., even when taken as a first degree by students not intending to complete the LL.B. programme. Both these concerns continued to preoccupy the Faculty for several years, and even as late as the early 1980s many of the curricular decisions they initially produced remained in place.\(^{252}\)

To these two academic apprehensions, which shaped the programme for B.C.L. entrants, may be added four other prudential concerns which largely determined the curricular content of the LL.B. course during the 1970s. First, to the extent that the LL.B. could be perceived (as was the case in the 1915-1925 period) not as an intellectual complement to the B.C.L., but rather as a purely professional programme in foreign law, and to the extent that English-speaking Quebeckers were admitted directly into it, some professors were sensitive to allegations that McGill was subsidizing students to leave the province.\(^{253}\) Given the polemics associated with English-language university education in Quebec in the late 1960s, it is not surprising that during the early 1970s a number of people, including one francophone official of the McGill Law Undergraduate Society and one prominent member of the teaching staff who was about to leave the Faculty, publicly called for the abolition of the LL.B. programme.\(^{254}\) This political uncertainty hampered the

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252. When the Faculty laid out the requirements for a fourth-year B.C.L. in 1971 it followed, for much the same reasons, the model for the three-year B.C.L. Hence, throughout the 1970s joint-degree students and all B.C.L. students were obliged to follow a curriculum dominated by obligatory private law courses.

253. This was a bona fide concern, especially in view of the initial statistics on origin and dispersal of graduates. Between 1968 and 1975 the ratio of Quebec students registered for the first year of the LL.B. varied between 54% and 85%. While there are no direct figures as to their dispersal, since only 40 of the 133 LL.B. entrants took a fourth-year B.C.L., it is obvious that at least 2/3 of the total group (including presumably a large number of Quebec entrants) left the province. Of the 107 double-degree graduates entering via the B.C.L. (almost all of whom were Quebec residents) 50, or almost one-half, were no longer resident in Quebec by the summer of 1976. One indication of the magnitude of the problem was the number of students enrolled both in the Quebec Bar Admission course and the fourth-year common law programme. The size of this group of largely absentee students (who obviously had no academic interest in the LL.B. programme) prompted the Faculty to enact a regulation prohibiting such double registration on December 2, 1971.

254. Linguistic tensions at McGill in the period after October 1970 were very high, to the point that certain anglophone students would tease francophones about “concentration camps” for English-speaking Quebeckers being set up in St. Hyacinthe. This, more than anything, provoked the francophone Law Undergraduate Society official to seek the closing of the LL.B. programme. The disaffected professor had served on several Quebec government committees and was friendly with several Ministers, one of whom (presumably at the prodding of this professor) announced in Toronto that the McGill LL.B. was an error which should be rectified. This provoked a panic in Ottawa, where the Dean-designate of the civil law section, Gérard
Faculty's efforts to recruit and retain English-speaking common law professors (especially Canadian educated common law professors), and by implication argued strongly against the immediate development of an esoteric comparative law curriculum which would demand a highly specialized and stable professoriate.255

The second prudential concern related to some of the very premises underlying the emerging National Programme. The curricular fads of the late 1960s and 1970s in common law faculties (and to a lesser extent in some civil law faculties) — public and constitutional law; civil liberties; optional courses; "law and..." courses; poverty law; intensive programmes; clinics; and "relevance" — all seemed to pull in the opposite direction to McGill's primary teaching orientations.256 Some professors feared that in a period of political uncertainty and student disaffection, too active a promotion of the National Programme as an intellectual endeavour grounded in comparative private law and taught in an explicitly bilingual context, would undermine student recruitment, compromise McGill’s ability to attract the best young professors, and expose the Faculty to charges of élitism and irrelevance.257

Beaudoin, sensing his faculty in a similar position to McGill, only vis-à-vis the Ontario government, prevailed upon his Rector to make representations in Quebec City in support of the McGill programme. A final indication of the sensitivity of the question was the policy of the Deans of the Faculty to keep a list of reasons why the common law programme was a benefit to Quebec close to the telephone, in order to respond to anticipated journalistic inquiries about the desirability of maintaining the LL.B. course and the National Programme.255 The turnover among professors teaching common law and public law courses was very high during the National Programme's first decade. Between 1968 and 1975 the Faculty hired a total of 5 common law professors with a first law degree from a Canadian law faculty, and 13 with a foreign first degree. By the end of 1977, only 2 Canadian-trained common law professors (H.P. Glenn and J.M. Glenn) remained, and only 2 of the 13 non-Canadian-trained common law professors (W.F. Foster and R.B. Sklar) still held Faculty positions.256 When Professor Durnford assumed the Deanship in 1969 many of these fads were just developing. By the mid-1970s they were as dominant at McGill as elsewhere. Yet the intellectual climate in Quebec was not the same as elsewhere in Canada, with the result that common law students especially were often pushing for innovations not yet on the agenda of their civil law colleagues. The different intellectual universes inhabited by students in the different degree streams, combined with those differences resulting from distinct linguistic and cultural points of reference — all in a general climate of the late-1960s and early 1970s student protest — would have made curricular development a high-risk enterprise, even if the theory of the National Programme were compatible with all these student revindications. Given the special features of the emerging National Programme idea which seemed to be at odds with the mood of the student body at the time, its further explicit promotion by the professoriate was out of the question for most of the 1970s.257 The paradox of such fears, however, is that the external intellectual climate of legal education could have worked to the Faculty’s advantage — were the logic of the National Programme as a universalist polyjural endeavour fully worked out at that time. Links between events and curriculum were legion: the oil crisis and international law; James Bay and environmental and native law; social welfare, gender equality and civil code revision; Quebec
apprehensions were not without foundation for, during the 1970s, the Faculty's applicant pool did not grow as anticipated, a large number of common law professors resigned to take up teaching positions elsewhere, and a disappointingly low number of LL.B. entrants elected to complete the B.C.L. 258

Compounding these apprehensions was a third concern, flowing from the generally unsupportive attitude of the University administration, all too willing, it seemed, to make the Faculty of Law a sacrificial lamb. In the late 1960s, for example, the University proposed (without consulting the Faculty) terminating the common law programme, moving the Faculty to smaller premises and relocating the Faculty of Education at Chancellor Day Hall. Again, in 1975, the University asked the Faculty to draw up a contingency plan for phasing out the common law programme. Throughout this period the Dean was also constantly required to defend French-language teaching to uncomprehending and unsympathetic University administrators who saw it as demanding an unnecessary duplication of resources. 259

The budget of the Faculty was particularly strained during the early 1970s. The end of the Ford Foundation grants meant that the Faculty would have to support the salaries of those common law professors initially hired through the Institutes. Only with great reluctance (and then only partially) did the University augment the salary component of the Faculty budget. Moreover, for the first time the Faculty was facing real salary competition from other institutions, and (at least for its common law professors) could not offer the possibility of a consulting practice to serve as an income supplement. The severity of these financial constraints was such that curricular development, let alone the replacement of even senior professors who resigned their positions with anyone other than entry-level candidates, was unthinkable. 260 The lack of support from the

independence and constitutional law; capital gains and taxation law; to name only a few. Yet, when one feels vulnerable, such events seem more like threats than opportunities. And there is no doubt that vulnerability was the prevailing ethic within the Faculty during the 1970s.

258. The turnover in professoriate has already been noted. The applicant pool for both the B.C.L. and the LL.B. actually declined between 1972 and 1979, from 610 to 587 and from 506 to 498 respectively. Finally, by 1980 only 27% of the LL.B. entrants compared to 53% of the B.C.L. entrants completed both degrees. See Brierley, “Developments”, supra, note 1 at 369.

259. It is true that the entire University was going through a period of financial strigency. Yet the one Faculty which had actually designed an undergraduate curriculum responsive to the social image McGill was groping towards seemed also to be the principal target for austerity. Why this should have been the case I have been unable to discern — either from conversation with University administrators of the time, or from the archival record they left behind.

260. Between 1971 and 1979, only one professor (in 1977) was hired at the rank of full professor, and only one other professor had more than two years teaching experience when an offer of appointment was made.
University administration also affected the Law Library. As early as 1972 the Law Librarian was warning that the plant was overcrowded by at least 50% (in terms of students) and that, even though the acquisitions budget was by then among the lowest in the country, the stacks would be full by 1980. Yet these predictions drew little response — the Faculty being told that the 1966 addition was its share of the University's capital expansion programme — and by the mid-1970s the Librarian was unable to purchase all the materials listed as a first priority on the Faculty's own Acquisitions Policy.

A final concern which shaped the undergraduate curriculum during the 1970s resulted from the Quebec Bar's suspicions of law faculties generally, and from its desire (never far from the surface in any debate about legal education since the 1850s) to establish a substantial *profile obligatoire* for civil law studies. Following a student strike at the newly established Bar Admission Course in 1972, a Commission of Inquiry chaired by Judge Guy Guérin was struck to examine all facets of legal education in the province. In its brief to the Guérin Commission, the Bar sought to impose, as in the 1949-1968 period, a mandatory curriculum for more than two-thirds of the undergraduate law programme in accredited Quebec faculties.261 Even though this proposal was never formally implemented, because the Bar thereafter required Faculties to publish a list of some twenty courses upon which the professional entrance exams would be based, the impact of the proposed *profile obligatoire* on course selection in the B.C.L. programme was substantial. Primarily for lack of student interest, attributable to the extensive compulsory private law curriculum, to large enrolments in such "obligatory" courses as Banking, Bankruptcy, Municipal Law, Labour Law and Criminal Procedure, and to student wishes to take "relevant" optional seminars, such as Law and Poverty, Environmental Law, Land Use Planning and Civil Liberties, the Faculty was obliged to forego the development of additional courses in comparative law and legal theory at the undergraduate level. Balancing extensive professional demands, student interest, and political prudence left little room for development of the National Programme tuition.

Notwithstanding the efforts of many younger colleagues, and despite the invitation contained in the Curriculum Committee Report of November 1971, throughout the 1970s, the Faculty's curricular and para-curricular responses to these challenges and concerns frequently was

261. For a brief review of the events leading up to the Guérin Commission, see J.E.C. Brierley, "Paradoxes", supra, note 1 at 36-38. See also the symposium "Legal Education, Admission to the Bar and Practice in Canada" (1976), 45 *The Bar Examiner* 35 et seq., and especially the address by Dean Brierley, at 36-40.
ad hoc, and not directly related to the goal of developing a distinctive tuition for the National Programme. This inability to escape from the immediate crises of the day produced what one member of the professoriate at that time characterized as a "bunker mentality". But it also should be noted that, even among those professors most committed to the National Programme idea, the majority probably did not favour the development of a curriculum (or even a curricular option) which was grounded in the assumptions of a universalist polyjurality. That is, the "immersion" view of comparative law study propounded by Gow, in which students would study either one of the civil law or the common law as a complete system prior to experiencing the other was the dominant intellectual motif of the second generation of the National Programme. Not surprisingly, therefore, many decisions relating to the admissions policy of the undergraduate programme, to the process and objectives of professorial recruitment, and to the curriculum itself reflect a preoccupation not with expansion of the National Programme concept (and its possible transformation into a universalist enterprise), but with maintaining the general theory of the undergraduate curriculum adopted in 1968.

Insofar as admission to the undergraduate programme was concerned, in 1972 the Faculty formally decided not to adopt a common admissions pool for the two degree streams, but rather to set the number of students accepted to the first year of the common law stream at one-half the number of admissions to the civil law stream. Moreover, it was agreed that this ratio would not be altered even were the number of applicants for the LL.B. course to increase dramatically. Finally, it was determined not to permit students to apply to enter the joint degree National Programme directly, but rather to oblige them to make separate application to it either upon successful completion of the first year of the B.C.L. or LL.B. course, or upon graduation with one or the other degree. These three admissions policies, it was felt, would not

262. As in most institutions under external threat, a degree of public consensus was maintained by professors. But behind the scenes a number of younger professors were unhappy with the status quo, and with the reluctance of more senior members of the Faculty to develop the curriculum or at least permit the creation of an integrated four-year option designed along universalist lines.

263. Such an expansion in LL.B. applications did in fact occur. Between 1968 and 1975 applications for the B.C.L. grew from 268 to 706, before declining to 587 in 1979. Over the same period LL.B. applications grew from 85 to 585 in 1976 before declining to 498 in 1979. The ratio of B.C.L. to LL.B. applications thus declined from 3:1 to 6:5 over this period.

264. As early as 1971 the curriculum committee mooted various proposals for enhancing the commitment of common law students the National Programme. These included enacting a regulation to "lock-in" LL.B. students who initially declared their interest in the Programme and were admitted on this basis. Some professors even suggested the desirability of replacing
undermine the joint degree option for those students who genuinely wished to pursue it, but would assist the Faculty in maintaining a public image as a predominantly civil law institution at a time when the legitimacy of the common law programme remained under attack. Yet these policies committed the Faculty to a continuing administrative division of the undergraduate student population into B.C.L. and LL.B. classes throughout all four years of the National Programme. They were also to lead, in the early 1980s, when the Faculty was still accepting a high percentage of CEGEP entrants to the B.C.L. and when the number of applicants to the LL.B. began to rise sharply, to unfortunate divergences in the pre-law qualifications and background experiences of the two groups of degree candidates.

The uncertainties of the 1970s also had a large bearing on the strategies for, and results of, professorial recruitment. The high turnover which dogged McGill during the Programme’s first decade became a rupture following the provincial election of 1976; the Faculty was obliged to recruit no fewer than twelve new professors over the next two years. Moreover, given the demands of the teaching programme, the Faculty determined to direct its hiring efforts primarily to attracting common law and bilingual civil law candidates whose expertise was in private law. In doing so, it hoped to reinforce perception of its commitment to the distinctiveness of Quebec’s legal system in North America. Yet, this decision and the unfortunate consequence of isolating the Faculty from many of the newer approaches to law teaching and legal scholarship which were being pioneered mainly by professors interested in public law. In view of the career ambitions of most younger Canadian-educated common-law professors at that time, these decisions led the Faculty to recruit a large number of professors having no Canadian legal education. For example, of twenty-seven professors hired between

the 3-year LL.B. pool with a separate 4-year National Programme admissions pool. Nevertheless the Committee declined to recommend either of these options primarily on the basis that they were likely to reduce even further what was perceived to be the Faculty’s already limited LL.B. applicant pool.


266. Throughout the 1970s most Canadians seeking to enter the teaching profession in a common law faculty took a graduate degree in a public law (or to a lesser extent corporate/commercial law) in the United States. The few who went to the United Kingdom usually wound up teaching private law. For statistics which support the conclusion set out in the text see the annual Directory of Law Teachers published by the Canadian Association of Law Teachers for the period 1975-1980.
1970 and 1979, twenty-one had their initial training in the common law rather than civil law. Of this number, only three had Canadian LL.B. degrees, and an additional three had Canadian graduate degrees. That is, the provenance, graduate training, and specialties of most new professors, and the need to offer both French and English language sections of private civil law courses, meant that the curriculum was dominated by the traditional forms of pedagogy and evaluation methodologies associated with the undergraduate teaching of private law in the United Kingdom and in Quebec.267

Finally, in response to the problems and challenges of the 1970s, the Faculty took a number of decisions relating to degree requirements for the B.C.L. and the LL.B., and to the undergraduate curriculum. These decisions were designed primarily to demonstrate its commitment to the civil law. As noted, the post-1968 undergraduate programme required all candidates for the B.C.L. degree to take a large number of obligatory civil law credits, and the joint programme was structured so that the fourth year tuition for B.C.L. entrants was largely an obligatory private-law year of common law studies. But this curricular structure did not appear to be promoting the joint-degree programme among common law students. In order to encourage LL.B. entrants also to obtain a B.C.L., therefore, the symmetry in cross-stream private law requirements established in 1968 was broken. Following the recommendations of the 1971 Curriculum Committee Report,268 as of 1974, all LL.B. students — including those not intending to take the B.C.L. degree — were required to take twenty credits of private civil law or comparative law courses, up from the initial requirement of six credits.269 At the same time that the Faculty sought to promote the joint degree programme by increasing the number of obligatory private law courses, it declined to establish a full legal clinic programme, to develop a panoply of “law and ...” offerings, or to proliferate advanced public law courses. Each of these minor amendments to the curriculum, it was believed, would prevent the common law from overwhelming the private civil law tradition with the Faculty, and would assist in developing the joint degree programme as the Faculty’s principal (although optional undergraduate focus.270 While

268. See supra, note 250, and accompanying text for the background to this Report.
269. The rationale for this requirement was that LL.B. students would be more likely to take a fourth year of the B.C.L. if they had already completed most of its requirements by the end of their third year in the Faculty. As with the earlier hortatory strategy for encouraging common law students to complete the National Programme, however, this requirement had a negligible impact on B.C.L. IV enrolment.
270. A continuing curricular paradox throughout this period was the insistence by many of those teaching private civil law courses that all public and commercial law subjects were
the number of French-language courses was increased slightly, because the Faculty maintained its posture of refusing to impose a mandatory second language requirement on all students, enrolments from LL.B. entrants in these courses were not substantial.

Throughout the decade little energy was expended on developing a distinctive National Programme tuition. The only undergraduate courses which consciously reflected the Faculty's intellectual ambitions were the final year course — Private International Law — and the first year theory course — Foundations of Canadian Law. The former course evolved during the late 1970s into a polyjural rather than system-specific offering and became obligatory in 1980; the latter course, while designed to engage students in the challenge of universalist polyjurality was, however, often taught during the late 1970s by the most junior members of the Faculty and took on the tenor of a conventional Introduction to Law course.271 Although certain public and corporate law offerings — administrative law, labour law, banking, bankruptcy, business associations, corporate finance, taxation — were designed as "national" courses, most were taught by professors not versed in the aims and objectives of comparative law, or even by practitioners. Hence, the opportunities for curricular polyjurality which they presented were largely unexploited. Finally, despite the obvious connexions between various upper-year private law courses in the two streams, and despite the curricular flexibility which their joint teaching invited, no comparative courses in areas such as sales, wills/successions, trusts, agency/mandate, lease/landlord and tenant, or secured transactions were developed.272

Each of these institutional responses — to student admissions, professorial recruitment, degree requirements, and curriculum — had an important impact on both the speed with which, and the manner in

common law courses, and that all new curricular initiatives — clinics, "law and . . ." seminars, and legal theory courses — were common law trojan horses. Whatever the merits of the claim, it had the effect of inhibiting these curricular developments, and of reinforcing the Badgley/Walton rather than the Day/Lee view of comparative law within the Faculty. That is, given Quebec's heterodox legal culture, those nonjurisdiction specific subjects most likely to generate universalist approaches to legal knowledge were largely ignored in the curriculum. During the entire decade the only curricular innovation which seemed to reflect the typical North American pattern of intellectual extroversion was the development, in 1979, of a joint Law/M.B.A. programme, if anything a professionally driven initiative.

271. With the exception of Professor H.P. Glenn (who also taught Private International Law) the professors teaching Foundations of Canadian Law were too inexperienced to develop the course as an introduction to the universalist model of legal knowledge.

272. There were, however, a number of comparative private law courses, of uneven merit, offered through the Institute of Comparative Law and open to undergraduates. Unfortunately, undergraduate enrolment in the best of these courses (i.e. those not simply designed to compare legislative rules of the civil law and common law) remained small.
which, the National Programme emerged as a distinctive element of legal education at McGill. Notwithstanding the promise of the curriculum as an alternative to the systemic and linguistic isolation that characterized other Canadian attempts to develop joint civil law/common law programmes, the Faculty was not able to market itself to many of Canada's best law school applicants as an intellectually exciting environment. In fact, because of major divergences between the universalist theory of the National Programme held by some professors, and the conservative approach to teaching and curricular design held by most others on the one hand, and the purely professional expectations of the majority of students on the other, student dissatisfaction with the curriculum (and, as in the late 1950s, with the Faculty generally) was widespread.\(^{273}\)

Many B.C.L. applicants who later took the LL.B. were simply interested in obtaining a professional qualification which would enable them to practise law outside Quebec, and had no real commitment to the academic aspirations of the joint programme;\(^{274}\) the small number of students admitted directly to the LL.B. stream meant, therefore, that they often felt marginalized and exploited — indeed even in their first year common law courses they were outnumbered by often jaded and absentee third and fourth year B.C.L. students. Moreover, the large number of obligatory civil law courses for the B.C.L. degree meant that even LL.B. entrants who had taken twenty civil or comparative law courses over their first three years, and who for reasons other than professional necessity were interested in the civil law — that is, the common law students who came to McGill precisely because of the National Programme — would still be required to take a virtually

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\(^{273}\) This is not to suggest either that all professors were committed to a non-professional view of the undergraduate programme, or that all students were primarily interested in a practice-oriented curriculum. But a large number of professors were committed to the National Programme and kept their courses pitched at the high level demanded by this commitment notwithstanding the wishes of the majority of their students. See the *White Paper on Legal Education at McGill* circulated by the Law Undergraduate Society during the 1978-79 academic year.

\(^{274}\) The Faculty's concern about the motivation (and motives) of fourth-year students who entered via the B.C.L. programme was reflected in a number of academic regulations. For example, to prevent them from taking only common law subjects in their first three years (and then petitioning the Faculty to change their degree stream), one compulsory LL.B. course — Civil Procedure — was made available to B.C.L. entrants only in their fourth year. Again, to prevent students accumulating the 125 credits necessary for both degrees by Christmas of fourth year at least one obligatory common law course (often Wills and Estates) was scheduled only in second semester.

These two requirements were perceived by students as unjustifiable restrictions on course selection and, not surprisingly, as evidence that they were not to be trusted.
obligatory tuition of private civil law courses in fourth year. Thus, the paradox of the National Programme curriculum during its second generation model was that almost all final year B.C.L. entrants wanted Bar-admission type courses in the common law, while most final year LL.B. entrants wanted a civil law programme providing a greater intellectual challenge (largely it appears because they did not see themselves as likely to practice in Quebec).

The climate of the 1970s was such that the Faculty was not able to capitalize fully even on those few opportunities to develop the undergraduate curriculum which actually did arise. In particular, the theoretical component of the National Programme remained limited. No distinctive approach to comparative law or comparative legal research emerged from the Faculty’s experience with its joint programme. In addition, many North American scholarly developments which seemed to be coherent with McGill’s ambitions (for example, an increased interest in European legal theory and in law and society studies) were not pursued vigorously within the undergraduate curriculum. As a consequence, rather than being admired within the Canadian law teaching community as truly innovative and challenging, the National Programme began to be perceived in some circles as anachronistic and idiosyncratic.275

Far from attracting the very best students from across the country and preparing them for a leadership career in national legal institutions or in the public service, the Faculty admitted an undergraduate population which remained predominantly drawn from and focussed on Quebec and central Canada. Few alumni and alumnae of the period went on to graduate school, sought judicial clerkships, or entered the law teaching field, even though all three presumably would be natural avenues for students completing a bilingual and bijural undergraduate programme. Again, far from attracting large numbers of applicants for teaching positions from among the leading candidates in Canadian and foreign LL.M. and S.J.D. programmes, the Faculty often found itself unable to compete with other law schools for these aspiring professors.

275. This perception was, at best, unfair. In my view it resulted from a real lack of understanding of the National Programme arising mainly from a continuing commitment to the professional model of legal education within the Canadian law school professoriate. Interestingly (and ironically) many of the concerns which came to preoccupy common law schools in the 1980s — the admission of women and minorities, their recruitment as professors, legal theory, law and society research — were already beginning to be addressed at McGill in the late 1970s. Yet because the specific contribution of the National Programme idea to these issues was never given an explicit theoretical statement, the Faculty forfeited any claim it might have had to providing intellectual leadership on such questions within Canadian legal education.
Nevertheless, after a decade of struggle against logistical concerns which often seemed insurmountable, and against political forces both within and external to the University which were not supportive of its undergraduate degree programmes, by the late 1970s there were signs that a revised curriculum more attuned to the intellectual ambitions of a universalist National Programme might emerge.276

At that time, a number of factors came together in a way which enabled the Faculty to take the initiative in considering revisions to the B.C.L. and LL.B. curricula. To begin, the coincidence of the 10th Anniversary of the common law programme and the 125th Anniversary of the formal establishment of the Faculty became an occasion, in 1978, for promoting the four-year National Programme among alumni and students.277

In the 1977-78 academic year a second gold medal, the Aimé Geoffrion National Programme Gold Medal, was founded in order to recognize the top graduate of the double-degree course. That same year, as a complement to the $1.1 million endowment it was in the process of raising under the McGill Development Programme for the Law Library,

276. The next several pages should be seen in large measure as a continuation of the story told in J.E.C. Brierley “Developments”, supra, note 1, which served as the ground for the discussion of the first two phases of the post-1968 National Programme.

It is important to signal at this point that the interpretation given to these first two curricular phases of National Programme is not intended as an implied criticism of the Faculty's administration, of its alumni, of its professoriate, or of its student body between 1968 and 1982. I have dwelt on certain negative aspects of the story for two reasons. First, to illustrate how consistent the environment of legal education at McGill has been over the past 140 years, and to give some comparative content to these historical struggles. For example, the pressures under which the Faculty existed during the 1970s were remarkably similar to those which vexed the initial LL.B. programme in the period 1915-1925, and which almost closed the Faculty in the 1880s. One comes away with a significantly deeper appreciation of the achievement of Trenholme, Lee and Corbett — and a high opinion of Principal Currie — when one sees these same issues in a contemporary light.

Second, with such detail made explicit, the fact that Deans Durnford and Brierley (both of whom were named during the late 1970s to the Macdonald Chairs previously held by Scott and Cohen) were able to keep an English-language civil law Faculty — let alone a civil law/common law, and partly bilingual National Programme — functioning during the period 1969-1984, can better be seen as the accomplishment that it was. For those not familiar with the context within which the McGill Faculty of Law was required to operate after 1968, the failure to move the National Programme further along towards achieving some of its promise may appear inexcusable. For those familiar with that context, its very survival verges on the miraculous.

277. Much of the detail and the following paragraph is taken from the Faculty’s Annual Announcements for 1978 and 1979, and from the Dean’s Alumni Newsletters dated March 1978, Fall 1978, Spring 1979, Fall 1979 and Fall 1980. The latter sources, even more than the two Annual Announcements, give a sense of the direction and ambitions of Faculty at the time in that they were typically composed by the Dean and drawn from his Annual Report to the Principal.
the Faculty launched the 125th Anniversary Fund, the McGill Law Journal Trust, and the Caron Memorial Fund. The 125th Anniversary Fund generated several entrance scholarships and bursaries which, along with the Wainwright Scholarships and the Faculty’s National Programme Scholarships became important vehicles for promoting the four-year programme. It also marked the first step in the rapprochement of many McGill alumni at the Bar of Quebec, who — no doubt awakened to the potential of the common law programme by the election of the Parti Québécois — began to support financially the concept of a National Programme. As Dean Brierley wrote in the March 1978 Alumni Newsletter:

the Faculty has . . . taken up a unique challenge, the importance of which is undeniable at a time when, across the country, there are signs of a growing parochialism in attitudes. . . . Our record has, I believe been good, and one of which all graduates and friends of McGill can be proud. Their . . . financial support is certain testimony that they share my view . . . [and] . . . the values which the McGill Faculty of law has come to represent.

The McGill Law Journal Trust Fund, established to mark the 25th Anniversary of the Journal, and the Yves Caron Memorial Fund, created to honour the dynamic young civil law scholar who died in 1977, were two further fundraising projects which served to promote the polyjural and bilingual scholarly ambition of the Faculty.

Several other non-curricular developments of the time also helped set the stage for renovations to the undergraduate programme. In 1977 the Civil Code Revision Office submitted its final Report. Once again Professor Crépeau, who had assumed the Directorship of the Institute of Comparative Law in 1975, was able to take a more active role in promoting the civil law within the Faculty. The Wainwright Lectures became well established, and a Visiting French Lecturers programme was created in order to reinforce McGill’s ties with its civil law heritage.

278. The McGill Development Fund was a multi-year capital campaign launched by the University in 1973. The Law Faculty identified the Library as its principal need and this time, even though the student/faculty ratio had grown to almost 23:1, one of the largest in the country. This campaign was a modest success, and by 1975 the Library collection was to exceed 100,000 volumes.

279. During its first decade many of the harshest critics of the National Programme were McGill B.C.L. alumni, who saw the common law programme as facilitating the disappearance of an English presence in the Quebec legal community. After 1976 several earlier sceptics came to see the Programme as a means of assisting in the development of Toronto and Ottawa branch offices for Montreal firms, and as a vehicle for expanding their practice in the international commercial law field. While this reconciliation with Quebec-based alumni was slow in developing, during the 1980s it became an important political and financial asset for the Faculty.

280. The effective deployment of the Wainwright Trust vexed the Faculty in the early 1970s.
Moreover, in anticipation of an expansion in the graduate programme, the University made another old mansion on Peel Street available to the Faculty.\textsuperscript{281} This building was to house the two Institutes — in Air and Space Law and in Comparative Law — as well as the new Research Centres in these fields funded by the Quebec government's Fonds F.C.A.C.\textsuperscript{282} Finally, by the end of the decade the Faculty began to reconcile itself to the implications of the French language policy which it first formalized in 1968. In the Spring 1979 Newsletter, Dean Brierley wrote at length about the presence of French in the curriculum, about the number of students and professors who claimed that language as a mother tongue, and about the increasing degree of bilingualism in all Faculty activity.

After the turn of the decade, these initiatives within the Faculty were complemented by four other developments which enabled revisions to the undergraduate curriculum again to become a priority at McGill. Following the Quebec sovereignty association/independence referendum of May 1980 much of the psychological uncertainty which afflicted the Faculty, and dissipated both student and professorial energy in the 1970s, began to subside. This positive climate continued even after the re-election of the Parti Québécois government the following year.\textsuperscript{283}

By mid-decade, however, several initiatives — lectures, research fellowships, scholarships — were in place. The first two Wainwright Lectures were delivered by Mr. Justice Albert Mayrand — \textit{L'inviolabilité de la personne humaine} (1973), and Joseph Dainow — \textit{The Civil Law in a Mixed Jurisdiction} (1975). Paul-André Crépeau was named Wainwright Professor of Law in 1975; in 1977 and 1978 Madeleine Cantin Cumyn and Pierre-Gabriel Jobin (respectively) held positions as Wainwright Research Fellows. Beginning in 1975 the Faculty offered two four-year undergraduate Wainwright Scholarships in support of the National Programme. As for other civil law initiatives launched by Professor Crépeau, among the most significant was the French visitors programme. In 1978 and 1979 two eminent French jurists (Henri Battifol and Jacques Ghestin) taught at McGill under the French-visitors programme. 281. The first element in this expansion dates from the arrival of Armand de Mestral as a professor at McGill. In 1977 the Faculty established an International Business Law Programme under his leadership within the Institute of Comparative Law. This programme attracted some fifteen students each year, the majority of whom came from Europe to pursue a specialized LLM. By 1979 the graduate programme welcomed over forty new students each year, about twenty in each of its two Institutes.

\textsuperscript{282} The Fonds F.C.A.C. (Formation de chercheurs et actions concertées) recognized and funded the Centre for Research in Air and Space Law in 1977, and the Centre for Research in Private and Comparative Law in 1979. This second Centre inherited the Archives of the Civil Code Revision Office, and, under the direction of Professor Crépeau, assumed a major role in promoting civil law research within the Faculty.

\textsuperscript{283} In my view, much of any institution's capacity to innovate is determined by external forces. When a political context is unstable, institutions generally tend to resist any change which produces uncertainty and which requires accommodation to new ideas and processes. For McGill in the late 1970s, the fact of a Parti Québécois government and its language policies \textit{per se} was not nearly as much a destabilizing influence as was the possibility of sovereignty — a possibility which seemed to threaten the continuation of the institution itself. Hence, the re-election of the Parti Québécois following the referendum did not have nearly the
Moreover, in 1982 McGill University instituted a scheme of Cyclical Reviews of its various academic units. The Law Faculty was among the first to be reviewed and, as a direct consequence of this evaluative exercise, was encouraged to develop its comparative teaching programme, and was authorized to expand its teaching complement.  

Third, certain changes to the Bar's *Cours de formation professionnelle* (in part provoked by the various *Avis* of the *Office des Professions*) led, by mid-decade, to a new accommodation between the law faculties and the Bar of Quebec, which removed much of the latter's remaining influence over the details of the undergraduate curriculum. Finally, with a more stable young professoriate less trouble by Quebec politics, and with the first group of "French-immersion" students from across the country making McGill their Faculty of choice, extensive curricular innovation seemed possible. Almost spontaneously, a number of professors and students began to suggest new ways of putting into practice the ambitious curricular vision made possible by the establishment of the National Programme of 1968.

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284. The result of this review stands in sharp contrast to that of the in-house review undertaken in 1979-80, when the Faculty was asked by the University to produce a plan for reducing its budget by up to 25%. Moreover, the 1982 Report of the Cyclical Review Committee — a Committee chaired by the Vice-Principal (Academic) — was also an important psychological boost for the Faculty since, for the first time, it appeared to suggest the University's full commitment to the National Programme, and to providing the Faculty with at least some of the resources needed to develop the Programme's teaching and research potential. Over the period 1960 to 1990, the size of the professorial complement grew in two spurts. Between 1962 and 1968 it rose from 8 to 22, and between 1982 and 1988 it rose from 26 to 34.

285. See J.E.C. Brierley, "Paradoxes", *supra*, note 1, at 39-41. See also Y.-M. Morissette, "Testing Professional Skills in the Quebec Bar Admission Programme" (1988), 57 *The Bar Examiner* 13, for a detailed review of the elements of the new fourth-year professional training programmes. The external threat to the legal professions represented by the *Office* forced the Bar and the Quebec law faculties to develop a joint strategy for maintaining control over legal education, in which for the first time since the 1860s, the faculties were able to exercise significant power.

286. This is not to say, obviously, that such speculation about the joint B.C.L./LL.B. course was absent from the Faculty between 1968 and 1982. Many younger professors such as William Foster, Jane Glenn, Philip Slayton, David Cayne, Michael Trebilcock, Yves Caron, Richard Field, Brian Slattery and especially Patrick Glenn had always sought to promote the National Programme as a distinctive curricular endeavour. Yet because most stayed at McGill only three or four years, — with only the first two and last remaining with the Faculty throughout the 1970s — the impact of their ideas about the National Programme on the curriculum was not substantial.

Again, while some students — such as Robert Couzin and John Tait in the mid 1970s and several of the authors of a curriculum "White Paper" in the late 1970s — sought to develop the bijuridical and bilingual character of the National Programme, they were clearly in the minority among their peers. Most undergraduate students of the period were interested in the
For all of these reasons, the early 1980s saw the emergence of a third generation model of the National Programme (i.e. 1982-1989), in which the idea of a fully integrated, theoretical, bilingual and universalist polyjural programme gradually became the focal point of Faculty planning. Over the decade, the term National Programme was transformed from a label attaching primarily to an undergraduate curricular idea, into a concept which was also the touchstone of B.C.L. and LL.B. admissions requirements, professorial recruitment, graduate studies, library acquisitions, and Faculty research. Moreover, in this third generation version, the undergraduate teaching programme itself began to be understood by a large number of professors and students in much the same manner as Charles Dewey Day initially envisaged the universalist mission of the McGill Faculty of Law. And with this understanding came the realization that many of the attributes of the initial post-1968 curriculum (including the degree requirements for the joint B.C.L./LL.B. programme) might, paradoxically, have reflected one of the concepts of legal education which the addition of a common law course ostensibly was designed to overcome.

National Programme simply to achieve professional qualification in both the civil law and the common law.

287. The establishment of a joint French law/English law programme, co-sponsored by the Universities of Paris and London, also gave intellectual respectability to the National Programme among those both at McGill and elsewhere who were accustomed to deferring to European precedents. See the notice published in [1978] Rev. Int. de dr. comp. 841 which announces (and justifies) the programme in terms which closely track those employed by Cohen in his 1967 Senate presentation.

288. The earliest statement of this new direction for the Faculty and for of the National Programme appears in the Dean's Message reproduced in the Faculty Newsletter of Autumn 1980. In this Newsletter Dean Brierley reviewed the geographical distribution of McGill graduates, the diversity of careers they were pursuing and role of the National Programme as a bijuridical and bilingual curriculum in meeting the challenges of specialization and internationalism in the legal practice of the future.

289. It is implicit in this sentence that the theory of the National Programme (to the extent any such theory is discernible) during its first two models was more in the Badgley-Walton-Smith genre than the Day-Lee genre. From 1968 to 1982 the undergraduate programme more or less stressed the inculcation of two private law traditions, understood as "national legal orders". Beginning in the mid-1980s, however, the ideas about legal normativity reflected in the scholarship of J.E.C. Brierley and H.P. Glenn (e.g. J.E.C. Brierley, "Codification" supra, note 27; "Quebec's Common Laws", "Co-existence of Legal Systems" and "La notion de droit commun", supra, note 6; H.P. Glenn, "Persuasive Authority", supra, note 5; and "Le droit comparé" and "Reception", supra, note 6) began to percolate into one or two private law courses other than Private International Law, and into a few public and commercial law courses such as administrative law, corporation law and government control of business. For Glenn's most recent views see "Unification of Law, Harmonization of Law and Private International Law" in J. Erauw, et al. eds., Liber Memorialis François Laurent 1810-1887 (Brussels: Story-Scienta, 1989), at page 783.
Towards the end of his tenure, John Brierley promoted several initiatives by which a metamorphosis of the second generation model of the National Programme which he inherited at the outset of his Deanship in 1974, was accomplished. In order to demonstrate how this transformation — which brought the curriculum of Faculty to the verge of a universalist polyjurality adapted to the late twentieth century — it is necessary to look at these proposals in detail.

A first change in orientation affected the admissions process for undergraduate students. Interest in the National Programme as a bijuridical experience, and ability in both English and French explicitly became key elements in admissions decisions, as the Faculty appointed an Associate Dean (Admissions and Placement) to supervise student recruitment. In part for this reason, the composition, character, and expectations of the undergraduate population was transformed during the 1980s. In nine years the applicant pool grew by over 75%; while the number of students seeking admission to the civil law degree stream remained relatively constant, the number of applicants to the common law stream more than doubled. At the same time, applications originating from outside Quebec increased to almost one-half the Faculty total. By the end of the decade, several students in the first year class held Masters and Doctoral degrees, and the number of enrollees coming directly from CEGEP declined to about a dozen. Moreover, towards the end of the decade, the number of francophone students registered in the Faculty once again began approaching the one-third ratio seen during the 1950s, and allophone students (including those from visible minorities) became the largest single group of enrollees. Throughout the late 1980s, women comprised about one-half the total undergraduate population.

One of the most encouraging developments for professorial promoters of the four-year National Programme was the marked increase in the percentage of bilingual anglophone and allophone students registering for both B.C.L. and LL.B. degree streams. For most of these graduates of

290. Most of these ideas were sketched in the Self-Study Document drafted by Dean Brierley for the 1982 Ad Hoc Review of the Faculty, and were gradually implemented (with only minor variations) over the period 1984-1989 by his successor as Dean, the present author. Indeed, the period 1984-1989 was almost unique in the Faculty’s history in that it escaped the financial cutbacks, political uncertainty, student unrest and professional intermeddling in the curriculum which seemed like permanent features of its existence. The importance of this good fortune to the development of the curriculum of the National Programme during the 1980s cannot be discounted.

291. Notwithstanding these changes to its catchment the Faculty declined to establish a common admissions pool for both degree streams, or to revise the 2:1 ratio of B.C.L. to LL.B. acceptances. While both these ideas were discussed on several occasions during the 1980s, in each instance it was concluded that, for political reasons, they could not be implemented prior to the creation of a common, obligatory three- or four-year National Programme.
French immersion programmes who grew up nourished on the vision of Canada as a bilingual country, the prospect of studying the civil law in French became not a disincentive as previously had been the case, but an important attraction of the National Programme. In fact, during the late 1980s the vast majority of undergraduate students took both B.C.L. and LL.B. degrees, and the number of them who later enrolled in graduate school or sought out employment in the public service and in law faculties rose dramatically.\textsuperscript{292} Not surprisingly, the increased qualifications and expectations of these students began to have an impact on the curriculum of the National Programme: this was especially evident in relation to the increasing pressure for courses in comparative law and legal theory, and to the demand for French language instruction.

The character of the McGill professoriate also changed considerably during the 1980s. For the National Programme’s first dozen years budget restrictions prevented the Faculty from substantially increasing its professorial complement, even as student enrollment increased. Following the Cyclical Review of 1982, however, the University authorized the Faculty to create six new entry-level positions. As in the period immediately after 1968, the promise of the National Programme proved attractive to several young applicants for teaching positions. Most newly appointed professors could claim to have received at least some training in both the civil law and the common law, and to be bilingual. Almost all took their first law degree in Canada (some as National Programmes graduates of McGill), and most were partisans of the North American model of undergraduate legal education and of its theoretical ambitions. Finally, by contrast with the 1970s, when the Faculty faced a constant turnover among its younger teaching staff, the following decade saw a stability in the professoriate which permitted a relatively coherent theory of the Faculty’s teaching and research objectives to begin to develop.\textsuperscript{293} Again not surprisingly, the interests, attitudes and expectations of the teaching staff had a key influence on changes to the

\textsuperscript{292} For its first century, McGill had always been a Canadian leader in these respects, although during the 1970s the Faculty seemed to attract a larger percentage of careerist students for whom graduate study and public service were not priorities. Between 1982 and 1989 the traditional pattern began to reassert itself, as an average of ten students per year pursued graduate study. Over the same period McGill contributed more than a dozen new professors to various Canadian law faculties and twenty law clerks to the Supreme Court of Canada.

\textsuperscript{293} Even though the particular demands of bijuridicism and bilingualism significantly limited the pool of candidates for teaching positions, over this period the Faculty was able to attract all but two of the ten persons to whom it made tenure-track offers. Moreover, between 1983 and 1989 only two professors resigned tenure-track positions, one to take up a named Chair at a U.K. institution.
The curriculum of the National Programme: seminars in public law and legal theory were established, new "national" courses were developed in private law subjects formerly taught as strictly B.C.L. or LL.B. courses, and the focus of course content became less system specific.

While the 1980s witnessed a transformation of both student population and teaching staff as the universalist potential of the National Programme became more apparent, the major change to the practice of the Programme over that decade occurred in relation to the B.C.L. and LL.B. degree requirements and to the undergraduate curriculum. Following a favorable reaction to its proposals in the Report of the 1982 Ad hoc Review Committee, the Faculty consciously set about trying to define a distinctive component to the National Programme and to make it the centrepiece of undergraduate teaching. Several major modifications to the curriculum were enacted in five years. At certain times, students in each year in the Faculty were subject to a different set of degree requirements, and the 1989-1990 academic session was the first in ten years not affected by a transitional regime. Many professors characterized the pace of change as frenetic; others, by contrast, pressed for further reforms so as to transform the B.C.L. and LL.B. courses into a single undergraduate programme.

A primary theme in this curricular renovation involved the substantial (and continual) amendment of the formal requirements for the two degree streams. Three main objectives were pursued. Between 1982 and 1986, the Faculty sharply reduced the number of obligatory subjects for each degree and the total number of such courses required for the National Programme. Students entering the Faculty in 1989 were required to take only three private law obligatory courses in each of the civil law and common law streams and seven other obligatory courses — a reduction from 91 to 53 compulsory credits over the four-year programmes.

The conception of the National Programme as an integrated four-year course of study was also strengthened by eliminating the sequential route to obtaining the B.C.L. and LL.B. degrees. This modification, initially mooted in 1972, represented a major reorientation in the theory of the undergraduate programme, and sharpened the

294. With the exception of the first-year subjects Foundations of Canadian Law, Criminal Law, Constitutional Law and Legal Writing, these obligatory courses remained primarily in private law fields. But apart from the three first-year courses and Private International Law, all could be taken from a list of "semi-obligatory" courses. Thus, candidates for the LL.B. were required to take two courses from the following list: Equity, Restitution, Remedies, Commercial Transactions, Family Law. Candidates for the B.C.L. were required to take three courses from the following list: Administration of the Property of Another and Trusts, Family Law, Successions, Security on Moveable Property, Security on Immoveable Property.
meaning of expression. Finally, the centrality of the National Programme to the undergraduate curriculum was emphasized by requiring students to opt out of the programme at the end of three years (rather than by having them opt in at the end of first year) and by recharacterizing the former B.C.L. and LL.B. degree programmes as mere “streams” within the National Programme.

Many younger professors complained that these three modifications to the Faculty’s degree requirements were largely cosmetic and were insufficient to permit the creation of a true four-year National Programme. Yet student perception of the purposes of the McGill undergraduate tuition began to change once the rhetoric and processes of curricular choice put the initiative on students NOT to pursue the National Programme. Between 1985 and 1989, the number of LL.B. entrants graduating with both degrees almost doubled, while the number of B.C.L. entrants completing the National Programme remained constant at about 80%. The changes noted in the previous paragraph also had two important symbolic effects. They indicated to students that degree requirements, curriculum, teaching timetable, and informal academic programme would be designed around the four-year Programme. For the first time, the National Programme would no longer be treated as an “innovative appendage” to the two separate three-year B.C.L. and LL.B. degree programmes; these degree streams would, rather, be the two routes by which students would eventually complete the four-year National Programme. Second, these modifications suggested the importance to the undergraduate teaching programme of comparative law and “national” courses in both public and private law.

295. The changing perceptions of the National Programme idea within the Faculty can best be tracked by reference to the Academic Regulations governing the award of the B.C.L. and LL.B. degrees. Between 1968 and 1972 it was not possible for a student to graduate with both degrees at the end of four years’ study. Students could only enter the second degree programme after graduating with a first degree. Between 1972 and 1985 students could obtain both degrees either (i) “sequentially” — by taking a first degree after three years (95 credits), and enrolling for a fourth year (30 credits) to obtain the second degree, or (ii) “jointly” — by taking both degrees after four years (125 credits). During this period, most students followed the sequential, rather than the joint route, to the National Programme. By 1985 the programme had been redesigned so that it was not possible to obtain a second degree in one year after taking a first degree in three years. All National Programme students graduated with both degrees after four year’s study.

296. Two examples of administrative adjustments made in 1986 will illustrate this idea. First, it was decided that priority in course registration would be given to fourth year graduating students over third year graduating students. No longer would third-year graduating students not balloting for a course preference be able to claim equal priority with double-degree candidates in fourth year. Second, courses were scheduled and were announced as being scheduled so that timetable conflicts would be minimized for National Programme students, even at the expense of single degree students.
Even though no new uniquely National Programme seminars in upper year private law subjects were immediately established, for the first time the possibility of so doing became both viable and generally thought desirable.297

During the 1980s, the Faculty not only undertook to modify significantly its formal degree requirements, but it also sought to renovate the structure and content of the courses taught in its undergraduate curriculum. Several themes were pursued as vehicles to enhance the emerging universalist ambition of the National Programme. The private law component of both B.C.L. and LL.B. degree streams was reoriented to emphasize comparative teaching; the Faculty established a number of legal theory courses designed to promote the intellectual ambitions of the National Programme; and, a larger pool of courses taught in the French language was generated. Together, these developments permitted the Faculty to articulate more clearly a bijuridical and bilingual vision of the undergraduate curriculum which, for many professors and students of the 1980s, was thought to be at least implicit in the decision to create the National Programme in 1968.

Experience with the first two models of the National Programme curriculum suggested certain defects of its initial design. Most importantly, the National Programme failed to encourage the comparative teaching of private law at the undergraduate level. In keeping with the views set out in Gow’s original memorandum in 1965, the original curriculum was grounded on the assumption that undergraduate students should take the private law courses of each degree stream sequentially. As part of the creation of a third generation model, however, several steps were taken to refocus the teaching of private law within the National Programme. The first-year curriculum was substantially reorganized so as to provide students in each stream with a solid theoretical grounding in private law. In the B.C.L. stream, the number of first-year private law credits was increased from eleven to sixteen and all such courses were extended from one semester (the norm

297. During much of its first two decades, the enhancement of the Faculty’s basic private law tuition in both the civil law and the common law was such a preoccupation that the possibilities of polyjuralism in public and commercial law courses were often overlooked. For example, rather than developing the Bankruptcy course into a comparative Creditor’s Rights type offering, the Faculty decided to establish two system-specific courses: a Debtor-Creditor course (LL.B.), and a course entitled Protection and Enforcement of Creditors’ Rights (B.C.L.). A similar fate befell Business Associations, where its two sections were advertised as being directed towards B.C.L. or LL.B. students as the case may be, and Insurance Law. Moreover, even legal theory courses tended to be taught to a system specific substantive groundwork. After 1985, the Faculty Council determined that future curricular innovations should be designed to promote comparative and polyjural teaching.
in Quebec civil law faculties) to full-year offerings. In the LL.B. stream, the first year private law courses remained as Property, Contracts, and Torts, taught throughout the year in parallel with the B.C.L. courses, but they were intended to have an explicit theoretical and polyjural orientation. These private law courses were also made the focus of the legal research and writing programme.

To support the transformation of the first-year private law curriculum, the Faculty moved by stages to exclude upper-year students from these courses. In 1982, the cross-stream private law requirements were all collapsed into the second year. From 1968 through 1972 students had been required to take these courses in third and fourth years, while from 1972 through 1982 these requirements had been spread throughout second, third and fourth years. While the 1982 adjustment improved the sequencing of private law courses for National Programme students and gave them a thorough and intense immersion in the private law of the second system in a single year, it did little to relieve the dissatisfaction of second year students who were obliged to take almost one-half their courses with their first-year colleagues. To overcome this dissatisfaction and to enhance comparative study of private law, in 1985 the Faculty established separate and abbreviated upper-year sections in the basic private-law courses for cross-stream students. In this revised programme, for example, the common law contracts course taken by second-year B.C.L. entrants would be taught on the assumption that students already had internalized the rudiments of contractual ordering during their first-year civil law Obligations course.

At the same time that the first-year second-year private law programmes were given (at least in principle) an explicit universalist orientation, the Faculty created additional private law offerings intended to be taught on a comparative basis. Beginning in the 1987-88 academic year, Evidence, Civil Procedure, Land Sales Financing, and Children and the Law were added to Private International Law as comparative courses designed for students enrolled in both streams. These new courses were established in consequence of the reduction in the number of upper-year obligatory (or semi-obligatory) private-law courses, and immediately

298. Prior to 1982, the fifty students in the first year of the LL.B. stream typically would be swamped by 100 second-year B.C.L. students in their Contracts course, by 100 third-year B.C.L. students in their Property course, and by 100 fourth-year National Programme students in their Torts class. A similar though less severe regime prevailed for first-year B.C.L. students. The 100 first year B.C.L. students were not overwhelmed by the presence of 50 upper-year common law students, but because many LL.B. students showed no interest in (or even tolerance for) either magisterial teaching or in the epistemology of codal exegesis they were often a disruptive force in the first year classes.
became popular options among National Programme candidates. As substantive undergraduate courses, they thus complemented the more specialized graduate courses in Comparative Civil Liability, Contemporary Private Law Problems, and Comparative Medical Law, which were maintained as Institute of Comparative Law seminars open to National Programme students.

Together, these developments enhanced the polyjural and comparative features of the undergraduate curriculum. They also stimulated demand for legal theory workshops and programmes, and for jurisprudentially oriented courses as a key element of the National Programme. Between 1982 and 1989 a number of new theoretical seminars were established: in Legal History, Feminist Legal Theory, Literary and Linguistic Approaches to Law, Law and Economics, Tax Policy, Tort Theory, Economic Regulation, Advanced Jurisprudence, Legal Theory, the Legal Profession, the Legislative Process, and the Administrative Process. The challenge to the National Programme was to ensure that at the theoretical level, it maintained a polyjural character, consciously reflecting both civil and common law dimensions. This key goal, however, was only modestly achieved in most of these new legal theory courses. Proponents of the new National Programme recognised that unless legal theory were understood as a means of ventilating and comparing differing approaches to legal normativity, the Faculty's emerging universalist orientation would be supplanted by the unificationist model of the undergraduate programme rejected in 1853 but always lurking on the margins of its curriculum. Indeed, establishing a complementarity between legal theory in its various non-comparative dimensions and the comparative intellectual ambitions of the National Programme was to be the unfinished agenda of its third generation model.

A final important curricular initiative within the National Programme after 1982 was the decision to increase the Faculty's inventory of French-language and bilingual courses. While the original proposal of the Resources Committee in 1968 had two principal components—a common-law programme and a French-language programme—the presumed exigencies of law society accreditation and the restrictions on university funding meant that for several years, the French-language

299. Two distinct features of the Faculty's extroversion to legal theory reveal the challenges which this development represented. First, each of these new courses was established and taught by a common law trained member of the professoriate, and not a single course was proposed (or offered) by a professor teaching a Civil Code subject. Second, for several years the legal theory workshops and distinguished visitors programmes were dominated by English and American scholars, most of whom were either unfamiliar with (or uninterested in) the civil law and comparative law.
programme did not develop as initially expected. Prior to the 1980s, not only did the Faculty not have the resources to augment the number of French-language courses (or sections or courses) it offered, it declined to explore the possibility of imposing a mandatory second-language requirement for B.C.L. students as a means of building demand for the French-language programme. By the end of the decade, however, the Faculty usually offered between 20 and 25 courses or sections of courses in the French language, up from the eight or nine usually offered in the late 1970s. All first-year courses for the B.C.L. stream were routinely taught in French and English, and a number of upper-year civil law courses such as Matrimonial Regimes, Judicial Law and Evidence, and Lease, Loan and Deposit were given exclusively in French.

Yet, two other possible components of a French-language undergraduate programme, both of which were mooted on more than one occasion, did not garner sufficient support for the formal adoption. Even though the 1980s saw an expansion in the number of federal law courses taught in French as part of the B.C.L. curriculum, the Faculty determined not to offer a French-language common law programme. And, notwithstanding the overwhelming number of bilingual students in both B.C.L. and LL.B. courses, it was not felt advisable to reinstitute (either de jure or de facto) an obligatory French-language requirement as a component of the undergraduate curriculum. Thus, despite considerable development of the French-language programme after 1982, this component of the 1968 National Programme proposal remained, even in the third generation model, more or less on the margins of the curriculum, rather than essential feature of the undergraduate tuition.

300. In the earliest proposals for a French-language programme, the idea of teaching the common law in French was only obliquely raised and then quickly dismissed. After the foundation of the French-language programme at the Université de Moncton in 1977, the idea was considered afresh and a formal decision was taken not to institute the teaching of pure common law subjects — property, contracts, torts, trusts, wills, restitution, commercial transactions, real estate transactions, landlord and tenant, agency, partnership, remedies — in French. At the same time, it was agreed that federal subjects — criminal law and procedure, constitutional law, administrative law, international law — and corporate/commercial subjects of pan-Canadians scope — banking, bankruptcy, corporations, taxation — would be offered in French were there sufficient student demand. See, J.E.C. Brierley, “Developments”, supra, note 1.

301. While the Faculty never formally adopted a French-language requirement even for the B.C.L. degree, between 1857 and 1897 de facto such a requirement existed. During most of this period at least one, and often as many as three courses (all of which were obligatory at the time), were taught only in French. Throughout the twentieth century, however, no basic compulsory courses have been offered exclusively in French.
From this review of its three different generational models, it is apparent that the primary vision of the formal National Programme since the inception of the common law programme in the mid-1960s was as a particular approach to the undergraduate curriculum, and to the focus of law teaching at McGill. But many professors also believed that, as the programme developed, it would ultimately play the central role in all Faculty planning implicitly announced by Gow between 1965 and 1968. During the mid-to-late 1980s a number of non-curricular initiatives revealed that the ambition captured by the term National Programme was coming to be seen in this broader fashion. As part of its preparation for McGill’s second major capital campaign, the Faculty reviewed its needs for private funding. Once again, the Law Library was placed at the top of the priorities list, although the submission to the McGill Advancement Programme also stressed the need for undergraduate scholarships and research endowments. The most important new funds which resulted were the Boulton Trust, established in 1983, two new named Chairs - the Peter M. Laing Chair and the F.R. Scott Chair, twelve new scholarships and bursaries for the National Programme students, and several Anniversary Class Gifts by which computers, lecture and workshop series, and research assistants were financed. These endowments enabled the Faculty to expand its professorial complement and to develop further the research component of its comparative law programmes. As in the 1930s, the deployment of alumni gifts and

302. One important aspect of the curriculum not discussed in the text which also reflects the agenda of the third generation model of the National Programme relates to the legal research and writing programme — first and second-year legal methodology seminars, mooting, undergraduate essays, the McGill Law Journal. Throughout the 1980s the Faculty redesigned this dimension of the undergraduate curriculum several times. A mandatory writing requirement under which students were obliged to submit an essay of at least 15,000 words in length was instituted in 1983, and in 1987 all students were obliged to take legal methodology (including computer-assisted legal research) courses in both civil law and common law. Finally the John G. Ahenn, Q.C. mooting fund was established to assist students in participating in several national and international competitive moots each year.

303. One of the central issues raised during the 1982 Ad Hoc review exercise was the general weakness of the Law Library, and its particular inability to keep up with the demands placed on it by students and professors seeking to pursue the theoretical ambition of the National Programme. Yet throughout the mid-1980s the situation of the Law Library deteriorated rather than improved, to the point where it was hampering significantly professorial research. In 1987 the Faculty received endowments from the estate of H.A. Mettarlin (B.C.L. 1926) of $375,000, as well as an additional $200,000 raised through the M.A.P. campaign. Moreover, a major grant from the Wainwright Trust permitted the acquisition of several hundred French civil law doctoral theses, and other gifts permitted the purchase of additional comparative law materials. Despite these endowments to enhance the undergraduate collection, however, the Library remained inadequate to the demands of the National Programme.
bequests was targeted specifically to the scholarly rather than professional aspects of the Faculty's activities.304

Perhaps the most important expansion in the concept of the National Programme during its third generation model was that, for the first time, its overall vision was held to apply to the Faculty's graduate as well as undergraduate programmes.305 The role of the Institute of Air and Space Law in maintaining McGill's important extroversion to international, public, and regulatory law has already been noted. Many of the members of the Faculty who adopted a polyjural outlook on international law during the 1950s and 1960s — John Cobb Cooper, Eugène Pépin, and Maxwell Cohen — were Directors of the Institute. However, for a period of about twenty years following Cohen's tenure as Director, the Institute seemed to downplay this scholarly aspect of its programmes, and functioned primarily as a service agency to governments, to the private airline industry, and to the profession. By the late 1980s, largely as a result of an Ad hoc University Review of the Institute of 1987, the international, bilingual and polyjural potential of the D.C.L. and LL.M. programmes in Air and Space Law once again came to be seen as an important part of the Faculty's curriculum — specifically targeted to foreign graduate students. In 1989, Michael Milde, (D.C.L. 1966), Director of Legal Affairs for the International Civil Aviation Organization, assumed the Directorship of the Institute and set about to resurrect its previous teaching and scholarly vocation.

But ever since the emergence of the common law programme in the mid-1960s, it was the Institute of Comparative Law (formerly the Institute of Foreign and Comparative Law) which was held out as the vehicle by which the international vocation and theoretical vision of the National Programme was primarily to be articulated at the graduate level. The development in 1977, and the reorientation in 1987, of the Institute's teaching programme in International Business Law, reflected a similar dimension of specialized and bilingual polyjurality to that initially pursued in the Institute of Air and Space Law. Under the Directorship of

304. For a complete review of developments in the Faculty between 1982 and 1988 relating to curriculum, professoriate, student population, library and finances (including an assessment of their contribution to the enhancement of the National Programme), see Parts II, III and IV of the Self-Study Document prepared by the author for the second Cyclical Review of the Faculty, undertaken during the 1988-89 academic year.

305. The best discussion of the Faculty's graduate programmes between 1968 and 1982, is given by J.E.C. Brierley, "Developments", supra, note 1, at 371. In 1988 the Faculty established the position of Associate Dean (Graduate Studies and Research) in order to enhance the connexions between the graduate curriculum and the undergraduate National Programme.
Armand de Mestral between 1984 and 1989 this component of the Institute curriculum flourished.

But the main role envisioned for the Institute at its creation in 1965 — to be the intellectual focus of the entire teaching programme of the Faculty — while always remaining present in its self-image, was never really fulfilled. Even during most of its third generation variant, neither the concept nor the content of the National Programme was significantly shaped by theoretical developments in comparative law emerging from the Institute. In 1989, this began to change. The Faculty’s leading comparativist, Patrick Glenn, who was named the inaugural Peter M. Laing Professor of Law the previous year, assumed the Directorship of the Institute, and for the first time in twenty-five years it began to generate the rudiments of a theory of comparative law which would animate the academic ambitions and the curriculum of the undergraduate National Programme.

Nowhere was the previous absence of intellectual leadership in comparative law more apparent than in the Institute’s failure to shape (or even incite) Faculty scholarship. Among the main rationales for establishing both the Institute of Foreign and Comparative Law and the Civil Law Studies Programme in 1965 was a belief that no undergraduate teaching programme of the scope ultimately proposed in 1968 could exist without a vibrant graduate programme and significant professorial research in comparative law and legal theory. Yet, for at least the first two generations of the National Programme, little McGill scholarship seemed to reflect the concept of law sustaining in the Faculty’s undergraduate curriculum. During the 1980s, by contrast, and largely as a result of the work of J.E.C. Brierley and H.P. Glenn, a distinctive scholarly tradition, reflecting the theoretical concerns explicit in the 1968 National Programme and implicit in law teaching throughout the Faculty’s history, began to emerge. This programmatic literature then was to play back into the Faculty’s curricular decisions, both at the undergraduate and graduate levels, as the universalist model of polyjurality began to gain intellectual ascendency among the

306. Finding the appropriate mechanism for weaving the Institute of Comparative Law programmes into the overall curricular ambitions of the Faculty as reflected in the National Programme was a major theme of the Ad Hoc Review of the Institute — which was also undertaken during the 1986-87 academic year. The Review Committee noted that, unfortunately, the period 1982-1987 saw a diffusion rather than a concentration of Institute energies as two new graduate programmes — in Health Law and in International Human Rights Law — were engrafted onto the I.C.L. Nevertheless, despite a strong plea for consolidation, in the first two years following the Ad Hoc Review, no restructuring of its several existing component programmes and no new integrative programmes, courses and themes in the graduate curriculum of the Institute of Comparative Law were established.
professoriate. In the late 1980s, for the first time since the turn of the century, at least some legal scholarship at McGill was dialectically engaged with the core aspects of the teaching programme in articulating this distinctive conception of law and legal study. 307

Before leaving this assessment of the three post-1968 models of the National Programme it is worth noting some of the deep commitments reflected in its undergraduate curriculum throughout the period. At a time when many other North American law faculties were explicitly adopting either instrumentalist or sceptical approaches to the very possibility of law, the recognition of legal normativity as a social reality was implicit in the universalist polyjural ambition of the National Programme; the analysis of questions of interpretation, empiricism, and interdisciplinarity was believed to be a necessary component of the teaching programme. At a time when politics began to shape many decisions about admissions, professorial recruitment and curriculum elsewhere, these concerns continued to be addressed (as they had long since at McGill) through the vehicle of the undergraduate programme; issues of language, gender, class and ethnicity were as important at McGill as at other faculties, but they were not seen as being external to the curriculum. In other words, as a universalist polyjural and bilingual curricular idea, the National Programme necessarily had to encompass a commitment to catholicity and diversity among students, faculty, and normative inquiry.

By 1989, as the formally constituted National Programme entered its third decade, it continued both to change in its detail, and to reflect the traditional curricular and scholarly preoccupations of the Faculty. In 1968 the approach to these preoccupations was (probably unconsciously) focussed on one particular model of the curriculum — that which concentrates on identifying law with the political state and with the state’s formal institutional arrangements. 308 As in the period 1915-1925, the

307. See the articles by Brierley and Glenn cited supra, note 289. It is important that this point about the complementarity of research and pedagogy not be overstated. While the teaching and scholarship of several of the Faculty’s younger professors — Baker, Stevens, Boodman, Jutras, Toop, Jukier, Kasirer and Harvison Young, to give just a few examples — began to reflect a number of the universalist themes traced by Brierley and Glenn, the curriculum of the National Programme itself was not explicitly justified on such terms. Moreover, a consensus on the future development of the undergraduate programme as a universalist polyjural endeavour could not be marshalled in deliberations leading to the preparation of the Self-Study Document submitted in connexion with the 1988 Cyclical Review of the Faculty. For this reason it cannot be said that even towards its maturity in the late 1980s the third generation model of the National Programme represented a firm embrace of universalist polyjurality with the Faculty. 308. At that time, such a territorial and temporal view of comparative legal studies was not unique to McGill. The four common law/civil law comparative programmes which emerged in the 1960s and 1970s — at McGill, at the University of Ottawa, at Paris/London and
Faculty sought intellectual extroversion mainly through private, rather than through public and international law; and, as in the period 1915-1925, it did so principally by articulating normative differences between civil and common law traditions. This "professional" or "system specific" or "scientific" comparative model of the undergraduate curriculum remained more or less dominant through two decades when the political and social climate in Quebec seemed to dictate such an approach. The fact that the expression National Programme fully captured Faculty discourse over that period is clear evidence of the strategy's success.

But the renovation of the undergraduate curriculum and the clearer articulation of its underlying theory during the last few years of the 1980s suggested a further reorientation of the programme in a manner which anticipates the probable academic agenda of many Canadian law faculties in the 1990s. With major changes in international legal ordering on the horizon — the Canada/U.S. Free Trade Agreement, Europe 1992, perestroika — with a redirection of the professional practice of law toward a more business and less liberal organization — international law firms, stratification of the profession, enlarged fields of practice — and with powerful theoretical challenges to the very identification of law with the political state — law and economics, critical legal studies, feminist legal theory, legal pluralism — many of the Faculty's comparativists began to question whether the scientific comparative law model of 1968 would remain the best vehicle for pursuing the universalist vision of legal study at McGill. After all, as the antecedents of the 1968 programme reviewed in Part One, and as its development over the past two decades examined in this Part, have suggested, far from being the ultimate (or final) goal of the McGill teaching programme, the present National Programme may well be really just another transient model for achieving the universalist, theoretical, polyjural, and bilingual goals which have characterized the Faculty's curricular ambitions since the 1850s. It is, therefore, not inappropriate to speculate on how the National Programme will develop over the next decade; and, as part of this speculation, to ask how the general intellectual orientation it has reflected over much of the past twenty years will change as the Faculty approaches its three sesquicentennial anniversaries.309

Exeter/Rennes — all appeared to be grounded in the "scientific" comparative law model. Nevertheless, for the reasons set out in the first few paragraphs of this Part, even from its outset, the McGill model was less oriented to comparing "national legal orders" than its various competitor comparative law programmes.

309. In 1989, Yves-Marie Morissette was appointed Dean of the Faculty and announced that the expansion of the Law Library, the development of the graduate programmes, and the enhancement of the comparative law component of the Institute of Comparative Law would
3. **Prospects for the National Programme: 1989 —**

From the above discussion, it is obvious that the concept of a national programme at McGill has always been more than just a particular view of what comprises the appropriate undergraduate curriculum of a Faculty of Law. The idea of a national programme — whether officially designated as such or not — is fundamentally an epistemological commitment. It follows that any assessment of the prospects for the post-1968 McGill National Programme over the next few decades will primarily be driven by beliefs about the meaning and content of the term "law". But the inquiry into the Programme's future demands that one go deeper. Implicit in the history retold in the previous two Parts of this essay are also theories about histories and about interpretations of legal belief.

It is now appropriate to attempt to make these theories explicit. Throughout this essay a distinction has been maintained between the idea of continuity on the one hand, and the idea of progress on the other. The latter has been consciously rejected as an intellectual frame. For the notion of progress (and the dynamic of evolution and perfection which it commands) is so powerful a lens that it tends to distort any internally-generated observations about an institution. Perfection requires one to find in the past not only explanations but also justifications for current beliefs and activities; and it induces the rewriting of history as an inexorable progression to the present. Even worse, like all evolutionary dialectics, the chronicle of perfection has no discernible future: It provides no standpoint from which to look ahead. For this reason, then, while the logic of progress allows one to say that the idea of a National Programme
necessarily contains elements which transcend its current manifestation, that same logic offers no insight as to what these elements are or where they may lead.

The stories told in Part One and Two of this essay have been written to the counterpoint theme of continuity. Over the past 150 years, two main features of the curriculum have been constantly in tension as the Faculty worked and reworked its teaching programme. On the one hand, the Faculty has sought to undertake internationally-oriented, multi-systemic and bilingual teaching and research in law and legal theory. On the other, it has offered an undergraduate tuition which provides training in specialized fields of domestic law and prepares students for the practice of the profession in Quebec and elsewhere in Canada. This tension is reflected in almost every facet of the curriculum, and indeed in the very expression “National Programme”. For, if anything, the theory of the National Programme which seems dominant in 1989 comprises within it an understanding of the limits of “the nation” as a means of localizing law. Nevertheless, ever since this tension first emerged at McGill in the mid-nineteenth century, it has never been resolved; and it probably never can be resolved by the Faculty itself. Indeed, however one resolves paradoxes of language, culture and legal tradition, as John Brierley points out, the result will always be incomplete and tentative, reflecting the felt needs of the time and the historical understanding which institutions bring to bear to their current situation.311

A single analogy will suffice to illustrate the paradox of polyjurality for the National Programme. Take the case of language and the challenge of bilingualism. One might begin by inquiring what is the object of learning and internalizing a second language. Is the idea of bilingualism to create a third type of discourse — an Esperanto — which could be understood by native speakers of both root languages? Or is it to assist in understanding the grammatical structure, syntax and linguistic presuppositions of a first language, and thereby to enrich the metaphorical content of one’s vocabulary and the rhetorical depth of one’s discursive style? That is, the learning of a second language can be posited either as a means of achieving uniformity in human discourse, in which one seeks ultimately to homogenize diversity; or it can be posited as a means for universalizing human understanding, in which one celebrates the distinctiveness of two symbolic modes. In the former case, one would seek to generate one single group melded together by a common vision of language and expression. In the latter case, one would

311. This I believe is the underlying thesis of J.E.C. Brierley, “Paradoxes”, supra, note 1.
seek to nurture two equally strong linguistic groups which would mutually instruct and enrich the experience of each other.  

Exactly this debate has come to dominate learned discussions of comparative law in recent years, just as it has long been present in curricular debates at McGill. The initial differences of opinion between Badgley and Day about how the polyjural ambition of the new law programme should be pursued were rooted in just this dilemma. In my view, perhaps for the first time since Walton initiated the turn to scientific professionalism in the undergraduate curriculum at the turn of the century, the universalist understanding of polyjurality is becoming ascendant at the Faculty of Law. If indeed this is the case, then the 1968 concept of the National Programme as a bilingual and bisystemic undergraduate curriculum may be on the verge of entering a fourth developmental cycle, in which it shows even greater coherence with the half-dozen traditional aspirations in the McGill law programme.

So that no misunderstanding will arise as to what curricular initiatives this notion of coherence implies, it is important to signal the claims which are not being made here about the ground on which the National Programme of the future will rest.

1. I do not suggest that the polyjural component of the curriculum necessarily will comprise only the common law and civil law traditions, other expressions of legal normativity such as those represented in systems of aboriginal law, islamic law, Soviet law, a new lex mercatoria, etc.) may well figure in the universalist extroversion of the programme.

2. Nor do I presume that English and French will forever be the only relevant natural languages for the expression of legal normativity at McGill; German, Russian, Japanese, and Chinese are also candidates for extensive deployment.

3. Nor do I argue that a polyjural curriculum must necessarily be tied to the concept of the political state; subnational and supra-national legal orders (be these community or sectarian, or be they emergent in international treaties) cannot be discounted or ignored as legal phenomena of the next decades.

4. Nor, finally, do I claim that the teaching and research programme which emerges at McGill will be a purely intellectual endeavour in which

314. These aspirations are set out supra, text immediately preceding note 4.
law is analyzed in abstraction from the technological and political realities of modern society.

Of these caveats and disclaimers about the National Programme of the future, the fourth is probably the most important in the present context, especially since the issues it raises have not been really addressed in the first two Parts of this Essay. In addition, it bears directly on more than curricular matters because it raises fundamental questions about the formation of legal élites, as well as about the relationship of law to knowledge, culture, and the symbols of culture. These issues I do not propose to engage in detail. But it is to be noted that one of the ambitions of a polyjural and bilingual curriculum must surely be to expand the range of individuals and groups who understand and can wield the various symbols of human interaction which are reflected in law’s formal institutions. To promote the ability to symbolize about law — in its institutions, in its normative structures, and in its rhetorical discourse — is the vision of legal education presented here as being fundamental to universalist polyjurality.315

What then will the National Programme look like over the next decade? As a preliminary to addressing this question, three ideas must be noted. Perhaps the most interesting point is that the National Programme will probably not survive either in its present organization or with its present nomenclature. To take the question of nomenclature first, it is probable that the widening disjuncture between the programme’s title and its intellectual ambitions will lead to its renaming, if not to the abandoning of any official designation at all. For reasons relating to its connotation of exclusion, the adjective “National” will probably disappear; nation and national suggest the antithesis of universalist polyjurality, and are increasingly the terms being appropriated by xenophobes and cultural purists. It was an accident of history that the expression National Programme should have been deployed in 1968 to describe a new curriculum whose content happened to embrace certain courses called “national” because they had an inter-provincial or “inter-national dimension, and whose professional accreditation was to extend to all provinces across the country.316


316. For the circumstances of the 1968 programme being labelled the “National Programme” see supra, note 223.
There is another problem with the term National Programme besides its connotations of boundary and separateness. The expression "national" has come to be associated with the political (or nation) state. Yet through much of the history of the Faculty, the undergraduate teaching programme has rested on a belief that no political state was entitled to arrogate to itself exclusive usage of the concept of law within its territory. The universalist vision assumes that law exists across the frontiers of nation states and that it in no way depends on formally constituted political power for its expression or authority. Universalist polyjuralism also is grounded in the belief that law exists across the boundary of time. Because legal normativity is both temporally and territorially plural, the label International Law Programme would be no better as a title for the curriculum. For it, too, symbolically locates the root of legal normativity in the present nation state.\(^{317}\)

In addition to a change in nomenclature, a significant change in the organization of the National Programme curriculum can be anticipated, to reflect the increasing integration of the separate B.C.L. and LL.B. courses. As in the years after 1915, the establishment of a distinct teaching programme in the common law in 1968 was dictated in large measure by political circumstance. In theory, there was no reason why a variant of the non-jurisdictional model of a "national law school" could not also have developed at McGill in the 1960s through an expansion in the scope and ambition of the public law, commercial law, and legal theory subjects taught in the B.C.L. programme. Such an enlargement, it will be recalled, was the organizing theme of the initial precodification curriculum of the Faculty when, except in certain limited areas, personal, commercial, criminal and public law was taught non-jurisdictionally, and when international law, Roman Law and legal history defined the programme's ambition. It was also the approach pursued by Lee in establishing Course A and Course B of the B.C.L. in 1915. To a certain extent this is how domestic law is taught today in many North American common law faculties, and how the LL.B. courses typically have been taught at McGill since 1968. Rather than focus on the "law in force" in

\(^{317}\) In view of this observation it is interesting to note the paradox in the following extract from the Supplement of the Harvard University Gazette of April 28, 1989 in which the Harvard Law School describes its "Long-Range Planning" objectives in these words: *International Program.* "We intend to become a world law school, a major centre for teaching and research in all phases of international and comparative law, with the inclusion of an international facet in nearly all our courses. This is an ambitious and, we believe, necessary and possible task, requiring pervasive changes." Even in this brief statement of ambition one sees that the unificationist conception lies behind the new programme. In this sense Harvard is proposing for the 1990s a curriculum not unlike that developed by Walton in the 1890s, Smith in the 1920s and Cohen and Gow in the mid-1960s.
one particular state or province, substantive courses are designed to ventilate a wide variety of legislative and judicial responses to social conundra, and to seek the more abstract or universal themes in common law legal ordering.

From this curricular approach it is only one step to seeing all the common law (including those variations present in the U.K., the U.S., Australia, New Zealand and India) as a mutually reinforcing normative system; and this, of course, is only one step from seeing all western private law (civil and common law) in such terms. The paradox of this model for the undergraduate curriculum at McGill, however, is that (at least in its dominant U.S. versions) it rests on a strongly unificationist vision of legal normativity. Indeed, the theory of most Canadian and American common law casebooks has been unificationist for at least half a century. For all these reasons in 1968 there was no contemporary universalist precedent for a single undergraduate curriculum which could have been adopted (or adapted) by McGill.318

Moreover, two other factors worked against building a unitary universalist undergraduate curriculum for the new National Programme. During the 1960s, the teaching of the civil law in Canada tended to be largely monojural and jurisdiction specific. Little attempt was made, at any Quebec faculty, to teach German, Swiss, Italian, Scottish, or even (surprisingly) French civil law as reflecting some non-territorial and non-temporal civilian legal normativity.319 The strong influence of the professional corporations on the law faculties also seemed to argue against even comparative recourse to European materials — including those published in French; and the fact that English was the usual second language of most Quebec private lawyers insulated law teaching and legal scholarship from most German, Spanish and Italian civil law sources. In addition, the perception among many law teachers that the civil law continued to play a leading role as a bulwark against Anglo-American culture meant that this alternative legal cross-current — not a European civilian extroversion, but a North American common law extroversion — could not be contemplated as a viable wellspring of enrichment for the teaching of Quebec private law at McGill.

318. It is also the case that, to achieve accreditation in Ontario, a separate LL.B. course was required. From correspondence with the Law Society of Upper Canada regarding accreditation requirements it was clear that an extended or universalist B.C.L. curriculum would not have been acceptable to the Benchers. See supra, note 208.
319. But see, for some evidence of a more recent tendency by courts and authors to cite French and continental sources, P.-G. Jobin, “Les réactions de la doctrine à la création du droit civil québécois par les juges: les débuts d’une affaire de famille” (1980), 21 C. de D. 257.
This feeling was especially present at McGill, given the contemporaneous Civil Code Revision project, in which the personae of Professors Crépeau and Caron was playing a leading role. By contrast with the 1866 Codification’s indebtedness to the polyjurality of Charles Dewey Day, the 1966 Civil Code Revision Project was very much grounded in the Walton/Mignault model of legal authority. While its work was in course, the preoccupation with drafting new rules of positive law for the Code prevented any alternative polyjural tradition from emerging. Thus, in the late 1960s, the concept of the private civil law of Quebec as monojural and posited was so dominant in educational circles that any attempt to re-establish a universalist programme for the B.C.L. degree would automatically have been seen as an attempt to implant a unificationist model of the undergraduate curriculum.

Yet given that the Civil Code of Quebec will soon be enacted, one may assume that this period of scientific legal statism will recede as professors and jurists begin to seek wide-ranging doctrinal explanations for, and elaborations of, its new articles. Moreover, in view of the displacement of the Code from the centre of the legal universe by public and commercial law, it is unlikely that the 1991 Code — by contrast with its 1866 ancestor — will be seen as comprising all the contemporary positive law of Quebec. In fact, because the new Code will be twice removed from its plural historical and material sources, it is likely to incite reference to other civil law (and possibly common law) sources for interpretive texture.

It follows that the claims of “political necessity” resulting from excessive legal nationalism will be less compelling over the next decade. It also follows that “political necessity” will not dictate that curricular extroversion at McGill be pursued only through scientific comparison of cognate rules of different national legal orders. If this proves to be the case, and if therefore, these arguments from history and politics are downplayed or discarded, then the external rationales for an undergraduate curriculum based on two separate private law traditions each sanctioned with its separate courses and its own degree — the


B.C.L. and the LL.B. — will lose much of their persuasiveness. Whether the National Programme thereafter retains any elements of its 1968 parallelist organization, or whether it reverts to Lee's Course A and Course B designations within a single B.C.L. programme, or whether it even recaptures Day's initial undifferentiated structure become questions opened for debate.

The second point preliminary to a reflexion on the future curriculum of the National Programme relates to the changing clientele of legal education in Canada. Further diversification in the composition of the student body and the professoriate will continue to produce a redefinition of the ambit and nature of legal knowledge and, consequently, of legal education. The increasing presence of women, visible minorities, and foreign students will break the dominant mould of the undergraduate curriculum — emphasizing scientism, *a priori* rationalism, uniformity, homogeneity, literary objectivism and formal law — which has driven legal education both at McGill and elsewhere since the turn of the century. In my view, the focus of the literary tradition on text, rights and adjudication in courts will not survive the challenge to its basic premises arising from normative pluralism. A more diverse law faculty population will generate a polyjurality at the level of informal legal normativity very similar to the polyjurality at the level of literary legal normativity implied by the Faculty's longstanding universalist model of legal authority.

Since the 1850s, the National Programme idea has shown itself to be particularly open to such developments. But over the next decade the scope and rhythm of these changes to student population and professoriate will multiply. In attracting increasing numbers of bilingual Canadians from across the country who will take significant aspects of their undergraduate training in both languages the homogeneity of social normativity within the Faculty will be diminished. Moreover, with women now accounting for over one-half the student population and with visible minorities, native Canadians, and especially foreign students most probably also entering the Faculty in increasing numbers, many of the implicit normative structures that underlie explicit doctrinal teaching will be revealed and reformed. Finally, the better integration of international graduate students in Air and Space Law, International

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322. The upshot of this point is as follows. If legal normativity comprises both explicit and implicit elements, then polyjurality is a concept which must apply to both. A diversified student population will assist in generating an awareness of polyjurality within the implicit order. For a development of this idea in an administrative law context see R.A. Macdonald, "On the Administration of Statutes" (1987), 12 Queen's L.J. 488; and for a more detailed theoretical elaboration see R.A. Macdonald, "Custom Made", *supra*, note 320.
Business Law and Comparative Law into the undergraduate programme will provoke a territorial reorientation in the materials of law study.

The same may be said of the professoriate. McGill has attracted an international professoriate since the turn of the century and especially since the 1960s. Today almost one-half of the teaching staff hails from outside Canada: some thirteen professors received their initial legal training in the United States, England, France, Belgium, Holland, Italy, Czechoslovakia, Roumania, Yugoslavia, India, Australia and New Zealand. Over the decade one may expect the Institute of Comparative Law to draw together research scholars interested in the themes of universalist polyjurality from other countries in Europe as well as Africa, South America and Asia. The consequences of a transformed student population and professoriate for the curriculum will be profound. For if the bijuridical and bilingual National Programme has produced a certain scholarly and pedagogical diversity, even without a conscious commitment to universalism, the teaching prospects for a polyjural undergraduate tuition embracing both universalism and internationalism are almost unimaginable.323

The last preliminary point which requires mention, prior to my attempting to trace a specific future for the National Programme idea, is the challenge to the intellectual assumptions of legal education (if not to the very concept of law) represented by various new developments in legal theory, and by changes to the environment of legal practice. For the past twenty years the two traditional normative theories of law — analytical legal positivism and natural law — have receded before a surge of interest in theories which either deny any special normativity to legal rules — American legal realism, Scandinavian realism, critical legal studies — or which claim alternative bases for that normativity — marxist legal theory, law and economics, and feminist legal theory in most of its variants. Compounding the conundrum are revisionist perspectives such as the law as literature, law as interpretation, law as political theory, legal pluralism, and sociological jurisprudence which, while ostensibly supporting traditional normative views, undermine its

323. It is important to note that the claim here is more than that a diverse professoriate and student population can be intellectually enriching. Universalism does not mean spreading some pax Romana across the world via the inculcation of monojuralism or unifications polyjurialism into foreign students. The diversity being sought must be complemented by a commitment to universalist polyjurality in teaching and scholarship. For this reason, I am sceptical about the value of curricular proposals such as that represented by Harvard's "International Law Programme". See supra, note 317.
internal logic through the infinite regress of interdisciplinary evaluation.\textsuperscript{324}

In tandem with this dematerialization at the theoretical level we are witnessing the breakdown of unified normative systems capable of claiming either exclusivity or pre-eminence within a given geographic area. The emergence of a new \textit{lex mercatoria} at the commercial level, sustained by bi-lateral and multi-lateral trade agreements, serviced by multi-national law firms and developed and applied by non-national private arbitration mechanisms threatens the authority of national law and legal institutions from without. The reappearance of contract as the primary social ordering device consequent upon moves to deregulate, privatize and \textit{Charterize} government activity, combined with the emergence of institutions of "alternative dispute resolution", such as private arbitrations, conciliation, mediation, \textit{etc.} threatens to undermine the authority of national law and legal institutions from within.\textsuperscript{325}

Responding to these challenges to the normativity of law and to its institutional character within the nation state promises to be a continuing priority for curricular redefinition of the National Programme. Since its founding, the Faculty has sought to maintain the possibility of a universalist polyjurality in the pursuit of which these and analogous intellectual perspectives could be debated. Through its emphasis on international law, Roman Law, and legal theory, the curriculum has never been exclusively monojural. Through the constant tension with the Bar of Quebec over matriculation requirements and course content which originated in linguistic and cultural difference, the Faculty has maintained an awareness of sub-national normative orders. Through its connexions to the Montreal commercial establishment it has been compelled to confront non-state international legal ordering. Yet rarely has it explicitly set about trying to identify the theoretical underpinnings of its activities, with the result that a comprehensive view of the undergraduate or graduate tuition implied by its ambitions is still unarticulated. And as its various curricula since 1843 have shown, without such a statement, the undergraduate programme of the Faculty

\textsuperscript{324} For an explicit rejection of the usefulness of the turn to interdisciplinarity, see E.J. Weinrib, "The Special Morality of Tort Law" (1989), 34 \textit{McGill L.J.} 403 and footnotes therein.

\textsuperscript{325} The paradox of these two developments is that they argue simultaneously for the proposition that the nation-state is both too small (to promote and regulate international business effectively) and too large (to respond sensitively to its diverse sub-national normative orders). For an assessment of the complementarity of these themes in the context of recent Canadian constitutional developments see the papers in J. Whyte, and I. Peach, eds., \textit{Reforming Canada: Meech Lake and the Free Trade Agreement} (Kingston: Inst. Integov. Aff., 1988).
is in constant risk of being dominated by the monojurialism or unificationist polyjurality that results from intellectual indirection.  

If, therefore, the next few years in Canadian legal education are likely to see (i) a changing intellectual climate, in which terms like “national” will be understood as reflecting a limiting and inferior ethic for pursuing a universalist vision of law and law teaching, (ii) a changing population of the law faculties, in which divergent cultural and ethnic origins among students and professors will generate divergent conceptions not only of the meaning of specific legal rules, but also of normativity and institutionalization, and, (iii) a radically changing external environment of legal education at both theoretical and practical levels, what will be content of the National Programme idea at McGill?  

I believe that in the evolution of the Programme over the past twenty years, one can see the seeds of four main themes which will explicitly come to drive the curriculum before the turn of the century: a heightened attention to sub-state legal orders and greater focus on law and society issues; the development of a theoretical framework for studies in law, science and technology (especially in relation to bio-medical and environmental issues); the generation of courses responsive to the demands of various new supra-national lex mercatoria; and, the reconception of comparative law as legal pluralism. Each of these themes speaks primarily to the scope and ambition of the various courses taught within the National Programme — that is, to the substance of universalist polyjurality — rather than to the structure of the curriculum through which the Faculty will attempt to maintain its traditional approach to legal education. Each, therefore, requires brief elaboration, prior to the suggestion of probable changes to the form of the National Programme itself.

To say that the curriculum of the National Programme will afford a greater place to sub-state legal orders is to argue that substantive courses in both public and private law will be redirected away from exclusive analysis of the text of codes, statutes, and judicial decisions. In the future, these courses will be attentive to the outcomes of legal regulation and to the specificity of practices within different normative and social groups. So, for example, one may anticipate that courses in the law of contracts

326. The era of indirection may be about to end. See, notably, the prospectus for the Institute of Comparative Law prepared by H.P. Glenn, and presented to the professoriate generally at a Faculty Retreat held on September 9, 1989, and later submitted in a revised form to potential members of the Institute at a Seminar held on December 14, 1989. This prospectus, the Institute’s first since that developed for its founding in 1965, sets out a number of possible avenues for pursuing a universalist polyjurality in the teaching programme. Many of these ideas have been incorporated into the following paragraphs.
will be much more sensitive to differences between commercial and consumer contracts, between the subsets of commercial and subsets of consumer contracts, and to differences in contractual practices relating to different geographical areas, different ethnic communities and different social structures. The upshot of this orientation is that questions which are now characterized (and marginalized) by the legal education establishment as directed only to law and society issues will necessarily become central to the polyjural teaching of all courses offered within the Faculty.

A second theoretical focus which is likely to predominate in the curriculum over the next few years will arise because of the challenges to traditional conceptions of who or what may be a rights holder, and of who or what may be an object, subject to rights. This *summa divisio*, which has grounded all post-enlightenment western law, is under assault as a result of advances in medical technology and the threat to the biosphere. Already one sees proposals in the field of environmental law for a complete reconceptualization of legal doctrine. As the line between person and property shifts dramatically, one may expect that the classical undergraduate curriculum will also undergo significant readjustment. Courses in subjects like Corporations Law will be completely made over so as to give extensive treatment to the whole panoply of legally-cognizable non-natural persons. Similarly, the course on Property will be turned upside down in order to provide a framework for addressing legal responses to commerce in genetic material and human tissue. Polyjurality will mean coming to understand how many different conceptions of personality and property are actually captured by our seemingly unitary legal usage of these two terms.

A third theme which will dominate the content of the National Programme of the future flows from the increasing globalization of exchange relationships. In both public and private law fields, one finds that the universe of doctrinal relevancy is enlarging tremendously. Jurists can no longer pretend disinterest in the law of third-world countries on the basis that Western conceptions of obligations and property rights can be imposed on multi-lateral commercial transactions. Moreover, it is apparent that the attempts to unify aspects of this new law through quasi-legislative conventions adopted by treaty will not succeed in the absence of a body (or several bodies) of specialized decisional law onto which

327. See for an initial attempt to address this issue which in fact uses the example of contract law, J.G. Belley, "La théorie générale des contrats. Pour sortir du dogmatisme" (1985), 26 C. de D. 1045.
328. The most far reaching proposal is that of Christopher Stone as set out in *Earth and Other Ethics* (New York: Harper and Row, 1987).
these conventions can be grafted. These various new lex mercatoria will not be an “international system” but will be a juridical polyglot much like the early common law.\textsuperscript{329} For this reason, one may well anticipate that the teaching of courses in the diverse elements of international law will displace the teaching of domestic law from the centre of the curriculum, with the result that constitutional law will be then seen in relation to international law much the way administrative law is now seen in relation to constitutional law — as an applied (and notional) jurisdictional dissection of public authority.

Finally, the concept of comparative law itself will undergo an important transformation in the next generation model of the McGill curriculum. To the extent that comparative law has meant the acceptance of national legal systems whose rules are then set side by side for assessment, it has failed.\textsuperscript{330} For such scientific contrasting of formal normative systems necessarily minimizes the influence of informal normative orders on the manner in which the system works. Given a better epistemology of comparative law, in which both implicit and non-formulaic legal artifacts become equally important to the comparative exercise, we are soon likely to see a substantial movement towards making non-state legal systems a central feature of the undergraduate curriculum. It is to be anticipated, then, that Roman, Islamic, Talmudic, and various systems of socialist law would be seen as complementing indifferently and with equal force the basic courses now taught as either civil law or common law subjects.

Although these four themes will come to dominate the content of the courses taught as part of the National Programme over the next two decades, they say nothing about the formal properties or the structural organization of the undergraduate curriculum which will have to be developed in order that they may be effectively addressed. That is, at first blush, it appears that there is nothing in any of these four themes which inherently suggests the need for a curricular structure such as that associated with the National Programme. Each, it might be argued, could just as easily be developed and implemented at any Canadian faculty of law. While such a claim is, in principle, plausible, I suggest that these themes actually are deeply connected to the notion of a universalist polyjurality, and that the existing curricular organization of the National Programme will not only facilitate their achievement, but also promote its own obsolescence. Put simply, I believe that their increasing impact on

\textsuperscript{329} This theme is evoked, notably, in “Problèmes relatifs au contrat passé entre un état et un particulier” (1989), 128 Recueil des cours 95; Luzatto, “International Commercial Arbitration and the Municipal Law of States” (1977), 157 Recueil des cours 9.
\textsuperscript{330} See H.P. Glenn, “Unification” supra, note 289 for a detailed development of this idea.
the substance of the causes taught will also lead to structural changes to the undergraduate curriculum. To a brief discussion of four such structural modifications called forth by the commitment to universalist polyjurality I now turn331.

To begin, I think it quite doubtful that the idea of a four-year combined B.C.L./LL.B. programme will be central to the curriculum. One of two major modifications is likely to occur. Either the programme will be reduced to three year’s duration, or a significantly new content will be added in order to justify a four-year tuition. If the B.C.L./LL.B. curriculum were to be reduced to three calendar years, it would also have to comprise summer internships between first and second and between second and third years, as well as a re-ordered first-year programme. In this three-year structure, one would see, hypothetically, a forty-credit first-year organized around only four courses: 10 credits of “institutional” law (international, constitutional, administrative, and organizational law); 10 credits of civil law focussed on basic doctrinal notions of property and obligations; 10 credits of common law also centred on basic doctrinal notions of property and obligations; and 10 credits of legal theory comprising history, epistemology, logic and legal method, analytical jurisprudence and major tendencies in modern theories of law.

A complementary modification to the existing programme (or even a further dimension of this three-year intensive programme) would be the transformation of the fourth-year into a programme which would address approaches to legal normativity in other countries, such as the United States, and in other societies or sub-societies. This would be truly a polyjural and universalistic curriculum, in no way anchored either territorially or temporally. It is not clear to me which of these two routes the Faculty is likely to adopt, or whether they might even be combined in the curriculum of the future. Both, however, would represent remarkable challenges to the intellectual structures of contemporary undergraduate legal education.

A second feature which, I have no doubt, will come to dominate the teaching programme over the next two decades in that of polylingualism. As the student and professorial population of the Faculty becomes even more diverse, English will no longer be the only *lingua franca* of Faculty discourse. While I do not believe that in the immediate future the

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teaching programme will comprise courses offered in German, Italian, Russian, Japanese, Chinese, and so on, it is clear that the Faculty will come to recognize the importance of the discipline imposed by the learning and discussing of law in a second language to its conception of universalist polyjurality. This recognition will lead to the development of a second (in the present circumstances, French) language requirement for all courses. That is, the same arguments which led Lee, Gow and Cohen to develop a bijural programme will lead to the development of a bilingual programme in which both English and French become languages of instruction in every course. Universalist polyjurality demands that courses not be ghettoized by language, but rather that the reach of all the programme extend beyond monolingualism. Bilingualism (or polylegalism) will be recognized as the only effective way of ventilating issues of implicit, polyjural normativity as a complement to the formal orders of explicit, polyjural normativity.

A third structural change to the National Programme likely to result from the thematic reorientation noted above will be that the standard divisions of the curriculum which were put into place in the late 19th century will be explicitly rejected. New categories for legal analysis will be proposed, and a new arrangement of teaching matter will result. There is nothing magic about the manner of division adopted so far by university law faculties (e.g. family, property, contract, tort, etc.). Moreover, as both public and private law courses become more transnational, the basic structures which are inherent in one or other western private law traditions will give way to alternative combinations.

As these recombinations begin to emerge, the epistemic foundations of legal organization will then be clearly debated, for the first time in almost a century. To take only one example. The course in civil procedure will include administrative procedure, public interest advocacy, private dispute resolution, and all matter of other dispute processing forms not tied just to the paradigmatic traffic accident. Moreover, this reconceptualization of procedure will lead to greater focus on issues of justiciability, standing, the forms of adjudication, institutional structure, the role and organization of the legal professions, and problems of bureaucratic design. Universalist polyjurality will come increasingly to bear on how the institutions and procedures, as well as the substantive rules, of legal ordering are studied.

A final structural change to the curriculum, I believe, will result from the contemporary assault upon the processes of legal education themselves. One will find that the standard classroom teaching vehicles — lectures and seminars — will be attacked from both so-called theoretical and so-called practical perspectives. Much more teaching will
be done via essays, research and writing, *pro bono amicus curiae* briefs, and theses. These written assignments will include both analytical and doctrinal theses, and also field work and empirical studies in which students attempt to uncover the implicit normative structures which shape the area of legal regulation which they are investigating. The second attack on standard teaching methods will come from those who urge the improvement of clinical work through public service placements. Rather than legal clinics simply being a source of cheap labour for legal aid plans, they will provide students opportunities to participate in formal international organizations and various non-governmental organizations in the international community. In other words, under the theoretical impulse of universalist polyjurality the notion of a clinical term will undergo the same broadening of scope as other features of the curriculum.

To undertake such a major transformation of curricular structure and directing themes is, I acknowledge, a tall order for the National Programme over the next 15 years. Yet it is no more ambitious than that which Day foresaw for his new Faculty in the 1850s; that Lee sought to develop in the 1920s; and Cohen and Gow put into place at both graduate and undergraduate levels in the 60s. Recurring to the half-century cycles which seem to have characterized the Faculty’s history, suggests that it is now on the verge of reconceiving exactly what a contemporary universalist and polyjural legal education must comprise. If this reconception seems to operate a radical transformation and desystematizing of legal education, it should be recalled that it is, in fact, no more disruptive than the attempt at deprofessionalization undertaken on several occasions previously. And it will be, moreover, entirely consistent with the themes already identified as being central to the very notion of the National Programme idea at McGill University.

**Conclusion**

There is little that can be canvassed by way of conclusion to this interpretation of the idea of the National Programme, that has not already been examined in detail. Indeed, the story can best be completed by recurring to its introduction. Certain ideas about legal education and certain features of the teaching programme have been present throughout the Faculty’s history. These ideas are also likely to figure in its future. They are: a non-formal and non-professional view of the curriculum; an emphasis on legal theory; a vocation to bilingualism; a belief in the non-territoriality and non-temporality of legal normativity; and a commitment to public service. Together, these ideas have led the Faculty, throughout the greater part of its history, to reject monojurality.
as a foundational ethic of its curriculum; they also confronted the Faculty from its earliest days with the tension between unificationist and universalist versions of polyjurality.

The effort to resolve these tensions through the structure and substantive ambitions of the curriculum has been the driving force behind many of the innovations and experiments with the undergraduate programme undertaken since 1853. Seen in this larger perspective, the National Programme established in 1968 is an important contemporary attempt to address the demands of universalist polyjurality. It is not, however, the only possible approach that can be marshalled to guide the curriculum of the Faculty into the 21st century. For, as the story told here reveals, the idea of a National Programme is more plural than any particular one of its curricular manifestations.