

Law at McGill : Past, Present and Future

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Introduction

The senior professional schools at McGill University are those of medicine and law. Teaching in medicine commenced at the Montreal Medical Institution in 1823 and the McGill Faculty of Medicine was established in 1829. Legal education did not get its start until 1844, in the Faculty of Arts.

We suggest that the reason for medicine's earlier beginning lies partly in the different role of the hospital and the lawcourts in the two professions, and partly in differences in the client-practitioner relationship. The medical student's experience of "walking the wards" of a teaching hospital in the wake of the professor-physician is a major element in the learning process. The lawcourts, however, do not provide opportunities for the professor-lawyer to incorporate his students in the conduct of his case, nor can he introduce his client to a seminar in order to discuss what legal advice should be given. Whereas a medical career can combine practice and teaching to their mutual advantage, there is a tendency in the legal profession for the two functions to compete, to the detriment of one or the other. It is understandable, therefore, that teaching in medicine began at McGill because the physicians wanted to teach, whereas teaching in law began because third parties urged it upon the lawyers. This also accounts in large measure for the fact that although the legal discipline was introduced very early into the curriculum, its development was slow. It was not until the years after World War I that law emerged strongly as an academic discipline. In the early days the typical law professor was a lawyer who happened to do some teaching on the side and it was only in this century that the concept of the academic lawyer gained acceptance in Canada. This paper reviews something of the past history of the faculty and then looks at its present circumstances, before suggesting some further developments which we believe to be desirable.

I. Law at McGill in the Past

William Badgley, a prominent member of the Québec Bar, was appointed lecturer in law in April 1844, six months after the inauguration of the Faculty of Arts of McGill College. At the opening ceremony in September 1843 the vice-principal had eloquently expounded the virtues of a

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classical education. Badgley's appointment as lecturer in law was intended to appease those Montréal citizens who even in 1844 were contending that a more practical education would provide greater benefits for Canadian youth. However, that same month Badgley was also appointed a circuit judge, and he apparently did not devote much attention to his academic duties. In February 1846 the Caput, *i.e.*, the academic council, noted that he was neglecting to lecture, and informed him that if he did not mend his ways his appointment would be terminated. He must have heeded the warning, for in March of the following year he was confirmed in his position.

A certain democratic freedom, reminiscent of the early days of the Universities of Bologna and Paris seems to have been prevalent in Montreal. In 1848 a group of twenty-three young men who described themselves as "students composing the Law Class of McGill College" signed a document whereby they agreed to attend Badgley's lectures, and enrolled themselves as members of his class "in accordance with the Resolution adopted at a meeting held at the Court House on the nineteenth day of June".¹ This matriculation *en masse* is not reflected in the university records, and the student initiative, if it came to anything, must have done so beyond the aegis of McGill College. This incident shows, however, that the pressures for legal education came not only from the professional and merchant classes but also from prospective lawyers. The student contribution to the development of law-teaching has been, as we shall see, significant and continuous from the earliest times.

Under the *Amended Charter of McGill College* of 1852, the reformed Board of Governors made Badgley a professor in 1853 and in 1854 he was appointed dean and given two colleagues, John Abbott and Frederick Torrance. This was the beginning of a separate law faculty, but the three members were told that "their emolument would be the subject of future consideration", *i.e.*, their main academic income was to come from their students' fees. These fees were supplemented at the end of the year by a modest grant of £ 500 to each of the three teachers.² This began a practice which prevailed until 1898, whereby the university made an annual discretionary grant which was divided *pro rata* among the professors and lecturers. For most of the lawyers involved, their academic "emoluments" remained a small part of their total income.

Formal instruction at first took place in the lawyers' offices, and even when the faculty acquired premises of its own, the argument that the

¹ A copy of the document hangs on the wall outside the Dean's office in Chancellor Day Hall; its provenance has not been established. Among the names are those of Alexander Morris, W.B. Lambe, Brown Chamberlin and Romeo Stephens — four of the first class of five men who graduated with the B.C.L. degree in 1850.

² *Minutes of the Board of Governors of McGill College*, 27 July 1854. McGill University Archives [hereinafter cited as MUA] 681/3A.

operation must be near the lawcourts and legal offices kept it in rented premises downtown. The connection with the university was in fact tenuous, and the quality of legal education in the province in general was such that in 1863 a recent McGill graduate, Gonzalve Doutre, organized a petition of law students to be presented to the Bar, directed towards "changing the present type of examination for those aspiring to the study and practice of the profession of lawyers."³ His proposals were accepted and became law in 1866, but the passing of the *Act* did not effect a permanent improvement. A decade later McGill law students complained to the Board of Governors of the irregularity of their lectures, while the graduates petitioned that the standards of education for the B.C.L. degree should be raised. In 1887 the problems were still unsolved and Principal William Dawson had to deny publicly the charge that law lectures were scheduled but not given. "According to the returns made by the secretary of the faculty", he wrote, "over 300 lectures were delivered". He argued that four or five hundred lectures of superior quality might prove more valuable than "the one thousand or more" lectures which the Secretary of the Bar Council thought each student should receive in the course of his legal education. He also commented that "law students are usually under apprenticeship, and are obliged to devote the greater part of their time to office work".⁴

The major difficulty was that the university lacked the funds needed to provide adequately for the faculty; in particular, it could not compete with the income a capable lawyer could earn in the practice of his profession. Badgley resigned his academic position temporarily in 1855 and John Abbott became dean and professor of commercial law. He remained in office until 1880. During those twenty-five years he served in the Legislative Assembly as the member for Argenteuil, and prepared and piloted through the House the *Insolvent Act* of 1864.⁵ He bought the Montreal-Bytown Railway, helped Sir Hugh Allan form the railway company which was to build a line to the Pacific coast and was implicated in the subsequent political scandal. He also wrote the historic contract between the federal government and the reconstituted Canadian Pacific Railway. At the same time he conducted a practice described by a contemporary as "of enormous proportions". But through it all he remained McGill's professor of commercial law. Obviously he brought great prestige to the deanship, and immense authority to the course in commercial law, but it is difficult to establish how much deaning and how much professing he actually accomplished. His colleague Frederick Torrance, the professor of Roman law, was probably more consistent. He remained in practice until 1868, when he was appointed a judge of the Superior Court of Quebec. Two other

³ M. La Terreur, *Dictionary of Canadian Biography* (1980), vol. X, 249.

⁴ Dawson, Letter to the Editor, *The Montreal Gazette*, 19 April 1887, 2, col. 3, para. 4.

⁵ Statutes of the Province of Canada, 27 & 28 Vict., c. 17.

lecturers were added, Me R.G. LaFlamme and Me P.R. Lafrenaye. They were lawyers of considerable standing who further enhanced the faculty's reputation, but they too were busy men.

The pressure for full-time law appointments continued to come from the Board of Governors. In 1884 the faculty received an endowment of \$35,000 to set up a chair in the name of Samuel Gale, a distinguished jurist and judge. The faculty proposed that the dean should occupy the Gale chair, but that the income from the endowment should be added to the discretionary university grant and as before, distributed *pro rata*. The Board disagreed, and ruled that all the income should be wholly devoted to the dean's academic salary, obviously with the intention of making the incumbent something nearer to a full-time appointee. Six years later, William Macdonald gave the faculty \$150,000, which he later increased to \$200,000. In the letter accompanying his donation, Macdonald underlined the statement that each of the two lawyers to be supported by this endowment, the dean and the secretary of the faculty, would be required to "devote himself zealously to the management and continuous advancement of the faculty and instruction therein."⁶ In 1897 Frederick Walton accepted appointment as dean on this understanding, and served until 1914. He was the first career law professor associated with McGill and probably the first in Canada. Just prior to Walton's appointment, Macdonald had shown further interest in the faculty by paying for the rehabilitation of Dawson Hall so as to provide it, for the first time, with a home on campus. Lectures were given in the Arts Building and the law library was brought back from the Fraser Institute to be housed with the university's collections in the Redpath Library. The training of lawyers thus became more truly an academic process, and the faculty became fully integrated with the university for the first time. Macdonald also provided several travelling scholarships for post-graduates. The academic horizons were broadening quickly.

Further advances were not achieved until, on Walton's retirement, the university opted for a different style of appointment in seeking to replace him. It should be recalled that the McGill Law Faculty was in a position shared by very few institutions in the world. Because it was situated in the province of Québec, it was teaching civil law, a legal system derived from French jurisprudence and based on Roman law, but it was doing so in English. All faculty members had hitherto been appointed from the Québec Bar. There was little inducement to make appointments of jurists from other Canadian jurisdictions, since they would not be versed in the Civil Code, and in Montréal they would be deprived of access to common law practice. It was, therefore, a step of major proportion when in 1915 Principal William

⁶ *Minutes of the Board of Governors of McGill College*, 5 April 1890. MUA 681/5A. See also S. Frost, *McGill University: For the Advancement of Learning 1801-1895* (1980), vol. 1, 279.

Peterson went outside the Québec Bar and recommended Robert Warden Lee of Oxford for appointment as Walton's successor both as professor of Roman law and as dean of the faculty.

Like Walton, Lee was a full-time academic, a man who saw his future career not in terms of a large practice or a position on the bench, but in terms of university appointments. He saw legal education as more than a training for practice at the Québec Bar, and when in April 1915 the faculty recommended appointing a lecturer in common law, Lee was undoubtedly the moving spirit. In 1919 he followed this initiative by sending to Frank Dawson Adams, the acting principal, a considerable memorandum on the subject of McGill as a law school for all of Canada.⁷ When Sir Arthur Currie was appointed principal in 1920, Lee sent him an expanded set of proposals. He began from the premise that Montréal was uniquely fitted to be the home of a great law school, since it was an international metropolis and the meeting place of two great legal systems. The essential conditions for a good law school, he continued, were threefold: students should be full-time in attendance at the university, professors should be committed full-time to the academic pursuit of law, and professors should be appointed because they were qualified to study and to teach law, not because they had been successful in the practice of their profession. He reported that for the students intending to practice in Québec the faculty had strengthened the course for the B.C.L., and for those who wished to study law but not to practice it, or who intended to practice in another jurisdiction than Québec, the faculty had instituted a new common law program, leading to the LL.B. degree. There was also a four-year program leading to both degrees for those who planned to go further in legal studies or to practice in another jurisdiction. These developments were timely, he argued, because of the great increase in student numbers. "The first year registration this year", he reported joyfully, "is phenomenal." It exceeded eighty and was not then complete; the students were coming from all over Canada and beyond. "Our faculty", Lee proudly asserted, "has ceased to be a merely provincial institution."⁸

It would be interesting to speculate how the law faculty might have developed if Lee had stayed on as dean. Unfortunately, Oxford offered him the chair of Roman and Dutch law and he resigned his post at McGill in 1921. Before departing he recommended H.A. Smith of Oxford and Ira Mackay of Saskatchewan as new appointees. Both men continued the Lee initiative in taking a broader view of law than that derived only from the Québec civil law, and both wrote significant articles on the subject of legal education.

⁷R.W. Lee, Letter to F.D. Adams, 30 October 1919. MUA 641/293.

⁸R.W. Lee, *The Law Faculty of McGill University: Its Past, Present and Future* and Letter to Sir Arthur Currie, 4 November 1920. MUA 641/293.

Ira Mackay was an extremely interesting person, both as a lawyer and as a philosopher. He had been a professor of both disciplines in Saskatchewan before coming to McGill and would undoubtedly have been a major liberalizing influence in the faculty had he remained with it, especially since he was appointed to teach constitutional law. But after two years he transferred to the Frothingham chair of logic and metaphysics in the Faculty of Arts. In 1925 he became dean of Arts and served in that capacity until 1934. While he was still a political scientist and a professor of law, he published an article, "The Education of a Lawyer", of which his fellow jurists thought so highly that they reprinted it twenty-seven years later. In his address, Mackay strongly supported the concept of the scholar-lawyer. He deplored the "half-law school" and declared that for a "first-class law school... two things are necessary, viz: legal research and uniform legal education, based upon the results of research... No department of study has ever presented a prettier field for research and for lively classroom teaching than English law."⁹ He was greatly concerned that, with judgments being rendered simultaneously in England, the United States, Australia, New Zealand and in the common law provinces of Canada, the system would lose cohesion and lapse into self-contradiction and anarchy. Hence he saw the need for uniformity at the level of legal education. How that consensus was to be achieved, other than through research, he did not say, and his return to philosophy distracted him from pursuing the idea further.

H.A. Smith's discussion of the functions of a law school, published about the time he came to McGill, was not so innovative as Mackay's and in fact did not go very far beyond reiterating the ideas which Lee had already expressed. But his proposals, because they were more practical, stood a better chance of being implemented. He emphasized the need for full-time appointments, and the need for law-teachers to be interested in law *per se* — not simply as a means to practicing at a particular Bar. He made much of American examples: "Can anyone imagine that Harvard greatly concerns herself with the local requirements for practice at the Massachusetts Bar? ... By thus emancipating themselves from purely local and professional trammels the chief American law schools have been enabled to play a part in the public life of the nation for which we can find no parallel in Canada."¹⁰

⁹ Mackay, *The Education of a Lawyer* (1940) 4 Alta L.Q. 103, 110. Mackay's paper was privately published after being presented at the Third Annual Meeting of the Law Society of Alberta held in Calgary, 18-9 December 1913. Perhaps it was not republished in his lifetime because as Dean of Arts at McGill he may have regretted some of the stronger statements in it: "The temper of an arts school is very different from the temper of a professional school. There is undoubtedly a great deal of dilettantism and intellectual play in our traditional arts course. After all an arts course is a sort of preliminary canter in life. But a law course is a serious matter. An arts course is intended for boys, a law course for men. The law is a jealous mistress", at p. 114.

¹⁰ Smith, *The Function of a Law School* (1921) 41 Can. Law Times 27, 28.

Smith lays a particular emphasis on the need for scholars who can contribute to the growth of legal literature: "Among the great names in the history of legal literature may be reckoned many who have learned and taught in American law schools. Here again there is no real parallel to be found on the Canadian side".¹¹ He desiderates "a comprehensive library, reasonable leisure for study, and, where necessary, University assistance in the publications of works which cannot be certain of obtaining commercial success."¹² It was a classic statement of the traditional scholar's modest requirements — modest, that is, until all the auxiliary costs are considered. But the breadth of the McGill vision had been revealed to the legal public and its academic ideals had been placed on record.

One of the indications of the growing professionalism of the faculty can be seen in the changes in the hours of scheduling classes. In Dawson's day, there seem to have been no set hours. The Calendars of the early 1900s say that classes will be given between 8:30 and 9:30 a.m., and 4:00 and 6:30 p.m. — obviously because most law students spent the day in legal offices. In 1927 the Calendar says for the first time that "students should devote their entire time to university work", and this progressively became the rule, leading finally to the institution of the additional year of professional training.

Smith did not find the legal atmosphere wholly congenial at McGill. While acting as dean in 1923 he wrote to Principal Currie¹³ saying that he felt his colleagues resented the fact that he — a common lawyer — was in charge of a faculty largely composed of civil lawyers. Currie reassured him and informed him of his permanent appointment as vice-dean; but the deanship was indeed reserved for a member of the Québec Bar.¹⁴ Smith continued to teach at McGill until 1928. He was not without grounds in thinking that there was some resentment of his position — not so much as acting vice-dean, but as a teacher of common law courses.¹⁵ There were those in the faculty who felt that Lee had led the law school astray, and that McGill did not have, and never would have, the resources for a "national" program. In 1924 their view prevailed and the courses for the LL.B. and the four-year joint B.C.L.-LL.B. were discontinued. The faculty's resources were to be concentrated on the training of anglophones for the provincial legal system, for — as the Board of Governors had observed¹⁶ when Lee first made his far-ranging proposals — the maintenance of a good anglophone representation at the Québec Bar was essential for the well-being of the English-speaking community in Montréal.

¹¹ *Ibid.*, 29.

¹² *Ibid.*, 32.

¹³ H.A. Smith, Letter to Sir Arthur Currie, 4 August 1923. MUA 641/293.

¹⁴ Sir Arthur Currie, Letter to H.A. Smith, 6 August 1923. MUA 641/293.

¹⁵ H.A. Smith, Letter to Sir Arthur Currie, 9 August 1923. MUA 641/293.

¹⁶ F.D. Adams, Letter to R.W. Lee, 12 January 1919. MUA 641/293.

Smith departed in 1928 for London to follow a distinguished career as professor of international law in that university. There is no doubt that in both Lee and Smith McGill had had the experience of excellent academic lawyers. It would be easy, in view of the termination of the common law program, to say that they had been prophets before their time, or at least that McGill was not ready for them. However, the fact is that the faculty was never again open to the charge that it was a "trade-school" operation only. Lee and Smith had started something which in future years would become increasingly significant.

The full-time deanship was given, as we have said, to a prominent member of the Québec Bar. He was Judge R.A.E. Greenshields, of the Québec Superior Court, who had previously taught criminal law as a part-time lecturer. As dean he continued with that teaching responsibility. Another Québec lawyer, C.S. Lemesurier, was appointed professor of commercial law. But the Gale chair was given to Percy Ellwood Corbett, and he certainly stood in the Lee-Smith tradition. Corbett was a McGill graduate in arts at both the bachelor's and the master's level, who had studied law at Oxford as a Rhodes Scholar. He had served as Assistant Legal Advisor in the International Labour Office in Geneva before coming back to McGill and he stayed with the faculty for fifteen years. He was appointed dean in 1928 and held that office for eight years. Corbett was a great internationalist: he published *Canada and World Politics* with Smith in 1928, just before the latter left for London, and in 1934 his own *Fundamentals of a New Law of Nations*. He was thus contributing to a tradition which was already making McGill the pre-eminent Canadian school for the study of international law.

One of his students was John Humphrey, a McGill graduate in arts, commerce and civil law, who did post-graduate work at the University of Paris and then taught international law in the faculty from 1936-46. Recognizing that the average law student would find the subject of little practical advantage, Humphrey sought to teach international law as an exercise in legal science, thus requiring even the most practice-oriented student to consider the further implications of his profession at least once during the course of his legal education. Humphrey left McGill to become the first director of the Division of Human Rights in the United Nations Secretariat. He returned to McGill in 1966 as professor of law and political science.

Another field which the practice-oriented student might regard solely in terms of intellectual exercise was that of constitutional law. Francis Reginald Scott was appointed in 1928 as a result of the departing Smith's recommendation. In his letter of resignation Smith wrote that he considered Scott "unquestionably the best student who has graduated here"¹⁷ in his

¹⁷H.A. Smith, Letter to Sir Arthur Currie, 16 December 1927. MUA 641/293.

time. During a lifetime of multifarious activities embracing everything from poetry to politics, Frank Scott found time to establish his reputation as one of the outstanding constitutional lawyers of his day. The links between the Faculty of Law and the Department of Political Science have always been many and close, and the consideration not only of what the law is, but also of what the law should be — especially in matters relating to the Canadian constitution — offers a true exercise of legal expertise. Scott wrote *Canada Today, Her National Interest and National Policy* in 1938, *Civil Liberties and Canadian Federalism* in 1959, and his collected papers were published in 1977 as *Essays on the Constitution*. “In 1930, influenced by views first forwarded by H.A. Smith, Scott began to attack the referral of legislation of the Judicial Committee of the Privy Council [in England], a battle he carried on throughout the decade.”¹⁸ It was, of course, one of the many battles Scott won. Whether accepted or rejected, Scott’s lively partisan views made him a vital force in the legal education of several generations of students at McGill. During the post-war Duplessis years, Scott gained recognition as an outstanding defender of civil rights, particularly by arguing successfully two notorious cases before the Supreme Court of Canada.¹⁹

Maxwell Cohen began his career at the faculty in 1946, and he quickly made his mark in the international law tradition of Corbett and Humphrey. He served on a number of international commissions, was a member of the Canadian delegation to the fourteenth General Assembly of the United Nations in 1959-60, and was chairman of the Canadian section of the Joint International Commission of Canada and the United States from 1974 until 1979. His writings have been prolific and include *Some International Law Problems of Interest to Canada and Canadian Lawyers*²⁰ in 1955, *Some Main Directions of International Law: A Canadian Perspective*²¹ in 1963, and *Secrecy in Law and Policy: The Canadian Experience and International Relations* in 1974.²² The international law tradition at McGill has been so strong that R. St.J. Macdonald could say in 1974 that “the amount of writing that has come out of the McGill Law Faculty in the field of public international law far exceeds the production of other [Canadian]

¹⁸ M. Shore, *Overtures of an Era Being Born: F.R. Scott, Ideas of Cultural Nationalism and Social Protest 1920-1929* (1977) (unpublished M.A. Thesis, University of British Columbia), 73.

¹⁹ *Switzman v. Elbling* [1957] S.C.R. 285 and *Roncarelli v. Duplessis* [1959] S.C.R. 121. F.R. Scott argued two other cases in the Supreme Court of Canada: *Brodie v. The Queen* [1962] S.C.R. 681 (the case on *Lady Chatterley's Lover*), and *Oil, Chemical and Atomic Workers International, Local 16-601 v. Imperial Oil Ltd* [1963] S.C.R. 584.

²⁰ (1955) 33 Can. Bar Rev. 389.

²¹ (1963) 1 Can. Yearbook of Int. Law 15.

²² E. Weisband & T. Franck, *Secrecy and Foreign Policy* (1974), 355.

law faculties and reflects the interest of the institution in the field as a whole."²³

Cohen also wrote papers on legal education, including *The Condition of Legal Education in Canada*²⁴ in 1950, *Objectives and Methods of Legal Education*²⁵ in 1954, and *Lawyers and Learning: The Professional and Intellectual Traditions*²⁶ in 1961. It was in the 1950s and 1960s that Maxwell Cohen made his greatest contribution to legal education at McGill. He was involved in the founding of the Institute for Air and Space Law in 1951, and he was the prime mover in the establishment of the Institute of Comparative Law in 1966, and again in the re-establishment of the National Program in 1968.

These three educational developments were, of course, mutually supportive. The Institute of Air and Space Law was made meaningful by the presence in Montréal of the headquarters of the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA). Its purpose was concisely stated in its Calendar publication: "The principal objective of the Institute is to provide its students with an overall view and understanding of the legal processes regulating world-wide aerospace activities." The first director was John Cobb Cooper, a distinguished American jurist, who had spent the greater part of his career as legal adviser to IATA and as an airline executive. The presence in the faculty of Cooper and his equally distinguished successors, including Eugène Pépin of France, Sir Francis Vallat of Britain and Ivan Vlasic from Yale, emphasized the supra-national character of the discipline. The founding of the Institute of Comparative Law had to wait another fifteen years before the necessary financial support could be assembled. That was achieved in 1966, when public funds were becoming more available, and when foundation interest was also secured.²⁷ The institution made an excellent beginning by attracting Dean H.R. Hahlo from South Africa and his presence introduced a further cosmopolitan element into the faculty. Graduate students came in considerable numbers to the two institutes — both from across North America and from overseas — and the opportunities they afforded were made all the more attractive because of opportunities for co-operation with

²³ Macdonald, *The Teaching of International Law in Canada* (1974) 12 Can. Yearbook of Int. Law 81.

²⁴ (1950) 28 Can. Bar Rev. 267.

²⁵ (1954) 32 Can. Bar Rev. 762.

²⁶ (1961) 7 McGill L.J. 181.

²⁷ The venture was initially described as "The Institute of Foreign and Comparative Law". The institute's *General Information Announcement* of January 1981 states at p. 4: "The Institute is dedicated to the promotion of comparative graduate study and research in public and private law, principally in civil and commercial law. Special attention is paid to international business and comparative civil law."

university departments such as Political Science, Classics, and the Institute of Islamic Studies.

We have stressed this development from the time of Lee's appointment to the establishment of the two institutes and the re-establishment of the National Program, because it offers clear evidence of the progressive liberation of the faculty from the "trade-school" concept of legal education. But to do this is to run the risk of distorting the picture unless we also emphasize that the process took place as truly in the civil law courses as elsewhere in the faculty. Even when the only task of the faculty had been to train lawyers for practice at the Québec Bar, the academic obligation to study, expound and develop the Civil Code had been increasingly recognized and very creditably discharged. It should be remembered that a particular loyalty to the Code as a legal instrument dates back to the days of McGill's fourth principal and first chancellor, Charles Dewey Day, who was an influential member of the three-man commission which re-ordered the Code in 1866.²⁸ The maturation of scholarship within the Civil Code tradition thus long antedated the common law and international law development, as is further shown, for example, by the publication of Gonzalve Doutré's primarily historical *Le droit civil canadien* in 1872, P.-B. Mignault's *Le droit civil canadien* in nine volumes, dated from 1895, and F.P. Walton's *The Scope and Interpretation of the Civil Code of French Canada* in 1907. The new degree of professional commitment to the teaching of law introduced by Walton and fostered by Lee, provided even greater stimulus for the tradition of scholarship centering in the Civil Code to express itself more directly in the curricula and the publications of the faculty. In the early and middle decades of the century this tradition was worthily maintained by such civilians as "Pinégale" Eugène Lafleur, William de Marler, Louis Baudouin and Arnold Wainwright. When a further revision of the Code was called for one hundred years after the first codification, McGill's Wainwright Professor of Law P.-A. Crépeau was named president of the Office of the Revision of the Civil Code, and the faculty's expertise in the Code was placed beyond all doubt. John W. Durnford, John E.C. Brierley, and especially the late Yves Caron, served with other colleagues on the revision committee, so that McGill's contribution was substantial.

It was this combination of strength in the Civil Code and in the areas of international, constitutional and comparative law which enabled the faculty to resurrect the idea of a "national program" in 1968.

This Program is an integrated program of studies in Canadian law in which students pursuing either a civil law or common law degree share a wide range of 'Canadian' law courses in areas such as Constitutional Law, Public International Law, Administrative Law, Commercial Law, Criminal Law, and Labour Law. All civil law students take at

²⁸ Brierley, *Québec's Civil Law Codification, Viewed and Reviewed* (1968) 14 McGill L.J. 521.

least one basic common law course, such as Contracts, Torts or Property ; all common law students take a number of basic civil law courses. All students therefore receive a basic training in the legal system in which they are earning their degree together with a serious introduction to the other. Thus students may still obtain only a B.C.L. degree ; alternatively they may study for only the LL.B. (common law) degree... But a further year of study after the obtaining of either degree leads to the granting of the second degree... . The Faculty believes that its National Program creates an important link between Québec and the rest of Canada. We are now training truly 'national' lawyers, for which there is a real need in this country.²⁹

The success of this program over the past twelve years has been aided by the increased material and intellectual resources of the faculty. The growth of the student body has also been a major factor. From approximately fifty students in 1940, to one hundred and eight in 1950, to two hundred and thirty in 1960, to two hundred and seventy in 1970 and to over five hundred in 1980, the increase has been steady and unfaltering.

II. Law at McGill Today

This then is something of the history of law at McGill which has produced a strong faculty complemented by two institutes — each of which has achieved an enviable national and international reputation.

The faculty is unusual in that it is teaching the civil law and the common law in one integrated curriculum. This makes for diversity of subject, method and language. Lectures in the civil law courses may be given in either English or French, and this has been the practice for well over a century.³⁰ Lecturers are expected to receive questions in either language and to respond in the language of the questioner, and students may submit essays or write examinations in either language. Similarly, although there has been no attenuation of the position that McGill's is an English-language law school, the student body is a healthy mix of those whose mother tongue is English and those whose mother tongue is French. The breakdown by maternal language is seventy-two *per cent* English, twenty *per cent* French, and eight

²⁹ McGill Faculty of Law *Announcement* (1980-81), 3.

³⁰ Over the years the amount of teaching given in French appears to have varied with individual lecturers. The earliest reference to the subject in the Law Faculty *Minutes* appears in December 1875 :

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.

However, the regular language of instruction has been English. The only other Civil Code jurisdictions which operate partly in English are South Africa, where the alternate language is Afrikaans, and Sri Lanka, where the alternate language is Sinhalese. Both systems are of Dutch origin.

per cent those who are of some other linguistic origin. As St Exupéry said, "Because I am different, I do not diminish you, I enrich you." For McGill's Faculty of Law that is indeed a way of life.

This diversity shows itself in other ways. Before the days of the Parent Commission on education in Québec, which reported in 1963-66,³¹ a student needed a B.A. to get into law school. Now only eighty *per cent* of the students have a first degree — not always the traditional B.A. — but often a B.Eng. or a B.Comm. Some students — approximately six *per cent* of the total — have a year or two of arts or science, and the rest — approximately fifteen *per cent* — are admitted straight from the Collèges d'enseignement général et professionnel (CEGEP). These last two categories of students reflect the principle established by the Parent Commission that first degrees in all disciplines should confer a professional qualification.

This raises an important educational issue, defined by two conflicting points of view. On the one hand there is a desire to educate and train young people as quickly and as technically as possible, and get them into productive practice with minimum expense to the taxpayer. This pressure is accentuated by current government policies — and to some extent by current public opinion — which believes that a quick and easy solution must exist for any challenge. On the other hand there is a strongly held opinion that a professionally-oriented legal education should be built upon a broadly conceived cultural base. It presumes that lawyers need to understand our culture and its history to be able to adapt easily to change in the legal system throughout an entire practicing lifetime, and to be able to advise clients with a judgment informed by an understanding of their personal and social situations. There must be sufficient scope in a future lawyer's formal education, before his professional education begins, to enable him to recognize that the frontiers between one discipline and another are not boundaries, but simply interconnecting and overlapping points. All education is one, and legal education is but one aspect of an indivisible whole. These two views are in contention. Legal education in the British tradition has been representative of the former attitude. Legal education in the tradition of the United States has been characterized by the latter opinion, and it is this view which we favour.

The ratio of undergraduate students to full-time teachers is now approximately 17:1, or 20:1, when graduate students are included. This is not nearly as low as we would like it to be. But it would be worse if the thirty full-time teachers were not supported by more than twenty part-time instructors. Their participation helps to root the teaching program in the

³¹ *Report of the Royal Commission of Inquiry on Education in Canada* (1963-66), Parts I, II and III [referred to as the *Parent Report*].

lively experiences of actual practice, and to invigorate it with the insight of Oliver Wendell Holmes that "the life of the law is not logic ; it is experience".

When one turns to the Institutes of Air and Space Law and of Comparative Law, diversity in unity is again the characteristic theme. The graduate students now number approximately one hundred, and they thus constitute by far the largest full-time graduate law school in Canada. They come from four Canadian provinces and twenty-six other countries around the world. The nature of the problems they study is even more wide-reaching than their countries of origin, as the names of the two institutes indicate. It is difficult to conceive of any legal subject which could not be rightly subsumed in the study of one or the other. Together they exemplify the law as a universal discipline, not concerned simply with the systematization of the rules of local law, but with the critical comparative consideration of different operative legal systems.

Professor Paul-André Crépeau, the Director of the Institute of Comparative Law, recently presented the revision of the Québec Civil Code to the Minister of Justice. The work of the team which he led is now being progressively introduced into the Québec National Assembly, so that its many provisions may receive consideration and legislative enactment. This is the culmination of fourteen years of work by Professor Crépeau as the moving spirit in the first full revision of the Code in its one hundred and fifteen year history. He and his colleagues are currently engaged in writing a series of treatises which comment on and explain the provisions of the Code.

Professor Nicholas Matte, Director of the Institute of Air and Space Law, is probably the most productive legal scholar in Canada today. In the last year he has brought into the institute more than \$500,000 in external grants, and over the years of his directorship he has maintained a steady flow of significant publications in air and space law.³²

In concluding this historical sketch, we think it is fair to say that McGill has produced and exemplified for all of Canada the academic lawyer. As the oldest law school in this country, it was perhaps natural that McGill should arrive at this concept first. The seminal influence of F.P. Walton and R.W. Lee, combined with the distinguished careers of innovators such as Smith, Corbett, Scott and Cohen, established a great tradition at McGill which is still in evidence today, and is surely one of the strongest determinants of the faculty's future development.

We have seen that if the legal professoriate is to fulfill the tradition of teaching and writing critically and imaginatively about the law, it must have

³² Professor Matte's recent publications include *Aerospace Law: From Scientific Exploration to Commercial Utilization* (1977), *Space Policy and Programmes Today and Tomorrow: The Vanishing Duopoles* (1980) and *Treatise on Air-Aeronautical Law*, 3d ed. (1980).

the qualities of detachment, of confident constructive criticism, and of a willingness to be slightly ahead of the times. It is not surprising that law professors are often the subject of controversy because of their unwillingness to accept the status quo. Just as we treasure the independence of the Bench from political influences, so must we value the independence and the detachment of a professoriate that is prepared to criticize and to improve our laws and system of justice, if our society is to grow confidently and humanely. A detached and constructively critical approach to the law is as certain a guarantee of our liberties as a written charter of rights. In fact, in some ways it is more certain, because it is rooted in customs and convictions — not simply in legislative fiat. This has certainly been true of McGill's Law Faculty in the past. The same conviction must be a major guiding principle for the days that lie ahead.

III. The McGill Law Faculty of the Future

In looking to the future of the Faculty of Law there is much we would hope to improve. The library collection and its facilities need to be augmented, so that this resource would not simply struggle to keep pace with five or six other library collections in the country but rather would better reflect in its books the traditions of breadth and diversity which have in the past characterized its teaching and its institutes. Scholars would then not have to go elsewhere quite so often for collections with which to do their more adventurous work. The secretarial assistance to professors needs to be increased so that their time might be more productively used in teaching and research. In particular, the secretarial and administrative resources of the institutes need to be augmented, so that they could pursue their work with ease and not worry about needing to find external grants. The ratio of teachers to students should be improved so that it would more closely parallel those of the several better endowed law schools in the country. To show that there is a consistency in these proposals, one may refer back to H.A. Smith's paper in 1921 to see that professors have been making similar demands for generations.³³

Of course, there are some things we do not hope to change. We would retain and perhaps increase the complement of part-time teachers. Indeed, we may develop fellowships which would bring into the faculty for study-periods of one month, three months, or even a year, members of the practicing Bar or the Bench, to pursue particular projects and stimulate others by their presence.

Finally, we hope in the near future to be able to increase the interactive role of the faculty with other parts of the university. Courses on areas of law could be given in the Arts Faculty, as has been done at different times in the

³³ *Supra*, note 9, 31-2.

past. At the same time, the specialized interaction of the Law Faculty with other professional faculties could be increased. Several examples already exist: a cross-appointment with the Department of Humanities and Social Studies in Medicine, and the resultant partnership in Medical Ethics and Jurisprudence; another cross-appointment with the School of Urban Planning; the current involvement of engineers and economists in the Institute of Air and Space Law; and the joint Bachelor of Laws/ Master of Business Administration degree program. And of course, we would reciprocate by ensuring that teacher-scholars from related disciplines such as economics, political science, history, psychiatry and psychology would also be jointly appointed to the Faculty of Law.

Summation

As McGill's Law Faculty charts its strategy for the future, we expect it to be faithful to these perspectives of the past. Some of the following observations would seem to provide the appropriate guide-posts. First, its middle-size among Canadian law schools should be seen as a virtue to be preserved. It encourages a preoccupation with quality and perspective and fosters a steady emphasis on research and writing about the law. This is based on the conviction that research and teaching inform one another, and are indispensable to one another if each is to be lively.

Secondly, the existence of the two first-degree programs, the LL.B. and B.C.L., reflects the fact that life is always a little harder at McGill because one is not content to do the conventional. By presenting the two Canadian legal traditions side by side — traditions which mirror the two great European legal systems — and by insisting that they inform and refine one another in fruitful co-existence, one begins to fulfill in law the rich destiny of Canada.

Thirdly, the fact that the largest and most international law graduate-program in the country exists within a faculty significantly smaller in size than many of the other law schools in the country is a symbol of McGill's ability to do more with less.

This article commenced with a reference to the two founding professional faculties in McGill University, the Faculty of Medicine and the Faculty of Law. We can take legitimate pride, more than a century later, in viewing their present stature. One can be confident that as these two professional faculties have helped to lead the university in the pursuit of excellence in the past, so they will continue to do so in the decades to come.
