LEGAL EDUCATION IN A "MIXED JURISDICTION": THE QUEBEC EXPERIENCE

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I. INTRODUCTION

That legal education plays an important role in the shaping and flourishing of a given legal system is undeniable. The law students of today will be the legal players of tomorrow, and, like any game, the legal one is only as dynamic as its players are skilled.

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Perhaps underestimated, however, is how particularly crucial the role of legal education becomes where the legal systems concerned fall into the category of so-called "mixed jurisdictions."[1] For in such systems, legal players must be capable of playing two games at once, which requires that they be trained to juggle with, and yet never confuse, two distinct sets of rules. Only if legal players can properly accomplish this will the integrity of the various games being played be preserved. In mixed jurisdictions, therefore, it is the very identity of the legal games, not just their respective dynamism, that is at stake for legal education.

As one such mixed jurisdiction, Quebec is faced with a singularly onerous educational challenge. Because all matters of private law are governed in Quebec by a system of rules rooted in the continental tradition of civil law,[2] law students in Quebec must be trained as civilian jurists. At the same time, Quebec's membership in the Canadian federation[3] entails its endorsement of the Anglo-Saxon tradition of

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1. THE ROLE OF JUDICIAL DECISIONS AND DOCTRINE IN CIVIL LAW AND IN MIXED JURISDICTIONS (J. Dainow ed., 1974); R. DAVID & J.E.C. BRIERLEY, MAJOR LEGAL SYSTEMS IN THE WORLD TODAY (3d ed. 1985).

2. By the Treaty of Paris of 1763, France ceded to England what was then referred to as "Lower Canada"—a territory covering roughly that of the current Canadian provinces of Ontario and Quebec, but extending further south to Louisiana. A decade later, the Quebec Act of 1774 was enacted whereby the province of Quebec was allowed to return to the French tradition of civil law that had ruled it before the conquest of 1759. Indeed, Section 8 of the Quebec Act provided that:

> all his Majesty's Canadian Subjects within the province of Quebec, the religious Order and Communities only excepted, may also hold and enjoy their Property and Possessions, together with all customs and usages thereto, and all other their civil rights, in as large, ample, and beneficial manner, as if the said Proclamation, Commissions, Ordinances, and other Acts and Instruments had not been made, and as may consist with their Allegiance to the Majesty, and subjection to the Crown and Parliament of Great Britain.

Quebec Act, 14 Geo. 3, ch. 83 (1774) (Eng.); R.S.C., app. II, no. 2 (1970) (Can.). In this provision, the phrase "laws of Canada" was understood as referring to the French civil law which governed Quebec before 1759. For detailed studies of the Act, see H. NEATBY, THE QUEBEC ACT (1972), and THE ADMINISTRATION OF JUSTICE UNDER THE QUEBEC ACT (1937).

3. The Canadian Confederation was born out of the British North America Act of 1867, 30-31 Vict., ch. 3 (Eng.), which succeeded the Quebec Act of 1774. The BNA Act proceeded to allocate constitutional powers between the federal and the provincial governments as follows:

> Before Confederation, each province bore the traits of sovereignty; but in joining the federal union each province gave up this sovereignty in its entirety, and with it gave up the revenues to be derived from the exercise of concomitant privileges, prerogatives and attributes. By virtue of the B.N.A. Act, the central power returned to the provinces some of these rights.

common law with respect to matters of public law,[4] with the result that Quebec law students must also be educated as common lawyers. In this sense, "the Quebec jurist has had a split personality."[5]

The task of properly integrating two distinct legal traditions within the same educational program is not an easy one, if only because legal traditions that differ in important ways are likely to present different philosophies of education and thus are also likely to require different educational agendas. Indeed, if this is the case, their integration cannot be successful unless such difference are accommodated in the process.

It is now widely acknowledged that the civil-law and common-law traditions differ fundamentally[6] and that this fundamental difference extends to their respective perspectives on legal education.[7] Their concurrent teaching in Quebec faculties[8] would therefore ideally entail

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Church v. Blake, 1 Q.L.R. 177 (Sup. Ct. 1876) (Taschereau, J.); 2 Q.L.R. 236 (Q.B. App. 1876). According to Section 92(13) of the BNA Act, one of the rights thus "returned to the provinces" by the central federal power is that of exclusive legislating power on matters concerning "Property and Civil Rights in the Province." On the early days of the BNA Act, see generally J.E.C. BRIERLEY & R.A. MACDONALD, QUEBEC CIVIL LAW—AN INTRODUCTION TO QUEBEC PRIVATE LAW 1-32 (1993); J.G. CASTEL, THE CIVIL LAW SYSTEM OF THE PROVINCE OF QUEBEC 1-58 (1962); P. HOGG, CONSTITUTIONAL LAW IN CANADA 21-31 (2d ed. 1985); A.I. SILVER, THE FRENCH CANADIAN IDEA OF CONFEDERATION: 1864-1900 (1982); M. WADE, THE FRENCH-CANADIANS: 1760-1945, at 63-68 (1955).

4. Quebec Act, *supra* note 2, § 11.

5. L. BAUDOUIN, LES ASPECTS GÉNÉRAUX DU DROIT PRIVÉ DANS LA PROVINCE DE QUÉBEC 20-21 (1967) (*"le juriste québécois a subi un dédoublement de personnalité"*).

6. *See, e.g.*, DAVID & BRIERLEY, *supra* note 1; M. GLENDON ET AL., COMPARATIVE LEGAL TRADITIONS IN A NUTSHELL (1982); H.C. GUTTERIDGE, COMPARATIVE LAW (2d ed. 1949); F.A. LAWSON, A COMMON LAWYER LOOKS AT THE CIVIL LAW (1953); J.H. MERRYMAN, THE CIVIL LAW TRADITION (1985); J.H. MERRYMAN & D.S. CLARK, COMPARATIVE LAW: WESTERN EUROPEAN AND LATIN AMERICAN LEGAL SYSTEMS (1978); K.W. RYAN, AN INTRODUCTION TO THE CIVIL LAW (1962); R.B. SCHLESINGER, COMPARATIVE LAW 222-329 (4th ed. 1980); A.T. VON MEHREN & J.R. GORDLEY, THE CIVIL LAW SYSTEM: AN INTRODUCTION TO THE COMPARATIVE STUDY OF LAW (1977); A. WATSON, THE MAKING OF THE CIVIL LAW (1981); 1 K. ZWEIGERT & H. KÖTZ, INTRODUCTION TO COMPARATIVE LAW (1987).

7. *See* M. Damaska, *A Continental Lawyer in an American Law School*, 116 U. PA. L. REV. 1363 (1967); W.K. Geck, *The Reform of Legal Education in the Federal Republic of Germany*, 25 AM. J. COMP. L. 86 (1977); E. Lambert & M.J. Wasserman, *The Case Method in Canada and the Possibilities of its Adaptation to the Civil Law*, 39 YALE L. REV. 1 (1929); G.E. Ledain, *Teaching Methods in the Civil-Law Schools*, 17 CAN. BAR REV. 499 (1957); MERRYMAN, *supra* note 6, at chs. IX, X & XV; Merryman, *Legal Education There and Here*, 27 STAN. L. REV. 859 (1975).

8. The term "law faculties," as distinct from the term "law schools" is important here, for, as will be shown *infra*, text accompanying notes 57-66, one significant difference between the evolutions of the common-law and the civil-law traditions is that they emerged from, and were

the coexistence—in one and the same learning environment, university curriculum, and teaching body—of two different forms of teaching methods, styles, and tools. Otherwise, the chances that Quebec law students will master the art of juggling with, while not confusing, the two sets of rules are rather dim.

In this respect, Quebec bears no more than the lot immediately expected of a mixed jurisdiction that combines two nontrivially different legal traditions. But the difficulty of its educational challenge is further compounded by the fact that for complex reasons having to do in part with the structure of Canadian legal institutions, the two sets of rules are not nearly as clearly delineated as they would be in a healthy mixed jurisdiction.

I indeed argue elsewhere[9] that what had been planned in 1867 as the peaceful and mutually respectful alliance of two distinct legal traditions under the common roof of Canadian federalism evolved into the bleak tale of a largely unsuccessful struggle by civilian elements to preserve their distinctive juridical identity. The tale ends unhappily, I concluded, since it appears that beyond the skeletal remnants of some conceptual foundations, little of Quebec's contemporary private law qualifies as truly civilian. At best, the current legal scene in Quebec can be described as a hodge-podge of civilian and common-law instruments, at both the level of substantive rules of law, and that of juridical logistics and methodology.[10]

If such a depiction of the history of Canada's bijuralism is accurate, the mission of legal education in Quebec is more onerous than that of your average mixed jurisdiction. For then, it is not enough that law students be capable of playing two games competently. Before any game-playing can even begin, it is necessary to reconfigure the games to be played, that is, to sort out from Quebec's hodge-podge of legal rules

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accordingly also taught as, professional and academic disciplines, respectively. R. STEVENS, LAW SCHOOL—LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S (1983); SCHLESINGER, *supra* note 6, at 146; Geck, *supra* note 7, at 86.

9. *See* C. Valcke, *Quebec Civil Law and Canadian Federalism*, 21 YALE J. INT'L L. (forthcoming 1995).

10. While such a hodge-podge need not be problematic for the common law, where juridical authoritativeness is canonical, it is problematic for the civil law, where juridical authoritativeness derives from conceptual unity. This difference between the common law and civil law is briefly described *infra*, text accompanying notes 40-56. On the unity of the civil law in particular, see C. Valcke, *The Clash of the Titans: When the Civil Law Tradition Meets the Welfare* State, U. TORONTO L.J. (forthcoming 1996).

which are civilian and which are of common law, and to reconstruct the distinct set of rules which each legal game requires. Beyond training competent legal players, therefore, Quebec's system of legal education must aim to form individuals capable of undoing years of unskilled playing. As such, the educational mission of Quebec is far weightier than what it bargained for as just another mixed jurisdiction.

I argue here that Quebec has fallen short of discharging this onerous mission, for its typical law graduate cannot be described as a solid civilian jurist. If anything, law graduates from Quebec may in fact be better trained at playing the game of common law. At the very least, they are, from academic and professional standpoints alike, barely indistinguishable from their common-law peers. One can only conclude, therefore, that the civilian game has been neglected in Quebec law faculties.

The reasons behind this state of affairs are, as with most social phenomena, hard to pinpoint with certainty. Three factors can nonetheless be singled out, which have been especially instrumental in shoe-horning Quebec's legal education into the mold of the common law. The description of these three factors, which I label the "financial," the "Bar Association," and the "psychological" factors, is the object of Part II. In Part III, I show how these factors' combined influence particularly affected three major aspects of legal education, namely, the profile of curricula, the nature of scholarship, and the method of instruction.

II. THREE FACTORS DESCRIBED

A. *The Financial Factor*

As expected, the "financial factor" refers to a state of financial strain. More specifically, the reference is to the state of financial strain which has befallen all universities in Quebec since the provincial government decided, back in 1963, to follow the recommendations of the Parent Commission,[11] and undertake what was to become the most comprehensive process to democratize higher education in Quebec's history. Indeed, since the adoption of the Parent Report, education in

11. QUEBEC MINISTRY OF EDUCATION, RAPPORT DE LA COMMISSION ROYALE D'ENQUÊTE SUR L'ENSEIGNEMENT DANS LA PROVINCE DE QUÉBEC (1963-66) [hereinafter PARENT REPORT].

Quebec is virtually user-free at all levels, and nowadays almost exclusively state-financed.[12]

Law faculties suffered greatly in this democratization process, for they were made to bear more than their proportional share of the costs generated by this process at the university level. The great variation in costs-per-graduate ratios across university departments afforded an opportunity for financing through cross-subsidization, which was quickly seized by Quebec's Ministry of Education. As law studies are, like most other social studies, practically costless in comparison with, say, scientific studies,[13] they stand to offer the greatest profit potential. Thus intent on increasing enrollment in law studies, the Ministry determined that while the amount of tuition fees charged to law students would be fixed at a province-wide uniform standard, government subsidies to law faculties

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12. Students in Quebec usually go through thirteen years of schooling before entering university. After six years of elementary school, and five years of high school, students wishing to pursue their education may, depending on their elected field of studies, choose to do so at a College of General and Professional Education [hereinafter CEGEP] for two or three years. Born in the aftermath of the PARENT REPORT, these CEGEPs were initially established with a view to provide high school students with the kind of general advanced education which university programs were deemed already too specialized to properly dispense. All three levels of pre-university education are entirely free. Even among private schools and colleges, very few institutions are privately subsidized at more than 20%. At the university level, fees are minimal. Statistics for the years 1981 to 1991 reveal that, among the ten Canadian provinces, Quebec has maintained the lowest percentage of tuition fees to general operating income of universities (around 9%) and the highest percentage of provincial operating grants to general operating income of universities through that period. STATISTICS CANADA, UNIVERSITY FINANCE TREND ANALYSIS, No. 81-260 (1990-91). Tuition fees for the year 1992-93 were on average C$750 per semester, as appears from the 1992-93 catalogues of Quebec's five civil-law faculties, McGill, Montreal, Laval, Sherbrooke, and UQAM [hereinafter CATALOGUES]. Brierley notes that Quebec has always maintained the lowest fee schedules in the country. J.E.C. Brierley, *Quebec Legal Education Since 1945: Cultural Paradoxes and Traditional Ambiguities*, 10 DALHOUSIE L.J. 5, 9 (1986).

13. The *Conseil des universités* of Quebec estimated that for the school year 1975-76, the average cost per law student was C$2,038, as compared to a cost per student of C$12,614 in medicine, C$3,334 in mathematics, and C$2,420 in literature. CONSEIL DES UNIVERSITÉS, AVIS AU MINISTRE DE L'ÉDUCATION SUR DEUX RAPPORTS RÉALISÉS PAR LE CENTRE DE RECHERCHE EN DROIT PUBLIC DE L'UNIVERSITÉ DE MONTRÉAL: LA PLACE DU JURISTE DANS LA SOCIÉTÉ QUÉBÉCOISE. L'ADÉQUATION DES FACULTÉS DE DROIT AUX FONCTIONS DE TRAVAIL DE LEUR DIPLÔMÉS 11 (1979) [hereinafter CONSEIL DES UNIVERSITÉS]. The proportions, almost identical three years earlier, *see* André Poupart, *A hue et a dia . . . ou les changements dans la filière à suivre pour devenir avocat*, 7 REVUE JURIDIQUE THÉMIS [R.J.T.] 273, 275 (1972), are comparable today according to a recent study commissioned by Quebec's Ministry of Education. In the 1991-92 school year, the average cost per student were C$4,253 in law, C$10,216 in medicine, C$7,054 in pure sciences, C$4,615 in literature, and C$4,710 in the humanities. QUEBEC MINISTRY OF EDUCATION, MÉTHODOLOGIE DU CALCUL DES COÛTS MOYENS DISCIPLINAIRES 15 (1994).

would be set in proportion of the number of full-time admissions each year.[14] As Quebec law faculties are almost entirely dependent upon their provincial government for funding,[15] they took the bait. Hence firmly determined to fill their classrooms to a maximum,[16] law faculties proceeded—as any maximizing enterprise would have—to assemble service packages likely to please the average consumer,[17] that is, to offer educational packages molded to the preferences of the average Quebec law student.

In and of itself, such a marketing policy bears no obvious implication for the issue of the ideal form of legal education in a world of two distinct legal cultures, given that, other things being equal, there is no reason to assume that the average Quebec law student would prefer noncivilian law studies. If anything, there would be reason to assume the contrary, given the chosen locus of study. But other things were far from equal, owing in part to the second of the three factors listed above: the "Bar Association" factor.

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14. The problem is not new. *See* J. Boucher, *Évolution récente de l'enseignement du droit: méthodes d'enseignement: Canada; droit civil,* 11 COLLOQUES INTERNATIONAUX DU DROIT COMPARÉ 138, 143 (1974); Poupart, *supra* note 13, at 276.

15. *See supra* note 12. One major difference between continental and Anglo-Saxon systems of legal education concerns their financing structure: the strong alumni tradition present in the latter system is simply nonexistent in the former. *See* Merryman, *supra* note 7, at 863. From telephone conversations with the alumni officials of various Quebec universities, it appears that money gifts from graduates create more embarrassment than satisfaction among administrators. Because of the fear that such gifts may be mistaken for bribes, gifts of tangible objects are commonly substituted for money gifts. Sadly, Quebec university libraries need more Harrap dictionaries than they do Riopelle paintings. McGill is an important exception to this rule. *See* R.A. Macdonald, *The National Law Programme at McGill: Origins, Establishment, Prospects,* 13 DALHOUSIE L.J. 211, 329-31 (1990).

16. According to the latest annual statistics compiled by the Committee of Canadian Law Deans on Canadian law schools, student-teacher ratios for Quebec law faculties have been among the worst in the country for many years. COMMITTEE OF THE CANADIAN LAW DEANS, REPORT CONCERNING THE SIXTH CANADIAN LAW TEACHING CLINIC 34 (1985) (The statistics are for 1984-85 and earlier years; more recent statistics are unavailable due to confidentiality requirements.); *see also* M. Cohen, *The Condition of Legal Education in Canada,* 28 CAN. BAR REV. 267, 271-74 (1950).

17. As would be explained in a basic economics textbook, *see, e.g.,* R.H. PALGRAVE, DICTIONARY OF MICRO-ECONOMICS § 397 (1982), this policy contrasts with that of enterprises in a private market, which usually seek to reach what amounts to the optimal—rather than maximal—number of consumers, as determined by reference to the preference curve of the marginal—as opposed to the average—consumer. The standardization of tuition fees chargeable by law faculties makes it impossible for them to adjust prices in the way necessary to reach marginal consumers, however.

B. *The Bar Association Factor*

That the Quebec Bar Association mostly retains the last word in all matters relating to the licensing of legal professionals in Quebec[18] clearly was destined to have a major effect on the condition of civilian legal education in that province. A major adverse effect has been that the average law student in Quebec has come to prefer—and thus obtain from law faculties—educational packages of questionable quality from the perspective of forming competent civilian jurists. Like the "financial" factor described above, therefore, the Bar Association's contribution to legal education in Quebec has been detrimental.

The story of the role of the Quebec Bar Association in legal education is one of relentless confrontation with the universities.[19] It begins with this Association, created as a professional corporation in 1849,[20] ostensibly with a view to provide a form of quality control mechanism that would serve the public interest by double-checking on the competence of law graduates entering the provincial market.[21]

The professional corporation took its mission very much to heart. Although its intervention was discrete at first, merely requiring that new recruits write qualifying examinations and/or undergo a period of internship with a corporate member,[22] it quickly became more daring.[23]

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18. The Quebec Bar Association is only one of Quebec's two professional corporations in law. The *Chambre des notaires* is the other. Act for the Organization of the Notarial Profession in that part of this Province called Lower Canada, S. PROV. C., ch. 21 (1847) (Can.). Although the *Chambre des notaires* has obviously also had influence over legal education in Quebec, *see* Macdonald, *supra* note 15, at 217-96, this influence has been neither as important (largely due to the fact that notaries are not nearly as numerous as advocates in Quebec), nor as perverse, as that exerted by the Bar Association. *See generally* J. Mackay, *La loi sur le notariat, son évolution et son histoire*, 91 REVUE DU NOTARIAT 421 (1989). For this reason, it is not discussed here.

19. *See generally* H. Le Bel, *Formation juridique et formation professionnelle: Quelques réflexions*, 7 R.J.T. 305 (1972); E. Colas, *Le Barreau, les facultés de droit et le stage*, 33 REVUE DU BARREAU [R. DU B.] 1 (1973); Macdonald, *supra* note 15; J. Moisan, *Barreau et universités*, 7 R.J.T. 287 (1972); M. Nantel, *L'étude du droit et le barreau*, 10 R. DU B. 97 (1950); G. PÉPIN, LA FORMATION PROFESSIONNELLE ET LES FACULTÉS DE DROIT: QUELQUES ÉLÉMENTS D'UN VOLUMINEUX DOSSIER (1981); Poupart, *supra* note 13.

20. Acte pour l'incorporation du Barreau du Bas-Canada, S. PROV. C., 12 Vic., ch. 45-6, § 325 (1849) (Can.).

21. *See* BARREAU DU QUÉBEC, GUIDE DES ARCHIVES INSTITUTIONNELLES DU BARREAU DU QUÉBEC (1994).

22. Bar Act, S.Q., ch. 27, § 44 (1881) (Can.); Bar Act, S.Q., (1st Sess.) ch. 5 (1936) (Can.). The period of apprenticeship is referred to as *le stage* in Quebec, and as the period of "articles" in the other Canadian provinces. Between 1944 and 1947, one could be admitted to the practice of

Before long, strict standards of university education were edicted,[24] and aspiring new entrants in the profession were required to attend eight months of courses administered and documented by the Bar Association prior to writing the qualifying examinations and undertaking the mandatory period of professional internship.[25] While the Bar Association recently modified the format of its professional training program with a view to emphasize professional skill training over legal knowledge testing,[26] the checklist of licensing criteria has, in substance, remained unchanged.[27]

Although the Bar Association claims that such professional training is the necessary complement to the universities' academic agenda,[28] many have questioned the purity of its motives.[29] Purity of

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law either by writing the required qualifying examinations or by undergoing a longer *stage*. An Act Modifying the Bar Act, S.Q., ch. 41 (1944) (Can.).

23. For a general description of the Quebec Bar Association's increasing intervention in university education, refer to 28 R. DU B. at 276-77 (1968).

24. In 1886, the Bar Association was given the legislative power to monitor the content of university studies in law in the province. *See* BARREAU DU QUÉBEC, *supra* note 21. In 1947, university studies in law became mandatory prior to writing the professional entrance examinations. Bar Act, S.Q., ch. 62 (1947) (Can.); *see* W. Meredith, *A Four-Year Course of Theoretical and Practical Instruction*, 13 R. DU B. 878 (1953).

25. *See* C. Fortin, *Preparing for the Practice of Law in Québec*, 3 J. PROF. LEGAL EDUC. 101 (1985).

26. R. Morissette, *The Evaluation of Bar Admission Candidates in Québec—Testing Knowledge and Testing Skills*, J. PROF. LEGAL EDUC. 1 (1988). Since 1987, the Bar Association's eight-month course program consists of technical courses, clinical workshops, and simulated legal proceedings. Candidates are evaluated throughout the program by way of written assignments, oral presentations, practical exercises, and examinations. Règlement sur la formation professionnelle des avocats, 123 G.O.Q. II, 5047 (1991), *enacted under* An Act Concerning the Barreau du Québec, R.R.Q., ch. B-1, § 15, 44 (1981).

27. For the current standards of admission to the Bar Association's training program, see R.R.Q., ch. C-26, r. 1, § 1.03 (1981) (Can.), *enacted under* § 43 of An Act Respecting the Barreau du Québec, R.S.Q., ch. B-1 (Can.). Concerning the content of this program and the details of the mandatory period of professional internship, see Règlement sur la formation professionnelle des avocats, *supra* note 26.

28. *See* BARREAU DU QUÉBEC, *supra* note 21. In March of 1978, Mr. Viateur Bergeron, then Head of the Quebec Bar Association, delivered an address at the Faculty of Law of the University of Montreal in which he declared:

> I always considered that three distinct and separate stages, three essential stages moreover, are needed to form a competent advocate. There must be a solid juridical preparation at the university level. The faculties are in charge of it. There must be a professional formation well designed and well taught. The Bar . . . is in charge of it. Finally, there must be an internship . . . to learn the essential rudiments of professional practice. It is the concrete training, it is the

motives aside, however, the Bar Association's intervention into legal education in the province has clearly been, and still is, largely seen by the universities more as trespass than as collaboration.[30]

As I show in Part III, this enduring dispute has had two notably detrimental effects with respect to the preservation of the civil-law tradition in Quebec. The first is the polarization of what could have been allied forces in redressing the structural defects noted above.[31] The second is the partial erosion of Quebec's academic base. While much of the ammunition against assimilation that is most valuable in a mixed jurisdiction lies in academia, particularly when the besieged is the civil-law tradition, Quebec law faculties have been instilled with an overpowering preference for professional training over academic schooling.

> essential experience. These three periods seem to me essential to the formation, at any rate, of all future advocates.

The address appeared as V. Bergeron, *La valeur de l'enseignement dispensé face au présent et à l'avenir de la fonction juridique*, 9 REVUE GÉNÉRALE DE DROIT 430 (1978).

29. Drawing on contemporary economic writings on professional licensing, *see, e.g.*, T.G. Moore, *The Purpose of Licensing*, J.L. & ECON. (1961); B.P. Pashigian, *The Market for Lawyers: The Determinants of the Demand for and Supply of Lawyers*, 20 J.L. & ECON. 53 (1977); M. SPENCE, ENTRY, CONDUCT AND REGULATION IN PROFESSIONAL MARKETS (Working Paper #2 prepared for the Professional Organizations Committee, Ministry of the Attorney General, Government of Ontario) (1978); D. Stager & P. Foot, *Lawyers' Earnings under Market Growth and Differentiation, 1970-80*, XXII CAN. J. ECON. 150 (1989)), many have likened the Bar Association's dealings in legal education to a form of market monopoly, claiming that behind the notions of public protection and quality control heralded by the Bar Association as justifications for its interventionist policy lie truly protectionistic intentions. *See* Brierley, *supra* note 12, at 8; Le Bel, *supra* note 19, at 313; Nantel, *supra* note 19; Poupart, *supra* note 13, at 276; G. Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. 3 (1971). These critics argue that one of the Bar Association's purposes in regulating the legal profession is to create barriers to entry so as to shelter its current members from potential competition. The Bar Association's apparently fading interest in a classic civilian legal education could also be explained in part as an exercise in political self-preservation. Indeed, if the arguments presented in Valcke, *The Clash of the Titans*, *supra* note 10, to the effect that a codal tradition clashes with the proliferation of state control are sound, then it would surely be in the interest of the Bar Association, itself an agent and beneficiary of state control, to steer Quebec's legal scene away from its civil-law lineage and towards an ideology that would better match the political aspirations of the modern welfare state.

30. The resentment felt by the *Association des Professeurs de Droit du Québec* is clear from the reading of its *Mémoire* submitted in 1964 to the Committee for the Revision of the Act and Regulations of the Quebec Bar Association. The *Mémoire* was subsequently published as Association des Professeurs de Droit du Québec, *Mémoire de l'Association des Professeurs de Droit du Québec*, 1964 (No. 51) THÉMIS 179.

31. *See supra* note 9 and accompanying text.

C. *The Psychological Factor*

The last of the three factors, which contributed significantly to the impoverishment of civilian legal education in Quebec, is what I call the "psychological" factor, in loose reference to a psychological form of parochialism, or some kind of inferiority complex, that would strike the members of a given minority group merely by reason of their membership in that group.

Among the many denominations used to describe this apparently widespread psychological phenomenon,[32] the one encountered most frequently in the field of social psychology is that of "alienation syndrome."[33] Borrowing from earlier anthropological studies,[34] Steinberg gives the following description of the symptoms of this syndrome, as they were observed among the economically disadvantaged:

> [T]he poor, by virtue of their exclusion from the mainstream of the societies in which they live, develop a way of life all their own, one that is qualitatively different from that of the middle-class societies in which they live. Like all cultures, the culture of poverty is a "design for living" that is adapted to the existential circumstances of the poor. The pressure of coping with everyday survival leads to a present-time orientation; the lack of opportunity, to low aspirations; exclusion from the political process, to feelings of powerlessness and fatalism; disparagement of the poor on the part of the society at large, to feelings of inferiority; . . . unrelenting poverty, to passivity and a sense of resignation. Thus . . .

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32. Chestang refers to the same phenomenon in the context of African-Americans as the "black experience." L.W. Chestang, *Character Development in a Hostile Environment* (Occasional Paper No. 3, School of Social Service Administration, University of Chicago, November 1972), *reported in* W. DAHLSTROM & D. LACHAR, MMPI PATTERNS OF AMERICAN MINORITIES 201 (1986). In the context of disadvantage which is specifically socio-economic, this phenomenon has been labeled "the culture of poverty." *See, e.g.*, S. STEINBERG, THE ETHNIC MYTH—RACE, ETHNICITY, AND CLASS IN AMERICA 106-09 (1989).

33. S. Middleton, *Alienation, Race, and Education*, 28 AM. SOC. REV. 473 (1963); DAHLSTROM & LACHAR, *supra* note 32, at 200.

34. O. LEWIS, FIVE FAMILIES: MEXICAN CASE STUDIES IN THE CULTURE OF POVERTY (1959); O. LEWIS, LA VIDA: A PUERTO RICAN FAMILY IN THE CULTURE OF POVERTY--SAN JUAN AND NEW YORK (1966).

> the culture of poverty comes into existence as a reaction and adaptation to conditions of poverty.[35]

While the specificity and vehemence of this description would seem to preclude its transposition to contexts other than that of socio-economic relations, some scholars have not hesitated to do just that. Dahlstrom and Lachar, for example, contend that any minority group acting in a hostile social context is vulnerable to this syndrome of alienation,[36] and Pierre Elliott Trudeau himself has decried what he calls Quebec's "ghetto mentality."[37]

If such a sweeping prognosis is warranted, it may be that some of the puzzles about legal education in Quebec, which the discussion of the financial and Bar Association factors leaves unsolved, could be explained as the manifestations of some sort of juristic syndrome of alienation. This is the case, I propose in Part III, specifically with respect to the nature of Quebec legal scholarship.[38]

Probably due to the factual volatility and causal indeterminacy that inheres in all things psychological, this last factor is more difficult to define than the financial and Bar Association factors, and its import for legal education thus will necessarily remain somewhat unclear. Given the lack of analytical constraints, there is great potential for indulging in exaggeration and caricature, and ascribing to the psychological factor more explanatory power than it deserves. In order to guard against this possibility—and avoid falling into the trap of over-medicalizing what could be just a normal, yet undesirable, feature of the human psyche—it is here treated as residual: it is invoked only where other satisfactory explanations are unavailable.

The three factors just described have thus contributed in different ways to the impoverishment of civilian legal education in Quebec. While the financial and Bar Association factors clearly have actively participated in bringing about this state of impoverishment, the contribution of the psychological factor has been more subtle. This last factor seems to have merely reduced the chances that the disturbing

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35. STEINBERG, *supra* note 32, at 107.

36. DAHLSTROM & LACHAR, *supra* note 32.

37. P.E. TRUDEAU, FEDERALISM AND THE FRENCH CANADIANS 42 (1968). Atias referred to the same as Quebec's "*mentalité de survivance*" ["survival mentality"]. C. ATIAS, SAVOIR DES JUGES ET SAVOIR DES JURISTES 33 (1990).

38. *See infra* Part III.C.