INSTITUTIONAL CULTURES AND LEGAL EDUCATION AT SELECT CANADIAN LAW FACULTIES

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Abstract

This dissertation is an exploration of the uniqueness of Canadian law Faculties as sites of meanings about legal education. Through an empirical study, it aims to tease out the institutional cultures of three law teaching institutions: the Legal Sciences Department at the University of Quebec in Montreal, the Faculty of Law at the University of Alberta and the Faculty of Law at the University of Moncton. The thesis notably focuses on the goals they each attribute to legal education, the structures surrounding it and its academic modalities. The findings show that each Faculty associates to such elements a set of meanings experienced as core to their self-conception, enduring through time and distinguishing them from others. Each Faculty thus constitutes a unique community of significations in resonance with its history, social environment and changing membership, even when accounting for the internal contestation and evolution of such meanings about legal education. This thesis builds on the insights of previous works showing that law professors experience their Faculty's institutional cultures as endowed with normative force and sketch out the content of such cultural norms at the three case studies. It then examines how these same Faculties are engaging with the prominent challenge posed by the Truth and Reconciliation Commission's Call to Action 28 to further tease out their culture as well as demonstrate their relevance to improve our understanding of law Faculties' responses to common contemporary challenges. The substantive and detailed engagement with the plural realities of legal education in Canada in this thesis aims to awaken the assumptions legal educators entertain about the goals and modalities of legal education and broaden their horizons of possibilities.

Résumé

Cette thèse de doctorat en droit explore la singularité des facultés de droit canadiennes en tant que communautés de sens à propos de la formation des juristes. En s'appuyant sur une étude empirique, elle cherche à établir un portrait de la culture institutionnelle propre à chacune des institutions d'enseignement du droit suivantes : le Département des Sciences Juridiques de l'Université du Québec à Montréal, la Faculté de droit de l'Université d'Alberta et la Faculté de Droit de l'Université de Moncton. En particulier, cette thèse se concentre sur les finalités que chacune attribue à la formation des juristes, les structures au sein desquelles cette dernière se déroule et ses modalités universitaires. Les conclusions démontrent que chacune de ces facultés attribue à ces éléments des significations perçues comme centrales à leur identité, durablement inscrites dans leur histoire et qui les distinguent les unes des autres. Chaque faculté constitue ainsi une communauté herméneutique unique en résonance avec son développement historique, son environnement social et les membres qui l'ont composée. En prenant en compte les contestations et évolutions dont sont l'objet ces significations singulières, cette thèse montre que les professeurs de droit attribuent une force normative à la culture institutionnelle de leur faculté. Cette thèse examine ensuite comment chacune de ces facultés se confronte à l'appel à l'action numéro 28 de la Commission Vérité et Réconciliation pour révéler des aspects supplémentaires de leur culture propre et illustrer la pertinence de prendre en compte les aspects culturels des facultés de droit pour améliorer notre compréhension de la façon dont celles-ci font face aux enjeux contemporains qui leur sont communs. En prenant à cœur et illustrant la réalité plurielle de la formation des juristes au Canada, cette thèse cherche à éveiller les acteurs du domaine à leurs préconceptions concernant les finalités et modalités de la formation des juristes ainsi qu'à élargir leurs horizons des possibles.

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Chapter 1: Studying Institutional Cultures in Legal Education

Introduction

A Supreme Court decision in June 2018 marked the culmination of a long saga about Trinity Western University's (TWU) proposal to establish a law school.[1] This legal case and the years of debates in the legal education community about the acceptability of the proposed TWU law school that preceded it showcased the great significance that actors on either side attribute to the institutional variations in terms of the context for and meaning attributed to legal education. Indeed, opposition to the proposal did not rest in the proposed structure for the program, the course requirements or the pedagogy set forth by TWU; what was deemed to cross the boundary of appropriateness in Canadian legal education was the imposition of certain religious values regarding marriage and intimacy in the university environment by way of a binding Community Covenant.

TWU would have become the first religious university to offer a law degree in Canada. The Community Covenant embodied TWU's Christian worldview and commitment to the overriding authority of the Bible. Many stakeholders took issue with the proposal to offer legal education in this religious environment, intended to imprint all aspects of education at TWU, especially as the mandatory Community Covenant made adherence to these faith-based principles compulsory for students and staff. Yet, many law Faculties in Canada seem to emphasize the distinctive character of the legal education they each provide. This phenomenon is prominent for newcomers in the field, such as the Bora Laskin Faculty of Law at Lakehead University (Lakehead Law) boasting its regional and Indigenous focus and Ryerson University's Faculty of Law (Ryerson Law) advertising its technological and entrepreneurial approach. The

[1] *Law Society of British Columbia v Trinity Western University* [2018] 2 SCR 293 [*LSBC v TWU*]; *Trinity Western University v Law Society of Upper Canada* [2018] 2 SCR 453 [*TWU v LSUC*].

same is also true for long-established institutions such as McGill University Faculty of Law (McGill Law) and its global, pluralistic and bilingual program. Beyond the justifications necessary to obtain public authorization and funding to operate in what is perceived as an already saturated market, and besides attempts to attract the best students, faculty and private donations, we can sense that each law Faculty cultivates its unicity for the education of jurists. Even as regulators have renewed their efforts to impede too great a differentiation in the last decade, Faculties maintain and exercise their discretion on a wide array of matters relating to degree requirements, course offerings, admissions policies and faculty recruitment. They also shape the legal education they offer by devising their own educational offer through specific programs and pedagogy.

Arguably, these readily perceptible variations remain limited, especially within the sphere of each of the two official legal traditions. Institutions seem to cultivate their unique character at a more cultural level. Regarding McGill Law, for instance, Belley affirmed that the internal political significations attached to the National Programme established in 1968 were the main driver in creating the current integrated and transsystemic curriculum, at a time of local turmoil in the Quebec society torn between the horizon of sovereignty and increasing continental economic integration.[2] Writing about legal education in Canada more broadly, Blanc affirmed that the ends and modalities of legal education are inextricably connected to expressing cultural identity and highlighted the crucial importance of cultural elements in the transformation of legal education.[3] Moreover, Pue insisted that locating the developments of legal education in the diversity of social, intellectual, cultural and political contexts across Canada is

[2] Jean-Guy Belley, "Le programme transystémique de McGill et la transnationalisation du droit" in Pascal Ancel & Luc Heuschling, eds, *La transnationalisation de l'enseignement du droit* (Larcier: Bruxelles, 2016) 139 at 146 ("la conception et l'adoption du programme transsystémique ont primordialement été influencées par l'expérience antérieure du programme national et sa signification politique interne"; mentioning as relevant background the "crise politique provoquée par le second référendum sur la souveraineté du Québec (1995)" and, "en contrepoint," the increasing consciousness of the repercussions of economic globalization as embedded in the North American Free Trade Agreement which came into force in 1994).

[3] Nicolas Blanc, "L'enseignement du droit au Canada : la culture, facteur de transformation" in Marie-Claire Ponthoreau, ed, *La dénationalisation de l'enseignement juridique* (Paris: Institut Universitaire Varenne, 2016) 83.

indispensable to properly understand its history, as they are an inseparable part of the larger Canadian cultural history.[4] There is thus something intangible, distinguishable from their internal policies and located in the realm of the cultural, that sets law Faculties apart from each other. Further, they appear to nurture and rely on this element to define themselves and fulfil their functions in society.

Respected scholars such as Arthurs and Macdonald have long called for Canadian legal education to embrace a genuine pluralism in its modalities and ends, encouraging legal educators to find their strength in the cultural diversity among law Faculties.[5] While the hegemonic forces that they spoke against continue to thwart the realization of this aspiration, we can nonetheless see the resilience of such cultural diversity among Canadian law Faculties. Differences may be small or great depending on the chosen comparators, but each Faculty holds the potential to constitute a unique cultural community cultivating its own norms regarding legal education, almost inevitably within the perimeter set by professional regulators.

Each generation before us seems to have felt that its time presented the greatest challenges and placed the highest demands on law Faculties, making its own such clichés as the inadequacy of law school curriculum to prepare future professionals for an always changing world of practice, or a perceived surplus of law graduates for high-paying positions even as unmet legal needs remain a perennial social issue.[6] Authors have even identified a genre of legal scholarship dedicated to the idea of a crisis in legal education.[7]

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[4] W Wesley Pue, "Common Law Legal Education in Canada's Age of Light, Soap and Water" (1995) 23 Man LJ 654 at 656—57 [Pue, "Common Law Legal Education"].

[5] Consultative Group on Research and Education in Law, *Law and Learning* (Report to the Social Sciences and Humanities Research Council of Canada, Chairman Harry Arthurs) (Ottawa: Social Sciences and Humanities Research Council of Canada, 1983) [*Arthurs Report*] at 56ff; Roderick Macdonald, "Still 'Law' and Still 'Learning'? Quel 'droit' et quel 'savoir'?" (2003) 18 CJLS 5 [Macdonald, "Still 'Law' and Still 'Learning'?"].

[6] See e.g. Adrien Habermacher, "A Hitchhiker's Guide to the Crisis of Legal Education" (2019), online: *SSRN* <https://ssrn.com/abstract=3374361>.

[7] See e.g. Mark Edwin Burge, "Access to Law or Access to Lawyers? Masters Programs in the Public educational Mission of Law Schools" (2019) 74 U Miami L Rev [forthcoming] (writing in the American context and citing the

Acknowledging this pattern should not prevent us from observing that our own era is a very dynamic one for legal education in Canada. The last decade has been one of effervescence, with recent developments fueling both angst and excitement. For the first time since the 1970s, new law Faculties were established,[8] accompanied by the institution of the National Requirement for the Federation of Law Societies of Canada (FLSC) to accredit old and new common law degrees.[9] An ad hoc program training lawyers in Nunavut launched its second edition,[10] and opportunities to gain legal competency in Canada's both official languages expanded for the first time in decades.[11] The Law Society of Ontario questioned and experimented as to the future of professional licensing,[12] etc. To this impressive but non-exhaustive

followings as examples of such a genre: Brian Z Tamanaha, *Failing Law Schools* (Chicago: University of Chicago, 2012), James E Moliterno, "And Now A Crisis in Legal Education" (2014) 44:4 Seton Hall L Rev 1069, and James G Milles, "Legal Education in Crisis, and Why Law Libraries Are Doomed" (2014) 106:4 Law Libr J 507).

[8] At Thompson Rivers University (2011), Ryerson University (to open in 2020); Memorial University is also studying the feasibility of creating its own law Faculty (Memorial University, *Faculty of Law Proposal* (August 2018), online: <https://www.mun.ca/law/> [MemorialU *Law Proposal*] (endorsed by the Memorial University Senate in November 2018), and TWU's proposal came in the same period.

[9] FLSC, *National Requirement* (1 January 2018), online: <https://flsc.ca/wp-content/uploads/2018/01/National-Requirement-Jan-2018-FIN.pdf> [FLSC *National Requirement*] (proposed 2008, first became effective 2015).

[10] The Akitsiraq Law School (cooperation between University of Victoria Faculty of Law and Nunavut Artic College) graduated a single cohort in 2005, and a similar program in cooperation between University of Saskatchewan Faculty of Law and Nunavut Arctic College started in September 2017 with a cohort of 25 (see University of Saskatchewan, College of Law, "Nunavut Law Program", online: <https://law.usask.ca/programs/nunavut-law-program.php> and Nunavut Artic College, "Nunavut Law Degree", online: <https://www.arcticcollege.ca/law>).

[11] Since the early 2010s, the University of Manitoba has offered some first year and upper years law courses in French and aims to offer a Certificate program in French common law by 2022 (see "Bilingual Course Offerings", online: <law.robsonhall.com/programs/jd/bilingual-course-offerings/>); the University of Ottawa Common Law Section has developed partnerships with the University of Saskatchewan (2016, see "French Common Law Option", online: <https://programs.usask.ca/law/juris-doctor/common-law.php#Year15creditunits>) and the University of Calgary (2019, see "Certification in common law in French", online: <https://law.ucalgary.ca/future-students/our-programs/french-certificate>) to provide educational possibilities to the common law in French at these institutions and aims to develop similar offerings at Faculties across the country (Caroline Magnan, "L'accès à la justice en Alberta" (Paper delivered at the General Assembly of the Association des Juristes d'expression Française de l'Alberta, Edmonton, 10 June 2016) [unpublished]); see also *infra* note 584 and accompanying text (discussing the agreements between the Université de Moncton and Francophone colleges across Canada facilitating access to the former's J.D. program for the latter's students).

[12] See e.g. Law Society of Ontario, Professional Development and Licensure Committee, *Options for Lawyer Licensing* (10 December 2018), online (pdf): <https://lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2018/convocation-dec-2018-professional-regulation-committee-report_1.pdf> (presenting four options to Convocation for lawyer licensing several years after it had approved an optional pilot project in the form of the Law Practice Program (LPP) at Ryerson University (in English) and at uOttawa (in French) in 2013 and the integrated practice program at Lakehead Law as alternatives to articling; on 10 December 2018, Convocation decided to maintain articling and LLP as two pathways to licensing).

list of recent developments, we can also add the prevailing sentiment that technology and market changes are bringing greater disruption than ever to the practice of law.[13]

The greatest contemporary challenge has come from the Truth and Reconciliation Commission of Canada (TRC) confronting law Faculties with their responsibility in the pursuit of reconciliation with Indigenous Peoples.[14] It dedicated one of its calls to action to recommend that future lawyers gain an understanding not only of Indigenous Peoples' rights, but also of laws and legal worldviews. Law Faculties across Canada are now attempting to find and implement responses to this call.[15] Borrows has been instrumental in convincing Canadian legal academia that Indigenous laws are "a vital part of the laws of Canada" and that all law Faculties should find ways to teach them; he also recognized that the degree and type of engagement with the issue will vary for each Faculty.[16] The diversity of Indigenous cultures across the country is of course a key factor here; however, I argue that variations from one Faculty to the next will also owe much to their own cultural differences, including the unique blend of ends and modalities for legal education that they each nurture in their specific local context.

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[13] See e.g. Richard E Susskind, *Tomorrow's Lawyers: An Introduction to Your Future,* 2nd ed (Oxford: Oxford University Press, 2017); Canadian Bar Association Legal Future Initiative, *Innovations in Legal Services: 14 Eye-Opening Case Studies* (Canadian Bar Association: Ottawa, 2013), online: <https://www.cba.org/CBA-Legal-Futures-Initiative/Home>; Ian Holloway, "The Evolved Context of Legal Education" (2013) 76:1 Sask L Rev 133 (opening with "[l]ooking at the legal profession today is rather like it must have been to observe Europe in the month of July 1914.").

[14] See "Calls to Action" in Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling the Future* (Summary of the Final Report of the Truth and Reconciliation Commission of Canada) (Toronto: James Lorimer & Company Ltd, 2015) 319 at Call no. 28 ("We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.") [TRC, "Calls to Action"].

[15] See e.g. Council of Canadian Law Deans, *TRC Report* (2018), online (pdf): <ccld-cdfdc.ca/wp-content/uploads/2018/07/CCLD-TRC-REPORT-V2.pdf> [*CCLD TRC Report]* (compiling summaries of each Faculty's responses to the TRC Report and related initiatives).

[16] John Borrows, "Outsider Education: Indigenous Law and Land-Based Learning" (2016) 33:1 Windsor YB Access Just 1 at 10 [Borrows, "Outsider Education"]; see also John Borrows, "Issues, Individuals, Institutions and Ideas" (2002) 1 Indigenous LJ ix at xiii—xvi [Borrows, "Issues, Individuals, Institutions and Ideas"].

My assertion here comes from the first-hand exposure to three Faculties' engagement with Indigenous issues in the course of my empirical research for this project. I found clear patterns of engagement, specific to each institution. At one of them, for example, I observed internal struggles regarding the appropriateness of traditional land acknowledgments, whereas at another it was a consensual and established practice and at the third, it was a very new idea that had not yet given rise to much consideration. At one of them, the sense of already serving a disadvantaged minority in its own language against all odds fueled sentiments that teaching Indigenous laws was not a priority or even, for some participants, did not fit in their Faculty's unique mission. On the other hand, at another Faculty, participants felts that it corresponded very well to their specific values and objectives, and at the last one it was considered a natural part of the general service of the law school to society.[17]

Beyond the important questions connected to reconciliation that are raised here, I identified manifest patterns of significations accorded to different aspects of legal education at each of these Faculties, including their self-conception of their mission, the structures within which they each operate and their academic programs. The patterns of meanings attached to reconciliation and teaching Indigenous laws at these three institutions matched the ways each of them conceived of themselves, engaged with their environment and defined the ends and modalities of legal education at their Faculty.

The unique cultural aspects that set law Faculties apart from each other thus appear to play a significant role in the ways they address the common contemporary challenges. As the FLSC and other regulators play their own part in setting common requirements for legal education, a somewhat opposite force seems to come from the intangible cultural dimension of legal education at distinct Faculties. If we think of other challenges, such as the blatant social need for better access to justice across the country or

[17] See Chapter 5, *below*, for more on this topic.

the effects on legal practice of the economic and technological changes in the delivery of legal services,[18] we can also imagine that different law Faculties will vary in their responses and engagement.

A comparative study of legal education at different law Faculties from this perspective holds great potential to enhance our understanding of the phenomena at play, which we assume to shape law as a discipline and a profession. Studying law Faculties as sites of multifaceted cultural normativity on their own will provide insights into the epistemology of the discipline, the making of the profession, as well as the contribution of legal education to the needs of society in our time.

In the following, I will explain how I endeavoured to conduct such an inquiry. I will first provide an overview of the existing literature on legal education in Canada to highlight how the current scholarship both supports the promising character of this research and has yet to explore this avenue (*section 1*). Historical scholarship is the corpus that most engages with the individuality of law Faculties. It demonstrates the importance of paying attention to the cultural meanings attached to legal education and to the social context in which it takes place. Other corpora such as contemporary accounts of pedagogical developments and conceptual contributions usually adopt other frames of reference, at a smaller or larger scale. On the other end, a recent wave of empirical research on legal education in Canada has demonstrated this approach's potential to yield significant analytical insights for the field. While it has not yet focused its attention on individual law Faculties as distinct cultural sites, this vein of inquiry is the most promising avenue to address the issues upon which this project focuses.

I will then propose a conceptual framework based on the analytical tools common to the fields of social anthropology, sociology and higher education studies (*section 2*). The concept of institutional

[18] See e.g. Ian Holloway, "A Canadian Law School Curriculum for this Age" (2014) 51:4 Alt L Rev 787 at 797—798 (speaking of a technological revolution in the practice of law as law firms make large investments with the aim of improving process efficiency) [Holloway, "A Canadian Curriculum for this Age"]; see also Richard E Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford: Oxford University Press, 2013) at chap 5 (describing 13 disruptive technologies in law).

cultures offers a possibility to capture the meanings attached to legal education and the values it embodies. It allows us to focus on each law Faculty as a community distinct from, but not isolated from others. It draws on the insights from established scholarship on the possibility of defining, analyzing and comparing cultures, and even more so for higher education institutions. Moreover, it also resonates with many insights from the field of comparative law, which comparative research in legal education cannot ignore.

The next step will be to define the methodological frame I designed to conduct this inquiry (*section 3*). There again relying on tools from the social sciences, I will show that qualitative research in the forms of interviews and observations constitute an interesting path to obtain data on the cultural meanings attached to legal education at diverse Canadian law Faculties. I explain that I will treat each Faculty as a case study and expose the ethical considerations that also form part of the methodology. It will also be the opportunity to outline the limitations of this project and clarify that it does not aim at presenting a general theory of the role of institutional cultures in legal education nor making specific causal claims. Instead, my ambition is to offer an elucidation of meanings at three Faculties that will confront readers with the contingency of many of our assumptions about legal education, encouraging them to reexamine the supposedly familiar aspects of the field and engage with the social and cultural elements constitutive of the reality of legal education in Canada. Finally, I will summarize the approach I chose and provide an outline of the sites of analysis on which I will deploy this approach in the subsequent chapters (*Conclusion & Overview of Thesis*).

Before proceeding further, the first assumption that needs to be unpacked here relates to the meaning of "legal education" itself. The expression may encompass a range of associated meanings, ranging from exclusively initial university education leading to professional qualification to all kinds of

formal and informal learning about law.[19] My approach here will focus on the education to law which takes place in university programs offered by academic units dedicated to this discipline and offering a program recognized by at least one professional association toward qualification for the practice of law. All such academic units in Canada are members of the Council of Canadian Law Deans (CCLD),[20] and I will refer to them as "law Faculties" even as their individual names may differ from this canon.[21]

1. Canadian Legal Education Scholarship

To date, scholarship on legal education in Canada with a comparative perspective has remained scarce, and so have been studies looking at individual law Faculties as distinct cultural sites. The overview below shows that the approach I propose addresses a blind spot in the field. Historical scholarship is the corpus that most pays attention to institutional characteristics, but it comes with shortcomings including the general absence of contemporary or comparative insights. It also tends to be celebratory rather than critical. A brief exploration of the historiography of Canadian legal education will nonetheless prove useful to identify the trends in the field and show the promising character of an institution-specific analysis. On the other hand, non-historical scholarship too-often engages with local specificities with a granular perspective that does not allow for meaningful comparative research, for instance with a focus on specific courses or individual pedagogies; the rest of the time it remains at a general level of analysis that treats legal education as an abstract concept or uniform phenomenon. Empirical scholarship offers the most promising potential for comparative research and a study of law Faculties' individuality. While a growing

[19] See e.g. William Twining, "A Cosmopolitan Discipline? Some Implications of 'Globalisation' for Legal Education" (2010) 8:1 Intl J Leg Prof 23 at 29ff.
[20] See Council of the Canadian Law Deans, *Constitution of the Council of Canadian Law Deans*, s 2.1, online: <ccld-cdfdc.ca/index.php/about-us/constitution> [*CCLD Constitution*].
[21] See also Chapter 1, Section 3.2.1, *below*, for a discussion of the universe of potential cases and non-cases in this study.

body of empirical works in legal education is emerging in Canada, to date the possibility of comparing the cultural differences of institutions has remained underexploited.

1.1 Historiographical Insights

Pue provided one of the only historiographic studies on Canadian legal education in his admirable "Common Law Legal Education in Canada's Age of Light, Soap and Water."[22] Among the patterns that he identified, such as the narratives of an ineluctable progressive march toward the current state of affairs and of heroic struggles fought by great academics against narrow-minded practitioners, he also highlighted "a failure to appreciate the cultural meanings of legal education."[23] While Pue's external history approach certainly led him to consider the meanings given to legal education in society generally, his analysis shows that a cultural understanding of legal education, whether internal or external, has hardly featured in historical scholarship on legal education in Canada.

Most of the historical scholarship on legal education in Canada takes the form of institutional histories. While such histories are prone to heroic narratives such as those criticized by Pue, and individually focus on a single object, thus hindering comparative analysis, they show how Faculty-specific characteristics matter in the developments of legal education. They lay the foundations and highlight the promise of research focused on the individuality of the Faculties. They also offer a wealth of factual information about each law Faculty. Second, there is a modest volume of regional or thematic histories, that provides more promising insights for comparative scholarship in legal education across Canada. In this second corpus, only a handful of authors have bridged the traditional divide between civil and common legal education. This tendency entrenches the perception of some incommensurability between

[22] Pue, "Common Law Legal Education", *supra* note 4.
[23] Pue "Common Law Legal Education", *supra* note 4 at 655.

these two spheres of legal education in Canada, even though they face many common challenges and are embroiled in the same larger trends.[24]

1.1.1 Institutional Histories

In most of Canada, the local practitioners and the professional associations played a significant role in legal education before the establishment of law Faculties for this purpose. Even after the advent of such institutions, law societies have retained an important part in the preparation of their future members. It is therefore not surprising that the literature on the histories of law societies as professional institutions includes sections on the role they have assumed in legal education. The insights they offer are concentrated on legal education before the establishment of university institutions for this purpose and on the conditions of the transfer of responsibility for legal education from the professional associations to the universities. For instance, Watts's *History of the Legal Profession in British Columbia* details the pressure built up by law students in Vancouver and Victoria that led to the creation of law schools in both cities in the early 20th century, and then how the Faculties of law at the University of British Columbia (UBC Law) and the University of Victoria (UVic Law) came about in 1945 and 1975 respectively.[25] We can also note Moore's *Law Society of Upper Canada and Ontario's Lawyers*,[26] Harvey's *Law Society of*

[24] See also Christophe Jamin & William van Caenegem, "The Internationalisation of Legal Education: General Report for the Vienna Congress of the International Academy of Comparative Law, 20-26 July 2014" in Christophe Jamin & William van Caenegem, eds, *The Internationalisation of Legal Education* (Springer, 2016) 3 ("in many ways the common law and civil law approaches, with their mix of university degrees and periods of apprenticeship are no longer very different, and have not been so for quite a while.").

[25] Alfred Watts, *History of the Legal Profession in British Columbia 1869-1984* (Vancouver: Law society of BC, 1984).

[26] Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyers 1797-1997* (Toronto: University of Toronto Press, 1997).

Manitoba,[27] and Bell's *The Law Society of New Brunswick: an historical sketch*[28] with a similar purpose for different jurisdictions.

These histories sometimes display a tendency to picture the debates around legal education as an opposition between a profession homogeneously inspired by legitimate ideas and radical-minded academics, the flip side of the historiographical trend identified by Pue when law professors write their Faculties' histories.[29] Law societies' histories are now dated regarding the role that the professional associations have assumed in the regulation of legal education. Even as the institutional set up has not changed much within each law society, attitudes may have. Moreover, while the diverging decisions regarding the approval of TWU's proposed law school in different provinces showed that provincial law societies retain an important role in accrediting courses of study, the FLSC has taken on a much greater role in the regulation of legal education in the past two decades, with national initiatives such as the National Requirements and the National Committee on Accreditation. To date, scholarly attention on the FLSC's role in legal education remains lacking. We are confronted here with a limit inherent to historical scholarship: the passing of time is necessary for sound historical analysis and the most recent events are thus necessarily excluded from the exercise. Insights into the development of FLSC's national initiatives would, however, be helpful to understand this body's efforts to shape how law Faculties respond to certain contemporary challenges.

Law Faculties are now the main actors driving legal education even if law societies have retained consequential gatekeeping privileges. It is logical therefore to now turn to the scholarship focused on the

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[27] Cameron Harvey, ed, *The Law Society of Manitoba 1877-1977* (Winnipeg: Peguis, 1977).

[28] David Bell, *The Law Society of New Brunswick: an historical sketch* (Fredericton: Law Society of New Brunswick, 1999) [Bell, *LSNB*].

[29] See e.g. Watts, supra note 25 at 61—62.

history of law Faculties. Most of the law Faculties across Canada, except those who only recently joined the club, have already seen their history recounted in a dedicated monograph or journal article.

There seems to be a certain fondness among Canadian law Faculties to commission books on their own history to celebrate milestone anniversaries. Some of these works hardly go beyond bringing together a great number of testimonies, photographs, and factual information; this is the case for Hétu's *Album souvenir* for the centenary of University of Montreal Faculty of Law (Droit UMontréal),[30] as well as Pilarczyk's *Noble Roster* for McGill Law's sesquicentennial.[31] However, others offer thoughtful analysis of the context and dynamics of the historical developments they relate; Willis' *History of Dalhousie Law School*, published just a few years before the school's (Dalhousie Law) centenary,[32] Bell's *Legal Education in New Brunswick: A History* for the same milestone at the University of New Brunswick Faculty of Law (UNB Law),[33] and Vanderlinden's *Genèse et jeunesse d'une institution* for Moncton University Law School's (Droit UMoncton) twentieth anniversary are such analytical works.[34] A similar work had been prepared for Osgoode Hall Law School (Osgoode Hall) centennial in 1989 by Cole but seems to have never been published.[35] This vein of publications also includes less ambitious works published in the form of booklets, such as Banks's *Law at Western,*[36] or mere articles, such as Demers's "And Social Justice for All: A History

[30] Jean Hétu, *Album souvenir 1878-1978 Centenaire de la faculté de droit de l'université de Montréal* (Montreal: Yvon Blais, 1978) [Hétu, *Album souvenir*].

[31] Ian C Pilarczyk, *"A Noble Roster": One Hundred and Fifty Years of Law at McGill* (Montreal: McGill University Faculty of Law, 1999).

[32] John Willis, *A History of Dalhousie Law School* (Toronto: University of Toronto Press, 1979).

[33] David G Bell, *Legal Education in New Brunswick: A History* (Fredericton: University of New Brunswick, 1992) [Bell, *Legal Education in NB*].

[34] Jacques Vanderlinden, *Genèse et jeunesse d'une institution : l'école de droit de l'université de Moncton* (Moncton: Université de Moncton, 1998) [Vanderlinden, *Genèse et jeunesse Droit UMoncton*].

[35] Reference to this work is made in the following pieces: Mary Jane Mossman, "Educating Men and Women for Service Through Law: Osgoode Hall Law School 1963-1988" (1988) 11:3 Dal LJ 885 at 888, n 9 (citing "the forthcoming history of Osgoode Hall Law School by Professor Curtis Cole" in 1988), Bell, *Legal Education in NB, supra* note 33 at Preface; and Moore, *supra* note 26 at 167, n 51 (referring to the same work in manuscript in 1997).

[36] Margaret A Banks, *Law at Western: 1959-1984* (London, ON: Faculty of Law University of Western Ontario, 1984).

of the University of Windsor, Faculty of Law."[37] It also includes web-based publications from the two Faculties at the University of Ottawa (uOttawa Common, uOttawa Civil),[38] as well as a dedicated website from UBC.[39]

In his history of Laval University's Faculty of Law (Droit ULaval), Normand affirms that this context favours apologias over true historical scholarship.[40] This tendency is not unique to law faculties but affects other areas of Candian legal history, as Baker aptly argues that the biographies of Canadian legal actors and histories of Canadian legal institutions often lack critical edge, seldom include professional historians and usually presume their subjects to be praiseworthy.[41] Writings that present the factual developments of institutions are not limited to commemorative contexts, as we can think of several articles of this kind, for instance the series of portraits on the existing law Faculties that appeared in the pages of the Dalhousie Law Journal in the 1980s[42] and Law & Wood's history of the University of Alberta's Faculty of Law

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[37] Annette Demers, "And Social Justice for All: A History of the University of Windsor, Faculty of Law" (2009) 27 Windsor Rev Leg & Soc Issues 31.

[38] University of Ottawa Faculty of Law Common Law Section, "Reunion: Common Law History at the University of Ottawa" (2007), online: <https://commonlaw.uottawa.ca/en/about/history> [uOttawa Common Law "Reunion"]; University of Ottawa Faculty of Law Civil Law Section, "History of the Faculty", online: University of Ottawa, <https://droitcivil.uottawa.ca/en/about/history-of-the-faculty>.

[39] Allard School of Law History project, online: <historyproject.allard.ubc.ca/>. This web-based historical resource is much more elaborate than the usual tab on most faculties' website presenting a very short narrative of their history. On UBC Law history, see also W Wesley Pue, "A History of British Columbia Legal Education" (March 2000) UBC Legal History Papers WP 2000-1, online: SSRN, <https://ssrn.com/abstract=897084>.

[40] Sylvio Normand, *Le droit comme discipline universitaire, Une histoire de la Faculté de droit de l'université Laval* (Québec: Les Presses de l'Université Laval, 2005) at xi [Normand, *Le droit comme discipline universitaire*] (also citing Alfred S Konefsky & John Henry Schlegel, "Mirror, Mirror on the Wall: Histories of American Law Schools" (1982) 95:4 Harv L Rev 833 making a similar point in the context of American legal education).

[41] G Blaine Baker, "Juristic Biographies, Homage Volumes, and 'Tracings of Gerald Le Dain's Life in the Law'" in G Blaine Baker & Richard Janda, eds, *Tracings of Gerald Le Dain's Life in the Law* Montreal: McGill-Queen's University Press, 2012) 3 at 4—6.

[42] Ronald St John Macdonald invited contributions from and on all law Faculties in Canada (see e.g. Louise Thisdale, "Le Centenaire de la Faculté de Droit de l'Université de Montréal" (1980) 6:2 Dal LJ 374 at 375), and the Dalhousie Law Journal published numerous pieces on Canadian legal education in this decade, and among them portraits of nearly all law Faculties across the country, including Carleton's Legal Studies Department (see R Lynn Campbell, "Law as a Social Science" (1985) 9:2 Dal LJ 404).

(UAlberta Law).[43] Such publications play a valuable role to establish and make available factual knowledge about law Faculties but offer little in terms of analytical insights.

In addition, the histories of law Faculties as educational institutions also include works that focus on particular moments in the institutions' life rather than covering the whole of their history. For instance, before the actual opening of the law program at the University of Quebec in Montreal (UQAM), Brault published *L'affaire des sciences juridiques à l'UQAM* relating events leading to the aborted opening in 1973 and the social and political conditions surrounding it.[44] Freed from the ambition of relating a comprehensive history, these works can provide more analysis on precise points. The recent series penned by Hobbins in the Dalhousie Law Journal on turning points of McGill Law's history are prominent examples.[45] One could also cite Normand's article on the evolutions at Droit ULaval at the time of Quebec's Quiet Revolution.[46]

A final variation in the stream of institutional histories features a thematic analysis of legal education offered at a given institution during a certain period. Such publications emphasize the significance of distinctive categories of thoughts or assumptions in the history of an institution rather than exposing a chronology or event-based narrative. Morgan's "Embarrassingly and Severely Masculine Atmosphere" is a good example of this kind of historical studies; it focuses on the issue of gender in legal

[43] John M Law & Roderick J Wood, "A History of the Law Faculty" (1996) 35:1 Alta L Rev 23.
[44] Serge Brault et al, *L'affaire des sciences juridiques à l'UQAM* (Québec : Editions Québécoises, 1973).
[45] AJ Hobbins, "No longer 'naked and shivering outside her gates': Establishing Law as a Full-time On-campus Academic Discipline at McGill University in the Nineteenth Century" (2011) 34:2 Dal LJ 373; AJ Hobbins, "Designating the Dean of Law: Legal Education at McGill University and the Montreal Corporate and Professional Elite, 1946-1950" (2004) 27:1 Dal LJ 163; AJ Hobbins, "'A couple of generations ahead of popular demand': The First National Law Program at McGill University, 1918-1924" (2008) 31:1 Dal LJ 181.
[46] Sylvio Normand, "Tradition et Modernité à la Faculté de Droit de l'Université Laval de 1945 à 1965" (1992), 33 C de D 141.

education at Osgoode Hall in the second third of the 20th century.[47] This approach is rare in institutional histories, and it is more commonly found in regional and thematic histories.

Before turning to this second vein of historical scholarship, we can see from this review that the literature on individual law Faculties is plentiful, but generally presents limited analytical insights due to the context for which it is produced. Despite this shortcoming, it is helpful as it constitutes a rich source of secondary materials to establish factual patterns across the institutions, thus avoiding to a later researcher the tedious task of digging through institutional archives at several universities to form arguments about the developments of Canadian legal education.

1.1.2 Regional & Thematic Histories

The object of the works cited thus far is to recount the history of legal education within the walls of a given institution, even though some engage substantially with the surrounding context. It is a different body of literature, this time almost exclusively composed of journal articles rather than monographs, that offers analytical insights comparing the developments of legal education in different institutions and sometimes different parts of the country. This scholarship features much stronger analytical themes than the literature on institutional histories alone. Although it focuses on historical developments at Osgoode Hall, Kyer and Bickenbach's *Fiercest Debate* is a notable example here since it offers an insightful analysis of the ideological struggle between the Law Society of Upper Canada's (LSUC, now Law Society of Ontario (LSO)) Benchers and Dean Wright over the form of legal education in Ontario in the second third of the 20th century.[48] At this time, Osgoode Hall was the only institution providing legal education in Ontario,

[47] Cecilia Morgan, "'An Embarrassingly and Severely Masculine Atmosphere': Women, Gender and the Legal Profession at Osgoode Hall, 1920s-1960s" (1996) 11 CJLS 19.

[48] C Ian Kyer & Jerome E Bickenbach, *The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario: 1923-1957* (Toronto: University of Toronto Press, 1987).

and the developments related by Kyer and Bickenbach explain how and why the LSUC relinquished significant control over the training of its future members, thus allowing universities across the province to open common law Faculties in the 1950s starting with the University of Toronto (UToronto Law). In this regard, this history is properly regional rather than strictly confined to Osgoode Hall as an educational institution.

The existence of provincial histories of legal education is most obvious for the province of Quebec. The distinctive tradition of legal education in the province, in keeping with the Continental roots of its legal tradition, probably contributes to this phenomenon. So does the number of law Faculties in Quebec, which at the same time allows for comparisons while remaining small enough to encompass them all in a given narrative. Articles addressing the question include Brierley's "Quebec Legal Education since 1945: Cultural Paradoxes and Traditional Ambiguities,"[49] and Howes's "Origins and Demise of Legal Education in Quebec (or Hercules Unbound)."[50]

In contrast, in provinces where there has been only one institution providing legal education, the history of legal education in the province can hardly be distinguished from the history of that institution and that of the local law society. There are however important differences to highlight between institutional histories such as those cited above and histories of a phenomenon, here legal education, even though a single institution takes charge of it. An example is London's "Perspective on Legal Education and Admission to Practice in the Province of Manitoba," which is centred around the Admissions and Education Committee of the Manitoba Law Society, but effectively offers a historical perspective on legal education in the province even after the establishment of a law Faculty at the University of Manitoba

[49] John C Brierley, "Quebec Legal Education since 1945: Cultural Paradoxes and Traditional Ambiguities" (1986) 10:1 Dal LJ 5 [Brierley, "Quebec Legal Education since 1945"].

[50] David Howes, "The Origins and Demise of Legal Education in Quebec (or Hercules Unbound)" (1989) 38 UNBLJ 127.

(UManitoba Law) in the 1910s.[51] Another example of a great-quality provincial history is Sibenik's "Doorkeepers."[52] The focus is here once again on the diverse institutions that controlled legal education and entrance into the legal professions but Sibenik emphasizes the developments of their gatekeeping role. His piece is also particularly interesting because its scope (1885-1928) encompasses major political and administrative changes in and around the said institutions since in this period Alberta acquires the status of province. This helps him provide an analytical account rather than a purely chronological exposition of events.

There are a few publications that address the history of legal education in the whole of common law Canada. The most notable and widely praised instance remains McLaren's 1985 "History of Legal Education in Common Law Canada."[53] It attempts to be comprehensive both historically and geographically. Unfortunately, no similar academic article offers insights of similar quality on such a wide geographical scope regarding the next 30 years of history. We can also think of Risk's article on Canadian law teachers in the 1930s, which also encompass the whole of common law Canada in its scope.[54] It demonstrates the instrumental role of several personalities involved in law teaching across Canada in the late 1920s and 1930s in pushing legal thought and jurisprudence in new directions. The individuals he introduces are mainly drawn from Dalhousie, McGill, Osgoode Hall, UToronto and the University of Saskatchewan (USaskatchewan), thus representing regions of the country where common law university legal education was then established.

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[51] Jack R London "The Admissions and Education Committee: A Perspective on Legal Education and Admission to Practice in the Province of Manitoba-Past, Present and Future" in Harvey, *supra* note 27.

[52] Peter M Sibenik, "Doorkeepers: Legal Education in the Territories and Alberta, 1885-1928" (1990) 13:1 Dal LJ 419.

[53] John PS McLaren, "The History of Legal Education in Common Law Canada" in Justice Roy J Matas & Deborah J McCawley, eds, *Legal Education in Canada* (Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23-26, 1985) (Montreal: Federation of Law Societies of Canada, 1987) 111.

[54] Richard CB Risk, "Canadian Law Teachers in the 1930s: When the World Was Turned Upside Down" (2004) 27:1 Dal LJ 1.

To date, nobody seems to have produced a comprehensive pan-Canadian history of legal education of scholarly quality. In the published proceeding of the National Conference on Legal Education held in Winnipeg in 1985, McLaren's history of common law education immediately precedes a summary of Brierley's article on the history of law teaching in Quebec.[55] Examined together, they could represent such a comprehensive pan-Canadian history, at least for the 40 years period following WWII. However, even in combination, they remain the works of two different authors with distinct approaches and two distinct enterprises; their analytical categories do not overlap, which therefore does not offer an overall understanding of legal education across Canada.

The few instances of truly pan-Canadian histories of legal education only present a very superficial analysis of either civil law or common law developments, if not both. The short chapter on the history of legal education in the otherwise memorable Arthurs Report is no exception.[56] The criticisms of Canadian legal education historiography articulated by Pue match almost squarely the characteristics of the report on the topic.[57] Some works are genuinely pan-Canadian in scope, but only inquire into very specific aspects of legal education, and thus cannot seriously challenge this absence of pan-Canadian history. One of them is Ron Macdonald's four-part series relating to the teaching of international law in Canadian law Faculties,[58] indeed a small part of the whole story.

Without aiming for a comprehensive pan-Canadian analysis, a handful of works provide high-quality historical scholarship on certain phenomena at play in Canadian legal education across institutions and regions. Bell's "Slamming the Door on Brains," for instance, demonstrates how the history of the law schools in the Maritimes is illustrative of the sacrificing of educational opportunities as entry requirements

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[55] J E C Brierley, "Historical Aspects of Law Teaching in Quebec" in Matas & McCawley, *supra* note 53 at 146 [Brierley "Historical Aspects"] (a summary of Brierley, "Quebec Legal Education since 1945", *supra* note 49).
[56] *Arthurs Report supra* note 5 at 11—22.
[57] Pue, *supra* note 4 at 654—60.
[58] Ronald St John Macdonald, "An Historical Introduction to the Teaching of International Law in Canada" (1974) 12 Can YB Intl L 67 & (1975) 13 Can YB Intl L 255 & (1976) 14 Can YB Intl L 224 & (1983) 21 Can YB Intl L 235.

and tuitions increased in the first half of the 20th century.[59] This is a particularly insightful piece displacing the center of gravity of legal education debates from the center of Canada to the East and also telling a story that is not one opposing the supposedly uniform requests of the bar against the supposedly homogeneous aspirations of academics. Published in the same collections of essays, we find Brunet's "Good Government without Him, is Well-nigh Impossible."[60] This essay shows how legal education was perceived as a preparation for public service in politics in Quebec as well as in Ontario and Nova Scotia between 1920 and 1960, and the role played by gendered rhetoric in this phenomenon. It is a unique piece due to its combination of historical case studies of law Faculties across provinces, but most importantly, across the boundaries of legal and educational traditions. By contrast, Pue's "British Masculinities," an article featuring very similar arguments regarding the first third of the 20th century, looks into legal education across Canada, with an emphasis on the Prairies, but leaves Quebec out of the picture.[61]

These two last examples not only present a scope wider than merely regional, but they also expose a very thematic approach thanks to their analysis of the discourses and practices emphasizing public service. Another common theme between them is the gendered characteristics of the vision of legal education they describe. In that respect, they resemble Morgan's study of Osgoode Hall's history cited above.[62]

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[59] David G Bell, "Slamming the Door on Brains: Two Early Twentieth-Century Law Schools and the Narrowing of Educational Opportunity" in Constance Backhouse & W Wesley Pue, eds, *The Promises and Perils of Law: Lawyers in Canadian History* (Toronto: Irwin Law, 2009) 31.

[60] Mélanie Brunet, "'Good Government without Him, is Well-nigh Impossible': Training Future (Male) Lawyers for Politics in Ontario, Quebec, and Nova Scotia, 1920-1960" in Backhouse & Pue, *supra* note 59, 49; see also Mélanie P Brunet, *Becoming Lawyers: Gender, Legal Education and Professional Identity Formation in Canada, 1920-1980* (Ph.D. Dissertation, University of Toronto Department of History, 2005) [unpublished].

[61] W Wesley Pue, "British Masculinities, Canadian Lawyers: Canadian Legal Education, 1900-1930" (1998-1999) 16 Law Context: A Socio-Legal Journal 80 [Pue, "British Masculinities"].

[62] See Morgan, *supra* note 47.

Lastly, Adams's account of the circulation of individuals and ideas influential on legal education across the Canadian-American border deserves a special mention here.[63] While the geographical reach within Canada in this piece is limited, the publication demonstrates the potential of comparative scholarship in legal education to better understand the development of certain ideas and their implementation in different settings.

The regional and thematic histories I just presented are usually driven by an analytical argument rather than motivated by the mere presentation of factual developments as is the case for most institutional histories. The latter can generally be trusted for their factual accuracy and provide helpful secondary historical material; the former on the other hand engage with the common trends at play across different sites of legal education. They are also more prone to external perspectives that integrate the socio-political environment in the analysis.[64] This review of the existing literature on the history of Canadian legal education demonstrates that attentiveness to institutional characteristics coupled with an understanding of the surrounding context and larger trends in the field is a promising field of inquiry where serious analytical insights may still be gained. The study I am proposing here is not historical in character and will not borrow the methods and aims of historical scholarship; it will, however, build on this scholarship to explore contemporary phenomena.

[63] Eric Adams, "The Dean Who Went to Law School: Crossing Borders and Searching for Purpose in North American Legal Education, 1930-1950" (2016) 54:1 Alta L Rev 1.

[64] What Gordon called "external histories", see Robert W Gordon, "J. Willard Hurst and the Common Law Tradition in American Legal Historiography" (1976) 10 L & Soc'y Rev 9; Robert W Gordon, "Critical Legal Histories" (1984) 36 Stanford L Rev 57.

1.2 Contemporary Literature

Research on Canadian legal education is not limited to historical scholarship, and authors writing about the political economy or the pedagogy of legal education have offered significant and valuable insights. However, we can observe that they usually do not engage in a comparative endeavour or treat law Faculties as relevant levels of analysis. Authors who engage with the characteristics of distinct institutions often remain at the granular level and do not draw on the potential of comparative research. They usually remain in the realm of recounting pedagogical or other institutional experiments. On the other hand, those who study legal education as a larger phenomenon tend to disregard the institutional level of analysis. They often offer an analysis of common trends or normative arguments that treat Canadian legal education as a monolithic reality. Lastly, the most promising grounds for comparative research has been in the field of empirical scholarship on Canadian legal education. We will see that the main drawback of the still modest existing literature in this vein remains its blind spot for institutional distinctions and its corollary failure to engage with the socio-political context.

1.2.1 Granular Approaches

Law Faculties in Canada experiment on a range of matters not regulated by other bodies, and so do individual law teachers. This leads them to share the results of their experiments with others in the pages of law journals, and sometimes to argue that their idea should be generalized in other Faculties. While they may make such normative claims, this vein of publications is primarily characterized by the granular approach it takes to legal education. There is a hyper-local focus, may it be on one classroom or a Faculty. We can see this tendency playing out in a number of topics, of which the ones explored in the next few paragraphs are only examples.

The topic of clinical legal education, in particular, has proved particularly prone to discussions of the anecdotal type. The idea of clinical legal education has been discussed and implemented for several decades. Although interest for it may have fluctuated, it seems that the topic is now trending again. Organizations such as the Association for Canadian Clinical Legal Education, founded in 2010, have certainly helped to spark recent scholarship on the topic, for instance on the occasions of its annual conferences. For example, the contributions from several speakers at the 2012 annual conference held in Manitoba were published in the Manitoba Law Journal shortly after. Among them was Guth who presented the advantages of a judge shadowing program at Manitoba Law,[65] Noakes who described the benefits of having a social worker on staff in a law clinic from her experience at UVic Law,[66] and Simmons who talked about the Meditation Intensive Program at Osgoode Hall.[67] All of them made general recommendations for legal education in Canada based on their personal experience with the programs they presented. This was not atypical; Voyvodic and Medcalf, to pick only one example, had done the same in a different forum.[68] In the Manitoba Law Journal issue, Ferguson also briefly surveyed the current landscape of clinical legal education in Canada.[69]

Discussions of clinical legal education are not necessarily as anecdotal as these examples suggest. The topic has lent itself to more theoretical analysis, sometimes by the same authors.[70] More general discussions of clinical legal education in Canada, usually paired with engaging theoretical frameworks,

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[65] Delloyd J Guth, "Judge Shadowing at the University of Manitoba & Canada First-Year Law Curriculum" (2013) 37:1 Man LJ 473.

[66] Susan Noakes, "The Effective Role of a Social Worker in a Clinical Legal Education Practice" (2013) 37:1 Man LJ 449.

[67] Martha E Simons, "Innovative Thinking and Clinical Legal Education: The Experience of the Osgoode Mediation Intensive Program" (2013) 37:1 Man LJ 363.

[68] Rose Voyvodic & Mary Medcalf, "Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor" (2004) 14 Wash U J L & Pol'y 101.

[69] Douglas D Ferguson, "The State of Experiential Education in Canadian Law School" 2013) 37:1 Man LJ 465.

[70] See e.g. Rose Voyvodic, "'Considerable Promise and Troublesome Aspects': Theory and Methodology of Clinical Legal Education" (2001) 20 Windsor YB Access Just 111.

cohabit with the previous examples in the recent literature. For instance, we can cite Buhler's work on pedagogy and emotions in this setting,[71] as well as articles by Cantrell,[72] and Macfarlane.[73] The scholarship on clinical legal education can also offer important insights of a political nature to the analysis of legal education, such as in the example of Mosher's work.[74] These works are nevertheless primarily based on their authors' experiences with such programs. Overall, it is desirable that the authors exploring the implications and possibilities of clinical legal education be exposed first-hand to such programs; they must simply be wary of tempting generalization when they may perceive only a limited range of possible applications for the multifaceted concept of clinical legal education. Some institutions have developed a strong tradition of clinical legal education, and part of this scholarship comes from their faculty; however, the existing works hardly engage with that aspect and offer little in terms of comparative insights.

We can find similar anecdotal accounts in the body of literature that focuses on the potential of new technologies for legal pedagogy. Writings in the field do not engage with legal education in connection with specific institutions or in a comparative fashion. In 1997, instructors at UBC, UVic, and the Australian National University in Canberra designed and taught a web-based course on comparative legal history to students at all three institutions. They offered very contextualized accounts of their fortunes and misfortunes in a publication shortly after.[75] By the same token, they reflected upon the possibilities of distance education and Internet-based pedagogy for law programs. A few years later, a similar publication came after a resembling experiment was conducted on comparative family law with

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[71] Sarah Buhler, "Troubling Feelings: A Moral Anger and Clinical Legal Education" (2014) 37:1 Dal LJ 397; Sarah Buhler, "Painful Injustices: Encountering Social Suffering in Clinical Legal Education" (2012-13) 19 Clinical L Rev 405; Sarah M Buhler, *Painful injustices: clinical legal education and the pedagogy of suffering* (LLM Thesis, University of Saskatchewan College of Law, 2011) [unpublished].

[72] Deborah J Cantrell, "Are Clinics a Magic Bullet" (2014) 51:4 Alta L Rev 831.

[73] Julie Macfarlane, "Bringing the Clinic into the 21st Century" (2009) 27:1 Windsor YB Access Just 35.

[74] Janet Mosher, "Legal Education: Nemesis or Ally of Social Movements?" (1997) 35 Osgoode Hall LJ 613.

[75] Douglas Harris et al, "'Community without Propinquity': Teaching Legal History Intercontinentally" (1999) 10:1 L Education Rev 1.

Canadian, American, and Mexican institutions.[76] While such writings may offer desirable avenues for comparative discussions, it is not their aim. More publications in the same vein came out of the 2013 Future of the Law School Conference in Edmonton. Henderson and Thai reflected upon the use of crowdsourced coursebooks,[77] and Sankoff on the flipped classroom.[78] We can contrast those with Dewhurst's 2012 endeavour to explore the issues of compatibility between legal pedagogy and distance education in general rather than sharing a specific experience with it.[79]

Lastly, we ought to mention here one exception to this trend. McGill Law's integrated teaching of the common law and the civil law traditions has sparked a voluminous scholarship that speaks to the underlying institutional project and the specific socio-legal context in which it finds its pertinence, including by outsiders.[80] McGill generally has attracted and generated a disproportionate volume of scholarly attention on its legal education;[81] the scholarship on the integrated law program truly stands out because it often does much more than recounting a pedagogical experiment, connecting it with external considerations and the uniqueness of its home institution.

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[76] Barbara Atwood et al, "Crossing Borders in the Classroom: A Comparative Law Experiment in Family Law" (2005) 55:4 J Leg Educ 542; Barbara Atwood et al, "Franchir Les Limites de la Salle de Classe: Une Expérience en Droit Comparé de la Famille" (2008) 24:1 Can J Family L 65.

[77] Stephen E Henderson & Joseph T Thai, "Crowdsourced Coursebooks" (2014) 51:4 Alta L Rev 907.

[78] Peter Sankoff, "Taking the Instruction of Law Outside the Classroom: How the Flipped Classroom Can Make Learning More Productive and Enjoyable (for Professors and Students)" (2014) 51:4 Alta L Rev 891.

[79] Dale Dewhurst, "The Case Method, Law School Learning Outcomes and Distance Education" (2012) 6 Can Legal Educ Ann Rev 59.

[80] See e.g. by outsiders: Harry Arthurs, "Madly Off in One Direction: McGill's New Integrated, Polyjural, Transsystemic Law Programme" (2005) 50:4 McGill LJ 707 [Arthurs, "Madly Off in One Direction"] and Peter L Strauss, "Transsystemia - Are We Approaching a New Langdellian Moment? Is McGill Leading the Way?" (2006) 56:2 J Leg Educ 161; by insiders: Rosalie Jukier "Where Law and Pedagogy meet in the Transsystemic Contracts Classroom" (2005) 50:4 McGill LJ 7, and H Patrick Glenn "Doin' the Transsystemic: Legal Systems and Legal Traditions" (2005) 50:4 McGill LJ 863; Shauna Van Praagh, "Palsgraf as Transsystemic Tort Law" (2011) 6:2 J Comp L 243.

[81] See e.g. Hobbins, *supra* note 45, Stanley B Frost & David L Johnston, "Law at McGill: Past, Present and Future" (1981) 27:1 McGill LJ 31, Roderick A Macdonald, "The National Law Programme at McGill: Origins, Establishment, Prospects" (1990) 13:1 Dal LJ 211, Julie Bedard, "Transsystemic Teaching of Law at McGill: Radical Changes, Old and New Hats" (2001) 27:1 Queen's LJ 237, Helge Dedek & Armand de Mestral, ""Born to be Wild: The Trans-Systemic Programme at McGill and the De-Nationalization of Legal Education" (2009) 10:6/7 German LJ 889, Belley *supra* note 2.

1.2.2 Conceptual Literature

McGill scholars have also offered robust theoretical discussions of legal education more generally. While their contributions are informed by the specific experience of their law Faculty, it explores the idea of legal education at a conceptual level and often offers normative arguments extending much beyond the specific context fueling McGill Law's approach. We can think of Kasirer's arguments for *métissage* and bijuralism, which are in clear dialogue with the polyjural education deployed at the institution he then headed.[82] Illustrating a form of tradition, his successor at the McGill deanship had advanced similar arguments in an article of his own,[83] and a predecessor, Rod Macdonald, had also engaged with the same themes in a similar vein.[84] Also owing much to the McGill Faculty, the collection of essays *Stateless Law* edited by Dedek and Van Praagh offered varied contributions to the idea of legal education.[85]

Such scholarship exploring legal education conceptually is not the sole preserve of McGill scholars. Pue, mainly a legal historian, offered general arguments about legal education in the inspiring *Educating*

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[82] Nicholas Kasirer, "Legal Education as Métissage" (2003) 78 Tulane L Rev 481; Nicholas Kasirer, "Bijuralism in Law's Empire and Law's Cosmos" (2002) 52 J Leg Educ 29.

[83] Daniel Jutras, "Two Arguments for Cross Cultural Legal Education" in Heinz Dieter Assmann, Gert Brüggemeier & Rolf Sethe, eds, *Unterschiedliche Rechtskulturen - Konvergenz des Rechtsdenkens* (Baden-Baden: Nomos Verlagsgesellschaft, 2001) 75.

[84] Roderick A Macdonald, "Legal Bilingualism" (1997) 42:1 McGill LJ 119; see also Roderick A Macdonald & Jason MacLean, "No Toilets in Park" (2005) 50 McGill LJ 721. Other contributions to the field by the same author include Roderick A Macdonald, "Law Schools and Public Legal Education: the Community Law Program at Windsor" (1979) 5 Dal LJ 779 (drawing on experience as Director of the Community Law Program at Windsor to discuss public legal education), Macdonald, Macdonald, "Still 'Law' and Still 'Learning'?" *supra* note 5 (assessing the state of legal education in Canada in 2003, an extension of sorts of the Arthurs report on the occasion of its 20th anniversary), Roderick A Macdonald, "Academic Questions" (1992) 3:1 Leg Educ Rev 61, Roderick A Macdonald, "Everyday Lessons of Law Teaching -- Le Quotidien de l'Enseignement Juridique" (2012) 6 Can Legal Educ Ann Rev 1.

[85] Helge Dedek & Shauna Van Praagh, eds, *Stateless Law Evolving Boundaries of a Discipline* (Burlington, VT: Ashgate, 2015); see e.g. Helge Dedek, "Stating Boundaries: The Law, Disciplined" in Dedek & Van Praagh, *ibid* at 9 [Dedek, "Stating Boundaries"], Shauna Van Praagh, "Teaching Law: 'Historian and Prophet All in One'" in Dedek & Van Praagh, *ibid* at 23, Rosalie Jukier, "The Impact of 'Stateless Law' on Legal Pedagogy" in Dedek & Van Praagh, *ibid* at 201, and Vincent Forray, "Qu'est-ce qu'une Faculté de droit ? De la philosophie au droit" in Dedek & Van Praagh, *ibid* at 175.

the Total Jurist? in 2005 and *Legal Education's Mission* in 2008.[86] Arthurs, on the other hand, has provided insightful analyses of the political economy of Canadian legal education,[87] forceful articulations of intellectual aspirations in legal education[88] and recommendations for the future of law Faculties.[89] Though far from the only ones, these two scholars have been the main contributors to elaborate scholarship on Canadian legal education in this vein.

Although much of it comes from a specific institutional environment, the scholarship described here often treats legal education at the conceptual level, focusing on its unifying characteristics across Canada and acknowledging the implications of law Faculties' individual characteristics only in passing.[90] The genre itself drives authors to analyze the phenomenon of Canadian legal education with an emphasis on the common traits and to formulate uniform recommendations directed at legal educators in diverse settings. This is the case even when the same authors have elsewhere expressed their interest for such a

[86] W Wesley Pue, "Educating the Total Jurist" (2005) 8 Leg Ethics 208; W Wesley Pue, "Legal Education's Mission" (2008) 42:3 The Law Teacher 270. See also W Wesley Pue, "Globalisation and Legal Education: Views from the Outside-in" (2001) 8 Int'l J Leg Prof 87.

[87] Harry W Arthurs, "The Political Economy of Canadian Legal Education" (1998) 25 JL & Soc'y 14 [Arthurs, "The Political Economy of Canadian Legal Education"]; Harry W Arthurs, "Poor Canadian Legal Education: So Near to Wall Street, So Far from God" (2000) 38:3 Osgoode Hall LJ 381 [Arthurs, "So Far From God"]; Harry W Arthurs, "The World Turned Upside Down: Are Changes in Political Economy and Legal Practice Transforming Legal Education and Scholarship, or Vice-Versa" (2001) 8:1 Intl J Leg Prof 11; Harry W Arthurs, "The State We're In: Legal Education in Canada's New Political Economy" (2001) 20 Windsor YB Access Just 35; Harry W Arthurs, "The Spider, the Bee, the Snail and the Camel Legal Knowledge, Practice, Culture, Institutions and Power in a Changing World" (2005) [unpublished, archived at CPLE Paper Series]; Harry W Arthurs, "The Tree of Knowledge, the Axe of Power: Le Dain and the Transformation of Canadian Legal Education" in Baker & Janda, *supra* note 41.

[88] Harry W Arthurs, "Prometheus Unbound: Law in the University" (1989) 38 UNBLJ 75; see also Arthurs, "Madly Off in One Direction", *supra* note 80.

[89] Harry W Arthurs, "Valour Rather Than Prudence: Hard Times and Hard Choices for Canada's Legal Academy" (2013) 76 Sask L Rev 73; Harry W Arthurs, "The Future of Law School: Three Visions and a Prediction" (2013-14) 51 Alta L Rev 705 [Arthurs, "The Future of Law School"].

[90] See e.g. Arthurs, "The Future of Law School", *supra* note 89 at 716 (mentioning only at the twelth and final page of his essay on the future of law schools that it will be "plural [as] different law schools will have different futures.").

diversity.[91] To these, we can add many other pieces emanating from specialists of other fields taking a stab at presenting small or large recommendations for legal education. The normative arguments this literature presents are often compelling but do not engage with the individual characteristics that each law Faculty seems to cultivate. The kind of scholarship thus does not engage with the institutional level of analysis nor allows for detailed comparative research among Canadian law Faculties, as it keeps ideas and recommendations at an abstract, all-encompassing level.

1.2.3 Empirical Scholarship

In light of such shortcomings, we need to turn our attention to a final corpus of literature on Canadian legal education as it holds greater potential for the type of analysis I am looking for: empirical scholarship. While the historical research introduced above may be considered a form of empirical scholarship as it relies so much on factual evidence, it holds a special place that warrants a separate treatment, hence the first section being dedicated to it. Non-historical empirical scholarship on the topic of Canadian legal education is rare.

The first noteworthy study on this kind was the 1983 Arthurs Report.[92] Arthurs chaired the Consultative Group on Research and Education in Law initiated by the Social Sciences and Humanities Research Council of Canada. The report provided a comprehensive assessment of the state of legal education and legal research at the beginning of the 1980s and articulated recommendations to remedy

[91] For instance, the same Arthurs has long encouraged "genuine pluralism" in Canadian legal education (see Arthurs Report, *Arthurs Report supra* note 5 at 153, 154—157 and Arthurs, "The Political Economy of Canadian Legal Education", *supra* note 87 at 18.)

[92] Arthurs had already demonstrated his scholarly interest for the field, see e.g. Harry W Arthurs, "The Affiliation of Osgoode Hall Law School with York University" (1967) 17:1 UTLJ 194, and Harry W Arthurs, "Paradoxes of Canadian Legal Education" (1977) 3:3 Dal LJ 639.

the pathologies it identified. Decades after its publication, it remains a starting point for debates and research on the topic and has inspired further empirical inquiries on Canadian legal education.[93]

There was keen interest in scholarship on admissions policies and practices in Canada in the 1990s.[94] This generated a series of empirical inquiries on this specific aspect of legal education. In 1997, Mazer published a statistical study of the gender gap in applications and admissions to undergraduate law programs over a 10-year period;[95] the following year, he and several colleagues at the University of Windsor Faculty of Law (UWindsor Law) published an empirical study on the effects on the student population brought about by a new and distinctive admission policy at their institution.[96] Shortly after, a study on law students and graduates came out which compared five law Faculties from different regions of Canada, including civil and common law institutions, that differed in their admissions policies.[97] This inquiry established that differences among law Faculties had a long-term impact on students' trajectories, thus demonstrating the relevance of analyzing distinctions among Faculties.[98]

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[93] See e.g. Ruth Murbach, "Editorial" (2003) 18:1 CJLS 1 (introducing a special dossier of the CJLS dedicated to the Arthurs Report, twenty years later); David Sandomierski, *Canadian Contract Law Teaching and the Failure to Operationalize: Theory & Practice, Realism & Formalism, and Aspiration & Reality in Contemporary Legal Education* (SJD Thesis, University of Toronto Faculty of Law, 2017) [unpublished] [Sandomierski, *Canadian Contract Law Teaching*] at 10—11 (classifying the Arthurs among the seminal writings on legal education and characterizing it as the "Canadian flagship" in the field). See also the upcoming meeting of the Canadian Law and Society Association (CLSA) in October 2019 themed after the 40th anniversary of the Arthurs Report, see CLSA, "Call for papers—Mid-year meeting of the CLSA" (3 April 2019), online: <www.acds-clsa.org/?q=en/content/call-papers-mid-year-meeting-clsa>.

[94] To what follows, we can also add Dawna Tong & W Wesley Pue, "The Best and the Brightest: Canadian Law School Admissions" (1999) 37:4 Osgoode Hall LJ 843 (featuring limited empirical components).

[95] Brian M Mazer, "An Analysis of Gender in Admission to the Canadian Common Law Schools from 1985-86 to 1994-95" (1997) 20 Dal LJ 135.

[96] Dolores J Blonde et al, "The Impact of Law School Admission Criteria: Evaluating the Broad-Based Admission Policy at the University of Windsor Faculty of Law" (1998) 61:2 Saks LR 529.

[97] Larry Chartrand et al, "Law Students, Law Schools, and Their Graduates" (2001) 20 Windsor YB Access Just 211.

[98] *Ibid* at 305 ("It appears that these differences among the law schools persisted into the lives of their alumni, demonstrating that there can be an impact made by the education and socialization process at a specific law school: they may all turn out lawyers, but they do not produce clones.").

Such studies stood out as in 2001, Pue and Rochette could affirm that there were no reliable data or evidence to support scholarly research on what "*actually* happens in legal education."[99] Around the same time, Ogloff published a review of the empirical literature on legal education in Canada and the United States.[100] It is revealing to observe that among the numerous cited materials, only a handful looked at Canada, thus confirming Pue and Rochette's conclusion.

Since 2001, a number of empirical studies have come to address in part the deficiencies highlighted by Pue and Rochette. The diversity in objects of study among them seems to indicate enthusiasm for the matter and signals positive prospects for further developments in the field. What is more, some have included the institutions and their characteristics as variables. For instance, a group of professors at seven Canadian common law faculties surveyed the "outsider" courses offered at their institutions and corresponding enrolment statistics over 35 years.[101] In addition to providing insights into the dynamics regarding outsider pedagogy in the surveyed institution, they offer explanations for student enrolment decisions. In particular, they concluded that "each of [the featured] schools showed trends that were unique when contextualized within the school's overall culture."[102] In 2009, Henderson and Farrow published an empirical study on law school socialization, and, in particular, the role played by law schools in the ethical development of students.[103] They compared students' ethical attitudes at two Faculties (Osgoode Hall and USaskatchewan Law) and observed some significative variations between the

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[99] Annie Rochette & W Wesley Pue "'Back to Basics'? University Legal Education and 21st Century Professionalism" (2001) 20 Windsor YB Access Just 167 at 167—68 [emphasis in original] (continuing as follows: "Opinion [about legal education] is undisciplined, entirely unconstrained by reliable verifiable data or evidence of any sort.").

[100] James RP Ogloff et al, "More Than Learning to Think Like a Lawyer: 'The Empirical Research on Legal Education'" (2000) 34 Creighton L Rev 73.

[101] Natasha Bakht et al, "Counting Outsiders: Critical Exploration of Outsider Course Enrolment in Canadian Legal Education" (2007) 45 Osgoode Hall LJ 667.

[102] Bakht et al, *supra* note 101 at 695.

[103] Joshua J A Henderson & Trevor C W Farrow, "The Ethical Development of Law Students: An Empirical Study" (2009) 72:1 Sask L Rev 75.

two student groups.[104] Florio and Hoffman then conducted a longitudinal study with students on their experience at UToronto Law;[105] among other aims, they wanted to provide data to decision makers regarding the "strengths and shortcomings of specific institutional structures at [a] particular law school."[106] In addition, we can include Manderson and Turner's ethnographic study of socialization at coffee house events at McGill Law in this vein of empirical research focused on Canadian law students.[107]

We can, therefore, observe a growing body of empirical scholarship that focuses on students in Canadian legal education. It follows the international trend identified by Cownie toward an increasing sophistication in methods and analysis in the field.[108] and wider scope of This research seems to take seriously the institutional level of analysis to better analyze legal education in Canada, as it either allows insightful comparisons between institutions on specific aspects of legal education or presents an in-depth study of elements specific to a given institution by way of case studies.

We can also encounter a nascent corpus of empirical research focused on law professors. For instance, Shanahan analyzed the answers of law professors across Ontario on questions relating to legal scholarship, with a focus on the effects of neo-liberal policies.[109] While this project included six different institutions, the published results do not explore the commonalities and differences among them and remain at the level of general trends. The same author later conducted a case study at UBC on the same topic,[110] thus showing her interest in this level of analysis. Forcese's attempt to measure public

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[104] *Ibid* at 89—90.

[105] Cassandra M S Florio & Steven J Hoffman, "Student Perspectives on Legal Education: A Longitudinal Empirical Evaluation" (2012) 62:1 J Leg Educ 162.

[106] *Ibid* at 163.

[107] Desmond Manderson & Sarah Turner, "Coffee House: Habitus and Performance Among Law Students" (2006) 31:3 L & Soc Inquiry 649.

[108] Fiona Cownie, "Legal Education and the Legal Academy" in Peter Cane & Herbert M Kritzer, *The Oxford Handbook of Empirical Legal Research* (Oxford: Oxford University Press, 2010) 854 at 855 [Cownie, "Legal Education and the Legal Academy"].

[109] Theresa Shanahan, "Legal Scholarship in Ontario's English-Speaking Common Law Schools" (2006) 21:2 CJLS 25.

[110] Theresa Shanahan, "Creeping Capitalism and Academic Culture at a Canadian Law School" (2008) 26:1 Windsor YB Access 121.

engagement among common law professors through a large dataset including about 600 individuals (though the data is not comprehensive) included some remarks on institutional differences.[111]

This set of projects was characterized by a primary reliance on quantitative methodology. They are also exclusively exploring the English-language common law Faculties. Two doctoral projects in the last ten years reversed this trend and applied qualitative methods to study legal pedagogy from the point of view of law professors in Canada. Sandomierski's work focused on the teaching of contract law in the 17 institutions teaching common law in Canada,[112] and Rochette's own study was truly pan-Canadian in scope as it included institutions from all regions of the country, featuring both legal traditions and official languages.[113] While these two last examples, each in their own way, provide valuable insights into the realities of law teaching in Canada, they do not pay significant attention to the institutional level of analysis.[114]

While student-centred research has started to explore the significance of institutional variations, research that focuses on law professors has so far seldom included this aspect in the analysis. In summary, the bulk of the literature on Canadian legal education has not taken up the invitation to study institutional characteristics, especially when approached in context, while historical scholarship in the field seems to give it great attention. There is a wealth of publications offering, on the one hand, a granular approach to legal education largely based on individual experiments, and on the other conceptual explorations that usually treat legal education as an abstract or uniform phenomenon, but empirical scholarship on Canadian legal education remains modest. Furthermore, even though this last category holds the greatest

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[111] Craig Forcese, "The Law Professor as Public Citizen: Measuring Public Engagement in Canadian Common Law Schools" (2015) 36 Windsor Rev Leg & Soc Issues 66 at 81ff [Forcese, "The Law Professor as Public Citizen"].

[112] Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93.

[113] Annie Rochette, *Teaching and learning in Canadian legal education: an empirical exploration* (DCL Thesis, McGill University Faculty of Law, 2011) [unpublished].

[114] See e.g. *ibid* at 241 (exploring institutional requirements and constraints), 246 (limiting her analysis of "institutional cultures" to a distinction between research-oriented institutions and teaching-oriented institutions).

potential for comparative analysis that engages with institutional specificities, the most commendable empirical research to date has either not done so, either because of the scope, methods or objects of the projects. This is a gap that my doctoral research aims to address.

2. Conceptual Tool: Institutional Cultures

In order to study the individual characteristics of law Faculties in a comparative fashion and in an empirical way, we now need to define an adequate conceptual framework for this inquiry. In a piece dedicated to exploring the possibility of comparative research on legal education, Bradney offered an avenue at the crossroads of comparative law and social anthropology to do so.[115] Moreover, agreeing with Twining, he warned that "concepts do not travel well," and embraced the idea that a degree of vagueness could constitute "a form of precision" for such scholarship.[116] He therefore invited us to turn to the fields of comparative law and social anthropology to find the conceptual tools most appropriate for a project such as mine, even though those may appear elusive at first sight.

The concept of culture, central to both social anthropology and comparative law, with its complexity and imperfection, corresponds to Bradney's recommendations. The literature sometimes refers to a Faculty's culture to imprecisely capture an institution's particularities.[117] We have here a conceptual tool that has been sporadically used in the field and seems to indicate the type of phenomena I am studying, and at the same time offers the analytical rigour necessary for careful examination. It is an adequate conceptual tool for this project. Let us first see what related fields, starting with social

[115] Anthony Bradney, "Can There Be Commensurability in Comparative Legal Education?" (2007) 1 Can Leg Educ Ann Rev 67.
[116] Bradney, *supra* note 115 at 71 (citing William Twining, "Have concepts, will travel: analytical jurisprudence in a global context" (2005) 1 Int'l J L in Context 5 at 14), 83.
[117] See e.g. Bakht et al, *supra* note 102; Shanahan, *supra* note 110.

anthropology, but also comparative law and higher education studies, can teach us about this concept before turning to its application to legal education.

2.1 Culture, Cultures

Raymond Williams provided a good introduction to the term and the many layers it encompasses. He wrote: "[c]ulture is one of the two or three most complicated words in the English language. This is so partly because of its intricate historical development, in several European languages, but mainly because it has now come to be used for important concepts in several distinct intellectual disciplines and in several distinct and incompatible systems of thought."[118] Williams' etymological account demonstrates that this single term has long carried a "complex of senses", a wide "range and overlap of meanings", and it is this complexity that Williams found most significant about it.[119] Of course, an epoch, a discipline, or even an individual user can clarify the conceptual usage that they attach to a term. Williams concluded with the following thought: "the range and complexity of sense and reference indicate both difference of intellectual position and some blurring or overlapping. These variations, of whatever kind, necessarily involve alternative views of the activities, relationships and processes which this complex word indicates."[120]

For the purposes of the current project, we do not need to explore in its entirety the wide range of meanings that Williams summarized. I situate my project within socio-legal research in a comparative approach. Consequently, I will restrict my explanation of the concept to the possible meanings attached to it in contemporary academic works coming from scholars associated with a similar field of intellectual inquiry.

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[118] Raymond Williams, *Keywords: a Vocabulary of Culture and Society*, 2nd ed (New York: OUP, 1983) at 87.
[119] Williams, *supra* 118 at 91.
[120] *Ibid* at 92.

"Culture" carries much complexity even within contemporary social anthropology and related disciplines. William Sewell talked of a "cacophony of contemporary discourses about culture."[121] He provides helpful insights into the complexity of the concepts that authors communicate with this term. Whereas the study of culture, and the related theoretical developments, was exclusive to anthropology until the late 1970s, Sewell argued that "pervasive transdisciplinary influence of the French poststructuralist trinity of Lacan, Derrida and Foucault" had a crucial role in drawing academics from many disciplines to the study of culture.[122] He then distinguished two incommensurate approaches to this enterprise, each revolving around a fundamentally different concept. The first usage considers culture primarily as an abstract analytical category. In this usage, culture only takes the singular and contrasts what pertains to culture generally from what does not. It is understood "as a dialectic of system and practice, as a dimension of social life autonomous from other such dimensions both in its logic and its spatial configuration, and as a system of symbols possessing a real but thin coherence."[123]

In comparison, the second usage approaches culture as a "concrete and bounded world of beliefs and practices," intimately associated with a given group. In this second usage, culture takes the plural as it allows to contrast distinct worlds of meaning with one another, a given culture with another. Sewell noted that most recent theoretical works on culture now adopt this second usage.[124] It echoes Geertz's influential definition from the 1970s: "Believing, with Max Weber, that man is an animal suspended in webs of significance he himself has spun, I take culture to be those webs."[125] My project follows this trend, and unambiguously uses the term 'culture' in the second, pluralizable sense.

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[121] William Sewell, "The Concept(s) of Culture" in Victoria E Bonnell & Lynn Hunt, eds, *Beyond the Cultural Turn: New Directions in the Study of Society and Culture* (Berkeley and Los Angeles: University of California Press, 1999) 35.
[122] Sewell, *supra* note 121 at 36, 37.
[123] Sewell, *supra* note 121 at 39, 52.
[124] *Ibid*.
[125] Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1975) at 5.

Cover's seminal "Nomos and Narrative" eloquently articulated the necessity of attending to the "narratives that locate […] and give […] meaning" to our *nomos* in order to understand the normative universe in which we inhabit, of which legal rules, formal policies and social conventions are but a small part.[126] In a study on the role of educational leadership in Canada's North, Blakesley defined culture in a similar fashion: for him, culture is "the knowledge you construct to show how acts in the context of one world can be understood as coherent from the point of view in another world."[127] It is also the approach that Cownie relied on to study the culture of British legal academics, in contrast with that of other groups (e.g. academics from other disciplines).[128] Such examples demonstrate the relevance and adequacy of Sewell's framework to study the culture of law Faculties in Canada.

The meanings Sewell referred to, and the significances mentioned by Geertz, are located in ideas about the concrete or intangible practices and symbols of the group. Johnson also emphasized that what makes certain ideas cultural, rather than personal, is not merely the characteristic of being shared by several persons, but the experience or perception of such ideas as "something external to ourselves that transcends what we actually do." Such meanings are therefore normative ideas that derive their authority from the group rather than the individual. Johnson also posited that "the most important of these ideas are attitudes, beliefs, values, and norms."[129] These categories overlap and are intimately interconnected.[130] There is the degree of vagueness that Bradney invited us to embrace in the comparative study of legal education.[131]

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[126] Robert M Cover, "Foreword: Nomos and Narrative" (1983) 97:1 Harv L Rev 4.
[127] Simon Blakesley, "Remote and Unresearched: Educational Leadership in Canada's Yukon Territory" (2008) 38:4 J Comp & Intl Educ 441 at 445.
[128] See Fiona Cownie, *Legal Academics* (Oxford: Hart, 2004).
[129] Allan G Johnson, *The Blackwell Dictionary of Sociology*, 2nd ed, (Oxford: Blackwell Publishers, 2000) *sub verbo* "culture".
[130] See e.g. *ibid sub verbo* "attitude", *sub verbo* "culture", *sub verbo* "value."
[131] See Bradney, *supra* note 115 at 83.

2.2 Institutional Cultures

In this project, the worlds of meanings are those constituted by individual Canadian law Faculties, and I chose to speak of "institutional cultures." Now that we have set the conceptual foundations for the second term, the first also deserves attention. This will clarify further what is the object of my analysis, something distinct from the often-hasty references to a "law school culture" in popular discourse and even legal education scholarship.[132] It will also outline the conceptual possibility of a coherent culture within a given institution for the researcher to uncover, interpret and compare.

Institution is also a term with multiple definitions and uses. For instance in sociology, according to Johnson, "[a]n institution is an enduring set of ideas about how to accomplish goals generally recognized as important in a society."[133] Even as I adopt a more trivial use for the term, this definition is helpful to remind us that calling certain organizations 'institutions', as we often do in usual discourse, emphasizes the fact that such organizations purport to have a defined purpose (goals to accomplish), which is deemed important for society, and identifiable ways of pursuing it (an enduring set of ideas). Law Faculties are such organizations. Exploring the enduring set of ideas about these Faculties' goals is central to my research project.

As mentioned above, what makes an idea cultural rather than personal is the fact that individuals experience or perceive it as enjoying a form of authority external to any individual in particular. It constitutes a form of collective representation, i.e. an idea that may be internalized by individuals, but is above all a social fact as it enjoys authority in the social body that cannot be reduced to a sum of

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[132] See e.g. Jerome Organ, "How Scholarship Programs Impact Students and the Culture of Law School" (2011) 61:2 J Leg Educ 173 (seemingly equating "the culture of law school" with the cultural experience lived by law students); William Twining, "Rethinking Law Schools" (1996) 21:4 Law & Soc Inquiry 1007 (listing the following as "features of American law school culture": "the student-dominated law review, the block-busting tenure […] article, the underdevelopment of postgraduate studies, the problems of clinical programs […], the tension between faculty intellectual interests and J.D. student educational demands." at 1011).

[133] Johnson, *supra* note 129 *sub verbo* "institution".

individuals adhering to it.[134] We see here that the collective ideas constitutive of culture are not such because they are shared by a large enough number of individuals in a given group; instead, they constitute culture since individuals, whether they agree with them or not, consider them to be cultural.

To escape the traps posed in this apparently circular approach, let us now turn to Sewell's much richer discussion of the possibility of coherence within culture(s). Sewell noted that much of the criticisms against the concept of culture have not really targeted the intellectual soundness and usefulness of a notion of culture as worlds of meanings ("the notion that the meaning of symbols is determined by their network of relation with other symbols"), but rather to the idea that cultures "form coherent wholes: that they are logically consistent, highly integrated, consensual, extremely resistant to change, and clearly bounded."[135] This is how classic ethnographies tend to portray cultures. Sewell agreed with contemporary criticisms that such assumptions are untenable and that we should understand worlds meanings instead as "being contradictory, loosely integrated, contested, mutable, and highly permeable."[136] Symbols everywhere carry multiple meanings, and often contradictory ones. Cultural groups include disparate spheres of activities among which the integration of meanings can vary greatly. Such integration is often the result of power struggles, is never complete, and is therefore contested and resisted by some. The dynamics of these power relations change over time, and so do the networks of meanings that result from them. In addition, constant mutual borrowings from and reactions against the cultural ideas developed by neighbour social groups also contribute to progressive or radical changes within cultures. This new understanding does not negate the possibility of construing coherent bounded worlds of meanings; instead, it provides a caveat against light assumptions.

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[134] Johnson, *supra* note 129 *sub verbo* "collective representations."
[135] Sewell, *supra* note 121 at 52.
[136] *Ibid* at 53.

Social anthropologists have considered this caveat necessary for the study of cultures that were the object of classic ethnologies: apparently simple and isolated societies. It becomes paramount when the object of study is a multi-layered sub-group of our complex modern societies in constant interactions with others, as is the case for Canadian law Faculties. In any group, the powerful actors attempt to organize difference: they try to homogenize ideas across the group in accordance with their own but also hierarchize or marginalize opposing ideas.[137] As far as it might be from the romantic tight coherence depicted in classic ethnographies, this organization of difference nevertheless represents a form of coherence. The map resulting from this attempt at organizing might be resisted by some, and might change over time under internal or external pressures. As variable, contested, and incomplete as this form of coherence may be, it prescribes the way meaning is produced and consumed within the group. Studying cultures thus means analyzing such coherences where they exist, showing how they are deployed or opposed, and explaining how they persist or evolve. With this approach, Sewell argued that the value of the concept of culture thus resided in its capacity to get at "a sense of the particular shapes and consistencies of worlds of meanings in different places and times and a sense that in spite of conflicts and resistance, these worlds of meaning somehow hang together."[138]

[137] *Ibid* at 56.
[138] Sewell, *supra* note 121 at 57—58.

2.3 Cultures in Comparative Legal Studies

My education as a comparative jurist, my conduct of this project as doctoral student in a law Faculty and an institute of comparative law, and my following Bradney's recommendation to conduct comparative research on legal education at the crossroads of comparative law and social anthropology leads me to engage with and situate myself within the scholarly tradition of comparative legal studies after the discussion of socio-anthropologic literature in preceding sections. Moreover, as legal education has primarily been an object of study for and by jurists, entertaining the conceptual and methodological dialogue across the boundaries of these disciplines seems most beneficial to both build upon the insights of the existing literature and fulfil the promises of the approaches outlined thus far.

Comparative legal studies share with social anthropology and sociology attention to cultures as an object of analysis. Comparative legal studies have long used the concept of culture to define the "legal cultures" of certain local, national or even transnational communities in order to compare them to that of other groups. And much like in other social and human sciences, the appropriateness of the concept of culture has also been the object of vigorous methodological and epistemological debates within the discipline.[139]

Glenn believed that the concept could hardly contribute to comparative law, as the idea was vague and capable only of describing rather than explaining.[140] Instead, he offered the concept of legal traditions, understood as information having a normative influence on what we do, as allowing greater clarity as to what the researcher is analyzing, such as distinctions between "what we must do, what we

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[139] See e.g. Roger Cotterrell, "The Concept of Legal Culture" in David Nelken, ed, *Comparing Legal Cultures* (New York: Routledge, 2016) 13, H Patrick Glenn, "Legal Cultures and Legal Traditions" in Mark Van Hoecke, *Epistemology and methodology of Comparative Law* (Portland, OR: Hart, 2004) 7 (both taking issues with the appropriateness of the concept of culture in comparative legal studies). See also Louis Assier-Andrieu, "Brève théorie culturelle du droit" in Helge Dedek & Shauna Van Praagh, *Stateless Law : Evolving Boundaries of a Discipline* (2016) 83, Helge Dedek, "When Law Became Cultivated: 'European Legal Culture' between Kultur and Civilization" in Geneviève Helleringer & Kai Purnhagen, eds, *Towards a European Legal Culture* (Münich: C.H. Beck, 2014).

[140] See Glenn, *supra* note 139 at 7ff.

are told to do, and what we do."[141] Cotterrell fiercely objected to the prevalence of the concept of cultures in Friedman's law and society scholarship along similar lines. He nonetheless acknowledged that the concept could be interesting when the research stayed clear of causal claims, and only sought empirical evidence in ethnographic-like work on a local, narrowly confined scale (rather than for an entire society or country for instance).[142]

Responding to Cotterrell's critique, Friedman embraced the apparent vagueness of the concept, much like Bradney, and called it an "umbrella term" which he found useful to understand legal changes and status quo. He insisted that even though we might not capture the whole of a culture through empirical discovery, the components that we did reveal provided information of considerable value for comparisons.[143] In the same volume, Pennisi affirmed that the concept was helpful when interpreting phenomena "in terms of the 'relations of values' with respect to the individuality of their historical social meaning."[144] His insistence on the meanings attributed to normative ideas shows that his perspective is that of a sociologist, and his contribution demonstrates that the legal and sociological approaches to the concept of cultures are not incommensurable nor contradictory.

Legrand offered probably the most robust and thorough examination of the concept for use in comparative legal research.[145] First, he invited comparatists-at-law to move away from the traditional orthodoxy of typologies of "technical knowledge" and "rudimentary data" about legal phenomena as today "one can relatively easily consult an encyclopedia or enlist the help of a local lawyer to ascertain […] what a foreign law says on any given point at any given time"; instead, we should address the "urgent need to understand how foreign legal communities think about law, why they think about the law as they

[141] Glenn, *supra* note 139 at 13.
[142] Cotterrell, *supra* note 139 at 25—26.
[143] Lawrence M Friedman, "The Concept of Legal Culture: A Reply" in Nelken, *supra* note 139 at 33.
[144] Carlo Pennisi, "Sociological Uses of the Concept of Legal Culture" in Nelken, *supra* note 139 at 106.
[145] See e.g. Pierre Legrand, "Comparative Legal Studies and the Matter of Authenticity" (2006) 1:2 J Comp L 365.

do, why they would find it difficult to think about the law in any other way, and *how their thought differs from ours."* [146] To do so, he affirmed that comparative legal studies need to "secur[e] pertinent anthropological, sociological, historical, and psychological insights,"[147] and saw culture "as the 'dangerous supplement' that comparatists-at-law have not wanted to see."[148]

Legrand grounded his approach to the concept of culture in the same strain of socio-anthropological scholarship discussed above, as it transpires from the following: "I apprehend 'culture' as referring to frameworks of intangibles within which ascertainable interpretive communities operate and which have normative force for these communities, even though not coherently and completely instantiated."[149] He relied on Geertz's definition, much like Bradney,[150] and called it the "ur-text of contemporary anthropology."[151] He also emphasized the same complexity as Sewell when discussing the coherence of a given culture[152] and the necessarily porous boundaries of such worlds of meanings.[153] In short, he advocated for the concept of culture as "a convenient shorthand," embracing its limitations and complexity:

> Referring to 'culture' in this way does not automatically privilege coherence, does not imply stultification, does not entail essentialism, does not exaggerate distinctness, does not preclude temporal variation, does not efface individual variations or contestations that can take the form

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[146] Legrand, *supra* note 145 at 369 (emphasis in original).
[147] *Ibid* at 371.
[148] *Ibid* at 374 (citing Derrida).
[149] *Ibid* at 374.
[150] See Bradney, *supra* note 115 at 80.
[151] Legrand, *supra* note 145 at 374, n 36.
[152] See *ibid* at 381—82 ("culture is not uniform […] every culture is tested and contested by individuals who inhabit it and whom it inhabits as a function of the way in which power manifests itself. Thus, a culture has to accommodate internal tensions and instabilities. […] Meanings are not reducible to common meanings [and disagreement occurs within the ambit of [a] common reference world" internal citations omitted).
[153] Legrand, *supra* note 145 at 376, n 43 ("Any individual partakes in a seemingly infinite array of ascertainable cultural formations. […] The decision by the comparatist to address one specific manifestation of culture cannot be taken to deny the legitimacy of cultural analysis. Any research endeavour must contend with the matter of boundedness. Nor can he decision to map one particular feature of the discursive sprawl that is culture be taken to suggest a lack of awareness of the composite character of cultural identity.").

> of participation in a range of sub-cultures, does not fetishise identity such that it would lay beyond critique, and certainly does not cast its advocates as some reactionary minority.[154]

Moreover, regarding the umbrella character of the concept, Legrand further affirmed that culture "is made to function as an omnibus category"; this, for him this was essential as it allows to examine meanings ("which alone can disclose the goals sought by a community as it invests itself into its posited law"),[155] especially since "no constant elemental units of culture have as yet been satisfactorily established."[156]

Regarding alternative concepts, Legrand refused to see a competition or even contradictions between 'tradition' and 'culture'; instead, he affirmed that "[p]erhaps the most helpful way to approach the dialectic between the cultural and the traditional is to think of culture as being the contemporary instantiation of tradition and of tradition as being the historical valency of culture."[157] While Legrand's predilection is for culture, he embraced the temporal aspect as he invited us to study legal rules and processes "not as a response to the immediate circumstances or current mental state of an interlocutor or of oneself, but as part of an unfolding story."[158] Legrand also sometimes used the concept of 'mentalité' for something very close to what he defines as culture, to approach the embedded normative element from a slightly different perspective.[159]

Lastly, going back to the idea of research into and about meanings, Legrand defined the comparatists-at-law's task as "a venture into cultural hermeneutics,"[160] i.e. a of study of the cultural

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[154] *Ibid* at 390.
[155] *Ibid* at 376.
[156] *Ibid* at 379 (citing Hall).
[157] *Ibid* at 379, 376 (calling tradition "culture-in-time").
[158] *Ibid* at 378 (citing Carrithers).
[159] See e.g. Legrand, *supra* note 145 at 376 ("A mentalité – which suggests an array of predispositions, predilections, propensities, or inclinations – is the outcome of a process of transformation of often unconscious aspirations or expectations according to the concrete indices of what is probable, possible, or impossible for an identifiable community into relatively durable tendencies that are internalised intergenerationally through socialisation and that crystallises into patterns of action").
[160] *Ibid* at 378 (citing Glendon).

meanings certain communities attach to specific objects. He further elaborated on the purpose of such research as follows:

> Appreciating that [understanding] is a notion far removed from the world of statistic and causal laws, comparative legal studies wishes to subscribe to a very different cognitive project and wants to pursue a very different account of significance. […] For comparatists-at-law, plausible explanations, then, can be more profitable, and hence preferable, to causal demonstrations. In fact, comparative analysis of law is best apprehended as a hermeneutical investigation aiming to achieve understanding about the life of the law and the life-in-the-law through the elucidation of meaning.[161]

This builds upon the insights of socio-anthropological scholarship as well, as Geertz too understood "the analysis of [culture] to be […] not an experimental science in search of law but an interpretive one in search of meaning."[162] In the same vein, Bradney stated that comparative research on legal education aimed to "explain [something] to someone who is not native to it" and constituted an "enquir[y] into and [an] exeges[is] of foreign cultures."[163]

One might still wonder how the field might benefit from such studies. Legrand offered the following answer:

> To be sure, such understanding may then be used to encourage new forms of problem-solving. Yet, it remains the case that the primary role of comparative legal studies is to awaken assumptions, that is, to answer an emancipatory interest. […] Comparative analysis of law wishes to liberate individuals dwelling within the realm of intelligibility into which they have been socialised from confining and repressive forces regarded by them as natural rather than socially constructed.[164]

It is Legrand's robust, complete and interdisciplinary framework that I adopt for my present project. The legal communities I set out to study are those composed by law professors at select law Faculties in Canada; I endeavour to offer a socially, geographically and historically situated hermeneutics

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[161] *Ibid* at 387 (internal citations omitted).
[162] Geertz, *supra* note 125 at 5.
[163] Bradney, *supra* note 115 at 79.
[164] Legrand, *supra* note 145 at 387—388; see also Cownie, *Legal Academics, supra* note 128 at 14 (explaining that her cultural inquiry into the experience of law professors aimed to "exoticize the domestic" (citing Pierre Bourdieu, *Homo Ademicus* (Paris: Editions de Minuit, 1984) and "make the familiar strange" (citing Sara Delamont, "Just Like the Novels? Researching the Occupational Culture(s) of Higher Education" in Rob Cuthbert, ed, *Working in Higher Education* (Buckingham: Society for Research into Higher Education & Open University Press, 1996) 145).

of legal education at these institutions. Building on the conceptual insights from the fields of anthropology (Geertz), sociology (Sewell), sociology of law (Pennisi), law and society (Friedman), and comparative law (Legrand), which all have reconciled limitations and complexity inherent to the concept of culture, I will elucidate the cultural meanings attached to certain aspects of legal education at specific law Faculties. This will in turn serve to emancipate thos interested in legal education as it will highlight the too-often assumed and implicit significations of certain aspects, demonstrate that their nature as social constructs and broaden legal educators' horizons of possibilities beyond their usual assumptions about legal education.

2.4 Institutional Cultures & Higher Education Studies

The last field of inquiry relevant to my project that I would discuss here is that of scholarship on higher education institutions more generally. While it sometimes borrows the language and concepts of the other fields I have discussed above, it also offers valuable insights with slightly different frameworks that will prove helpful for my project.

Scholarly works on aspects of universities comparable to the object of my own research often adopt the terms 'organizational culture', instead of 'institutional culture.' Tierney's seminal work is an example,[165] as well as that of Kuh and Whitt who used the 'organizational' and 'institutional' as interchangeable adjectives.[166] We can also find the expression "organizational identity," as in Albert and Whetten's research.[167] Such terminology came from studies into the corporate cultures of American and

[165] William Tierney, "Organizational Culture in Higher Education: Defining the Essentials" (1988) 59:1 J Higher Educ 2. See also e.g. Mats Alvesson, *Understanding Organizational Culture* (London: Sage, 2002); Majken Schultz, *On Studying Organizational Cultures: Diagnosis and Understanding* (Berlin/Boston: De Gruyter, 1995).
[166] George D Kuh & Elizabeth J Whitt, *The Invisible Tapestry: Culture in American Colleges and Universities*, ASHE-ERIC Higher Education Report No 1 (Washington, DC: Association for the Study of Higher Education/ The George Washington University, School of Education and Human Development, 1988).
[167] S Albert & David Whetten, "Organizational Identity" (1985) 7 Research in Organizational Behaviour 263.

Japanese companies in the early 1980s[168] and usually featured strong evaluative purposes as they aimed to identified which cultural traits could help a company perfom better than others.

The approach I adopt for my project is quite different. As set out above, I do not seek to make causal claims nor explain why law Faculties achieve certain outcomes and refuse to assess "how well" Faculties. The vocabulary coming from this tradition, therefore, seemed inadequate for my own project, as it would situate myself in filiation with research approaches that are not mine. Consequently, I prefer the term 'institutional' to 'organizational.' I also refused to adopt Albert and Whetten's term of 'identity', and instead retained that of 'culture', for the reasons exposed above. This, however, does not mean that there is nothing to glean from these academic works for my present purposes. On the contrary, they offer significant insights to guide my inquiry.

Kuh and Whitt approached culture as "a frame of reference within which to interpret the meaning of events and actions on and off campus."[169] The proximity with the definitions I adopted above is striking. Tierney largely echoed this framework; additionally, he recognized the importance of external factors such as demographic, economic, and political conditions in shaping institutional cultures, even as he emphasized the role of internal forces which have their "roots in the history of the organization and [derive their] force from the values, processes, and goals held by those most intimately involved in the organization's workings."[170] This leads me to value history, individuals, and environment in my exploration of institutional cultures.[171]

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[168] E.g. William G Ouchi, *Theory Z: How American Business Can Meet the Japanese Challenge* (Reading, MA: Addison-Wesley Publishing Company, 1981) and Thomas J Peters & Peter H Waterman, *In Search of Excellence: Lessons from America's Best Run Companies* (New York: Harper & Row, 1982) (both arguing that corporate culture was key to the organizations' performance, and that it is possible to manage corporate culture to improve a company's competitive situation.)

[169] Kuh & Whitt, *supra* note 166 at 12.

[170] Tierney, *supra* note 165.

[171] We can see here echoes of Legrand's invitation to include the "dangerous supplement" that is culture in the analysis (see quote accompanying *supra* note 148) and of Pue's recommendation to approach Canadian law faculties from an external history perspective rather than purely institutional one (see Pue, *supra* note 4).

Albert and Whetten defined organizational identity as an explanatory tool for the decisions of organizations, for instance, those that do not submit to economic rationality.[172] Twenty years later, while clarifying this framework to strengthen the validity of scholarship concerned with causal claims and involving for instance hypothesis testing, Whetten agreed that using the concept with some flexibility, even metaphorically, had yielded important insights.[173] Whetten also distinguished his concept from that of culture, but affirmed that the latter (in the way I use it here) was compatible with identity, and that "cultural elements are functioning as parts of the organization's identity."[174] For Whetten, identity referents constitute a "self-determined and self-defining unique social space" and form "a unique pattern of binding commitments;" identity itself "is an unobservable subjective state" that we can only access through its manifestations in discourses and decisions.[175] Further, legitimate identity referents include three components: an ideational one ("the members' shared beliefs regarding the question 'who are we as an organization'?"), a definitional one ("the central, enduring, and distinctive" features of an organization), and a phenomenological one ("identity-related discourse [is] most likely to be observed in conjunction with profound organizational experiences"). Albert and Whetten's framework thus provides a useful guide for my inquiry in order to focus my attention on certain normative cultural meanings: those relating to the self-definition of a Faculty's identity, those constitutive of central, enduring, and distinctive features, and those manifesting themselves at pivotal moments in a Faculty's life.

There is much overlap between the conceptual propositions of these authors among themselves, and the framework I laid out for my own study in the previous sections. For instance, Legrand embraced the entanglement of his framework for culture with the concept of identity,[176] and emphasized that the

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[172] Albert & Whetten, *supra* note 167.
[173] David A Whetten, "Albert and Whetten Revisited: Strengthening the Concept of Organizational Identity" (2006) 15:3 J of Management Inquiry 219 at 220.
[174] Whetten, *supra* note 173 at 228.
[175] Whetten, *supra* note 173 at 220—21.
[176] See e.g. Legrand, *supra* note 145 at 374 ("'law-as-culture', which I take to mean the framework of intangibles within which an ascertainable 'legal' community […] operates and which organises (not always seamlessly) the

characteristics to consider in order to ascertain "discrete patterns of reasoning or of discourse or of implicit beliefs […] need not only be distinctive but also recurrent and pervasive."[177] In addition to confirming the pertinence of analyzing cultural meanings with normative bearings, and that of being attuned to the environment in which they find themselves, it helps identify the factors that I should study to characterize such institutional cultures. The ideational, definitional and phenomenological aspects laid out by Albert and Whetten provide additional clarity to characterize institutional cultures outside of the circular frameworks sometimes attached to this concept. I have therefore explored and analyzed information, i.e. elucidated meanings, that corresponds to the components outlined by Albert and Whetten and understood as normative about legal education in certain law Faculties in Canada.

3. Study Design & Research Methodology

Now that we have set out the conceptual framework to study institutional cultures in Canadian legal education, we need to lay out a method for doing so. Rochette's and Sandomierski's respective research partly responded to Pue and Rochette's lucid assessment regarding the lack of factual information on the realities of Canadian legal education at the turn of the century.[178] Rochette's findings showed how law professors experienced the normative powers of certain expectations on the part of colleagues or students, and characterized such "institutional cultures" in terms of whether greater emphasis was put on research or teaching at a given Faculty.[179] Sandomierskied demonstrated that "[t]he norms that most powerfully appear to [create a path dependence for] law professors are implicit and

identity of such legal community as legal community."), 380 ("As a term attempting to delineate identity, culture […]").

[177] Legrand, *supra* note 145 at 381 (adding that characteristics "must, in other words, inform a substantial part of the ideas, beliefs, assumptions of the legal group concerned."); the resemblance with Albert and Whetten's analysis of core, enduring and distinctive features is striking.

[178] Rochette, *supra* note 113; Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93. See Pue and Rochette, *supra* note 99 at 167—68.

[179] Rochette, *supra* note 113 at 246ff.

inferential, akin to unwritten general principles, expressed by the term 'institutional culture.'"[180] Their findings demonstrate the importance of doing so to charcaterize more precisely these powerful norms and understand how they differ from one Faculty to the next, but neither of them both sketch out any specific instutition's culture. Moreover, while the existing literature and for instance, the institutional websites of law Faculties, contain publicly available information on the ideational, definitional and phenomenological aspects of the institutions, this data remains spotty and subject to important biases as it is often produced for promotional rather than scholarly purposes.[181] Therefore, I needed to seek out data to document the phenomena that are the object of the present study, hence a large reliance on empirical methods.

Recent empirical works on Canadian legal education are helpful to identify relevant methods. Rochette visited 9 law Faculties to conduct interviews and in-class observations with 49 teachers for her doctoral research on teaching and learning, relying on a mix of quantitative and qualitative methods.[182] Sandomierski conducted 67 interviews but no observation and relied only on qualitative analysis. Outside of Canada, we can think of a recent qualitative study of about 26 law teachers in the United States that used interviews, focus groups and in-class observations.[183] From the previous decade and in the English context, Cownie should be mentioned here as well as she interviewed 54 law professors in England, also working with a qualitative approach, and examined their collective culture,[184] whereas Rochette, Sandomierski and Hess primarily analyzed their individual teaching and attitudes toward legal education. In addition, Bradney also formulated methodological recommendations for comparative research in legal

[180] Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 394ff, 400.
[181] See e.g. Normand, *Le droit comme discipline universitaire*, *supra* note 40 and accompanying text, Bell, *Legal Education in NB, supra* note 33 in Preface, (both highlighting the biases of institutional histories of law faculties published to celebrate a marking anniversary); see also and Pue, *supra* note 4.
[182] Rochette, *supra* note 113 at 97.
[183] Gerald F Hess, "Qualitative Research on Legal Education: Studying Outstanding Law Teachers" (2014) 51:4 Alta L Rev 925; see also Michael Hunter Schwartz, Gerald F Hess & Sophie M Sparrow, *What the Best Law Teachers Do* (Cambridge, Mass: Harvard University Press, 2013).
[184] Cownie, *Legal Academics, supra* note 128.

education. Borrowing Trow's approach, he favoured methods that would be able to pay attention to the public as well as private lives of institutions;[185] he also suggested to produce "thick descriptions" as set out by Geertz.[186] Let us now see how these examples and recommendations, as well as additional sources, helped me design a suitable methodology for my own study. In addition to such empirical data, my analysis is also informed by the publicly available information and literature.

3.1 Qualitative Research, Case Studies & Interpretivist Paradigm

Much like for the scholarship cited in the preceding paragraph, the most adequate type of empirical research for the present project is qualitative. Creswell describes qualitative research as an approach aimed at "exploring and understanding the meaning individuals or groups ascribe to a social or human problem."[187] Qualitative research has also been defined as a type of empirical research where the analytical categories are the object of research itself,[188] and which does not rely on making causal claims.[189] Further, qualitative research is predominant in social anthropology and makes great use of interviews and participant observations, which require fieldwork research.

Rochette, Sandomierski, Hess and Cownie all identified their own qualitative research on legal education as engaging in grounded theory.[190] Grounded theory consists in applying inductive reasoning

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[185] See Bradney, *supra* note 115 at 71 (citing Martin Trow, "The Public and Private Lives of Higher Education" (1975) 104:1 Daedalus 113); this also echoes Cover, *supra* note 126 at 7 ("The normative universe is held together by the force of interpretive commitments - some small and private, others immense and public.").

[186] See Bradney, *supra* note 115 at 80 (citing Geertz, *supra* note 125).

[187] John W Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (Thousand Oaks, Cal: Sage Publications, 2014) at 32.

[188] Gérald Boutin, *L'entretien de recherche qualitatif,* revised ed, (Québec : Presses de l'Université du Québec, 2008) at 10—11.

[189] James Mahoney & Gary Goertz, "A Tale of Two Cultures: Contrasting Quantitative and Qualitative Research" (2006) 14:3 Pol Analysis 227 at 228—30.

[190] See Rochette, *supra* note 113 at 124; Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 26ff; Hess, *supra* note 183 at 928; Cownie, *Legal Academics, supra* note 128.

to the data to generate a theory.[191] I attempted to maintain a dialogue between the local details and the common structures, and not to obscure the existence of commonalities in the study of differences, but I did not aim to generate explanatory principles for all Canadian law Faculties. This is inherent in the choice I made to dive into the specific character of each Faculty's culture, as distinct from rather than as representative of others. While I certainly borrow many features of grounded theory for my own work and build on that of previous authors who identified with it, I refrain from claiming this as my research paradigm as I see a form of gap between my emphasis on individual Faculties' characteristics and the focus on theory generation central to grounded theory. Sandomierski and Rochette selected participants and analyzed their data with a view of obtaining a representative picture of contract law taching and legal pedagogy generally in Canada; to the contrary, the results I aim to generate will be thick descriptions of localized phenomenon. The connotations of generalization attached to theory therefore do not fit squarely with my project, even as the literature suggests that a theory can certainly take various forms and scopes depending on the research in question.[192]

Therefore, and while acknowledging that aspects of my work could be qualified as grounded theory, I prefer to adopt the label of case studies for this project. Case studies can be described as attempts to develop an "in-depth analysis of a case, often a program, event, activity, process, or one or more individuals"; such cases are "bounded by time and activity," and researchers collect information using "a variety of data collection procedures over a sustained period of time."[193] Cases studies borrow features from several traditions of inquiry to design their own strategy, in accordance with the object of study and the interests of the researcher. This framework proved particularly appealing for the current

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[191] See Creswell, *supra* note 187 at chap 3, Kathy Charmaz, "Grounded Theory: Methodology and Theory Construction" in James D Wright, ed, *International Encyclopedia of the Social & Behavioral Sciences,* 2nd ed (Oxford: Elsevier, 2015) 402.

[192] *Ibid.*

[193] Creswell, *supra* note 187 at 43; see *also* Robert E Stake, *The Art of Case Study Research* (Thousand Oaks, CA: Sage, 1995); Robert K Yin, *Case Study Research: Design and Methods* (Thousand Oaks, CA: Sage, 2009), Robert K Yin, *Applications of Case Study Research*, 3ed (Thousand Oaks, CA: Sage, 2012).

project as it "allows us to observe the elephant in its entirety or, if not in its entirety, more completely than a research project that employs only one method."[194]

Case studies are frequent in ethnographic works, a type of research that explores "the shared patterns of behaviours, language, and actions of [a] cultural group in a natural setting over a prolonged period of time" and usually relies on fieldwork consisting of observations and interviews.[195] Fieldwork is a traditional aspect of qualitative research in general and sociology and anthropology in particular. It involves going 'on the field', i.e. where the phenomenon to be studied happens, to collect data about it. Doing so has many advantages, as it gives the researcher access to the sources and data in a manner less mediated than if they had to rely on second-hand accounts or even recordings. It enables them to immerse themselves for a time in the setting where the participants to the study conduct their activities, and where the object of their study normally occurs. Given the scarcity of information available to date on the topic of law Faculties' cultures, this approach enabled me to analyze a wealth of information that I would otherwise have not encountered elsewhere. It also allowed me to encounter sites of meanings that I would not have otherwise included in the analysis, for instance, thanks to informal discussions with faculty members, and thus broadening the scope of my research beyond my initial intuitions and limiting my research biases.

Thick descriptions are also usual in the field of ethnography. Even in the absence of a generalizable theoretical explanation or theory, producing and comparing thick descriptions of several case studies allows the researcher to identify common traits and differences among the objects.[196] In keeping with the comparative aims of my research, therefore, I included several case studies and presented them in

[194] Nielsen, *supra* note 52 at 970.
[195] Creswell, *supra* note 187 at 41—43.
[196] Hess, *supra* note 183 at 927.

dialogue with each other to maximize the analytical leverage they can yield for each other.[197] The balance I sought between the ethnographic and the comparative approach limited the number of case studies I could include to three and enabled me to share about a month in the life in each community.

Thick descriptions are interpretive by nature.[198] The interpretivist paradigm in qualitative research considers that the social world is not "an entity in and of itself but is local, temporally and historically situated, fluid, context-specific, and shaped in conjunction with the researcher." [199] Here, the research does not purport to unveil objective truths, but rather the multiple and varied subjective meanings that individuals construct to understand the world in which they live.[200] This requires inductive reasoning to identify a pattern of meanings and does not involve starting with a theory or hypothesis to be tested.[201] Research in this vein relies heavily on participants' own views, and this is why I have retained a large number of direct quotes throughout the thesis. Such subjective meanings are understood as negotiated socially and historically, and close attention to the specific contexts in which participants live and work is necessary to understand these meanings. The research aims to interpret the meanings others hold. Moreover, interpretivist researchers need to "position themselves in the research to acknowledge how their interpretation flows from their personal, cultural, and historical experiences."[202] I do so later in this chapter after I explain the cases I decided to study for this project, and how I went about collecting and interpreting data about them.

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[197] See Audie Klotz, "Case Selection" in Audie Klotz and Deepa Prakash, eds, *Qualitative Methods in International Relations A Pluralist Guide* (New York: Palgrave, 2008) 43 at 56 (on multiple case studies).
[198] Geertz, *supra* note 125 at 20.
[199] See Carol A Bailey, *A Guide to Qualitative Field Research*, 2nd ed, (Thousand Oaks, CA: Pine Forge Press, 2007) at 50—51; see also Creswell at 37—38 (referring to a constructivist worldview). Sandomierski also adopted an interpretive approach, see Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 26).
[200] Bailey, *supra* note 199 at 53.
[201] Creswell *supra* note 187 at 37; see also Geertz, *supra* note 125 at 5.
[202] Creswell, *supra* note 187 at 37.

3.2 Cases Selection & Fieldwork

3.2.1 Cases

Before explaining which cases I selected and the reasons for their inclusion in this study, let me begin with some reflections on the universe of potential cases, and the non-cases.[203] I briefly stated in the introduction to the present chapter what I meant by "legal education" for the purposes of this project: my focus is on university units offering a program recognized by at least one professional association for admission into the legal profession. This criterion constitutes an identifiable point of departure to make comparisons. The idea that such criterion marks a significative distinction is widespread: regardless of their exact organizational structure within the university and potential overlaps in the fields of study with other units, those units featuring a professional program in law are thought of as constituting a distinct endeavour, and attracting students and faculty with qualitatively different background and aspirations, as compared to other parts of the university. The present project does not need to confirm the accuracy of this premise, nor adopt a normative stance as to whether this ought to be the case. Acknowledging this premise, and only accepting it based on its prevalence is enough for the present project; others will be better placed to challenge it. My study, therefore, excludes the academic units across the Canadian university landscape that make law and legal phenomena their main focus without offering any program recognized by professional orders.[204]

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[203] See Klotz, *supra* note 197 at 43—58.

[204] E.g. Carleton's Department of Law and Legal studies, Winnipeg's Department of Criminal Justice, Regina's Department of Justice Studies, etc. See also programs such as Law and Society at York University, Law and Justice at Laurentian University, Legal Studies at Concordia University and Simon Fraser University, Sociology and Legal Studies at University of Waterloo, etc. One could also include in this list Saint Paul University's Faculty of Canon Law.

In Canada, there are currently 23 permanent units offering a qualifying program.[205] An additional institution has been approved and is set to open its doors in September 2020 (Ryerson),[206] at least another remains at the proposal stage (MemorialU),[207] and yet another institution offers a qualifying program on an ad hoc rather than permanent basis (Nunavut Law Program).[208] Among these 23, I decided to include three Faculties in my study: the Département des Sciences Juridiques de l'Université du Québec à Montréal (DSJ UQAM), the Faculty of Law of the University of Alberta (UAlberta Law) and the Faculté de droit de l'Université de Moncton (Droit UMoncton). This number resulted from the competing demands of comparative and ethnographic research: it allowed me to consider sufficient diversity within my case studies to engage in valuable comparisons while enabling me to dive into sufficient details on each case to make such comparisons most meaningful. Each case study provided analytical leverage for others.[209] Much like what I hope to instill for the readers, the process of comparing and contrasting cultural aspects across sites helped me question aspects that a single case study may have left untouched as their self-evident or unimportant appearance in a given context only reveals itself when we observe major differences elsewhere.

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[205] At UVic, UBC, TRU, UAlberta, UCalgary, USaskatchewan, UManitoba, LakeheadU, Western, Queen's, UWindsor, UToronto, Osgoode Hall, UOttawa (Common Law), UOttawa (Droit Civil), McGill, UMontréal, UQAM, USherbrooke, LavalU, UNB, UMoncton, Dalhousie: see Federation of Law Societies of Canada, "Canadian Law School Programs", online: <https://flsc.ca/law-schools/> (list of programs approved for admission in a common law Canadian law society), Barreau du Québec, "Devenir Avocat", online: <https://www.barreau.qc.ca/fr/ressources-avocats/devenir-avocat/> (list of programs approved for admission in the Quebec Bar); see also Council of Canadian Law Deans, "Canadian Law Schools", online: <https://ccld-cdfdc.ca/law-schools/>. Qualifying programs for the notarial profession in Quebec only exist at Faculties also offering programs qualifying for joining the *Barreau du Québec*.

[206] See Ryerson University, Faculty of Law, online: <https://www.ryerson.ca/law/>.

[207] See MemorialU Law *Proposal supra* note 8. After losing the Supreme Court case (see *LSBC v TWU* and *TWU v LSUC, supra* note 1), TWU changed its policies and made the Community Covenant (TWU, "Community Covenant Agreement", online: <https://www8.twu.ca/governance/presidents-office/twu-community-covenant-agreement.pdf> [TWU "Community Covenant"]) that was at the hearty of the case optional (see Trinity Western University, News Release, "TWU Reviews Community Covenant" (14 August 2018), online: <https://www.twu.ca/twu-reviews-community-covenant>); it remains to be seen whether TWU will make a new bid to open a law school.

[208] See text accompanying *supra* note 10.

[209] See Klotz, *supra* note 197 at 56.

Taken together, DSJ UQAM, UAlberta Law and Droit Moncton present a cross-section of Canadian legal education. In the differences between them, we can see usual characteristics of the diversity in the field of legal education in Canada (legal traditions, languages), as well as factors relating to their environment and history (see Table 1.1, *below*). I also took to heart Pue's invitation to cast light on legal education outside of the almost hegemonic centers of attention in the fields and recognize regional importance.[210] Moreover, the three cases constitute a puzzling set and bring together elements of university legal education in Canada that actors do not often confront with each other. I do not mean to study any of them as representative of a larger category of law Faculties. Instead, I treat each as a unique site of institutional culture and a window into the diversity and pluralism of legal education in Canada. Each of them represents an opportunity to analyze cultural meanings with regard to comparable aspects in different settings. Table 1.1 below offers a snapshot of the apparent differences among them.

	DSJ UQAM	**UAlberta Law**	**Droit UMoncton**
Language	French	English	French
Legal tradition	Civil Law	Common law	Common law
City, Province; Region	Montreal, QC; Central Canada	Edmonton, AB; Western Canada	Moncton, NB; Maritimes
Establishment	1974	1912	1978
Total number of students (incl. all programs of study)	980	560	124
Number of full-time professors (incl. all ranks and status)	34	36	12
Degree programs offered	LL.B., BRIDI, LL.M., LL.D.	J.D., LL.M., Ph.D.	J.D., LL.M.

Table 1.1: Some characteristics of the case studies Faculties[211]

[210] Pue, "Common Law Legal Education" *supra* note 4 at 662—63.
[211] Information as of 2017-18 (time of fieldwork); the total number

3.2.2 Interviews

I conducted my research fieldwork at DSJ UQAM between 28 August and 28 September 2017 (23 active days), UAlberta Law between 2 October and 10 November 2017 (25 active days), and UMoncton Droit between 7 March and 10 April 2018 (23 active days).[212] During these periods, I conducted interviews with law professors and observations. I will first describe the methods and procedures relating to the interviews before turning to the observations.

Law Faculties are human communities composed of several groups that could be described for instance as follows: students, professors, usually including administrative leaders, librarians, support staff, other instructors. Each such group and individuals themselves would contribute differently to an understanding of a Faculty's culture. The following reasons led me to conduct interviews with professors only. First, the few examples of empirical scholarship focusing on institutional characteristics in Canada focused on students rather than professors,[213] and those focusing on professors did not portray any specific institution's culture.[214] As professors, among whom are usually selected Deans and other administrative leaders, are the main decision-makers regarding legal education at given institutions, and as they tend to participate in a given institution for longer periods than students enrolled in a three-year program, they undoubtedly have a key role in shaping and experiencing a Faculty's culture, and therefore can offer valuable contributions to this project. Second, capturing a sample of students anywhere near representative of the whole body would have required a much greater number of interviews than that

[212] I conducted no fieldwork activities on weekends, holidays, days when campus closed for weather-related reasons (1.5 at UMoncton); moreover, I interrupted my fieldwork at UAlberta Law between 27 October and 2 November for personal reasons. One interview at DSJ UQAM happened outside of the fieldwork period (22 November 2017).
[213] See Chartrand et al, *supra* note 97.
[214] See e.g. Rochette, *supra* note 113, Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93, and the discussion of their contribution to the understanding of the normative power of institutional culture in the text accompanying *supra* notes 179-180.

required for professors; given the inclusion of three case studies, this would have been impracticable in light of the necessary time and the volume of data it would generate.

Further, support staff and librarians are usually in situations of greater subordination vis à vis the leaders than professors, and their ability or willingness to offer critical or controversial contributions may be hindered accordingly.[215] At one institution, I sensed a willingness from the Dean to have a say in the selection of participants for this study; I attribute this to the fact that my initial request at this Faculty (like the two others) included the possibility to interview staff and librarians. Once on site and after I clarified that I eventually decided to interview only faculty members, there was no attempt to screen my list of participants. This example demonstrates the greater difficulties in involving staff members in such a study despite the valuable insights they would provide. Staff members are also usually less involved in the decisions shaping the institutions (although they remain essential in their operations), which is true of non-faculty instructors as well. This is why I chose to restrict interviews to full-time faculty members, to whom I refer as professors regardless of their rank and status. I nonetheless had informal discussions with librarians, support staff and students during my fieldwork which helped me gain a broader sense of the Faculty's operations.

I conducted 30 interviews with law professors: eleven at DSJ UQAM, eleven at UAlberta Law, and eight at Droit UMoncton. I used a combination of volunteer and purposeful sampling to recruit participants.[216] I wanted to include a variety of professors at each institution, with variables such as gender, length of involvement with the institution (usually tied to rank), administrative experience, and

[215] This is so despite the possibility that they be unionized or benefit from another protective status.

[216] *Cf* Rochette, *supra* note 113 at 107 (using "a combination of volunteer, snowballing and purposeful sampling to recruit participants."); Hess, *supra* note 183 at 930ff (selecting participants purposefully in a pool of volunteers nominated by varied sources); Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 50 (contacting all potential participants, i.e. professors who had recently taught contracts in a common law Faculty).

areas of specialty likely to lead to a plurality of perspectives.[217] Other variables, such as whether participants had obtained a doctoral degree, proved relevant at a later stage of the analysis but were not included in the sampling strategy.[218] Based on publicly available information, I thus invited a diverse selection of faculty members at DSJ UQAM and UAlberta Law for an interview. At Droit UMoncton, given the small size of the Faculty, I contacted all the professors in order to maximize the chances of reaching a number of interviews close to that I had achieved in the previous two fieldworks.

While I noted that the response rate was sometimes lower for some sub-groups (such as young female faculty members, maybe due to the greater demand on their time that my request represented in light of other commitments),[219] I obtained the diversity I aimed for among participants in each Faculty (see Table 1.2, *below*). While not all points of view could be included short of interviewing the entire faculty, this strategy and the content of the interviews leave me confident that I succeeded in capturing a diverse cross-section of attitudes toward cultural meanings in each law Faculty.

	DSJ UQAM	**UAlberta Law**	**UMoncton Droit**	Overall
Interviews	11	11	8	30
Total full-time professors (% interviewed in total)	34 (32%)	36 (31%)	13 (62%)	83 (36%)
Female interviewees (% of interviewees)	4 (36%)	5 (45%)	3 (31%)	12 (40%)
Total female full-time professors (% of faculty)	16 (47%)	12 (33%)	4 (33%)	32 (39%)

[217] Race could have been a relevant variable as well, however given the general lack of ethnic diversity in Canadian legal academia, it would have been impossible to ensure some representativity on this front; moreover, it would have been impossible to maintain the anonymity of racialized participants if I disclosed this element in the analysis.
[218] See Chapter 3, Section 4.2, *below*.
[219] See e.g. Cassandra M Guarino & Victor MH Borden, "Faculty Service Loads and Gender: Are Women Taking Care of the Academic Family?" (2017) 58 Research in Higher Educ 672 (finding that female academics in the United States, all disciplines combined, perform more service work for their universities than their mal counterparts), and Amani El-Alayli, Ashley A. Hansen-Brown & Michelle Ceynar, "Dancing Backwards in High Heels: Female Professors Experience More Work Demands and Special Favor Requests, Particularly from Academically Entitled Students" (2018) 79 :3-4 Sex Roles 136. More generally, see Cownie's review of the literature on the experience of female law teachers in Cownie, "Legal Education and the Legal Academy", *supra* note 108 at 860ff.

Interviewees with: - 0-5 years (% of interviewees) - 5-15 years (% of interviewees) - 15+ years (% of interviewees) of experience in this Faculty	 - 4 (36%) - 5 (45%) - 2 (18%)	 - 3 (27%) - 5 (45%) - 3 (27%)	 - 4 (50%) - 3 (38%) - 1 (12%)	 - 11 (37%) - 13 (43%) - 6 (20%)
Interviewees with administrative leadership experience (% of interviewees)	6 (55%)	4 (36%)	2 (25%)	12 (40%)

Table 1.2: Some characteristics of interview participants[220]

Before each fieldwork visit, all faculty members received a collective notice by email, through the usual channel for general announcements, informing them of my upcoming presence at their institutions, the goals of my research, the possibility that they might be contacted for an interview, and my potential participation at public events in the Faculty during the time of my fieldwork. I then contacted each purposefully-selected professor directly by email with a personal invitation for an interview about institutional culture and legal education at their law Faculty, anticipated to last about 60 minutes. Participants decided the time and place for the interview and chose whether to allow me to record the conversation and whether they wished their participation and contributions to remain confidential. I experienced a much lower response rate at UQAM, and thus had to send out more invitations, compared to the other two Faculties (see response rates in Table 1.3, *below*). Several factors probably explain this difference: the period when I conducted my fieldwork, the pool of faculty members to whom I sent invitations, and my own presence on site. Professors were less available during the period when I conducted my fieldwork at UQAM (September), than mid-fall term (UAlberta) or mid-winter term (UMoncton). After this initial experience, I obtained guidance at UAlberta Law to avoid sending invitations to faculty members on sabbatical or sick leave. Moreover, UAlberta and UMoncton gave me access to a

[220] Information current as of 2017-18 (time of fieldwork); Administrative leadership experience includes Dean, Vice Dean, associate Dean positions, past or present at the said institution. Information such as ethnicity and geographical origin could not be presented here to preserve the identity of participants but is discussed in Chapter 3, Section 4.2, *below*. See also Chapter 3, Sections 4.2.1, 4.2.2, *below* (presenting information on the academic credentials and bar membership of participants).

faculty office space for the duration of my fieldwork, which led to more numerous informal interactions with faculty members, which undoubtedly impacted the response rate. Most interviews took place in the interviewee's office or my own (83%). A few occurred in other places on campus, and a couple happened off campus in a coffee shop at the request of participants more concerned than others about the confidentiality of their contributions.

	DSJ UQAM	UAlberta Law	Droit UMoncton	Overall
Responses				
Invitations sent	23	15	13	51
Interviews conducted	11	11	8	30
Response rate	49%	73%	62%	60%
Location				
Faculty office (interviewees' or mine when applicable)	8 (73%)	9 (82%)	8 (100%)	25 (83%)
On campus, public space	2 (18%)	1 (9%)	0	3 (10%)
Off campus	1 (9%)	1 (9%)	0	2 (7%)
Duration				
Average duration in minutes	75	60	90	70
Range (min; max) in minutes	45;100	30;75	55;135	30;135

Table 1.3: Response rate, location and duration of interviews

The interview style I adopted was that of semi-structured interviews; I prepared a set of topics I wanted participants to address, but I adapted the sequence and phrasing of the questions depending on the flow of the conversation and the particular contributions of each participant. This strategy was particularly helpful to weed out the possible categories of analysis, let the participants lead me to the ideas they wanted to share on general topics, and explore certain issues in all their complexity.[221] I structured the interviews around the following topics and most interviews discussed them all:

- Academic and professional background of the participant;

[221] See e.g. Boutin, *supra* note 188 at 3; see also Legrand, *supra* note 145 at 368 (affirming that "no information can be deemed irrelevant to the comparatist as he undertakes to come to terms with foreign law," thus supporting an exploratory approach and constant curiosity to ascertain and characterize cultures).

- Participant's roles and involvement within the Faculty;
- General perception of the institution, including unique characteristics;
- Knowledge of and rapport with the history of the institution;
- Courses taught, pedagogical objectives and teaching philosophy of the participant;
- Signification and importance accorded to certain prominent characteristics of the Faculty, including of the undergraduate and graduate programs offered, the official label, etc.;
- Matters of debates and consensus with the Faculty on legal education and contemporary socio-political issues (e.g. reconciliation);
- Any additional topic they deemed important to discuss.[222]

3.2.3 Observations

During the fieldwork, I also attended public events susceptible to yield additional insights into the meanings associated with legal education in each Faculty. I only attended official events organized by the Faculty and to which I was specifically invited by organizers or to which the entire community was invited.[223] During such events, I took notes and behaved like a regular attendee. I was thus conducting a form of participant observation, which consists in observing an environment while being engaged with the actors that compose it. While I did not attempt to impact the course of the events to obtain more relevant data, I was not a remote observer as other participants sometimes interacted with me, for instance asking what I was taking notes of. Such observations are particularly helpful to complement interviews in exploratory research.[224] Observations allowed me to understand in greater detail the participants' environment in order to prepare the interviews questions, as well as confront the

[222] See Appendix B, *below,* for more details on my interview guide.
[223] On one occasion I attended an event at the invitation of a faculty member, but a later conversation with an organizer who expressed their refusal to have the event form part of my study led me to exclude all data collected on this occasion.
[224] Boutin, *supra* note 188 at 41—42.

perceptions and representations I acquired as an observer with the those that the participants express for themselves. Moreover, this combination echoes Trow's recommendation to pay attention to the private as well as public life of institutions which Bradney endorsed for comparative research in legal education.[225] While I attended three to four events during each fieldwork, I only retained and used data from 4 in total, at least one at each Faculty, being those where I gained valuable insights for the purpose of this project. Table 1.4 below summarizes the events included.

	DSJ UQAM		**UAlberta Law**	**UMoncton Droit**
Title	Rentrée étudiante	Conseil académique	MOU with JAG Signing Ceremony	11e Conférence J Fernand Landry
Date	30 August 2017	30 August 2017	25 October 2017	15 March 2018
Time	12:30- 1:30 PM	1:30 – 2:45 PM	11:00-11:30 AM	5 :00 – 6 :30 PM
Location	Large hall on campus	Board meeting room on campus	Atrium of Faculty's building	Largest classroom in Faculty's building
Description	Welcome event for new law and political science students; included speeches by the Dean and keynote address.	Meeting of the governing body of UQAM's Faculté de Science Politique et de Droit.	Signing ceremony for a Memorandum of Understanding between UAlberta Law and the office of the Judge Advocate General (JAG) of Canada for the creation of internships position; included speeches by the Dean and the JAG.	Conference delivered by H.E. Michaëlle Jean, then Secretary General of the Organisation Internationale de la Francophonie and former Governor General of Canada.

Table 1.4: Summary of events observed and included in the study

3.3. Ethics, Data Processing & Analysis

As my research involved human participants, I had to obtain an ethics approval from relevant authorities before conducting the fieldworks and also had to comply with continuing ethics obligations as long as the research was ongoing. I obtained ethics approval from McGill University's Research Ethics Board

[225] See Trow, *supra* note 185 and Bradney, *supra* note 115 at 71.

(REB) on 22 March 2017, and subsequently from the REBs of UQAM, UMoncton and UAlberta before starting the fieldwork. All ethics approvals were renewed yearly, and all involved REBs have been notified of the closure of the project.[226]

As with any study involving humans, there were risks associated with participation. These were however minimal in the case of this project, as the several REBs involved recognized. Such risks were mainly social and reputational, for instance for a professor criticizing their own institution or colleagues. The risks were minimized by procedures ensuring anonymity for all participants who did not wish to be identified.

As per the procedures approved by the research ethics boards, I communicated a consent form to the participants in my email invitation to participate in an interview. Moreover, I took about 5 minutes at the start of each interview to describe the goals of my study, go over the main points of the consent form, and discuss with participants whether they wanted their participation to remain confidential and whether they allowed me to record the interview. While I usually expressed a preference for the recording (as it made subsequent use of the date easier and ensured that I stayed as close as possible to the participants' own words when reporting their views), I insisted that I did not seek to associate the names of participants with their statements in my thesis. After conducting several interviews, I noticed that some participants were more comfortable to make that choice after the interview, something I then readily offered to subsequent participants. I observed that participants expressed different levels of preference regarding anonymity beyond the binary I initially proposed. Some participants, usually the most senior ones, were comfortable with their remarks being publicly attributed to them. Most participants preferred that they remain anonymous. Some gave strong signs that they insisted on such confidentiality, for instance by requesting that the interview happen away from campus, and worried about the risk indirect identification.

[226] See also Appendix A, *below,* for details on the REB certificates.

Moreover, participants retained control of their preference regarding anonymity and recording throughout the interviews. On several occasions, participants indicated that certain statements in particular needed to be treated with the utmost confidentiality. On at least one occasion, a participant who had waived confidentiality retracted some statements, insisting that they not appear, even anonymously, in my work. During another interview, a participant who had already elected to remain anonymous asked me to pause the recording and to not take notes while he shared specific things with me.

I generally treated all participants with the same high level of confidentiality, with minor exceptions. I associated an alpha-numeric code to each participant, indicating their institution by the provincial abbreviation (QC, AB, NB) and a sequence number. I am the only one with access to the document associating such codes with individuals. All my working documents and reporting on the data refer only to the alpha-numeric codes. I only identified by name a couple of participants on a few occasions in the thesis when the following specific conditions were met: the participants had explicitly waived the option of confidentiality and naming the said participants (usually due to their past or present leadership position) added a substantial layer to the analysis. Moreover, while I usually redacted quotes to exclude information that may allow for indirect identification of the participants (e.g. when they refer to specific courses they taught), I did not do so systematically for those participants who had waived the option of confidentiality when that information could be materially relevant.

	DSJ UQAM	**UAlberta Law**	**UMoncton Droit**	Overall
Recorded	10 (91%)	8 (73%)	7 (88%)	25 (83%)
Anonymity required	7 (64%)	6 (55%)	5 (62%)	18 (60%)

Table 1.5: Recording and anonymity statistics for interviews

Different ethical considerations were at play regarding observations. As is frequent for ethnographic observations, and in order to minimize any impact on the normal course of events, I could not seek informed consent from all participants at the public events I attended. I followed the following procedures to overcome this obstacle: I sought the consent of the Dean in each Faculty to conduct fieldwork at their institution (this was not necessary to conduct interviews with faculty members);[227] I asked the Deans' office to notify their entire community (including students and staff) ahead of my arrival with a description of the goals and methods of my fieldwork signaling my potential presence at events organized during my period of fieldwork and an invitation to contact me with any question or requests that I do not attend specific events; I signalled my presence to the organizers of the events I attended before they began and paid attention to any sign of reluctance regarding the inclusion of their event in my study; lastly, I did not audio or video record any part of the events, and did not keep a record of the identity of the persons whose speech or behaviour I observed, unless it manifestly constituted an official speech (e.g. Dean's speech).

I processed the fieldwork data myself. Most importantly, I transcribed the interview recordings myself, which, in addition to limiting the potential for breach of anonymity, allowed me to further familiarize myself with the data. In the process of transcribing, I started taking preliminary notes of patterns I identified across interviews and specific extracts that were particularly informative. Once I had transcribed all the interviews, I worked from such notes and my general impressions acquired throughout

[227] See also Rochette, *supra* note 113 at 107, n 77 (indicating that her email to the Deans asking for their "permission" to invite faculty members to participate in her study and visit their institutions "was more out of courtesy than necessity," that she contacted the members of those faculties where the Deans had not replied to her emails nonetheless); Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 (making no mention of asking for Deans' approval for interviews with faculty members); Cownie, *Legal Academics, supra* note 128 at 15 (seeking the Deans' approval in order to improve participation rate rather than as a requirement). In my case, seeking the Deans' support was out of courtesy, and to improve participation rate (for interviews as well as to alleviate concerns regarding observations); it also had logistical advantages, as the Deans' involvement made it easier to notify the community of my presence and study for ethics purposes, and two Deans offered me a work space for the duration of my fieldwork, which proved extremely helpful.

the fieldworks to define objects of analysis. I selected and included in the present thesis those that my analysis revealed to offer the most interesting commonalities or distinctions across institutions as sites of meanings.

I did not use a data analysis software (e.g. Nvivo, used by Sandomierksi),[228] largely because my data was in two different languages,[229] which would have greatly reduced the usefulness of automated analysis tools. Instead, once I had identified an object of analysis worthy of detailed investigation, I read all interviews and extracted all contributions that related to the said object, as well as all additional related information I had encountered during my fieldwork or in the literature. I worked from these subsets of data to analyze and write about each object in sequence, interpreting and recounting the webs of significance characteristic of each law Faculty. In the presentation of this data and analysis in the next few chapters of the thesis, I there again aimed to find the right balance between ethnography and comparison. The reader will observe that the internal structure of chapter 2 is primarily organized around blocks of ethnography about each institution while that of chapters 3 and 4 is primarily organized around transversal objects of analysis; as the reader progresses through the monograph, it becomes easier to rely on previous exposure to the cultural elements of each institution to engage in a more direct dialogue among case studies on specific objects.

I also want to offer some precisions on the numerous quotes and citations related to interviews included in the thesis. First, I elected to default to neutral pronouns wherever possible to preserve the participant's anonymity since gender indications would have undermined it. Second, participants are identified by their alphanumeric code (e.g. QC01, AB06, NB08) to indicate their institution and to allow some cross-referencing, for instance to contrast what the same participant expressed on different topics.

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[228] See Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 40—41.

[229] All interviews at DSJ UQAM and Droit UMoncton happened in French while all interviews at UAlberta Law occured in English.

When the content of a quote of significant value for the analysis could compromise the anonymity of the participant, I redacted the alphanumeric code (e.g., NBXX) to prevent indirect identification. Moreover, given that as per the ethics approvals I was the only person allowed to access the interview data (including anonymized transcripts), I did not include pinpoints for the quotes in the transcripts.

The transcription of interview statements includes some modifications for ethics-related and stylistic reasons. I removed or replaced short linguistic fillers by an ellipsis (e.g., in English “uh”, “you know”, and in French “pis”, “là”). I generally did not include indications of wordless speech acts (e.g., laughs, sighs) and pauses, unless they were particularly relevant to properly understand the quote. I also preferred the proper written form for most linguistic reductions (e.g., in English “gonna” becomes “going to”, in French double negative signals “ne … pas” instead of “pas” alone) and sometimes replaced idioms and phrasings that could be easily associated with a given participant to preserve their anonymity (e.g., idioms that one participant had used repeatedly but that others had not used at all, phrasing indicative that the language of the interview is the participant’s second language). When relevant, I preceded the participant’s answer with my question, introduced by the letter R (for Researcher) and in italics. Lastly, for greater clarity I capitalized the word “Faculty” when referring to the institution (e.g. the Faculty’s website) and used a lowercase f when reference is to the group of professors, (e.g. the faculty members).

3.4. Self-situation

The interpretivist approach I adopted requires me to situate myself vis-a-vis the research in order for me as well as the readers to identify and account for the personal perspectives I bring into the analysis. In the conduct of interviews and observations, I further noted that my verbal, as well as non-verbal, behaviour and my mere presence had effects on the participants’ own demeanor and discourse. I will, therefore, end this chapter with a brief discussion of these elements.

Firstly, my personal background and interests have shaped this project, the design of the research and some parts of the analysis. I have primarily been educated in France, with my main legal education being non-traditional in this country as it was mainly in English and to the common law (Sciences Po, 2010-2013 and Sciences Po Law School, 2013-2015). I have had exposure to North-American undergraduate legal education in Vancouver (UBC Law, 2012-2013), New York (Columbia Law School, 2014), and I am currently pursuing a graduate degree in law in Montreal (McGill Law, 2015-2019). Two of the institutions I have attended (Sciences Po Law School and McGill Law) cultivate a strong sense of uniqueness in their approach to legal education, and this background and sensibility to institutional differences are partly what shaped my choice to pursue this project with an attention to individual institutions.

I only had anecdotal knowledge of the institutions included in this study before my fieldwork. Moreover, I am not native to any of the cultural contexts in which they find themselves. From living in Montreal since August 2015, I was familiar with the social and urban context of the city where DSJ UQAM is located; in the last decade, I also visited family in Edmonton regularly, sometimes for extended periods, and I had thus had some exposure UAlberta Law's context; I was not substantially acquainted with Droit UMoncton's context before my fieldwork there. However, as a Francophone who has mainly studied and worked in English since 2010, the centrality of a minority language that was my own at Droit UMoncton found a certain personal echo.

I do not have nor did I pursue significant experience with the practice of law. I have therefore never approached legal education as solely a professional form of higher education. This led me to be attuned to other aspects of legal education at the institutions I studied, for instance their graduate programs. Moreover, I am a young doctoral student with some teaching experience. While I may be considered an insider in the field of legal academia, I am not as established or recognized as was Rochette

when she conducted her own research.[230] In addition, my professional aspirations from the start of my doctoral journey have been to join the ranks of legal academia in Canada; this led me to sometimes consider whether the data I would report, the way I would report it and the analsysis I would present could impact the perceptions of future employers or colleagues in the field. This situation may have contributed to my restraint regarding prescriptive claims.

In the summer of 2019, I started an Assistant Professor position at Droit UMoncton. I had already submitted the initial draft of this thesis to McGill University prior to this appointment and I have not used any new knowledge acquired since about this institution in the analysis I offer here.

During interviews, I noted how much my own behaviour impacted the course of the conversation. In addition to the recording, and in substitution when the participants preferred it, I took handwritten notes during the interviews. On several occasions, I observed that participants were more voluble when I took more notes of their contributions than when I took less. They generally saw what I wrote down, and sometimes insisted that a certain word or expression be written down. Unlike Rochette, I cannot say that I often finished the participants' sentences or substituted my thoughts to theirs.[231] Nonetheless, since I adopted a semi-directed interview technique, I sometimes added reflections of my own in an effort to keep a conversational style, which could alter subsequent answers from the same participants.

Regarding my observations, I have no indication that my presence altered in any significant way the course of the events I observed or other attendees' behaviours and discourses. Some attendees interacted with me informally, sometimes wondering whether I was a journalist as the events were public occasions and since I was taking more written notes than regular attendees; in such cases, I introduced myself and explain the goals of my study. My participative observation in the life of the community was

[230] See Rochette, *supra* note 113 at 117.
[231] Rochette, *supra* note 113 at 117.

not limited to such events, as at UAlberta Law and Droit UMoncton I was present in an otherwise vacant faculty office every day during business hours. While law professors often travel and meet each other at conferences or for short term teaching activities at other Faculties, it is very rare for such presence to be for the purpose of studying the other institution itself. Faculty members, including some who did not participate in interviews, thus invited me to take part in other activities, such as informal social gatherings or academic events happening on site; I did not collect data at such events and I did not include them in my analysis, but they greatly contributed to building trust with my participants and added layers to my understanding of their faculty life.

Conclusion & Overview of Thesis

The contemporary landscape and history of Canadian legal education invite us to regard each law Faculty as a unique cultural site that sets it apart from other Faculties. From the global, pluralist and bilingual program at McGill Law to the (for now) aborted proposal to establish a faith-based law school at TWU, we can see that law Faculties cultivate intellectual, social, political projects in connection with their own environment and history. While market positioning and the consequences of the political economy of the field are also at play in this phenomenon, law Faculties develop specific cultures characterized by the meanings they entertain about educating lawyers. These are worth investigating to better understand the discipline and the profession of law, as well as the Faculties' larger contribution to society. Their history, their environment and their evolving membership have shaped paths to consider legal education in a certain way. Law Faculties across Canada face pressing contemporary challenges and pressures to live up to the necessities of the time; understanding the significance and normative character of individual characteristics becomes especially interesting to define the governance and the futures of legal education in Canada, in addition to adding to our knowledge of a complex and multilayered phenomenon.

To date, this type of inquiry has not been attempted in Canada, even as the existing scholarship signals the pertinence and possibility to do so. Institutional histories are frequent but come with inherent shortcomings and offer little comparative insights. Most of the literature analyzes legal education granularly or as an abstract or uniform phenomenon. Empirical research is most apt at capturing and analyzing this phenomenon and has so far focused its attention on other aspects of legal education in Canada. Moreover, the traditional divide between civil and common law traditions seems to have stood in the way of valuable contributions to legal education as a common but plural reality across the country.

In this chapter, I showed how the fields of social anthropology, comparative law, and sociology of organizations offer a robust framework to conceive of institutional cultures; I also outlined an adapted methodology based on qualitative case studies to conduct such research. In the following chapters, I will offer my elucidation of the worlds of meaning that the three law Faculties I identified constitute, based on the interviews and observations I conducted. The insights from social sciences that I rely on to do so proved particularly apt to capture and analyze this phenomenon. In relying on them, I also situated my project in the sometimes-entangled fields of knowledge, with the stronger ties being with social anthropology and comparative legal studies. The path I defined offers a complex, imperfect, but fruitful way to approach and analyze the individual nature of law Faculties in a moment when they cultivate such specificities while responding to common issues.

The first site of meanings that we will explore to tease out the institutional culture of each Faculty is their own conception of their mission (*chapter 2*). We will see that it is a very rich terrain to start ascertaining the institutional culture of DSJ UQAM, UAlberta Law and Droit UMoncton. The way participants defined their institution's aspirations in legal education outlined clear patterns of core and enduring meanings distinctive of each Faculty. The prevalence of an emphasis on social justice and critique and the ambition to challenge society's inequal structures of powers characterizes DSJ UQAM in this regard, in sharp contrast with the traditional focus on providing foundational knowledge in preparation

for professional practice at UAlberta Law. Droit UMoncton will appear to combine elements of both as I show that it aims to transform the social condition of minority Francophones by providing them with a traditional pathway to the legal professions.

The next stage will be to explore the structures of each Faculty (*chapter 3*). This is a broad category encompassing apparently eclectic elements sharing the characteristic of emerging from interviews as both shaping institutional cultures as well as manifesting them outwardly. The third chapter will examine meanings associated with the institution's labels, infra- and supra-structures, relationships with other components of the universities as well as with the legal professions and finally the teaching personnel. It will show how the importance and significations accorded to each of these elements vary greatly from one Faculty to the next. For instance, DSJ UQAM's label is highly distinctive and is experienced as embodying the institution's history and uniqueness. Droit UMoncton's own was an object of contention between the university and the Faculty, whereas at UAlberta Law the official label unproblematically cohabits with an informal one. Similar patterns of difference, in varying arrangements, appear on the remaining objects of analysis in this chapter.

Then, we will turn our attention to academic matters and analyze the institutional cultures on such aspects as the programs offered at each Faculty and the content of the main undergraduate program qualifying graduates for joining the legal professions (LL.B. or J.D.) (*chapter 4*). The curriculum and pedagogy are often the focal points of legal education scholarship. We will see in this chapter that meanings associated with academic matters are indeed key components of the portrait of each Faculty's institutional culture, but that they are intimately intertwined with other components that we will have previously explored. Notably, we will see that the programs other than the LL.B. take much greater significance at DSJ UQAM than either of the other two Faculties, understandably as they enroll nearly half of the students at this institution but remain extremely peripheral at UAlberta Law and Droit UMoncton.

We will also discern that even as differences in the current J.D. and LL.B. curricula are relatively marginal, UAlberta Law continues to attach importance to the meanings it accords to required courses.

Together, these three chapters paint rich portraits of the webs of meanings characterizing each Faculty. The insights gained from them will enable us to examine attitudes within each Faculty regarding responses to the TRC Call to Action 28, as a prominent example of a common contemporary challenge (*chapter 5*). We will be able to examine how the ongoing dialogue on addressing reconciliation is unique to each Faculty as it relies on the meanings and cultural elements we will have previously ascertained. This will show the necessity of engaging with the cultural alterity within Canadian legal education and the limitations of our understanding of common but differentiated normative phenomena across law Faculties. It will form the basis of the general conclusions and discussion of implications that will conclude the thesis (*General Conclusion & Implications*).

Chapter 2: Missions

Introduction

The idea of an institutional mission permeates the public as well as private discourse within and about law Faculties. Navigating their websites, reading their history, listening to speeches, and interviewing professors, I have observed that this idea of a particular mission attached to a given institution seems to lie at the core of the worlds of meanings about legal education that I am exploring with the present project. Perception and experience of the mission was an essential component of most of the discourses about legal education at the law Faculties that I studied and seemed to inform explicitly or implicitly the meanings attached to the policies and practices at such institutions. Therefore, it constitutes an indispensable starting point to tease out the institutional cultures of DSJ UQAM, UAlberta Law and Droit UMoncton.

Studying the mission of institutions has long been a key feature of higher education scholarship.[232] While central in such research, the notion of a mission is not usually the object of elaborate definitions. "Mission is purpose," as Dominik simply explained; he added that a statement of mission "is a statement of intent, of direction."[233] Treating law Faculties as institutions, as I indicated in the first chapter, emphasizes that they indeed purport to accomplish certain goals in society.[234] Scholarship on legal education often engages with the idea of a law Faculty's mission, but almost always does so with an abstract and a prescriptive approach, arguing which purposes legal education as a whole, all law Faculties

[232] See e.g. Donald S Doucette, Richard C Richardson & Robert H Fenske, "Defining Institutional Mission: Application of a Research Model" (1985) 56:2 J Higher Educ 189; Charles A Dominick, "Revising the Institutional Mission" (1990) 71 New Directions for Higher Educ 29; Janet Swaffar, "Institutional Mission and Academic Disciplines: Rethinking Accountability" (1996) 45:1 J General Educ 18; Gary R Pike, George D Kuh & Robert M Gonyea, "The Relationship between Institutional Mission and Students' Involvement and Educational Outcomes" (2003) 44:2 Research in Higher Educ 241; Leslie R Zenk & Karen R Seashore Louis, "Mission as Metaphor: Reconceptualizing How Leaders Utilize Institutional Mission" (2018) 120:9 Teachers College Record 1.
[233] Dominick, *supra* note 232 at 30.
[234] See text accompanying *supra* note 133.

as one, ought to pursue.[235] One exception is Rod Macdonald's and McMorrow's recommendation against the creeping domination of market orientation in Canadian legal education: "For law schools to escape colonization by the market, each will need to develop and pursue a mission that is unique to its specific context, capacities, and intellectual aspirations, as judged by its own internal metric."[236]

Usually, the literature about legal education revolves around dichotomies regarding the purpose of legal education, such as whether it should be vocational or academic, aim to teach skills, knowledge, doctrine or else, etc.[237] The existing scholarship often discusses the mission of law Faculties in general,[238] but rarely explores the specific mission of individual law Faculties. When it does, it is usually without much conceptual exploration,[239] and certainly not grounded in empirical research.[240] In the course of my interviews, I frequently used the word mission, as did participants, and the need to clarify the term arose only very rarely. There is, therefore, a widely shared understanding as to the meaning of this notion.

In a rare instance where a participant clarified the use of the term, it highlighted the central character of the idea of mission to understand the ideas and cultural meanings characteristic of a given institution: "quand on parle d'une mission j'imagine qu'on parle d'un type d'éthique qui caractérise l'institution en tant que telle."[241] This statement shows that professors perceive and experience their Faculty's mission as a central component of what it is as an institution.

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[235] See e.g. Arthurs, "The Future of Law School", *supra* note 89; David Sandomierski, "Training Lawyers, Cultivating Citizens, and Re-Enchanting the Legal Professional" (2014) 51:4 Alta L Rev 739.
[236] Roderick A Macdonald & Thomas B McMorrow, "Decolonizing Law School" (2014) 51:4 Alta L Rev 717 at 728.
[237] See Anthony Bradney, "Liberalising Legal Education" in Fiona Cownie, ed, *The Law School – Global Issues, Local Questions* (Aldershot: Ashgate, 1999) [Cownie, *Global Issues, Local Questions*] 1 (limiting this observation to the common-law world); see also Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 226ff (showing that law professors' discourse often, but not always, rely on the conventional narrative opposing theory and practice).
[238] See e.g. Burge, *supra* note 6.
[239] See e.g. Rosalie Jukier & Kate Glover, "Forgotten? The Role of Graduate Legal Education in the Future of the Law Faculty" (2014) 51:4 Alta L Rev 761 at 773 ("McGill [Law]'s primary mission is its transsystemic orientation.").
[240] A rare counter example is a current project by Elizabeth Mertz at the American Bar Foundation to study the mission statements of individual American law schools.
[241] QC02.

I explained in the previous chapter that my aim is to interpret institutional cultures as worlds of meanings about legal education and analyze what they can tell us about law Faculties' engagement with contemporary challenges; although I do not purport to make causal claims about organizations' decisions, it will become clear through the present chapter that Albert and Whetten's framework for legitimate identity referents is pertinent to analyze claims about the mission. That is because such claims include an ideational component (relating to the members' beliefs about their identity), a definitional one (central, enduring, and distinctive features of the institution), as well as a phenomenological one (such discourse manifests itself at turning points in the life of the institution rather than through its routine activities).

The present analysis of the missions of the three law Faculties, therefore, takes a central place in the understanding of their institutional cultures. The mission is one of the central objects about which cultural meanings are held by faculty members. Moreover, as we will see in later chapters, meanings about other objects are often in relation to those entertained about the mission. The significance and understanding of the mission are therefore core components of institutional cultures.

In keeping with Sewell's conception of cultures, we will see that meanings and claims about the Faculties' missions are subject to change and contestation. We will see that faculty members do not always agree about their institutional mission, and sometimes even disagree about whether they agree about it. Moreover, there are pivotal moments in the life of the law Faculties when claims about the mission become explicit and important, revealing times when members perceive a threat or a likeliness that the mission may evolve, which some may wish for more than others. The decisions faculty members make collectively in such moments (e.g. hiring decisions, strategic planning) are shaped by previous conceptions of their mission (as a form of binding commitments,[242] normative cultural meanings) and shape future ones, including by shifting the collective approach to the mission in certain directions. They

[242] See Whetten, *supra* note 173 at 224.

constitute interpretive commitments.[243] Such pivotal moments are often marked by collective decision-making and deliberations. In the following, I will include in my analysis official statements about the mission (such as those found on institutional websites), usually formulated by the leadership even if informed by collective processes, as well as what faculty members shared with me during interviews on this topic. This corresponds to Trow's recommendation to pay attention to the public and private lives of institutions.[244]

Exploring DSJ UQAM, UAlberta Law, and Droit UMoncton's respective missions as core components of their institutional cultures will reveal marked differences among them. By design, these three institutions share the common characteristic of offering an education in law that can qualify students for admission into professional practice, but each approaches this common enterprise with a distinct set of goals and sense of purpose. Within the institutions that we recognize as law Faculties, we can see that the three that are this study's focal points entertain different aspirations for their actions in and on society. Such multiple possibilities as to what a law Faculty can represent and aim to do speak to the plurality of university legal education in Canada.

This inquiry will start with an exploration of the key moments when discourses about the mission come into play in the life of the institution (*section 1*). The interviews demonstrated that claims about the mission tend to appear at specific moments rather than in the routine life of the Faculties, and such moments correspond to pivotal moments when the institution experiences profound changes with its past, or envisions its present choice to have a significant impact on its future. For the observer, looking at such moments reveals the cultural meanings associated with the mission, and for the institution, they are

[243] See Cover, *supra* note 126 at 7; see also Whetten, *supra* note 173 at 224.
[244] Trow, *supra* note 185.

times when such meanings can evolve and depart from established paradigms; I will generally refer to them as "pivotal moments."

I will then endeavour to draw portraits of DSJ UQAM, UAlberta Law, and Droit UMoncton's respective missions, in their evolving and contested character. While structuring comparative case studies around transversal analytical categories is usually preferable, it is helpful first to detail the specificities of each institution as an introduction. This short gallery of portraits sets the stage for a more fruitful dialogue across the case studies later on. I will start with DSJ UQAM's explicitly political aspiration to educate critical jurists committed to social justice (*section 2*). Then, I will show how UAlberta Law conceives of its mission in a traditional way focused on providing a foundational education to well-rounded future lawyers for its region (*section 3*). Finally, I will turn to Droit UMoncton's commitment to serve the Acadian community and pursue socio-linguistic goals (*section 4*). This journey will highlight the unique character of each Faculty's sense of mission and significative differences between them. I conclude this chapter with considerations about the centrality in each institution of cultural meanings about missions and how this affects the next steps of my inquiry into the large puzzles of law Faculties' institutional cultures.

1. A Central Cultural Reference at Pivotal Moments

I designed and conducted interviews so as to discuss explicitly the theme of an institutional mission with faculty members. As this promised to be a valuable object of investigation, I asked every participant about their perception of their Faculty's mission, whether they believed there was a consensus about it among faculty members, as well as the occasions on which they discussed or debated certain matters with their colleagues.[245] While we will see throughout this chapter that answers varied by institution as to the character, collective attitudes, and more generally the importance and significance,

[245] See Appendix B, *below,* for the guide questions relating to this topic.

related to the mission, responses in all three Faculties pointed to a common trend: the mission was not part of the discourse in everyday activities and discussions, but it became so at certain important moments in the life of the institutions.

In the routine life of the law Faculties I studied, the mission does not constitute a usual topic of conversation. Ordinary discussions may involve for instance seeking advice from a colleague with more expertise to approach a certain area of law, or even how to handle certain student behaviours.[246] In such exchanges, the mission does not come up as a cultural reference to discuss or to frame the discussion. The mission itself and avenues to fulfil it are part of the Faculty conversations on identifiable occasions rather than routine discussions.[247] It is usually when the Faculty experiences profound changes in the institution or when it faces decisions that engage its future that professors their perception of what the mission is or ought to be, and how to best pursue it, among colleagues, whether implicitly or explicitly.[248]

We can refer to such occasions as "pivotal moments." This term reflects the fact that these moments correspond to times when the institution, in its self-perception and culture may pivot toward a new direction. Change does not need to happen for such moments to be pivotal; the mere perception that significant change is possible is enough. More metaphorically, we can also see such moments as the flip of a one-way mirror, confronting insiders with their own perception of self, and allowing observers (like me) to see them grapple with it.

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[246] See e.g. AB02 ("I have colleagues who are good friends […] and we go for a beer and we talk about teaching, or more senior colleagues to whom I can go to and say […]: 'I don't understand this area of law, […] where should I look?', or […] 'How should I respond [to a student seemingly staging technological difficulties to obtain more time to work on an assignment]?'").

[247] See e.g. QC02 ("[Les désaccords de certains collègues apparaissent] dans leur opposition à certaines initiatives, dans leur opposition à certaines embauches, etc. ça sort vis-à-vis *des enjeux ou des décisions particulières*." emphasis added).

[248] See e.g. QC08 (explaining that discussions in such moments are not necessarily organized around explicit claims about the mission but that deliberations reveal the different conceptions of it held by various faculty members).

Several types of pivotal moments came out of my analysis of interviews. First, hiring decisions, especially when the replacement of key individuals or the renewal of a large part of the faculty is at stake, emerged as the most typical pivotal moments (*section 1.1*). Second, I identified other pivotal moments of a more ad hoc character: for instance, when the Faculty intentionally discusses its strategic priorities or reviews the programs it offers (*section 1.2*).

Beyond the fact that such pivotal moments provide access to manifestations of institutional cultures and perceptions of the Faculties' mission, they remind us that attitudes toward the mission within each Faculty are not monolithic and are indeed a matter of debate. While certain characteristics are core to one Faculty's understanding of its mission, some faculty members may wish that this were not the case; while some traits are enduring in the same regard, they may change over time to reflect shifting preferences in the group. Whether or not faculty members agree with specific elements connected to the mission is not the focus on this chapter; I do not attempt either to assess whether Faculties achieve the ambitions they define for themselves. Instead, I aim to attend to the mission as an object of cultural meanings characteristic of each institution. As we will see below, beliefs and attitudes about the institutional mission, as well as the values they embed, occupy a central place in the cultural grammar of each Faculty.[249]

1.1 Hiring decisions

Participants in all three Faculties most often described debates relating to the mission in the context of hiring decisions. Although the details may slightly differ from one institution to another, the process of hiring new faculty members usually includes collective decisions as to how the position will be advertised and which applicant will be offered the position. All three law Faculties included in this study

[249] The linguistic metaphor comes from Sewell, *supra* note 121 at 49.

have experienced significant renewal of their professors lately. One participant at DSJ UQAM affirmed that half of the faculty changed in the past few years;[250] at Droit UMoncton, the proportion will soon be similar as five new members have also been hired on tenure track since 2014, and additional long-time members are nearing retirement.[251] At UAlberta Law, a cohort of professors hired in the 1970s retired recently as well, and a number of younger members also left for diverse reasons in the same timeframe;[252] this led to nearly a dozen of recent tenure-track hires.[253] This degree of renewal in a short period of time is unusual, as there can sometimes be few to no hires for several years.[254]

We will speak here only of the hiring of full-time professors. The hiring of other staff, including support personnel and ad hoc instructors is usually at the discretion of the Dean and is not considered to amount to a decision affecting the identity of the Faculty. The hiring of Deans on the other hand would be considered as such but involves more greatly the university authorities and is less frequent than for professors. In any case, interviews only mentioned the hiring of faculty members.

Comments highlighting the pivotal character of hiring processes in terms of the mission were frequent at DSJ UQAM.[255] For instance, a participant shared that upon arriving in this Faculty, they

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[250] QC10 ("Il y a eu des années sans embauches, tandis que là on dit que plus que 50 pourcents des profs ont été engagés dans les 5-6 dernières années."); see also QC07 ("De 2002 à 2015 je pense que c'est 80 pourcents du corps professoral qui a été renouvelé.").

[251] NB01 ("On a tout un groupe, une génération qui part en même temps [...] [Le premier professeur engagé est encore là], mais [il] est maintenant en demi-retraite pour 2 ans, [et il y a deux autres professeurs à qui] il doit rester 1 ou 2 ans [avant leur propre retraite].").

[252] AB11 ("There has been a significant number of retirements since [the mid-2000s;] there has been two groups: there has been a large number of older, male profs, many who had been teaching here from the 70's, some later, but older male profs who retired [in the last five years]; and then there has been another relatively large group of female academics who have left to go work somewhere else.").

[253] In the months following my fieldwork, UAlberta Law hired 7 new tenure-track faculty members, after having hired 4 the previous two years (see e.g. UAlberta Law, News Release, "11 New Tenure-Track Faculty" (11 June 2018), online: <https://www.ualberta.ca/law/about/news/main-news/2018/june/11-new-tenure-track-faculty>); see also AB03 ("13 of the present faculty [were hired under David Percy's deanship, i.e. 2002-2009].").

[254] See QC10, supra note 250, see also QC07 ("Pendant 10 ans [entre 1992 et 2002 environ] il n'y a pas eu de renouvellement du corps professoral régulier […] Et de 2002 à 2015 je pense que c'est 80 pourcents du corps professoral qui a été renouvelé.").

[255] E.g. QC02, QC05, QC07, QC09, QC11.

observed that hiring decisions were the prime forum for debates about the institution's mission.[256] Another participant echoed this sentiment and insisted that such discussions could even prove quite tense.[257] Debates arise as much regarding how to advertise the position as to the selection of applicants to fill it.[258]

"Pendant les embauches, on va [se demander si le candidat ou la candidate] adhère au projet particulier du département, ou [si] c'est simplement une personne qui cherche une université où travailler comme universitaire."[259] This extract shows how a DSJ UQAM participant outlined one of the ways in which views about the mission come into play in hiring decisions. Two colleagues shared that when they applied to DSJ UQAM, they made sure to highlight how their interests and projects aligned with what they perceived as the institution's mission in their written application as well as hiring interviews.[260] The first even believed that another applicant perceived to have a stronger file overall was eventually unsuccessful due to their failure to deploy such a strategy.[261] However, the second wished that hiring decisions rested more heavily on the candidate's potential to contribute to the concrete fulfilment of the mission, for instance in light of current needs, rather than mere adhesion or fit with the ideal.[262]

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[256] QC09 ("Je dirais que c'est [au cours] embauches où [j'ai] le plus vu [de débats à propos de la mission]. Parce que quand on ne connait pas vraiment le département, c'est peut-être là où il y avait des discussions plus costaudes si on veut. ").

[257] QC08 ("Quand on a des postes et qu'on les affiche, et qu'on a des candidatures, là il y a des discussions, et c'est là que ben on se rend bien compte que tout le monde n'a pas la même image— les mêmes attentes, les mêmes objectifs, ne voient pas de la même façon la façon dont devrait se développer le département. Et là je pense que là ce sont les moments les plus tendus.").

[258] See QC11 ("L'éternelle tension [concernant les domaines du droit qui rentrent dans le périmètre de la mission] se manifeste notamment au niveau des décisions d'embauches, et avant même la décision d'embauche, dans la décision de prioriser tel ou tel domaine d'enseignement pour la création d'un nouveau poste.").

[259] QC07.

[260] QC05, QC09.

[261] QC05.

[262] QC08 ("Quand on fait […] de nouvelles embauches on devrait peut-être se poser cette question : 'de quoi, de qui [a-t-on] besoin maintenant pour réaliser notre mission ? [De qui a-t-on besoin pour] développer les enseignements dans [un domaine à définir et les] compétences chez les étudiants pour pouvoir réaliser notre mission ?' Ça ce n'est jamais fait. Il n'y a même pas de discussion là-dessus […]. On ne va pas […] dire 'vu notre mission, on a besoin de ça.' Ça ne va jamais être dit comme ça.").

Considering a candidate's fit with the values and mission of the hiring institution is a common practice.[263] A participant at Droit UMoncton reported experiences similar to those described above at DSJ UQAM, remembering that the Faculty had advertised their position with a statement indicating that expertise of a certain type would represent an asset as it would most correspond to the institution's mission (as opposed to the specific needs it sought to fulfil with this hire).[264] They also reported having to answer questions during the hiring interview regarding their understanding of the institution's mission.[265] They perceived this strategy as a way to situate the candidate in relation to internal debates on the mission within the Faculty.[266]

At both DSJ UQAM and Droit UMoncton, the recent hiring processes took on an unusual significance. In both institutions, several individuals who had been instrumental in the creation and initial period of the Faculties had recently retired.[267] Whetten had identified the period when an organization's founders retire as an example of "profound organizational experience."[268] This proved true at DSJ UQAM and Droit UMoncton, and hiring decisions in this period were experienced as defining decisions for the future in the absence of those who had set the institution on its initial course for the past few decades.

Given its establishment in the early 20th century, UAlberta Law was not facing a similar period. When they discussed hiring processes, participants at this institution less readily focused on the

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[263] See e.g., Susan B Twombly, "Values, Policies, and Practices Affecting the Hiring Process for Full-Time Arts and Sciences Faculty in Community Colleges" (2005) 76:4 J Higher Educ 423 at 436—37.

[264] NB04 ("l'affichage de poste […] pour mon embauche précisait que [un intérêt pour] les droits linguistiques serait certainement vu comme un atout [car c'est] une composante importance de la faculté de droit.") ; on the topic of language rights in Droit Moncton's mission, see *infra* note 554ff and accompanying text.

[265] NB04 ("on m'a posé la question 'quelle est ta perception de notre mission ?'").

[266] NB04 ("La réponse à cette question-là à l'entretien […] je pense permettait déjà de me positionner, de savoir de quel côté de la clôture que je me retrouvais. Donc il fallait donner une réponse un peu stratégique. Sachant que la mission de cette faculté ne fait pas unanimité, elle n'est pas écrite, puis ça dépend vraiment à quel professeur tu demandes.").

[267] See e.g. QC05 ("[Les professeurs qui ont fondé le département] arrivent au bout [de] leur cycle de vie professionnel."), NB01, supra note 251, NB03 ("Avec le départ de Michel Doucet […] je pense que ça va changer la donne.").

[268] Whetten, *supra* note 173 at 226.

institutional mission. One of them, who had been on the hiring committee "a number of times for the last few years" affirmed that debates about the institution's goals and mission "are implicit in hiring decisions."[269] They added that "hiring […] remain[ed] driven by two characteristics more than others: one is the capacity of that individual to teach and research at a high level, and two, the needs of the Faculty for scholarship and teaching in the particular area that the candidate has."[270] In this description, the congruence between an applicant and the Faculty's mission could seem to intervene only in the second factor. However, another participant's comments shed some light on the first factor as well: "you see these sorts of things come up when we talk about who we are going to hire, because when you are saying 'who is excellent?', sometimes that is a way of saying 'what do I think is excellent?', so one tension is should we hire people who want to be great researchers versus people who want to be great teachers."[271] As we will see below, the balance between teaching and research at UAlberta Law is one component of debates regarding the Faculty's mission.

Participants at UAlberta Law, much like their colleagues at DSJ UQAM and Droit UMoncton, did see hiring processes as moments of debates about their mission, although in different circumstances and less explicitly so. Moreover, differences in the definition of each Faculty's mission may factor in the variations I observed. As we will see below, UAlberta Law's mission is more traditional and less overtly connected to a given socio-political project than that of DSJ UQAM and Droit UMoncton; it is probable that this contributes to more tacit references to it (as it is less precisely defined) and less heartfelt attachment to a certain conception of it. Lastly, the hiring process at DSJ UQAM and Droit UMoncton involves the entire faculty; the former is attached to non-hierarchical collective decision-making, and the latter is small enough to enable all professors to participate in the process. Conversely, hiring is usually

[269] AB06.
[270] AB06
[271] AB02.

handled by a sub-group of professors at UAlberta Law, and the Dean plays an instrumental role in making the decision.[272]

Even when the institution is not experiencing the loss of key individuals such as founders, hiring decisions constitute binding commitments for the future. Offering a tenure-track position to a candidate implies that the Faculty wants them to contribute to its activities for the long-term. Moreover, professors play a key role in defining an institution, its mission and its culture. Hiring decisions, especially when a large number of them happen in a short period, have the potential to set the Faculty on new paths. Current members may disagree among themselves as to which paths those ought to be. Hiring decisions therefore constitute pivotal moments and are loci of engagement with the institution's mission among faculty members.

1.2 Other Pivotal Moments

I identified moments other than hiring decisions that are also pivotal in the life of the law Faculties and when the mission constitutes an essential cultural reference. The first is the time of major curricular change; another is the creation of new programs and the elimination of old ones. We can also see similar debates about the creation of research chairs, as well as the selection of recipients for honorary degrees. Finally, Faculties sometimes engage purposefully in deliberations about their missions, such as during strategic planning processes.

Making changes to the curriculum is a routine exercise for law Faculties. Most such changes are minor, such as the creation of new courses or slight modifications of degree requirements, and do not

[272] AB03; AB07.

lead to significant engagement with the members' perception of the mission.[273] Even when required courses are considered a key avenue for the Faculty to pursue its mission, as we will see for UAlberta Law later in this chapter, changes to the list of required courses are not necessarily moments when the Faculty engages with its understanding of its mission. One UAlberta Law participant reported that the recent decision to remove Conflicts of Laws from the list of required courses in the JD program was not accompanied by debates or discussions on the program's ambition beyond this particular course, but was "a one-off thing as opposed to a coherent rethinking of the curriculum."[274]

More than decisions about one part of the curriculum in isolation from others, it is when Faculties engage in an extensive review of the curriculum that debates about the mission can really happen.[275] However, neither UAlberta Law or Droit Moncton have recently undergone such a process.[276] At DSJ UQAM the Faculty was in the early stages of a comprehensive curriculum review for its undergraduate program when I conducted fieldwork there, which a participant described as "l'occasion d'amener une

[273] See e.g. Roderick A Macdonald, "Curricular Development in the 1980s: A Perspective" (1982) 32 J Leg Educ 569 at 589 ("most curricular changes are implemented or retracted in the general spirit of tinkering") [Macdonald, "Curricular Development in the 1980s").

[274] AB11 ("There is a sort of sense that when we add a course or remove a course from the required list, it's sort of a one-off thing as opposed to a coherent rethinking of the curriculum. But we also seem incapable, given the constraints of time, and structure, to really address that deeper level of the curriculum coherently […] I don't know whether we are functionally capable of having a conversation like 'what does it mean to have a required course? What sort of things should be required? Why?' as opposed to 'should Conflicts be required?' It's no longer required because we had that conversation about Conflicts of Laws. And then we might have it about Legal History, or we might have it about Corporations, but it's not a coherent sort of conversation about 'should we have required courses at all, should we have required courses beyond the first year, etc?'").

[275] See also Macdonald, "Curricular Development in the 1980s" *supra* note 273 at 569 ("curricular debate is a law school's primary heuristic device"), and William Twining, "Taking Facts Seriously" in Neil Gold, ed, *Essays on Legal Education* (Toronto: Butterworths, 1982) 51 at 51-53 (expressing the idea that curriculum design is the main preoccupation of law Faculties and the device by which they claim to be " new, creative, innovative, path-breaking...") [Twining, "Taking Facts Seriously"].

[276] AB10 ("we haven't had a comprehensive curriculum review for, certainly at least a decade."); NB06 ("[Il y a eu] un comité en 2009 [pour faire] une révision approfondie de tous les cours qu'on offrait ici à Moncton; [il s'agissait] vraiment [d']une réforme du programme […] et puis pour toutes sortes de raisons il y a un consensus qui a été cherché de la part de l'administration et puis qui n'a jamais été obtenu, donc [ça n'a pas abouti] et il n'y a rien qui a été fait depuis.").

réforme majeure."[277] Accordingly, interviews did not yield substantial data about discussions regarding the mission during such processes.

Even more than the details of each program, the very programs of study that a law Faculty offers can be vehicles for carrying out the mission. The creation or closure of such programs can, therefore, be moments of engagement with the sense of mission within a Faculty. In recent years two of the three Faculties created new programs. UAlberta Law and DSJ UQAM both created a doctoral program in law approximately at the same time about a decade ago.[278] Participants who were present at the time did not remember the terms of the discussions on this matter and how they related to the mission. However, more recently, DSJ UQAM also revamped its master's programs and created an LL.M. concentration in law and society in 2016. Several participants recalled that on this occasion, there were vivid debates on the theoretical approaches this new program embodied and how they related to the institution's ambitions:

> QC05: [Un gros enjeu] a été la réforme du programme de maitrise. [La création du programme de maitrise en droit et société a été un moment important car on s'est demandé si] on laissait tomber [la maitrise en] droit international qui était le flagship, et puis on l'a gardé. Et on ne voulait pas [supprimer la maitrise en] droit social et du travail, qui n'est pas super populaire, mais qui fonctionne relativement bien je pense, [et] qui est important[e] pour certains membres du corps professoral qui ont [historiquement] beaucoup d'ascendant. […] La création du programme de doctorat [a] aussi [été un moment important]. Mais ça c'est plus vieux.[279]

> QC09: La création de la maitrise droit et société est un autre exemple de moment où il y a eu, moi j'ai senti en tout cas beaucoup de dissensions au département.[280]

Some of the same participants also spoke of important debates among colleagues when they recently discussed a private company's proposal to establish a research chair at UQAM'S Faculté de

[277] QC03 ("Il y a une réforme du bac qui s'en vient […] on commence, on va rencontrer le 13 novembre prochain deux experts externes, et généralement c'est la dernière étape dans le processus d'évaluation. Donc les deux experts externes vont produire un rapport et avec le rapport d'auto-évaluation, ça va donner les pistes et les bases de la future réforme de notre programme en droit. Mais chaque programme fait l'objet d'une évaluation éventuellement, et c'est l'occasion d'amener une réforme majeure.").
[278] DSJ UQAM created its LL.D. program in 2007 and UAlberta Law its Ph.D. one in 2008; see also Chapter 4, Section 1.2, *below,* for more on the graduate programs at each Faculty.
[279] QC05.
[280] QC09.

science politique et de droit (FSPD).[281] While these discussions also pertained to the academic soundness of the proposed research project, they happened against the backdrop of ideological opposition to the presence of private (financial) interests in the university:

> QC08: On a eu une proposition dans la faculté de la création d'une chaire privée […] Ici au département [le financement privé] a toujours été quelque chose d'assez compliqué par ce que tu as vraiment les personnes qui vont dire d'emblée 'non il n'est pas question que le privé donne de l'argent pour quoi que ce soit' alors que d'autres personnes sont peut-être moins catégoriques, mais jusqu'à maintenant ça ne s'était jamais fait.[282]

The political conceptions at stake were intimately connected to the values embodied in DSJ UQAM's mission.[283]

Two DSJ UQAM participants compared discussions regarding the acceptance of private funds, such as for a research chair, with recent faculty discussions regarding the granting of honorary degrees. In their views, both instances could be moments when the Faculty engages with the values which its mission embodies. A participant described both cases in terms of implicit engagement with such values, for instance in implicit boundaries of discussions about such decisions:

> R: *Comment [la Faculté] définissent[-elle] cette idée particulière [de] la justice sociale ?*
> QC02: [Pause] Pour moi ça ressort plutôt dans les actions, dans les décisions, et les non-dits pendant les assemblées départementales. Par exemple […] [depuis que je suis ici] la possibilité de chercher des fonds auprès de cabinets privés n'a jamais été soulevée, parce que tout le monde sait que ça n'arriverait pas. Ou par exemple l'année dernière quand on discutait qui on devrait inviter pour parler à la collection des grades, [à qui donner un] doctorat honoraire […] [J'avais suggéré un nom] dans des discussions dans le couloir, et la réaction [de mes collègues m'a clairement indiqué que ce n'était même pas la peine d'en parler]. Donc il y a certaines bornes à

[281] QC09; QC07 ("[On nous proposait] une chaire, un financement d'une chaire sur 5 ans, environ 800 000 dollars.").
[282] QC08 (adding : "associé à ça il y avait un projet de recherche qui nous avait été envoyé […] ce n'était pas un projet de recherche, c'était un projet de lobbying […] qui n'avait aucune valeur scientifique, et vraiment problématique sur le plan méthodologique, donc ça ne se tenait pas.").
[283] See QC02 ("Notre département a résolument rejeté l'idée d'aller aux cabinets privés, aux entreprises privés, pour soulever des fonds […] Ce rejet de l'idée de chercher aux cabinets privés présume une certaine vision de [ce qu'est] la justice sociale."); see also Chapter 3, Section 3.3, *below,* for more details on the meanings attributed to the absence of visible signs of private donations at DSJ UQAM.

> l'intérieur desquelles les discussions, les débats prennent place, et ces bornes sont reflétées par les décisions qui sont prises.[284]

Another professor also mentioned recent discussions regarding honorary doctorates as moments of engagement with institutional values and their application.[285]

The granting of honorary degrees can indeed become contentious when the values they seem to promote are themselves controversial. The public debates in June 2018 regarding the granting by the University of Alberta of an honorary doctorate in science to David Suzuki, a vocal opponent of the oil-sands industry, illustrate this point.[286] We should note that UAlberta Law was not involved in making the decision to grant this honorary degree, although it suffered some consequences of the resulting backlash.[287]

Lastly, we can mention moments when discussions about the mission happen intentionally. At DSJ UQAM, collective discussions about the mission accompany the crafting of a development plan for the unit, done every three years as an institutional requirement. It is a moment when faculty members have to agree on a written statement about their mission and objectives and communicate it to other

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[284] QC02.

[285] QC08 ("Il y avait toute la discussion autour de à qui donner un doctorat honoris causa […] Je pense que ça c'est quelque chose, un enjeu, […] un très bon exemple en plus hyper récent, mais qu'il y a beaucoup d'exemples de ce genre qui sont des petits évènements. Ce n'est pas des évènements immenses non plus, mais qui effectivement sont l'objet des fois d'oppositions assez inattendues je trouve […] Un autre exemple, je trouvais ça vraiment fascinant, c'est que on a eu une proposition dans la faculté de la création d'une chaire privée."); see also QC08, *supra* note 282.

[286] "Globe Editorial: Calls to block honorary degree for David Suzuki are misplaced" *The Globe and Mail* (25 April 2018), online: <https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-calls-to-block-honorary-degree-for-david-suzuki-are/>.

[287] See Clare Clancy, "Premier not 'big fan' of Suzuki's honorary degree, but respects choice" *Edmonton Journal* (25 April 2018), online: <https://edmontonjournal.com/news/politics/premier-not-big-fan-of-suzukis-honorary-degree-but-respects-choice> ("Calgary law firm Moodys Gartner cancelled a five-year $100,000 funding commitment to the university [of Alberta]'s law school.").

stakeholders.[288] One participant reported that this was sometimes an occasion for energetic debates.[289] This exercise takes place within DSJ UQAM, FSPD, as well all other academic units at UQAM.

A comparable exercise recently took place at UAlberta Law. When I conducted my fieldwork, the Faculty was coming out of a strategic planning process. This process was happening after that University adopted an institutional strategic plan in 2016 titled "For the Public Good,"[290] and as it encouraged individual Faculties to undertake a similar process.[291] Several participants mentioned this situation in interviews.[292] Unlike at DSJ UQAM, it is not a regular institutional requirement to engage in such enterprise, and it was a much larger endeavour than the crafting of DSJ UQAM's regular development plan since UAlberta Law consulted broadly its faculty members, but also students, staff, and external stakeholders (alumni, etc.) over several months. Part of the process focused on identifying what distinguished UAlberta Law from other law Faculties.[293] Interview questions about the mission thus echoed discussions many participants had engaged in over the preceding months as part of this process. The exercise seemed to constitute a response to an institutional mandate from the University and Faculty leadership rather than a collective decision to define an institutional mission. While this process does not necessarily indicate that the community did not already have a good sense of its mission, it nonetheless speaks to the lack of clear enunciation of such mission in the preceding period. Development and strategic plans try to encapsulate the diversity of existing interests and expertise and ensure all existing members

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[288] For an exploration of the idea of "stakeholders" in legal education, see e.g. Fiona Cownie, ed, *Stakeholders in the Law School* (Portland, OR: Hart, 2010).

[289] QC03 ("Il peut y avoir un clash […] sur la mission et les objectifs que s'est donné le DSJ de manière globale, et à tous les trois ans dans le plan de développement du département.") ; see also QC03 ("[Dans] chaque département en décrivant son plan de développement, puis en spécifiant sa mission, […] on essaie de s'inscrire politiquement dans le monde dans lequel on est."); QC01 (citing "les plans directeurs [et] les plans quinquennaux" as referrence mission statements for DSJ UQAM).

[290] UAberta, *For the Public Good* (Edmonton: University of Alberta, 2016), online: <https://www.ualberta.ca/strategic-plan> [UAlberta, *For the Public Good*].

[291] See e.g. UAlberta, "Faculty and Unit Priorities", online: <https://www.ualberta.ca/strategic-plan/faculty-priorities>.

[292] AB02; AB04; AB06; AB10.

[293] AB02.

can have a place in the future directions of the institution; while they can be informative, they often remain phrased in broad terms at an abstract level. A participant articulated the limits of such exercise as follows:

> AB06: It was not in fact an existential exercise to get to the bottom of who we are and to define our future […] I think there is a fear, or a suspicion that strong articulation of a particular vision or mission may well hamper or limit the range of independence that the institution currently enjoys. That is if we decide that we are a school dedicated to teaching our students, to be ready, skills-ready for practicing, what does that mean about our capacity to focus our time and capital on research that may be, say, less relevant from that perspective? So again, our goals are stated at a fairly abstract level so that, and a general level, so that our own career trajectories can all easily fit within it.[294]

This survey of how these three Faculties engage with their own conception of their missions demonstrates a common trend in the fact that such discussion indeed mostly happens at specific, pivotal moments rather in the routine life of the institution. It also highlights the contentious character of debates among faculty members about the mission, especially when they experience such pivotal moments as profound institutional experiences, for instance at DSJ UQAM and Droit UMoncton in the wake of the loss of institutional founders. Let us now turn to the content of the debates and definitions of each Faculty's mission.

2. DSJ UQAM: Legal Education for Critique & Social Justice

DSJ UQAM presents itself in the following terms on its official website:

> Le Département des sciences juridiques priorise la promotion et la défense de la justice sociale en apportant une réponse fondée sur le droit aux préoccupations des citoyennes et citoyens et des groupes sociaux d'ici ou d'ailleurs dans le monde. Notre département est un laboratoire d'analyse critique du rôle que joue le droit dans la société et de la place que joue le social dans le droit.
>
> Dès sa fondation, notre département s'est inscrit dans un projet novateur rompant avec la formation classique en droit afin de favoriser un apprentissage fondé sur la participation active de sa communauté étudiante. Nos professeurs désirent de plus encourager la pensée critique et

[294] AB06; see also QC07 (making a similar point for FSPD's periodic mission statements).

> vont au-delà d'un enseignement du droit positif afin de rendre compte de l'interaction entre le droit et la société.[295]

In describing its goals, the institution starts with an emphasis on "social justice." In echo, it also features several mentions of "society" and "law" in connection with each other. The description also repeats in both paragraphs the idea of a "critical" approach to law. These two sets of ideas, social justice and critical approach to law, constitute the two legs of its self-defined mission. We will first explore their importance in the discourse of faculty members (*section 2.1*). We will then examine their significances, including the political orientation they indicate (*section 2.2*). We will continue by analyzing the dynamic and contested character of the meanings attached to them (*section 2.3*), before contrasting such meanings with those DSJ UQAM students attach to their legal education, as perceived and expressed by their professors (*section 2.4*).

2.1 Importance of "Social Justice" & "Critique"

Throughout interviews, I noticed that the ideas of social justice and critique occupied a central role in the way faculty members defined their mission, and in fact their institution.

> R: *Quels sont les principes ou les valeurs qui sont au cœur de votre approche?*
> QC01 : Le mot qui revient tout le temps c'est justice sociale, le concept qui revient tout le temps c'est justice sociale.[296]

> QC03: Je crois que le thème clef qui fait pratiquement l'unanimité c'est 'justice sociale.' C'est un peu le 'branding' qu'on a voulu mettre. Je pense qu'il y a d'autres éléments qui caractérisent l'enseignement du droit à [DSJ UQAM], mais probablement que le fond commun, en tout cas l'élément sur lequel autant les juristes [de différents domaines d'expertise] s'entendent c'est sur la dimension 'justice sociale.'[297]

> R: *Quelles sont les caractéristiques du DSJ UQAM?*
> QC05: Je pense que l'engagement social. Ça c'est clair, c'est net, c'est précis… les enjeux de justice

[295] DSJ UQAM, "A propos", online: <https://juris.uqam.ca/le-departement/a-propos/>.
[296] QC01.
[297] QC03.

> sociale, égalité, non-discrimination, recherche action, c'est toujours toujours— c'est des mantras.[298]
>
> R: *Qu'est-ce qui vous vient à l'esprit si on parle de la formation des juristes à l'UQAM?*
> QC06 : Une formation critique, fondée sur la justice sociale.[299]
>
> QC09: [C'est] un département qui est orienté vers la critique et la justice sociale.[300]
>
> R: *Quels éléments caractérisent la formation au DSJ UQAM […]?*
> QC11 : […] Un enseignement social du droit […] Social et critique je devrais ajouter. Les deux dimensions sont probablement complémentaires. Donc si je devais qualifier les intentions du programme ce serait ces deux dimensions là, l'aspect social, au sens très large du terme, et l'aspect critique. [301]

The extracts from six different interviews reproduced here illustrate several points: first, social justice and critique in combination are prevalent references in faculty members' discourses about their institution and its mission; second, such discourses are strikingly similar among faculty members; third, the discourse points to a conflation between the aspirations of the institution and its self-definition, i.e. the faculty members largely define DSJ UQAM in terms of its aspirations for social justice and critique. This last element shows that the mission, as a cultural reference, is central to the ideational and definitional components of DSJ UQAM's identity.

In their discourse, participants often mentioned that such characteristics were part of the institution's raison d'être when it was created and have endured ever since. For instance:

> QC05: La constante [dans l'histoire du DSJ UQAM] vraiment ça a été l'engagement pour la justice sociale, l'égalité, etc, l'accès aux services, aux soins, aux services sociaux, etc.[302]

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[298] QC05 (using the word "mantra" without negative connotations and expressing his adhesion to approach, see e.g. ibid, quotE accompanying infra note 310).
[299] QC06.
[300] QC09.
[301] QC11.
[302] QC05; the discourse is indeed strikingly similar in 2017 with that of the founders in 1973, see e.g. Brault et al, *supra* note 44 at 1 ("le projet des sciences juridiques à l'UQAM, avait voulu prendre au mot à la fois les objectifs d'une université nouvelle qui se proclamait populaire et ouverte au milieu[,] critique et créatrice, et les politiques gouvernementales qui prétendaient vouloir transformer le droit et la profession juridique dans l'optique d'une plus grande justice sociale." (internal quotations marks omitted)).

> QC01: C'est une formation qui historiquement a cherché à se distinguer de par son contenu critique et progressiste.[303]

As these last two quotes indicate, the emphasis on social justice and critique is perceived as what has set DSJ UQAM apart from comparable institutions since its inception. The next two quotes also bring these two aspects together:

> QC07: Evidement l'aspect justice sociale, ça fait longtemps, comme c'est une espèce de marque de commerce.[304]

> QC05: [Les] gens qui ont participé à la fondation du département c'est tous des gens qui étaient plus ou moins directement impliqués dans des enjeux de travail communautaire. C'est eux autres qui ont donné la couleur au département.[305]

The mention of a trademark, echoing mention of a certain "branding" in a previous quote, as well as that of the colour of the department show that the emphasis on social justice and critique in legal education is perceived as a historically distinctive feature of DSJ UQAM. We can therefore see how these two elements are experienced as central, enduring, and distinctive features of the institution that define DSJ UQAM by reference to its perceived mission.

Some faculty members expressed their perception that the pursuit of social justice and critique had eroded as a distinctive and central characteristic of DSJ UQAM. For instance, the following participant expressed the view that the education at DSJ UQAM was no longer genuinely distinct from other comparable institutions:

> QC08: Ce qui me vient en tête en premier lieu [à propos de DSJ UQAM] c'est le clair décalage qu'il y a pour moi entre la mission du département, qui est de former des juristes critiques, en tout cas c'est ce qui est annoncé sur le site internet et c'est ce que l'on réitère constamment, et la réalité de la formation qui est offerte, qui est en fait à mon avis une formation plutôt mainstream, qui ressemble beaucoup à celle qui va être offerte à l'université de Montréal ou à l'université de Sherbrooke par exemple.[306]

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[303] QC01.
[304] QC07.
[305] QC05 (citing the following individuals as founders: George Lebel, Lucie Lamarche, Lucie Lemonde, René Laperrière, Pierre Mackay, René Côté).
[306] QC08.

Several participants shared the idea that DSJ UQAM's emphasis on social justice and critique was less distinctive now than it used to. The combination of two phenomena could explain this. First, other Faculties of law have made social justice a key component of their own mission, as a participant noted that "chaque faculté ou département de droit que je connais parle aussi de justice sociale,"[307] whereas this was almost unique at the time of the department's creation.[308] On the other hand, participants affirmed that the education delivered at DSJ UQAM had departed from the radical ideals that motivated its creation, and had become closer to what others offered. One of them affirmed the following: "je pense qu'il y a encore beaucoup de profs qui sont préoccupés de remplir cette mission spécifique de sciences juridiques : de former des juristes soucieux de la justice sociale et tout ça, mais ça se perd un peu."[309] We will explore in greater detail below the perceived evolution of the mission and debates on this theme. Suffice here to note the perceived convergence over time between DSJ UQAM and other law Faculties.

Such doubts about the enduring and distinctive character of DSJ UQAM's aspirations focused on social justice and critique do not negate the continued importance of these ideas as cultural references for the institution. To the contrary, it is because they continue to be perceived as important that participants felt concerns about their erosion. Such participants generally lamented DSJ UQAM's "normalization", and always affirmed their attachment to DSJ UQAM's historic mission.[310] Moreover, even as they might disagree as to the exact definition of social justice and critique, as well as over the appropriate ways to fulfil such mission, as we will see below, faculty members generally observed a

[307] QC02 (the same participant nonetheless later affirmed UQAM's distinctiveness : "UQAM a vraiment une idéologie particulière, […] un peu plus socialiste [que celle] qu'on rencontrerait dans n'importe quelle autre université au Canada je crois, et […] je dirais peut-être syndicaliste aussi, parce que […] il y a [un attachement] au syndicalisme beaucoup plus profond ici que j'imagine n'importe où d'autre.").

[308] See e.g. Roderick A Macdonald, "Préface" in Robert D Bureau & Pierre Mackay, eds, *Le droit dans tous ses états* (Montreal: Wilson & Lafleur, 1987) xi at xii (characterizing DSJ UQAM's "pari intellectual" as distinctive).

[309] QC10.

[310] See e.g. QC05 ("Le projet, la mission du département, j'y crois sincèrement. Je ne suis pas le plus grand zélote, mais j'y crois.").

consensus about the importance of the notions of social justice and critique in the institution's mission and self-definition. The following participant expressed this idea as follows:

> QC03: Je serai très étonné que vous ayez dans vos entrevues, que vous tombiez sur des collègues qui se fichent éperdument de la justice sociale, de la mission du département, qui ne se reconnaissent aucunement dans le département. Non au contraire, je pense qu'il y a quand même chez les professeurs, autant les plus vieux que les plus jeunes, il y a quand même une adhésion à ce projet politique là.[311]

DSJ UQAM faculty members, therefore, organize their discourse and perception of their institution's mission around the ideas of "social justice" and "critique." The mission is constitutive of the way they define their institution itself. As the last interview extract reproduced above suggests, these cultural references come with strong political meanings and values.

2.2 Political Meanings for "Social Justice" & "Critique"

Let us now turn to the significance(s) attached to social justice and critique by DSJ UQAM participants. In order to go beyond the mantras, as several participants called them,[312] we need to explore the meanings they give to these terms and the underlying values. We will see below that this discourse comes with specific political meanings, mostly explicit, that constitute a defined way of purporting to act in and on society.

The expression "social justice" is found in many contexts, ranging from moral and political philosophy[313] to political activism. The latter is a more adequate context to understand DSJ UQAM's use of the phrase, as one participant affirmed, "le militantisme politique, social, communautaire, [est] central à la mission que se donne le département depuis sa fondation."[314] A different participant concurred with

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[311] QC03.
[312] See e.g. QC05 (quote accompanying supra note 298) and QC08 (quote accompanying supra note 306).
[313] See e.g. Kathleen Maas Weigert, "Social Justice: Historical and Theoretical Considerations" in Wright, *supra* note 191 at 397; John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).
[314] QC01.

the political dimension of the institution's mission: "en spécifiant sa mission [on] essaie de s'inscrire politiquement dans le monde dans lequel on est."[315]

There is no single definition of social justice commonly accepted, even among DSJ UQAM participants. Some even recognized this openly: "c'est un principe général qu'on a jamais défini, volontairement ou pas,"[316] and "c'est quand même un terme flou, donc je pense que là-dessus on est face à des notions un petit peu indéterminées et qui font matière à débat."[317] When asked about the existence of statements defining the notion for the institution, one participant mentioned a collection of essays published in 1987 by the members of DSJ UQAM (including many of its founders),[318] affirming that *Le droit dans toutes ses états* is sometimes seen as an authoritative reference.[319] Across the varying definitions offered by participants and the diverse authors' perspectives in the collection, we can see a clear convergence, which several participants expressed as a positioning on the usual right-left spectrum: "je dirais que ça signifie en termes politiques une approche généralement de centre gauche";[320] "notre idée de la justice sociale c'est une idée à gauche, une idée socialiste."[321]

The following historical anecdote from the creation of DSJ UQAM sheds light on the enduring political orientation of the institution: when the Quebec education minister initially refused to authorize the creation of the department due to the "pseudo-Marxist" orientation of the proponents, the latter

[315] QC03.
[316] QC01.
[317] QC06.
[318] Bureau & Mackay, *supra* note 308.
[319] QC02 ("L'ancien directeur m'a dit 'si tu veux vraiment savoir ce que ça veut dire d'être un prof au département de science juridique à l'UQAM, ça c'est le livre que tu devrais lire.' […] [Ce livre] est vu comme un texte explicatif."); QC01 also referred me to this publication.
[320] QC01 (also affirming that a majority of professors leaned toward centre-left politics at DSJ UQAM, with a minority leaning even further left-wing, whereas he believed that at other universities professors there was a mix of centre-right, centre and centre-left leaning professors).
[321] QC02; see also QC09 ("L'UQAM est reconnue […] pour être une université plus à gauche en général, […] le corps professoral et les étudiants."), QC11 (quote accompanying *infra* note 345: articulating internal debates as a rejection of approaches perceived as conservative or right-wing).

took offence at not being considered proper Marxists.[322] It is also the way DSJ UQAM is perceived externally, as a UAlberta Law participant spoke of this institution in the following terms: "UQAM […] built itself as a Marxist separatist law school. And I remember going there and looking at the calendar: they did not teach labour law, they taught 'Grèves.' I used to say 'Grèves, how to do it.'"[323] While the exact pinpoint on the spectrum may depend on the speaker's own political beliefs, DSJ UQAM clearly associates with the political left.[324]

In the following quotes, participants tried to define further what social justice entailed for them: "un biais en direction de luttes sociales ou de justice sociale […] être avec le peuple, avec les plus malpris de la société,"[325] "une tradition favorable aux positions des travailleurs,"[326] "promouvoir aussi une transformation sociale dans le but d'avoir un projet de société plus équitable et plus inclusive,"[327] "améliorer la condition de vie des êtres humains, même plus largement, dans une perspective post-anthropocentrique, améliorer la qualité de vie sur terre pour toute espèce confondue."[328] While they each

[322] QC01 (recounting the anecdote and adding: "Le prof qui était en colère contre le 'pseudo' a pris sa retraite depuis 3-4 ans, et se plaisait à dire qu'il avait à l'époque embauché tous les profs ici. Et donc ça ça a marqué, ça a fait son chemin. On ne peut pas défaire une telle tradition aussi rapidement."); see also Brault et al, *supra* note 44 at 54—62 (reproducing transcripts of debates in the National Assembly of Quebec on 4 May 1973 during which the Minister of Education referred to the proposed DSJ UQAM program with terms such as "vocabulaire pseudo-marxiste" and "orientation révolutionaire", and reproducing newspaper articles covering the controversy it sparked), and Pierre Macay, "L'Enseignement du Droit dans une Perspective de Changement Social: Bilan de l'Experience du Programme de Sciences Juridiques à l'Université du Québec à Montréal" (1979) 44 Sask L Rev 73 at 75.

[323] AB03 (discussing the features or identity of several Faculties other than UAlberta Law and offering this take before I mentioned that DSJ UQAM was one of my case studies in this project). The issue of Quebec separatism at DSJ UQAM will be discussed below, see text accompanying *infra* note 352ff. See also Brierley, "Quebec Legal Education since 1945", *supra* note 49 at 6 (referring to DSJ UQAM as "a semi-Marxist teaching institution" and comparing it to "the otherwise highly conservative establishment that Quebec law faculties have traditionally been.").

[324] See also e.g. Robert D Bureau, "Le droit en question et la crise de l'État" in Bureau & Mackay, *supra* note 308 at 1 (the author, a founder of DSJ UQAM and the first program director, advocates for social-democracy, collective rights, and welfare state policies against neo-liberalism and neo-conservatism).

[325] QC01.

[326] QC07.

[327] QC06.

[328] QC03

have their own vision of what social justice entails,[329] we can see large overlaps among the political ideologies embodied in these statements. To these, we can also add expressions of general support for labour unions and workers strikes from several participants.[330] About half of the participants at DSJ UQAM also evoked student strikes and, despite the challenges they represent for less experienced instructors, they generally expressed support for them.[331] These elements confirm the leftist positioning indicated above.

A participant affirmed that the terms "social justice" and "critique" complemented each other, and could overlap significantly.[332] She further stated that "critique", much like "social justice", is not defined precisely and remains an undetermined notion.[333] Another participant highlighted the vagueness of this notion when she wondered which were the skills that a critical jurist had to possess in comparison to a jurist that would not be critical, and pointed how odd the idea of a non-critical jurist sounded.[334]

There is some chronological coincidence in the adoption of the critique discourse at DSJ UQAM, drawing its intellectual references mainly from Continental Europe and French-speaking traditions, and

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[329] E.g. QC03 (recognizing that his colleagues did not commonly share the post-anthropocentrist approach he had expressed, see quote accompanying *supra* note 328).

[330] QC01 ("De manière générale sur une question qui touche les conflits sociaux, une position syndicale, ou ce genre de choses là, quand par exemple il y a des grèves, il y a une sorte, je dirais pas une sorte d'unanimité ou un consensus fort, mais on sait qu'on va généralement aller dans une direction commune."); QC02 at *supra* note 307 ("il y a [un attachement] au syndicalisme beaucoup plus profond ici que j'imagine n'importe où d'autre."). See also QC07 (e.g. "Nos liens historiques avec les syndicats") and QC11 speaking about the historical importance of unions at DSJ UQAM (such unions employees coming to DSJ UQAM to complete their education in labor law).

[331] QC02 ("notre idée de la justice sociale […] implique au moins pour une majorité de mes collègues que l'on devrait […] soutenir les grèves étudiantes."); QC03 ("[en cas de grève, j'avise] mes étudiants en disant que si il y avait une levée de classe, j'allais respecter la levée parce que je ne voulais pas jeter de l'huile sur le feu, je ne voulais pas créer des tensions, puis créer des frustrations qui, au-delà de la grève"); QC07 ("le département, les profs sont habituellement assez sympathiques aux positions des étudiants qui veulent la grève.").

[332] QC06 (quote accompanying *supra* note 301).

[333] QC06 ("c'est une des tensions que je perçois au niveau de qu'est-ce que la recherche critique, au niveau aussi de qu'est-ce que la justice sociale," immediately preceding the quote accompanying *supra* note 317).

[334] QC08 ("C'est quoi les compétences d'un juriste critique? Qu'est-ce qu'il doit savoir faire quand il finit son [LL.B.] que le juriste pas critique— du reste c'est déjà bizarre à dire, […] n'aurait pas forcément comme compétence? Ce n'est pas du tout clair.").

the blooming of Critical Legal Studies (CLS) in the United States.[335] No participant drew a parallel between the two; despite some similarities between the intellectual paradigms and political sensibilities of the two groups, there is no filiation. Further, at Droit UMoncton a participant defined his own approach as "critique" and articulated as follows: "moi j'appelle ça critique, mais on pourrait certainement dire plus à gauche. Parce que critique de quoi ? [Critique] du système néo-libéral, de la mondialisation, ses effets, [des] inégalités que ça crée."[336] This illustrate the many uses, sometimes overlapping, of the vocabulary of "critique" in the legal world.

The quote below sums up the explicit political meanings associated with "social justice" and "critique" as central cultural references for DSJ UQAM's self-definition of its mission and itself:

> QCXX: Je vais être simpliste, mais [on a] longtemps vu la profession juridique comme étant une affaire de classe, que le droit c'était un outil du pouvoir, que les avocats [étaient] tous des défenseurs de l'ordre établi, tandis que la mission ici c'est de former les gens à se servir du droit comme un outil pour aider, au service des populations plus marginalisées, plus discriminées. Donc un outil au service du petit [plutôt] que de la grosse corporation, […] l'image que l'on a de l'avocat. Alors justice sociale, c'est très grand, puis maintenant ça inclut aussi protection de l'environnement, droits des communautés— moi j'ai commencé avec droits des femmes, mais maintenant ça s'est étendu, [par exemple aussi] les droits des usagers face à l'administration publique […] — c'est [tout] ça que je mets dans la justice sociale.[337]

2.3 Enduring References, Dynamic & Contested Meanings

This last quote illustrates that, even for one individual, the meanings attached to central concepts evolve over time. This participant's statement that social justice *now* includes environmental concerns echoes another participant's previously quoted post-anthropocentric perspective.[338] A third participant also spoke about the evolution of such meanings, explaining it with external factors, such as changes in society itself:

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[335] See generally Pierre Schlag, "U.S. CLS" (1999) 10 Law & Critique 199.
[336] NBXX.
[337] QCXX.
[338] See QC03 (quote accompanying *supra* note 328).

> QC07: La conception de la justice sociale évolue, les enjeux ne sont pas forcément toujours les mêmes, ça se transforme. Jusqu'à un certain point c'est une sensibilité pour les personnes en situation de vulnérabilité, mais comme la société évolue les situations de vulnérabilités changent, donc cette mission va changer en fonction de comment on est capable de mieux remplir cette mission.[339]

As the socio-economic conditions of certain groups change over time, and as society becomes aware of the obstacles some communities face, it is logical that the focus of those aiming to improve the living conditions of the most vulnerable members also evolves.[340]

One can also look at factors internal to DSJ UQAM to explain changing perspectives on social justice. Faculty members also change over time, and so do their backgrounds, expertise and preoccupations. For instance, since the early 2000s, the place of international legal issues in the expertise and focus of the faculty members has increased significantly. One participant estimated that about half the professors at DSJ UQAM were now engaged within this field of expertise, a proportion he believed to be very high compared to other universities.[341] Historically, DSJ UQAM's main area of expertise was labour and employment law. While it has retained a significantly greater focus on this area than other law Faculties,[342] international law now seems to be the most prominent field of expertise. This new phenomenon could be observed in the descriptions of the mission and of social justice that participants offered, as many included an international element in their discourse on these topics.[343]

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[339] QC07.

[340] See also Robert D Bureau & Carol Jobin, "Les Sciences Juridiques a l'Université du Québec à Montréal: Fifteen Years Later" (1987) 11:1 Dal LJ 295 at 301—02 ("The aim of defending and advancing the rights of the disadvantaged has, then, a variable content.").

[341] QC07 ("Dans les dernières 15-20 années, il y a [eu] une augmentation des expertises en droit international très très marquée. Au point que je vous dirais que la moitié du corps professoral fait d'une manière ou d'une autre du droit international, ou dans une perspective de droit international et de droit interne [...] Je dirais que dans les institutions francophones c'est l'endroit où il y a la plus grande concentration d'internationalistes."); see also QC09 ("C'est un département où il y a une présence très très forte des internationalistes.").

[342] See e.g. QC07 ("On a 5 professeurs sur 36 qui font du droit du travail, comparativement à McGill par exemple qui a 42 professeurs, il y a une professeure, Adèle Blackett, qui fait du droit du travail. Donc le rapport c'est 5 fois plus.").

[343] See e.g. QC03 ("L'idée de justice sociale, tant sur le plan national que sur le plan international, c'est une préoccupation je crois très sincère des membres de notre département.").

An ongoing tension within DSJ UQAM relates to whether all domains of legal expertise lend themselves to a critical approach in pursuit of social justice. A participant affirmed that some colleagues considered certain fields of law more relevant than others for social justice-oriented jurists.[344] The line of divide between the 'proper' and 'improper' fields often corresponds to the traditional distinction in civil law between public and private law. A participant articulated how this played out at DSJ UQAM as follows:

> QX11: Il y a l'éternelle tension […] entre le droit privé et le droit public. Il y a eu historiquement, et je pense que ça existe encore […] une opposition entre droit privé et droit public ici au département. Les privatistes sont, à tort je pense, et je n'en suis pas [un ou une] moi-même, […] considérés comme étant un peu plus conservateurs que les publicistes. Je pense que c'est à tort parce que nos privatistes, surtout les plus jeunes, les plus récemment arrivés, ont une conception sociale du droit privé… [Ce] n'est pas parce qu'on enseigne le droit privé qu'on est un conservateur, encore moins un réactionnaire. Mais […] il y a des vieux réflexes qui reviennent parfois et qui vont se traduire au moment où l'on va décider de créer un poste en [droit] public plutôt qu'en [droit] privé. Tout cela est non-dit [mais joue beaucoup]. En fait, l'opposition public/privé […] traduit une opposition un peu idéologique, entre gauche et droite pour simplifier. Le droit public est considéré à tort ou à raison comme étant plus progressiste, plus à gauche que le droit privé. Pour moi c'est un peu désuet comme distinction. Mais ça joue encore.[345]

The field of private law has been perceived as promoting the interests of the already powerful, whereas public law would be an area of law enabling the state to step in to compensate situations of inequality and protect the vulnerable. During DSJ UQAM's formative years, the political climate favoured state social and economic intervention, for instance in the fields of consumer protection, work safety, and even state-sponsored economic development.[346] Such interventions were examples of public law being leveraged and expanded to advance social progress. It explains in part the divide in the perception of public and private law. The same participant affirmed that such debates become most salient when DSJ UQAM decides how to create or advertise a new faculty position, and whom to hire;[347] hiring decisions, as

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[344] QC08 ("La justice sociale c'est une question qui se retrouve partout, c'est un enjeu qui se retrouve partout, il n'y a pas des domaines de droit particuliers qui sont plus importants pour des juristes qui s'intéressent à la justice sociale. Je pense que ça c'est quelque chose qui n'est pas forcément partagé.").

[345] QC11; see also the quasi-absence of private law topics in Bureau & Mackay, *supra* note 308.

[346] See Bureau, *supra* note 324 at 3—4.

[347] QC11 ("Ça se manifeste notamment au niveau des décisions d'embauches, et avant même la décision d'embauche, dans la décision de prioriser tel ou tel domaine d'enseignement pour la création d'un nouveau poste.").

analyzed above, are pivotal moments with the potential to alter the proportion of public and private law expertise and interests among the faculty. Another participant echoed this perception:

> QC08: Il y a des tensions […] de l'ordre de cette vision du droit social, de la mission du département qui s'organiserait autour de certains domaines de droit. Comme s'il n'y avait pas d'enjeux de justice sociale, et comme s'il n'y avait pas lieu d'y avoir une réflexion critique sur le droit privé. Donc c'est toujours très complexe, très lourd, d'imaginer, de discuter, d'avoir des nouveaux privatistes, et ça à mon avis c'est une erreur fondamentale— c'est une erreur immense, parce qu'aujourd'hui, avec les développements qui se passent en ce moment, [comment est-ce possible de n'] avoir personne qui travaille de façon critique sur la procédure civile ? C'est pas sérieux.[348]

A third participant confirmed the persistence of tensions alongside the public/private law distinction in relation to the fulfillment of DSJ UQAM's mission, although they affirmed that such tensions are now much less prominent.[349]

As noted above, DSJ UQAM forged itself in a period favorable to social reform through state intervention. The corresponding left-wing policies were primarily advanced by the Quebec national movement. For instance, significant consumer protection and labour standards legislation was passed by the Parti Québécois (PQ) after its first provincial victory in 1976.[350] Leveraging the state of Quebec to improve the economic and social conditions of Quebecers was a key characteristic of Quebec nationalism in this period.[351] Several participants mentioned a historical association between UQAM and the Quebec national movement.[352] A professor expected the question of Quebec sovereignty to constitute a topic of internal debate upon joining the Faculty in the 2000s; they were surprised that this was not the case.[353]

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[348] QC08 ("Le droit privé était moins bien perçu parce que […] ça ne s'inscrivait pas nécessairement avec la théorie; il y a des champs du droit qui était moins bien perçus autrefois. Ce n'est plus vrai maintenant, mais je pense que ça a encore un effet dans le discours.").
[349] QC09.
[350] See Bureau, *supra* note 324 at 4.
[351] See e.g., François Rocher, "The evolving parameters of Quebec nationalism" (2002) 4:1 Int'l J Multicultural Societies 1 at 7—8.
[352] QC02 ("La naissance de [l'UQAM] [s'explique] un peu par le mouvement souverainiste et les inclinaisons un peu socialistes du PQ et du mouvement souverainiste à cette époque."), QC06 ("Ma vision [limitée sur l'histoire de l'UQAM] c'est qu'elle a pour mission d'être une université accessible, de défendre une pensée critique, peut-être aussi d'incarner, pendant un temps de l'histoire, je pense qu'aujourd'hui on n'en est plus là, mais à ses débuts d'incarner, de soutenir le projet souverainiste Québécois."). See also AB03, quote accompanying *supra* note 323.
[353] QC07.

The attachment to the Quebec national movement is no longer salient at DSJ UQAM.[354] It is probably due to the diminished prominence of the sovereignty issue in Quebec[355] and the transformations in the socio-economic ambitions of the national movement since the 1980s.[356]

DSJ UQAM seems always to have been more attached to challenging the allocation of resources in society than to the national question itself.[357] Writings from founders even distance themselves from the Quebec national movement when its socio-economic policies started to rely more heavily on business strategies and private actors rather than statism, thus becoming less distinguishable from right-wing stances.[358] Therefore, while the issue of Quebec sovereignty was closely linked to DSJ UQAM's approach to the pursuit of social justice, it no longer is today.[359]

Perceptions have also changed regarding which research paradigms match the institution's commitment to social justice and legal critique, giving rise to debates or tensions within the Faculty. A participant spoke about this aspect in the following terms:

> QC06: [T]out le monde n'a pas la même position [sur ce que sont] l'enseignement critique du droit [et la] recherche critique. Pour certains […] la critique se fait [seulement] par la mobilisation de certaines théories, et certaines théories du droit ou certaines théories en recherche seraient plus critiques que d'autres. Pour d'autres il y a une vision beaucoup plus inclusive de qu'est-ce que la critique du droit : donc une critique qui peut être autant théorique et pas du tout centrée sur une théorie en particulier, et la critique qui peut être aussi au plan méthodologique.[360]

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[354] It is not totally absent from the environment though, as I observed the presence of political posters put up by student groups promoting Quebec sovereignty in the hallways adjacent to DSJ UQAM's offices (e.g. "Pour la République Ouvrière du Québec").

[355] QC06 ("[Le soutien au projet souverainiste] est quelque chose que je perçois un petit peu moins aujourd'hui. Politiquement, c'est un enjeu qui est toujours présent au Québec mais qui est un petit peu dilué. Et puis je sens peut-être une transformation, un glissement de cette mission de soutenir le passage souverainiste à la mission de soutenir un projet social que l'on peut qualifier de gauche.").

[356] See Rocher, *supra* note 351 at 14ff.

[357] See also QC07 ("L'enjeu fédéraliste ou souverainiste n'est pas du tout à l'avant place [à DSJ UQAM]. [L'enjeu qui nous préoccupe porte] beaucoup plus [sur] une question de savoir comment la distribution, la redistribution des ressources a lieu au sein de la société.").

[358] See Bureau, *supra* note 324 at 4ff.

[359] See also AB03 (quote accompanying *supra* note 323 and referring to a past perception of DSJ UQAM as "a Marxist separatist law school").

[360] QC06.

The same participant later affirmed: “malgré cette volonté, cette mission commune, on est encore face aux barrières disciplinaires ou intra-disciplinaires.”[361] Another participant echoed this sentiment, and offered some insight into the theoretical debates, particularly as they emerge in the context of hiring decisions:

> QC06: [Certains professeurs ont une] vision un peu plus proche du département [tel qu’il] a été fondé, où ça prend des approches critiques, plus structurelles […]. Ce genre de discours […] va s’opposer à des gens qui vont avoir une ouverture un peu plus grande sur les façons de voir un candidat ou une candidate qui peut offrir une perspective critique même si on n’est pas dans un cadre théorique marxiste par exemple.[362]

Beyond the research paradigms, the type of research itself is a matter of debate. DSJ UQAM originally fostered a lot of “action-research” (“recherche-action”) from professors. Many of DSJ UQAM founders and first professors offered their time and expertise to support local militant groups, for instance, labour unions. Early in its development, UQAM set up structures and policies across the university to promote these projects, perceived as essential for the fulfillment of the university’s mission.[363] I noticed a greater emphasis on “services”, and especially external services, as part of the faculty members’ responsibilities at DSJ UQAM than UAlberta Law and Droit UMoncton. While “services aux collectivités” remains an important part of UQAM’s professors’ functions, alongside and often intertwined with teaching and research, it appears less and less in the form of action-research. The rapid and recent renewal of large parts of the faculty[364] and the replacement of the first generation of activists by academically trained faculty members has led to a decrease in action-research, and a rise in traditional academic research. Two long-time members of the DSJ UQAM lamented this phenomenon,[365] and a

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[361] QC06.
[362] QC09.
[363] See UQAM, *Politique no 41 sur les services aux collectivités* (2003, last amended in 2018), art 1, online: *Secrétariat des instances* <https://instances.uqam.ca/reglements-politiques-et-autres-documents/politiques/> [UQAM, *Politique no 41*] (“Par cette politique, l'Université reconnaît formellement l'existence d'une mission universitaire, distincte mais intégrée aux missions d'enseignement, de recherche et de création, identifiée sous l'expression ‘services aux collectivités.’”).
[364] See e.g. QC05 (quote accompanying *supra* note 267), QC10 (quote accompanying *supra* note 250).
[365] QC04, QC10.

younger professor (self-identifying as a traditional academic rather than an action-researcher) also evoked it:

> QC05: La recherche-action […] devient de plus en plus difficile à réconcilier [avec d'autres demandes]. Il y a comme un changement de garde, avec des profils comme les miens, qui sont plus universitaires. Je pense qu'à l'intérieur du département c'est une source de tension pour les embauches, parce que [les professeurs plus anciens] voient que le projet social est en train de s'effriter, peut-être, avec des profils comme le mien, et beaucoup d'autres profils, où on s'intéresse à des enjeux conceptuels théoriques.[366]

In addition to the generational renewal, this participant attributed the decline of action-research to the increasing pressures on academics for scholarly publications and grant proposals.[367] Action-research projects usually take up large volumes of resources and do not produce outputs that fit squarely within the performance metrics that have become the norms in North American academia, such as academic publications and grant proposals.

We see that the cultural meanings attached to social justice and critique as central references for DSJ UQAM's mission are dynamic and contested. The socio-political climate of the times, the political economy of higher education, and the personal and professional preferences of different generations of professors, all inform a constant evolution of a mission forged in the 1970s, even as social justice and legal critique endure as central components of the discourse.

[366] QC05.

[367] QC05 ("[L'ancienne génération a] pu obtenir une permanence avec zéro publication, c'est inconcevable aujourd'hui. […] La recherche-action c'est des projets de longue haleine qui nécessite beaucoup de fric, alors qu'à l'époque il n'y avait pas les mêmes pressions, au niveau du financement etc. […] Ce sont des choses qu'on nous a fait comprendre au niveau du décanat. [On nous a demandé récemment quels étaient nos projets de demandes de subventions]; si tu fais [des demandes de subventions], ça veut dire que ton engagement à l'extérieur, si tu veux avoir une vie familiale, sociale, amoureuse, peu importe, ben faut que tu fasses des compromis quelque part, et souvent ça va être la recherche-action qui va prendre le bord.").

2.4 Different Meanings for Students

DSJ UQAM faculty members perceive their mission, with its complexity and internal dynamics, as a transformative project challenging traditional conceptions of law and the traditional structures of legal institutions and the legal profession. They see their role as educating new generations of jurists who will give effect to such challenges and bring out such transformations. The students are therefore an essential part of DSJ UQAM's aspirations. Faculty members often spoke about the students in discussing their institutional mission. While the aim of the present study is not to assess the effectiveness or the realization of the Faculties' mission, this is a topic DSJ UQAM brought up regularly. The prevalence of this theme in interviews about the mission at this Faculty justifies an exploration of how law professors perceived the complex relationship between their students and the mission and adds an additional layer of understanding about DSJ UQAM's mission and the context in which it deploys itself. The meanings Faculty members attach to the legal education they offer are in dialogue with the meanings students attach to the legal education they hope to complete.

From its early days, DSJ UQAM expressed the wish to educate lawyers for different careers than the traditional legal practice.[368] It was not a rejection of the professional dimension of legal education, but rather a challenge to the structures of the legal professions. While it represented a departure from the commonly accepted lawyerly professional activities, it was not a purely theoretical enterprise. DSJ UQAM has aimed to equip future jurists for them to act in society in ways other than the traditional and commonly accepted lawyerly professional activities, for instance working for labour unions or community

[368] See e.g. Bureau & Jobin, *supra* note 340 at 301 ("The aims express an intention to move away from a model of legal education centered around training lawyers whose basic role is limited to litigation practice and whose work would be organized around files structured according to the application of existing law to fact situations ideally and in the last instance resolved by judicial decisions. This latter model is clearly oversimplified, the reality being more complex and detailed. It is, however, representative of the tendency of legal training which encourages the student more or less consciously towards obtaining a license to practice a profession controlled by a corporation.").

organizations; it hoped that students would leverage their legal education and credentials to advance social justice.[369]

Nonetheless, students have long perceived this approach as more academic than professional, given the disconnect between DSJ UQAM's mission and the canons of the profession most of them will eventually join. Most students entertain different expectations than the goals defined by the department, seeking an education to law more closely aligned with the values and expectations they perceive to be that of the legal profession. This situation, and the idea that it hinders the implementation of the institutional mission, recurred in interviews with DSJ UQAM participants, as the following three participants expressed:

> QC03: Même si notre mission c'est de former des juristes […] la réalité c'est que les étudiants ont une préoccupation immédiate qui est celle de devenir membre du barreau puis être avocat, ou avocate, ou notaire.[370]
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> QC11: Tous les cours que nos étudiants suivent en masse, qui sont des « cours barreau. » Ces cours ne sont pas nécessairement congruents avec les objectifs du département, mais par contre ils sont très congruents par rapport aux besoins réels de nos étudiants, enfin par rapport à ce qu'ils viennent chercher d'une formation en droit [...] Et pour nos étudiants en fait c'est ce qu'ils cherchent quand ils viennent ici, davantage que le regard critique sur le droit. Bon, ça ils vont l'apprendre un peu malgré eux pour certains d'entre eux, parce que c'est obligatoire. Il y a quand même une proportion, [que] je ne pourrais pas quantifier […] de nos étudiants qui cherchent ce regard critique ou externe sur le droit, [mais ce n'est pas] la majorité d'entre eux. En fait pour eux d'abord ça va être une découverte. Et c'est souvent après, en sortant d'ici qu'ils vont se dire « bon finalement c'était bien que l'UQAM nous ait forcé à critiquer le droit. » Mais ils ne viennent pas ici pour ça.[371]
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> QC08: Je crois qu'il y a un groupe, un petit groupe dans les classes, ça [ne] représente pas plus de 10 pourcents de la classe à mon avis […] je pense c'est très variable d'un cours à l'autre, par exemple dans les cours à options il pourrait y en avoir plus, mais— des étudiants qui sont politisés, qui sont engagés, puis qui sont intéressés par l'enseignement critique. Ils ne sont pas très nombreux. La plupart des étudiants sont intéressés par aller au barreau ensuite, donc être préparés pour ça, et ça les intéresse assez peu finalement […] toute la discussion au sujet des inégalités sociales, de la mise en contexte du droit, de la production du droit ; tout ça ce sont des

[369] MacKay, *supra* note 322 at 79 ("Le programme de sciences juridiques vise à former des juristes qui pourront intervenir largement [recherche-action, enseignement, organisation, consultation, contentieux] dans le sens de la défense et de la promotion des droits démocratiques des travailleurs.").
[370] QC03.
[371] QC11.

> éléments qui ne les préoccupent pas beaucoup. Et donc je pense qu'il y a vraiment un décalage entre ce que l'on arrive en réalité à faire, à obtenir sur une formation d'un étudiant qui passe trois ans chez nous, et ce que l'on voudrait réaliser, ou en tout cas ce que l'on dit que l'on voudrait réaliser.[372]

These quotes illustrate the nature of this innate obstacle. The professors expressed the feeling that most students coming into the program are not looking for the social justice and critical approach to law that DSJ UQAM aims to cultivate, but very simply a law degree they need to join the profession.[373] Students often perceive the social justice and critique orientation as unconnected to, or even in conflict with, the education they need to achieve professional success. The tension between the Faculty's mission and the students' expectations to prepare for the Quebec bar exams has long existed in this institution. While at the beginning, DSJ UQAM mainly attracted workers, union employees or other persons looking to complete their skillset with legal knowledge, it has come over time to attract mainly college students who want to join the ranks of the Quebec bar, and who expect that this program will take them as close as possible to this end:

> QC03: Avant de former des juristes, j'ai parfois l'impression qu'on forme des gens pour passer les examens du barreau, comme si c'était une fin en soi. Je pense que les marqueurs qui font en sorte que la mission passe moins chez certains, c'est peut-être ça, cette idée là que dans le fond ils veulent être capables de suivre les cours profil barreau, d'être bien formé pour les examens, d'avoir des examens qui se rapprochent plus des examens du barreau plutôt que des travaux de session puis des travaux d'équipe.[374]

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[372] QC08.

[373] See also Arthurs, "The Political Economy of Canadian Legal Education" *supra* note 87 at 20ff (affirming that in general "[s]tudents - even many who considered themselves politically and intellectually radical - tended to see themselves as legal practitioners, albeit with new ideals and in the service of a new clientele' and that they consequently pressures their law schools "to equip them with the skills and knowledge necessary to achieve their professional objectives," including by voting against intellectual innovations in the curriculum in faculty council debates, avoiding them when selecting optional courses, passively resisting them byt not taking them seriously when nonetheless enrolled in such courses, and favouring the hiring of new professors that they perceived more likely to provide a more practical kind of education rather than "those who displayed the most impressive intellectual credentials.") But see Chartrand et al, *supra* note 97 at 308 (concluding from their study of law students at five different law Faculties that "[s]tudents for whom [issues such as social change] were important chose law schools according to the schools' legal philosophy"; the proportion of such students may, however, remain small).

[374] QC03.

This innate obstacle is further accentuated due to the type of students DSJ UQAM takes in. As part of its social justice approach, the department has wanted to make its programs accessible to the widest range of students. This includes part-time students, representing a quarter of all students enrolled in DSJ UQAM's undergraduate law program.[375] DSJ UQAM hosts the only undergraduate law degree program that students can take part-time in Quebec and offers evening courses for this purpose. Moreover, about a third of incoming students work more than 20 hours a week, generally performing non-study related work.[376] They therefore have less time on their hands to study or complete time-intensive or group-based assignments. In addition, as they are often older than other students, they frequently also have families to care for and therefore prefer assignments and evaluations that are punctual and time-defined, such as exams, rather than take-home essays. They are also less patient with events that may delay their graduation through no fault of their own, such as student strikes, as their professional, financial, and even family planning depends on foreseeable time for completion of the program. The following quote illustrates these points :

> QC03: On a la particularité d'accepter beaucoup d'étudiants à temps partiel. C'est possible de faire un bac à temps partiel chez nous, donc [on a] beaucoup d'étudiants qui travaillent le jour à temps plein, qui étudient le soir à raison de deux trois cours du soir. Ils avancent plus lentement; leur bac, ils vont le faire en cinq-six ans. Ils ont des préoccupations pécuniaires et familiales différentes des autres étudiants qui arrivent du CEGEP. Ces étudiants […] sont clairement là pour des raisons professionnelles ; ils ne sont pas au stade où ils peuvent participer à la vie étudiante ; ils ne se pointent jamais aux assemblées étudiantes ; ils votent rarement sur des résolutions qui concernent le fait d'aller en grève ou pas aller en grève ; donc ils sont complètement détachés, ils veulent que ça avance, ils veulent leur [diplôme]. Tout ça, ça fait partie aussi de la réalité de notre programme. On a des étudiants à temps partiel, et ça fait des classes mixtes où il y a des gens à temps plein, des gens à temps partiel, les gens ne cheminent pas au même rythme. Demander à tous les étudiants de faire des travaux de session quand les gens sont [seulement] disponibles le soir, qu'ils ont une vie de famille, c'est autre chose, ce n'est pas évident.[377]

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[375] DSJ UQAM, "Characteristics of students enrolled in a law degree (baccalaureate) at Université du Québec à Montréal – Fall 2016" (On file with the author): Part-time students make up 23% of LL.B. students (n=532).

[376] *Ibid*: 75% of new students (n=51) work while studying, of which 45% work more than 20 hours a week, and 66% performing non-study related work.

[377] QC03; see also QC07 ("Evidemment il y a des étudiants qui viennent ici pour la mission première, il y en a d'autres qui peuvent venir parce qu'on est le seul programme qui ouvre ses portes à temps partiel. [Ces derniers] ne sont pas les étudiants qui nécessairement, entièrement partagent les objectifs socio-économiques du département.").

While it is inherent to DSJ UQAM's mission to make legal education accessible to students with different constraints than usual university graduates, as this constitutes progress toward social justice in itself,[378] it comes with its own challenges.

We can analyze the relation between DSJ UQAM students and the values embedded in the institutional mission through a final perspective: attitudes toward student strikes. Student strikes are a cultural reference unique to discourses within DSJ UQAM: seven participants mentioned them, whereas the topic never surfaced in interviews at other law Faculties.[379] As mentioned, DSJ UQAM has historic ties with the labour movement and generally supports it, including organized student movements.[380] Accordingly, the Faculty supports student strikes when they happen.[381] UQAM students, in general, are often at the forefront of student protests in Quebec, [382] and such periods are have major impacts on the life activities throughout throughout UQAM.[383]

However, contrary to what one might assume, professors are sometimes more supportive of student strikes than law students themselves.[384] While their professors often express even stronger support for the student movements than colleagues in other units of the university,[385] in part due to the

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[378] QC07 ("Nous sommes le seul programme qui est disponible à temps partiel […] Ça fait partie de la mission d'accessibilité qu'on s'est donné […] c'était très important […] [d'] offrir à tout le monde la possibilité de se dépasser et de se réaliser […] peu importe leur condition sociale, leur réalité antérieure.").

[379] QC01, QC02, QC03, QC05, QC07, QC09, QC10.

[380] See QC01, QC02, QC03, QC07 (quotes accompanying *supra* notes 330, 331); see also MacKay, *supra* note 322 at 79 ("L'objectif fondamental et avoué du programme des sciences juridiques, c'est la formation de juristes qui sachent servir les intérêts des travailleurs.").

[381] QC01, QC02, QC07, QC10.

[382] QC03 ("C'est sûr que [certains] étudiants de l'UQAM ont eu un rôle prépondérant [dans] les grèves étudiantes qu'il y eu.").

[383] QC09 ("Les grèves étudiantes [sont] des moments marquants, et on les vit intensément à l'UQAM.").

[384] QC01 ("De manière un peu ironique quand il y a des mouvements sociaux qui prennent la forme de grève étudiante les profs sont souvent plus enclins à défendre le mouvement que la moyenne des étudiants.").

[385] QC10 ("On a souvent des discussions d'enjeux politiques extérieure qui arrivent en assemblée départementale […] comme par exemple pendant la grève étudiante. […] Bizarrement, on est peut-être le département [de l'UQAM] qui est vu comme étant le plus à gauche alors qu'on pense toujours que les avocats c'est super à droite. […] [On est] quasiment unanimes sur des questions [comme le] gel des frais de scolarité, dénoncer les arrestations de masse dans les manifestations, la brutalité policière envers nos étudiants qui manifestent ou la police qui rentre à l'université, [ce genre de résolution] passe à l'unanimité [au sein de l'assemblée départementale]. Souvent c'est le

proximity of certain faculty members with labour issues and social movements,[386] and sometimes to provide striking students with greater negotiation leverage,[387] attitudes toward such movements tend to be very divided among students themselves. For instance, participants often referred to the 2012 student strike that mobilized up to 300,000 students across Quebec against proposed hikes in tuition fees.[388] Several participants indicated that many law students, if not most, opposed the strike at the time,[389] sometimes expressing frustration at their classmates who took part in it and professors who indulged them.[390] Thus, even though faculty members saw supporting the striking students as the position most consistent with their own values and the department's mission,[391] a large share of law students did not adhere to the movement.

One should not conclude from the foregoing that DSJ UQAM fails to convince students of the merits of its approach to legal education. Faculty members perceive that their students generally embrace

département ici qui amène ces questions-là au syndicat pour l'assemblée générale des profs, où on a des discussions plus houleuses. […] Il y a [des désaccords au sein du syndicat] alors qu'au sein du département il n'y en a pas sur ces questions-là.").

[386] QC01 ("On a plusieurs profs en droit du travail [et donc] les collègues sont généralement sympathiques aux différents mouvements sociaux, notamment quand il y a des grèves étudiantes."); QC05 ("[Les professeurs] au département sont statistiquement plus mobilisés sur ces questions-là que l'ensemble des autres professeurs dans d'autres départements. Parce qu'il y a beaucoup de spécialistes en droit syndical, très militants.").

[387] QC10 ("Nos résolutions deviennent des outils de négociation [pour les étudiants].").

[388] On the 2012 movement, see generally e.g. Pierre-André Tremblay, Michel Roche & Sabrina Tremblay, eds, *Le printemps québécois : le mouvement étudiant de 2012* (Québec: Presses de l'université du Québec, 2015); Marc Simard, *Histoire du mouvement étudiant québécois 1956-2013 : des Trois Braves aux carrés rouges* (Québec: Presses de l'université Laval, 2013).

[389] E.g. QC09 ("[Pendant la grève] c'était très divisé entre les étudiants […] Certains étudiants voulaient avoir leurs cours parce qu'ils payaient pour."); QC03 ("On a eu deux grosses grèves, 2012 et 2015, […] il y avait parfois une vaste majorité d'étudiants qui étaient contre la grève."); QC01 ("Il y a plusieurs de nos étudiants qui historiquement se sont opposés à ce genre de grève."). See also Yessica Paola Valderrama Chavez, "L'UQAM va en grève" *Montréal Campus* (9 November 2011), online: <montrealcampus.ca/2011/11/09/luqam-va-en-greve/> (reporting 97% of support at the law and political science general assembly for general unlimited strike during Winter 2012); but see QC03 (quote accompanying *supra* note 377 indicating that students opposed to strikes often do not participate in such general assemblies).

[390] QC03 (also affirming: "[J'ai trouvé les étudiants] globalement modérés autant d'un côté que de l'autre, assez respectueux de la position des autres, malgré les clashs et les différences qu'il pouvait exister.").

[391] But see QC01 ("Pendant la grève étudiante quand on voyait nos étudiants se faire arrêter […] recevoir des fusées fumigènes dans l'œil, se faire crever l'œil, se faire blesser, c'est sûr que là ça vient en contradiction avec nos valeurs.").

their institution's distinct mission,[392] sometimes even earning national recognition for their engagement.[393] Any robust assessment of the students' level of adhesion to the mission would require an extensive inquiry outside of the scope and methodology of the present study. All we can conclude here is that faculty members perceived that their students often attached different meanings to legal education and the mission of the institution than those that faculty members themselves entertain. The political orientations within the student body seem more diverse than those of the Faculty,[394] and students' professional aspirations are frequently at odds with those embedded in the Faculty's transformative mission as defined and experienced by their professors, in part due to purposeful policies designed to fulfill the institution's mission and make legal education accessible to a larger range of students.

Other elements of DSJ UQAM's institutional culture create obstacles to the realization of its self-defined mission. As we have seen, changes in expectations for professors regarding their research activities, with the new emphasis on the pursuit of funding grants at the expense of more time and resource-intensive research-action, means that pursuit of research activities that DSJ UQAM deem important and most aligned with its values may be constrained. [395] The collegial decision-making structure

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[392] QC03 ("J'ose croire que nos étudiants 'achètent' le programme. C'est ce qui semble ressortir du processus d'auto-évaluation. Ils ne sont pas d'accord avec tout le programme, il y a des choses à changer, ils ont des griefs sur certaines choses, mais par ailleurs ce que je comprends, c'est que la mission du département, il y a un niveau d'adhésion assez important chez les étudiants. »); see also QC10 (« Je pense qu'il y a encore des étudiants et des étudiantes qui choisissent sciences juridiques à cause de sa spécificité. Il y en a d'autres qui veulent aller en droit et ils sont prêts à aller n'importe où où ils vont être acceptés, mais il y a encore une proportion assez intéressante, assez importante, je ne pourrais pas la quantifier — en tout cas dans mes cours c'est à peu près dans les mêmes proportions que dans les dix-quinze dernières années je dirais, qui ont choisi sciences juridiques spécifiquement pour ça."), but see QC08 (quote accompanying *supra* note 372).

[393] See e.g. QC09 ("L'UQAM est reconnue [au sein de l'organisation nationale de Pro Bono Students Canada] comme étant l'une des universités [avec] les étudiants [les] plus mobilisés et plus militants.").

[394] See e.g. QC09 ("Je dirais qu'il y a des étudiants plus militants, mais il y en a aussi qui ont un profil plus conservateur.").

[395] QC01 ("La job de prof a pas mal changé dans les dernières années. Plus de pression à la publication, beaucoup plus de tâches administratives, beaucoup moins de soutien, ce qui fait en sorte que même pour quelqu'un comme moi qui ai milité quand j'étais étudiant, j'arrive à la fin de ma semaine et je n'ai plus de temps de faire ce genre de militantisme là, qui est du militantisme politique, social, communautaire, qui était central à la mission que se donne le département depuis sa fondation. Il y a encore des gens qui militent."); see also QC05 (quote accompanying *supra* note 367).

and the allocation of teaching duties among faculty members, leaving a large part of the undergraduate curriculum to be taught by external instructors (often less committed to the program's aspirations than faculty members) is another example that we will examine further in a later chapter.[396] These situations show that while a law Faculty may define and nurture a specific mission, it will face obstacles from within as well as outside of the institution toward its fulfilment. This speaks to the complexity of institutional cultures, even as its constitutive parts may seem to form a coherent web of significances.

3. UAlberta Law: Legal Education as Foundational Preparation for Professional Practice

Let us now turn to the meanings associated with legal education at UAlberta Law in terms of its mission. We will see that it stands in sharp contrast with DSJ UQAM's, regarding both the importance and the significance of the mission in this Faculty's institutional culture. We can start in the same place as for DSJ UQAM, with the Faculty's own short description on its website:

> UAlberta Law is a leading global institution of legal education and research and one of Canada's most prestigious law schools. Located in Edmonton, Alberta, Canada, it has been at the forefront of legal scholarship in Canada for more than 100 years, fostering generations of thought leaders. Our Faculty is at the forefront of legal research and scholarship in Canada, and our students are among some of the country's brightest learners.[397]

This paragraph emphasizes leadership, prestige, excellence, but leaves implicit any orientation as to the aspirations of the law Faculty and the meanings it attaches to the type of legal education it provides. This silence and the preference given to situating the institution vis-à-vis competitors in generic terms of excellence ("leading", "prestigious", "forefront") suggests that the Faculty relies on traditional understandings of what legal education means and what it is for, rather than offering a distinctive,

[396] See Chapter 3, Section 4.1, *below*.
[397] UAlberta Law, "About", online: <https://www.ualberta.ca/law/about>.

transformative approach like DSJ UQAM. In short, UAlberta Law indicates that it strives to excel at being a mainstream law Faculty.

We have to look elsewhere to gain a more detailed sense of how UAlberta Law defines its mission, and of the importance and significances it attaches to that mission. As in the two other case studies, I asked faculty members to discuss their institution's mission during interviews. I realized early on in my fieldwork that this exercise had a special ring for participants. I learned that the Faculty had recently engaged in a strategic planning process in which diverse stakeholders, including faculty members, discussed the institution's mission. Most participants evoked this process,[398] and I sometimes emphasized the distinction between it and my own research endeavour. A consequence of this coincidence is that the notion of a mission, and the need to articulate it, had been an explicit topic of conversation in the previous months among faculty members. This situation may have had the effect of 'preparing' participants to answer my questions on the topic, and of producing a more uniform discourse on this theme than would have been found a couple of years earlier.

To date, the outcomes of the strategic planning process for UAlberta Law have not been made public,[399] therefore they cannot be included in the present analysis. The Dean nonetheless summarized "a two and a half years process and a large document" in the following way:

> ABXX: I think what has come out of the process is a reaffirmation that the law school is at its heart extremely committed to both the academic mission, being an academic law school not just focused on job training, and focused equally on teaching our students well. And teaching our students well means not only that the students receive a top-notch foundation in the fundamentals of understanding the law, what it is, where to look it up, how to think, how to analyze, and how to write it, but also that the sense of professionalism and the responsibility and privilege that comes with being a lawyer infuses what students are actually getting as part of the

[398] AB02, AB03, AB04, AB06, AB08, AB10, AB11.

[399] Latest publicly available information: UAlberta Law, "Faculty of Law – Town Hall – Draft of Strategic Plan (Jan 25, 2017)" (31 January 2017), online (video): *Youtube* <https://youtu.be/EMVebG3jTCE>. As of 10 December 2019, no strategic plan or equivalent document had been made publicly available on UAlberta Law's website or on the UAlberta's webpage dedicated to Faculty and Unit Priorities (see UAlberta, "Faculty and Unit Priorities", *supra* note 291).

> experience… [t]he tag line that is being tossed around, not finalized yet, as part of communications, is that we want to ensure that people are aware of U of A law school as Western Canada's leading academic law school, with local impact, regional reach, and with national and international importance. And I think that tag line really captures a lot about who we are and what we do.[400]

These few sentences provide more substantive elements to assess the Faculty's perception of its own mission; they also include most of the ideas and language that other participants relied on when discussing this idea. In essence, a strategic plan aims to encapsulate potentially diverging views into a unifying mission statement. It does not provide much information on the internal debates and contradictions. Moreover, given the public character of the final document, and that the process is led by the unit leadership, it also presents the institution in the best possible light. For these reasons, even if available, the final strategic plan would only be one more resource to portray UAlberta Law here; it would not constitute a definitive definition. The Dean's words reproduced above nevertheless give us some indications. First, we can notice once again the absence of any language departing from the traditional and expected understanding of legal education and law Faculties or indicating an aspiration for important transformations. Second, the discourse emphasizes a duality: an academic approach, "top-notch foundation in the fundamentals of understanding the law," combined with a professional approach, "sense of professionalism and the responsibility and privilege that comes with being a lawyer." This duality is commonplace in discourses about legal education.[401] The professional component embraces a traditional definition of legal practice and careers, one infused with privilege and responsibility; the academic one emphasizes acquisition of legal knowledge. These two references differ from those observed at DSJ UQAM, where I analyzed an aspiration to challenge the power structure of the legal profession and foster a critique of legal rules and institutions.

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[400] ABXX (attributed with permission).

[401] See Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 226—35.

In the following, we will see that the faculty members' discourse about their institutional mission follows patterns similar to those identified above. First, we will explore the meanings attached to the Faculty's mission based on the traditional conception of legal education as preparation for professional legal practice (*section 3.1*). Second, we will examine in greater detail the meanings attached to such preparation, primarily based on knowledge and viewed as a foundation for future professional development; also highlighted is the recurrent use of the idea of "foundational" education in UAlberta Law's participants' discourse about their institution's mission (*section 3.2*). Then, we will analyze the absence of overt political orientation at the institutional level in connection with the legacy character of UAlberta Law in the landscape of university legal education in Alberta, two points in sharp contrast with the situation of DSJ UQAM set out above (*section 3.3*). Finally, we will shed some light on another cultural reference in the faculty members' discourse, that of balance between different components of legal education (*section 3.4*).

3.1 Traditional Mission

At UAlberta Law much like at DSJ UQAM, I observed the recurrence of certain words and ideas throughout the interviews on the themes of the mission. Most of them defined their institution's mission in similar terms:

> AB04: I see the U of A law school['s] primary role [as] providing foundational legal education to people who want to practice law or want to use their law degree for other purposes.[402]
>
> AB06: My sense is that I am part of […] an institution that is educating people for professional life.[403]
>
> R: *What is UAlberta Law's mission?*
> AB07: Produce [legal] professionals.[404]

[402] AB04.
[403] AB06.
[404] AB07.

> AB08: I would say the mission of the law school is […] to prepare our students for their professional careers in law.[405]

These few quotes illustrate that UAlberta Law participants consider the professional end of the education they propose to lie at the core of their institution's mission. A participant also described the institution's mission as providing the "necessary education for practice," in contrast with "humanities" taught in a Faculty of Arts;[406] another faculty member insisted that their "job" was to "produce lawyers, not scholars."[407] Whereas DSJ UQAM participants often distanced themselves from the idea of preparing students for professional life, at least in a traditional sense of law practice, their counterparts at UAlberta Law overwhelmingly embraced this idea.

Moreover, I observed a phenomenon similar to DSJ UQAM in that there is a certain porosity between defining an institutional mission and defining the institution itself. The following interview extract illustrates this: "The University of Alberta has for a very long time I think defined itself as a law school that prepares our students to practice law."[408] This speaks to the centrality of the aspirations and purposes of the institution, the role it aims to play in society, in its self-definition.

I also observed that participants perceived the foregoing definition of their mission as an enduring feature of the institution. This is apparent, for instance, in the following passage: "Traditionally, and I still think actually, in the present, the mission of the law school is to turn out competent lawyers."[409] The same participant continued with the following: "I think that the meaning of this modifier, 'competent,' has changed or is changing a bit, but not much."[410] Another participant echoed the same perception when

[405] AB08.
[406] AB01.
[407] AB05.
[408] AB08.
[409] AB11.
[410] AB11.

affirming that the mission had been "quite constant," and that "every administration may have [a] different focus, but [it is] minimal."[411]

However, we can not really characterize this feature as truly distinctive. Several participants confirmed the impression expressed above that UAlberta Law was conforming to traditional and widely shared conceptions of legal education. When asked what set UAlberta Law apart from other comparable institutions, a faculty member replied that most law schools are very much the same.[412] Another participant expressed the same idea as follows:

> AB06: [UAlberta Law] is as an institution of legal education. It seems to me that Canadian law schools are more alike than they are different, and that Canadian legal education is different from one institution to the next only at the margins and only in small ways. […] I think of the U of A as of being, in the main, in keeping with the tradition of Canadian legal education in its self-conception and its practices.[413]

There was no negative judgment attached to these statements in either interview. Other participants pointed to distinguishing characteristics,[414] including one who affirmed that "[UAlberta Law's] real focus on preparing lawyers for practice" set it apart from "other law schools where there is more of a focus on legal education as an academic discipline and preparing people either for academic or non-legal careers."[415] However, while this focus may distinguish this institution from some others, such as DSJ UQAM, it is not a unique feature, and the same participants would undoubtedly agree that UAlberta Law does not aim to do something not very different from most other law Faculties in Canada. They define

[411] AB01.
[412] AB07 (also affirming that UAlberta Law might have been more distinctive in the past, but that even this idea could be a mere perception).
[413] AB06; see also AB01 (affirming that "every law school" is similar as "[they all teach basically the same [things]," even if "emphasis may differ.").
[414] E.g. AB03 ("The largest thing and the most underestimated thing here is Students Legal Services […] I would have to say, our great advantage, […] is our physical location. I don't know if you have been to UBC or [U]Calgary, but they are stuck out miles away from downtown, miles away from where people live. And we are right in the middle of the city. And I think that gives the law school a different feel.").
[415] AB02.

their institution and its mission largely in keeping with the traditional perception of legal education in Canada, i.e. as a form of preparation for legal practice.

Before explaining the role that UAlberta Law aims to play in such preparation, we can say a few words about the kind of practice that is envisioned as the outcome of the education UAlberta Law aspires to offer.

The institutional focus on preparation for legal practice targets primarily the local market. Due to language and legal tradition, UAlberta Law graduates could potentially seek legal employment across Canada (except Quebec) or even beyond. Nonetheless, UAlberta Law remains primarily a regional law Faculty. A participant affirmed that in the 1970s, "it was largely a provincial, somewhat parochial law school."[416] Since then, they noticed the hiring of faculty members who studied or worked outside of Alberta throughout the years and argued that it has provided a "bigger worldview" and "greater [intellectual] diversity" in the Faculty.[417] However, other participants insisted that "U of A has to acknowledge that it is a regional Faculty. While we have some international exchanges and international initiatives, and all that sort of things, what we are best at is being a top-notch law school in Western Canada."[418] The Dean himself affirmed that his institution "is still very much a regional school with national presence,"[419] and cited the large law firms in Calgary as the main competitive ground for their graduates.[420]

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[416] AB03.
[417] AB03.
[418] AB04.
[419] ABXX (attributed with permission; see also ibid, quote accompanying *supra* note 400).
[420] ABXX (attributed with permission; "There is greater competition than ever before for placing our graduates […]. [UAlberta Law] very much is still a regional school with national presence, but given what's happened in the Calgary market place, our students and our faculty are now competing really nationally against other schools that are placing their students in Calgary […]. We can no longer count on that kind of primacy of place. The other thing that is important in that context, [is that] the University of Calgary law school has gone very competitive, and has made great strides and inroads, to their credit, with the Calgary legal firms market. That used to be very much U of A's domain, and U of C has made significant inroads into, particularly the large law firms of Calgary.").

Two participants spoked about the dissonance that existed between the Faculty's local focus and the University's international ambitions under the previous leadership:[421]

> AB10: I think the other thing that is interesting is that the University itself has gone through, with a new president and a new provost, a rethinking of its direction: […] the former President's focus was very much 'Top 20 by 2020,' so really playing on the world stage. The new President has taken a very different direction, one that is more inward or regional looking, and a new strategic plan for the university with something like 16 different priorities […] that are not as focused [on measures such as global rankings].[422]

> AB04: I think that there is currently more push to be international, more push to be experiential, and sometimes that push come from the university. A few years ago, the University President of the time […] wanted to put the University of Alberta among the top 20 universities by 2020. Which requires you to have a very international sort of focus to what you are doing, and that sort of mandate was advanced for all the Faculties, so everybody started thinking in those terms. Now there is less so that sort of an idea from the central administration, which I think is better for us because I think we are more comfortable focusing on what we do well.[423]

These contributions confirm that the professional outcomes that UAlberta Law imagines for its graduates are essentially regional.

Besides the geography, participants' discourse also revealed the type of professional practice that they conceived of themselves as preparing students for. Several participants made a point of including a range of practices, for instance: "it may be a big firm downtown or solo practice in Red Deer"[424] and "[the] legal work [for which we prepare students] takes place in government or small firms, large firms, business, and sometimes just other professions."[425] We can see a similar discourse at play across the landscape of Canadian legal education, trying to include so-called alternative legal careers in the horizons presented to

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[421] See also Julian Webb, "Post-Fordism and the Reformation of Liberal Legal Education" in Cownie, *Global Issues, Local Questions, supra* note 237 at 230 ("there may be dissonance between a university's regional or national definition of its mission and the international aspirations of (some of) its scholarship").
[422] AB10.
[423] AB04.
[424] AB01.
[425] AB06 (adding: "I saw one of my former students the other day becoming a librarian. And I don't think that this means that her legal education was a failure, I suspect that what she learnt in the course of law school will be immensely valuable to her in her professional life as a librarian because, again, my understanding of what a school does is that it's about teaching ways of thinking about and solving problems as much as it is about learning the specific mechanics of how to function as a lawyer.").

students. One interviewee affirmed: “it does not necessarily have to be private practice, it could be government practice, it could be something unrelated.”[426] The beginning of this statement reveals that one kind of legal careers remains the default to which new possibilities can be added.

The traditionally most valued practice settings, such as large business firms and litigation lawyering, remain central in the professional outcomes that UAlberta Law considers for its graduates. The following extract is illustrative: “U of A has an incredibly strong pride in its traditions of populating elite firms, the judiciary, and really all walks of leadership in Alberta and Western Canada.”[427] Even a participant with a professional background that did not conform to the standards of the profession and teaching mostly “non-core courses, and non-doctrine courses” affirmed that for “the bulk of [the students]”, the aim was to enrich what they will do “in practice […] and especially in litigation practice, [for instance] how do I present [statistical evidence] better to my clients, to my superiors or directing lawyers.”[428] This demonstrates that UAlberta Law’s mission primarily consists in preparing students for traditional legal careers in the region and according to what is generally valued by the profession, even if this focus is not exclusive of other possibilities.

3.2 Foundational Knowledge-Based Education

As we have seen, UAlberta Law’s self-definition of its mission relies on traditional conceptions of legal education, and what it aims to prepare its students for. Let us now turn to a more precise examination of the role UAlberta Law aspires to play in such preparation.

Many UAlberta Law participants used similar language, centred around the idea of “foundational” education. For instance:

[426] AB08.
[427] AB10.
[428] ABXX.

> AB08: We give [students] the *foundational* doctrinal understanding that we think young lawyers should have, or would benefit from having when they go into legal practice, and that that sort of *foundational* understanding is valued as part of what we do in the law school.[429]

Similar language was echoed in other interviews.[430] Foundations here means a set of building blocks, all of which are necessary, but that, even together, are not sufficient to achieve the end goal. The first part of this definition relies on the idea that law is composed of discrete areas, and that a jurist must learn enough in each area to gain a sufficient understanding of the whole picture. We will explore the implications of this approach in the next section. The second part of the above definition suggests that a law degree can only provide the foundations for legal practice and that students will necessarily complete their training once they leave the university, before becoming full professionals. Most notably, the period of articles serves this purpose. A participant summarized these two aspects when he spoke about "the minimum you need to have to go out there" in relation to the education UAlberta Law aims to provide.[431] We can see once again the intrinsic connection UAlberta Law draws between the legal education it offers and professional legal practice.

Chapter 4 will explore in greater detail the meanings associated with the curriculum;[432] we nonetheless need to venture slightly into this territory here to analyze further what UAlberta Law participants considered to be foundational in legal education. The following two extracts are indicative:

> AB02; When people are hiring U of A graduates they know that they are getting somebody who has studied […] all [the] foundational courses that are necessary for practice.[433]

> AB06: Traditionally the U of A has had a larger number of required courses than other institutions […] I suppose that it is one of the signals that is being sent about core foundational competencies in legal education that the U of A remains attached to.[434]

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[429] AB08 (emphasis added).
[430] See e.g. AB04, *supra* note 402 ("foundational legal education"), and ABXX (quote accompanying *supra* note 400: "the students receive a top-notch foundation in the fundamentals of understanding the law").
[431] AB01.
[432] See Chapter 4, Section 2.2, *below*.
[433] AB02.
[434] AB06 (also expressing a personal preference for "a more open-ended and self-directed approach to legal education.").

As alluded to in the previous paragraph, the idea of foundations implies a set of building blocks, each necessary and complementary to all others in order for the building to stand solid. The building blocks appear to be the courses required in the J.D. curriculum.[435] A participant proposed an analogy with medicine to illustrate this point: "I don't think you go through medical school, and basically skip a physiology class, and say 'I'm sorry, I am a doctor, but I really don't have any background in this particular area of medicine'; it just strikes me as odd."[436]

UAlberta Law's curricular structure, based on this sense of foundational courses, is experienced as both an enduring and distinctive characteristic of UAlberta Law.[437] Although the Faculty recently decided to drop Conflict of Laws from the list of required courses,[438] the general framework remains the same:

> AB03: We can argue about whether subject A should be in or out, that's fine, and I think you should not be overly prescriptive, but I defy anyone to tell me what is wrong with the statement that every lawyer who graduates from law school should have taken administrative law, corporations, one or two others we can argue about [in addition to first-year courses].[439]

The courses composing UAlberta Law correspond to the traditional curricular *découpage* in common law education;[440] that is, they are primarily organized around doctrinal knowledge categories.[441] While the

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[435] See also AB01; AB03 ("what we see as the appropriate core of the law school curriculum [has not changed substantially since the 1970s]."); AB06; AB07; AB10.
[436] AB03.
[437] See e.g. AB08 ("Certainly you would have heard that the U of A had mandatory courses [in upper years] at a time when other law schools were not doing that […] It is historically unique in the sense that U of A had more mandatory courses than I think probably every other law school in Canada, which relates back to my first point which is that this law school felt that those professional courses were essential really for any graduating lawyer to go out and practice law."); AB06, supra note 434 (the participant's contestation of the policy and underlying approach implies a recognition of its centrality, see e.g. Sewell, *supra* note 121 at 57). Note that AB02 AB06, AB07, AB08 affirmed that this feature was less distinctive of their law Faculty now than it had been in the past as other law Faculties have returned to more prescriptive curricula, see also Chapter 4, Section 2.2, *below,* for more on this topic.
[438] AB03; AB11.
[439] AB03.
[440] See e.g. Macdonald, "Still 'Law' and Still 'Learning'?" *supra* note 5 at 15 (lamenting that legal pedagogy in all Canadian law faculties be "still organized around the same subject headings – contracts, property, torts, etc. – that reflect the same doctrinal *découpage* as always."). See also Chapter 4, Section 2.3, *below*.
[441] "Legal Research and Writing" is the exception that proves the rule, demonstrating by contrast that this is not the primary focus on any other course.

exact substantive content of courses and their methods of delivery are not set in stone or indicated by course titles alone,[442] their place in the curriculum relies on long-established common understanding of distinct categories of legal knowledge. This does not mean that the acquisition of skills is not considered important and part of the mission at UAlberta Law,[443] but it take the backseat in the design and perception of UAlberta Law's mission. One participant went as far as expressing it as follows: "[The mission of the institution is focused on] standardized teaching [of] doctrinal knowledge to students. […] We do not teach skills here. We do a little bit, but only on the periphery."[444] In this regard as in others, UAlberta is perceived as in keeping with most other law Faculties in Canada.[445]

The series of four keywords another participant offered to describe legal education at UAlberta Law constitutes an accurate summary of the above points: "Knowledge-based. Practice-oriented. Well-rounded. Regional-based."[446] This combination encompasses the components of UAlberta Law's sense of mission that we have analyzed so far and highlights once again the tendency to identify the institution by its sense of mission.

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[442] See e.g. Donald H Clark, "Core vs Elective Courses: Law School Experience Outside of Quebec" in Matas & McCawley, *supra* note 53 at 218—19 (illustrating how different commentators relied on the same course titles to refer to different contents).

[443] See e.g. ABXX (quote accompanying *supra* note 400: including skills like legal research, legal thinking, legal writing alongside knowledge of the legal rules in the "fundamentals of understanding the law"), AB06 (affirming that "[Dean Wilbur Bowker's] vision of legal education in the 1950s, [was that] legal education should balance public and private law [and incorporate] both learning to think like a lawyer, but also skills associated with professional practice: writing skills, speaking skills, analytic skills, drafting skills" and that "the law school that we exist in today would be very familiar to Wilbur Bowker.")

[444] ABXX.

[445] See e.g. ABXX ("I think the U of A as an as traditional way of educating as there is. […] This school generally prides itself on providing a basic doctrinal knowledge to lawyers, and that's mainly what it does. […] It is incredibly traditional, it really does not differ much from the way things were done 25 years ago. […] Aside from individual efforts, there have been no institutional culture of changing education. And from my experience, that's pretty true in all Canadian law schools, I look forward to what you come up with, but I haven't looked at UQAM and Moncton, but most Canadian law schools are still teaching in a very traditional way, or struggling to break out from what we have been doing for a 100 years."); see also AB07 (quote accompanying *supra* note 412), AB06 (quote accompanying *supra* note 413).

[446] AB04.

3.3 Apartisan Mission for a Legacy Faculty

UAlberta Law's reliance on traditional references and meanings for legal education in defining its mission and its identity contrasts with the emphasis on a transformative approach at DSJ UQAM. A further point of distinction between the two lies in the fact that UAlberta Law does not pursue overtly political aspirations.

We can look at one of the most politically charged issues that animated the Canadian legal education community in the last decade to illustrate this point. A wide range of actors, institutional and individual, expressed themselves publicly in the past years about whether the evangelical TWU could open a law Faculty while prohibiting its students and staff to engage in "sexual intimacy that violates the sacredness of marriage between a man and a woman."[447] For instance, as early as 2012, the Canadian Council of Law Deans expressed its concerns regarding unlawful discrimination on the basis of sexual orientation in a letter to the FLSC.[448] The UAlberta Law Dean, however, affirmed that his institution was "one of the few law schools that has not taken an official position as a law school on [this matter]."[449] A faculty member indicated that there were colleagues on "both sides of the debate," and that the institution itself, "as is not policy or politics driven," "did not get into that."[450]

This does not mean that the discussion did not reach UAlberta Law, or that individuals did not take a position on the issue. A participant told me that "individual faculty members have signed on letters of objection or support, depending on their objective."[451] A large group of students had also weighed in

[447] See TWU "Community Covenant" *supra* note 207 and accompanying text.
[448] See Letter from CCLD to FLSC regarding Trinity Western University School of Law Proposal (20 November 2012), online: *Federation of Law Societies of Canada* <https://flsc.ca/law-schools/submissions-to-the-federation-regarding-the-proposed-accreditation-of-trinity-western-universitys-law-program/>.
[449] ABXX (attributed with permission).
[450] AB01.
[451] AB10.

with a collective letter to the FLSC in 2013.[452] Lastly, during my fieldwork, a student group organized a debate on the legal case a few weeks before the Supreme Court hearings.[453]

While several members of the Faculty community may be politically engaged, neither the institution itself, through official statements, or professors collectively take a public stand on political issues.[454] This illustrates Whettn's idea that "organizations are more than social collectives",[455] i.e. more than the sum of their individual members. This is true beyond the TWU debate. A participant affirmed that taking positions on political or social issues was "left to individual professors," adding that faculty members were "pretty diverse in that respect."[456] Another offered the following description and explanation:

> AB11: There are ways in which different [faculty members] have engaged directly in contemporary legal, or legal-political or legal-social issues. But not in a way that is coherent for the faculty, and not in a way that there is a shared agreement in the faculty on a position on this, or in a way that the faculty really engages in discussion about this. […] I think one of the ways in which we, as a larger group, try to get along, is to limit in some ways the ways in which we think coherently as a group, or are capable of thinking coherently as a group, in reaction to broader social or political things. […] When the [provincial] government changed three years ago, you know there were some people here who thought that was great, and some people who were less certain about it, […] but there wasn't a sense that this was a point of where we should all be having a discussion. And I think that is a general trend, or a […] general practice: we don't step out in those sorts of moments. […] That's partly [because] there is also a sense of a reaction of what we imagine American legal education culture is, so to not create this sort of intra-faculty battles […] that are associated with CLS and critical race theory, or the Federalist Society, and their attempts to make

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[452] A group of approximately one hundred UAlberta Law J.D. students wrote to FLSC opposing the accreditation of TWU law program on grounds similar to that of CCLD, see Letter from UAlberta Law – OUTlaw to regarding Trinity Western University School of Law Proposal (18 March 2013), online: *Federation of Law Societies of Canada* <https://flsc.ca/law-schools/submissions-to-the-federation-regarding-the-proposed-accreditation-of-trinity-western-universitys-law-program/>.

[453] The event took place on 26 October 2017, and UAlberta Law posted the video of the event on its official Youtube channel, see UAlberta Law, "Runnymede Society: Diversity or Discrimination? The Trinity Western University Law School Debate" (30 October 2017), online (video): *Youtube* <https://youtu.be/yxkQbU09lh4>.

[454] Compare e.g. QC10 (explaining that DSJ UQAM professors routinely adopt collective statements on political issues : "On va […] prendre des résolutions [en assmemblée départementale] très souvent [pour] dénoncer toutes sortes d'affaires, je parle en même temps de l'installation de caméras de surveillance, […] l'invasion américaine en Irak, […] la liberté d'expression dans l'université, […] Je pense que oui on a souvent des discussions d'enjeux politiques extérieure qui arrivent en assemblée départementale.") such as strikes, polic movements; see also UWindsor Law's statement on the Stanley trial verdict, *infra* note 1179 and accompanying text.

[455] Whetten, *supra* note 173 at 221 (also distinguishing "collective identity" from "organizational identity).

[456] AB04 (also expressing disagreement at the possibility that teachers may try to convey their political worldview into their teaching).

> themselves part of the institutions. […] I think there has been a general wariness of being in a situation where that sort of political dispute then fractures us. That it's unnecessary to do so. It's not that we don't have radically different positions on some of these things, I know that we do, but that doesn't mean that we have to, that it becomes part of our internal debates.[457]

Two other faculty members echoed the sentiment that the Faculty kept its distance with controversial movements. The first affirmed that UAlberta Law had not known the kind of "civil wars" that had occurred at Queen's and Osgoode Hall "in the [19]80s, 90s,"[458] while the second shared his belief that the Faculty had not collectively embraced "controversial waves" such as Law and Economics, Law and Society, described as "the most visibly productive currents of thought," and Critical Legal Studies even though "everyone feels it's always a good idea for a Faculty to have two or three people who are quite specialists in that."[459] Lastly, another participant opined that there was no set of political principles informing today's institutional values, as opposed to the historical emphasis on public service at Dalhousie and social justice at UWindsor.[460]

While it is not the aim of the present study to explain such phenomena, we can nonetheless formulate a hypothesis that future research may confirm or challenge. The potential explanatory factors that I suggest here are the following: UAlberta Law's legacy status and the divided political attitudes among the constituencies it serves.

From the first half of its history, i.e. from the first decade of the 20th century to the mid-1970s, UAlberta was the only institution of legal education in Alberta; after the creation of its counterpart at the University of Calgary, it has remained one of only two in the province, and the only one in the provincial capital region. This makes of UAlberta Law Alberta's 'legacy law school.' Since its establishment, UCalgary Law's part has been that of the disruptor nurturing a discourse of "innovation" purposefully signalling a

[457] AB11.
[458] AB01.
[459] AB03.
[460] AB05.

form of rupture with traditional approaches.[461] We can see a similar situation for DSJ UQAM as it came to life at a time when two other legacy Faculties of law had been operating in Montreal for at least a century. At UAlberta Law, the Dean alluded to such legacy status when referring to the "primacy of place" his institution had once enjoyed in the Calgary legal market.[462]

Moreover, commentators often characterize Alberta's dominant political culture in terms of "individualistic, populist, anti-statist and pro-market" values and the "long-running dominance of political parties that emphasize[d] an anti-statist sentiment [and their] decidedly anti-socialist approach to […] policies."[463] Behind this overall picture, political scientists nonetheless remind us that the province's capital, Edmonton, usually votes for opposition parties,[464] and that there are significant differences in cultural and political values between urban and rural regions in Alberta.[465] UAlberta Law's catchment area, in terms of where most students and faculty come from, encompasses these different constituencies. This situation could explain the refusal to take political sides at the institutional level, in order to keep serving equally the communities featuring opposed political values across the province.

We can, therefore, hypothesize that the presence of competition and the diversity of political attitudes among the public that a Faculty aims to serve matter in shaping a generalist culture of legal education or the preference for a niche positioning. The same two factors, the institution's legacy status and its commitment to serving the diversity of Albertan constituencies, could also explain the generalist approach to legal education that we explored above. Indeed, while Faculties such as DSJ UQAM and

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[461] See e.g. John P S McLaren, "Legal Education at Calgary: Blending Progress and Tradition" (1985) 9 Dal LJ 421; Margaret E Hughes "Law Faculty Developments at Calgary, 1984-1989" (1990) 13:2 Dal LJ 778; UCalgary Law, *Strategic Plan 2017-2022*, online: <https://law.ucalgary.ca/about/strategic-plan> (identifying Innovation as one of three strategic priorities) [UCalgary Law, *Strategic Plan*].

[462] ABXX (attributed with permission; see quote in *supra* note 420).

[463] Clark Banack, *God's Province Evangelical Christianity, Political Thought, and Conservatism in Alberta* (Montreal & Kingston: McGill-Queen's University Press, 2016) at 29, 3—4.

[464] David Taras, "Alberta in 2004" in Michael Payne, Donald Wetherell & Catherine Cavanaugh, eds, *Alberta Formed Alberta Transformed*, v 2 (Edmonton: University of Alberta Press, 2006) 748 at 752.

[465] See e.g. Roger Epp, "1996: Two Albertas Rural and Urban Trajectories" in Payne, Wetherell & Cavanaugh, *supra* note 464, 727.

UCalgary Law nurtured their expertise in specialized areas from their inception, such as labour and employment law and international law for the former and natural resources law for the latter,[466] UAlberta Law has refused specialization of this kind, seeking to maintain a balance between different interests and perspectives, in keeping with the mainstream approach to legal education.[467]

Whether or not this hypothesis can be confirmed, I did find that interviews with faculty members demonstrated the seemingly apolitical character of the institution's self-definition and that of its mission. However, we should keep in mind that maintaining a balance between opposed political points of view and a broad appeal across different-minded communities is a sign of a certain understanding of the roles of universities and lawyers in society. Several participants referred to a notion of the public good in their responses about UAlberta Law's mission. Two of them explicitly used the expression "public good" in relation to research at UAlberta Law, picking up the language of the University of Alberta's *Strategic Plan*.[468] Two others mobilized a similar idea in relation to teaching specifically, for instance: "to prepare our students for their professional careers in law [this way]… is partly I think an obligation that we owe to the public, I think that is an obligation we owe to the profession, and that is an obligation we owe to our students."[469] This discourse echoes that of the Dean speaking of "the responsibility and privilege that comes with being a lawyer."[470]

The absence of an explicit political positioning for the institution, of the type observed at DSJ UQAM, nonetheless signals a certain approach to the role of a law Faculty in society and how it purports

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[466] See e.g. McLaren, *supra* note 461 at 421; UCalgary Law, *Strategic Plan*, *supra* note 461 (identifying Energy as one of three strategic priorities).

[467] See AB06 ("[The] balance [between teaching public and private law as well as legal competencies] got set in motion in [the] post-war period, and it's one that still dominates Canadian legal education today. […] What is notable in UAlberta's legal education […] is that you can actually find a moment in time when this model gets built [i.e. Wilbur Bowker's deanship]. It does not do it in isolation, it does it as a part of [a] larger movement in North American legal education. Law schools are thinking the same things and undergoing the same transitions across North America during that period."); see also *ibid* (quote accompanying *infra* note 480).

[468] See AB02 (quote accompanying *infra* note 475); AB06 (quote accompanying *infra* note 476).

[469] AB08.

[470] ABXX (attributed with permission; quote accompanying *supra* note 400).

to act on it. Without undermining the long-standing importance of law reform research at this Faculty[471] nor the diversity of views, teaching and research paradigms, and political attitudes found across the Faculty, we can characterize its institutional mission as aiming to accompany rather than lead changes in society, aspiring to adapt legal education to best serve a society in constant evolution rather than be a vanguard actor of such social transformations.

3.4 Balance, a Central & Contested Reference

We have seen above that the idea of a balance is a recurrent reference in faculty members' discourse about their institution and its mission, in keeping with traditional conceptions of legal education. In a universe where certain dichotomies such as theory/practice and academic knowledge/practical skills permeate the discourse and thinking about legal education,[472] a central feature of the discourse at UAlberta Law highlighted the aspiration to strike proper balance between the supposedly opposed elements. It is a constitutive element of UAlberta Law's culture. What such balance is, whether it is achieved, and sometimes whether balance is the right approach is nonetheless a matter of contestation within the Faculty.

The above portrait might leave the impression of a very strong consensus among UAlberta Law participants as to the mission of their institution. While there is indeed wide adherence to the core idea of preparing students for legal careers, participants sometimes expressed diverging views as to some other aspects. Participants even disagreed as to whether there was a consensus within the Faculty on the mission. When asked about it, three participants affirmed there was consensus on the mission described

[471] See Chapter 3, Section 3.3, *below,* for more on this topic.

[472] See e.g. Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 226—35 (finding that it is "frequent for professors to speak about the tension between theory and practice, or to assert that either academic or professional goals ought to be prioritized" in discussions about "what a law professor's role is, or what the mission of a law school (or faculty) should be" at 226, and that "many professors do espouse an attitude that the academy and the profession, theory and practice, exist in opposition" at 233—34).

above, including two who stated that the consensus was stronger now than it had been in the past.[473] On the other hand, other participants expressed the opinion that there were disagreements within the Faculty as to the mission.[474] One of them offered the following take:

> AB02: I don't think that there is consensus on what the mission of the law school is. One mission is to prepare students for legal careers, and I think that most students who come here will tell you that this is what they are looking to do when they are done. But you know, as faculty member, forty percent of my time is supposed to go to teaching and forty percent is supposed to go to research. We have just come through with a strategic planning as a university that really emphasizes the— the name of the strategic plan is "for the public good", like how do you serve the community. When you look at the amount of public funding that is coming into a university like this, I think that we need to be very cognizant of how we serve the community. One way that we serve the community is by training good competent lawyers. One way we can serve the community is through doing research on topics that are important and where there is potentially not the capacity to carry that research out elsewhere. There is some research that will get done because there are clients out there […] who will pay lawyers to do that research; there is some research that either lawyers can't do because it requires a cross-disciplinary perspective, or that lawyers will never do because the sort of people who are impacted by those legal issues can't afford lawyers. And so, I think that is where there is a very important role for legal academics to step in.[475]

In this statement, the participant does not describe an internal debate as to UAlberta Law's mission but rather presents two ways that the Faculty can serve the public. The two options – training competent lawyers and doing research that would otherwise not be performed – are not inherently in opposition with each other. What seems to be implicit in this participant's statement is the idea that disagreements as to the mission would revolve around which aspect to emphasize, rather than choosing exclusively one and abandoning the other.

Another participant spoke about these two components in the following terms: "I think [our mission] goes back to a pretty standard answer about the goals of legal education, which is the

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[473] AB03 ("I would say there is a reasonable consensus about that. More consensus now than in the past"); AB07 ("No debates. Unanimity on most things […] More like minded now than in the past"); AB08 ("I think there is a wide consensus").
[474] E.g. AB04 (starting to answer my question about the institution's mission with the following: "Some people might disagree with this, but I see the U of A law school as […]").
[475] AB02.

preparation of students for professional life and research that will promote the public good."[476] The same later highlighted the potential conflict between these two missions, not coming from inherent inconsistency but rather priorities and allocation of resources: "if we decide that we are a school dedicated to teaching our students, to be ready, skills-ready for practicing, what does that mean about our capacity to focus our time and capital on research that may be, say, less relevant from that perspective?"[477] Despite this potential conflict, this faculty member described UAlberta Law as "an institution balanced between teaching and research."[478] Several other participants echoed this sentiment.[479]

We can see a similar pattern between this attempt to balance the two components of legal education, as described by participants, and the generalist character of the institution highlighted above. We can see this reflected in statements such as the following:

> AB06: There is no sense that […] the U of A [has] wanted to be […] a certain kind of school focusing on certain kind of issues to the exclusion of others […] or branded as a school that focuses on teaching to the exclusion of research, focuses on research at the exclusion of teaching. It hasn't done that. Instead, what has emerged, I think, is a really balanced culture, in which the U of A tries to be good in all of the aspects of legal education. Top-flight research, top-flight teaching, private law, public law, law and society, doctrinal analysis; I think it is playing in all of those venues and some of that I think is somewhat deliberate as an institutional culture, but some of it I think is just a byproduct of the independence that it extends to its faculty members.[480]

Another participant's statement in a similar vein highlights an additional dimension of this pursuit of balance: "We need to ensure that [we are] not only connected to the rest of the university and the academic mission of the university but that we are also very sensitive to what our various stakeholders

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[476] AB06.
[477] AB06.
[478] AB06 (continuing as follows: "which I think most Canadian law schools strive to be, to partake in the life of the university as a research institution, doing research on pressing social questions which, from the law school's perspective, engage issues of law and law and society. And paired with that is the notion of professional legal training, and so the fact that the graduates of this institution will be moving on to professional practice.")
[479] E.g. AB07 (When describing traits of UAlberta Law that are comparable to what exists in other law Faculties: "[We have] good teachers, [who] care about teaching. [We also have] good publications.").
[480] AB06.

and constituencies are looking for from us in terms of preparing the next generation of lawyers."[481] This discourse echoes the perennial debates opposing theory and practice, professional and academic education, and the University to the Law Society.

However, participants did not all agree that UAlberta Law strikes the right balance between such elements. One of them, in particular, affirmed that "in every sense of the institution, from top to bottom, research trumps all,"[482] also adding the following: "I think we are imbalanced; I think we have gone way too far down the research road. I think research is really important, but I think teaching is also important."[483] This judgment was not limited to UAlberta Law but extended equally to all Canadian law Faculties.[484] The same argued that "the law school has to have a mission that it makes education our priority, and then actually does it." This participant thus not only disagreed with colleagues who perceived a certain balance between research and teaching at UAlberta Law, but more radically did not think balance was the right approach to legal education. The same participant also acknowledged that this position was marginal within the Faculty.

At least another participant recognized that the emphasis on one aspect or the other was a source of debate among faculty members.[485] In addition, we can also note that a few participants expressed dissatisfaction with the level of support or resources at their disposal to improve their teaching.[486] Lastly, even within the realm of teaching, we have seen above that disagreements existed as to the balance to

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[481] AB10 (adding "That's not always an easy conversation.").
[482] ABXX.
[483] ABXX.
[484] ABXX ("That is true at every law school I have ever been at. Everyone. Not just here. And I have been in a lot. Research always trumps all"; "We talk teaching, if you read about teaching you will see that everybody talks teaching, you go look at every law school website, they are all the best teaching law schools in the country, everyone. And in my view they are all horrible. I can't say all, I haven't been to all. But I am assuming that they are all horrible."); see also AB09 (quote accompanying *supra* note 445).
[485] See e.g. AB02 ("One tension is 'should we hire people who wanna be great researchers versus people who wanna be great teachers?'").
[486] See e.g. Chapter 5, Section 5, *below,* regarding integration of Indigenous issues and perspective in participants' teaching.

find between knowledge and skills-based education.[487] One participant showed how these two elements are in opposition in debates within the Faculty:

> AB07: And that's part of the debate: […] to what extent is professional training, skills training, practice oriented training, appropriately undertaken in the law schools, to what extent is that the responsibility of the Law Societies, the organizations that work with the Law Societies, like the Legal Education Society of Alberta. I do think that the law schools have a role, in some respect, in terms of certainly the analytical skills of being a lawyer, the skills of problem solving, the skills of finding resources, using resources effectively, writing effectively as well. I mean those are all skills that I think are part of the practice. I personally am a bit skeptical about integration too heavily of sort of the mechanical skills of legal practice into law school: so you know, drafting pleadings, drafting contracts. I am actually not persuaded that the law schools are the best able to do that, and I think that those are, these kinds of day to day experiential skills are best taught in the articling process. So while I do think again that we have to adapt in some ways, as I have, as I mentioned, even things like having students write an opinion letter for a client, now that is something I wouldn't have done five years ago, so I think that we can structure our learning around some of those sort of skills, but I remain passionately of the view that we should not sacrifice the teaching of foundational doctrine to an attempt to teach what we might call skills, practice skills. I actually think that law school is the best opportunity lawyers are ever going to have to establish a grounded understanding of the law, and I think that it would be a terrible thing if we abandoned that.[488]

Sandomierksi had already established how the dichotomies on which this participant relies, and the emerging aspiration to integrate rather oppose these elements, permeate the discourse of law professors.[489] This is also at play at UAlberta Law and we see that participants entertained differing views in this regard.

Sewell outlined how cultures could be contested from within and retain coherence, as dissidents' contestation of dominant meanings in themselves imply a recognition of their centrality.[490] Legrand reminded us that "[m]eanings are not reducible to common meanings" and that contestation illustrates

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[487] See e.g. AB06 (quote in *supra* note 443); ABXX (quote accompanying *supra* note 444, also adding: "I think that you can merge skills and theoretical knowledge […] It's not like you give up your academic mission, you keep closely in mind what the students need as outcomes, and maybe you shape the course as the curriculum in the ways that provide the ability to give a little bit of all those things.").
[488] AB07.
[489] See Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 226—35.
[490] Sewell, *supra* note 121 at 54, 56—57.

the power of the norm.[491] The dissents and disagreements about UAlberta Law's mission presented here do not negate but confirm the dominance of the cultural references previously exposed.

In conclusion, UAlberta Law's participants' discourse about the mission of their institution (often pervaded by discourse about the institution itself) relies on traditional conceptions of legal education as knowledge-based preparation for professional practice, presents itself as apolitical and seeks a balance between the usual components of legal education (e.g. knowledge and skills, public and private law, etc). It seems that faculty members bestow lesser importance on the idea of an institutional mission than their colleagues at DSJ UQAM and that it is a less central cultural reference for them; in addition, the meanings attached to such a mission are more diffuse and encompass greater heterogeneity that what I observed at DSJ UQAM. The greater proximity with mainstream perceptions of legal education in Canada probably alleviates the compulsion to define more precisely the underlying notions and values.

This comparative examination of the importance and significances that faculty members at DSJ UQAM and UAlberta Law associate with their institution's mission shows a sharp contrast and even an impression of incommensurability between the missions of these two Faculties. As we pivot to analyzing Droit UMoncton's mission, we will find yet a third approach where traditional and transformative conceptions of legal education co-exist and mutually support each other. We will see once more the necessity to analyze the surrounding educational, political and social environment to understand fully a law Faculty's self-defined aspirations.

4. Droit UMoncton: Legal Education at the Service of a Minority-Language Community

[491] Legrand, *supra* note 145 at 382 (also affirming: "It is essential to account for a measure of heterology within a culture at any particular time, since every culture is tested and contested by individuals who inhabit it and whom it inhabits, as a function of the way in which power manifests itself.").

As with DSJ UQAM and UAlberta Law, our exploration of Droit UMoncton's sense of mission begins with what the institution offers to visitors to its website:

> La Faculté de droit a été fondée en 1978 pour répondre à un besoin pressant, celui d'assurer aux francophones du Canada une formation en common law entièrement en langue française. […] La Faculté de droit est d'abord un établissement d'enseignement de la common law en français. C'est là sa mission.[492]

The same document refers to the students as "des intervenants dans le processus permanent de la réforme du droit et de la réforme sociale" as well as "futurs avocates et avocats."[493]

The Dean's word of welcome, also on the institution's website, is also informative:

> Au fil des années, la Faculté de droit de l'Université de Moncton s'est bâti une réputation enviable et s'est démarquée notamment par son enseignement de la common law en français. […] Tout en étant un établissement important dans le développement de l'Acadie – puisque s'y préparent de futurs avocates et avocats, des juges et des preneurs de décisions dans les domaines politique, économique et social, […] la Faculté de droit de l'Université de Moncton est un point de rencontre naturel pour les francophones et francophiles de toutes les régions du monde.[494]

The Dean also adds "la promotion et la défense de la culture des communautés acadienne et francophone" among the characteristics of his Faculty.[495]

Both documents start by mentioning an element that all interviews at Droit UMoncton also emphasized: offering an education to the common law entirely in French. Faculty members expressed the idea that teaching common law in French was a core characteristic of the institution (e.g. "On enseigne […] la common law en français […] je pense que fondamentalement c'est ce que fait la faculté.").[496] They situated it in line with the creation of the institution and the work of key actors who have accompanied its developments since.[497] Further, they insisted on the distinctive character of teaching common law in

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[492] Droit UMoncton, "Faculté", online: <https://www.umoncton.ca/umcm-droit/node/84> [Droit UMoncton, *website,* "Faculté"].
[493] *Ibid*.
[494] Denis Roy, "Mot de bienvenue", online: *Droit UMoncton*, <https://www.umoncton.ca/umcm-droit/node/2>.
[495] *Ibid*.
[496] NB04.
[497] NB01; NB03; NB04; NB05; NB07; NB08.

French, with for instance one participant affirming: "Cette faculté n'est pas comme les autres. Vous entendrez sûrement cela ailleurs, mais c'est plus vrai encore ici. On a prétendu pour la première fois enseigner la common law en français,"[498] and another positing: "La mission de la faculté c'est la common law en français. C'est presque unique au monde."[499] Therefore, we can see here that faculty members experience the fact that Droit UMoncton teaches the common law in French as a central, enduring and distinctive characteristic of their institution, as well as an essential component of its self-definition.

Before turning to the meanings associated with teaching the common law in French and other intertwined aspects of Droit UMoncton's sense of mission, a few words on the distinctiveness of this characteristic are in order in order to situate the Faculty in the landscape of Canadian legal education.

New Brunswick's legacy law Faculty, established in 1892, is at University of New Brunswick ("UNB") in Fredericton, the provincial capital. Shortly before the creation of Droit UMoncton in 1978, this anglophone institution had started offering some law courses in French; the aim of this short-lived program was to assist French-speakers to learn the law in English and acquire some common law terminology in French.[500] Bell insisted that this attempt was not in opposition to UMoncton's own project;[501] it was certainly perceived as such within the Francophone community.[502] If successful, it would have preserved UNB's monopoly on legal education in New Brunswick, in addition to partly responding to a growing need for French-language legal competency in the province and beyond. A decade later, UNB

[498] NB05.
[499] NB04.
[500] Bell, *Legal Education in NB, supra* note 33 at 199—200.
[501] *Ibid* at 200.
[502] See e.g. Claude Bourque, "Le rôle de l'université" *L'Evangeline* (19 March 1975), online: *UMoncton* <www8.umoncton.ca/umcm-evangeline/TXT/9110.html> (affirming that supporting UNB Law's project to offer bilingual courses would amount to "[p]ermettre à une université anglophone de venir voler un secteur qui appartient à l'université francophone," something "injustifiable and inacceptable," and abandon UMoncton's role as the only Francophone university in the Maritimes).

reintroduced some form of bilingualism in its law program, this time designed for anglophones;[503] this second attempt did not endure either, and today UNB remains a unilingual anglophone law Faculty.

A participant spoke of the relations between UNB Law and Droit UMoncton in the following terms: "On est des voisins qui ne se dérangent pas." He insisted that there was no competition between the two, but that Droit UMoncton only compares and measures itself against uOttawa Common.[504] This institution is the only other to offer a common law program fully in French. uOttawa started offering several first-year common law courses in French in 1977, created an official dedicated program in 1980, and finally gave this program a status equal in the Faculty to English-language program by 1993.[505] Through its Pan-Canadian French Common Law Program, uOttawa is currently spearheading the development of French-language law classes in the Canadian West.[506] uOttawa Common is a much larger and better-funded institution than Droit UMoncton, but does not offer an environment equally francophone to that of the latter.[507] One participant expected additional competition to come from the currently nascent Université de l'Ontario francais if it were to open a law program.[508] To date, uOttawa Common remains the only genuine competitor to Droit UMoncton.

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[503] *Ibid*.

[504] NB01 ("R: *Vous comparez-vous à d'autres universités?* NB01: Ottawa. Ici c'est toujours Ottawa. Parce qu'ils ont un programme de common law en français. R: *et UNB?* NB01: Pas du tout. Il n'y a pas de concurrence. On est des voisins qui ne se dérangent pas."); see also NB05 ("On a prétendu pour la première fois enseigner la common law en français. Aujourd'hui Ottawa le fait aussi.").

[505] uOttawa Common Law "Reunion", *supra* note 38 at 67ff.

[506] See *supra* note 11; see also University of Ottawa, Faculty of Law Common Law Section, "Caroline Magnan", online: <https://commonlaw.uottawa.ca/en/people/magnan-caroline> (indicating that Professor Magnan also gave a introductory course to common law in French at UBC Law).

[507] See NB08 ("L'université d'Ottawa c'est une université bilingue. [Il y a] une très grande présence francophone, c'est une université qui a été fondé par des franco-ontariens, mais les anglophones [y] sont majoritaires depuis assez longtemps. Malgré le fait que les francophones à l'université d'Ottawa représentent probablement 3, sinon 4 fois le nombre d'étudiants à l'université de Moncton, donc le nombre d'effectifs est beaucoup plus important, mais l'atmosphère de l'université de Moncton est beaucoup plus francophone évidemment parce que c'est une université unilingue francophone qui est très étroitement associée à la communauté acadienne et francophone du Nouveau Brunswick.").

[508] NB01; see also *infra* note 580 and accompanying text. Note that while for now l'Université de l'Ontario français may only grant degrees in arts, science and commerce, this list could easily be expanded: see *Université de l'Ontario français Act*, 2017, SO 2017, c 34, s 7. Note also the Memorandum of Understanding signed between the

Teaching the common law in French remains highly distinctive in Canadian legal education. The extracts from the website reproduced above and interviews with law professors revealed the unique set of meanings associated with this enterprise at Droit UMoncton. We will see below that faculty members consider that there is an important "socio-linguistic" aspect to this mission, thus conceiving of legal education as a socio-political project (*section 4.1*). We will then explore how this transformative aspiration nonetheless relies on mainstream conceptions of legal education as preparation for traditional legal careers, bringing together elements of DSJ UQAM and UAlberta Law's respective missions that seemed irreconcilable in the above portraits (*section 4.2*). Third, we will examine shifts as to the importance and significances of the promotion of language rights in Droit UMoncton's perception of its mission; we will see that evolution of this aspect comes in the wake of the profound institutional experience of losing a key member to retirement (*section 4.3*). Lastly, we will specify how Droit UMoncton's aspirations are primarily local and geared toward the Acadian community, but also encompass other minority francophone groups in Canada (*section 4.4*).

4.1 Socio-Linguistic Mission

Offering a common law program in French may appear as a market niche, but Droit UMoncton perceives this mission primarily as embedding a "socio-linguistic" objective.[509] This expression captures the idea that social condition and language are intimately connected in Droit UMoncton's environment and in the ways the institution aims to contribute to society, primarily the Acadian community. These two

Government of Ontario and the Government of Canada insuring that the new university will obtain sufficient funding for its first few years of operation, Ontario, News Release, "The Governments of Canada and Ontario Reach a Memorandum of Understanding on the Université de l'Ontario Français" (7 September 2019), online: Newsroom, <https://news.ontario.ca/maesd/en/2019/09/the-governments-of-canada-and-ontario-sign-a-memorandum-of-understanding-on-the-universite-de-lontar.html>.

[509] See e.g. NB07 ("la mission socio-linguistique de la faculté […] est central à l'enseignement du droit.") ; see also Droit UMoncton, "Objectifs", online: <https://www.umoncton.ca/umcm-droit/node/3> (Dedicated section of the institutional website opening with: "Lorsque nous avons entrepris de créer à Moncton une Faculté de droit, notre objectif était essentiellement de nature sociolinguistique.").

entangled elements were omnipresent in faculty members' discourse about their institution and its aspirations.

This is how one faculty member started portraying Droit UMoncton: "[La faculté] a un impact réel, concret, mesurable sur le niveau de vie de gens. Je veux dire le niveau de vie, pas économique, mais intellectuel. L'éducation. On tente de relever ce défi […] On cherche à élever le niveau de vie."[510] The same later added the following explanation: "Le Nouveau Brunswick n'est pas réputé pour son histoire intellectuelle. Moncton est une ville industrielle, le Nouveau Brunswick est très rural. James McGill a dû trouver quelque chose de très similaire quand il a créé l'université [McGill] à Montréal; c'était pareil ailleurs. C'était il y a 200 ans. Nous on a commencé ici il y a 40 ans."[511]

Other participants expressed similar ideas when they described Droit UMoncton as in keeping with Robichaud's "Equal Opportunity Program." Robichaud, New Brunswick's first Acadian Premier, launched this program in the 1960s to provide social and economic opportunities to rural and poor communities in New Brunswick. A faculty member presented the program as follows:

> NB04: [P]resque en même temps que la création de la faculté de droit, [le] premier ministre Louis J Robichaud a dû instaurer un programme 'Chances Egales pour Tous' parce que les acadiens n'avaient pas une chance égale pour atteindre le même niveau de stabilité ou prospérité économique ou professionnelle. Ce programme-là, 'Chances égales pour tous' a été un programme colossal qui a mené à la modification de 170 lois qui existaient au Nouveau Brunswick, et donc qu'on a dû modifier pour atteindre ce qu'on appelait l'égalité, les chances égales pour tous.[512]

Another professor presented the ties between this program and the law Faculty as follows: "On est l'extension d'un projet de société : 'Chances égales pour tous,' de Robichaud […] s'attaquait à la pauvreté en région, [voulait] donner des chances égales aux ruraux […] L'université de Moncton, et ensuite la fac

[510] NB01.
[511] NB01.
[512] NB04.

de droit en sont le produit."[513] We can therefore see that this Faculty sees itself as part of an enterprise much larger than the legal world to improve education and socio-economic opportunities for Acadians.

> NB04: C'est une université qui a été créée avec l'objectif d'offrir une éducation post-secondaire à la communauté acadienne. [Avant sa création] les plus privilégiés avaient la chance d'aller s'éduquer au Québec ou en France, mais ça faisait en sorte que l'éducation post secondaire était inaccessible [pour la plupart]. Donc l'université de Moncton, et par la suite sa faculté de droit a eu pour effet de donner un accès aux études post secondaires à un groupe de personnes qui étaient vraiment dépourvues économiquement et socialement, donc ça a créé des opportunités.[514]

The same participant further explained that the Acadian community was not just a language minority, but also a socio-economic minority in New Brunswick.[515] To this day, New Brunswick Francophones remain significantly worse off than the Anglophone majority, but also than Francophone minorities in other provinces, in terms of literacy and other skills affecting the level of participation in social and economic life.[516] In the course of a conversation on this topic, another participant expressed the idea of empowerment through education: "knowledge is power."[517]

Even before creating socio-economic opportunities equal for Acadians to that of their English-speaking counterparts, the first and foremost aim of UMoncton and its law Faculty has been to provide a higher education setting in French in the region. A participant spoke of socio-linguistic research showing that in order for a linguistic community to perpetuate itself and flourish, its members not only need to

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[513] NB05 (note that contrary to NB04, NB05 here insisted that Robichaud's program targeted poor and rural parts of New Brunswick regardless of their dominant language, recalling that although the Acadians were disproportionally affected, "il y avait aussi des anglophones pauvres et ruraux.").

[514] NB04.

[515] NB04 ("Quand on pense acadiens, oui il y a le fait français, donc on pense minorité acadienne, on pense minorité linguistique, c'est certain, mais aussi minorité socio-économique, donc c'est l'extrême pauvreté.").

[516] Statistics Canada, "The literacy skills of New Brunswick francophones: Demographic and socioeconomic issues" by Julien Béchard-Chagnon & Jean-François Lepage, in *Ethnicity, Language and Immigration Thematic Series*, Catalogue no. 89-657-X2016001 (Ottawa: Statistics Canada, 2016), online: <https://www150.statcan.gc.ca/n1/en/catalogue/89-657-X2016001> ("New Brunswick francophones […] continue to perform far less well on [literacy, numeracy and problem-solving skills] tests than their anglophone counterparts and francophones from Quebec, Ontario and Manitoba. More than 60% of the province's francophones scored in the lower range of the literacy and numeracy scales.").

[517] NB01 (this did not seem to refer to Foucault's knowledge-power nexus, e.g. as expressed in Michel Foucault, *Surveiller et Punir* (Paris: Gallimard, 1975)).

acquire the linguistic skills but also must have access to institutional spaces where their language is useful;[518] he affirmed that UMoncton and Droit UMoncton are such spaces and constitute "un autre milieu institutionnel qu'on [peut] ajouter à l'éventail des institutions qui composent la communauté francophone du Nouveau-Brunswick."[519] Droit UMoncton's officially unilingual environment makes constituting such a space possible, as bilingual environments often favour the majority language.[520]

This does not mean that English never rings within Droit UMoncton's walls; the same participant expressed initial surprise at the volume of English students use among themselves. The same nonetheless affirmed that this corresponded to the reality of minority Francophones generally.[521] In fact, Droit UMoncton's students are bilingual. Several faculty members considered it a strength of their institution to educate lawyers competent in both official languages.[522] Education itself, however, happens in French,

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[518] See e.g. the seminal Raymond Breton, "Institutional Completeness of Ethnic Communities and the Personal Relations of Immigrants" (1964) 70:2 Am J Sociology 193 (demonstrating that the degree of assimilation of ethnic communities depends largely on the group's social organization and institutions; not cited by the participant).

[519] NB08.

[520] NB08 ("L'atmosphère de l'université de Moncton est beaucoup plus francophone [que à l'université d'Ottawa] évidemment parce que c'est une université unilingue francophone qui est très étroitement associée à la communauté acadienne et francophone du Nouveau Brunswick… les milieux bilingues ont tendance souvent à glisser vers l'anglais.").

[521] NBXX ("J'ai été surpris par la quantité d'anglais que j'entends sur le campus. J'entends souvent des étudiants parler entre eux en anglais, que ce soit ici à la faculté ou ailleurs sur le campus […] Des fois ils se parlent juste en anglais, des fois ils vont passer du français à l'anglais […] ou des fois une personne va parler en anglais l'autre personne va parler en français, etc. Donc dans un milieu qui se veut entièrement francophone, c'est un peu — je ne peux pas dire que c'est surprenant, parce que c'était un peu comme ça quand j'étais à l'école secondaire aussi. […] Tous les milieux francophones hors Québec ont un peu cette [même] dynamique. Mais j'avais osé espérer que ça serait un peu différent ici vu qu'au Nouveau Brunswick les francophones sont beaucoup plus concentrés territorialement, donc peut-être qu'avec la masse critique il y aurait plus l'habitude de se parler en français entre eux. Il y a un autre facteur qui contribue ici : […] premièrement, un grand nombre de nos étudiants proviennent de communautés francophones ailleurs au Canada. Donc ça ce sont des francophones qui ont évolué dans des environnements […] où le français est très fortement minoritaire, donc ils ont plus le réflexe de se parler en anglais, ou de parsemer leur parlé avec des mots ou des expressions anglaises. Et aussi il y a des anglophones, qui ont fait des cours d'Immersion qui ont décidé de venir étudier ici pour diverses raisons […] Tout ça pour dire que le profil sociologique de la faculté fait en sorte que on entend assez souvent de l'anglais dans les couloirs."); NB01 (speaking of different attitudes among faculty members regaridng the use of English among students).

[522] NB06 ("Au niveau des communautés francophones et acadiennes, cette capacité d'interagir avec notre système juridique en français est une composante importante pour nos communautés. Et puis la formation d'avocats bilingue, parce que veut / veut pas ils sont bilingues quand ils graduent de leur faculté, justement remplit ce rôle là."); NB07 ("La plupart de nos étudiants sont bilingues, ils apprennent le droit en français mais ils sont bilingues et ils sont capables d'adapter leurs conséquences aux deux groupes sociétaux, aux groupes linguistiques francophone et anglophone.").

even if professors will frequently raise awareness of issues coming from judicial or legislative bilingualism among their students.[523] French largely dominates at Droit UMoncton, and this institution can, therefore, strengthen the French-language community by providing an additional space where this minority language is useful for its speakers.

The idea that UMoncton, of which the law Faculty is a component, is essential to the continued existence of the Acadian society and culture is widespread within the Acadian community.[524] One participant articulated the underlying values as follows : "on est [à] l'épicentre du projet d'une communauté, d'un projet politique : permettre à une minorité, qui représente quand même un tiers de la population de la province, de s'épanouir."[525] The eminently political project here is the survival and development of the Acadian community as a distinct cultural group, in opposition to the potential assimilation of the Acadians into the anglophone majority. The same participant further affirmed that this approach constituted a dogma for the Faculty, comparing it to adhesion to the scientific method or liberal democracy.[526]

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[523] E.g. NB07.

[524] E.g. Université de Moncton Campus de Moncton, "Antonine Maillet remet son manuscrit original de La Sagouine à l'Université de Moncton - Partie 2" (8 December 2011) at 00h:15m:50s, online (video): *Youtube* <https://youtu.be/XFreOjFh3XE>) (Antonine Maillet, eminent Acadian writer and former Chancellor of UMoncton, affirming : "L'université est réellement le réceptacle de l'âme d'un peuple. L'Acadie sans l'université c'est pas sûr qu'elle pourrait continuer, parce que ce n'est pas une institution ordinaire l'université. Ce n'est pas une shop, ce n'est pas une manufacture, ce n'est pas une fédération de quelque chose, c'est l'âme d'un peuple qui doit continuer à vivre politiquement, économiquement, financièrement, scientifiquement, artistiquement, humainement, socialement.").

[525] NB05 (also affirming: "La faculté de droit est construite sur l'idée de permettre l'épanouissement d'une minorité.").

[526] NB05 ("Il y a une dimension dogmatique supplémentaire par rapport à ce qu'on retrouve dans les autres facultés de droit de démocraties occidentales. Dans toutes les universités, il y un aspect dogmatique. Par exemple la supériorité de la science, la méthode scientifique […] le dogme de la démocratie [et des] droits fondamentaux […] La faculté de droit est construite sur l'idée de permettre l'épanouissement d'une minorité. Par exemple si quelqu'un ici défend l'assimilation dans la majorité anglophone, il pourrait étudier la question […] mais il ne faudrait pas qu'il soit surpris de notre scepticisme. En fin de journée, comme disent les anglophones, il devra opérer dans un contexte donné. Il pourrait même se trouver en porte-à-faux avec les demandes de son employeur."); see also Serge Rousselle & Michel Doucet "Des espaces éducatifs distincts francophones à défendre… et à préserver !" *L'Acadie Nouvelle* (23 March 2012) 15 (two former Deans of Droit UMoncton arguing vehemently against giving any consideration to the creation of bilingual programs at UMoncton with arguments based on "cultural survival" and constitutional law.).

Behind this dogma, a few participants expressed diverging positions. One of them believed that the emphasis on the social mission constituted an obstacle in the way of exploring certain options that may be beneficial for the institution: "des fois il faut s'ouvrir à la communauté au sens large, et puis possiblement […] offrir certains cours […] en anglais. Mais ici, on ne peut même pas en discuter, parce que la mission d'être une institution acadienne fait qu'on ne peut pas discuter ce type de réforme."[527] Another one opined that the Faculty should be less focused on the Acadian community, and reach a broader audience beyond language barriers.[528]

Nonetheless, such views stood out when compared to those expressed by other participants. A different faculty member spoke of a "schism" within the Faculty, between those who favoured the socio-linguistic mission and those who would like Droit UMoncton to become a more generalist and mainstream law Faculty, "moins orientée vers les questions linguistiques et les besoins de la communauté acadienne."[529] A different participant also aware of such divisions considered that such opinions did not account for the well-studied impact that a greater presence of the English language on campus, especially if promoted, would have on the community.[530] As we saw in the previous section, dissidence can serve to confirm the centrality of certain meanings. Here, the diverging views expressed by two participants imply

[527] NB06.

[528] NB01 ("Mon but […] c'est de rapprocher les communautés […] On a une responsabilité envers la communauté extérieure. On devrait aller parler aux anglophones, aux francophones hors Québec et au Québec […] On peut être de l'autre côté de la rue mais les médias anglophones iront toujours chercher quelqu'un à Ottawa ou ailleurs. On a une carence de visibilité. On considère aussi trop souvent que ce n'est pas à nous d'aller les chercher.").

[529] NB08 ("[Il y a] un certain schisme au sein de la faculté dans la mesure où il y a des profs et des étudiants pour qui la mission socio-linguistique identitaire de la faculté est encore très importante. Et il y en a d'autres qui aimeraient mieux que la faculté tout simplement devienne une faculté comme les autres, et que la faculté soit moins orientée vers les questions linguistiques et les besoins de la communauté acadienne, et cherche tout simplement à se développer un profil dans tous les domaines.").

[530] NB06 ("Il est facile de concevoir la faculté comme essentiellement on pourrait donner des cours en anglais, on pourrait donner des cours bilingues, etc, mais ce n'est pas pour ça que l'université de Moncton a été formé. C'était vraiment pour— c'est une université qui est francophone. Ça c'est vraiment au cœur de son identité. Pour moi c'est évident, mais je comprends pourquoi pour certaines personnes qui ne sont pas nécessairement au fait avec le droit linguistique, ou qui n'ont pas étudié les conséquences justement du bilinguisme, pourraient avoir des opinions différentes."); see also NB08, *supra* notes 518—520 and accompanying text (mentioning studies on the topic).

a recognition of the dominance of the near-exclusive aspiration of serving minority Francophones in their language at Droit UMoncton.

The law Faculty finds its place within and carries out the larger project of strengthening and empowering the Acadian community. Due to its disciplinary specialization, there are of course legal-specific implications of this project. A participant shared that upon its creation, the Faculty aimed to constitute "une porte d'entrée pour les francophones à la profession [juridique]"[531], and further explained:

> NB08: [Cette idée] en soi avait des aspects de justice sociale dans la mesure où les francophones provenaient d'un milieu plus défavorisé que les anglophones en général, donc c'était plus difficile pour eux d'accéder aux facultés de droit, même anglophones, parce qu'ils n'avaient pas le même parcours académique, pas la même préparation.[532]

Droit UMoncton primarily measures the success of its contribution by looking at the linguistic composition of New Brunswick's legal institutions and professions. Another participant affirmed the following: "la création de la faculté de droit de l'université de Moncton […] a changé la démographie du barreau du Nouveau Brunswick […] depuis les 30 dernières années avec une arrivée massive de francophones. Ça c'est cette faculté qui a permis ça."[533] Prior to the establishment of the Faculty, the membership of the New Brunswick bar, and therefore the judiciary, as well as provincial political elites, were almost all anglophones. The same participant added that now we can find "des juges qui sont francophones, on a des politiciens qui sont francophones, des législateurs, des hauts fonctionnaires, et ce n'était pas le cas jusqu'à très récemment."[534] This first measure of success comes with a continuing

[531] NB08.
[532] NB08.
[533] NB04; see also e.g. James Lockyer, "Hier" (2008) 10:1 RCLF 6 at 8 ("La Faculté de droit de l'Université de Moncton a […] réalisé un de ses objectifs fondamentaux en contribuant à la création d'un appareil judiciaire bilingue (tribunaux, barreau, et profession) capable de fonctionner en français ou en anglais selon le désir des justiciables.").
[534] NB04.

objective to prevent any reversal to the status quo ante ("préserver les acquis"), as well as a desire to advance always further the cause of equality between official language communities.[535]

Contributing to an elevation of the social condition of minority francophones and to the continued existence of the Acadian community as a distinct cultural group, therefore, lies at the core of Droit UMoncton's mission and identity. The law Faculty's specific role in the larger mission of the University rests in creating the possibility for francophones to join the ranks of lawyers and decision-makers in the province, as a means of empowering the community.

4.2 Traditional & Transformative Meanings

The previous paragraphs show that the idea of legal education as preparation for joining the local bar and traditional professional careers in law is part of what Droit UMoncton faculty members project into their sense of mission, much like at UAlberta Law. Whereas at DSJ UQAM participants expressed reluctance, or even open opposition, to the ambition of training lawyers, in a traditional sense, on account that this would run counter to the social and political mission of their institution, Droit UMoncton faculty members in general, saw these two sets of objectives as complementary.[536] While the level of emphasis to place on this aspect differed from one participant to the next, they overall considered the training of future lawyers a key component of their mission.

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[535] See e.g Lockyer, *supra* note 533 at 8 ("Aujourd'hui et à l'avenir, le mandat de la Faculté et de ses finissants et finissantes est, à la fois, de demeurer vigilants et d'assurer que le nécessaire soit fait pour préserver [l]es acquis afin de s'assurer qu'aucun recul ne se produise et que se poursuive le développement des droits linguistiques au Nouveau-Brunswick et au Canada.").

[536] NB01, NB05, NB06, NB08; see also NB03 (expressing the view that this aspect was too prominent at Droit UMoncton).

Where DSJ UQAM challenged power structures attached to the legal profession by eroding traditional lawyers' monopoly over access to legal knowledge and processes,[537] Droit UMoncton has defied the same power structures by opening the gates of legal knowledge and access to the profession to a large minority group. In its beginning, DSJ UQAM sought to provide workers and union personnel with the tools to promote their interests against the class to which traditional lawyers belonged; today, it is mainly a pathway to the mainstream legal profession but maintains its substantial part-time program to enable an otherwise excluded socio-economic group to access the bar. Droit UMoncton's aspirations lay closer to the latter approach, as it opened the possibility for francophones to study the common law and join the legal professions in their language. It transformed the make-up of the local bar by bringing about linguistic and cultural heterogeneity. This Faculty has aimed to pave the way for francophones to join the established club, rather than break apart the club's elite status.

Moreover, a Droit UMoncton participant insisted that an objective was: "former des juristes compétents."[538] This discourse is reminiscent of that observed at UAlberta Law.[539] The emphasis on training competent lawyers and populating the local bar with Francophones is not an end on its own. It serves the greater ambition of enabling lay Francophones to access legal services and judicial processes in their own, officially-recognized language. It is a necessary corollary of language rights, as the formal

[537] See also Claude Thomasset & René Laperrière, "Faculties Under Influence: The Infeudation of Law Schools to the Legal Professions" in Cownie, *Global Issues, Local Questions*, *supra* note 237 at 201ff (two DSJ UQAM professors offering a thorough critique of the professional orders' monopoly in a piece about legal education).
[538] NB02.
[539] See *supra* notes 409, 410 and accompanying text. But note that the definition of a competent lawyer offer by this participant did not focus on the acquisition of well-rounded foundational legal education like at UAlberta Law (NB02: "R: *Qu'est-ce que vous entendez par 'compétent'?* NB02: Capable de travailler et réussir. Et réussir ne veut pas forcément dire gagner devant le juge. Parce que 50 % des avocats qui comparaissent devant un juge perdent. Mais qui a bien présenté la cause de son client jusqu'au point où le client doit être content de sa représentation, de son représentant, même s'il n'a pas gagné. À mon avis, le signe de succès, c'est qu'un client qui a perdu la cause dise à son avocat : 'j'ai perdu, mais honnêtement vous avez fait un très bon travail.' Ça c'est le signe d'un avocat qui est compétent. Parce que les [clients présentent souvent aux avocats] des causes qu'ils ne peuvent pas gagner. »).

recognition that citizens may access legal services and processes in French does not on its own provide the skilled legal personnel to make it possible.

Faculty members generally included the professional aspect of legal education in the meanings they associated with their mission. I observed some disagreements, however, as to the importance this element should have. One of the participants would have liked Droit UMoncton to focus more on the preparation for professional legal practice, and expressed the following sentiment: "Ma perception c'est qu'il y a certaines personnes qui privilégient la mission sociale, peut-être au détriment de la formation juridique."[540] The same participant justified this position along two ideas. First, the historic function of law Faculties in training future legal professionals: "historiquement les facultés étaient des facultés professionnelles […] Je pense qu'on est encore des facultés professionnelles. Souvent les gens qui misent sur la recherche, la théorie du droit, l'interdisciplinarité, tout ça, oublie que à la base on a un devoir de former les professionnels."[541] The last part of this sentence is reminiscent once again of the discourse I observed at UAlberta Law regarding a duty owed to the public and the profession.[542] Second, the participant also relied on the actual career paths of the students, most of whom go into legal practice after graduating.[543]

On the other hand, a different faculty member described the dominant mindset to be as follows: "les avocats de la région [veulent] que la faculté devienne une sorte d'usine à avocats, [et] certains professeurs [essaient] vraiment de former des avocats pour qu'ils aillent ensuite sur la Main Street travailler comme avocat à Moncton."[544] This participant disapproved of this approach and favoured the

[540] NB06 (also expressing the idea that hiring practices now privileging holders of doctoral degrees contribute to the phenomenon: "Maintenant avec la tendance de privilégier des professeurs avec des doctorats, on reconnaît moins l'expertise qui est développée par un avocat qui pratique le droit, et la contribution qui est selon moi essentielle à l'enseignement du droit au sein des facultés de droit.").
[541] NB06; but see *infra* note 562.
[542] See *supra* note 469; see also NB01 ("On a une responsabilité envers la communauté extérieure.").
[543] NB06 ("Parce que veut / veut pas, à la base, la majorité de nos étudiants pratiquent le droit.").
[544] NB03.

view that a law professor's role can be to introduce students to research considerations, which they might find more interesting than the regular practice of law.[545] The same lamented what was perceived as an almost exclusive focus on preparation for practice, to the detriment of theoretical and socio-legal considerations.[546] In the same interview, the participant nonetheless admitted that such considerations were not totally absent from Droit UMoncton, and that an overwhelming majority of students were looking for professional training.[547]

The terms of disagreement between these professors very much align with the usual divide between professional and academic approaches to legal education. One of them affirmed that this divide was a recurrent tension within the Faculty,[548] and both participants saw the University as driving the Faculty toward a more academic approach while the Bar pushed for a professional kind of education. This situation corresponds to larger trends in the discourse about legal education in Canada, as highlighted by Sandomierski and as we observed at UAlberta Law.[549]

In echo to DSJ UQAM, some participants noted a disconnect between some of their ambitions and the students' expectations. On the whole, students do not come to Droit UMoncton to strengthen the Acadian society's institutional network, nor to hoist the colours of language rights activism, a Droit UMoncton characteristic that we will explore in the next section. One participant readily recognized this disconnect: "nos étudiants ne viennent pas à la faculté de droit de l'université de Moncton à cause de sa spécialité ou de son expertise en droit linguistiques. Je pense que ça ce n'est pas un 'selling point,' ou en

[545] NB03 (recalling "[mes] profs [qui] m'ont montré qu'il y avait autre chose que remplir des actes de procédure puis d'avoir des actes introductifs d'instance et d'aller plaider à la cour.").
[546] NB03 ("Cette ouverture existe [là où j'ai étudié] mais n'existe pas encore à la fac de l'université de Moncton. Comme je dis c'est très très axé sur la création, la production d'avocats.").
[547] NB03 ("Je crois que la majorité de notre clientèle, c'est ce qu'ils veulent [travailler comme avocat]. Mais il y en a un 5%, 10 % qui justement cherche un peu autre chose, que la simple technicité du droit.").
[548] NB03 ("On a toujours eu une sorte de scission à la faculté entre ceux qui étaient pro-recherche et ceux qui étaient pro-pratique.").
[549] See Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 226—35 and Chapter 2, Section 3.4, *above*.

fait pour très peu de gens."[550] We can imagine that students will acquire a sensibility for this topic and underlying issues by the time they graduate, much like DSJ UQAM participants considered that even students who did not come to their institution for its social justice focus would leave with some sensibility to it.[551] However, students come to Droit UMoncton primarily in order to become lawyers in French in common law provinces.[552] It is still this core, enduring and distinctive characteristic that motivates them to study in this law Faculty, not just the possibility to obtain any law degree.

Overall, and despite certain views on both ends of the spectrum, Droit UMoncton faculty members embraced the dual aspect of their missions: the socio-linguistic component, and the professional education component, considered as two sides of the same coin. Characterized by an eminently social and political project infusing the institution through and through, and a willing embrace of the traditionally professional character of legal education, Droit UMoncton's approach resembles a blend of DSJ UQAM's and UAlberta Law's and is intrinsically connected to its unique socio-political environment.

4.3 Language Rights

The third set of meanings attached to Droit UMoncton's mission came up in interviews, although it did not appear in the extracts from the institution's website reproduced above.[553] Several participants portrayed their Faculty's mission as focused on the promotion of language rights, with statements such as the following: "la mission officielle c'est la défense des droits linguistiques."[554] The promotion of

[550] NB04; see also NB05 ("On forme des avocats. Pas des spécialistes en droits linguistiques.").
[551] See e.g. QC11, *supra* note 371.
[552] NB04 ("[De] façon générale c'est surtout l'aspect common law en français qui est attirant, pour des étudiants qui savent que c'est une petite université, qui savent que ce n'est pas une faculté prestigieuse.").
[553] See *supra* notes 492—495 and accompanying text.
[554] NB03; see also NB02 ("la mission c'est d'assurer que les droits des francophones en Acadie […] sont ancrés et ne peuvent pas être ignorés, inversés, abîmés, etc…"); NB04; NB05; NB08.

language rights is not an alternative in competition with teaching common law in French; rather, it is a specialized way to pursue the same socio-linguistic ambitions. Indeed, language rights aim to enable the flourishing of individual speakers as well as the minority-language community and serve the realization of real equality and democratic ideals.[555] Droit UMoncton's activities inherently advance certain language rights, in terms of access to legal education, access to the legal professions, and access to legal and judicial services. However, there is a larger world of language rights out there, for instance in primary education, health and other public services. The language rights that the Faculty advances immediately in teaching the common law in French (e.g. access to higher education to law in French) are on a continuum with others, and the distinctions may be porous. For instance, the wider the range of higher education options in French, the more useful it is for families to send their children to French-language high schools. There is a great level of complementarity between the promotion of language rights and the other components of the mission described above, and it is not surprising that participants' discourses on these topics often mentioned one while only alluding to the other.

The broad promotion of language rights takes two forms at Droit UMoncton: research by the professors and the training of lawyers to advocate for these rights before the courts. One participant affirmed that a few eminent members of Droit UMoncton had shaped the area of language rights in Canada: "le droit linguistique canadien dans une grande mesure a été créé ici par l'ancien juge Michel Bastarache, Michel Doucet, Serge Rousselle, Gérard Snow. Ils ont transformé ce qui était au départ quelques petites décisions en droit linguistique à quelque chose dont on parle partout à travers le Canada aujourd'hui."[556] The same participant shared that he felt a moral duty to educate himself on the topic

[555] See e.g. Michel Bastarache & Michel Doucet, eds, *Les Droits Linguistiques au Canada*, 3ed (Cowansville, QC: Yvon Blais, 2013) at 86.
[556] NB04.

upon joining the faculty.[557] Another participant described "un poids institutionnel" that highly influences research in this area at Droit UMoncton, also affirming that everything in this law Faculty was geared toward the promotion of language rights.[558] Language rights have also been described as Droit UMoncton's "magic potion," a necessary tool to fend off the tendency toward assimilation.[559]

The promotion of language rights also infuses teaching at Droit UMoncton. The dedicated course on this topic has never been mandatory in the curriculum; however, language rights issues will be found in other core courses, such as constitutional law.[560] Nevertheless, it is the training of competent lawyers generally, more so than the training of specialized advocates, that is perceived as contributing to the promotion of language rights. The following interview extract illustrates the connection between the two:

> La faculté de droit de Moncton a été créée pour valoriser et créer des droits linguistiques des minorités au Canada, en particulier la minorité francophone. Et ça c'est toujours notre mission […] Nous avons [aussi] développé une réputation à travers le Canada pour former des plaideurs. La raison est simple : si vous [voulez] valoriser les droits des minorités linguistiques, vous pouvez faire toutes les recherches que vous voulez, [en fin de compte, il faut] des plaideurs pour revendiquer ces droits devant les tribunaux. Ça ce sont nos deux missions, selon moi en tout cas. Et depuis mon début ici à la faculté de droit […], c'était toujours les deux volets que j'ai trouvé très importants et qu'on devait favoriser dans le développement de nos étudiants et nos finissants.[561]

This quote further illustrates the complementarity Droit UMoncton perceived between the social aspect of the mission and the ambition to prepare students for legal careers. The promotion of language rights contributes to this dual understanding. One could imagine attempts to train political leaders, or even

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[557] NB04 ("Quand je suis revenu à Moncton, et que je me suis intégré au corps professoral […] je ne voulais pas être en rupture avec mon environnement, tant ici à la faculté que dans le sens lare de la communauté acadienne, donc j'ai vu ça comme un, presque un devoir moral de m'éduquer sur les droits linguistiques.").

[558] NB01 ("Ici on a vu directement comment le poids institutionnel dicte les sujets, les résultats de recherche, les approches.", "Tout est orienté ici pour forger les droits linguistiques.").

[559] NBXX ("J'ai une théorie [...]: Astérix et la potion magique. Ici on est un village entouré, on va se battre. On se voit toujours comme le 'underdog' […] en état de siège permanent […] La potion magique c'est les droits linguistiques.") The same analogy to the magic potion, in reference to the Albert Uderzo and René Goscinny's French comic series Astérix, also appears Nicolas Lambert, "Demain" (2008) 10:1 RCLF 21.

[560] NB04.

[561] NB02.

lobbyists, in order to promote these rights in the political arena rather than the courts.[562] However, one participant affirmed that the Faculty did not work on the political aspects and explained: "les minorités linguistiques au Canada sont bien au courant que les majorités linguistiques ne vont pas prendre soin d'elles," adding that law always drives politics in this domain.[563] Now that the principles of equality between official languages and language communities are enshrined in constitutional documents,[564] it is therefore through judicial proceedings that these rights will be properly enforced.[565] The realities of a permanent political minority, the functioning of Canada's rule of law and judicial review, as well as the

[562] This idea is not foreign to Canadian common law legal education, as the tradition of the Mock Parliament at Dalhousie Law illustrates: see Willis, *supra* note 32 at 52—54 (affirming that the Mock parliament was already "in full swing" in 1887, was "still an honoured tradition" in 1979, and describing it as follows: "the Mock Parliament [was] more than a place where embryo lawyers could learn to think on their feet; it was a place where aspiring young politicians could learn how to debate the public issues of the day in accordance with the rules of the House and could acquire practical experience in the arts of combining one another to form and defeat governments."), 9 ("[Weldon, Dean from 1883-1914] "preached the duties of lawyers to the state in all branches of public service. It was the duty of lawyers to take part in the political life of the country for whatever party they chose" citing John Barrett, "Dalhousie Law School: Ideals and Traditions" (1907) [unpublished]; Weldon was also a Member of Parliament for 9 years during his deanship). A similar feature characterized the first university programs of legal education in the United States (at William and Mary college in 1779) and the dominant model in the South until the mid-19th century under the influence of Thomas Jefferson, see Charles R McManis, "The History of First Century American Legal Education: A Revisionist Perspective" (1981) 59:3 Wash ULQ 597 at 609—612, 621—626 (e.g. describing the William and Mary initial program in Law and Police as follows: "Instruction was given not only by lectures, but also moot courts […] and by mock legislative sessions in which committees drew up bills and debated them, with Whyte presiding as Speaker of the House and teaching parliamentary procedure in a simulating real-life atmosphere. Practical law, in other words, was combined with practical politics." at 609).

[563] NB02 ("On ne travaille pas sur le côté politique. […] C'est toujours le droit qui pousse la politique pour les minorité. […] Et c'est réellement [comme ça que ça] s'est passé au Nouveau Brunswick. [Ce n'est] pas pour dire les législateurs n'ont fait rien, [en fait] les anciens premiers ministres Louis Robichaud [et] Richard Hatfield ont été très ouverts à la question linguistique, étaient très prêts à ouvrir cette porte là pour les minorités. Mais quand même, c'est [bien beau] d'avoir des leaders politiques qui sont prêts à le faire, mais à moins qu'ils aient le soutien [necessaire] pour le faire, les choses ne vont pas loin. […] Une des choses importantes pour aider le leader, c'est une décision juridique. Parce qu'il peut regarder la législature et dire 'qu'est-ce qu'on peut faire, la décision est là, ça c'est le droit, ça c'est notre constitution.' A ce moment là c'est quelque chose qui permet à un leader politique d'arriver à une position favorable mais d'abord et avant tout c'est des droits créés par la constitution qui ne peuvent pas être abimés, donc on revient à la mission de la faculté de droit."); see also NB05 ("Une minorité se défend soit par le droit et la politique, soit par la violence. Le peuple acadien a systématiquement rejeté la violence politique dans son histoire.").

[564] See e.g. *Canadian Charter of Rights and Freedoms*, s 16—23, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11; the inclusion of these principles into the law is the result of political compromises in favorable times, for instance the 1993 addition of s 16.1 to the Charter.

[565] On this topic, see also Bastarache & Doucet, supra note 555 at 86—88.

historic focus of law Faculties in North America on training for legal professions combine here to justify this stance.

Moreover, as indicated above, participants knew that students do not come to their Faculty specifically to promote language rights, but rather to become lawyers in French.[566] Students' career choices appeared less important to Droit UMoncton participants than what I observed at DSJ UQAM where instilling students with a sense of affecting social change in their professional life seemed important. This did not appear at Droit UMoncton, probably because the mere availability of legal professionals competent in French is in itself a goal for the Faculty.

The centrality of promoting language rights in Droit UMoncton's self-definition through research and training is now the object of some debate at the Faculty. Some faculty members believe that their institution should broaden its horizons. Faculty members from several generations opined that language rights took too much space at Droit Moncton.[567] At the same time, others seemed to lament a lower interest in the topic among their colleagues.[568] Some saw the recent retirement of Michel Doucet in 2017 as an opportunity to rethink the emphasis on language rights.[569] Doucet had been a professor at Droit UMoncton since the mid-1980s, Dean from 1995-2000, and director of Observatoire International des Droits Linguistiques (2010-2017). Through his prolific writings as well as occasional practice, he championed language rights throughout his career.[570] As Doucet's retirement coincides with a series of

[566] See Section 4.2, *above*.
[567] NB01, NB03, NB04.
[568] NB05 ("Certains se plaignent que peu de profs s'intéressent aux droits linguistiques.").
[569] NB04 ("Il y a certains profs qui ont vu le départ de Michel Doucet comme [une occasion de] tourner la page, et passer à autre chose que les droits linguistiques."), NB03 ("On est plusieurs à penser que peut-être que c'est dépassé de limiter [la mission] aux droits linguistiques. Mais je pense que ça reste là parce que Michel Doucet était tellement activiste sur les droits linguistiques francophones des acadiens qu'on n'a jamais vraiment eu cette discussion là sur où qu'on s'en allait, et si on pouvait avoir une mission plus élargie peut-être que simplement celle des droits linguistiques des acadiens francophones.").
[570] See e.g. Serge Rousselle, "La faculté de droit et les droits linguistiques" (2018) 5 RDL 130 (summarizing Michel Doucet's contribution to the field of language rights at Droit UMoncton).

hires nurturing broader research interests, some perceive a shift away from language rights research as an almost exclusive focus at Droit UMoncton.

What seems to be happening is not a radical departure from this historic strength of Droit UMoncton. Rather, we can see a broadening of the focus toward minority rights, of which language rights are only a subset. Some see the change happening already,[571] while others think it will take some more time.[572] One participant recalled that the Dean's welcome speech to students in September 2017 emphasized the question of protecting minorities broadly speaking, and did not focus on language rights, but the same also affirmed that language rights remained the driving force of the Faculty.[573] All indicates that even as the way Droit UMoncton defines its mission may evolve, language rights will retain a prominent place in this institution. It has been a core, enduring, and distinctive characteristic of the Faculty, and even as it becomes less central in the way Droit UMoncton defines its mission, it appears to remain a significant component of the institutional culture.

4.4 Serving Minority Francophones

The use of the expression "language rights" in Droit UMoncton's participants' discourse is apparently neutral and may suggest the inclusion of rights for different language communities. However, this expression here primarily encompasses the rights of francophones in New Brunswick, as well as elsewhere in Canada where they are a minority. This is not surprising given the obvious geographic and deep-rooted connections between UMoncton and the Acadian society, but it is important to highlight this implied restriction. Research and promotion of language rights at Droit UMoncton have largely focused on the rights of the French-language minority in New Brunswick. I noted that faculty members also

[571] NB03.
[572] NB04.
[573] NB04 ("Les droits linguistiques […] sont une force motrice de la faculté de droit.").

included French-language communities outside Quebec in their discourse, signalling that their activities also served these communities. However, the discourse had an exclusive focus: francophones and the French language communities. For instance, one participant lamented that a former director of Droit UMoncton's Observatoire International des Droits Linguistiques (OIDL) had not considered the rights of Indigenous-language communities or even Quebec's English-language communities' language rights as part of his mandate.[574] A faculty member nevertheless believed that Doucet's retirement, combined with the more international interests and expertise of recent hires, would lead to a broadening of the definition.[575]

While a broader approach could have prevailed, this long-standing specialization comes from Droit UMoncton's roots in Acadian society. Droit UMoncton is primarily an Acadian institution, situating itself in the continuation of Acadian development.[576] While it represents about a third of New Brunswick's population, the Acadian community is overall small in absolute terms. This situation gave rise from the beginning of Droit UMoncton's adventure to doubts about the viability of the enterprise. The Faculty had to overcome the assumption that a French-language common law Faculty in Moncton would never attract enough students to make the endeavor worthwhile, among other obstacles, such as doubts about the very possibility of teaching the common law in French.[577] Opinions greatly varied as to the 'magic' number

[574] NBXX ("L'année dernière ou l'année d'avant, [Michel Doucet] organisait un colloque sur les droits linguistiques, et je lui ai proposé [la] question de l'utilisation des langues autochtones [dans un champ sur lequel j'ai travaillé], et il m'a gentiment répondu que ça ne fittait pas avec la question des droits linguistiques […] Donc il avait une version très très restreinte, [limitée aux] droits linguistiques francophones acadiens. Dès qu'on proposait quelque chose, droits linguistiques des anglophones par exemple, [la réponse était :] 'pfff, non.'"); but note that on 11 March 2014, the OIDL under the same leadership hosted a conference on Indigenous language rights, see "Les droits linguistiques des peoples autochtones" *L'Acadie Nouvelle* (8 March 2014) 6.

[575] NB03; see also *supra* note 569ff and accompanying text (discussing the impact of Michel Doucet's retirement on the evolving focus of Droit Moncton toward "minority rights" rather than "language rights" only).

[576] See e.g. Jacques Vanderlinden, "Regards D'Un Huron Sur Les Droits Linguistiques: En Guise de Synthèse" (2009) 11:1 RCLF 199 at 245—46 ("Lorsque les déportés de 1755, entassé sur les esquifs qui les emportaient vers des terres lointaines, ont vu s'effacer progressivement les rivages de leur patrie, qui parmi eux aurait cru qu'un peu plus de deux siècles et demie plus tard nous célébrerions les trente années d'existence d'une faculté ayant choisi de s'approprier le droit de leur vainqueur et de le faire sien dans leur langue?").

[577] Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 34—36 (e.g. at 36, n 60 citing Daniel A Soberman, *Legal Education in the Maritime Provinces* (Report to the Maritime Provinces Higher Education

of students the Faculty should reach. In the initial stages, Soberman, who initially opposed the creation of Droit UMoncton, affirmed that the investment would be worthwhile only if cohorts could count at least 100 students every year, whereas the University's Vice-Rector argued 50 would be sufficient.[578] The actual number of students enrolling at Droit UMoncton varied year after year, ranging from 16 to 46, but never reached the lowest of these initial estimates. Concerns about the minimal number of students have not fully subsided, as one participant affirmed the following: "[l]e nombre d'étudiants en première année est variable. Une année il était à 19, c'était beaucoup trop peu. Là depuis quelques années on tourne autour de 50. 60 étudiants ça me semble être ce qui nécessaire pour être viable."[579] He specified that the continued existence of the institution was no longer in question, but that there were concerns regarding whether certain developments in Canadian legal education might shrink the pool of potential candidates interested in Droit UMoncton.[580]

Period	1981-1990	1991-2000	2001-2010	2011-2017
Average number of J.D. graduates	20	38	34	30

Table 2.1: Average number of graduates from Droit Moncton's J.D. program by decade[581]

Commission) (Fredericton: Maritime Provinces Higher Education Commission, 1976) [*Soberman Report*] at 74 ("Il est impossible de devenir compétent sur le plan professionnel en matière de Droit commun dans une langue autre que l'anglais")), 55.

[578] See Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 36, 55.

[579] NB01.

[580] NB01 ("On ne parle plus d'existence. On craint pour le bassin. Avec Ottawa qui n'existait pas quand on a commencé, et Toronto en 2020 qui aura sûrement une fac de droit francophone."); to the concerns regarding the anticipated creation of a French-language law program at the still nascent Univeristé de l'Ontario Français, one could add the spread of uOttawa Pan-Canadian French Common Law program in the Western regions of Canada (see *supra* note 506 and accompanying text) that might provide enough French content to deter some students from uprooting themselves across the country for a program fully in this language.

[581] Figures from internal document communicated to the author by Droit UMoncton; figures for 1981-97 also available in Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 101. We can note that there was a hike in the number of first year students enrolled in the past few years, which should bring the average number of graduates for the 2011-2020 decade closer to that of the previous decade than this table suggests.

From the early years, Droit UMoncton has aimed to recruit French-speakers outside of New Brunswick to reaching a greater pool of potential students. The share of out-of-province students has been close to 40%.[582] Most of them come from Ontario, with Quebec, the Prairies, the rest of Atlantic Canada following in decreasing order. We can see a form of continuity between the 1978 advertisement for Droit UMoncton in a Manitoba French-language newspaper that attracted Roger Bilodeau to the Faculty,[583] and the recent agreements the Faculty signed with French-language universities outside of New Brunswick to enable their students to start legal education before the end of their undergraduate degree.[584]

	NB	ON	QC	Prairies	Atlantic (w/o NB)	Other
1981 to 1998[585]	63%	14%	10%	9%	4%	0%
2003-2004 to 2017-2018[586]	64%	14%	7%	6%	5%	4%

Table 2.2: Average proportion of students by geographical origin at Droit UMoncton[587]

The strong presence of francophones from outside of New Brunswick and outside of Quebec in Droit UMoncton's enrolment numbers is certainly a factor in faculty members' habit to often refer to Francophones outside of Quebec generally, in addition to Acadians, when speaking of the public

[582] See also NB08 ("Un grand nombre de nos étudiants proviennent de communautés francophones ailleurs au Canada").
[583] Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 69.
[584] See Université Sainte-Anne, News Release, "Études en droit plus facilement accessibles pour les étudiants inscrits à certains programmes à l'Université Sainte-Anne" (12 January 2017), online: <https://www.usainteanne.ca/nouvelles/20170112324/nouvelles/etudes-en-droit-plus-facilement-accessibles-pour-les-etudiants-inscrits-a-certains-programmes-a-l-universite-sainte-anne>; Université de Saint-Boniface, News Release "Les études en droit désormais plus accessibles pour les étudiants de l'USB" (19 January 2017) online: <https://ustboniface.ca/les-etudes-en-droit-desormais-plus-accessibles-pour-les-etudiants-de-lusb-janvier-2017>; UAlberta, News Release, "Une collaboration entre Saint-Jean et l'Université de Moncton!" (5 May 2017), online: *Campus Saint-Jean* <https://www.ualberta.ca/campus-saint-jean/a-propos/nouvelles/2017/mai/collaboration-moncton>. See also NB01 ("on va chercher des étudiants à l'ouest. L'incitatif qu'on offre c'est qu'ils peuvent venir en droit avec un an de moins à leur baccalauréat. Le campus St Jean, mais aussi Ste Anne et d'autres.").
[585] Data for graduates, see Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 100.
[586] Data for first year students (excluding conversion), see internal documents on files with the author; this set of data does not provide numbers for students from Saskatchewan (included in the "Autres" category), and they are therefore not counted in the average number of students the Prairies for this period.
[587] Despite methodological discrepancies between the two datasets, the information they provide is sufficiently comparable to see the continuity of certain trends as to the geographical origin of students.

benefiting from Droit UMoncton's activities. Furthermore, Francophones outside of New Brunswick have also benefitted from Droit UMoncton's activities through the translation works and expertise provided by the Centre de Traduction et de Terminologie Juridique (CTTJ),[588] as well as the national impact of doctrine and jurisprudence resulting from Droit UMoncton's research and activism on language rights.

In addition to the targeted recruiting mentioned above, the Faculty remains attractive for potential applicants across the country thanks to the low level of tuition. Annual tuition for Canadian students enrolled full-time in Droit UMoncton's J.D. program in 2018-19 amounted to $5,947;[589] this is only half of what the same students would pay in the only other university offering a common law program in French.[590] Even as New Brunswick's other law Faculty is looking to increase significantly its tuition, Droit Moncton will not follow suit.[591] The low tuition the institution charges, the lowest of all common law Faculties,[592] however, is not only a competitive advantage. Several professors mentioned that it corresponded to the social mission they pursue.[593] They deemed it important to maintain low tuition in order to make their program accessible to poorer and rural students, who are often the first generation in their family to reach this level of education.[594]

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[588] See Chapter 3, Section 3.2, *below,* for more on the CTTJ.

[589] UMoncton, "Coûts d'une année universitaire", online: <https://choisir.umoncton.ca/questions-financieres/couts-annee-universitaire>. Compare to UAlberta Law : $10,221 (UAlberta Law, "Juris Doctor, Tuitions & Fees", online: <https://www.ualberta.ca/law/programs/juris-doctor/tuitions-and-fees>) and DSJ UQAM: $3,629 (for the fall and spring terms combined) (UQAM, "Estimation des frais de scolarité par trimestre", online: <servicesfinanciers.uqam.ca/estimation-des-droits-de-scolarite-a-venir.html>).

[590] See uOttawa, "Tuition fees", online: <https://www.uottawa.ca/university-fees/tuition-fees-can-undergraduate>.

[591] NB05 ("Cette semaine à UNB, le doyen a exploré la possibilité de doubler les frais de scolarité. La fac de droit à UNB charge déjà des droits supplémentaires par rapport aux autres unités de l'université, environ 3,000$ de plus. Ça ne sera jamais comme ça ici. […] On ne suivra pas cette tendance."). See also Jared Durelle, "UNB students protest tuition hike" *NB Media Co-Op* (2 April 2018), online: <nbmediacoop.org/2018/04/02/unb-students-protest-tuition-hike/>.

[592] NB04.

[593] NB04, NB05, NB08 ("Les frais de scolarité qu'on a nous, qui sont je pense de 5 ou 6 000 par année sont plus abordables [que ceux de l'université d'Ottawa]. Ça rentre dans les enjeux d'accès à la justice et tout ça.").

[594] NB04 ("C'est une réalité socio-économique, démographique, de nos étudiants. Une réalité qui n'est certainement pas le cas à U of T, ou à l'université McGill où le prix rattaché à l'accès à l'éducation est 10 fois plus que le nôtre. Donc nos frais de scolarités sont extrêmement modestes, sont les plus bas au Canada, ce qui rend notre programme extrêmement accessible. Et puis ça ça se reflète dans […] les profils [de nos étudiants]."); NB05 ("Il y a cette mission,

Another obstacle that could deter potential applicants is the lower profile of Droit UMoncton compared to other law Faculties in Canada. Two participants affirmed that Droit UMoncton was not a "prestigious law Faculty,"[595] and another that it was an "underdog" among its counterparts.[596] This situation can affect the graduates' prospects when they compete against peers from other universities, for instance for Supreme Court clerkships.[597]

This is not to say that Droit UMoncton participants did not believe their institution offered quality legal education. They often appealed to different features to describe it, for instance: "c'est un environnement intime qui permet un échange entre professeurs et étudiants extrêmement favorable."[598] Even if a few faculty members also mentioned the impressive achievements of many alumni[599] and the institution's official webpage presents it as "at par with the best law [F]aculties in Canada,"[600] the overall discourse nonetheless contrasted with that observed in the other two Faculties.

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et il y a, même si je n'ai pas le mot, la clientèle. Très différente ici que McGill, U of A, UNB. Les acadiens [viennent] surtout de familles rurales, pauvres. Je peux voir les avantages de plus d'argent par les frais, mais je vois la réalité. C'est du pragmatisme.").

[595] NB04 ("Les étudiants savent que c'est une petite université, savent que ce n'est pas une faculté prestigieuse."); NB08 ("L'université de Moncton c'est une université jeune qui n'a pas beaucoup d'argent, et qui n'a pas énormément de prestige dans le monde universitaire canadien de façon Générale.").

[596] NB01.

[597] NB04 ("Nos étudiants savent que les personnes qui reçoivent des cléricatures à la cour suprême du Canada sont des étudiants de l'université McGill, et que à l'université de Moncton on peut rêver, mais c'est arrivé à quelques reprises seulement.").

[598] NB02.

[599] E.g. NB02 ("Si vous regardez les accomplissements de nos [environ] 1,000 finissants, vous verrez qu'ils occupent des postes à grande responsabilité un peu partout. Nous avons des juges en chefs, nous avons des juges à la Cour d'Appel, […] nous avons des finissants qui ont été des premiers ministres, Lord et Gallant aujourd'hui au Nouveau Brunswick, nous avons des finissants qui occupent des postes de responsabilité au niveau du gouvernement fédéral et provincial, notamment Roger Bilodeau qui est registraire à la Cour Suprême du Canada à l'heure actuelle […]; nous avons eu des finissants qui ont été des présidents des universités, etc. Donc la formule que nous avons employée ici a [obtenu] énormément de succès. Nous avons des finissants qui sont des très grands plaideurs: Philippe Eddie, Charles Leblond. [Ce sont tous] des finissants qui ont créé une marque pour leur travail au niveau de la profession.")

[600] Droit UMoncton, *website,* "Faculté", *supra* note 492 ("La Faculté [se place] au rang des meilleures facultés de droit au Canada.").

Adjectives such as best, leading, or even top-notch were frequent in the way UAlberta Law faculty members described their institution.[601] At DSJ UQAM, participants often insisted that their Faculty was now competing at par with other Quebec Faculties, and sometimes made sure to mention that their graduates obtained Supreme Court clerkships and placed high in Quebec bar exam rankings, while acknowledging past misfortunes in terms of reputation.[602]

A participant at Droit UMoncton connected the lack of prestige of this Faculty and the socio-economic aspect of the institution's mission in the following terms:

> Je dirais que la culture institutionnel de l'université de Moncton, la faculté de droit, [s'adapte] à la réalité socio-économique de sa classe étudiante. Je pense qu'il y a un constat qui est fait, ou qu'on peut faire, [c'est que nos étudiants sont des étudiants de première génération]. […] Une réalité qui n'est certainement pas le cas à *U of T*, ou à l'université McGill, où le prix rattaché à l'accès à l'éducation est 10 fois plus que le nôtre. […] nos frais de scolarités sont extrêmement modestes, sont le plus bas au Canada, ce qui rend notre programme extrêmement accessible, et puis ça ça se reflète dans le profil [général des étudiants]. C'est sûr que ça va influencer la culture institutionnelle. Tout comme, comme je disais, une institution qui peut se vanter d'avoir 8 étudiants en cléricature sur 12 à la cour suprême du Canada ; ça c'est quelque chose qu'on ne peut pas offrir ici. Et moi je trouve ça un peu discriminatoire en fait. Je pense qu'on a des étudiants tout à fait brillants qui sont étudiants ici, mais qui vont malheureusement devoir porter une étiquette, qui vont peut-être faire face à une discrimination du fait d'avoir choisi une petite université, un peu inconnue, un peu bizarre du fait que c'est la common law en français et que ça c'est bizarre. Ils vont peut-être avoir des obstacles professionnels qu'un étudiant de l'université McGill n'aurait pas [en raison du] prestige, prestige qui est souvent associé à un pouvoir d'achat.[603]

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[601] E.g. AB04, quote accompanying *supra* note 418; AB10 ("U of A was always known […] as, if not the leading […] law school in Western Canada, at least one of the two […]") and quote accompanying *supra* note 427.

[602] E.g. QC07 ("Il y avait [des] commentaires négatifs à l'égard de l'UQAM. […] Ce sont des préjugés qui parfois se répètent […] À un certain moment [un] journal étudiant [avait fait] une caricature [où] il avait [représenté] toutes les facultés de droit comme étant des moutons, [et] l'UQAM [apparaissait comme un] mouton noir […] On place bon an mal an à peu près le même nombre d'auxiliaires juridiques à la Cour Suprême que l'université de Montréal, depuis 10 ans, et on a au total le tiers de leur effectif."); QC03 ("Les années où […] les étudiants qui sortaient de l'UQAM avaient de moins bonnes notes [que les autres] au barreau […] ça a joué négativement sur la perception de notre programme. Ça a eu une incidence négative, [et] les corrections ont été faites il y a plusieurs années. Maintenant ça change d'une année à l'autre […] mais ça nous arrive assez régulièrement d'avoir le meilleure ou la meilleure étudiante d'une année, d'être soit premier, deuxième, troisième […] mais [on] arrive toujours à assez bien se classer parmi les universités au barreau. Donc je pense qu'on a plus à être complexé des résultats que les étudiants ont lorsqu'ils vont au barreau.").

[603] NB04.

Drawing from studies elsewhere, we can consider that the absence of emphasis on prestige or rankings at Droit UMoncton contributes to keeping the program accessible to poorer students and first-generation applicants.[604]

In this regard as in others, we can see that Droit UMoncton is intimately connected to its local Acadian community and perceives its mission mainly in terms of serving its educative and legal needs. It also sees itself as serving the Francophone minorities across Canada as they share the same language and socio-economic situations. The comparable destinies of minority (official) language communities throughout the country and the need to reach a sufficiently large audience to justify its continued existence explains this somewhat national reach. Unlike elsewhere, the breadth of the audience is not essentially conceived as a form of prestige at Droit UMoncton; this very notion is not part of the self-conception of the Faculty.

Conclusion

From the participants' contributions, we can identify manifestly distinct patterns of meanings associated with the idea of an institutional mission at each of the three Faculties. Even as internal debates sometimes rage, and as perspectives and paradigms evolve over time, for instance through generational renewal, each community seems to cultivate a unique sense of the ends of legal education at their institution. Even as discourses often rely on similar perennial tropes and hackneyed dichotomies, such the opposition between academic and professional aspirations, the way they are deployed distinguishes each

[604] See e.g. Jung-Sook Lee, "The Attainability of University Degrees and Their Labour Market Benefits for Young Australians" (2014) 68:3 Higher Educ 449 at 458 (showing that students' family backgrounds significantly predict the prestige of the university they attended). See also American Association of Law Schools & Gallup, *Before the JD: Undergraduate Views on Law School* (Washington, D.C.: American Association of Law Schools, 2018) at 53—57 (showing that a school's general reputation or ranking varies in importance as a criterion in students' selections of schools to apply to depending on their LSAT score); Chartrand et al, *supra* note 97 at 244—45 (showing some variation by Faculty in the importance that students placed on the prestige of the legal profession among their motivations for studying law).

Faculty. The boundaries between conceptions of the Faculty's mission and self-definition of the institution proved porous in all three case studies. This demonstrates that the idea of a mission is a site of unique cultural meanings for each law Faculty and a constitutive element of its institutional culture. In turns, it corroborates the premise that law Faculties can indeed be characterized as sites of unique significations about legal education.

DSJ UQAM and Droit UMoncton situate themselves in an identifiably political worldview. They each place specific social objectives and serving a distinct group of citizens at the core of their identity and objectives. DSJ UQAM directs its activities to the most socio-economically vulnerable and aims to use the power that comes from knowing the legal rules and structures to remediate the inherent social injustice in which they find themselves. Droit UMoncton's target community is primarily defined by its language, although it also constitutes a socio-economic minority in New Brunswick. DSJ UQAM and Droit UMoncton are therefore explicitly specialized law Faculties. On the other hand, UAlberta Law cultivates its generalist approach to legal education. It aims to contribute to the public good, broadly defined. It avoids any explicit political association, with a community or a school of thought. One could perceive UAlberta Law as embodying the mainstream and elite status of legal education that DSJ UQAM and Droit UMoncton aim to challenge or as the necessary positioning of Alberta's legacy law Faculty.

DSJ UQAM and Droit UMoncton nurture a transformative project for legal education as well as society. Whereas the former focuses on empowering disadvantaged groups for overall social transformation and the latter on empowering a specific language community for equality within the existing social framework, we can see a sharp contrast between these two and UAlberta Law. Comparatively, the latter appears to run alongside society as it evolves rather than seeks to lead it in a novel direction. For instance, UAlberta Law's move away from parochialism followed larger trends in legal education and society overall and was not a trailblazing phenomenon. The pursuit of compromise and

balance between diverging perspectives as well as a generalist approach favours the perpetuation of the status quo rather tha radical transformation.

UAlberta Law shares with Droit UMoncton the key objective of training competent lawyers for its region, in a traditional sense. The former has been the first institution to provide university legal education in its province, and the latter has been the first to do so in the second official language of New Brunswick and Canada. These two institutions consider the preparation for the professional practice of law to lie at the heart of their mission. At DSJ UQAM, faculty members recognize that this is what most students are looking for but generally see this as inconsistent with their own aspirations. Although social justice-oriented lawyers could help realize the political ideas embodied in DSJ UQAM's project, the tropism in legal circles toward private law and corporate interests certainly deters DSJ UQAM from contributing willingly to preparing students to serve interests they oppose. At Droit UMoncton, faculty members know very well that few among their students will argue the language rights cases they would like to see bring greater equality between language communities; however, the mere availability of lawyers competent in the minority language, regardless of the kind of practice they end up having, is perceived as a contribution to this equality. We can see here that different law Faculties engage differently with the much-discussed tension between the professional ends of legal education and other ambitions, and their institutional cultures expressed through their mission is the driving force behind such variations.

Legal educators often tend to discuss primarily the modalities of legal education, sometimes emphasizing tinkering at certain institution with discrete aspects of curriculum, pedagogy or admission policy. We can see here that responses to the larger question of the ends of legal education at specific institutions point to significative differences from one Faculty to the next. What we may perceive superficially, and even sometimes caricaturally, about the unique character of certain Faculties can be substantiated with detailed empirical evidence through portraits taking into account the local context,

history, and membership of the institution, for instance by asking questions such as “Why engage in legal education?,” “How do law Faculties aim to act on society?,” and “Who do law Faculties serve?”.

What I have done here with three Faculties forming a very heterogenous group could be tested elsewhere. While I generated the analytical categories and typologies mobilized throughout the chapter from my original data, they could inspire future researchers to explore further how other Canadian institutions experience their sense of mission. This inquiry proved fruitful for two Faculties which have explicitely articulated their *raison d’être* and unique character, as well as for another Faculty where such elements have remained more implicit and in keeping with mainstream conceptions. All Canadian Faculties thus seem susceptible to constitute interesting sites for similar endeavours and provide unique insights into the diverse realities of legal education in Canada.

On its own, the question of Faculties’ mission allowed me to identify manifest patterns of meanings at each institution. These patterns are coherent, even if subject to change and contestation, and distinguish Faculties from each other. Important on their own, these patterns are also key to understand other aspects of legal education at the same institution. In the following chapters, we will see how the meanings participants attribute to their Faculty’s mission are central to the webs of significations that they sustain. The insights we gained in this chapter thus provide us with a launchpad from which to continue ascertaining the institutional cultures of DSJ UQAM, UAlberta Law and Droit UMoncton.

Chapter 3: Institutional Structures

Introduction

In her history of *Legal Realism at Yale,* Kalman established that any analysis of legal education cannot rest solely on the study of ideas but must include robust consideration for what she called "institutional constraints."[605] Her seminal work is "a case study of the interrelationship between intellectual theory and institutional factors within the specific context of legal education."[606] Drawing on the insights she offered, Adams paid keen attention to "law professors and their writings, but also Deans and University Presidents, budgets and buildings, students and alumni" in his account of the evolution of legal education in Alberta in the mid-20th century.[607] These two scholars demonstrated that an analysis of legal education at specific institutions needs to extend beyond the mere exegesis of ideas and integrate an analysis of other factors such as the human actors themselves, the facilities and other structures that law Faculties set up and within which they develop themselves. This third chapter reflects the valuable lessons from Kalman's and Adams's works and turns to the meanings associated with some of the law Faculties' structural elements. As we will see, this is a fertile ground to ascertain meanings constitutive of the Faculties' institutional cultures and it adds valuable pieces to the portait that we started drawing in the previous chapter.

I make a different choice of words than Kalman to qualify to such elements. I find that Kalman's vocabulary ("institutional constraints") tends to obscure the variations to which such elements are subject. Budgets and personnel are subject to constant fluctuations; buildings and facilities also change

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[605] Laura Kalman, *Legal Realism at Yale, 1927-1960* (Chapel Hill: University of North Carolina Press, 1986) at xi.
[606] *Ibid* at xi.
[607] Adams, *supra* note 63 at 3.

over time, although at a much slower pace. Moreover, her terminology suggests a one-way relationship instead of a complex dynamic of mutual influence.

Instead, it seems that ideas, people, facilities, institutions, etc. at the same time structure and are structured by each other.[608] Drawing on Bourdieu, Sandomierski examined the complex interplay of structure and agency in forming the gap between aspiration in reality in contract law classrooms and concluded that "professors are not simply subjected to structural constraints, but […] also participate affirmatively in reproducing the structures that condition them."[609]

His insights allow us to rely on the premise that law professors are part of complex structuring dynamics in which ideas, people, facilities, budgets, institutions, etc. play a role. This is only a premise, however, and not something the present thesis aims to demonstrate with regards to the structural elements examined in this chapter. My current work is hermeneutical, consisting in the elucidation of meanings, rather than a quest for causal relationships or theoretical generalizations. It is as sites of intertwined meanings in the complex web of significance that constitute institutional cultures that I analyze structural elements in this chapter.

We will focus on several structural elements of legal education at the three law Faculties analyzed in this research. These elements will differ slightly from those examined by Kalman, Adams and Sandomierski as I selected them in light of the patterns of importance and significations attached to them in each Faculty that emerged from the data. This should not mislead the reader to conclude that elements absent from this chapter do not have a structural role in legal education; indeed, Arthurs and Macdonald,

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[608] See e.g. Pierre Bourdieu, *Distinction: A Social Critique of the Judgement of Taste*, translated by Richard Nice (Cambridge, MA: Harvard University Press, 1984).

[609] Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 407—08 (citing Bourdieu, *supra* note 608 at 101 to add that "the law professor's capital […] combined with the structural conditioning, in a given field of activity, constitute a practice" at 408, n 1697). See also Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 385 (painting "a picture of law professors as agents situated in an environment with its own norms and structures" and citing Arthurs, "The Political Economy of Canadian Legal Education" *supra* note 87 at 14 ("legal education is not an autonomous regime capable of defining and redefining itself from within")).

for instance, each identified a number of powerful forces that probably play a similar role.[610] My account here is limited to those which my fieldwork data allowed me to identify as drawing meaningful differences characteristic of each case-study Faculty.

Accordingly, this chapter will explore in sequence the following elements: the Faculties' labels (*section 1*), as each entertains a different rapport with its official name as a locus of meanings about itself; infrastructures and organizational arrangement within the university (supra-structures) (*section 2*), which are often assumed for law Faculties and that DSJ UQAM's unique situation allows us to question; the relationship with satellite organizations (research bodies, clinics) and connections with the legal profession as they are materially displayed in each Faculty's space (*section 3*); finally, the teaching personnel (*section 4*), including external instructors, who are often legal professionals themselves, and the law professors, who place great signification on their own background and trajectory.

1. Labels

> [T]he paradox of professional [F]aculties is patent. It can be expressed, as I have had occasion to do so in the past, with consideration of the simple label by which we describe our institutional affiliation. Are we members of a 'department of law' fully integrated into the intellectual life of the University? Are we members of a 'law school' where the law part of the equation, and the ambition to practice the profession, have pride of place? Are we members of a 'faculty of law', with the ambivalence about professionalism and uncertainty about the knowledge we profess that such a label carries? How we answer these questions says much about how we imagine our careers, our scholarship, and ourselves.[611]

This passage from Rod Macdonald's reflection piece on the occasion of the Arthurs Report's 20th anniversary illustrates that labels attached to law Faculties are at the same time replete with meanings

[610] Arthurs, "The Political Economy of Canadian Legal Education" *supra* note 87 (describing the political economy of Canadian legal education as an extension of that of the legal profession and the higher education sector); Macdonald & McMorrow, *supra* note 236 (identifying "powerful exogenous forces" dominating "the legal education establishment in Canada", including intellectual, professional, market, consumerist, and herd colonization).
[611] Macdonald, "Still 'Law' and Still 'Learning'?" *supra* note 5 at 25.

and a an object of worthy intellectual exploration.[612] In comparative legal studies more generally, Legrand explained that choosing a label for a thing and applying this name to it is an "ascriptive process [through which] the world becomes an object of significance beyond its raw materiality and that it can therefore become an object of thought."[613] Each in their own way, Macdonald and Legrand direct us to the structural characteristic of labels, show that they are prime sites of meanings constitutive of cultures (institutional or at another level), and encourage us to study them as such.

The following remarks by a participant at Droit UMoncton exemplify that law professors attach different meanings to different labels: "[il y a] des écoles, Osgoode Hall Law School, des facultés, et des départements, le Départment des Sciences Juridiques. 'Ecole,' c'est la vocation professionnelle. 'Département,' c'est purement la recherche au sein de l'université. 'Faculté,' c'est entre les deux."[614] While this typology, much like Macdonald's, may fail to reflect each institution's specificities,[615] it further shows that contemporary actors of Canadian legal education assign distinct meanings to their institutions' labels.

At first glance, we can see marked distinctions between the Faculties under scrutiny here, making this site of meaning an interesting one for this comparative entreprise: DSJ UQAM is a "Département des sciences juridiques", a sub-unit of UQAM's "Faculté de Science Politique et de Droit"; UAlberta Law is a "Faculty of Law," but is often called a "law school"; Droit Moncton came to life as an "Ecole de droit", and is now a "Faculté de droit." We have here three distinct examples that allow us to examine many aspects

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[612] In a different context, see also Christophe Jamin, "Faculté, école, clinique ? Quel choix ?" (Address delivered at the "Former les juristes: tradition, renouveau, défis" Conference, Paris, 12 October 2018) [unpublished]. On Sciences Po Law School, see also. Christophe Jamin, *La cuisine du droit* (Paris: L'extenso, 2012), and on the French debates on legal education that it triggered, see also Christophe Jamin & Mikhaïl Xifaras, "Sur la formation des juristes en France Prolégomèse à une enquête" [2015:2] 150 Commentaire 385 and the series of responses in subsequent issues of the same journal.

[613] Legrand, *supra* note 145 at 375.

[614] NB01; see also Section 1.4, *below*, discussing meanings associated with "département des sciences juridiques."

[615] E.g. it would suggest that UBC and Dalhousie's law Faculties's change of name reflected a substantial change of focus in the education they provide and that DSJ UQAM primarily aimed to educated legal academics.

of this issue. As we will see in this section, the importance attached to these labels varies from one institution to the next (as well as among faculty members within the same institution). In the above extract, Macdonald only mentions the first part of the labels: what describes the status of the academic unit. The second half of the labels, naming the discipline itself, also needs careful attention. Moreover, the labels do not only hold meanings on their own but do so in comparisons with the label of other equivalent institutions. Hence, I will start by offering a survey of contemporary practices for law Faculties' labels in Canada (*section 1.1*), before analyzing, in turn, the significance of UAlberta Law's (*section 1.2*), Droit UMoncton's (*section 1.3*) and DSJ UQAM's (*section 1.4*) own labels.

1.1 Contemporary Practices

Until recently, the "Faculty of Law" label was almost hegemonic in the country,[616] with only three exceptions among the now 23 members of the Council of Canadian Law Deans: DSJ UQAM, Osgoode Hall Law School, and University of Saskatchewan's College of Law.[617] A telling indication of the strength of this standard lies in the fact that the three most recently-established institutions all chose to name themselves "Faculties of Law."[618] However, in the past decade, two existing Canadian law Faculties changed their names and adopted the School of Law label. They enacted this change as they took the name of generous private donator to recognize his gift: first, the Schulich School of Law at Dalhousie University (Dalhousie Law), and a few years later the Peter A Allard School of Law at the University of British Columbia (UBC Law). With these recent additions, now three of Canada's law Faculties officially call themselves Schools. While still marginal, this phenomenon announces a growing acceptance of the American practice

[616] For a theoretical exploration of the terms "Faculty of Law", see Forray, *supra* note 85.
[617] Osgoode Hall Law School retains its name when it left the tutelage of the Law Society of Upper Canada to become affiliated to York University in 1965, whereas other universities in Ontario host "Faculties of Law."
[618] At Thompson Rivers University, Lakehead University, and Ryerson University (despite the forcefully professional orientation of some of these programs). But note that Trinity Western University's proposal the same period was for a "School of Law."

regarding the name of law teaching institutions,[619] much like Canadian common law Faculties have recently adopted the American designation for their undergraduate law degree.[620]

Allard and Schulich are not the only names of individuals to appear in the official designation of a Canadian law Faculty. Upon its creation, Lakehead University decided to name its own after Bora Laskin ("Bora Laskin Faculty of Law"), and the University of Manitoba in 1969 gave Hugh A Robson's name to both the new building of the law Faculty and the Faculty itself ("Robson Hall, Faculty of Law").[621] There are therefore now four institutions bearing the name of individuals. There is however a remarkable difference between, on the one hand the two schools (Dalhousie Law and UBC Law) and the two Faculties (Lakehead Law and UManitoba Law). Allard graduated from UBC's law Faculty and donated $30M to his alma matter;[622] Schulich has given his name to many educational institutions across Canada through similar philanthropic donations,[623] amounting to $20M in 2012 for Dalhousie.[624] The contrast is sharp with Laskin, former Chief Justice of the Supreme Court of Canada, and Robson, former Chief Justice of Manitoba and first chairman of the Manitoba Law School. The two Faculties that chose to bear the latter names did so to honour influential figures and inspire their communities, rather than recognizing a financial contribution, as was the case in Vancouver and Halifax.

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[619] Among the 179 members of the Association of American Law Schools (AALS), 135 (75%) are Law Schools or Schools of Law, 38 (21%) are Colleges of Law, 6 (3%) are Law Centers, and none are Faculties of Law (see AALS, "Member Schools", online: <https://www.aals.org/member-schools/> [ALLS, "Member Schools"]). On the Americanization of Canadian legal education, see generally Macdonald & McMorrow, *supra* note 236 (also commenting on the use "law school" in the title of their own paper at 718), and Arthurs, "So Far From God", *supra* note 87.

[620] See Chapter 4, Section 3.1, *below,* for more on degree designations.

[621] Chris Verscheure, "Robson Hall 'Finest on Campus'" *The Manitoban* (21 October 1969) 3.

[622] UBC Law, "About Allard Hall, Home of the Peter A. Allard School of Law", online: <www.allard.ubc.ca/about-us/about-allard-hall> ("A transformational gift of $11.86 million from law alumnus Mr. Peter A. Allard, Q.C. was recognized by the University by naming its new law building Allard Hall.").

[623] Schulich School of Business at York University, Schulich School of Medecine & Dentistry at University of Western Ontario, Schulich School of Engineering at University of Calgary, Schulich School of Music at McGill University, and Schulich School of Education at Nipissing University. See also NBXX (affirming that "Faculté de droit de Dalhousie" was a "noble" name in comparison with the new label).

[624] Dalhousie, News Release, "Introducing the Schulich School of Law" (15 October 2009), online: <https://www.dal.ca/news/2009/10/15/schulich.html>.

Moreover, be they Faculties, Schools or even Colleges, the name of all Canadian law Faculties includes "law" or "droit," and only this term, with the only exception of DSJ UQAM. "Law" (*tout court*) is the label that signals that these institutions offer a program leading to qualification for legal practice. Law Faculties sharing this characteristic are all part of the Council of Canadian Law Deans.[625] Some academic units across Canada bear other labels, such as legal studies, justice studies, criminal justice, or even law and "…" (e.g.: law and society);[626] regardless of the amount of law-related learning and research that they nurture, their programs are not recognized by any professional association in the country as counting toward admission to the bar.

We can also say a few words about the universities' names themselves. For UQAM, UAlberta and UMoncton, the university name is based solely on geography, and indicate the city, the province, or both, where it is located. This is the most common practice in Canada.[627] We can compare this to university names honouring historical figures, religious figures, or simply founders.[628] Geographic names do not tie the institution to a namesake's heritage, or certain religious values; they primarily signal the geographical community that this institution serves.

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[625] See *CCLD Constitution, supra* note 20 at s 2.1 (defining "a law school" as "any university unit principally responsible for offering a degree in law, completion of which is recognized by at least one Canadian admitting authority as satisfying most or all of that authority's academic requirements for admission to legal practice"; the French version translates "law school" in "faculté de droit."). Carleton University Department of Law was invited to be part of the CCLD (*ibid* at s 13.2); John R St Macdonald also included the Carleton University Department of Law in his invitations for pieces about the state of legal education across Canadian law Faculties to be published in the first few volumes of the Dalhousie Law Journal, see John Barnes, "The Department of Law, Carleton University, Ottawa" (1977) 3 Dal LJ 814. However, the department is now called "Department of Law and Legal Studies," indicating that it is not a unit teaching law tout *court*.

[626] See e.g. the list included in *supra* note 204.

[627] More than half of the hundred or so members of Universities Canada feature a name with geographic indication, see Universities Canada, "member Universities", online: <https://www.univcan.ca/universities/member-universities/>.

[628] This practice brings with it the challenge of addressing the wrongs that the namesake (see e.g. Ryerson University, Aboriginal Education Council, "Egerton Ryerson, the Residential School System and Truth and Reconciliation" (August 2010), online (pdf): <https://www.ryerson.ca/content/dam/lt/resources/aboriginal_education/egerton%20ryerson_fullstatement.pdf>).

Today, UAlberta Law and Droit UMoncton both bear the same label: Faculty of law/faculté de droit. This same label is also present (with an addition) in the name of the administrative unit under which umbrella DSJ UQAM finds itself (faculté de science politique et de droit), although DSJ UQAM's own label shares none of these terms. Let us start by looking closely at these two words in sequence (Faculty/faculté; law/droit), first as they apply to UAlberta Law and then to Droit UMoncton, before turning our attention to DSJ UQAM's distinct terms.

1.2 University of Alberta Faculty of Law

At UAlberta Law, interview participants used both "Faculty (of law)" and "(law) school" interchangeably in reference to their academic unit. For instance: "I think we have changed […] a vast amount from the *Faculty* I came to. When I was hired, it was largely a provincial, somewhat parochial *law school*,"[629] or "When I first started as a student at the *Faculty*, the role of the Dean was to run the *law school*."[630] That is so even as some faculty members expressed that they gave different meanings to the terms, generally associating the "school" vocabulary with the idea of professional education and that of "Faculty" with the academic perspective of a university: "[some of the professors are] a little more committed to the idea of the *law school* as a *Faculty* of the university, in sort of like academic's as opposed to practitioner's view necessarily of the law."[631] I have not encountered any evidence that the institution's label was the object of debates or attracted attention in the participants' discourse or the institution's environment. The terms Faculty of law and law school co-exist and overlap unproblematically at this

[629] AB03.
[630] AB04; see also AB08 ("I am not terribly engaged with the history of the Faculty […] many of the lawyers who are practicing in Alberta are graduates of this law school so there is that sort of historic connection between the faculty and our former students too, which is I think a strength."), AB10 ("U of A was always known […] as [at least one of the two] leading academic law school in Western Canada. [When I was hired,] I knew that the hiring at the Faculty had been very strong in years before. […] The Faculty and its members [had not been] promoted in ways that would attract the right kind of attention to the successes that are happening here.").
[631] See e.g. AB02.

instituion. A similar situation seems to have long prevailed at many common law counterparts across Canada.[632]

A historical perspective suggests that the Faculty designation for UAlberta Law was a decision contingent on the designation chosen for academic units across the university, rather than the result of specific considerations as to the unit in charge of legal education. In 1912, the University of Alberta created a Faculty of Law to administratively host the lectures sponsored by the Law Society in Edmonton.[633] The provincial statute establishing the University of Alberta adopted the Faculty label for all comparable academic units.[634] Neighbouring Saskatchewan became a province at the same time as Alberta and was then following a similar development. There, the provincial university was initially to be composed of Faculties,[635] but it soon preferred the name of "Colleges" for such units, and accordingly, a *College* of Law was established in 1913.[636] It has retained this label to this day.

The parallel birth of university legal education in Alberta and Saskatchewan was largely the work of graduates from the Dalhousie Faculty of Law. Dalhousie University had established a Faculty of Law in 1883, the first in common law provinces of Canada.[637] Its graduates were soon well present in the Prairies

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[632] See e.g. Willis, *supra* note 32 at 19 ("Dalhousie Law School or, to give it its correct title, the Faculty of Law of Dalhousie University […]"). Even at McGill Law, the institutional website features side by side the official name ("McGill Faculty of Law") and the following catchphrase: "Canada's most globally oriented law school" (see McGill Law, online: <https://www.mcgill.ca/law/>).

[633] University of Alberta Archives, *Minutes of the Board of Governors,* (8 October 1912) 70-177-44 at 27, cited in John M Law & Roderick J Wood, "A History of the Law Faculty" (1996) 35:1 Alta L Rev 1 at 4, n 21. We can however note that the term "department" was sometimes used to refer to an academic unit of the University, even by the University President himself (see Sibenik, *supra* note 52 at 461, n 172 (reproducing extracts of a letter from the University President Tory: "any department of the University […] - Arts, Law, or Medicine.'")); see also Adams, *supra* note 63 at 7 ("The Law Faculty dated to 1912 when the University created a Department of Law").

[634] See generally *University Act*, SA 1910.

[635] See *University Act*, SS 1907 (compare e.g. s 33 (d) (referring to faculties and departments to be established in the University) and s 33 (i) (referring to colleges existing outside of the University).

[636] Pue, "Common Law Legal Education", *supra* note 4 at 663. I did not find any indication regarding the meanings associated to this distinctive name then or now.

[637] Willis, *supra* note 32 at 19, 25 (showing that the official name of the law unit at Dalhousie was indeed "Faculty of Law"). In 1892 a "Law School" opened in Saint John, NB, in connected with King's College at Windsor, NS, which would only affiliate with the University of New Brunswick in 1923; it is unclear when it took the "Faculty" official designation, see generally Bell, *Legal Education in NB, supra* note 33.

by the early 19th century and came to populate influential positions in the legal professions in the region.[638] They imported the model of legal education that served them well.

Additional evidence of this genealogy comes from the lack of currency alternative models then enjoyed in the region. One potential such alternative could be American, as at the time the United States were starting to exert "pervasive cultural influence"[639] and could provide a model as university legal education had already taken a strong hold at the time South of the border. However, "Faculty" was not the way American universities called their law units.[640] Moreover, the leaders of the Prairie societies at the time remained vigorously British in orientation.[641] An American genealogy therefore is not possible.

Another suspect could be a British influence. In the hypothetical absence of the administrative organization contingency at the university level exposed above, we could expect the choice of the Faculty label in Alberta to have expressed the linkage with the British heritage, in opposition to the American practices, especially as the inspirator of this development (Dalhousie) was markedly British-minded. However British the orientation of the decision makers, England itself could hardly be the source of direct inspiration. At the time, the Universities of Oxford and Cambridge had long been teaching civil and canon

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[638] Willis, *supra* note 32 at 8 ("As to Alberta, so many Dalhousie graduates had gained positions of power in the legal profession there that one can say without doubt that it was their influence which […] brought about the change. In Saskatchewan, both the first Dean of the College of Law at the University of Saskatchewan and his assistant were from Dalhousie."); see also W H McConnell, *Prairie Justice* (Calgary: Burroughs & Cie, 1980) at 106 ("The influence of natives of the Maritime provinces in developing the College of Law can hardly be overestimated."). The influence of Dalhousie was not limited to the Prairies as we can also see they lasting impact in Minnesota (see Adams, *supra* note 63 at 16—29), and later in British Columbia (the first Dean of law at UBC in 1945 had been teaching law at Dalhousie for 11 years prior to his appointment, see Willis, *supra* note 32 at 8).

[639] Pue, "British Masculinities", *supra* note 61 at 86.

[640] None of the 179 members of the Association of American Law Schools seemed to have ever born the designation of Faculty (see AALS "Member Schools", *supra* note 619); we can note that currently 40 of them bear the label of College, including a dozen as early as 1914 (e.g. the University of Iowa College of Law, renamed a College of Law from a Department of Law in 1901, see online: "Law School History and Milestone" <https://law.uiowa.edu/celebrate-iowa-laws-150th/law-school-history-and-milestones>). See also Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 60 (quote reproduced at *infra* note 658).

[641] See Pue, "British Masculinities", *supra* note 61at 86; see also Pue, "Common Law Legal Education", *supra* note 4 at 662ff; see also Sibenik, *supra* note 52 at 461, n 172 ("[The President of the university of Alberta] had a low opinion of American professors, except those from prominent eastern universities, where he felt British cultural and intellectual traditions were stronger").

law, but the idea of teaching common law was only burgeoning.[642] Moreover, the primary components of these standard-setter universities were the traditional Colleges, rather than the Faculties or Schools organized by disciplines.[643] Accordingly, this option cannot be retained.

Closer to home, in Ontario and British Columbia, other potential sources of inspirations for then very British inclined Albertans, legal education was still very much the reserved domain of law societies and would not come in the hands of universities until after World War II.[644] On the other hand, Quebec featured well-established Faculties of law since the second half of the 19th century, in keeping with the continental European civil law tradition.[645] However, these probably had no bearing on the developments and naming of legal education institutions in common law Canada, as what Willis affirmed of late 19th century Nova Scotia lawyers, that they "would know little – and care less – about what French-speaking civilians did," certainly held true for Albertans a couple decades later.[646] In short, in addition to the evidence supporting this filiation, there were no alternative to Dalhousie for Alberta to find a model of university legal education to follow.

We can note that in Manitoba, it is a "Manitoba Law School" that came to life in the same period, even though its host university was organized in colleges like its Saskatchewan counterpart.[647] What stands out is that within the span of three years, three university units dedicated to law teaching were

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[642] See William Twining, *Blackstone's Tower: The English Law School* (London: Sweet & Maxwell, 1994) at 24—26 [Twining, *Blackstone's Tower*].

[643] See e.g. generally F H Lawson, *The Oxford Law School 1850-1965* (Oxford: Clarendon Press, 1968).

[644] In 1945 in British Columbia, and after 1959 in Ontario. But see Pue, "Common Law Legal Education", *supra* note 4 at 667—68, n 61 (citing a report made by Ontario's 1906 Royal Commission on the University of Toronto showing that the idea of a "Faculty of Law" in the province Ontario was floated early in the 20th century).

[645] See Willis, *supra* note 32 at 21 ("there were in the civil-law province of Quebec as many as three university law schools [in the 1880's]: at McGill (1848); at ULaval (1854); and at a branch of ULaval in Montreal (1878), now UMontreal (1878); all three of them have remained in continuous operation ever since. For in accordance with a European tradition going back to the eleventh and twelfth centuries, in France, and therefore in Quebec, it has always been considered the natural thing that a young man coming to the practice of law should receive his academic training in a university.").

[646] See Willis, *supra* note 32 at 21.

[647] Pue, "Common Law Legal Education", *supra* note 4 at 666—67, n 62 (citing to reports from the late 1900's arguing for the creation of a "School or College" to teach law at the university in cooperation with the Law Society).

established in the three Prairie Provinces, each bearing a different label. Upon making its first steps in the region, university legal education was thus hesitating as to how to call itself, but probably more as a result of variations in naming practices from one university to the next rather than differences in the form or content of the legal education itself. Indeed, all three Prairie law Faculties/Colleges/Schools were then very comparable joint endeavours of the provincial law society and the university, with the latter's role being overall limited to hosting lectures under a formal structure.

The contemporary connotations emphasizing the academic character of a Faculty as opposed to the professional character of a School, as expressed by a UAlberta Law participants quoted above, were therefore not a driving force in naming this institution when it came to life. It is not until 1921 that the University of Alberta obtained full control over the content of the courses and examinations leading to a law degree, which then became a requirement to join the Law Society of Alberta.[648] By contrast, the same arrangement solidified in Manitoba in 1966, after decades of fluctuation, and that was the occasion of renaming the Law School a Faculty of Law.[649]

UAlberta Law adopted from its beginnings a designation that would later become mainstream in Canada. It appears that the co-existence and overlapping use of the terms "Faculty of Law" and 'law school" have been unproblematic at this institution like many others in common law Canada. The absence of importance and distinctive significance that UAlberta Law participants associated with this matter are in keeping with the traditional character of other components of its institutional culture that we have ascertained so far.

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[648] Sibenik, *supra* note 52 at 457—458; Adams, *supra* note 63 at 7.

[649] See London, *supra* note 51 at 77—81; see also e.g. E K Williams, "Legal Education in Manitoba: 1913-1950" (1950) 28:7 Can Bar Rev 759.

1.3 Faculté de droit de l'université de Moncton

By contrast, professors at Droit UMoncton have attached great importance to the designation of their institution. From its creation in 1978 to 2001, Droit UMoncton was called *école de droit*; since 2001, it has become a *faculté de droit*. Writing about the history of the institution, Vanderlinden dedicated several pages to this topic in a section titled "Qui suis-je? Une faculté ou une école?"[650] Further, he recounted that several Deans had petitioned the university authorities during the first 20 years of existence in the hope to change the label from *école* to *faculté*.[651] He concluded the section on this topic with the following flight: "[n]ée faculté, baptisée école sans son consentement – mais quel nouveau-né acquiesce au nom, aussi mal choisi soit-il, que lui donnent ses parents? – l'Ecole espère toujours qu'un changement de nom lui sera un jour consenti."[652] When the change finally happened in 2001, the Faculty's bulletin declared that it conformed to "une volonté maintes fois exprimée, entre autres par le personnel de [l']établissement depuis sa création en 1978."[653] In the same publication, the Dean expressed the great significance he accorded to this name change: "Il est de ces moments dans la croissance d'un établissement comme le nôtre qui manifestent haut et clair son passage de l'adolescence à la vie adulte. Telle est sans aucun doute la signification de notre nouvelle appellation de Faculté de droit."[654]

We can, therefore, see that the label has been an object of contestation at Droit UMoncton, and a prime site of expression for the Faculty's understanding of itself and the way it wants to be perceived by others. It is so even despite the unit's designation being contingent on administrative organization within the university, such as that discussed earlier concerning early 20th century Prairies universities rather than careful conceptual considerations of the Faculty's deeply held feelings on the matter. Vanderlinden recounted that while all preparatory works towards the creation of Droit UMoncton

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[650] Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 59—61.
[651] *Ibid* at 61.
[652] Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 61.
[653] *Le Juriste: Bulletin d'informatin de l'Ecole de droit* 20 (Summer 2001) at 1 [*Le juriste Droit UMoncton*].
[654] *Ibid* at 2.

referred to a future *faculté de droit*, after the summer 1977 official documents suddenly spoke of an *école de droit*. He could not trace the exact origin of this change, but posited that it was "une simple mutation dans un document, suivie depuis sans qu'aucune décision formelle en ce sens ait jamais été prise."[655] A near quarter-century later, the name change occurred in the wake of a large reorganization of the academic structures across the university, and three *écoles* became *facultés* at UMoncon with the stroke of a pen.[656]

The apparent triviality of such processes should not obscure the importance and meanings that law professors have attached to Droit UMoncton's label. Analyzing the cultural significance of this topic is more pertinent for this thesis than the pursuing nominal definitions. The contrast between the absence of sentiments expressed at UAlberta Law on this topic and the history of strong positions expressed on this topic at Droit UMoncton warrants our attention.

Let us then turn to the meanings Droit UMoncton professors have expressed regarding their strong preference to be called a *faculté* rather than an *école*.[657] They primarily rejected being called a law school (*école*) as it aligned them with American labelling practices rather Canadian, English or French, and European ones.[658] In French, the norm is to call such academic units *facultés*. People would easily refer to Droit UMoncton as a "faculté" even when this was not its official name,[659] much in the same way as

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[655] Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 60 n 118.

[656] *HebdoCampus: Bulletin d'information de l'université de Moncton* 31:33 (10 May 2001) 5 (explaining that the board of governors gave the Faculty status to the schools of law, engineering and forestry on the basis of a 1999 report titled "Proposition d'allègement de la structure académique et de rationalisation de la gestion de l'U de M", which recommended that the status of school be reserved for subdivisions of larger Faculties).

[657] I have not found any evidence of contrary opinions expressed publicly by members of the institution; this of course does not signify that all members always agreed with this position, or even that all had strong preferences in this regard.

[658] See Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 60 ("A l'appui de l'appellation de faculté, il y a indiscutablement la pratique canadienne, davantage inspirée de l'Angleterre (où le terme école n'est utilisé dans aucune université pour désigner une faculté de droit) que de celle des États-Unis, où toutes les facultés de droit sont appelées école. ").

[659] See e.g. Paul-Emile Richard, "L'impossible se réalise" *L'Evangeline* (29 November 1978), online: *UMoncton* <www8.umoncton.ca/umcm-evangeline/TXT/10106.html> (an editorial of the local francophone newspaper making several mentions of a "Faculté de Droit" but never of an "Ecole de Droit" at UMoncton).

English-language Canadian law schools refer to themselves as "law schools" despite their official Faculty designation. Moreover, *école de droit* came across as a literal translation of the English *law school*. Opting for an Anglicism, and especially one typifying the American cultural influence, in the face of a well-established French language standard, which the English Canadian labelling norm mirrored, did not sit well in an institution where the flourishing of Francophones in their own language is so important. It ran counter to the aspiration to reverse the trend of assimilation of minority French-speakers across Canada to the English language and Americanized English Canadian culture. The Dean's mention of an "affranchissement" to qualify the name change in 2001 is evocative in this regard.[660]

Other negative meanings seemed to be associated with the *école* label. It was perceived to carry connotations of lower status compared to *faculté* counterparts. This could deter potential faculty members and leaders from joining Droit UMoncton, especially as the main competitor in Ottawa featured a more attractive geographical location and stronger institutional network regardless of label considerations. An additional set of connotations attached to *école* could falsely indicate that Droit UMoncton placed greater emphasis on professional training as opposed to academic pursuits than other law Faculties.[661] These concerns related to Droit UMoncton's legitimacy, a valuable currency for a young institution which attempted something many thought inadequate in the field of legal education.[662] It took even greater value in a university that saw itself as an essential pillar for the survival and development of a minority culture which too often perceived itself as less worthy than others.[663]

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[660] See e.g. the Dean's message in *Le juriste Droit UMoncton, supra* note 653 at 2 (« En abandonnant le nom d'Ecole pour enfin devenir Faculté, non seulement nous affranchissons-nous, en cet emploi, d'un calque de l'anglais […] »).
[661] Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 60—61.
[662] See e.g. Richard, *supra* note 659 and Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 36 (both citing *Soberman Report*, *supra* note 577 at 74 affirming that "it is impossible to become competent on a professional level in common law in a language other than English").
[663] See e.g. NB04. See also Chapter 2, Section 4.4, *above*.

One participant echoed the same meanings attached to *école* as compared to *faculté*: "Ici on est une faculté. On fait de la recherche, *on n'est pas juste une école.*"[664] This remark highlights that although Droit UMoncton acquired the long sought after faculté label nearly 20 years ago, the importance and significance attached to it have not disappeared and remain relevant for our contemporary analysis.

1.4 Département des sciences juridiques de l'université du Québec à Montréal

Droit UMoncton long demanded and finally obtained that its official name be aligned with that of counterparts in Canada. Conversely, DSJ UQAM purposefully chose a name that distinguished it from other institutions and has retained the same since its creation. It has remained distinctive and the embodiment of core meanings about legal education at DSJ UQAM. Interview participants at DSJ UQAM offered numerous comments regarding the label of their institution, remarkably more often than in any of the other case-studies; while some did so after I explicitly prompted them to engage with this topic, four of them did not need such prompt.[665] While they expressed different views on their institution's label, their engagement demonstrates the continued significance of this distinctive appellation, thus justifying a thorough exploration here.

Due to the internal organization of UQAM at the time, the administrative entity bringing law professors together was created shortly after and distinct from the program of study itself.[666] The program

[664] NB01 (emphasis added); see also *ibid*, quote accompanying *supra* note 614.
[665] 9 DSJ UQAM participants (82%) offered substantial comments on the label "sciences juridiques" (compared to 2 participants at Droit Moncton and 0 at UAlberta Law); 4 of them did so without prompt, while I explicitly prompted 5 of them. The prompts focused on "sciences juridiques" rather than "département."
[666] Bureau & Jobin, *supra* note 340 at 299 ("the 'Sciences juridiques' experience is broadly composed of two spheres of activity: an undergraduate Law Studies Program (literally, a 'Specialized Baccalaureat in Law') and a Law Department. The first aims at educating lawyers and qualifies the graduate to enter the Quebec Bar Admission Program. The second is composed of the law professors and oversees the teaching of law courses for all the programs offered at UQAM. The law professors are also required by the Department to report on their research activities and to take on some administrative or community service responsibilities. The Program and the Department reflect the typical UQAM institutional structure which recognizes the relative autonomy and the functional complementarity of the program entities ('modules') and the teaching resources entities ('départements'). This double structure may

was baptized "baccalauréat spécialisé en *sciences juridiques*," and not "baccalauréat en droit" or "licence en droit" as was the case in other universities teaching civil law.[667] The academic unit took the same name, becoming the "département des *sciences juridiques*" and not a "faculté de *droit*" like its counterparts. Both parts of DSJ UQAM's name, "département" and "sciences juridiques" hold meanings revealing certain aspects of the institutional culture. We will examine briefly the first part before dedicating more attention to the second one.

As we saw above, labels such as Faculty, school, and here *département*, carry different connotations, but most often result from organization decisions at the university level rather than depend on the law professors themselves. At UQAM too, the label *département* is the same for DSJ UQAM as for other equivalent units across the university. We will discuss below the dialectic between the Department and the Faculté de Science Politique et Droit within which it now finds itself.[668] While defining boundaries, *department* nonetheless suggests less isolation from other equivalent academic units across the university than *faculté*. This idea is also part of the meanings associated with "sciences juridiques." As participants overwhelmingly focused on this second part of their institution's label, we will now turn our attention to this more significant site of meanings.

DSJ UQAM participants knew that "sciences juridiques" was a distinctive name.[669] It was so by design in the initial gesture,[670] and the choice of terms seems to have come from within UQAM in 1971.[671]

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fairly be considered to be different from the more self-sufficient 'faculty' structure.") We can note that when writing in English, these two founders use "legal studies" for the program, and "law" for the department, whereas both bear the "sciences juridiques" label in French.

[667] See Chapter 4, Section 3.1, *below,* for more on DSJ UQAM'S law degree designation.

[668] See Section 2.1, *below*.

[669] E.g. QC01 ("département des sciences juridiques c'est assez particulier comme dénomination.").

[670] Carol Jobin, "Une certaine biographie des sciences juridiques à l'UQAM – La période 1972-1986 Première Partie : l'ère du programme de baccalauréat, phase I : l'implantation (1972-1976)" (2013) 58 Pour la suite du monde (Bulletin de l'APR-UQAM) 10 at 11 ("L'avènement d'un programme de 'sciences juridiques' (et non 'de droit', *originalité oblige*)…" [emphasis added]) [Jobin, "Biographie DSJ UQAM 1972-1976"].

[671] According to Brault's account of events (Brault et al, *supra* note 44 at 3, 7), it happened sometime between November 1970 (report recommending the establishment of a new program "de droit" at UQAM) and May 1971 (creation of a committee to establish a "sciences juridiques" program). A survey of the legal literature reveals that

While some affirmed that it proved sometimes confusing for English-speakers,[672] a participant affirmed that continental Europeans usually received it well as it reminded them of the French and German tradition in law.[673] We can presume that the greater confusion among English speakers could also result from the earlier and more complete discrediting of the epistemology of "legal science" in American legal theory under the influence of Legal Realism, than among its Continental counterparts.

However, DSJ UQAM founders did not intend to bring back 19th century German or French legal science. They intended the label to reflect the new program's unique ambitions. It has retained this primary function as the participants' discourse often conflated the "sciences juridiques" label with their institution's mission, for instance: "[un] aspect de la mission officielle c'est d'être un département de sciences juridiques, et pas de droit."[674]

Three participants offered the same illustrative analogy to explain the meanings they attached to this label, for instance:

> QC07: Le département s'appelle encore sciences juridiques parce que l'on disait on ne veut pas faire du droit simplement comme certains font de la théologie, c'est-à-dire essayer de l'intérieur comprendre le droit, et trouver sa vérité, ou trouver la meilleur interprétation, mais de voir le droit aussi comme les sciences religieuses le voient, c'est-à-dire comme un phénomène externe dans la société, le situer dans con contexte social, économique, politique, et pouvoir l'utiliser à des fins d'émancipation.[675]

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before the creation of UQAM's "baccalauréat en sciences juridiques," the expression was hardly used, and certainly not to name a distinguishable field of inquiry (as an equivalent or alternative to law). It did not take hold after the establishment of DSJ UQAM either, except to refer to the institution, the expression did not become popular after the creation of DSJ UQAM either. But note that it is not entirely unique, as for instance a French University features a *faculté de sciences juridiques, politiques et sociales* (Université de Lille) and a Belgian univeristy offers a "doctorat en sciences juridiques" (see Université Libre de Bruxelles, Faculté de droit et de criminologie, "Le doctorat", online: <https://droit.ulb.be/version-francaise/navigation/la-recherche/les-theses-de-doctorat>).

[672] QC02, QC04.

[673] QC04. On the significance of 19th century "legal science", see e.g. what Kennedy labels "Classical Legal Thought" in Duncan Kennedy, "Three Globalizations of Law and Legal Thought: 1850–2000" in David M Trubek & Alvaro Santos, eds, *The New Law and Economic Development: A Critical Appraisal* (Cambridge: Cambridge University Press, 2006) 19; see also Dedek, "Stating Boundaries", *supra* note 85.

[674] QC02.

[675] QC07. See also QC01 ("A l'origine pour moi, [le nom 'sciences juridiques' indiquait] la même chose que la différence entre la théologie et la science de la religion. Donc la théologie c'est l'étude du livre ; science des religions, c'est l'étude du fait religieux dans la société. Donc pour moi à l'origine c'était l'objectif de faire la

They explained the contrast between law ("droit") and "sciences juridiques" to correspond to that between theology and religious sciences. "Sciences juridiques" does not endorse or perpetuate legal dogmas, the sacred legal discourse published in sacred books (codes) or coming out of the mouth of oracles (judges); it acknowledges the normative power of such phenomena, but endeavours to uncover the biases contained within, explain their causes and consequences, and in short, critique them.

The writings of several founders also include the same analogy.[676] Together, these elements show that the analogy itself, a way to communicate the meanings corresponding to "sciences juridiques," has endured over time and has formed part of the socialization of new generations of faculty members. It is therefore highly relevant in our study of DSJ UQAM's institutional culture.

An additional signal of rejection of the established legal dogma lies in the plural form of the terms "sciences juridiques."[677] Other participants insisted that this plural form embodied the idea that law could be approached and theorized in a variety of ways.[678] The presence of the plural form and the plurality of perspectives it includes was necessary for their endorsement of the label itself.

The same participants, and others, further insisted that they understood "sciences juridiques" to also reflect the greater connections with other university disciplines that DSJ UQAM has cultivated within

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distinction entre 'on étudie le code civil, le code criminel, etc.,' ou 'on étudie le phénomène juridique dans la société.' [J]e vous rappelle qu'à l'origine l'objectif n'était pas de former les étudiants [pour le barreau] mais de faire comprendre, d'outiller les militants à la chose juridique. Donc ça évoque une perspective plus multidisciplinaire, plus de philosophie du droit, histoire du droit, sociologie du droit, ces trucs-là. [U]ne analyse du droit plus politique."); QC11 ("J'explique souvent à mes étudiants que c'est un département de sciences juridiques dans lequel vous êtes, alors attendez à ce que l'on regarde le choix comme un objet de recherche, d'étude comme un autre, et non pas comme la théologie, ou comme quelque chose d'objectif quoi. C'est-à-dire qu'il faut bien enseigner le droit positif tel qu'il existe, mais il faut aussi pouvoir le remettre en cause.").

[676] See Robert D Bureau & Pierre Mackay, "Présentation" in Bureau & Mackay, *supra* note 308 at ix, and René Laperrière, "A la recherche de la science juridique" in *ibid* at 526.

[677] But see Laperrière, *supra* note 676 (using the singular form throughout the piece, except for the last two pages).

[678] QC08 ("En plus c'est sciences juridiques au pluriel, donc ça aussi je pense que c'est vraiment un beau projet. […] pour moi c'est simple, je pense que la science juridique n'existe pas, que prétendre que le droit c'est une science, […] ça n'a aucun sens ; mais de dire 'les sciences juridiques,' je pense que c'est de pouvoir ouvrir sur le fait qu'il peut y avoir une pluralité de façon de travailler sur le droit."); QC03 ("Sciences juridiques, on le met au pluriel parce qu'il n'y a pas une seule théorie générale du droit, mais [parce] qu'on s'insérait dans une perspective scientifique.").

its approach(es) to legal study and education.[679] This point also relates to the *département* designation, and the broader institutional structure of UQAM, as DSJ was initially found within the Human Sciences "family," alongside the departments of History, Sociology and Political Science.[680]

Today, DSJ UQAM finds itself within the Faculté de Science Politique et de Droit. A few participants commented on the inconsistencies between the name of the Faculty and that of the department.[681] DSJ UQAM has retained its unique label despite its inclusion within a structure that adopted mainstream labels for itself. The adoption of the "droit" label in the name of the FSPD probably came from the same concerns that led to renaming DSJ UQAM's flagship undergraduate program "baccalauréat en droit" a few years prior: ensuring adequate professional recognition for the program and its graduates.[682]

Given this contrast between the two labels, I prompted some participants to comment on whether "sciences juridiques" had retained its relevance today. They differed in their answers. Some of them expressed commitment to their unique label as a symbol of their institutional culture, even though they acknowledged the erosion of DSJ UQAM's distinctiveness.[683] On the other hand, one participant expressed their lack of attachment to the label, positing that it had no practical consequence on the legal education

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[679] QC03 ("On ne faisait pas bande à part, il n'y avait pas un département de droit quelque part dans la structure universitaire, il y avait un département des sciences juridiques qui s'insérait plus largement dans les humanités, dans les sciences sociales, dans les sciences humaines."); QC08 ("Je pense qu'au départ la volonté c'était de reconnaitre une forme de pluralité, donc l'idée de dire qu'il y a probablement plusieurs façons de travailler sur le droit, et je pense quand même que ici il y a une ouverture pour ça, qui n'est pas nécessairement […] aussi abouti ailleurs. Même si dans les discours c'est très à la mode, tout le monde est très inter-disciplinaire, c'est extraordinaire, blablabla, je pense qu'ici il y a une tradition de ça depuis plus longtemps, avec peut-être plus de personnes qui l'ont pratiqué."); see also e.g. QC01, *supra* note 675 ("ça évoque une perspective plus multidisciplinaire, plus de philosophie du droit, histoire du droit, sociologie du droit, ces trucs là. Un regard, comment dire, une analyse du droit plus politique").

[680] Bureau & Jobin, *supra* note 340 at 298 (explaining that "A 'family' is more or less equivalent to a faculty in anglophone universities." at n 8).

[681] E.g. QC05 ("On appelle ça la faculté de science politique et de droit et on appelle ça le département des sciences juridiques. Go figure. Mais il y avait des enjeux idéologiques, pour l'affiliation sciences politique et droit, fin des années 90 début des années 2000, et ce contexte il n'est plus là en plus."); see also QC04 ("Quand la facultarisation a eu lieu, on a mis 'science politique' en premier, c'était politique. C'était pour signifier qu'ils n'allaient pas passer après. [On peut aussi remarquer que c'est la] 'Faculté de science politique' (au singulier), et '[le département] de sciences juridiques' (au pluriel). Certains collègues en science po aimerait le pluriel [dans le nom de leur unité].").

[682] See Chapter 4, Section 3.1, *below,* for more details on DSJ UQAM law degree's designation.

[683] E.g. QC01; QC03.

at DSJ UQAM.[684] Another went further and used strong language to affirm that cultivating a distinct label was superficial and illustrated a form of "narcissisme des petites différences."[685] These two participants nonetheless expressed adhesion to DSJ UQAM's mission and values.[686] It is therefore only the meanings attached to the label as a label and the importance of maintaining such distinctive label that they contested, and not the identity it is supposed to reflect. While they were younger than the participants who expressed strong attachment to the label, they were not necessarily newcomers to DSJ UQAM. The strong sentiments expressed against the distinct label dismiss the structuring potential of the label; nevertheless, they confirm the central character of meanings attached to it in DSJ UQAM's institutional culture.

This exploration of the case study's labels shows that they are replete with cultural meanings connected to the institution's history, environment, and sense of self. Labels have been sites of contestation and cultural expression at Droit UMoncton and DSJ UQAM, each in their own ways, but have not gathered controversy at UAlberta Law. The labels themselves, and the way members engage (or do not engage) with them reveal many aspects of the institutional cultures. They spark contention when they do not fit the perception of self within the institution, as members usually understand labels to structure how outsiders perceive and engage with their institution.

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[684] QC08 ("[Le nom 'sciences juridiques'] n'est pas quelque chose auquel je tiens personnellement. D'ailleurs la faculté s'appelle Faculté de science politique et de droit. [Si on s'appelait] un département de droit, ça ne changerait pas grand-chose. Parce que dans les faits ça n'a pas d'influence sur comment ça se passe dans la pratique. Et puis comme je disais tout à l'heure, je ne pense pas que le droit soit une science.").

[685] QC05 ("Le truc de sciences juridiques, c'est vraiment— c'est de l'enculage de mouches je pense. Parce que ultimement, qu'on s'appelle droit ou sciences juridiques, on doit obtenir l'accréditation du barreau pour pouvoir former des étudiants en droit. On appelle ça comme on veut, reste que au final, notre programme est à peu de choses près assez semblables de tous les autres programmes de droit au Québec, parce qu'il faut obtenir la satanée accréditation du barreau. Au final c'est ça. Puis il y a quelque chose d'assez pompeux d'appeler ça 'sciences.' Je pense qu'on peut, qu'on devrait faire preuve d'un peu plus d'humilité je pense. Je pense que c'est 'le narcissisme des petites différences.' [Donc] pour moi c'est assez superficiel comme mot.").

[686] QC08 ("[C]e qui m'a attirée ici c'est le développement de la pensée critique sur le droit, […] des formes différentes d'enseignement du droit, la recherche sur le droit, […] une approche sociale."); QC05 ("Le projet, la mission du département, j'y crois sincèrement.").

2. Infra- and supra-structures

Now that we have explored the Faculties' labels, let us turn to their locations, physical as well as organizational. We saw on several occasions how the designation of an academic unit as a Faculty, School or Department depended on the internal organization of their university. Webb and Twining further affirmed that university legal education was more contingent on the higher education system more generally than legal practice or the legal system itself.[687] Therefore, we need to pay attention to this "supra-structure" above the Faculties themselves. A Faculty's physical location and outward appearance, the infrastructure, is also a site of important meanings to understand its institutional culture, as we will see below. The supra- and infrastructure are often intertwined, impacting each other and echoing the same meanings; hence the choice of this vocabulary to describe them and the joint treatment in the following section.

In this cluster of inquiry, DSJ UQAM stands out in comparison to UAlberta Law and Droit UMoncton. It forms part of the Faculté de Science Politique et de Droit (FSPD) (*section 2.1*) and is physically intertwined with other components of the university (*section 2.2*). Its two counterparts are Faculties on their own within their respective universities, and enjoy their own dedicated building, as is the norm across Canada (*section 2.4*). These elements, as well as the location of the Faculties within their urban environment (section 2.3) and the special status of law libraries (*section 2.5*), constitute valuable sites of meanings for our exploration.

[687] Webb, *supra* note 421 at 229—30 (citing Twining: "most changes to university legal education have reflected changes to higher education more generally rather than changes to legal practice or the legal system").

2.1. A sub-unit within a bi-disciplinary Faculty (DSJ UQAM)

The Faculté de Science Politique et de Droit (FSPD) was established in 1999, in the wake of an overall restructuring of the academic units. The pairing of the department of political science and DSJ into this new unit (a reorganization often referred to as "facultarization" by the participants) was a marking moment of DSJ UQAM's development.[688] It has remained the object of significant contestation. In general, participants were very critical of the existence of FSPD, and similar analogies came up in different interviews to describe it: "c'est un mariage de raison,"[689] "c'est un mariage arrangé, forcé."[690]

Several elements seemed to fuel this hostility. First of all, participants perceived the reasons for this union to have remained obscure. For instance, one shared the following view: "choisir [d'unir le DSJ avec] science politique, c'est un peu absurde ; pourquoi on n'a pas pris socio[logie], pourquoi on n'a pas pris anthropo[logie], pourquoi on n'a pas pris géographie ? Il y a quelque chose d'assez arbitraire là-dedans et qui n'a pas été particulièrement réfléchi longtemps je pense, pour faire ce mariage-là."[691] When UQAM decided to replace the loosely organized "families" and create Faculties to group its different constituting departments, it could have done a number of things with DSJ UQAM, ranging from establishing a stand-alone Faculty of law, in keeping with the Canadian and American practice,[692] to integrating the department into the large Faculty of Human Sciences.

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[688] E.g. QC09 ("Les évènements marquants, je pense la facultarisation dont tout le monde parle tout le temps.").
[689] QC01.
[690] QC05; see also QC03 (using the vocabulary of marriage, see quote reproduced in *infra* note 692).
[691] QC05; see also QC05 ("Il y avait des enjeux idéologiques, pour l'affiliation sciences politique et droit, fin des années 90 début des années 2000, et ce contexte il n'est plus là.").
[692] QC03 ("Quand est venu le temps de la facultarisation, on aurait pu dire […] 'on va faire comme partout ailleurs au Canada puis aux Etats-Unis : on va faire une faculté de droit.'").

UQAM decided to reproduce the European model combining the disciplines of law and political science in the same unit.[693] It is unique in the North American context.[694] It signalled an aspiration to, at least, bi-, if not multi-disciplinary collaboration. Unlike at other universities, law was to be studied at UQAM in conjunction with at least one other social science. It attracted some faculty members,[695] and others saw it as an important reflection of their own approach to law.[696] Nonetheless, others pointed to the arbitrariness of combining law with political science as opposed to other social sciences, or combining it only with this other discipline; a participant, in particular, affirmed that being part of the larger Faculty of Human Sciences would be more consistent with DSJ UQAM's aspiration tor multi-disciplinarity and social perspectives on legal phenomena.[697]

Overall, participants believed that FSPD had not lived up to the perceived potential, or simply had not worked.[698] From the beginning, the most promising ground for fertile collaborations between the two departments was in the field of international studies.[699] Placing international considerations at the core

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[693] See "Une faculté de science politique et de droit est créée" *L'UQAM* (13 septembre 1999), online: <www.journal.uqam.ca/99-2000/JOURNAL/1/1C.htm> ("S'inspirant d'un modèle reconnu en Europe, les départements de science politique et de sciences juridiques ont décidé de s'associer pour former la toute nouvelle Faculté de science politique et de droit, une réalité unique au Québec."); the following French universities, to take only a few examples, feature a Faculty of law and political science : Aix-Marseille Université, Université de Bordeaux, Univeristé de Montpellier, Université de Rennes 1, Université Paris-Nanterres.

[694] With regards to faculties hosting programs leading to professional qualification. See QC03 ("On est la seule faculté de science politique et de droit, donc on fait un ménage à deux. A ma connaissance les autres facultés de droit, ce sont des facultés de droit, point."); QC04 ("Nous on est très spécifique. On n'a pas d'équivalent fonctionnel. [On est une] Faculté de science politique et droit. [On est] la seule, [et on] se démarque radicalement."); QC07.

[695] QC08 ("[Parmi] ce qui m'avait attiré à l'UQAM et tout, je trouvais intéressant l'idée d'une faculté bi-disciplinaire.").

[696] QC07 ("[Comme je ne vois] pas le droit comme étant simplement une technique, [qu'il doit nécessairement être replacé] dans un contexte plus large, la proximité avec science politique est un atout important.").

[697] QC05 ("Si c'était sérieux, le département de sciences juridiques devrait être dans la faculté de sciences humaines et de sciences sociales. Si c'est vraiment sérieux avec l'interdisciplinarité. Mettre science politique et droit, je trouve ça un peu arbitraire.").

[698] QC08 ("En fait, je pensais que ça allait être beaucoup plus— je pensais qu'il y aurait eu toute une réflexion, quelque chose en fait qui ferait qu'il y ait un maillage beaucoup plus étroit avec le département de science politique. Ce n'est pas le cas du tout."); QC01 ("La faculté a été créé [il y a un certain temps, et] je n'ai jamais senti que la colle a pris."); QC05 ("Ça ne marche pas et tout le monde le sait.").

[699] L'UQAM branché, *supra* note 693 ("S'il existe un pôle d'excellence en matière de formation et de recherche au sein de la Faculté, c'est bien celui des relations internationales, grâce à la convergence des forces des deux départements en ce domaine."); see also QC08 ("Je pense que les profs en droit international ont quand même

of the Faculty's development in the past two decades has been an attempt to create synergies between the two units.[700] However, while FSPD successfully set up undergraduate and graduate programs combining international law and international relations, as well as a common research institute, faculty members involved in the field deplored a quasi-absence of personal or research relations with their political science colleagues.[701] They affirmed that the kind of bi-disciplinary endeavours that the structure invited, by design, did not correspond to their own approaches.[702] Moreover, a participant pointed to the inherent difficulty of multi-disciplinarity to explain such failures.[703] Lastly, participants who were not involved in international studies felt that this focus excluded them and that there was no collaboration outside of these fields between the two departments.[704]

DSJ UQAM's marriage with another department ran against the faculty members' strong attachment to departmental autonomy and internal collegiality. Even as a participant affirmed that this

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beaucoup plus de contacts avec les politologues du département de science po […], mais pour les autres— même physiquement on est pas les uns à côté des autres, donc on ne se voit jamais, on ne les connait même pas. Moi je n'en connais que très peu des profs du département de science politique. Donc je pense qu'au final cette alliance entre droit et science politique, elle se concrétise dans peu de de choses.").

[700] QC03 ("Je pense que la faculté a misé sur l'international pour être un le pont entre les deux disciplines, science po et droit, donc on a un peu voulu faire un mariage de raison et de passion entre les internationalistes du département de sciences juridiques et ceux qui font des relations internationales du côté de science po.").

[701] QC01 ("il n'y a pas vraiment de contacts, il y a quelques profs qui travaillent ensemble et encore, ce n'est pas une relation fusionnelle."), QC03 ("on est quand même face à— bon, je ne dirais pas deux solitudes, mais le département de science po puis le département de sciences juridiques, ce ne sont pas des départements parfaitement intégrés, puis le niveau de collaboration entre les collègues n'est pas optimal non plus."), QC05.

[702] QC03 ("Je pense que ça a effectivement permis de tisser des ponts tant sur le plan de l'enseignement que de la recherche, il y a des choses qui ont fonctionné sur cette base là, mais mon sentiment c'est que ceux qui ne se reconnaissent pas dans cette approche-là d'internationaliste, tant du côté des RI que du côté du droit international, ben on était un peu les laissés pour compte d'une facultarisation. […] Les gens peuvent quand même avoir une perspective comparative ou internationaliste, mais ils ne sont pas par nature des internationalistes, et pour beaucoup n'ont pas participé directement à ce processus-là d'intégration des deux départements.").

[703] QC05 ("C'est plate, mais ça marche pas […] parce que au fond personne ne fait réellement de l'interdisciplinaire de cette façon-là, comme ça a été envisagé. Il n'y a pas beaucoup de monde qui est capable d'enseigner en science politique et en droit. [...] Et il a peu de gens qui savent même ce qu'il se passe de l'autre côté, juste dans la littérature. En fait les gens n'ont pas le temps de s'intéresser à ça. Ils font leur recherche, ils s'intéressent au fond, puis au-delà de ça ils ne peuvent pas savoir ce qu'il se passe de l'autre côté.").

[704] QC08 ("Je pense que les profs en droit international ont quand même beaucoup plus de contacts avec les politologues du département de science po […], mais pour les autres— même physiquement on n'est pas les uns à côté des autres, donc on ne se voit jamais, on ne les connait même pas. Moi je n'en connais que très peu des profs du département de science politique. Donc je pense qu'au final cette alliance-là, entre droit et science politique, elle se concrétise dans peu de de choses.").

would not impede collaboration across disciplines,[705] the existence of a hierarchical structure above the department, and the resulting requirement to negotiate budget lines and other policies with another department collide with certain core values at DSJ UQAM,[706] inherited from the intellectual and historical roots of the institution.[707] DSJ UQAM has a long history of distrust and confrontation with the UQAM hierarchy. Brault described the difficult birth of the program in 1973 and the university's original betrayal of the founding professors as it bowed to pressures from the government and the Bar. It postponed opening the *baccalauréat en sciences juridiques* to the following year, cancelling all admission decisions that had already been communicated to "ex-future students" and initiating disciplinary proceedings against the professors themselves.[708] Jobin also recounted these events and affirmed that they constituted an initial severing of the bond of trust between the university and the department that shaped DSJ UQAM's "DNA," in fostering antagonistic relationships with the university administration and strong solidarity within the department.[709]

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[705] See QC01 ("R: *[Selon vous, l'absence de contacts bi-disciplinaires est-elle] liée à l'auto-gestion que vous évoquiez au début?* QC01: Non, je ne pense pas. Ça pourrait être différent malgré la cogestion. Je ne pourrais pas l'expliquer.").

[706] QC07 ("L'idée de gestion collégiale est très importante, et le département de sciences juridiques tient beaucoup à son autonomie, notamment face à l'autre département de science politique, mais face à la faculté aussi. […] C'est un enjeu parce que compte tenu du besoin, du désir d'autonomie du département face aux décisions facultaires, c'est toujours une espèce de discussion sur quelle est la place de l'un et de l'autre."); see also e.g. QC05 ("Le décanat est mal perçu des deux côtés. C'est perçu comme une emmerde, une structure administrative inutile au-dessus de la tête des départements.").

[707] QC03 ("[Les] assemblées départementales [ont] un souhait et un désir d'autonomie. Parce que l'UQAM a été créée, à la fin des années 60, début 70, […] et [sa] structure, à la base, était héritée de mai 68 en France, de ce mouvement de contestation où on a voulu dépasser et transcender l'enseignement classique, puis la structure très lourde et peu conviviale des universités, du système universitaire qui existait à l'époque.").

[708] Brault et al, *supra* note 44 at 53ff.

[709] Jobin, "Biographie DSJ UQAM 1972-76", *supra* note 670 at 11 ("[Le] 'faux départ' du programme des sciences juridiques […] a déterminé, pour la suite des choses, plusieurs éléments du 'code génétique uqamien' des artisans du projet : 1) rupture du lien de confiance vis-à-vis l'UQAM, accusée de tentative d'infanticide ; développement d'un modèle de dépendance-confrontation dans les rapports avec l'institution ; […] 7) l'équipe des fondateurs, en partie décimée, se souda dans l'épreuve, et il en résulta une discipline collective exceptionnelle et un mode de fonctionnement communautaire.").

Participants often described the governance of the department in terms of "auto-gestion" and "co-gestion" or "gestion collégiale."[710] Jobin described how faculty members took turns to chair DSJ as part of each member's service obligations rather than as a privilege.[711] Moreover, the primary decision maker at DSJ UQAM is the assembly of the professors (*assemblée départementale*), rather than the department director.[712] Participants sometimes spoke of this body as having "sovereign" powers over many topics.[713] In this context, the creation of the Faculty structure, taking some decisions out of the realm of the department and functioning with a representative body (*conseil académique facultaire*) rather than through direct democracy among the professors, ran counter to long-standing traditions and

[710] See e.g. QC07 ("[A DSJ UQAM] il y a la possibilité aussi de pouvoir participer en autogestion [et en] gestion collégiale de nos carrières et plans de travail."); QC03 ("il y a une gestion […] collégiale"); QC01 ("à cause de la structure de l'UQAM on est davantage portés sur l'autogestion que dans d'autres universités […] Il y a une lutte constante pour […] ramener le plus de décisions possibles à l'intérieur de l'assemblée départementale."); see also QC08.

[711] Carol Jobin, "Une certaine biographie des sciences juridiques à l'UQAM – La période 1972-1986 Troisième Partie: l'ère de l'affirmation départementale (1981-1986)" (2013) 60 Pour la suite du monde (Bulletin de l'APR-UQAM) 4 [Jobin, "Biographie DSJ UQAM 1981-1986"] ("Nous fonctionnions alors selon le 'tour de rôle' [pour les mandats de directeurs de département et de module], ce qui excluait les problèmes de légitimité. On accédait à ces fonctions comme on 'passe à la casserole.' On n'y allait pas de gaieté de coeur, mais avec le sentiment de faire sa part. La tâche était allégée du fait que l'on bénéficiait du soutien général et que l'on connaissait déjà les dossiers dans leurs grandes lignes puisque tout était discuté en assemblée départementale et que l'on avait généralement séjourné dans les antichambres qu'étaient soit l'exécutif départemental, soit le conseil de module."). The 1990-92 "crise des directions" interrupted this practice, see Carol Jobin, *Réflexions « sabbatiques » sur le département des sciences juridiques* (1993) [unpublished, archived at UQAM Law Library] at 65—71 [Jobin, *Réflexions sabbatiques*].

[712] QC02 ("La deuxième chose la plus distinctive ici à l'UQAM c'est le style de gouvernance. A l'UQAM, au niveau des départements au moins, il y a un style de gouvernance consensualiste. Chaque mois on a des assemblées départementales. Presque toutes les décisions importantes sont [prises] par l'assemblée, donc tous les professeurs du département. Le directeur du département a un certain pouvoir en tant que dirigeant parce qu'il s'occupe des affaires d'administration [courante], mais il n'a pas vraiment un pouvoir décisionnel. Et cela a de [grandes] conséquences sur la manière dans laquelle les cours sont choisis, et par rapport à nos relations avec l'administration de l'université plus largement. [Il me semble que dans les autres facultés de droit, le doyen et les autres cadres de l'universitaire ont un plus grand pouvoir décisionnaire].").

[713] QC06 ("On dit souvent que l'assemblée départementale est souveraine."); See also QC07 ("On est un peu comme une *fédération*, deux départements qui sont mis dans une même *fédération* qui est la faculté." [emphasis added]).

values.[714] Moreover, recent negotiations regarding the status of Deans, and Vice Deans, in collective agreements have also kept such power struggles alive.[715]

Even as we account for these internal dynamics and dissatisfactions, the supra-structure of DSJ UQAM signals a unique aspiration on interdisciplinary research and education, placing law in the world of social sciences rather than a stand-alone technical field. It is distinctive from all other law Faculties in Canada in this regard.

2.2. Entanglement into the University (DSJ UQAM)

The supra-structure is not the only signal of its aspirations to interdisciplinarity. The location of the law department within the UQAM campus also speaks to the same idea, as one participant expressed:

> QC07: Nous on a une force qui est particulière c'est que l'interdisciplinarité elle se fait d'un département à l'autre. […] [À] McGill il y [a] des discussions entre [la faculté de droit et] d'autres départements, mais même physiquement les gens sont plus éloignés. [Les professeurs de droit] sont en haut de la montagne et les autres départements sont ailleurs. Si on regarde l'université de Montréal c'est la même chose, c'est une faculté qui a son building qui est séparé, et ça renforce la cohésion interne mais ça diminue jusqu'à un certain point le potentiel d'interactions avec les autres. Nous par exemple notre cafétéria […], nos lieux communs ce sont des lieux qui sont inter-facultaires, donc on croise facilement et quotidiennement des gens des autres disciplines. Donc il y a toujours une socialisation qui fait en sorte que […] on va prendre le café ici, c'est le café des sciences humaines, on rencontre des gens de [science] politique, de socio[logie], de philo[sophie], ça permet de développer des idées, des projets plus interdisciplinaires.[716]

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[714] QC07 ("Le conseil académique facultaire [fonctionne] sur une base de représentation, donc les gens qui sont là représentent différentes constituantes; c'est un peu plus éloigné des professeurs [car] l'assemblée départementale ne compte que des professeurs. [L'] assemblée départementale [est] une sorte de démocratie directe [uniquement entre les professeurs]. Alors qu'au conseil académique facultaire [il] y a une multitude de représentations: personnel de soutien, les associations étudiantes de chacun des programmes, chargés de cours, un professeur de chacun des départements, les directions de tous les programmes, directions des départements, vice-doyens, et le doyen, [chacun avec un siège et droit de vote]. Donc c'est une espèce de lieu de décision et de délibération qui est sur une base représentative plutôt que démocratie directe participative, mais le groupe de personnes qui y participent est plus élargi comparé à l'assemblée départementale.")

[715] QC07 ("[Depuis récemment,] les doyens sont des cadres de l'administration et relèvent directement du recteur, alors que la direction des départements ce sont tous des professeurs, il n'y a aucun cadre. Donc le directeur du département n'est pas un cadre. Les vices-doyens non plus ne sont pas cadres.")

[716] QC07; see also QC08 (quote at *supra* note 704; highlighting the importance of physical proximity).

DSJ UQAM has not always had the same location and proximity with other components of the university, as UQAM built its own campus over time and with the evolution of the department's needs.[717] During its first few years, DSJ UQAM operated from offices that were exclusively its own, physically separated from other parts of the university;[718] however, for the past 30 years, it has been part of UQAM integrated campus. Even after the creation of FSPD, DSJ UQAM was not grouped with the political science department, whether in their own building or within the same building shared with other units. DSJ UQAM is located in Pavillon Thérèse Casgrain, a connected but different building than FSPD and its political science counterpart.[719] DSJ UQAM's administrative offices are located on the 2nd floor, and professors' offices are split between the 2nd and the 3rd floors. DSJ UQAM shares the Thérèse Casgrain building with the departments of sexology, religious sciences, philosophy and the school of social work.

There is no set of classrooms primarily dedicated to law courses at UQAM. This echoes the initial organization within UQAM separating "the program entities […] and the teaching resources entities ('départements')."[720] In the same vein, a participant insisted on the fact that DSJ UQAM relied on professors from other departments to give certain courses, and that law professors gave courses in other programs throughout the university.[721] This contrasts with the traditional separateness of law students and law courses from the rest of the university.[722] According to the same participant, it constituted a

[717] Jobin, *Réflexions sabbatiques*, *supra* note 711 at 31 (1979), 55 (mid-1980s), 64 (late 1980s).
[718] Jobin, "Biographie DSJ UQAM 1972-1976", *supra* note 670 at 13—14.
[719] FSDP offices are at Local A-1655 (Pavillon Hubert-Aquin); The department of political science is located in the same building, two stories higher (A-3410).
[720] Bureau & Jobin, *supra* note 340 at 299.
[721] QC07 ("Si vous avez un cours d'histoire du droit par exemple, chez nous ce n'est pas nécessairement un prof du département de sciences juridiques, ça va être un prof d'histoire qui vient, un truc en socio ben c'est le prof de socio qui vient donner. Nous on donne des cours de services dans d'autres départements, mais il y a un mélange pour les travaux de recherche qui est beaucoup plus facile que ce que j'ai pu remarquer ailleurs.").
[722] See e.g. Andrew Goldsmith, "Standing at the Crossroads: Law Schools, Universities, Markets and the Future of Legal Scholarship" in Cownie, *Global Issues, Local Questions*, *supra* note 237 at 91.

further manifestation of DSJ UQAM's commitment to studying and teaching law with the insights of other university disciplines.[723]

2.3. Campuses & Cities

Participants also expressed that the location of their institution in the city, not just within the university campus, bore important meanings for them. Here is how one of them started answering my question about the institutional mission:

> QC01: Vous voyez historiquement où l'on est installé. On voit la Maison du Père juste de l'autre côté de la rue. La raison pour laquelle l'UQAM s'est installée ici, en 1969, c'était pour être, on dit, 'en bas de la montagne,' c'est-à-dire être avec le peuple, avec les plus malpris de la société. Ça ça a un peu influencé, guidé, la mission du département.[724]

La Maison du Père is a charitable organization helping the homeless.[725] Walking around UQAM and accessing its buildings, one will necessarily come across soup kitchens, shelters, and other resources and community organizations; they concentrate in this neighbourhood to serve the vulnerable and marginalized who are very present in this area. A concrete example of the porosity between the physical space of UQAM and this milieu is the presence of needle collection boxes in many UQAM washrooms, as during the colder winters substance users look for shelter in UQAM buildings.[726] Since its creation, UQAM

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[723] QC07.

[724] QC01. We can contrast the use of the expression "en bas de la montagne" in this quote with the use of "en haut de la montagne" (in referrence to McGill Law) in QC07, quote accompanying *supra* note 716.

[725] See La Maison du Père, "A propos", online: <https://www.maisondupere.org/>.

[726] See e.g. Gabrielle Duchaine, "Prolifération de seringues souillées à l'UQAM" *La Presse* (11 April 2014) online: <https://www.lapresse.ca/actualites/sante/201404/10/01-4756507-proliferation-de-seringues-souillees-a-luqam.php>; This has been a long standing issue, see e.g. Groupe de travail sur la récupération des seringues usagées au Québec, *La récupération des seringues et des aiguilles usagées : une responsabilité à partager* (2005) at 13, online: *Ministère de la Santé et des Services Sociaux* <publications.msss.gouv.qc.ca/msss/document-001331/> (indicating that 769 used needles were found on UQAM grounds and within its facilities between November 2002 and June 2004).

has worked closely with community organizations such as those described here, as well as worker unions, and considered services to communities a core component of its mission.[727]

This commitment to community service is very present at DSJ UQAM. While other universities also require their faculty members to contribute to "services," it is usually in the form of administrative contributions within the institution. DSJ UQAM also values and encourages services outside of the university. Several participants mentioned the following example: when Lucie Lemonde presided the Ligue des droits et libertés, her colleagues exempted her from any other service obligations within the university, which meant taking them on themselves.[728] While exceptional, this example illustrates the value DSJ UQAM members attach to such commitments.

UQAM's geographical location also corresponds to a concern for the accessibility of higher education, another component of the social justice ideal. The university is connected to the city's main metro station and is much closer than Université de Montréal for students commuting from the East or South of Montreal. Two participants affirmed that the ease to access this campus factored in their decision to study at this university when they joined higher education.[729] The meanings participants expressed regarding UQAM's geographical location within Montreal correspond to the same concerns for proximity to those who need the university, whether to study or to serve their needs.

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[727] UQAM, Service aux collectivités, "Genèse d'une mission univeristaire", online: <https://sac.uqam.ca/mission-des-services-aux-collectivites/genese-d-une-mission-universitaire.html>; See also UQAM, *Politique no 41, supra* note 363.

[728] QC01 ("J'ai l'impression qu'il y a une plus grosse pression chez nous à l'implication à l'extérieur de l'université. Nous par exemple il y a trois composantes à la tâche : enseignement, recherche et services aux collectivités. Il y a plusieurs années une collègue, Lucie Lemonde, était présidente de la Ligue des Droits et Libertés [LDL], et on lui a permis de ne pas avoir d'autres services aux collectivités que la présidence de la LDL […] C'est une façon d'inciter le militantisme, car c'est une implication sociale, c'est une implication politique, c'est du militantisme. Je ne pense pas que ça ça aurait été possible ailleurs."); QC10. Lucie Lemonde presided the Ligue des droits et libertés from 1994-2000.

[729] QCXX, QCXX.

Attaching significance to the location of law Faculties with regard to their university and within their urban environment is not unique to DSJ UQAM.[730] At UAlberta Law and Droit UMoncton, participants expressed a different set of corresponding meanings. There, participants spoke about where their Faculty was located within the urban space in terms of how it impacted the atmosphere on campus.

At UAlberta Law, a participant described the location as central and urban, contrasting it with commuter campuses encountered elsewhere; students and professors could, therefore, build a sense of community on campus rather than simply coming in for classes and leaving immediately after.[731] The UAlberta campus is indeed located now at the intersection of two dense and lively areas of Edmonton: downtown and Garneau-Old Strathcona. This situation results from the way the metropolitan area developed in the past century. When the first Premier of Alberta selected River Lot 5 to host the new province's university, it was "a 250-acre patch of scrubby wilderness,"[732] a bush with a farm in it and surrounded by "howling coyotes and a cacophony of frogs."[733] In addition, River Lot 5 was located on the South Bank of the Saskatchewan River, in the municipality of Strathcona, across from the newly minted provincial capital of Edmonton. Strathcona and Edmonton were then rivals, at least in terms of future development and access to railways.[734] As the cities grew rapidly and soon amalgamated, bridges were

[730] See e.g. Bell, *LSNB, supra* note 28 (arguing that the relocation of UNB Law from Saint John to Fredericton in 1959, and to UNB campus proper in 1968 illustrated the move of legal education from the hands of practitioners to that of academics.)

[731] ABXX ("Geographically, if we think of hyper local geography, U of A, its campus is quite central. When I compare my time at U of A to my time at Osgoode, and my time at UBC, this is not a commuter campus, this is a campus that people come and work at all the time. And so you will see a lot of people around, there is bodies in the building, whereas my experience at UBC and my experience at Osgoode was very much people were out there when they taught, and then they were not on campus. I think it is harder to develop a sense of community.").

[732] John Macdonald, *The History of the University of Alberta, 1908-1958* (Toronto: W J Gage, 1958) at 3.

[733] Ellen Shoeck, *I Was There: A Century of Alumni Stories about the University of Alberta, 1906-2006* (Edmonton: University of Alberta Press, 2006) at 100—01.

[734] *Ibid* at 9—15.

laid across the river,[735] and UAlberta became a neuralgic point between them. Today, the campus is intertwined into the city and constitutes a hub for public transit.[736]

When given the opportunity to discuss any additional topic at the end of the interview, a participant at UAlberta Law insisted that I speak to Steve. Steve has been running a café in the student lounge of UAlberta Law Centre for over a decade; the faculty member described him as "part of the family" and insisted that I needed to chat with him to get a full picture of the institutional culture and atmosphere.[737] Such comments further illustrate that UAlberta Law participants attached some importance to the campus atmosphere as part of their identity.

In contrast, a participant described Droit UMoncton as part of a commuter campus.[738] Created at a much later stage of development of its host city than the University of Alberta, Université de Moncton is located outside of the city's core, in the Sunny Brae neighbourhood, and is separated from Moncton's downtown by a major highway.[739] Additionally, public transit systems are much less developed in Moncton than in Edmonton. We should also keep in mind that on its main campus, Université de Moncton welcomes one-tenth the total number of students of its Edmonton counterpart. Nonetheless, another participant affirmed that a couple of decades ago, students used to spend more time in the student lounge

[735] The first in 1897 (low level bridge), the second 1913 more directly connecting the campus to downtown (high level bridge); but note that "U of A students walked across the frozen North Saskatchewan [river] to get to classes as late as the 1930s" (*ibid* at 12).
[736] But see Rod Macleod, *All True Things, A History of the University of Alberta, 1908-2008* (Edmonton: University of Alberta Press, 2008) at 309—10 ("The University, in part because the bend in the river cuts it off from direct contact on two sides, has had surprisingly little day-to-day effect on the city given its importance to Edmonton's economy and cultural life. The majority of Edmontonians who grow up in the city spend their lives here without ever setting foot on campus.").
[737] AB01. I did speak to Steve, but did not conduct an interview nor include any data obtained from him through our unformal discussion due to ethics considerations.
[738] NB01 ("Ici les gens viennent en voiture pour leurs cours et puis repartent. Le campus est un lieu de cours, pas de vie. À McGill les gens [restent sur place] le soir, ils [vont] à Thomson House, c'est comme ça qu'on apprend, qu'on s'imprègne. Moncton est une ville très orientée vers la voiture.").
[739] See also Clément Cormier, *Université de Moncton: Historique* (Moncton: Centre d'études acadiennes, 1975) Chap 4 at 3ff, online: *Centre d'études acadiennes Anselme Chasson* <https://www.umoncton.ca/umcm-ceaac/node/47> (describing the acquisition of land for the université de Moncton campus).

in between classes, attributing the change to a generational difference in socialization practices.[740] The trend of spending less time on campus also affects faculty members.[741]

While some participants seem to accord importance to questions of urban or commuter campuses and the local atmosphere, the meanings attached to the Faculty's location vis-à-vis urban life are of a different nature than those expressed at DSJ UQAM. At UAlberta Law and Droit UMoncton, while they probably contribute to the sense of self and world of meanings of these law Faculties, such aspects do not seem to constitute core sites of meanings, such as those this study aims to ascertain, while it was the case at DSJ UQAM.

2.4. Dedicated Units & Buildings (UAlberta Law & Droit UMoncton)

Contrary to DSJ UQAM, UAlberta Law and Droit UMoncton both enjoy the use of their own buildings on campus. Participants did not comment on this aspect during interviews at these two Faculties. A brief exploration of the historical evolution of the infrastructural situation reveals that at these two universities, a dedicated law building signals a certain prestige in the hierarchy of disciplines, as it indicates the availability of dedicated resources, and entrenches disciplinary boundaries, isolating law from the rest of the university community.

For the first decade, law classes organized by the University of Alberta happened at the Court House in downtown Edmonton.[742] It is only when law studies became a full-time university course that

[740] NB05 ("[Il y a environ 15 ans,] le salon étudiant était plein toute la semaine, entre les cours. Maintenant on a de la difficulté à garder les étudiants sur le campus. Plus d'étudiants ont une voiture, ça joue aussi ; certains travaillent. On a le réflexe de dire qu'ils sont moins sociaux, mais en fait ils socialisent différemment [par les réseaux sociaux notamment].").

[741] NBXX ("Je vis ici […] Je suis normalement dans mon bureau de 8 heures du matin jusqu'à 5 heures le soir, tous les jours, [y compris quand je n'enseigne pas,] à moins que je n'ai une réunion, un rendez-vous, quelque chose […] Je note que plusieurs des nouveaux professeurs ne font pas ça."); NB03.

[742] The location and timing of the lectures (nine to ten o'clock in the morning and after five o'clock in the afternoon) was most convenient for students (generally working in law offices during the day) and lecturers (whose offices where located downtown and themselves busy during the day), see Law & Wood, *supra* note 633 at 5—6 (also noting

UAlberta Law found its place on the university campus in 1921.[743] Its first home was in the Arts Building, where the Law Library established in 1922 also served as a classroom. It stayed there for 30 years, before moving to occupy the first floor of the Rutherford Library when it outgrew its allocated space.[744] In 1972, after another growth spurt made the previous arrangement untenable, it finally found its own home in the newly erected "Law Centre."[745] This building has remained the space dedicated to the Law Faculty since.

The Law Centre is located in the North East corner of the university campus, connected to the rest of the University only through the Fine Art Building erected in the same period. While the move of law lectures from downtown to the UAlberta campus in the early 1920s had "cemented […] [t]he bond between the Faculty of Law and the larger university community," leading law students to take part in all aspects of university life, the new Law Centre physically isolated it from other components of the University within which it had been intertwined until then, even though it "consolidat[ed] administrative and faculty offices, institutes, students' groups and the library into a building specifically designed for the Faculty."[746]

Droit UMoncton's home is Pavillon Adrien J Cormier, named in honour of someone who contributed to the creation of the université de Moncton and was a distinguished member of the New Brunswick judiciary. The Faculty moved into this new dedicated building in 1995. Prior to this date and since its establishment, it had occupied space in what used to be the on-campus residence of a religious congregation. Droit UMoncton progressively took more and more space in the building, the library occupying the basement, and the second-floor chapel being eventually turned into the main classroom.

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that similar lectures took place in Calgary, first provided for by the Law Society and then under the ambit of UAlberta Law starting in 1914).

[743] See also Bell, *LSNB, supra* note 28 (noting a similar phenomenon for UNB Law).

[744] Law & Wood, *supra* note 633 at 18.

[745] Law & Wood, *supra* note 633 at 19.

[746] Law & Wood, *supra* note 633 at 10, 19.

This building took the name of Pierre-Amand Landry, the first Acadian to be called to the bar in New Brunswick and later member of the provincial judiciary.[747] The new building is closer to the heart of campus, neighbouring the main library.

Therefore, we can see that Droit UMoncton and UAlberta Law align with the tradition of law Faculties in Canada having their own building, a self-sufficient space encompassing all classrooms, including a moot courtroom (an absent feature at DSJ UQAM), professorial officials, dedicated services and lounges. This situation entrenches the separateness of law as a discipline in the university. We will discuss in a later section the visual displays in these spaces, especially as they indicate the value accorded to the relationship with legal professionals.[748]

The buildings at Droit UMoncton are named after inspirational figures, celebrating them and their achievements as well as elevating them as role models for the community. At UAlberta Law, the building itself does not bear anyone's name. The law libraries at both Faculties, however, follow this practice. They bear the name of inspirational figures as well. At UAlberta Law, it is that of the Faculty's first Professor and Dean, Alexander Weir; at Droit UMoncton, it honours Michel Bastarache, who made substantial contributions to the development of language rights in Canada, served as Dean and Supreme Court Justice. The law libraries occupy a central space in UAlberta Law and Droit UMoncton's buildings.

At UQAM too, a specialized branch of the library is specialized in law. While there is now a door making for easy access to the DSJ's administrative and professorial offices, [749] the library remains physically included in the main UQAM library. Much like the department it serves, its infrastructure is

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[747] See e.g. Della M M Stanley, *Au service de deux peuples Pierre-Amand Landry* (Fredericton: Barreau du Nouveau Brunswick, 1987).
[748] See Section 3.3, *below*.
[749] UQAM, News Release, "La Bibliothèque des sciences juridiques fait peau neuves" (7 October 2010), online: <https://www.actualites.uqam.ca/2010/bibliotheque-sciences-juridiques-fait-peau-neuve>.

intertwined with that of other disciplines in the university. Further, it mirrors the union of law and political sciences united under the FSPD supra-structure, as it is a library of "sciences juridiques and politiques."[750]

2.5. Law Libraries

Universities divide their library branches, as well as academic units, in diverse manners; it is remarkable to see that all three case studies feature a library branch dedicated to law in their own building or immediate vicinity. For instance, at Droit UMoncton, the law library is the only of the four library branches on campus dedicated to a single Faculty. Jurists have long articulated the reasons for the law library's special status among other university libraries, arguing notably that its collections serve mainly a reference rather than loan function.[751] This special status owes much to Langdell's famous analogy making of the law library a laboratory for law professors and students.[752] This perception quickly spread across North America and became a cliché.[753] Accordingly, the regulators of legal education have been concerned

[750] Note that until recently, it only bore the "sciences juridiques" label (see *ibid*, "Les organisateurs de l'événement ont tenu à rappeler à tous que bien que la bibliothèque porte le nom de Bibliothèque des sciences juridiques, elle est aussi la bibliothèque des gens en science politique."); moreover, "sciences politiques" takes a plural form here, whereas it is singular in the anme of the corresponding department.

[751] See Guy Tanguay, "Le bien-fondé du statut particulier de la bibliothèque juridique universitaire" (1969) 10:4 C de D 601.

[752] See e.g. Christopher C Langdell, "Teaching Law As a Science" reprinted in "Notes" (1887) 21:1 Am L Rev 121 at 124 ("We have also constantly inculcated the idea that the library is the proper workshop of professors and students alike; that it is to us all what the laboratories of the university are to the chemists, and physicists, the museum of natural history to the zoologists, and the botanical garden to the botanists."). See also Bruce A Kimball, "Young Christopher Langdell, 1826-1854: The Formation of an Educational Reformer" (2002) 52:1&2 J Leg Educ 189 at 212—13 (tracing the origin of the quote and criticizing the "exaggerated attention" it has received, such as in Robert Stevens, *Law School Legal Education in American from the 1850s to the 1980s* (Chapell Hill: University of North Carolina Press, 1983) at 53; Richard A Danner, "Law Libraries and Laboratories: The Legacies of Langdell and His Metaphor" (2015) 107:1 L Libr J 7.

[753] See e.g. Marian G Gallagher, "The Law Library in a New Law School" (1969) 1:1 Tex Tech L Rev 21 at 21 n 1 (affirming in 1969 that "Some […] expressions have attained cliché status [in the legal education world]: A lawyer's books are his tools; the library is the law school laboratory; the library is the heart of the law school; the Lord is my Shepard; etc."); see also Beatrice A Tice, "The Academic Law Library in the 21st Century: Still the Heart of the Law School" (2011) 1:1 UC Irvine L Rev 157 (affirming e.g. that even in today's world of online collections and remote access, "the law library is-and will always remain-the heart of the law school" at 172).

with setting standards for the law libraries collections and administration.[754] Such concerns remain, as we can see that the recent FLSC National Requirement include some language to that effect.[755] In addition to reflecting the specificities of law as a discipline, the situation of law libraries echoes that of law Faculties in terms of separation of legal research and study from other academic disciplines, with regard to space as well as materials.

Kasirer commented on the power of law libraries to shape their users' thinking and described how they represent the legal order which they are designed to serve.[756] We can go further and affirm that law libraries may also reflect the institutional cultures of their law Faculty, of which the legal order is only one aspect.[757]

Labels are once again informative in this regard. As mentioned above, UAlberta Law and Droit UMoncton's libraries bear the name of figures who shaped the culture of these Faculties: for the former, the founding Dean, and for the later, a former Dean, prolific contributor to jurilinguistics and language

[754] See e.g. Theodora Belniak, "The History of the American Bar Association Accreditation Standards for Academic Law Libraries" (2014) 106:2 L Libr J 151.

[755] See e.g. FLSC *National Requirement*, *supra* note 9 at s C.2.4 ("The law school maintains a law library in electronic and/or paper form that provides services and collections sufficient in quality and quantity to permit the law school to foster and attain its teaching, learning and research objectives."). While this language opens the possibility of a fully electronic law library, it is noteworthy that the universities which most recently established law Faculties, TRU and Lakehead, both also established separate physical law libraries; see also Ryerson University, *Proposal for a Juris Doctor Program at Ryerson University* (April 2017) in FLSC, Canadian Common Law Program Approcal Committee, Report on an Application by Ryerson University for Approval of a Proposed Law School Program (December 2017), online (pdf): FLSC, <https://flsc.ca/wp-content/uploads/2017/12/Approval-Committee-Ryerson-Report-Dec-2017-C.pdf> at 61ff (discussing the plans for a "Legal Knowledge Centre and Common" to include physical and electronic collections and to be "*temporarily* housed in either the current Ryerson Library and/or the Student Learning Centre" (emphasis added)).

[756] See Nicholas Kasirer, "'K' as a Structure of Anglo-American Legal Knowledge" (1997) 22:4 Can L Libr 159 at 159—60. See also Jacques Vanderlinden, "A Propos des Catégories du Droit ou Propos Décousus d'un Juriste Arboricole Contemplant un Jardin de Roses Rampantes" (1998) 2:2 RCLF 301 at 317ff (discussing the epistemological consequences of different law library classification systems).

[757] See also the opening statement of the program for the American Association of Law Libraries (AALL)'s 1963 Institute for Law Librarians ("Every law library is organized to serve a specific group") reprinted in "The AALL Institute 1963--Summary Report" (1963) 56:4 L Libr J 402 at 405.

rights scholarships, and former Supreme Court Justice. At DSJ UQAM, as we have seen, the library's name now reflects the bi-disciplinary supra-structure to which it is attached.

The administrative status of the law librarires within their university and vis-a-vis the Faculty they serve can also be telling. At all three institutions, the law library is now a component of the university librairies, and law librarians are under the leadership of central library authorities. At UAlberta Law and Droit UMoncton, the law libraries were a component of the law Faculty itself and law librarians were under the responsibility of the law Dean until recently. While this takes part in a broader movement across Canadian universities favoring centralization of libraries, it also chips away at the image of law Faculties as self-sustaining units, autonomous of other components of the university.

Through the above exploration of supra- and infrastructures, we can see that they indeed tell stories of meanings attached to legal education. Similar to labels, the institutional supra- and infrastructures are among the first impressions law Faculties give to their visitors. They are all replete with meanings, important or trifling, voluntary or accidental. They constitute signals through which insiders and visitors attribute significations about the Faculty and legal education. This tour of the three institutions' physical and institutional organization tells a story of meanings that largely correspond to that which we learned from the analysis of labels in the previous section. As for labels, the interview data also showed that faculty members accord varying significance to such elements. We can also find many equivalencies with what the analysis of the sense of mission taught us in the previous chapter.

3. Satellites & Connections

Let us now continue this tour of the institutions' structures now by turning our attention to the Faculties' organizational surroundings. This is a heterogeneous category which includes the satellite organizations that law Faculties create, house or support, as well as the connections that they visibly maintain with outside organizations and actors. Such satellites and connections can fulfil specific functions

related to teaching (e.g. clinics), research (e.g. centres, institutes), but may also correspond to more diffuse connections with external stakeholders, primarily the legal professions that Faculties nurture and exhibit. Much like the way they call themselves and set their own structures, the company they keep has the potential to be a site of meanings constitutive of and revealing Faculties' institutional cultures.

I chose to examine here the institutional meanings regarding two types of satellite organizations, clinics (*section 3.1*) and research centres and journals (*section 3.2*), in addition those attached to the visible and established connections with the local legal profession (*section 3.3*). We will see below that these three categories of inquiry offer different windows into the institutional cultures of the Faculties. The significances participants accord to each are sometimes counter-intuitive compared to other components of such culture that we have ascertained so far.

On the first two topics, and to a lesser extent the third one, the participant contributions on which my analysis relies were mostly unprompted. This provides valuable insights into the importance they placed on these sites of meanings. I remain however conscious of the fact that whether participants mentioned these elements may depend highly on whether they are themselves involved with clinics or research bodies. I try to control for this in the analysis and give greater weight to contributions from participants who were not directly involved to determine the importance that the collective gives to such structures.

3.1 Clinics

Clinics are now an ordinary feature of law Faculties across Canada, especially in common law provinces. While Canadian law Faculties had already long been offering mock trials or moot court opportunities, clinical options, involving dealing with actual cases, appeared in the 1970s.[758] At the time,

[758] Brierley "Historical Aspects", *supra* note 55 at 225.

passionate debates animated Canadian legal education, ranging from whether the legal profession should embrace such direct involvement by law Faculties in the practice of law to whether clinical courses should become required components of the undergraduate curriculum.[759] Today, these early concerns have subdued,[760] and clinics seem to have established themselves with variations across the country regarding their inclusion in the curriculum and the level of involvement of the Faculty. For instance, the Pro Bono Students Canada (PBSC) organization features chapters in every Canadian law Faculty, including my three case studies.[761]

Clinics sometimes present themselves as courses that students can take for credit toward completion of their degree and sometimes remain independent organizations in which students are encouraged to participate without the benefit of academic credits. In both cases, they generally operate separately from the curriculum, are perceived as much as professional development opportunities as academic ones, and constitute true bridges with the professional and social world outside of the Faculty. For these reasons, we will examine them here instead of in conjunction with academic matters. We can also mention that legal clinics are not the exclusive domain of law Faculties, as many community legal clinics offer valuable services across Canada in total independence from teaching institutions.[762]

Clinics have almost always been "deeply connected to transformative social justice projects."[763] This, in combination with what we have already analyzed about DSJ UQAM's institutional culture, would suggest that clinical endeavours take greater significance in this Faculty than others. Seven participants at

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[759] *Ibid* at 225—29. See also Shelley Gavigan & Sean Rehaag, "Poverty Law, Access to Justice, and Ethical Lawyering: Celebrating 40 Years of Clinical Education at Osgoode Hall Law School" (2014) 23 J L & Soc Pol'y 1 at 2; Arthurs, "The Political Economy of Canadian Legal Education" *supra* note 87 at 20 (describing the creation of legal clinics, "which combined skills training and social activism with a strong intellectual component", as an attempt by the Faculties to accommodate the students' demands to learn "the skills and knowledge necessary to achieve their professional objectives").

[760] But see Gavigan & Rehaag, *supra* note 759 at 3, 4 (discussing contemporary debates regarding clinics in Canada).

[761] See Pro Bono Students Canada, "Our Chapters", online: <https://www.probonostudents.ca/ourchapters>.

[762] Gavigan & Rehaag, *supra* note 759 at 5.

[763] Gavigan & Rehaag, *supra* note 759 at 3, 4.

DSJ UQAM mentioned clinical activities during the interviews.[764] This figure is significative and reveals the relative importance of this topic since I did not specifically prompt any of them to talk about it. Most of their comments were made in passing while discussing other issues. They nonetheless highlight interesting points.

Two participants shared that DSJ UQAM students participate in large numbers in the clinical activities offered to them.[765] One of them insisted that students were looking for experiential opportunities such as those offered in clinical setting,[766] while the other pointed to this situation to show that students adhered to the social justice aspirations of the Faculty.[767] Other participants affirmed that several professors involved themselves in clinical activities, and that a small number involved their students in clinic-like activities through regular courses.[768] One of them expressed some concern that the trend favouring the hiring of professors with higher academic credentials but limited practice experience may reduce the involvement of professors in such endeavours.[769] On the other hand, another participant affirmed that those professors doing clinical work and involved with community organizations had "beaucoup d'ascendant moral" within the Faculty, which "reflète, et a une influence certaine sur le département, l'ethos du département."[770]

The ascendancy that comes with being involved in clinical activities for DSJ UQAM professors corresponds to the historical importance that the Faculty has accorded to having concrete impacts to

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[764] QC02; QC03; QC05; QC07; QC08; QC09; QC10.
[765] QC09 ("On est très reconnus à l'UQAM pour avoir une facilité à mobiliser [et] avoir plus de participants que les autres universités [pour] faire du bénévolat au sein d'organismes communautaires [tels que PBSC]."); QC03 ("Il y a beaucoup d'étudiants qui participent par exemple à la clinique itinérante.").
[766] QC03 *(*"Les jeunes veulent aujourd'hui avoir l'opportunité d'avoir des stages, des concours de plaidoirie, des activités cliniques, travailler dans une revue scientifique.").
[767] QC09 ("L'UQAM est reconnue aussi pour être une université plus à gauche en général, entre-autre avec le corps professoral [mais aussi] les étudiants. […] On est très reconnus à l'UQAM pour avoir une facilité à mobiliser"; this quote continues as reproduced in *supra* note 765).
[768] QC10; see also QC07.
[769] QC10.
[770] QC05.

empower and improve the situation of vulnerable communities. One participant affirmed that clinical opportunities used to distinguish DSJ UQAM from other Faculties, before the institution came closer to the model of legal education offered elsewhere and prior to clinics becoming more common elsewhere.[771] Another participant insisted that clinical and experiential learning had been an enduring distinctive characteristic of legal education at DSJ UQAM.[772]

DSJ UQAM features several clinics, as do other Faculties in Quebec.[773] This is despite an unfavourable legal framework, as law students in this province can only provide legal information (and no legal advice) and cannot represent clients even in limited court proceedings.[774] Commentators have called the Quebec Bar's monopoly on legal practice "one of the most pervasive in the Western world."[775] Moreover, the division between the legal professions of *avocats* and *notaires*, each with their own professional order, may further hinder the funding of legal clinics in the province in a similar fashion that what exists in common law provinces.[776]

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[771] QC03 ("On essaie de varier l'offre d'activités expérientielles pour nos étudiants, mais ce n'est plus un élément de signature comme ça l'a été dans les années 70. On mise pas exclusivement là-dessus, beaucoup d'universités offrent des programmes de ce type-là: des cheminements co-op ou des trucs du genre. Ce n'est plus un élément distinctif, c'est devenu un élément commun aujourd'hui.").

[772] QC07 ("On a un département qui est historiquement assez novateur sur le plan des approches pédagogiques. […] Un des aspects qui est assez marquant c'est que depuis très longtemps on utilise les formes expérientielles d'enseignement, […] par exemple on a la première clinique francophone de droits international de la personne [CIDDHU], mais aussi même dans les cours réguliers, […] on invite souvent les [étudiants] à travailler sur des sujets qui sont pas simplement académiques propres au cours, […] [des] travaux ne soient pas uniquement vus comme un mode d'évaluation mais vraiment un mode d'apprentissage qui peut être utile à la collectivité." citing the example of a group of students in a methodology course who worked on producing a booklet providing the public with information on recourses in cases of police brutality).

[773] See e.g. Droit UMontréal, "Bourses, ressources et services", online: <https://droit.umontreal.ca/bourses-ressources-et-services/>; Droit ULaval, "Cliniques juridiques", online: <https://www.fd.ulaval.ca/etudes/cliniques-juridiques-droit>; Droit USherbrooke, "Cliniques juridiques", online: <https://www.usherbrooke.ca/droit/etudiants/cliniques-juridiques/>.

[774] *Act respecting the Barreau du Québec*, CQLR c B-1, s 128.

[775] Thomasset & Laperrière, *supra* note 537 at 206.

[776] For instance, in Ontario the interests generated by mixed trsuts accounts (where lawyers usually place the money they hold in trust for their clients, for instance for the sale of a house) are managed by the Law Foundation of Ontario, which is a major contributor to the financing of legal clinics in Ontario and elsewhere in Canada; in Quebec, there are separate foundations to manage the equivalent income, depending whether the trust accounts are held by *avocats* or *notaires* (the latter being in charge, for instance, of real estate transaction and successions). We can imagine that even if law students were allowed to eprfomr more duties in a clinical setting in Quebec, the

The eldest is the Clinique juridique de l'UQAM, established in 1975. It came about in the wake of the creation of the LL.B. program, at a time when the latter included a mandatory internship in the legal field for the fourth term of study.[777] While it has gone through many reforms since, including several years of interruption (1986-92), the Clinique juridique now offers services within and outside of the university community and handles individual as well as collective legal issues in a wide range of areas (including family, housing, consumer and employment law, but excluding criminal matters). It is now a student-run organization fully independent from the Faculty (consequently providing no academic credit to volunteers).[778]

More recently, in the 2000s, the Faculty offered additional formal clinical options: Projet Innocence in 2002, with a focus on wrongful criminal convictions, Clinique internationale de défense des droits humains (CIDDHU) in 2005, intended to address human rights violations in Canada and around the world, and in 2006 a chapter of the national organization PBSC with projects in diverse areas of law. The Clinique Itinérante is an additional clinical option at DSJ UQAM, with a focus on homelessness. The latter also welcomes law students from McGill, UMontréal and ULaval. All, except for CIDDHU, are organizations independent from the Faculty.

The Clinique Juridique testifies to the enduring character of clinical education at DSJ UQAM, which more recent additions reinforced. A participant affirmed that the availability of clinical learning opportunities formed part of what the Faculty agreed on as to the legal education it wants to offer.[779] The

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Fonds d'études notariales (managing the funds generated by *les comptes généraux tenus en fidéicommis par les notaires*) may be reluctant to allocate funds coming from to *notaires'* activities to clinics perfoming mostly the duties of *avocats*.

[777] See e.g. MacKay, *supra* note 322 at 81 (speaking of the fourth term of study during which completion of a professional placement is required as the opportunity "pour les étudiants d'aller sur le terrain confronter leurs connaissances aux réalités et identifier la place, la fonctions et les enjeux des luttes sur le terrain juridique" and that this experience formed the basis of the in-class pedagogy during the fifth and sixth terms of study).

[778] La clinique juridique de l'UQAM, "Historique de la clinique", online: <https://www.cliniquejuridique.uqam.ca/historique-de-la-clinique/>.

[779] QC07.

presence of such options and the types of cases to which they confront students reflects DSJ UQAM's commitment to legal education as an avenue for social justice. The local PBSC chapter makes this connection explicit in its presentation.[780] Moreover, the CIDDHU, the first clinic of its kind given its global reach, comes out of the expertise of UQAM in international issues. It also welcomes students from other programs than the LL.B. (BRIDI and LL.M.), signalling once again the porosity between undergraduate legal education and other parts of the university that the Faculty's label, supra- and infrastructure exposed.

One DSJ UQAM professor insisted that many students volunteered for clinical opportunities even though they were not earning academic credits for it.[781] At UAlberta Law, several participants testified to a similar situation at their institution, insisting that a large portion of the student body took part in Students Legal Services (SLS) despite the absence of attached academic credits, for instance:

> AB03: The largest thing and the most underestimated thing [about UAlberta Law] is Students Legal Services, which is now close to its fiftieth year. You will find that nearly 200 students a year do community-involved legal services including appearing in court, which they have always been able to do, on minor criminal matters. And that's a huge connection to the real world. It was all student designed, they never even wanted law school credit for it. They said: 'it is our organization, but we benefit from it.[782]

Another participant affirmed that SLS was unique for the same reasons, estimating that between a third and half of the student went through it during their studies despite the absence of corresponding credit toward their degree.[783] In 1985, Jones painted a similar picture, also insisting on the fact that SLS was run by the students themselves without Faculty involvement.[784]

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[780] Pro Bono UQAM, "A propos", online: <https://www.probono.uqam.ca/a-propos/> ("Pro Bono UQAM s'inscrit dans l'objectif du département des sciences juridiques de l'UQAM qui vise la formation de juristes qui seront préoccupé-e-s de justice sociale et qui, à cette fin, pourront intervenir largement à la défense et à la promotion des droits des personnes.").

[781] See QC03 ("Les liens ne sont pas hyper formalisés […] entre la clinique itinérante et le département, mais il y a beaucoup d'étudiants à l'UQAM qui y participent.").

[782] AB03; see also Students Legal Services of Edmonton, "Who we are", online: <https://www.slsedmonton.com/about/>.

[783] AB01; see also AB07 (mentioning SLS as a marker of legal education at UAlberta Law).

[784] Frank D Jones, "The University of Alberta Faculty of Law" (1985) 9 Dal LJ 393 at 402 ("Approximately 350 members of the student body are involved in Student Legal Services which offers advice and, in certain instances, counsel to

SLS was created in 1969, at the very start of clinical legal education in Canada. From the beginning, it has adopted a generalist approach and handled civil, criminal and as well as family law issues. It serves low-income members of the Edmonton community, as well as undergraduate students of the university. While students cannot provide legal advice in Alberta, they can perform more functions than their Quebec counterparts as they can act as an agent and appear in court for the clients in certain proceedings.[785] In 2001, the recently established chapter of PBSC at UAlberta became a section of SLS.[786]

The three participants who mentioned SLS in response to my general questions about markers of legal education at their Faculty or when asked whether there was anything they would like to add before ending the interview led me to think that they perceive SLS as a core, enduring and distinctive characteristic of UAlberta Law. They usually spoke about it to insist on the long-standing commitment of their institution to experiential learning, rather than in terms of social justice. By comparison, the topic of clinics at DSJ UQAM came up in more interviews and participants spoke about either or both the experiential and the social justice aspects.

At Droit UMoncton, even though many interviews touched upon matters of social justice, access to justice and experiential learning,[787] only the supervisor of the local PBSC chapter mentioned clinical

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indigent people who do not qualify for legal aid. Student Legal Services is governed by a Board of Trustees who are elected from the student body. The trustees employ a full-time legal advisor who is a member of the Law Society of Alberta. Student Legal Services provides an excellent service to a segment of the community in need of legal assistance and in so doing also offers excellent training to the involved members of the student body.").

[785] See e.g. *Legal Profession Act* RSA 2000, c L-8, s 106(2)(e), and Law Society of Alberta, *Rules of the Law Society of Alberta* (1 July 2019), s 81.

[786] Students Legal Services of Edmonton, "Pro Bono Students Canada", online: <https://www.slsedmonton.com/pro-bono-students-canada/>.

[787] See e.g. NB02 ("R: *Est-ce que vous voyez d'autres enjeux sociaux et politiques qui animent la faculté?* NB02: Pro bono. Accès à la justice. […] si vous n'avez pas accès à la justice, la justice n'est pas là pour toi. Pas tout le monde aujourd'hui peut payer pour un avocat. C'est une situation qui est un problème pour le système juridique à travers le pays. 60% des parties qui comparaissent devant [la Cour Supérieure] sont des auto-représentées […] [Nous faisons face aux mêmes] problèmes que toutes les autres facultés de droit. […] Nous ne sommes pas [les seuls], bien que ça soit nos deux missions [: l'accès à la justice et former des avocats compétents].").

education.[788] This chapter of PBSC came to life in 2005, at the same time as in all other French-language law Faculties in Canada,[789] and offers the only clinical options available at this institution.

The national notoriety and support that PBSC brought to the clinical experience at Droit UMoncton certainly contributed to its success for more than a decade now. An earlier attempt to establish a clinic out of Droit UMoncton did not fare as well. Between 1982 and 1987, the Faculty ran a clinic in collaboration with the university's school of social work. Vanderlinden related the many challenges it faced, typical of such endeavours, but it is the lack of financial resources that forced its closure after only a few years of existence.[790] There does not seem to be core, enduring and distinctive meanings attached to clinics at this Faculty today, which could be surprising given the insistence on addressing the legal needs of Francophones in the region in the Faculty's definition of its aspirations.

We can, therefore, draw some conclusions as to the significance of clinics for each Faculty's institutional culture despite the variations in the legal as well as financial environments in which they operate. At DSJ UQAM, clinics echo the department's social justice mission and several of them focus on themes where the Faculty has historic expertise; there has been an erosion of the central and distinctive character that this form of pedagogy and institutional involvement in the community represented at the beginnings. At UAlberta Law, SLS long involvement in several domains may reflect the Faculty's generalist approach to legal education or may simply be a consequence of the high number of students enrolled in the program. The meanings that participant expressed about SLS show central, enduring and distinctive character they perceive it to have, especially since many students get involved with it even in the absence of corresponding academic credits, similarly to DSJ UQAM. While our ascertaining of UAlberta Law's institutional culture thus far points to it being the least "deeply connected to transformative social justice

[788] NBXX (mentioning it only when describing their own roles within the Faculty).
[789] Droit UMoncton, "Pro Bono", online: <https://www.umoncton.ca/umcm-droit/node/24>.
[790] Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 149—52; see also *Le Juriste: Bulletin d'informatin de l'Ecole de droit* 3 (October 1986) at 2 (reporting the same reasons for the closure of clinic).

projects" among the case studies, which clinics most often are,[791] we can see that SLS nonetheless takes noteworthy significance at this institution. Lastly, I observed no comparable significance accorded to clinical activities at Droit UMoncton, even though they would further the Faculty's sense of mission.

Clinics are usually supervised by practicing lawyers rather than law professors.[792] They are one of several contact points between the profession and the Faculties. We will turn to such connections in greater detail in a subsequent section, after exploring the meanings associated with the Faculties' research bodies in the following pages.

3.2 Research Bodies

Another type of satellite organization surrounding law Faculties is the one constituted by research bodies such as research centres and journals. They too play a structural role for law Faculties, even as their activities are primarily in research rather than teaching. The participants' contributions on this topic offer a picture opposite to that regarding clinics. This a topic on which I prompted none of the participants. Two-thirds of them at Droit UMoncton (5/8) spoke about their Faculty's research bodies, compared to one third at UAlberta Law (4/11), and only one participant at DSJ UQAM (1/11). Moreover, participants' remarks on this topic at the first two institutions were not made in passing; instead, they insisted on communicating the significance they attributed to research bodies.

A Droit UMoncton participant shared the following: "On a deux centres [de recherche] ici qui tournent autour de la mission […] On n'a pas d'autres centres; ça montre l'importance [que l'on attache

[791] See Gavigan & Rehaag, *supra* note 759 at 3.
[792] See Samantha Hale & Neil Gold, "Clinical and Experiential Learning in Canadian Law Schools: Current Perspectives" (2017) 95:1 Can Bar Rev 151 at 162 (reporting that in Canada generally, full-time academics teach 40% of clinical and experiential courses while non-academic instructors teach the remaining 60%, with large discrepancies in ratio from one law Faculty to the next).

à] cette question pour la faculté."[793] The Faculty counts two research centres: the Centre de Traduction et de Terminologie Juridiques (CTTJ), established at the same time as the Faculty itself, and the Observatoire International des Droits Linguistiques (OIDL), established in 2010 to replace the Centre International de la Common Law En Français (CICLEF). Remarks by other participants corroborate the perception that they carry central, enduring and distinctive meanings for the Faculty.[794] They perceive CTTJ and OIDL as additional avenues through which the Faculty pursues its socio-linguistic mission.

While CTTJ and OIDL signal the Faculty's expertise in select domains,[795] much like research bodies also do in other institutions, at Droit UMoncton these domains correspond to key areas deemed essential to fulfil the socio-linguistic dimension of the institution's mission: making common law resources available in French for all actors of the legal system (CTTJ) and promoting language rights and monitoring their implementation (OIDL, and as we will see later, AJEFNB too).

The unavailability of common law materials, or even vocabulary, in the French language for private law was one the greatest obstacles Droit UMoncton faced at its inception. It fueled many doubts about the very possibility of teaching the common law in French.[796] As a participant put it, "il n'y avait rien en français au début."[797] That is why the Centre was established at the same time as the Faculty. A quarter of the school's total budget for its first two years of operations was earmarked to translate common law cases through the CTTJ, which was perceived as "vital for all aspects of the Faculty's development" and

[793] NB05.
[794] NB04 (pointing to the presence of CTTJ and OIDL as evidence that "les droits linguistiques sont encore […] une force motrice de la faculté de droit"), NB07 ("Le CCTJ [joue un rôle] très central [quant à] l'accès à la justice en français."), NB08.
[795] See e.g. NB08 (affirming that Droit UMoncton ought to play to its historic strength in language rights).
[796] See text accompanying *supra* notes 577, 662 (quoting *Soberman Report, supra* note 577); see aslo NBXX ("Il y a eu de nombreux commentaires sur l'entreprise de faire la common law en français. Plusieurs doyens [d'autres facultés] ont dit que ça serait impossible, le doyen de Queen's et d'autres. Même [au milieu des années 2000] j'ai entendu des commentaires de fonctionnaires fédéraux qui disaient qu'on ne pouvait pas vraiment apprendre la common law en français.").
[797] NB05.

designed "primarily to serve teachers and students."[798] This understanding has persisted, as one participant affirmed their attachment to "traduire la common law et créer une common law en français, un vocabulaire juridique en français, des outils de travail, comme des traités, etc. pour permettre l'enseignement et la référence etc." as a continuing key function of the Faculty.[799] Another took pride in the fact that "la common law a été traduite ici à la faculté, presque dans son entièreté, ça a été colossal comme travail."[800] The work accomplished by CTTJ was instrumental to the success of Droit UMoncton's unique endeavour, but also spread much further than the walls of the Faculty, as the following comments from a UAlberta Law participant illustrate: "I do know that what Moncton did was unique in the common law world: compiling a lot of common law literature in French. That was a huge asset because nobody else would have done it at the time. When it was founded, it was the source for materials about common law in French."[801]

CTTJ has thus been instrumental to Droit UMoncton from the beginning. In addition to making possible the teaching of the common law in French, CTTJ has also advanced the use of French in legal processes in New Brunswick and elsewhere by creating and providing adequate resources. CCTJ contributes to enabling the delivery of legal and judicial services in French and is, therefore, part of the same endeavour as Droit UMoncton.

Droit UMoncton's other research centre, OIDL, embodies another core component of Droit Moncton: language rights. As we saw, though less central than it used to be, the promotion of language rights has been a core, enduring, and distinguishing characteristic of the Faculty. The creation of OIDL in 2010 constituted an attempt to perpetuate the expertise in the field that several individuals associated with Droit UMoncton (e.g. Michel Doucet, Michel Bastarache) had nurtured and embedded in doctrine

[798] Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 54, 136—37 (my translation).
[799] NB08.
[800] NB04.
[801] AB03.

and jurisprudence, especially as the pioneers of the field were progressively leaving the scene. It signals that beyond the personal efforts of a few individuals, Droit UMoncton aims to keep researching and advocating for language rights.

OIDL replaced CICLEF, which had been in operations for 20 years. Michel Doucet was the founding director of the latter and the former. Moreover, once CICLEF had demonstrated "au-delà des frontières du Canada que la common law exprimée en français pouvait exister sous toutes ses facettes au-delà du contexte spécifique d'une culture minoritaire, celle des Acadiens du Nouveau-Brunswick," the Faculty replaced it with OIDL to foster "l'approfondissement de certaines actions plus spécifiques plus directement centrées sur les besoins de la société acadienne."[802] This further indicates that OIDL anchors core, enduring and distinctive meanings about legal education at Droit UMoncton so that they last beyond the retirement of the founding generation.

We can mention here that Droit UMoncton hosts a journal dedicated to language rights issues, the Revue de droit linguistique (RDL). The journal was created in 2014 through OIDL to take up the torch left on the ground since the termination of the Revue de la Common Law en Français (RCLF). The latter had been created in 1995 in cooperation with other universities and became Droit UMoncton's own from 1999 until its eventual discontinuation in 2012.[803] No participant at this Faculty mentioned either journal.

UAlberta Law has housed a scholarly journal since 1934, first called the Alberta Quarterly Law Review,[804] and then the Alberta Law Review since 1955.[805] UAlberta Law and its Calgary counterpart share the management of this journal. The Faculty also hosts three research bodies: the Alberta Law Reform Institute (ALRI), the Health Law Institute (HLI) and the Center for Constitutional Studies (CCS). ALRI was

[802] Jacques Vanderlinden, "Demain" (2008) 10:1 RCLF 18 at 18—19.
[803] Jacques Vanderlinden, "Hier" (2008) 10:1 RCLF 20.
[804] Adams, *supra* note 63 at 8.
[805] See Alberta Law Review, "About", online: <https://www.albertalawreview.com/index.php/ALR/about>.

established in 1968 (under the name Institute of Law Research and Reform at the time),[806] HLI in 1977, and CCS in 1986. They have all remained in continuous operation at this Faculty since, contrary to a few other bodies who are no longer located at UAlberta Law.[807]

One participant made sure to mention ALRI, HLI and CCS at the end of the interview when asked if there was anything else about UAlberta Law that they would like to talk about, affirming that "[they] are part of what makes us."[808] In addition to being enduring, they seem to take on central meanings as well for the Faculty. ALRI, in particular, triggered the most significant comments, as another participant shared that the presence of ALRI shaped the conversation about what kind of research is valued by the institution,[809] and a third affirmed that ALRI was "very valuable in a different way [as] it engages our

[806] ALRI, "About ALRI", online: <https://www.alri.ualberta.ca/index.php/about-alri>. The late 1960s and 1970s saw the creation of law reform bodies across Canada with various relationships with their provincial or federal governments; for an intellectual history of such agencies, see e.g. Roderick A Macdonald, "Recommissioning Law Reform" (1996) 35:4 Alta L Rev 831 at 834—47. An indication of ALRI's status at its inception resides in the fact that Bowker resigned from the deanship to take the directorship of this new body, Law & Wood, *supra* note 633 at 19.

[807] Walter H Johns, *A History of the Faculty of Law* (Edmonton: UAlberta Law, 1978) at 11 ("In 1977, under the leadership of Dean Jones, the Law Centre was selected as the home of two other legal institutions, one Canadian in scope and the other an international body. The International Ombudsman Institute was established to promote and encourage the development of the concept of ombudsman throughout the world. The Canadian Institute for the Administration of Justice has as its object the development of programs of research with regard to the administration of justice in Canada, the gathering and dissemination of statistical and other educational programs for members of the judiciary and administrative tribunals. A feasibility study will be conducted this year with a view to establishing a Health Law Institute at the University of Alberta."). Note that in his own account a few years later, Jones mentioned the first two but omits HLI (see Jones, *supra* note 784 at 401—02). The International Ombudsman Institute is now located in Austria and the Canadian Institute for the Administration of Justice (CIAJ) was first established at Osgoode Hall in 1974, moved to UAlberta Law in 1978 and has been relocated to the Droit UMontréal since 1986 (see David C McDonald, "The Role of the Canadian Institute for the Administration of Justice in the Development of Judicial Education in Canada" in William Kaplan & Donald McRae, eds, *Law, Policy and International Justice, Essays in Honour of Maxwell Cohen* (Montreal & Kingston: McGill-Queen's University Press, 1992) 455).

[808] AB01.

[809] AB02 ("There is a real tradition here of law reform work as part of the types of research that we do." and "You see debates around what is a good publication; should you be publishing in the journal that's aimed at academics or that's aimed at practitioners? Do we favor one over the other? Some people think [the focus on peer review] is really important as a measure of academic quality, and then you have people doing things like writing law reform projects that are not going to be peer-reviewed, but make a very important contribution to the profession."). One the core character of ALRI, see also Jones, *supra* note 784 at 401 ("There is a useful, *symbiotic*, interplay between the Institute and the Faculty." [emphasis added].

Faculty in law reform."[810] Another participant expressed the idea that the law reform work coming out of ALRI was one of the Faculty's contributions to the public good.[811]

The public legal education efforts of CCS were also presented in terms of contributing to the public good:

> AB02: Another way by which we serve the public is through legal education, and that is something that we do quite a bit of here, especially through the Center of Constitutional Studies.[812]
>
> AB08: I think the Center for Constitutional Studies does wonderful work in communicating public education, and I think it provides a venue that we otherwise don't have. I mean law schools typically don't engage in public education very much. And I think it would be difficult for us to do that frankly without some sort of an organization [for which it is] part of its mission.[813]

The language of contribution to public good is that of the university's strategic plan.[814] Integrating the research bodies, in particular, ALRI and CCS, in this framework shows the participants' perception of them as truly part of the Faculty.

Given that UAlberta Law is an older and bigger institution, and that it nurtures generalist aspirations for its legal education mission, it is not surprising to see more diversity in the research bodies it hosts compared to Droit UMoncton, a smaller, younger and more targeted institution. Despite this difference, we can see that research bodies are sites of meanings that the Faculties experience as core, enduring and distinctive.

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[810] AB08.

[811] AB01 ("The ALRI [is] highly influential in Alberta. [It has] lots of weight [with] the University, the Minister Justice, the Law Society…"); see e.g. ALRI, "Legislation by Report", online: <https://www.alri.ualberta.ca/index.php/about-alri/legislation/legislation-by-report> (presenting a list of legislation based on the ALRI'S work).

[812] AB02.

[813] AB08; see also AB08 ("I think having these centres and institutes creates very valuable opportunities for faculty members to engage in communication of our understandings of the law with other audiences, it allows us to engage with external audiences, so we are not inward looking."). These comments primarily referred to CCS's Downtown Charter Series through which law professors give public talks about aspects of constitutional law in a downtown location (outside of the Law Centre) at lunch time.

[814] See UAlberta, *For the Public Good, supra* note 290.

This does not seem to be the case at DSJ UQAM. In the same conditions as for the other case studies, participants hardly ever mentioned the research bodies attached to their Faculty. The FSPD website presents 21 research units (1 institute, 4 chairs, 7 centres, 4 groups, 4 observatories, 1 laboratory), and 4 of them also appear on DSJ UQAM's own section referencing *regroupements de recherche*.[815] The only one of those which a participant mentioned is the Institut d'études internationales de Montréal (IEIM), which is not even one of the four presented as connected to the law department itself.[816] The same participant was also the only one to mention DSJ UQAM's sole academic journal: the Quebec Journal of International Law (QJIL/RQDI).[817] This journal is a creation of the Société Québécoise de Droit international (SQDI), and its presence at DSJ UQAM results from the fact the QJIL director and SQDI Vice President is a professor at DSJ UQAM. It is therefore not an emanation of DSJ UQAM. The participant only mentioned the journal in terms of the experiential learning opportunities it provided to students.[818]

This quasi absence of spontaneous engagement with the topic of research bodies at DSJ UQAM is all the more striking given that the number of such organizations attached to this Faculty, as indicated by its website, is greater than at UAlberta Law and Droit UMoncton. DSJ UQAM's current research bodies are younger than those at UAlberta Law and than Droit UMoncton's CTTJ as the eldest dates from the early 1990s and half of them have existed for less than 10 years. This suggests that they have not gained the status of core and enduring institutional characteristics, although they may well be distinctive. Their

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[815] FSPD UQAM, "Unités de recherche", online: <https://fspd.uqam.ca/recherche-menu/unites-de-recherche/>; DSJ UQAM, "Regroupement de recherche", online: <https://juris.uqam.ca/recherche-onglet/regroupement-de-recherche/>; see also UQAM, "Unités de recherche et création", online: <http://recherche.uqam.ca/unites-de-recherche-et-de-creation.html> (listing only 6 units "reconnues institutionnellement par l'UQAM" for FSPD). To these, we could also add Collectif de recherche en droit et société (CRDS) created in 2017 at DSJ UQAM, see CRDS, online: <https://crds.blog/>.

[816] QC03 (« La faculté au sens large[,] les départements [et] l'institut peu[vent] être [des lieux de] collaboration et permettre certaines dynamiques originales, en même temps [on peut y trouver des] frictions, surtout dans un contexte de coupures budgétaires depuis des années dans les universités.)

[817] A new journal coming out of DSJ UQAM in the field of law and society is expected to issue its first volume in 2020, see Communitas, online: <https://communitas.uqam.ca/>. DSJ UQAM briefly hosted the French Revue Droit et Société in the 1990s, see See Jobin, *Réflexions sabbatiques*, *supra* note 711 at 64.

[818] QC03.

respective status seems rather nebulous to the outsider, especially due to their various labels and levels of recognition within UQAM.[819] Despite DSJ UQAM's significant attachment to the study of law as any other discipline of the university, we can therefore conclude that the research bodies attached to this Faculty do not constitute sites of meanings constitutive of DSJ UQAM's institutional culture.

Before closing this section on research bodies, let us return shortly to the case of Droit UMoncton. There, two organizations engage in law reform recommendations in a manner comparable, though not completely similar, to ALRI at UAlberta Law. Whereas ALRI is generalist in scope, and pursues the apparently political neutral objectives of making the laws of Alberta "more useful and more effective,"[820] Droit UMoncton's bodies are specialized on the issues of language and law and language rights, and explicitly embrace a distinct socio-political ambition: the flourishing of French language minorities and the centrality of bilingualism in Canada's and New Brunswick's founding covenants. The CTTJ described above, as a member of the Réseau National de Formation en Justice, for instance, formulated recommendations to the House of Commons Standing Committee on Official Languages regarding the full Implementation of the *Official Languages Act* in the Canadian Justice System.[821]

In addition, Droit UMoncton also hosts the Association des juristes d'expression française du Nouveau-Brunswick (AJEFNB), established in 1987, which intervenes in public and legislative debates to improve the legal status quo in New Brunswick. Law reform, in the field of language rights in particular, is at the core of AJEFNB's purpose and makes it something different from just a French-speaking lawyers society.[822] We can observe for instance that it makes recommendations on improving the *Official*

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[819] See text accompanying *supra* note 815.
[820] *Alberta Law Reform Institute Continuation Agreement,* 2012, s 2(2)(a), online (pdf): *Alberta Law Reform Institute* <https://www.alri.ualberta.ca/images/stories/docs/2017_2022_Continuation_Agreement.pdf>.
[821] See e.g. House of Commons, Standing Committee on Official Languages*, Evidence,* 42-1, No 51 (9 March 2017) at 1215 (Ms Karine McLaren, Director, CTTJ, Droit UMoncton)), and member, Réseau national de formation en justice).
[822] Yves Goguen & Philippe Morin, "Les Mouvements Associatifs et les Droits Linguistiques" (2018) 5 RDL 115 at 118ff.

Languages Act in New Brunswick and at the federal level.[823] Like Droit UMoncton itself, AJEFNB is perceived as an Acadian institution and an essential watchdog for the survival of the Acadian society in French.[824] The current president described the research involved in AJEFNB's activities as a form of "recherche engagée," "recherche action" and activism.[825] However, as we will see below, AJEFNB is more properly characterized as a professional organization embodying Droit UMoncton's intimate relationship with a part of the local bar.

3.3 Connections with the Legal Professions

The Association des Juristes d'expression Française du Nouveau-Brunswcik (AJEFNB) engages in research and law reform activities. Nonetheless, it is primarily a professional association representing the province's French-speaking jurists and promoting the use and access to French in legal processes (for instance by providing reference materials in French). A participant affirmed that the physical presence of AJEFNB's headquarters within Pavillon Adrien J Cormier, "juste à côté des bureaux de l'[OIDL], du bureau de Michel Bastarache, ça permet certainement de créer une synergie, […] physiquement,

[823] *Ibid* at 119—29; See also e.g. AJEFNB, OIDL & Société de l'Acadie du Nouveau-Brunswick, "Projet de loi" (13 December 2011), online (pdf): *OIDL* <www.droitslinguistiques.ca/images/stories/Colloque_LLO/Projet_de_Loi_sur_les_langues_officielles_13_dcembre_2011VF.pdf> (proposing amendments to the provincial *Official Languages Act*, SNB 2002, c O-0.5); Senate, Standing Committee on Official Languages, *Evidence,* 42-1, No 30 (24 October 2018) (the Director of AJEFNB intervening as an witness regarding the modernizing of the *Official Languages Act*, RSC 1985, c 31 (Droit UMoncton's Dean testified on the same day, and the OIDL and CTTJ directors the following day, in front of the same committee).

[824] Michel Doucet, "Rapport de Synthèse du Colloque Pour Une Common Law a Notre Image" (1997) 1:2 RCLF 317 at 327 ("L'AJEFNB a un rôle important à jouer dans le contexte néo-brunswickois. Elle est en quelques sorte notre chien de garde en matière de droits linguistiques dans le domaine judiciaire.").

[825] NBXX ("J'ai vu [le fait de devenir président de l'AJEFNB] comme une opportunité de faire de la recherche engagée, de m'éduquer sur ce que sont les droits linguistiques, du moins en matière d'accès à la justice, […] et en même temps de faire quelque chose d'utile, de faire de l'activisme, ou ce qu'on appelle de la recherche engagée. […] Quand je dis recherche engagée, c'est à peu près le synonyme de recherche action.").

symboliquement, c'est un intérêt pour l'accès à la justice en français qui est au cœur de la mission de l'université."[826]

Several participants insisted on the significant connection between the Faculty and AJEFNB, for instance citing the fact that Droit UMoncton professors have often taken leadership roles within AJEFNB.[827] Vanderlinden reported that the 1984 meeting of Droit UMoncton featured a conference organized by the Dean on the very question of whether they needed to come together and form AJEFNB.[828] The presence of a critical mass of French-speaking lawyers across New Brunswick is a direct consequence of Droit UMoncton's activities.[829] While this could suffice to entertain a close connection with a subset of the local bar, AJEFNB embodies an original and close-knit relationship between the Faculty and the legal profession. It constitutes all at the same time a language rights advocacy organization, a Droit UMoncton alumni association, and the unofficial representative of Francophone members of the New Brunswick bar.

AJEFNB is a visible connection between Droit UMoncton and the local bar. I noticed a few others, including the name of Droit UMoncton's former and current buildings as well as that of its library. We explored above how the naming of these spaces was a recognition of certain individuals' outstanding

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[826] NB04.

[827] NB04, NB05 (indicating that Serge Rousselle, a former Dean, Denis Roy, the current Dean, had presided AJEFNB that and Yves Goguen, a professor, was the current president); see also Goguen & Morin, *supra* note 822 at 118—19 (indicating that Michel Doucet, former Dean, was instrumental in the creation of AJEFNB).

[828] Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 153.

[829] See Michel Bastarache, "La pratique du droit en français au Nouveau-Brunswick ; Un commentaire fondé sur la préparation et la Mise en œuvre du Rapport Final du Comité sur l'intégration des deux langues officielles à la pratique du droit au Nouveau-Brunswick (1981)" (2012) 44 Ottawa L Rev 1 at 5, 10 (reporting that the share of French-speaking lawyers in New Brunswick was 15% in 1981 and had doubled 30 years later, matching somewhat the share of French-speaking New Brunswickers). See also Bell, *LSNB, supra* note 28 (noting that changes to the electoral rules to the Law Society of New Brunswick in 1960 led to the election of francophones members of the profession; that the bar rejected a proposal requiring future lawyers to be bilingual in 1982, but accepted to bilingualized the Law Society itself, as a consequence of the official status of both French and English in the province and the opening of Droit UMoncton).

contributions, as members of the legal community, to Droit UMoncton and the Acadian society.[830] I had observed sharp differences during my previous two fieldwork visits regarding the presence of and attitudes concerning local firms' names and symbols throughout the Faculty's building to acknowledge financial gifts, as we will see below. At Droit UMoncton, I only encountered discrete signs of such a presence.[831]

A participant explained that there were indeed a few signs of the law firms' involvement at the Faculty, such as a couple of study rooms in the library, some study materials, the help of practitioners in the training of students for moot competition, and more heavily during recruitment periods, but that the name of their firms was not prominently displayed across the building.[832] Indeed, the most visible displays throughout the buildings are a series of large portraits by local artist Gisèle Léger-Drapeau and class pictures. Overall, the local bar's presence is therefore perceptible but not overwhelming.

I prompted a few interview participants at Droit UMoncton to comment on the topic. One of them explained that the relative absence of such visible signs or symbolic presence of law firms in the Faculty space resulted from practical considerations, rather than ideological ones comparable to DSJ UQAM's.[833] The university embraces donations that are usually the source of such symbolic incursions, and it has determined minimal amounts for the donor's name to be associated with a Faculty or a building; however,

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[830] See text accompanying *supra* note 747. See also Lynne Castonguay & Jacques Vanderlinden, "Le Devoir De Mémoire" (2004) 6:1 RCLF 1.

[831] A couple of small rooms in the law library bearing a firm's name, a copy of the 2-volume New Brunswick's Rules of Court left for common use in the students' study room, also bearing the same firm's name on the inside front cover of the bounded volumes. These resulted from the firm's commitments on the occasion of fundraising campaign by the université de Moncton in 2005; the firm has provided law students with a copy of the rules of Court every year since, see e.g. Droit UMoncton, "Dons", online: <https://www.umoncton.ca/umcm-droit/node/136>); another firm sponsored the J-F Landry conference, which is the main annual event at Droit UMoncton.

[832] NB02 ("Il y a deux salles de Stewart McKelvey dans la bibliothèque, [indiquées par une plaque]. Stewart McKelvey a fait un don lors de la campagne universitaire [Excellence], et leur don [consistait en la fourniture] des livres de procédure civile [aux étudiants]." and "Au point de vue de l'implication des bureaux […] [il y des] avocats qui viennent siéger comme juges [pour les] tribunaux écoles. […] Mais c'est vrai, vous n'avez pas McInnes Cooper et toutes ces affaires-là visibles sur le campus. Mais ils sont tous ici deux semaines au mois de janvier, [durant] la semaine de recrutement.").

[833] NB01.

UMoncton centralizes the efforts to obtain philanthropic donations at the university level.[834] The same participant affirmed that contrary to many other universities, it is not part of the law Dean's role to seek philanthropic donations:

> NB01: Ici les campagnes de financement relèvent de l'université. Ce n'est pas dans le rôle du doyen. Cette année, on a permis [au doyen] de contacter les anciens. C'est en raison du bassin restreint. On ne veut pas que deux entités contactent les mêmes personnes, brouillent le message. [C'est pour éviter la] concurrence entre la faculté et l'université dans la recherche de philanthropie.[835]

Another participant advanced as potential explanations the absence of widespread practice of naming legal buildings (such as courthouses) after individuals in New Brunswick as well as concerns for the consequences of attaching a name to an institution for the long-term.[836] Therefore, Droit UMoncton's relationship with the local profession does not express itself through the presence of visible recognition of philanthropic donations.

On the other hand, visitors entering UAlberta Law's building through the main doors immediately come across large panels naming the recipients of the (late Chief Justice of Alberta) Horace Harvey Gold Medal, (late Chief Justice of Alberta) George Bligh O'Connor Silver Medal and the Judges Bronze Medal.[837] Alumni of the class of 1958 and the judicial members of the sessional staff offered the panels in 1984.[838]

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[834] See Université de Moncton, "Politique pour l'appellation des installations physiques, des fonds de dotation, des fonds en fiducie et autres entités à l'Université de Moncton" (2016), online: <https://www.umoncton.ca/dons/fr/qui-sommes-nous-politiques>.

[835] NB01.

[836] NB02 ("Au Nouveau Brunswick on n'a pas la pratique de [donner le nom d'individus] aux palais de justice. Il y avait une pression il y a à peu près trois ans afin que le palais de justice du Moncton [soit nommé en l'honneur] du juge Ivan Rand. Ivan Rand était l'un des plus grands juges de la Cour Suprême du Canada […] Ivan Rand était un juge incroyable. Mais il était antisémite. Il y avait de la pression ici à Moncton pour nommer le palais de justice [en son honneur], et finalement il y a eu assez d'opposition [pour que ça ne se fasse pas]. […] Tu ne sais jamais ce qui va sortir plus tard sur la vie [d'une personne] qui [pourra mener] à enlever la plaque [par exemple des abus sexuels ou de l'antisémitisme]. Quand tu nommes un édifice [en l'honneur] de quelqu'un, tu as besoin de développer une *exit strategy*. Surtout aujourd'hui avec Harvey Weinstein et toutes ces affaires-là."). It is noteworthy that my fieldwork in Moncton happened in March 2018, a few months after the emergence of the #MeToo movement in the wake of accusations against Harvey Weinstein.

[837] Awards based on the J.D. students' GPA at graduation; see also Law & Wood, *supra* note 633 at 21 (a picture of the entrance, including the awards panels); see also online: <https://registrar.ualberta.ca/ro.cfm?id=536>.

[838] As indicated on a plaque at the bottom of the central panel.

Turning left, one will encounter the no less remarkable Donor Recognition Wall, recognizing individuals and firms who contributed more than $1,000 as contributors to the Law Campaign 75 in the 1990s, as well as the corresponding plaques for the Law Campaign 2008 honouring those who donated over $5,000 a decade later.[839] On both sets of panels, the contributors are presented in groups divided according to the bracket of their donation. Many of the names are those of local firms and practitioners. Walking across the first and second floors, one will find all the classrooms, almost all of which bear the names of law firms who donated funds to the Faculty in large letters above their doors.

There too, I prompted several interviewees to comment on this situation to understand the context and their attitudes about it. One of them shared that this practice was quite recent at UAlberta Law, further explaining that this situation had resulted from provincial cuts to the university's public funding, pushing the institution to rely more than previously on private fundraising even for general operations.[840] Law and Wood reported in 1996 that "[u]niversities in Alberta were among the first in Canada to undergo deep budgetary cuts as part of a larger provincial effort to eliminate the deficit and reduce the debt. Over the past three years [1993-96], the operating budget of the Law Faculty was reduced by over 15 percent."[841] Much like in the early 1990s, Alberta's finances presented significant deficits again in the late 2000s;[842] it is when the Law Campaign 2008 was launched, for the same reasons as the Law Campaigns 75 just over a decade earlier. They both brought in large private donations to

[839] Law Campaign 75, launched in 1995, raised over $4 million, and Law Campaign 2008, launched in 2005, raised over $18 million, see UAlberta, *Calendar 2019-2020*, "History of the Faculty of Law", online: <https://calendar.ualberta.ca/content.php?catoid=29&navoid=7307#history-of-the-law-faculty>.
[840] AB07. See also Webb, *supra* note 421 at 234 (portraying a similar situation in the UK: "the decline in state funding has been accompanied by some (but not comparable) growth ion non-state funding" at 234).
[841] Law & Wood, *supra* note 633 at 22—23. See also Macleod, *supra* note 736 at 289—90 (noting that public funding in real dollars for the University of Alberta dropped by approximately a third through the 1980s' and early 1990s', just as the institution was facing a new series of cuts amounting to 20% over three years in the mid-1990s'). More generally, see Taras, *supra* note 464 at 752—53 (indicating how the Klein government in power in Alberta from 1992 to 2006 restricted Universities' financial autonomy and put them on "strict financial diet," in a context of austerity and privatization).
[842] See e.g. Department of Finance, *Fiscal Reference Tables* (October 2014) at 29, online: <https://www.fin.gc.ca/frt-trf/2014/frt-trf-14-eng.asp> (presenting the main financial indicators for Alberta from 1990-91 through 2013-14).

UAlberta Law. Although DSJ UQAM and Droit UMoncton have not adopted this practice, UAlberta Law is far from the only Canadian law Faculty to have done so.[843] Another participant shared that concerns and debates about the naming of classrooms and the visible presence of law firms were not distinctive of UAlberta Law:

> AB04: It is a matter of debate everywhere because universities are increasingly looking to private funding sources, and then they want the name of a building, they want, you know, whatever, and there is always the concern that this will bleed into the academic freedom, in some way restrict it. And so, but I think that is a concern everywhere, not just here.[844]

It is noteworthy that this happened in the same period when market forces began taking an important role in Canadian legal education.[845]

Beyond the somewhat obliged policy choice of relying on private donations, the connections between UAlberta Law and the legal professions have deep roots and hold important meanings for the Faculty. On the second floor, the walls also bear the portraits of 14 "builders of the faculty of law."[846] The accomplishments thus recognized include different combinations of careers as faculty members or sessional instructors, judges, librarians, and administrative leaders within the Faculty. In the Weir Law Library, one will find numerous artworks representing courthouses or caricaturing a judge, etc. The library even contains a "Turn of the Century Law Office" displaying a donated collection of books typical of those

[843] See e.g. QC02 ("A Toronto il y a […] des salles de classes [qui portent le nom de donateurs privés], il y a [par exemple] la salle de classe McTarthy Tetrault et la salle de classe Tories ; c'est la même chose à NYU.").
[844] AB04.
[845] See Holloway, "A Canadian Curriculum for this Age", *supra* note 18 at 789—90 (arguing that the deregulation of professional school tuition in Ontario and UToronto Law's seizing of this opportunity to differentiate itself and increase tuition to "astronomical levels" in the second half of the 1990s marked the emergence of "a new spirit of market orientation among Canadian law schools.").
[846] Wilbur F Bowker, David C McDonald, George H Steer, William A Stevenson, John A Weir, Gary G Campbell, Peter T Costingan, Peter L Freeman, Lillian V MacPherson, Roderick A McLennan, Trevie H Miller, Ellen I Picard, Alexander Smith.

"used by frontier lawyers during the formative years of the province of Alberta."[847] Moreover, a participant shared the following:

> AB08: [There is a] historic connection between the Faculty and members of the legal profession here. That is an important […] historical linkage that is sustained and I think that is an important thing to continue to foster. […] We do welcome and value contributions from the members of the legal profession. We do take that into account in the way that we plan and think about what we do here. [Their input is] an important factor in our planning. […] We have […] many sessional lecturers who are members of the profession and are very supportive of the profession. […] Many of the faculty members participate in professional organization, [such as doing] presentations for the Canadian Bar Association, or the Legal Education Society of Alberta, for other sort of industry groups and organizations. So this Faculty is I think often invited to participate in those professional organizations and many of us [do participate]. So there are a lot of linkages with the profession.[848]

This portrayal echoes largely that offered by Jones wrote in 1985 regarding the "important involvement of the bar in the day to day life of the Faculty."[849] Moreover, the Dean maintains an External Advisory Board, composed of alumni practicing in different fields and professional environments, a body that neither exist at DSJ UQAM or Droit UMoncton.[850]

Lastly, the relationship is not purely unilateral as some professors are also engaged in activities on the professional side; one of them, involved in the organization delivering the bar admission program

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[847] According to a plaque in the Turn of the Century Law Office, the collection was that of John Cormack (1972-1957), was preserved by his son, Queen's Bench Justice John Cormack (1910-1991), who eventually donated it. The Turn of the Century Law Office opened in 1994.

[848] AB08.

[849] Jones, *supra* note 784 at 394 ("The Faculty was conceived and nurtured by far-sighted members of the local bar and it has been a close relative ever since. In the early years of its life, the Faculty was dependent upon the contributions of sessional lecturers drawn from the local, practicing bar and this important involvement of the bar in the day to day life of the Faculty has continued to the present. […] In recent years the Faculty has obtained special funding from the Alberta Law Foundation to enable it to underwrite the cost of having a "Practitioner in Residence" - a member of the local bar who spends six months as a member of Faculty, meeting and getting to know full-time members of the faculty and student body and giving special lectures in areas of expertise.").

[850] See UAlberta Law, "External Advisory Board", online: <https://www.ualberta.ca/law/about/external-advisory-board>. There is no such structure at Droit UMoncton, and UQAM's *Conseil des diplomés* for FSPD's actions consist mainly in social and professional activities for students and alumni rather than advising the Faculty leadership (see UQAM, "Conseil des diplômés", online: *FSPD*, <https://diplomes.uqam.ca/conseils-de-diplomes>).

and providing continuing legal education to practitioners (Legal Education Society of Alberta) qualified such involvement as part of a "continuum" with the teaching activities at the Faculty.[851]

The UAlberta Law environment is therefore infused by a longstanding and intimate relationship between the institution and the legal profession. Even when we account for the relative novelty of the most visible displays, and the concerns some professors may have about them, the legal profession is, symbolically, omnipresent through the Law Centre. This seems to be a site of core and enduring meaning for the Faculty, aligned with other aspects of its institutional culture.

The contrast is striking with DSJ UQAM. There, the topic of the connection with the bar and the presence (or lack thereof) of visible signs of private donations to the Faculty arose in several interviews in the absence of any prompt to that effect. Here is how three participants evoked it:

> QC02: Nous n'avons pas des salles de classes qui ont été renouvelées en usant des fonds qui viennent de cabinets privés. Ça c'est la contradiction qu'on voit le plus souvent dans les écoles de droit. Mais notre département a résolument rejeté l'idée d'aller [soulever des fonds] auprès des cabinets privés, des entreprises privés. [De] cette manière il n'y a pas des contradictions claires et explicites. A Toronto il y [a] des cliniques de droit qui poursuiv[ent] des fins de justice sociale entre guillemets, mais il y [a] aussi des salles de classes, il y [a] le McTarthy Tetrault classroom, et the Torys classroom. […] Ceci n'existe pas du tout à l'UQAM. […] Ce rejet de l'idée de chercher [des fonds auprès des] cabinets privés présume une certaine vision de [ce qu'est] la justice sociale, donc la question de si vous voyez une contradiction dépend de votre conception de la justice sociale. Et […] on peut se demander juste du point de vue conséquentialiste si l'UQAM pourrait mieux poursuivre sa mission de justice sociale si elle [allait chercher] des fonds [auprès] des cabinets privés, parce que peut-être que si on avait des fonds qui venaient d'un cabinet privé, et je ne sais même pas si des cabinets privés seraient volontaires de donner des fonds à l'UQAM, mais peut-être [que l']on pourrait avoir une clinique juridique plus active par exemple.[852]
>
> QC08: Ici au département [le financement privé] a toujours été quelque chose d'assez compliqué par ce que tu as vraiment les personnes qui vont dire d'emblée 'non il n'est pas question que le privé donne de l'argent pour quoi que ce soit' alors que d'autres personnes sont peut-être moins catégoriques, mais jusqu'à maintenant ça ne s'était jamais fait. […] [Mes collègues] ne veulent pas

[851] ABXX; see also Jones, *supra* note 784 at 394 (indicating that (at the time) three professors were also Benchers of the Law Society of Alberta, including two elected ones and the Dean ex officio).

[852] QC02 (in response to the following question: "R: *[Percevez-vous] des éléments dans les programmes, la façon dont les études sont organisées, ou même plus généralement l'environnement de l'institution, qui semble contredire les valeurs [que DSJ UQAM] met en avant ?*"].

> avoir 5,000 dollars de Vidéotron pour financer une clinique juridique, ça c'est méchant, Vidéotron c'est quand même le capitalisme, je ne sais pas quoi.[853]
>
> QC07: [Le doyen doit faire] attention de ne pas aller chercher du financement auprès de donateurs potentiels qui seraient perçus par les collègues comme œuvrant dans le sens inverse de leur mission, ou qui sont perçus comme étant peut-être des adversaires de leur conception. Donc un peu à la blague, [on dit que les doyens d'autres facultés de droit] doivent convaincre des donateurs de leur donner de l'argent, et [notre doyen a] le double de leur tâche parce qu'[il doit] convaincre les donateurs de donner de l'argent, mais [il doit] quand même convaincre [les professeurs] de l'accepter.[854]

There are no visible signs of law firm presence at DSJ UQAM, in spite of the prolonged periods of reduced public funding that UQAM has faced like many other universities.[855] Faced with the same challenges as UAlberta Law, DSJ UQAM made different policy choices. We can see from the above quotes that this choice is rooted in certain values embedded in the Faculty's intellectual and political approach to legal education. The vehement rejection of the principle of private donations perceived by participants illustrates this. The symbolic presence of law firms and the reliance on private donations would run against DSJ UQAM's aspiration to challenge inequal power structures and might limit its perceived freedom to critique the private actors who benefit from them. On this front as well, we can therefore ascertain core, enduring and distinctive cultural elements about DSJ UQAM.

4. Teachers

The previous section evoked the role of practitioners in teaching at UAlberta Law. Our last stop in the present exploration of the meanings associated with institutional structures will focus on the teachers: external instructors and faculty members. In every law Faculty, we find external instructors and law professors sharing the same essential function of teaching courses to students. Interviews revealed that

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[853] QC08 (but also discussing the recent acceptation by DJS UQAM of $800,000 in private financing for a chair within the political science department; this project was eventually rejected by political science professors; see *supra* notes 281ff and accompanying text).
[854] QC07.
[855] See e.g. QC02, QC07.

participants associated significant meanings to the repartition of the teaching roles between these two groups, especially in terms of the ratio as well as the allocation of certain courses perceived as more important by Faculty members. We will first look at external instructors, as participants often perceived them as another dimension of the relationship between their Faculty and the local bar. We will examine the roles they take in the three Faculties and their profiles (*section 4.1*). We will then turn to investigating law professors themselves. We will see that analyzing how they perceive their own background, relation to the profession and identity traits provides valuable insights information about their Faculty's institutional culture (*section 4.2*).

4.1 External Instructors

Discussions of the role of external instructors in legal education were very different in substance, volume and frequency at each Faculty. At UAlberta Law, the topic came up in a few interviews only, and comments about it concerned mostly the connection with the local bar that the presence of external instructors illustrates.[856] At DSJ UQAM, the same topic arose in the course of nearly all the interviews.[857] Law professors usually contrasted their own role with that of external instructors in fulfilling the institutional mission. Finally, at Droit UMoncton, the topic hardly came up at all.[858] These differences do not owe much to the conduct of the interviews at each law Faculty, as I only prompted two participants at DSJ UQAM to talk about this topic.[859] Therefore the way interviewees engaged with the topic, and whether they engaged with it at all signals significant institutional variations. That is what we will now explore in turn at each Faculty.

[856] See AB06, AB08, AB09.
[857] QC01, QC02 (prompted), QC03, QC06, QC07, QC08, QC09, QC10, QC11 (prompted).
[858] See NBXX, NB03.
[859] QC02, QC11.

First, a participant commented on the involvement of external instructors in teaching at UAlberta Law in the following terms:

> AB06: I think the large number of sessional instructors that the U of A has always maintained is a marker of a certain kind: […] it is part of this long history of this institution being very closely integrated into the local bar. There is perhaps a kind of a subtle signal that that sends about the hierarchies of professional development and practice as being the end goal of legal education. […] the more sessional lecturing that occurs, the more signals are being sent about the practical nature of the curriculum. Sessional lectures are not researchers, they are lawyers. And they are here to teach students the law largely as they practice it. The more courses that you teach in that vein, the stronger is your gravitation toward a vision of legal education as practice oriented. […] that may be a marker, but that is one that is driven by practical budget realities as much as it is driven by a particular vision.[860]

From these remarks, we can first see that the presence of external instructors at UAlberta Law is perceived as large. Other participants shared the same understanding: "we have tons of practitioners teaching here"[861] and "we have […] many sessional lecturers who are members of the profession."[862]

Second, we also understand that it is experienced as part of the enduring close connections between the Faculty and the local legal professions. It is something that another participant also concurred with when citing the practitioners teaching classes at UAlberta Law as an example of "the historic connection between the Faculty and members of the legal profession," characterized as "an important, […] historical linkage that is sustained and […] that is an important thing to continue to foster."[863]

The first quote reproduced on this topic above also evokes budget realities. As previously mentioned, UAlberta Law has known several periods of financial restraint since the 1990s.[864] In 1985, the Faculty counted 28 full-time faculty members, and thirty-six local practitioners as additional sessional

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[860] AB06 (responding to the following question: "Q: *Do you see markers maybe in the curriculum or in the space as we experience it that show, that demonstrate [the] mission [we previously talked about]?"*).
[861] AB09.
[862] AB08.
[863] AB08 (see also text accompanying *supra* notes 848—849).
[864] See text accompanying *supra* notes 840—842.

lecturers.[865] Since then, the number of external instructors has more than doubled while the faculty complement has increased only slightly.[866] Therefore, we can observe that external instructors, a cheaper and more flexible resource than full-time tenured or tenure-track professors, have born the main share of the increase in the course offering of the past decades.

Overall, participants at UAlberta Law indicated that the presence of external instructors was experienced as a core and enduring characteristic of their Faculty. While one participant expressed personal preferences for a different approach,[867] this situation nevertheless seemed to correspond to the institution's overall self-defined aims and perception of self.

Interviews at DSJ UQAM painted a different picture. There, greater importance was given to the presence of external instructors, which was also perceived as large. However, contrary to UAlberta Law, participants at DSJ UQAM regretted this situation, expressing the idea that such presence was too large, particularly for courses considered most important. They generally understood it to constitute an obstacle to the realization of the Faculty's mission, as we will see in extracts reproduced below.

A participant placed this matter front and center in response to my standard initial question regarding what came to mind when thinking about legal education at their institution:

> QC08: Je pense que ce qui me vient en tête en premier lieu c'est le […] clair décalage qu'il y a pour moi entre la mission du département, qui est de former des juristes critiques, […] et la réalité de la formation qui est offerte, qui est en fait à mon avis une formation plutôt mainstream, qui ressemble beaucoup à celle qui va être offerte à l'université de Montréal ou à l'université de

[865] Jones, *supra* note 784 at 394.

[866] 76 external instructors taught in 2017-18, compared to 28 law professors; see also Law & Wood, *supra* note 633 at 19 ("The Law Centre is now [in 1995] home to […] twenty-five full-time members of Faculty of Law. Close ties to the legal profession are maintained by virtue of the contributions of more than fifty members of the judiciary and practicing bar who annually serve as sessional lecturers."). For comparisons with DSJ UQAM and Droit UMoncton, see Table 3.1, *below.*

[867] AB06 ("That's not my particular preferred approach to legal education. […] I prefer to think of legal education in a balanced manner in that I want to create spaces for practical opportunities for legal education but to me those are secondary within the research and teaching mission of full-time academics. […] To the extent that we can drive this Faculty to a larger number of full-time faculty, and I think we should grow this faculty, then I think we send a different signal about the place of academic research in the life of the law school.").

> Sherbrooke par exemple. Pour plusieurs raisons. Une des raisons c'est la faible présence professorale au bac, […] parce que on est finalement pas très nombreux pour assurer tous les cours, et on a une très forte présence de chargés de cours, qui à mon avis au moins pour certains sont excellents, ça c'est clair, mais ce sont des fois les mêmes personnes qui vont donner le même cours à l'[université de Montréal] ou à Sherbrooke. [À] mon avis [ils] donnent exactement le même contenu, et [ils] n'ont pas forcément en tête cette mission, pour toutes sortes de raisons. […] Donc je pense que ça c'est la première chose.[868]

This professor believed that the great presence of external instructors diminished DSJ UQAM's capacity to offer a distinctive legal education in accordance with the social justice-oriented mission it set for itself. Other participants echoed this sentiment:

> QC03: Tous les chargés de cours n'adhèrent pas à la mission du département et aux objectifs du département, […] c'est un peu plus difficile de leur vendre cette perspective ou cette mission.[869]

> QC01: Je pense que dans les cours donnés par les profs il y a de manière générale un biais en direction de luttes sociales ou de justice sociale. Mais si on parlait de l'enseignement donné par les chargés de cours ce serait probablement différent.[870]

> QC09: Les étudiants […] vont aussi faire une différence entre l'enseignement par les profs puis les chargés de cours. Les profs vont peut-être avoir plus cette sensibilité de mettre le contenu justice sociale, plus critique dans les cours […] que les chargés de cours.[871]

An additional participant speaking on this topic gave an example of how students could perceive the difference between the two groups of teachers:

> QC07: Lorsque les étudiants partent en grève, comme la tradition [de DSJ UQAM] est une tradition favorable aux positions des travailleurs, le département, les profs sont habituellement assez sympathiques aux positions des étudiants qui veulent la grève, et chez nos chargés de cours il y en a qui y sont complètement opposés.[872]

Despite fulfilling essential functions of the Faculty, external instructors are generally not invested in the Faculty's self definition and sense of mission. Participants expressed their perception and sometimes own experience that external instructors are, indeed, external to the Faculty. They are not part

[868] QC08; see also QC02 ("Il y a un si grand nombre de chargés de cours.").
[869] QC03.
[870] QC01.
[871] QC09.
[872] QC07.

of the collective shaping of the institution, embodying its values and carrying out its aspirations. They fulfill an identified teaching need, providing the service that the Faculty and the students expect from them in relative isolation. Participants pointed to the differences in approach between external instructors and full-time professors regarding the institution in the following terms:

> QC10: C'est sûr que entre chargé de cours et prof, c'est différent. L'implication n'est pas la même. […] Chargé de cours, [tu es juste un enseignant]. Je ne sais pas comment expliquer ça, mais c'est plus livrer une connaissance que d'accompagner [les étudiants].[873]

> QC06: Je percevais ma fonction de chargée de cours comme […] je pouvais faire un parallèle avec l'image de l'électron libre, […] qui n'a pas vraiment d'attaches, qui n'a pas vraiment d'appartenance à une communauté universitaire. Alors que là en tant que chercheur, en tant que professeur, c'est aussi faire partie d'une communauté universitaire, ce qui a ses avantages […] en termes d'appartenir à un groupe, mais qui comporte aussi son lot de défis dans le sens que c'est aussi incarner les valeurs de l'institution du mieux qu'on peut, tout en ayant cette grande liberté académique qu'ont les professeurs. Donc. Je trouve que dans ce poste [de professeur, if faut] gérer la complexité entre l'incarnation des valeurs de la communauté universitaire et la liberté académique de manière beaucoup plus cruciale que quand j'étais chargé de cours, et que je ne me sentais pas appartenir tant que ça à la communauté universitaire.[874]

Moreover, external instructors do not constitute a homogeneous group at DSJ UQAM. A participant described their profiles as follows:

> QC03: Il y a différents profils de chargés de cours : il y a les chargés de cours qui sont des doctorants ou des professionnels qui veulent faire carrière de professeur, qui veulent rentrer dans le monde académique ; il y a les chargés de cours qui sont praticiens, et qui complètent leur pratique avec une ou deux charges ; et enfin il y a les chargés de cours de carrière, qui donnent six ou sept cours par session dans trois ou quatre universités [différentes], et qui font que ça pratiquement, l'enseignement, mais sans la recherche, [ni] les services aux collectivités, [ni] le statut de professeur.[875]

We can therefore see that the incentives and time available to different external instructors to adapt their teaching to and invest themselves in the specificities of a given institution vary considerably depending on their own professional situation.

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[873] QC10.
[874] QC06.
[875] QC03; see also QC02 (affirming that DSJ UQAM doctoral students have a lot of teaching opportunities, presumably as *chargés de cours*).

The diversity of profiles found among external instructors at SJ UQAM distinguishes this Faculty from UAlberta Law and Droit UMoncton. At UAlberta Law, the main occupation of two-thirds of external instructors is in private practice, and in government or public service for the remaining third.[876] At Droit UMoncton, the corresponding proportions for the same categories are around half each.[877] In both Faculties, all external instructors are therefore legal practitioners who complement their full-time occupation with some teaching services.[878] They teach maximum one class per term, and only a small proportion teach more than one in a given year.[879] At DSJ UQAM, external instructors on average take care of more courses than at UAlberta Law and Droit UMoncton.[880]

The distinction between law professors and external instructors with regards to their commitment to carrying out the Faculty's mission in their teaching activities mattered to DSJ UQAM participants for two main reasons. First, because of the volume of courses entrusted to external instructors itself, which they believed was too high:

> QC11: Il y a trop de cours donnés par les chargés de cours, c'est vrai, en particulier à cette session-ci on m'a dit qu'il n'y avait seulement que 15 ou 20 pourcents des cours donnés par des profs à cette session d'automne, ce qui est en soit anormal selon moi.[881]

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[876] Information gathered from the occupation listed for each external instructors as indicated on the Faculty's website, see UAlberta Law, "Sessionals", online: <https://www.ualberta.ca/law/faculty-and-research/sessionals>.
[877] Information gathered from search engines results corresponding to the names external instructors (provided by the Faculty in an internal document on file with the author).
[878] This is the norm for North American institutions teaching common law, see e.g. Karen L Tokarz, "A Manual for Law Schools on Adjunct Faculty" (1998) 76:1 Wash ULQ 293 at 294, n 3 (noting that "lawyers and judges […] are the most common categories of persons asked to teach at a law school [as adjuncts.]" in the United States). The large number of external instructors at DSJ UQAM and the absence of a publicly available document presenting their professional occupation like that at UAlberta Law (see UAlberta Law, Sessionals, *supra* note 876) prevented me from including estimations as to the proportion of external instructors in each category indicated by QC03 (see quote accompanying *supra* note 875) and their main occupation.
[879] At Droit UMoncton, no external instructors taught more than a single course in a given term, and only 27% (3/11) of external instructors taught 2 courses during the year 2017-18. At UAlberta Law, only 12% (9/76) taught 2 courses during the same year, with most of them (5) teaching the same course to two different groups of students; all other external instructors only taught one courses during this year.
[880] At DSJ UQAM (DSJ courses only), 51% (22/43) of external instructors taught more than 1 course during 2017-18, including 4 who taught 3 courses during the same year. See also Jobin, *Réflexions sabbatiques, supra* note 711 at 96 (indicating that over 40% of external instructors at DSJ UQAM in 1993 had taught at least two different courses during the year).
[881] QC11.

> R: *Est-ce que le volume de cours qui sont assurés par des chargés de cours est important ?*
> QC03: C'est très significatif. Historiquement je pense que c'est entre 50 et 60% des cours qui sont donnés par des chargés de cours au bac en droit.[882]

Some comparative data might be useful here to understand this perception in context. DSJ UQAM features roughly the same number of external instructors and the same ratio of external instructors to professors as UAlberta Law (see Table 3.1, *below*).

Second, and perhaps more importantly, the specific courses which external instructors teach was also a matter of great significance:

> Les cours donnés par les chargés de cours sont souvent importants, les cours de droit positif de base, droit des biens par exemple c'est un cours qui est souvent donné par des chargés de cours. Droit pénal, pareil. Je pense que ce genre de cours-là aurait avantage à être donné par des profs. […] Je pense que ce n'est pas tout à fait normal que des cours aussi fondamentaux que ceux-là soient donnés par des chargés de cours.[883]

These teachers take care of much higher proportion of courses in the LL.B. program generally, and even much more so in the first year (required) courses, than at UAlberta Law or Droit UMoncton (see Table 3.2, *below*). The figure cited by the above-quoted participant seems to correspond to this category.

	DSJ UQAM All LL.B. courses	DSJ UQAM DSJ courses only*	UAlberta Law	Droit UMoncton
# of external instructors	81	43	76	11
# of faculty members	31	20	28	9
External instructors to faculty members ratio	2.6	2.2	2.7	1.2

Table 3.1: Comparison of number of external instructors and faculty members teaching J.D. or LL.B. courses[884]

[882] QC03 (adding that for the LL.M. and Ph.D. programs, "ce sont les profs qui sont essentiellement présents.").
[883] QC11.
[884] Information current for 2017-18; all courses offered in Summer 2017, Fall 2017 and Winter 2018, excluding moots, internships, externships, paper supervisions. *DSJ courses=courses marked as JUR.

	DSJ UQAM All LL.B. courses	DSJ UQAM DSJ courses only*	UAlberta Law	Droit UMoncton
All J.D. or LL.B. courses	66% [131/199]	66% [79/120]	38% [62/161]	28% [11/39]
Required J.D. or LL.B. courses	64% [43/67]		23% [15/65]	16% [3/19]
First year J.D. or LL.B. courses	78% [36/46]		6% [2/35]	0% [0/9]
Upper Years J.D. or LL.B. required courses	33% [7/21]		43% [13/30]	30% [3/10]

Table 3.2: Proportion of courses taught by external instructors in certain categories[885]

Since they perceived that external instructors generally did not infuse their teachings with the aspirations and values that the Faculty experience as core, enduring and distinctive, and since the same external instructors were in charge of what participants considered to be fundamental courses, they logically concluded that this situation impeded the realization of the Faculty's mission.

When we examine the causes of this situation, we find a striking paradox. Participants pointed to explanatory factors that they perceived themselves as important characteristics for the Faculty's self-definition, as well as individual professors' personal preferences.

First, the importance given to participating in the unit's self-governance and that accorded to the department's internal organization leads many professors to benefit from discharges of some teaching duties (*dégrèvements*). Second, such discharges are also available for professors who supervise a sufficient number of masters or doctoral theses. It becomes important given the large size of graduate programs at this Faculty. These two factors increase the number of courses to be taught by external instructors.[886]

[885] Information for 2017-18; excluding moots, internships, externships, paper supervisions. *DSJ courses=courses marked as JUR

[886] QC11 ("Ça tient à toute sorte de facteurs : un facteur c'est que plusieurs de nos collègues sont dégrevés […] d'une partie de leur charge d'enseignement parce qu'ils ont des fonctions administratives, ou parce qu'ils ont accumulé suffisamment d'encadrement de mémoire ou de thèse pour être dégrevé.") ; QC07 ("Si on calcule le fait que notre mode de gestion collégiale occupe beaucoup de nos profs sur des postes administratifs, […] c'est plusieurs dégrèvements. Le corps professoral compte 36 profs. Il y en a bon an mal an cinq ou six qui sont en sabbatique à chaque année. Ça fait en sorte [qu']il y a peu de profs […] qui ont quatre charges de cours dans l'année.").

More importantly, professors at DSJ UQAM have a great level of agency in deciding which courses they teach. Contrary to other more hierarchically organized Faculties, at DSJ UQAM the allocation of teaching duties is not decided by the administrative leadership of the academic unit; instead, professors decide collectively which courses they will teach, and do not pressure each other to teach those that nobody has claimed.[887] Even if certain professors expressed the importance they personally placed on teaching at least some of their courses at the undergraduate level ("Je me suis toujours fait un devoir [d']enseigner des cours obligatoires au [LL.B.]. […] Je trouve ça important [pour] le sentiment d'appartenance [des] étudiant[s]"[888]), at the end of the day, many professors prefer to teach courses in other programs than the LL.B., for instance at the masters' level.[889]

Finally, several participants mentioned chronic underfunding as an additional explanatory factor.[890] The lack of budgetary commitments available to hire full-time professors on a permanent basis could explain the lack of professors to teach certain courses. Several elements nonetheless undermine this idea. Given that several participants commented on the personal preferences of existing professors to teach certain courses, and the high level of agency they have in deciding which courses to teach, it seems that the dissatisfaction regarding the high proportion of required LL.B. courses left to external instructors results more from inadequate allocation of existing personnel than from a mere lack of professors. In addition, the long-standing preference for hiring in certain fields (e.g. public law) at DSJ

[887] QC07 ("L'attribution des cours chez nous ne dépend pas d'un doyen ou d'une doyenne qui dit 'ça va être toi, toi, toi qui va enseigner tel cours,' c'est chaque professeur [qui] prépare son plan de travail annuel et le soumet à ses collègues de l'assemblée départementale pour approbation. Et donc la distribution des cours entre professeurs [est] décidée collectivement. […] Le système collégial fait en sorte que les gens ne veulent pas paraître tenter d'imposer une obligation à autrui, parce qu'ils ne veulent pas eux-mêmes se faire imposer une obligation. […] L'assemblée va intervenir quand il y a un conflit entre deux profs qui veulent donner le même cours au même moment […]. Mais autrement ils ne changeront pas le plan de travail d'un prof pour lui dire 'toi tu as mis droit des affaires, ben tu vas mettre un cours de droit des biens.' […] L'assemblée départementale ne fera pas ça.").
[888] QC10; see also QC11 ("Moi j'aime beaucoup enseigner au [LL.B.], donc je pense qu'on devrait, collectivement, enseigner davantage au premier cycle."); QC08.
[889] QC11 ("Ça s'explique aussi parce que certains collègues préfèrent enseigner à la maitrise, ce qui n'est pas une bonne chose selon moi."); QC07.
[890] E.g. QC02, QC05.

UQAM[891] suggests that additional professors may express preferences similar to that of their colleagues already present for their teaching activities. Another participant also expressed the idea that budget constraints were not key issues to understand DSJ UQAM's rapport to external instructors and teaching:

> QC11: On pourrait parler des ressources disponibles, mais ça m'intéresse assez peu. Je suis sûr que tout le monde vous dit 'on manque de profs, on devrait en avoir davantage' mais bon, c'est un peu des lieux communs. […] Je ne suis pas celui qui va se plaindre du sous-financement de la recherche ou du nombre insuffisant de collègues. Pour moi ce n'est pas des enjeux très importants.[892]

At Droit UMoncton, the topic of external instructors hardly came up during interviews. One participant mentioned their role in taking over professors' courses when they are on sabbatical leave,[893] while another lamented the fact that most commercial law courses in Canadian law Faculties are taught by external instructors rather than career professors.[894] Therefore, we can see that no significant meanings seemed to be attached to the presence of external instructors at Droit UMoncton, neither as the continuation of an important relationship with the local bar such as at UAlberta Law, nor as an obstacle to fulfilling the institutional mission such as at DSJ UQAM. It is worth noting that the ratio of external instructors is much lower in this Faculty compared to DSJ UQAM and UAlberta Law (see Table 3.1, *above*) and that they rarely teach required courses (see Table 3.2, *above*).

4.2 Professors

[891] See Chapter 2, Section 2.3, *above,* for more details on how certain fields of law have dominated at DSJ UQAM's.
[892] QC11.
[893] NB03.
[894] NBXX ("La majorité des professeurs dans les facultés de droit canadienne qui enseignent le droit commercial sont des chargés de cours. Et ça ce n'est pas nécessairement une bonne chose non plus parce que ce qu'il se passe c'est que tu n'as plus personne qui publie dans le domaine, et puis tu n'as plus personne qui propose des réformes, qui fait de l'analyse si ce sont tous des chargés de cours.").

The preceding section showed how professors gave different significance to the role of external instructors in each Faculty and that their profiles mattered in this regard. Interview participants, who included tenured, tenure-track and non-ternure-track professors, had much to share regarding their perceptions of law professors themselves, especially in the midst of what many perceived to be a major generational renewal. As we saw at the beginning of Chapter 2, all three Faculties have experienced a large replacement of their professors in the past few years.[895] Participants in each institution expressed their perception that this rapid renewal was not simply the replacement of certain professors by similar individuals; they described a true generational change:

> NB01: Il y a un roulement générationnel. Il n'y a pas eu de séquencement. On a tout un groupe, une génération qui part en même temps.[896]
>
> AB11: It's a Faculty in intellectual and cultural flux.[897]
>
> QC10: Ça change le portrait.[898]

What participants found significative was not simply that newcomers were younger than their predecessors, but rather that they differed from them as to their academic and professional background. First, participants commented that the new generation increasingly came to the professoriate with doctoral credentials, whereas their predecessors usually only held masters' degrees (section 4.2.1). Second, and not unrelated, participants remarked a more detached relationship to the world of legal practice (section 4.2.2). Third, some also offered their views on the composition of their faculty regarding personal characteristics such as gender, race and geographical origin (section 4.2.3). We will examine these themes in turn below. Each Faculty features only small differences on these three themes, all exhibiting the same general patterns.

4.2.1 Doctoral Credentials

[895] See Chapter 2, Section 1.1, *above*.
[896] NB01; see also QC03 (speaking of a "creux générationnel").
[897] AB11.
[898] QC10.

Let us start with the professors' academic credentials. In all three Faculties, participants indicated that while the LL.M. degree used to be the main credential for law professors, with only a handful of holding doctorates, the Ph.D. degree had increasingly become the expected norm for recruitments of new law professors: "the older generation, a lot of them were hired on with just LL.M.s, whereas the younger generation has gone through the Ph.D. process,"[899] "à l'époque on engageait [des profs qui n'avaient] pas de doctorat, [qui venaient] de la pratique."[900]

	DSJ UQAM	UAlberta Law	Droit UMoncton
LL.B. or J.D.	73% [8/11]	91% [10/11]	100% [8/8]
LL.M.	100% [11/11]	73% [8/11]	100% [8/8]
Ph.D. (law) or S.J.D, etc.	91% [10/11]	55% [6/11]	50% [4/8]

Table 3.3: Proportion of participants by level of law degrees earned

Table 3.3 shows the law degrees held by participants at each Faculty. We should note here that the participants are only a subset of their larger Faculty and were not selected to constitute a representative sample on these variables. While not necessarily representative of the whole, the figures presented here nevertheless provide useful portraits of the group of participants at each Faculty and include interesting contrasts. For instance, we can see that while DSJ UQAM participants had a much higher rate of doctoral degrees in law, they had the lowest rate of undergraduate degree in this discipline. Moreover, Table 3.3 omits the fact that some participants at Droit UMoncton were in the process of completing their doctoral degree.[901] Forcese was able to compute that in 2014, half of Canada's 600 professors at common law institutions had earned a doctorate and nearly all others had LLMs as their

[899] AB02; see also AB11 (affirming that "*now* the majority of the faculty has […] not just an LL.M. but a Ph.D., or its equivalent" emphasis added).
[900] QC10.
[901] The exact figure of participants in this group cannot be disclosed without jeopardizing the confidential character of participation this study.

highest degree.[902] We can therefore see that on these variables, my set of participants at Droit UMoncton and UAlberta Law resembles the overall trend in common law Canada.[903]

The doctorate does not only represent longer education before embarking on a teaching career. For participants, it constitutes a thorough academic preparation centred on research conceived as a broader endeavour than the production of doctrinal knowledge about legal rules:

> NB05: Le doctorat vient avec une certaine façon de faire les choses [et une méthodologie]. Ça ne veut pas dire qu'on sait tout, mais qu'on est capable de devenir un spécialiste.[904]
>
> AB11: [Ph.D. holders present] much wider range of research methods and research questions, and with output goals that are not textbook oriented.[905]
>
> AB02: [Ph.D. holders] are maybe a little more interdisciplinary in their approach to law, and maybe a little more committed to the idea of the law school as a Faculty of the university, in sort of like academic's as opposed to practitioner's view necessarily of the law.[906]

This last quote illustrates that the academic trajectory sanctioned by the doctorate is perceived in opposition to one characterized by the practice of law, and research interests different from those of practitioners. Another participant expressed the same idea as follows, revealing a preference for one of the two paradigms: "Quelqu'un qui a fait un baccalauréat, [un J.D.], son stage, sa maitrise, et puis qui a

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[902] Forcese, "The Law Professor as Public Citizen", *supra* note 111 at 76 ("In terms of education, 49.9 percent of Canadian common law professors have doctorates. Another 42.7 percent have LLMs as their highest degree, while 5.5 percent have JDs, LLBs, or BCLs as their highest degree. The remaining 1.9 percent had other master's degrees (for example, MA, MBA, MLitt, MSL) as their highest degrees.").

[903] More detailed and comprehensive portraits of the Canadian law professoriate have not been updated since the late 1970s and early 1980s, see Edward Veitch & Roderick Macdonald, "Law Teachers and Their Jurisdiction" (1978) 56 Can Bar Rev 710; John S McKennirey, *Canadian Law Professors* (A report to the Consultative Group on Research and Education in Law based on the 1981 survey of full-time law professors in Canada) (Ottawa: Social Sciences and Humanities Research Council of Canada, 1982). An update seems to be in preparation, see Kerri Froc & Nicole O'Byrne, "Has the Empire Declined? The Predominance of US and UK Trained Law Professors in Canadian Legal Education" (Paper delivered at the Canadian Association of Law Teachers Conference, Kingston, 2 June 2018) [unpublished].

[904] NB05.

[905] AB11 (describing the previous situation as that of "a Faculty were the research is dominated by […] traditional legal research, often with a textbook type focus in terms of output.").

[906] AB02 (opposing this to "[older faculty members' commitment] to legal research that is maybe a little more doctrinal.")

des années d'expérience en pratique privée […] a probablement plus d'années d'expérience que quelqu'un qui a fait son Ph.D. et qui n'a jamais pratiqué et qui n'a jamais fait son stage."[907]

The time required to gain experience in the practice of law and that necessary to obtain a doctoral degree, in addition to a different set of skills and interests one needs to acquire for each of them, make it extremely difficult to seek candidates cumulating both trajectories. Candidates will have one or the other, but rarely both backgrounds. Participants thus felt that their Faculties had to favor one over the other for recruitment and promotion purposes.[908] A participant at Droit UMoncton even described his Faculty in the following terms: "On a […] une sorte de scission à la faculté entre ceux qui [sont] pro-recherche et ceux qui [sont] pro-pratique."[909]

A DSJ UQAM participant expressed the underlying dichotomy as follows:

> QC07: On avait beaucoup de professeurs qui étaient encore membres du barreau parce qu'ils faisaient beaucoup de recherche-action, donc ils travaillaient avec des dossiers, avec des partenaires. Avec le temps, graduellement, puis les attentes universitaires, notamment avec les embauches, on a moins de professeurs à temps plein qui sont aussi membres du barreau. Donc le profil plus entièrement universitaire tend à dominer maintenant. Donc le lien avec les organismes professionnels ne sont pas les mêmes que dans le passé peut-être. Parce que le département de sciences juridiques, l'accent a vraiment été mis sur l'aspect universitaire, pour des enjeux de recherche, de subventions de recherche, au moment de l'embauche, la diplomation plus avancée est vraiment [plus valorisée], les attentes sont plus élevées par rapport à ce qui était avant, […] dans les années 80, 90, même début 2000, on embauchait quelqu'un qui n'avait pas son doctorat, c'était à condition de l'obtenir, ou [cette personne était] en train de le faire et […] va le compléter plus tard. Aujourd'hui c'est beaucoup plus exigeant, […] le doctorat est devenu un peu vraiment l'étalon d'or pour l'embauche.[910]

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[907] NB06.
[908] See e.g. AB02 (speaking of "a little bit of tension around what is a good publication: should you be publishing in the journal that's aimed at academics or that's aimed at practitioners, do we favor one over the other? Why the focus on peer review? Some people think it's really important as a measure of academic quality, and then you have people doing things like writing law reform projects that are not going to be peer reviewed but make a very important contribution to the profession.").
[909] NB03.
[910] QC07.

One could expect DSJ UQAM's commitment to studying law as one among the social sciences of the university and the long-established tradition of graduate legal studies in the civil law sphere[911] to provide a straightforward explanation for DSJ UQAM's early adoption of the doctoral degree as a standard qualification for its professors. Indeed, this phenomenon started in the early 1990s at DSJ UQAM,[912] compared to the late 2000s at UAlberta Law and the 2010s at Droit UMoncton.[913] However, this quote from QC10 reproduced above points to more complex dynamics at DSJ UQAM.

Jobin's account in the 1990s showed that DSJ UQAM was very divided on this issue when the University started imposing the Ph.D. qualification for the recruitment of tenure-track professors.[914] It ran at least partially in contradiction with the Faculty's strong commitments to multi-disciplinary approaches and to research-action, activities more grounded in practice than the academic research to which the Ph.D. prepares). The rise of the Ph.D. at UQAM came primarily from the University's adoption of the standard as a metric of comparison to other universities and an indication of the candidates' ability to seek external funding for their research. At the time, the imposition of the Ph.D. standard was therefore experienced as a negation of DSJ UQAM's specificities.

Ph.D. qualifications have become the new norm for hiring at Canadian universities, including law Faculties. Participants were aware that this phenomenon was not unique to their own institution: "j'en

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[911] See Chapter 4. Sections 1.2—3, *below*, for more details on graduate legal education in the civil law tradition and at DSJ UQAM.

[912] QC07 ("On a un cours professoral qui, dans les années 80 début 90, on était le un corps professoral qui avait plus de doctorants si on compare aux autres universités au Québec, en droit."); QC10 ("Plusieurs des professeurs à l'origine et dans les années 80 […] avaient travaillé par exemple […] pour l'aide juridique, ils pouvaient faire une charge de cours, ils avaient peut-être fait une maitrise, on les embauchait en leur demandant d'obtenir un doctorat."); see also Jobin, *Réflexions sabbatiques supra* note 711 at 85 (indicating that of 34 professors at DSJ UQAM in 1993, 13 professors held Ph.D. and 10 more were pursuing one), 61, 181 (referrring to the a derogation process through which candidates could be hired on the condition that they obtain a Ph.D. in the following years).

[913] A few professors hired in previous decades also held doctorates, but it is only recently that it has really become the norm.

[914] See Jobin *Réflexions sabbatiques supra* note 711 at 181 (wondering what the future consequences of the Ph.D. standard would be for DSJ UQAM's identity and objectives).

parle à mes collègues dans d'autres universités et ils vivent les mêmes dynamiques au sein de leur faculté."[915]

4.2.2 Bar Membership

Let us now turn to the second aspect of the dichotomy introduced above and reflected in many interviews: the issue of professors' bar membership and involvement in legal practice. On this front, we can notice some contrast between, on one hand, UAlberta Law and Droit UMoncton, and on the other, DSJ UQAM.

At UAlberta Law, one participant shared the following feeling: "I am odd. I am not a lawyer. […] I think my relationship with the profession is different than many of my colleagues. Not all of them, but many of them."[916] This reveals that the normal state of things at this institution is for law professors to be members of the bar. At Droit UMoncton, a participant who had chosen to join the local bar sometime after starting teaching at this Faculty explained that "par les échanges avec les collègues […] j'ai compris que [rejoindre le barreau] était la chose à faire. […] C'est le brevet d'aggrégation ici."[917] This indicates a similar norm in the two Faculties. While bar membership is not officially required by the University to hold the position of law professor,[918] these two quotes point to a form of social expectations among colleagues to the same end.

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[915] NB06; see also NB05 (affirming that the issue of doctoral credentials illustrated the fact that "la Faculté n'est pas isolée des courants normatifs ailleurs au Canada" and citing the adoption of the J.D. degree designation as another example of this phenomenon); see Chapter 4, Section 3.1, *below,* for more details on law degree designations.
[916] ABXX.
[917] NB01.
[918] See e.g. NB01 (explicitly stating that the University had not expressed an expectation as to bar membership). Job postings for tenure-track appointments available at UAlberta Law and Droit UMoncton during the time of my study did not include mention any such expectation either.

At Droit UMoncton, a participant who had been a member of another provincial bar was considering applying to join the New Brunswick Law Society (NBLS),[919] while another who had been a non-practicing member of the local bar had already filed an application to regain practicing status.[920] One of their colleagues had been the president of the NBLS while a full-time professor at the same Faculty[921] and another maintained bar membership even though they did not have time to work on cases.[922] Being a law professor and a member of the bar are not perceived as opposites at Droit UMoncton; on the contrary, they are even sometimes understood as complementary situations: "Je pense que mon expérience pratique enrichit mon enseignement."[923]

At UAlberta Law, several professors shared similar perceptions, for instance: "I practiced before I became an academic, and I consider that very valuable background."[924] Many participants at this Faculty mentioned that they had practiced for several years before coming to full-time teaching.[925] One of them also explained "try[ing] to keep a little toe in practice."[926] Such contributions add to the close relationship between UAlberta Law and the local bar explored in other sections of this chapter. Another participant even affirmed that the main markers of legal education at this Faculty were responses to expectations coming from the bar.[927]

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[919] NBXX ("J'ai pensé à rejoindre le Barreau du Nouveau Brunswick. Ce ne serait pas difficile de le faire. […] Les profs qui sont en fonction pendant trois ans peuvent avoir accès au Barreau du Nouveau Brunswick. […] C'est quelque chose que je considère […] pour le futur.").

[920] NBXX (indicating that they are currently registered as a non-practicing member but are about to request readmission into the practicing category).

[921] James Lockyer in 1987, prior to being elected to the provincial legislature and appointed Attorney General of New Brunswick and Minister of Justice, see Law Society of New Brunswick, "Past Presidents", online: <lawsociety-barreau.nb.ca/en/about/past-presidents/>.

[922] NB05.

[923] NB06; see also *ibid*, quote reproduced at *supra* note 540 ("[L'expertise acquise par la pratique le droit] est selon moi essentielle à l'enseignement du droit au sein des facultés de droit.").

[924] AB04.

[925] E.g. AB06, AB08, AB10.

[926] AB02.

[927] AB07 (citing Students Legal Services and required courses as the main markers).

Much like what we saw when discussing the meanings attached to the mission of these two Faculties, there are some nuances and contestations of such views. For instance, a participant affirmed the following:

> AB03: The local bar […] sometimes thinks that we should be doing a lot more to be parochial and teach students exactly what they are going to be doing if they go downtown to become lawyers; I think we have to fight against that. […] You know, lawyers like […] the new students to be trained like they were trained, and there is always a bit of tension about that, […] We like to think that we are somewhat ahead of the bar, in our thinking. It would be a problem if we weren't.[928]

This quote illustrates the idea that while there may be complementarity, the role that law professors assign to themselves and that the local bar would like them to play are nonetheless distinct. Despite this nuance, participants at Droit UMoncton and UAlberta Law entertained some porosity in the meanings they attached to being a law professor and a member of the bar.

At DSJ UQAM, attitudes were different in this regard. Two participants justified their continued membership with the local bar on the basis of students' expectations, for instance:

> QC11: La principale raison pour laquelle je continue de payer mes cotisations au barreau [est que ça rassure les étudiants], ça les réconforte que leur prof n'est pas uniquement un prof, qu'il est encore membre du barreau. C'est important pour certains d'entre eux. En fait moi je n'ai plus de raison d'être membre du barreau, ce n'est plus nécessaire pour être prof, et ça coute cher aussi, mais je le fais parce que les étudiants l'apprécient.[929]

Another participant insisted that the expectations to maintain membership and nurture connection with the local bar came mostly from students.[930] Other added that the representatives and leaders of the institution had to maintain some relationship with the bar in other ways.[931]

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[928] AB03 (specifying that the local bar in question was the Edmonton bar and that the Calgary bar had different views).
[929] QC11; see also QC04 (offering the same reasons).
[930] QC09.
[931] QC07 ("Le lien entre le baccalauréat en droit et l'école du barreau, ça c'est la direction du département qui s'en occupe."), QCXX ("On a évidemment une présence claire dans les milieux sociaux [et associatifs] depuis longtemps, mais moi je veux m'assurer d'avoir une présence accrue auprès du barreau, la chambre des notaires, les cabinets, pour voir ce qu'on a à offrir.").

The general discourse at DSJ UQAM, and the need that these two participants in particular felt to justify maintaining dual hats, indicated a general wariness of close connections between law professors and the local bar. It echoed the refusal of funding and symbolic presence coming from private practice analyzed above, as well as the lower rate of professors holding a LL.B. as indicated in Table 3.3, *above*. A participant articulated the underlying rationale as a concern for any type of influence that the local bar would exert on the education that DSJ seeks to deliver:

> QC06: Le barreau a plus ou moins d'influence sur la formation universitaire des juristes […]. Je ne dis pas que c'est nécessairement une influence directe que l'on donne à l'école du barreau, mais parfois je sais qu'elle est directe, pas nécessairement à l'UQAM, mais dans d'autres universités où il y a des contacts entre les professeurs et le barreau, et donc il y a une influence directe sur les programmes par rapport aux besoins du barreau. A l'UQAM je ne sais pas si cette influence est directe ou si elle est seulement indirecte. Mais mon intuition serait de dire que chez certains de mes collègues il y a une influence certaine des besoins de l'école du barreau. […] Je pense notamment à certains de mes collègues qui sont avocats.[932]

Nevertheless, the same participant affirmed valuing the presence of colleagues who were members of the bar as they brought a complementary component to legal education at this institution.[933]

In a quote reproduced in the previous section, another participant explained that in the past, many DSJ UQAM professors worked on cases with partners in the community conducting action-research.[934] To fulfil this role, they had to be members of the bar as they practiced law and provided legal advice, although in untraditional ways. This shows that earlier in DSJ UQAM's history, bar membership itself was not perceived as an issue for law professors. On the contrary, it was a necessary thing for them to engage in research-action, the type of research activities then most valued at this institution, and provide legal advice to communities and social groups that professors aimed to serve. The *Barreau* itself has been understood to represent the interests of the traditional practice milieu and the power structures

[932] QC06.
[933] QC06 ("On arrive tout à fait à collaborer entre professeurs avocats ou professeurs qui ne sont pas des avocats. Je pense qu'on est complémentaires, et qu'on a des visions très complémentaires de la matière à apporter.").
[934] See QC07, quotation accompanying *supra* note 910.

of the legal profession that DSJ UQAM aims to challenge. Therefore, it was not mere bar membership but close connection with the traditional bar milieu that would be in contradiction with the institution's values. With the decline of research-action and the rise of doctoral credentials and mainstream research, bar membership itself has caught on this meaning.

4.2.3 Personal Identity Traits

The third and last site of meanings regarding the law professors themselves that we will explore here corresponds to more inherent personal traits than the academic and professional characteristics analyzed above. As we will see, law professors' gender, ethnicity and geographical origins may take on significance at each Faculty.

At UAlberta Law, participants offered remarks on multiple occasions regarding the gender of law professors. One of them recalled witnessing "a lot of sexism" directed at the few female law professors on the part of students upon joining the Faculty approximately three decades ago but indicated that this situation had improved significantly.[935] However, another participant expressed the feeling that students still displayed sexism against female professors, especially in anonymous evaluations of their instructors.[936] A third professor at the same Faculty also commented on the possibility that the teaching score coming out of student evaluatiosn may be biased "against women, racial minorities, against junior professors."[937]

Another of their colleagues also commented on the issue of gender as follows:

> AB11: It's a Faculty in intellectual and cultural flux. There has been a significant number of retirements since [the mid-2000s]. […] There has been two groups: […] a large number of older,

[935] ABXX.
[936] AB05 (affirming that "the system," for instance the said evaluations, "is better suited and designed for the average middle-aged with male professor" and that "evaluations are harder on women").
[937] AB06 (adding that if that were the case, "we should take account of that and we should control for that, or stop using them in that way" especially since "awards, promotion, and yearly evaluation [are] based virtually exclusively" on this metric); see also AB05 (affirming that "evaluations are good for improvement" but that they shouldn't determine the professors career evolution).

> male profs, many who had been teaching here from the 70s, […] and then [a] relatively large group of female academics who have left to go work somewhere else. […] The leaving of this older generation of men has changed the culture here. […] We are in flux.[938]

In addition, two participants commenting on the portraits of the past Deans that used to be displayed on the fourth floor, where all the professorial offices are located, also insisted on gender considerations. These portraits had recently disappeared on the occasion of renovations happening in the same aisle, and here is what the participants shared: "There was a point, in the front hall, when you came up the elevator on the fourth floor, there were portraits of each of the past Deans, and then, that was just a wall of white men going back a hundred years,"[939] and "it was not too welcoming, […] it was too male, […] I don't know if they are going back up."[940]

Therefore, we can see that participants perceived gender to matter in their individual experiences as well as the general environment of the Faculty.

At Droit UMoncton too I noticed several remarks on the gender of law professors. Participants commented on the low ratio of female professors at this institution,[941] sometimes explained by the fact that "une vague de femmes viennent de prendre leur retraite, et les candidats avaient des dossiers beaucoup plus fort que les candidates. […] [Cela explique que] aujourd'hui [il y a un] déséquilibre dans le corps professoral."[942] One of them lamented that the Faculty was "pas mal un monde d'hommes" and also suggested that mainstream assessment metrics did not account for certain ways in which female professors more than their male colleagues often engage with their students and contribute their

[938] AB11.
[939] AB11.
[940] AB07.
[941] NB03, NB05, NB06.
[942] NB05.

learning.[943] Another affirmed that the gender ratio would become an issue for future hiring processes,[944] an idea that a UAlberta Law participant had also expressed.[945]

We can therefore see strong parallels between these two Faculties on this front. While a few participants also offered comments relating to gender at DSJ UQAM, they did not speak of a gender imbalance or bias against women in the general environment of the Faculty.[946] Therefore, the topic seems to be less prominent at DSJ UQAM compared to its two counterparts.

In contrast, participants almost never spoke about law professors' ethnicity. For the time being, I exclude the issue of Indigenous presence, which I will tackle in a later chapter analyzing Indigenous issues in legal education more generally.[947]A UAlberta Law participant mentioned this issue of race in tandem with gender when suggesting that the Faculty had to aim for better representativeness of society in its hiring practices.[948] Another participant at the same institution shared the perception that student evaluations were biased against racial minorities as well as women.[949] The issue did not come up at all in either of the two other case studies.

The geographical origin of law professors attracted a few more remarks from participants during interviews at each institution.

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[943] NB03.
[944] NB06 ("Evidemment une des composantes ici à la faculté qui va devenir un enjeu c'est le nombre de femmes qui enseignent. […] Ça va devenir une question importante pour les prochaines embauches.").
[945] AB06 ("I think that to some extent there is a sub-current in our hiring practices in doing a better job at having a faculty that is reflective of the culture, or the population that we are serving. The sense that we are under representative as a teaching faculty, both on racial and gender diversity. To the extent that our institution is under representative, what are the obligations that the institution has to become representative, or more representative.").
[946] E.g. QC03 ("Il y a une grosse féminisation aussi de la pratique du droit. [..] On a parlé d'évolution de la population étudiante, mais la féminisation aussi fait partie de ces éléments-là. Surtout au premier cycle, on le voit un petit peu moins au deuxième cycle, troisième cycle."), QC06 ("Spontanément je vais davantage me sentir plus à l'aise en parlant de [mes propres insécurités dans mon boulot] avec mes collègues femmes qu'avec mes collègues hommes").
[947] See Chapter 5, Section 6, *below*, for more details on the presence of Indigenous faculty members.
[948] AB06 (see quote at *supra* note 945).
[949] AB05.

At DSJ UQAM, a participant affirmed that the presence of several professors from outside of Quebec was "très important[e]" for the Faculty and its members, and that they amounted to a third of all professors, citing three colleagues "du monde anglo-canadien" (coming from Vancouver, Alberta and Toronto), as well as about five from France.[950]

At UAlberta Law, a professor recalled that "Dean La Forest, [who] later became Supreme Court of Canada judge, was only here for two years [1968-1970], but […] hired six people [in the same year], and none of them were from Alberta."[951] The same participant affirmed that this wave of hires and later developments largely contributed to making of the Faculty a less "provincial, somewhat parochial law school."[952]

The two participants offered such comments without specific prompt to that effect on my part. At Droit UMoncton, I decided to explicitly invite some participants to offer their thoughts on the topic of geographical origin; I did so because the first few interviews at this Faculty had revealed both the deep connection between the institution's sense of self and mission with the local Francophone culture, as well as important divisions as to whether such connection ought to remain exclusive in the future.[953] I aimed to test whether the geographical origins of professors contributed to such divisions, presuming that a weaker connection with the local community on the part of outsiders could lead to lower adhesion to the socio-political project of the Faculty. Two participants to whom I asked this question rejected this

[950] QC04.
[951] AB03.
[952] AB03 (later adding that the "student body is 35–40 percent from out of province.").
[953] See Chapter 2, Section 4.1, *above*.

hypothesis,[954] while another affirmed that it could indeed contribute to the differing approaches among the professors.[955]

Lastly, another point here deserves some mention. In a 1978 article, Veitch and Macdonald lamented that law professors in Canada had overwhelmingly obtained their graduate law degrees from abroad, primarily the United States and England for common law Faculties and France for their civil law counterparts.[956] Contemporary research by Froc and O'Byrne seeks to update the data, reaching similar conclusions for our time.[957] This raises the question of the geographical origin of professors' credentials, a combination of two matters explored here. Only one participant offered remarks related to this topic, affirming that the decision to go abroad to earn doctoral credentials constituted an advantage in the tight competition for the position he eventually obtained at DSJ UQAM.[958]

Overall, we can thus say that the professors' academic credentials, membership in the local law society and personal identity traits such as gender and geographical origin take varying importance but rather consistent meanings across the three Faculties studied here.

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[954] NB05 ("On a eu des gens passés par ici sans origines acadiennes qui ont bien compris [et adhéré] à la mission."), NB06 (answering "Je ne sais pas" when asked whether local identity or local upbringing was a factor in disagreements about the institution).

[955] NB08 ("*R: [A quoi attribuez-vous les différences d'opinion quant à la mission de la faculté au sein du corps professoral ?] Est-ce une question d'avoir été là depuis longtemps, est-ce une question de domaine d'expertise, ou autre chose ?* NB08: Je présume que c'est lié en partie au domaine d'expertise. Et qu'il y a aussi, et je pense que l'identité des personnes peut jouer un rôle aussi : tu sais je pense que les acadiens ont plus tendance à tenir à la mission socio-linguistique parce que pour eux, ils ont été élevés avec cette vision-là de la faculté et de l'université, tandis que ceux qui viennent de l'extérieur, ils sont venus ici pour un poste, souvent, et ils voient ça tout simplement comme un lieu de travail comme les autres. Ils […] envisagent la faculté comme étant une faculté comme les autres.").

[956] Veitch & Macdonald, *supra* note 903.

[957] Froc & O'Byrne, *supra* note 903.

[958] QCXX ("C'était assez serré la compétition quand même, il y avait une bonne cinquantaine de collègues qui ont appliqué d'un peu partout dans le monde sur le poste. […] Je pense que le fait d'être à la fois un interne mais aussi un externe, quelqu'un qui a fait sa thèse à Paris, quelqu'un qui avait un parcours dans d'autres universités, qui avait été chargé de cours ailleurs, a permis mon intégration, parce que si j'avais juste été quelqu'un de l'interne qui avait fait tout son parcours à l'UQAM, probablement que je n'aurai pas été sélectionné pour être professeur ici.").

Conclusion

The three Law Faculties each associate a unique set of meanings to structural characteristics such as their official name, their relationship with the rest of their university and with the legal professions, as well as the identity of individuals teaching certain courses. The meanings we have analyzed here often corroborate and amplify those that we had previously exposed, though not always. The institutional structures examined constitute rich sites of meaning and their exploration has contributed to further ascertaining each Faculty's institutional culture.

We have seen that DSJ UQAM's label, administrative and geographical situation within its university distinguishes it from other law Faculties and that such differences are perceived as important signifiers to signal the institution's own approach to law and legal education. DSJ UQAM also featured a very high proportion of external instructors in mandatory courses of its LL.B. program, despite nurturing a strong opposition to the physical or symbolic presence of professional and private organizations in the educational experience of their students. We saw that this apparent paradox resulted from other characteristics of the institution, such as the collegial allocation of teaching duties and the volume of resources mobilized for graduate and non-professional programs, which are also elements to which professors attribute important significations.

Droit UMoncton has also attached great signification to its name but has long preferred a mainstream designation to the way it was initially baptized. Its situation within its university is also in keeping with the mainstream of Canadian law Faculties. This Faculty also attaches great importance to its research bodies, both intimately connected to its distinctive mission and raison d'être. At this institution, the internal debates regarding law professors' ideal credentials and professional trajectory appeared the strongest, articulating themselves around the perennial divide between academic and practitioner's background, often respectively symbolized by the doctorate and bar membership. The question of cultural

proximity with the local community that the Faculty primarily serves sometimes further complicated participants' perceptions on this issue.

Lastly, UAlberta Law's relationship with its name, as well as its situation within its university, proved in keeping with the mainstream of Canadian legal education. There, participants expressed the enduring importance of the institution's clinic and the research bodies; those aligned with the Faculty's overall generalist approach to law and legal education. Moreover, UAlberta Law has taken pride in the historically strong ties with local practitioners and their presence among the teaching staff, in resonance with the Faculty's professional orientation; however, acceptance of the overwhelming symbolic presence of private law firms in the physical space of the Faculty seemed more nuanced. Regarding the ideal profile of law professors, participants expressed a consensus that research was a key factor in assessing excellence, and debates focused more on whether law reform should be given the same consideration as more traditionally academic endeavours; questions of gender and ethnicity featured more prominently at this Faculty than the other two.

In addition to exposing the different meanings each community attributed to certain elements, the analysis revealed that participants at different institutions placed varying importance on such objects. Therefore, it is not only the meanings themselves that distinguish Faculties but also which of these meanings matter most to them. Despite individual variations, marked trends specific to each Faculty identified the meanings associated with certain structural elements as important to their perception and experience of self. The portraits of the three institutional cultures teased out here thus do not differ only with regard to the colours applied on the canvass, but also the amount of light cast on certain parts of the paintings.

The structural elements examined here were those for which interviews yielded sufficient data to analyze and compare. The categories of analysis I deployed emerged from the data, rather than being

imported from a different canvass. Kalman and Adams, working with historical facts instead of contemporary interviews, included certain other objects in their own studies of institutional structures.[959] Undoubtedly, an inquiry into such topics as budgets, Deans, students and non-teaching staff would provide additional layers of understanding to each Faculty's institutional culture. However, a different set of interviews would be needed to offer such insights.

The structural elements examined here usually lay in plain sight, but rarely attract the kind of scholarly attention that I applied to them. Looking at the practices and attitudes at DSJ UQAM, UAlberta Law and Droit UMoncton on elements of legal education such as the labels of law Faculties, their situation within their university, their relationship with satellite bodies and with the professional world, as well as the characteristics of law teachers generally should assist legal educators in questioning their own assumptions regarding these structural elements. In many ways, the example of DSJ UQAM here reveals the contingent character of many mainstream conceptions; examining the situation of UAlberta Law and Droit UMoncont also confirms the contingency and the cultural character of legal educators' approaches to structural elements of legal education.

However, questions of curriculum and programs often overtake consideration for the structural issues examined in this chapter in discourses about legal education. This near-hegemonic focus suggests that academic matters are sites of important meanings constitutive of institutional cultures. As participants expectedly offered a wealth of remarks on related topics, the next chapter will turn to academic matters to further ascertain the cultural characteristics of DSJ UQAM, UAlberta Law and Droit UMoncton.

[959] See text accompanying *supra* notes 605ff.

Chapter 4: Academic Matters

Introduction

One needs only read the debates at the annual meetings of the Canadian Bar Association (CBA) in the years following World War I and compare them to today's debates to convince oneself of the recurrent and central character of discussions regarding the curriculum and programs of studies in Canadian legal education.[960] Topics such as what Faculties ought to teach, the sequence of courses, which of them should be required for completion of the degree, have focused much of the attention of actors in the field of legal education. The concerns at the forefront have remained largely the same, as evidenced by the FLSC's national requirements for common law degrees[961] adopted nearly a century after the "standard curriculum."[962]

The CBA's and FLSC's efforts, decades apart, show that the profession has concerned itself with ensuring a certain level of uniformity in the undergraduate programs of study leading to the practice of law across the country. The discourse about legal education, even outside of these bodies, always exclusively features an implicit focus on such programs. The combination of these two phenomena has made the LL.B. or J.D. a prime site for harmonization rather than differentiation among law Faculties.

In contrast, the Arthurs Report recommended that law Faculties embrace a genuine pluralism in legal education:

> 1. Law faculties should [establish] a series of clearly defined alternativ[e] [programs] based on intellectual insights, social goals, pedagogic approaches or professional specialties […].
> 2. Among the alternatives offered should be clearly defined scholarly programs leading to a first

[960] See e.g. Canadian Bar Association, *Proceedings of the Fifth Annual Meeting of the Canadian Bar Association held in Ottawa, Ontario September 1st, 2nd and 3rd, 1920* (Winnipeg: Bulman Bros, 1920) at 16—57 (discussions on the report on a standard curriculum for legal education in the common law provinces, reproduced at 250—57, featured such familiar themes as which courses ought to be required for graduation, the relative importance of such courses compared to the method and material of instruction, the distinction between theoretical knowledge and practical skills, the teaching of legal ethics).
[961] FLSC *National Requirement, supra* note 9.
[962] See *supra* note 960.

> degree in law. Regional and local resources, needs, traditions and strengths would determine the specific forms of such programs.[963]

Arthurs thus advocated for law Faculties to offer a diversity of programs, at the undergraduate and graduate level, adapted to each Faculty's goals, approaches, specialties, resources, needs, etc. We can see readily the connection with variations in institutional cultures. Consequently, the differences in the program offer among the Faculties are promising sites of meanings to continue ascertaining their institutional cultures.

DSJ UQAM, UAlberta Law, and Droit UMoncton all offer an undergraduate degree in law that leads to qualification for regulated law professions (LL.B. or J.D.), as well as at least one additional program. In the following, we will often make a distinction between, on the one hand, LL.B. and J.D. programs, and on the other, graduate and undergraduate programs other than the LL.B. or J.D. Together with Jukier and Glover, we can lament the silos such distinctions perpetuate, and hope for a more holistic approach to legal education and law Faculties.[964] Given how such distinctions permeate the discourse on legal education, exploring the meanings attached to them 'at face value' is nonetheless helpful for the present study. Rather than endorsing such silos, the following aims to explore them as widely accepted cultural categories.

The lesser attention generally accorded to programs other than the J.D. or LL.B. has provided Faculties with more possibilities to express their individual character in the design of such programs. We ought to pay great heed to them as they thus constitute sites of expression of the Faculties' institutional culture in a less constrained setting than J.D. or LL.B. programs. For these reasons, we will start this chapter with an examination of programs other than the J.D. or LL.B. at the graduate and undergraduate level (*section 1*). We will see significant differences between DSJ UQAM and its two counterparts as to the

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[963] *Arthurs Report supra* note 5 at 155.
[964] Jukier & Glover, *supra* note 239 at 766—70.

significance they take for the Faculty. Throughout this first section, we will also observe that the discourse about such programs relies on the J.D. or LL.B. as the main point of reference to discuss legal education. Building on such insight, we will then dedicate our attention to the meanings associated with key aspects of J.D. and LL.B. programs (*section 2*). On this front, we will observe greater similarities than differences between the Faculties, despite the importance they sometimes attached to marginal variations.

Upon embarking on this inquiry, it is helpful to familiarize ourselves with the educational offer at each Faculty (Table 4.1) as well as the corresponding enrolment figures (Table 4.2):

DSJ UQAM		
Undergraduate studies (1er cycle)	Baccalauréat en droit (LL.B.)*	98 credits; degree program; enables admission in the Quebec Bar
	Baccalauréat en relations internationales et droit international (BRIDI)	90 credits; degree (B.A.) program; does not qualify for admission in the Quebec bar (but credit can be earned toward a LL.B. in the course of this program)
	Certificat en droit social et du travail (Certif.)	30 credits; does not autonomously grant a university degree or qualify for the Quebec bar, but credit can be earned toward a LL.B. in the course of this program
Graduate studies (2ème cycle)	Maîtrise en droit (LL.M.)	45 credits; degree program; thesis-based concentrations: employment law, international law, law and society; course-based concentration: international law and international politics
	Diplôme d'études supérieures spécialisées (DESS)	30 credits; diploma program; concentrations: human rights, or employment law and social protection
	Programme court (Attest.)	12 credits; concentrations: human rights, or employment law and social protection
Graduate studies (3ème cycle)	Doctorat en droit (LL.D.)	Degree program

UAlberta Law		
Undergraduate studies	Juris Doctor (J.D.)*	92 credits; degree program; qualifies for admission to a Canadian common law bar; can be jointly pursued with an M.B.A. at UAlberta or a J.D. at University of Colorado
	Internationally trained Lawyers Pathway (NCA)*	Non-degree program; for foreign-trained lawyers to satisfy the conditions set by the NCA for their admission to a Canadian common law bar
Graduate studies	Masters of Law (LL.M.)	45 credits; degree program; can be thesis-based or course-based
	Doctor of Philosophy (Ph.D.)	Degree program
Droit UMoncton		
Undergraduate studies (1er cycle)	Juris Doctor (J.D.)*	93 credits; degree program; enables admission in Canadian common law Bars; can be jointly pursued with M.B.A., M.A.P. or M.E.E. offered at UMoncton
	Conversion (J.D.)*	36 credits; degree program; for graduates of a Canadian civil law undergraduate degree; qualifies for admission to a Canadian common law bar
	Diplôme d'études en common law (D.E.C.L.)	27 credits; diploma program; for lawyers trained in the civil law tradition abroad; does not qualify for admission in a common law bar
Graduate Studies	Maîtrise en droit (LL.M.)	42 credits; degree program

Table 4.1: Summary of programs offered at each Faculty[965]

DSJ UQAM						UAlberta Law				Droit UMoncton	
Undergrad.			Graduate			Undergrad.		Graduate		Undergrad.	Graduate
Certif	BRIDI	LL.B.	LL.M.	Others	LL.D.	J.D.	NCA	LL.M.	Ph.D.	J.D.	Others	LL.M.
114	195	533	75	35	28	528	21	4	7	122	0	2
842			138			549		11		122	2	
980						560				124		

Table 4.2: Enrolment statistics for fall 2017, by program and level of study[966]

[965] Information current as of 2017-18. * denotes programs leading to qualification for a professional order in one or more Canadian provinces.

[966] See UQAM, Registrariat, *La population étudiante de l'UQAM Statistiques d'inscription 2017-2018* (July 2018), online: <https://registrariat2018.uqam.ca/statistiques-officielles/> [UQAM, *Statistiques d'inscription*]; UAlberta, Faculty of Graduate Studies & Research, *3raduate Student Enrolment Report 2017-18*, online:

1. Programs other than J.D. or LL.B.

Let us start this inquiry into the educational programs offered by each Faculty by looking at graduate programs and undergraduate programs other than the J.D. or LL.B. As we will see, these programs are fertile grounds of meanings constitutive of institutional cultures. The J.D. or LL.B. programs are constrained by professional bodies' explicit or implicit requirements, the latter of which often manifest themselves through student demands; by contrast, law Faculties enjoy much greater discretion to shape graduate programs and non-professional undergraduate programs and express through them their institutional cultures relating to legal education. For both kinds of programs included in this section, graduate ones and non-qualifying undergraduate ones, we will see a sharp distinction between on the one hand DSJ UQAM, and on the other UAlberta Law and Droit UMoncton. One could think that this difference owes to the different traditions of legal education distinguishing civil law and common law Faculties; we will thus first provide contextualized information on each to better understand the role that this factor may play in this divide between the case studies (*section 1.1*). We will then explore the meanings attached to graduate legal studies at each institution (*section 2.2*). A theme that emerges from such exploration will require additional attention, that of the specialization of certain programs (*section 2.3*). Finally, this will allow us to explore the meanings attached to undergraduate programs other than the J.D. or LL.B. (*section 2.4*).

<https://cloudfront.ualberta.ca/-/media/universitygovernance/documents/resources/reports/graduate-enrolment-annual-report-2017-18.pdf> [UAlberta *Graduate Enrolment*] (at 8—9) and UAlberta, *Statistical Reports*, online: "Student" <https://www.ualberta.ca/reporting/statistical-reports> [UAlberta *Statistical Reports*]; internal documents provided by Droit UMoncton on file with the author. This is a simplified presentation of the programs and number of students (e.g. programs combining a J.D. with an M.B.A. are collapsed into the J.D. category, visiting students are not counted).

1.1 Graduate Studies & Legal Traditions

The present thesis engages in a comparative study of legal education in Canada and aims to overcome the too often-assumed incommensurability between civil law and common law education. We have seen throughout preceding chapters that this traditional divide is of limited relevance to understanding the phenomenon of legal education at different law Faculties. Before embarking on an analysis of the meanings attached to graduate legal education, it is important to say a few additional words about this divide as it seems even more pronounced in the field of graduate legal studies.

Indeed, while all three Faculties offer undergraduate and graduate studies programs, the weight of such programs differs widely among them. At DSJ UQAM, graduate programs represent almost 15% of the overall student body, whereas at UAlberta Law and Droit UMoncton only 2% of students study at the graduate level.[967] This is not a mere result of diverging university-wide policies and priorities regarding graduate studies: the rate of graduate students at the university level is similar at UAlberta and UQAM (20%),[968] and slightly lower at UMoncton (12%).[969] The share of graduate students in law, therefore, is lower than the university-wide trend, but the divide is much wider for UAlberta Law and Droit UMoncton. Therefore, there is something specific about law Faculties in this regard, and there seems to be a marked distinction between the common law Faculties and the civil law one included in this study.

This historical context will help us situate the sharp the differences we will analyze later regarding the meanings attached to graduate programs at DSJ UQAM, UAlberta Law and Droit UMoncton. We will

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[967] Compare *Arthurs Report supra* note 5 at 27—28 (finding that despite a growth in absolute numbers, the proportion of graduate students in Canadian law Faculties remained stable at 1.7% between 1969-70 and 1979-80, compared to about 7.5% for all university disciplines (masters and doctorate combined)); today's figures at Droit UMoncton and UAlberta Law are equivalent to the overall trend in Canadian law Faculties in the 1970s.

[968] UAlberta *Statistical Reports, supra* note 966; UQAM, *Statistiques d'inscription*, *supra* note 966.

[969] Association of Atlantic Universities, *Survey of Preliminary Enrolments at October 1, 2017,* online: <www.atlanticuniversities.ca/statistics/aau-survey-preliminary-enrolments>.

see that differences between the two traditions are not as straightforward as suggested by their European roots.

University legal education has much stronger roots in the civil law tradition than the common law one. The study of (Roman first, and then local) law was a core component of the sprouting of universities across Europe between the eleventh and the thirteenth centuries.[970] Law has remained a key discipline in continental European universities since,[971] and although it is not until the middle of the 19th century that English universities started teaching the common law, they too had long established branches dedicated to canon law.[972]

ULaval was the first French-language university in North America, and its founding Faculties reproduced the continental European model as they were dedicated to the following disciplines: law, medicine, theology and arts. Of those, the ULaval initially endeavoured to create the law Faculty first, at a time when McGill and Collège Sainte Marie were already teaching law in an academic setting in Montreal.[973] To modern eyes, this suggests a strong academic orientation to legal studies in the Canadian civil law province in the mid-19th century.

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[970] H Patrick Glenn, *Legal Traditions of the World*, 5th ed. (Oxford: OUP, 2014) at 141, 145.

[971] Willis, *supra* note 32 at 21 ("in accordance with a European tradition going back to the [11th and 12th] centuries, in France, and therefore in Quebec, it has always been considered the natural thing that a young man coming to the practice of law should receive his academic training in a university.").

[972] The first attempt at establishing the study of the common law as a university endeavour came from Sir William Blackstone at Oxford the 1770s. Neither his, nor Cambridge's own attempt in 1800, proved successful. The first true realization in this vein was in London half a century later (McLaren, *supra* note 461 at 113). See also Twining, *Blackstone's Tower, supra* note 642.

[973] Normand, *Le droit comme discipline universitaire*, *supra* note 40 at 15 (attributing the eventual creation of the medicine Faculty before its law equivalent to the sudden lack of teaching in medicine in the city of Quebec); see also Jean Hamelin, *Histoire de l'université Laval Les péripéties d'une idée* (Québec: Presses de l'Université Laval, 1995) at 43, 46 (also confirming that establishing the law Faculty was a priority, but attributing the creation of the medicine Faculty first to the enthusiasm of local physicians, more willing than local lawyers to take on teaching duties less lucrative than their regular activities). McGill Law was established in 1848, and Ecole de Droit du Collège Sainte-Marie in 1851. ULaval took over the latter when it established a branch in Montreal in 1878, which became UMontréal in 1920.

Despite their early creation, the law Faculties in Quebec[974] remained "the poor relations of the universities- in funding and, one may also say, in academic spirit," until the 1960s.[975] Moreover, it is only after a university law degree became a requirement to join the ranks of Quebec legal professions in 1948,[976] and especially with the immense growth of higher education starting at the end of the 1960s, that university legal education in Quebec stopped being "almost exclusively dominated by the cast of mind of the legal professions."[977] This portrait provided by Brierley puts the previous impression in perspective, and shows that university legal education in Quebec, even if inspired by the European civil law model, was not really more academic in nature that available in common law provinces, especially in the Maritime and Prairie provinces where small law Faculties also existed in close connection to the local bars.

Brierley also noted that "graduate work by way of the occasional submission of a doctoral or master's thesis has always been possible" at McGill Law, Droit ULaval, and Droit UMontréal.[978] Between 1870 and 1901, 8 doctoral theses in law were submitted at ULaval, [979] and UMontréal awarded a mere 25 doctoral law degrees between 1889 and 1950.[980] Brierley could thus affirm that "[f]ormal graduate programmes, involving post-graduate instruction, are a […] recent development," starting in 1951 at

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[974] In addition to McGill Law, Droit ULaval and Droit UMontréal mentioned above, Bishop's University created a Faculty of law in Sherbrooke in 1880. However, it was short-lived and lasted only for 8 years, awarding barely 15 LL.B. degrees (see Christopher Nicholl, *Bishop's University, 1843-1970* (McGill-Queen's University Press, 1994) at 97—98 (explaining that the demand for legal education in English in Sherbrooke was too slim to sustain this Faculty; see also Donald Campbell Masters, *Bishop's University: The First Hundred Years* (Toronto: Clarke, 1950) at 75, 95, 167—169 and Bishop's University, "Historical Timeline 1854-1907", online: <www3.ubishops.ca/library/old-library/historical-timeline/1854-1907.html>).

[975] Brierley "Historical Aspects", *supra* note 55 at 151.

[976] This contradicts Willis's sweeping statement reproduced at *supra* note 971 as it concerns Quebec but does not invalidate it regarding continental Europe.

[977] Brierley "Historical Aspects", *supra* note 55 at 151.

[978] The list of graduates of Bishop's University (see Masters, *supra* note 974 at 169ff) indicates 3 LL.M. and 6 D.C.L. awarded, including some decades after the closure of the law Faculty in 1888.

[979] Normand, *Le droit comme discipline universitaire*, *supra* note 40 at 61 (describing the requirements for the doctoral degree as the submission of a thesis and 30 short statements about different areas of law, and successful oral examination on these submissions, at 59—61), 247.

[980] Hétu, *Album souvenir, supra* note 30 at 163—64.

McGill, and through the next two decades in other Quebec universities.[981] It is why Arthurs qualified graduate law studies as *virtually* non-existent prior to 1950 in Canada, including Quebec.[982] Historically, the early existence of graduate programs in civil law Faculties was only nominal; we can thus say that the two traditions did not differ radically in this regard.

More recent developments feature a stronger distinction between Quebec and the rest of Canada regarding graduate legal education. In the early 1980s, Arthurs remarked that two-thirds of all full-time graduate law students in Canada were enrolled at three Quebec Faculties (UMontréal, McGill, and ULaval), with the remaining third scattered between nine common law Faculties.[983] Whereas many Faculties have created or strengthened their graduate programs since then, the same trend seems to continue as Quebec law Faculties welcome many more graduate students than common law Faculties, and graduate students represent a higher proportion of all law students in these institutions than in their counterparts.[984] This context suggests that the civil law tradition fosters a more robust place of graduate studies than the common law one.

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[981] Brierley, "Quebec Legal Education since 1945", *supra* note 49 at 11 ("McGill's Institute of Air and Space Law, founded in 1951, appears to be the first [structured [graduate program]. It was followed in the next years by master's and doctoral level programmes at the Universities of Ottawa (1957), Montréal (1961) and Laval (1964), all offering varying general concentrations in public and private law. To these were added, in 1966 at McGill, offerings in comparative private law and international commercial law and, at Sherbrooke in 1984, a concentration in health law."); see also Normand, *Le droit comme discipline universitaire*, *supra* note 40 at 225, 248—49 (reporting several structural reforms to ULaval's graduate law programs in the 1960s), Hétu, *Album souvenir, supra* note 30 at 315—18 (reporting similar developments at UMontréal in the same decade); Jean Pineau, "Les études supérieures" in Hétu, *Album souvenir, supra* note 30 at 281 (describing graduate law studies at UMontréal as oscillating between splendor and misery before the 1977 reform).

[982] *Arthurs Report*, *supra* note 5 at 18.

[983] *Arthurs Report*, *supra* note 5 at 36 ("[In 1983,] 13 Canadian law faculties have graduate programs. Among the 260 full-time master's or doctoral students, 170 are enrolled at three civil law faculties (Montreal, McGill and Laval), leaving only about 80 distributed among nine common law faculties.").

[984]

	UMontréal	ULaval	McGill	uOttawa (Civil and Common)	UToronto	York (Osgoode Hall)	UBC
Number	523	309	148	128	147	213	106
Percentage of all law students	32%	25%	16%	7%	11%	19%	16%

Table 4.3: Full-time graduate law enrolment at select Canadian universities. Information for Fall 2017.

Nevertheless, Webb reminded us that legal tradition alone does not explain the growth of graduate law programs. Writing from the perspective of British legal education, he affirmed that "the spectacular growth in graduate education […] is in large part a response to" the funding schemes of universities.[985] Where there are caps on undergraduate enrolment and where public funding is primarily based on per capita formulas, such incentives can indeed explain that Faculties build large graduate programs. Similar schemes and incentives are present across Canada. This brings an additional nuance to any comparative approach to graduate legal education solely based on legal traditions.

Participants did not make explicit mention of legal traditions or funding schemes when speaking about graduate legal education at their Faculties, although such elements were sometimes implicit in their discourse. Let us now turn to the meanings they attributed to such programs at their institutions to see where the difference between the civil law Faculty and the common law counterparts lay in this regard.

1.2 Graduate Studies & the Faculties

At all three institutions, participants generally assumed that my project was focused on studying undergraduate law programs, resulting in the need for me to depart from the all-inclusive statements I generally used (e.g. "legal education," "law study," formation des juristes," "enseignement du droit") and mention explicitly graduate programs to obtain the participants' insights on them. This confirms several

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See UMontréal, Registraire, "Statistiques d'inscription Automne 2017" (1 May 2018) online: <https://registraire.umontreal.ca/publications-et-ressources/statistiques-officielles/>; ULaval, Registraire, "Profil de la population étudiante", online: <https://www.reg.ulaval.ca/>; McGill, Enrolment Services, "Enrolment Report Fall 2017" (16 October 2017), online: <https://www.mcgill.ca/es/registration-statistics>; uOttawa, Institutional Research and Planning, "Common University Data Ontario" (2017) online: <https://www.uottawa.ca/institutional-research-planning/resources/facts-figures/cudo/2017>; York University, Office of Institutional Planning an Analysis, "Common University Data Ontario: York University (2017)", online: <cudo.info.yorku.ca/2017-2018-report/>; UToronto, Institutional Data Hub, "Common University Data Ontario 2017", online: <https://data.utoronto.ca/reports/cou/cudo2017/>; UBC, "Enrolment Statistics 2017/18" (1 November 2017) online: <www.calendar.ubc.ca/archive/vancouver/1819/index1d6b.html?page=appendix1>.

[985] Webb, *supra* note 421 at 234.

commentators' observation that graduate studies in law are usually absent from the discourse on legal education.[986] Usually after an explicit prompt, some participants shared insights on the meanings they attached to graduate programs. At UAlberta Law, a participant shared the following about the doctoral program:

> AB09: I don't believe our program is robust, … and I don't think we get the calibre of students to make it interesting […] it's hard to have a robust Masters' and Ph.D. program when [they are] so small. Because the robustness draws a little bit from the school's commitment to the program, and right now our commitment to the program is pretty limited.[987]

Another participant was, on the contrary, pleasantly surprised with the level of the doctoral students; however, nothing in his discourse repudiated the idea of a weak commitment to this program.[988] One of their colleagues also affirmed that graduate programs "have a role, but not a big role" at UAlberta Law.[989]

To inquire further about the meanings attached to graduate programs in this institution, I asked a few participants who were already present when the Ph.D. program was established in 2009 whether they recalled the reasons for creating it. One of them simply answered: "it's just there."[990] Another offered that there were "times when developing graduate programs was a higher concern for University."[991] This implied that UAlberta was more interested in having a doctoral program in law than the law Faculty itself. A third participant believed that when it was established, there was demand for such a program, and stakeholders agreed that offering it would give UAlberta Law "a meaningful presence as a graduate

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[986] Jukier & Glover, *supra* note 964. See also Dia Dabby, Bethany Hastie & Jocelyn Stacey, "Doctoral Studies in Law: From the inside out" (2016) 39 Dal LJ 221 at 223 ("graduate studies, and particularly, doctoral studies in law largely have been absent from the conversation."); Sanjeev S Anand, "Canadian Graduate Legal Education: Past, Present and Future" (2004) 27:1 Dal LJ 55. For an historical look at graduate study in law in North America, see e.g. Erwin N Griswold, "Graduate Study in Law" (1950) 28:2 Can B Rev 172.
[987] AB09.
[988] AB03 ("Yes, I have been pleasantly surprised by the number of good Ph.D. students we have had [despite the graduate programs being a small part of the overall law school]. At the start of the program I had real doubts about [this], but we've had quite good ones. And they are more Ph.D. students around than I expected.").
[989] AB01.
[990] AB01.
[991] AB07.

school."[992] In this last statement, "graduate school" refers to the Faculty of law overall, rather than its LL.M. and Ph.D. programs; since students complete at least an undergraduate degree before admission into the J.D., the Faculty of law is often perceived as a graduate school. Opening the Ph.D. program was therefore seen as a way to strengthen the Faculty's standing within the university, at a time when the University's priority was to rise in international rankings.[993]

In addition, several participants expressed the idea that students who came to pursue a Ph.D. in law at UAlberta were not attracted by the perceived quality of the program itself or attached prestige:

> AB04: The people that tend to come here for those higher-level degrees usually come here because there is someone specific here they want to work with. […] I don't think people come to our graduate program because they need a graduate degree from the U of A. But they want a graduate degree on a specific subject matter, working on a specific professor. So our graduate students are a fairly narrow and targeted group.[994]

Speaking about the rationale for the LL.M. program created in 1965 at UAlberta Law,[995] another participant offered a similar take:

> AB03: We recognize that we have a number of areas of specialty, one of which [is] secured transactions and insolvency, […] we have an unusually large group of people [working in that field], so I think we tend to get graduate students attracted in certain clusters where they are enough good people to work with here.[996]

Therefore, graduate students seem to enrol in UAlberta Law's graduate programs primarily to work with a specialist in a given field.

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[992] AB04 ("I think up to maybe a decade ago having a Ph.D. program was not something many Canadian law schools had, but then students became more and more interested in that idea, so in order to have a meaningful presence as a graduate school, I think we decided that we should look at having a Ph.D.").

[993] See AB04 ("[T]he university president of the time wanted to put the University of Alberta among the top 20 universities by 2020."); AB10 ("[The] President and the Provost of the University [who were in place between 2004 and 2014]'s focus was very much top 20 by 2020, so really playing on the world stage.").

[994] AB04 (citing Tim Caulfield in health law, David Percy in oil and gas law, and Cameron Jeffries in environmental law as examples of specific professors that graduate students would like to work with).

[995] Johns, *supra* note 807 at 9.

[996] AB03.

Participants' discourse about their graduate programs often featured concerns for resources. One of them spoke about the Ph.D. program in the following terms "It does not cost a lot all in all."[997] About graduate programs in general, the same also affirmed that they involved "lots of supervision work," offered "little returns for professors," and in the end proved "more costly than rewarding."[998] Another participant echoed this sentiment: "[We] need more faculty to give enough attention [to graduate students]."[999] This concern for the perceived resource-intensity of graduate programs also came up when discussing the LL.M. program. When speaking about its size, a participant also evoked the issue of resources: "We don't have a lot of funding resources for our graduate programs. So it is intentionally kept small so that we can devote more resources to fewer students rather than have sparse resources for a lot of students."[1000] Another affirmed that the LL.M. program "[got] cut back [due to] funding pressure."[1001]

In the preceding chapter, we mentioned the repeated periods of financial pressure on public funds for universities in Alberta.[1002] Keeping in mind that the allocation of limited available resources depends on institutional preferences, the contributions included above leave a clear impression that graduate programs at UAlberta Law are not a priority. As one participant expressed it, "it is all about the J.D. [here]."[1003]

As analyzed previously, UAlberta Law participants perceived their institutional mission to be focused on preparing students for legal careers.[1004] One of them summarized it in saying that their "job" was to "produce lawyers, not scholars,"[1005] while another affirmed that "[UAlberta Law's] real focus on

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[997] AB01.
[998] AB01
[999] AB07.
[1000] AB04.
[1001] AB01 (also affirming: "[The LL.M. program] was much bigger."); but see AB04 ("It fluctuated a little bit, but not greatly in number.").
[1002] See Chapter 3, Section 3.3, *above.*
[1003] AB01.
[1004] See Chapter 2, Section 3.1, *above.*
[1005] AB05.

preparing lawyers for practice" set it apart from "other law schools where there is more of a focus on legal education as an academic discipline and preparing people either for academic or non-legal careers."[1006] Graduate programs are usually assumed to lead to academic careers. UAlberta Law's graduate programs, therefore, are not perceived as playing more than an accessory role in the institution's mission and are not seen as an essential component of the Faculty. The kind of academic inquiry that graduate programs embody plays a marginal role in UAlberta Law's approach to legal education, even as the institution values its professors' research and the academic character of its J.D. program.[1007]

Droit UMoncton participants did not share many comments about their graduate program; nonetheless, evidence from other sources suggest a picture similar to that of UAlberta Law in this regard. The Faculty opened its LL.M. program in 2002, 25 years after its creation, and before the then already centenarian UNB Law.[1008] Within its first dozen years of existence, the program only graduated four students; this poor record even led to recommendations that it be closed.[1009] Since these comments surfaced, half a dozen students, most of them international, have enrolled in the program.[1010] This picture confirms that since the opening of the LL.M. program, Droit UMoncton still embraces Vanderlinden's 1998 perspective that the J.D. program constitutes the Faculty's "mission première."[1011] This statement, together with the enrolment figures, the absence of a doctoral program, and the Faculty's sense of mission

[1006] AB02; see also AB11 ("I think there is a way in which, both the student pressure and the faculty's internalizing of that pressure is that the law school is a trade school.").
[1007] See Chapter 2, Section 3.4, *above*, for more details on the balance between academic and professional ends at UAlberta Law; see e.g. AB09 ("[we should not] give up [our] academic mission."), AB10 (« the law school is at its heart extremely committed to both the academic mission, being an academic law school not just focused on job training and focused equally on teaching out students well. […] Our emphasis and our strength has been on the academic training of lawyers").
[1008] "La Faculté de droit offrira la maîtrise dès l'an prochain" *L'Acadie Nouvelle* (17 October 2001) 9.
[1009] Pascal Raiche-Nogue, "Pour nous, ce n'est vraiment pas la solution" *L'Acadie Nouvelle* (24 October 2013) 2.
[1010] Internal documents provided by Droit UMoncton on file with the author (indicating between 1 and 3 students enrolled every year between 2014-15 and 2017-18, and 5 out of 7 students were international).
[1011] Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34.

also focused on providing students access to the legal professions,[1012] tells us that graduate programs are truly marginal in Droit UMoncton's institutional culture.

Despite some remarks similar to that reported at UAlberta Law regarding financial hardship and the calibre of students,[1013] DSJ UQAM presents a sharp contrast in its approach to graduate legal studies compared to its counterparts.

First, the high number of students enrolled in DSJ UQAM's graduate programs, 138 representing almost 15% of the overall student body,[1014] suggests a significant commitment to such programs. Moreover, LL.M. courses are separate from undergraduate courses, unlike in most Faculties where LL.M. students sit in the same classes as LL.B. or J.D. students except for one or two of their courses.[1015] In addition, and despite the large enrollment, LL.M. courses at DSJ UQAM consist of small groups rather than large classes, there again showing that substantial resources are allocated to them. A participant commented on this situation, showing the importance accorded to this policy choice:

> QC08: Moi à la maîtrise [dans une autre université] je me rappelle d'avoir suivi des cours où on était 60. D'avoir suivi des cours où on nous mélangeait avec des gens du bac. Ce n'est pas du tout sérieux. Tu ne peux pas penser faire de la formation au deuxième cycle, développer des aptitudes de recherche et de réflexion chez les étudiants en étant 60. C'est impossible. Donc [à DSJ UQAM] nos groupes vont être beaucoup plus petits, c'est vraiment les formules séminaires, les étudiants peuvent participer, doivent participer beaucoup plus, [et] je l'apprécie beaucoup.[1016]

[1012] See Chapter 2, Sections 4.1—2, *above*.
[1013] QCXX ("C'est le deuxième examen doctoral [que j'évalue et] que je fais échouer. Ça c'est un problème. Le niveau des étudiants n'est pas au rendez-vous. [L'UQAM n'a] pas d'argent non plus pour les [financer].").
[1014] See Table 4.2, *above*.
[1015] QC07 ("Contrairement à McGill par exemple, les étudiants qui viennent faire la maîtrise ne prennent pas de cours de premier cycle. Ce sont tous des cours spécialisés à la maitrise."); see also Jukier and Glover, *supra* note 964 at 773 ("in most North American graduate programs in law, […] particularly at the master's level, [students] satisfy the bulk of their course requirements by taking upper-year undergraduate courses."), Macdonald, "Still 'Law' and Still 'Learning'?" *supra* note 5 at 18 ("few Masters programmes actually comprise dedicated graduate-level courses.").
[1016] QC08.

The same participant also indicated that this was a distinctive feature of DSJ UQAM's graduate programs.[1017]

Comparatively, the required common course for graduate students at UAlberta Law also includes J.D. students,[1018] and LL.M. students fulfil their additional course-credits requirements by taking J.D. courses.[1019] At Droit UMoncton, however, the required graduate course only includes graduate students despite their sparse numbers.[1020]

About three-quarters of participants (eight) at DSJ UQAM talked about courses they taught at graduate levels.[1021] By comparison, both at UAlberta Law and Droit UMoncton, only a couple of participants spoke about teaching a graduate course.[1022] This is of course due to the much lower number of graduate courses offered in these two Faculties; nonetheless, this speaks to the much smaller weight of graduate legal education in professors' activities at UAlberta Law and Droit UMoncton than DSJ UQAM.

Despite the general trend I noticed on the part of participants to assume that my project focuses primarily on undergraduate law studies,[1023] I noticed that participants at DSJ UQAM were a lot more prone to mentioning graduate programs on their own than their counterparts at UAlberta Law and Droit

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[1017] QC08.

[1018] AB11 ("The grad program is too small, so the [graduate] course [comprises] graduate students and undergraduate students."); AB02 ("The graduate seminar is cross listed as J.D. jurisprudence section, so [the instructor teaches] graduate students and J.D. students in the same class.").

[1019] See e.g. Jones, *supra* note 784 at 400 ("[LL.M.] [s]tudents are able to take any of the second- and third-year courses to fulfill their requirements. Alternatively, they may register in a special course which requires the completion of a research paper on a topic different from that of the thesis.").

[1020] See e.g. UMoncton, *Répertoire universitaire 2017-2018*, "DROI6050 Rech. juridique approfondie", online: <https://www.umoncton.ca/repertoire/>.

[1021] E.g. QCXX ("[Mes] enseignements depuis quelques années ont été surtout au niveau de la maîtrise [et du BRIDI]"), QC03 ("J'enseigne quand même pas mal de cours en maîtrise"), QC02, QC04, QC05, QC06, QC09, QC11. See also QC11 and QC07 (affirming that several professors prefer teaching masters' courses), see Chapter 3, Section 4.1, *above*, for more details on the allocation of teaching duties among DSJ UQAM professors.

[1022] ABXX, ABXX; more participants mentioned supervising graduate student research projects: e.g. AB03, AB06, AB08 (although affirming "I have to say that's not been a large part of my role in the Faculty."); but see contra ABXX (a senior faculty member stating: "I have never been a supervisor of a graduate student".). NBXX (mentioning having taught a graduate course in a different institution), NBXX (mentioning having supervised a LL.M. thesis).

[1023] See *supra* note 986 and accompanying text.

UMoncton. The mere size of such programs in terms of student enrolment and the greater involvement of DSJ UQAM professors in teaching graduate courses compared to their colleagues elsewhere certainly contribute to this trend; nonetheless, all of this further illustrates the much smaller weight of graduate programs in UAlberta Law's and Droit UMoncton's institutional cultures, compared to DSJ UQAM's. The idea of legal education at DSJ UQAM more readily includes graduate programs, which are conceived as academically oriented rather than professionally oriented. The comparatively large place of graduate legal education at DSJ UQAM resonates with the Faculty's mission, especially the emphasis on "critique." Even prior to the creation of the graduate programs in the mid-1980s,[1024] two of the founders had anticipated this phenomenon.[1025] One participant expressed a similar view: "c'est sûr que justement le fait que ce soit un département qui est orienté plus vers la critique et la justice sociale, évidemment que ça peut être plus intéressant d'enseigner un cours de maîtrise ou de doctorat parce que tu peux aller plus loin dans ces choses-là."[1026]

In the words of a UAlberta Law participant, graduate law students "are going to be people who don't just use the law, but study and *critique* the law."[1027] Of course, throwing a critical look on law is not the reserved domain of graduate studies. Several participants in all three institutions indicated that they aimed to equip their undergraduate students with a critical understanding of law.[1028] It remains the case, however, that graduate studies, sitting at the top of the education chain, most clearly embody such an

[1024] Jobin, "Biographie DSJ UQAM 1981-1986", *supra* note 711 at 10 ("[Entre avril 1984 et janvier 1987] [l]e dossier de la maîtrise fut approuvé et le département embaucha […] le premier directeur."). The LL.D. program was established in 2008.
[1025] Bureau & Jobin, *supra* note 340 at 303—04 ("[The] scientific aim [of legal critique] is by far the most ambitious and difficult to put into practice. The context of an undergraduate program imposes clear limitations… It is likely that such a critique will really develop with the opening of a graduate program.").
[1026] QC09.
[1027] AB02 (emphasis added).
[1028] See e.g. NB03, NB04, AB07.

aspiration. The much greater role of graduate studies at DSJ UQAM thus corresponds to differences in institutional cultures as we have ascertained them so far.

1.3 Specialized Legal Studies

A common feature of graduate and undergraduate programs other than the J.D. or LL.B. is that Faculties sometimes offer them in specialized areas. Let us now examine more thoroughly this issue here, as, although participants did not offer many contributions on the topic, it can nonetheless offer us valuable insights about each Faculty.

At UAlberta Law, the programs currently offered do not signal specialization, even though graduate students may often enrol at this Faculty to work in specialized areas under the supervision of specific scholars.[1029] In the early 1980s, UAlberta Law offered a program of graduate study leading to a Postgraduate Diploma in Law intended for practicing lawyers to update their knowledge or specialize in a new area of law.[1030] It only graduated a few students; the program was short-lived as the Faculty relied for its development on changes to the rules of the Law Society of Alberta regarding standards for specialization.[1031] This program no longer exists today. The LL.M. programs used to be "very much oriented toward natural resources, because that [was] the expertise that [UAlberta Law had and that] other law schools couldn't have," whereas "now it's much more generalist."[1032]

Natural resources law has been a field of historic expertise of UAlberta Law because of the big role this sector has always played in the economy of the region. However, UCalgary Law, located in the

[1029] See text accompanying *supra* notes 994, 996.
[1030] Jones, *supra* note 784 at 400—01.
[1031] *Ibid*.
[1032] AB03. See also Johns, *supra* note 807 at 9 (affirming that the LL.M. was created with an emphasis on oil and gas law), Law & Wood, *supra* note 633 at 18—19 (adding that "[t]he program was later expanded to facilitate graduate study in most major areas of law.").

business capital for this sector, has made this area its signature specialization and focuses its graduate programs on Natural Resources, Energy and Environmental Law.[1033] Given this competition, casting a broad net certainly allows maintaining greater, even if low, enrolment in UAlberta Law's non-J.D. programs.

Moreover, we have analyzed in a previous chapter this Faculty's emphasis on "well-rounded" legal education comprising knowledge in all the foundational areas of law.[1034] While this generalist approach was expressed with the J.D. in mind, we can see how it would not accommodate well specialization in legal education, at least at the undergraduate level.

Similarly, Droit UMoncton's LL.M. program is not explicitly specialized in one area of law, not even in language rights, the Faculty's long-standing and distinctive expertise. The low enrolment in this program, much like for UAlberta Law, certainly encourages keeping its scope as wide as possible. However, legal education at Droit UMoncton happens in a niche: common law in French. Although it does not constitute a traditional substantive area of law, it nonetheless represents a form of specialization. The same can be said for Droit UMoncton's undergraduate programs other than the J.D., as they enable lawyers trained in the civil law tradition to gain expertise in the common law in French. The Faculty's most central, enduring and distinguishing characteristic is thus embedded in its educational offerings beyond the J.D.

At DSJ UQAM, all the non-LL.B. programs except for the LL.D. come with concentrations in specific substantive areas. At the graduate level, the LL.M. is offered with concentrations in employment law, international law, or law and society; the DESS is offered with concentrations in human rights, or employment law and social protection; the *programme court* comes with concentrations in human rights,

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[1033] See UCalgary Law, "Future Graduate Students", online: <https://law.ucalgary.ca/future-students/future-graduate-students>.
[1034] See Chapter 2, Section 3.2, *above*.

or employment law and social protection. At the undergraduate level, the Certif program is specialized in labour and employment law, and the Baccalauréat en relations internationales et droit international (BRIDI) is in the field of international law and international relations. From this ample range of programs, three families of concentrations appear from this list: one concerned with legal relationships in the work environment, one concerned with international law and human rights, and the last one focused on law and society. Each of these families echoes elements of DSJ UQAM's institutional culture as ascertained thus far.

The first family correspond to DSJ UQAM's historic expertise in the field of labour and employment law and tight connections with unions and the labour movement. Referring to recent discussions about whether the Faculty should continue to offer the LL.M. in labour and employment law, a participant affirmed that although the program was not "super populaire" (presumably in terms of enrolment), it is "important pour certains membres du corps professoral qui ont beaucoup d'ascendant, d'ascendant historiquement."[1035] Other participants spoke about "[l'attachement] au syndicalisme beaucoup plus profond ici que j'imagine n'importe où d'autre,"[1036] "[les] liens historiques [de DSJ UQAM] avec les syndicats,"[1037] and the fact that many of the early students at the Faculty came from unions.[1038] DSJ UQAM identified labour and employment law as a key domain to realize the social justice ideals it entertained and offering specialized programs in this field has been conceived as a means to pursue this objective.

The second family reflects the more recent but now well-established expertise in international legal issues that has come in the wake of the *facultarisation*.[1039] Notably, the field of human rights marks a connection between this pool of expertise and the long-standing focus on social justice. While human

[1035] QC05.
[1036] QC02.
[1037] QC07.
[1038] QC11; see also Bureau & Jobin, *supra* note 340 at 306 (affirming that "the Department is particularly involved in the training of union militants"), MacKay, *supra* note 322 at 94.
[1039] See Chapter 3, Section 2.1, *above*, for more details on *facultarisation* at DSJ UQAM.

rights may be considered in a domestic as well as international legal perspective, the strengthening in the past two decades of DSJ UQAM's expertise in international matters is also reflected in programs with the human rights concentration. A participant called the LL.M. in international law the "flagship" program at the masters' level.[1040]

The third and last family of concentration is a recent addition as the LL.M. in law and society opened in 2016. While this concentration corresponded to the interdisciplinary leanings of the Faculty and its original desire for research to remain close to social groups, several participants affirmed that its creation followed strong internal debates regarding the expertise of current professors to teach and supervise research in this field, and the course requirements that should come with this concentration, notably for methodological purposes.[1041] Therefore, the three families of specialization for non-LL.B. programs at DSJ UQAM echo central, enduring and distinctive characteristics of the Faculty.

1.4 Undergraduate Programs other than J.D. or LL.B.

Let us now look in further detail at the undergraduate programs other than a J.D. or LL.B. offered at DSJ UQAM, UAlberta Law and Droit UMoncton. Beyond whether they are specialized or generalist, we will see that they further echo aspects of each Faculty's institutional culture.

[1040] QC05.

[1041] QC08 ("On est des juristes, qui pour la plupart ne font pas de recherche de terrain, ne font pas de recherche empirique, et ont la prétention d'offrir un programme en droit et société en n'invitant pas des gens qui ont des formations dans d'autres disciplines à donner des cours. […] La plupart des profs écrivent de la doctrine, donc ils ne peuvent pas encadrer des gens pour faire autre chose. […] On avait eu toute une discussion autour du cours de méthodologie […] Il y avait des gens qui voulaient maintenir ce choix [pour les étudiants de la maîtrise en droit et société entre le cours de méthodologie interdisciplinaire et celui de méthodologie de recherche juridique."), QC11 ("Je pense que l'un des problèmes que l'on risque de rencontrer [quant à la maîtrise droit et société] c'est que bien peu d'entre nous sont qualifiés pour encadrer des mémoires ayant une démarche interdisciplinaire."); see also QC09 ("La création de la maitrise droit et société est un autre exemple de moment où il y a eu, moi j'ai senti en tout cas beaucoup de dissensions au département."), QC05.

We have already mentioned the BRIDI program at DSJ UQAM; among those studied here, it is the only one to integrate two disciplines (law and political science) in a single course of study. UAlberta Law and Droit UMoncton both offer to take their J.D. conjointly with degrees in other disciplines, such as business administration (both), or public affairs or environment studies (Droit UMoncton only); these are shortcuts that allow students to take courses in both programs concurrently and obtain the two degrees in a shorter time than normally required. Their nature is different from what BRIDI does by design. One participant insisted that the BRIDI program stood out because the two disciplines are "entièrement intégrées."[1042]

The BRIDI represents about a quarter of all undergraduate students at DSJ UQAM. DSJ UQAM is the only Faculty among those studied here to maintain a multi-disciplinary program at the undergraduate level, as well as the only one to maintain an alternative undergraduate program that both mobilizes a substantial amount of resources and does not lead to professional qualification. Rod Macdonald observed in 2003 that "many of the themes and goals meant to be pursued in the academic stream [recommended in the Arthurs Report] have been realized in [other] departments or divisions" of the universities, such as legal studies or socio-legal studies programs at Carleton, York, or Laurentian University.[1043] DSJ UQAM is an exception to this trend, as the BRIDI program at DSJ UQAM compares to such academic streams where law is a central constitutive component. It is remarkable that it is housed by a university department that also offers a professional degree. No other law Faculty in Canada combines these characteristics.

Obtaining UQAM's BRIDI degree does not allow students to pass the Quebec bar, unlike the LL.B. One participant insisted on the importance of the BRIDI program for the Faculty as a marker that this institution does not gear its programs exclusively toward professional qualification: "[Le BRIDI] illustre que

[1042] QC07 (contrasting BRIDI with UMontréal's bachelor program in international studies in which international law is available as a concentration).
[1043] Macdonald, *supra* note 1015 at 9; see also *Arthurs Report*, *supra* note 5 at 155—56 (recommendations 1-4, 8).

la formation n'est pas uniquement professionnalisante à l'UQAM. Donc ça c'est un point important."[1044] This aligns with DSJ UQAM's reluctance to consider professonial qualifications as part of its mission, as analyzed previously.[1045]

The same participant emphasized that BRIDI graduates were both jurists and political scientists.[1046] UQAM also offers a masters level degree in law and political science, as a continuation of the BRIDI program into graduate studies. The presence of such bi-disciplinary programs echoes the meanings attached to the department label ("sciences juridiques") analyzed in the previous chapter as they embody the study of law as a one and in combination with other social sciences.[1047] The same further affirmed that many BRIDI graduates later enrolled in LL.B. programs at DSJ UQAM or elsewhere and brought their initial, non-exclusively legal approach with them.[1048]

Another participant affirmed that the creation of the BRIDI program represented a marking moment in DSJ UQAM's history.[1049] The BRIDI was created in 2002, shortly after that *facultarisation* grouped the law and political science departments together within FSPD and at a time when international law was emerging as a new domain of specialization at DSJ UQAM. [1050] It thus reflects DSJ UQAM's expertise in international legal issues as well as the interdisciplinary aspirations signalled by FSPD. Despite the negative or mixed feelings associated with FSPD as an institutional structure, the BRIDI and equivalent

[1044] QC07.
[1045] See Chapter 2, Section 2.4, *above*.
[1046] QC07 ("Le [BRIDI] forme aussi des juristes, qui sont à la fois juristes et politologues. »).
[1047] See Chapter 3, Section 1.4, *above*.
[1048] QC07 ("[Le BRIDI] est aussi une porte d'entrée importante pour le [LL.B.]. On envoie aussi beaucoup [de diplômés du BRIDI] à McGill.").
[1049] QC04.
[1050] QC05. The idea of an undergraduate degree combining law and political science at UQAM had been expressed around a decade prior, see Jobin, *Réflexions sabbatiques, supra* note 711 at 157ff (proposing a joint bachelor where half the credits would come from political science and half from law). See Chapter 3, Section 2.1, *above*, for more details on *facultarisation* at DSJ UQAM; see also QC07 ("cette intégration-là dans la même faculté pour moi c'est important, c'est un facteur important parce que ça crée aussi le lien avec science politique.").

masters' program that came out of this union align with many aspects of DSJ UQAM's institutional culture and display them in a way that distinguishes the Faculty from its counterparts.

A participant further affirmed that BRIDI students approached their education differently from LL.B. students, i.e. without the professional end in mind; given that BRIDI and LL.B. students often sit side by side in the same courses, this participant also posited that their different perspectives contributed to LL.B. students' education as well:

> QC07: [L]es cours de droit international sont partagés [par les étudiants du BRIDI et] les étudiants du [LL.B.] dans bien des cas, donc ils sont [souvent] dans les mêmes classes. Donc ça donne aussi une perspective à nos étudiants du [LL.B.] qui est différente. [De plus,] les étudiants au BRIDI, comme ils ne cherchent pas à aller au barreau, ils ont une perspective différente sur l'utilité de leur enseignement.[1051]

Implicit in this discourse is the hope that BRIDI students' lack of immediate professional aspirations rubs off on LL.B. students and lifts some of the pressure the latter exert for a more instrumental education helping them primarily to join the *Barreau du Québec*.

Besides BRIDI, DSJ UQAM offers another undergraduate program that does not lead to professional qualification: Certif. As a diploma program, it requires less time for completion than a full degree program; it also provides the opportunity to obtain university education in a specialized field of law: labour and employment law. DSJ UQAM is the only institution included in this study to offer the possibility of legal education limited to a specific legal field at the undergraduate level. Whereas the BRIDI integrates two disciplines, the Certif focuses on a subset of a single one. It is also a large program since it enrolled more than a hundred students in fall 2017. DSJ UQAM indicates that this program targets students who already have professional experience and who have already had exposure to labour and employment law issues;[1052] union workers seem to be prime candidates for this professional development

[1051] QC07.

[1052] FSPD, "Certificat en droit social et du travail", online (pdf): Présentation du programme, <https://etudier.uqam.ca/programme?code=4290> ("L'objectif général du programme est de permettre aux personnes qui possèdent déjà une expérience pratique du marché du travail, associée à une expérience

program. The entrenched status of this program indicates that even at the undergraduate level, DSJ UQAM considers that legal knowledge can be specialized, and does not require learning all the basics of all areas of law to be valid.

This stance is especially telling when we contrast it to UAlberta Law's generalist approach to legal education that professors consider ought to include all the foundational building blocks of legal knowledge.[1053] Even when it offered a Diploma Program in Law meant to permit specialization in certain fields of law, UAlberta Law reserved this offer to practicing lawyers who had already earned an LL.B.[1054] By contrast, DSJ UQAM's Certif program makes university legal education to a specific topic accessible to a wide and non-initiated public; it removes the burden of taking an entire degree program to learn about this legal field and opens legal knowledge to non-professionally oriented learners. Some of DSJ UQAM's specialized programs at the graduate level play a similar role as they do not require that the student' previous studies or professional experience be in the field of law even though they do not constitute entry-level education to the fields.[1055] Making university legal education at the undergraduate and graduate levels accessible at a lower price and lower time commitment than those required for a full law degree contributes to promoting social justice, as I explain below.

Several participants also emphasized that DSJ UQAM was the only Faculty allowing students to complete their undergraduate studies, including the LL.B., on a part-time basis and offering evening

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d'implications dans le sens du respect et de la promotion des droits sociaux, de se familiariser avec les règles juridiques propres au domaine du droit social et du travail. Ce programme est également offert à une clientèle détenant un DEC dans des programmes de technique ciblés dont le profil s'oriente dans l'axe du droit social et du travail."; "Ce programme en est un de perfectionnement.").

[1053] See Chapter 2, Section 3.2, *above,* for more details on UAlberta Law's conception of foundational knowledge-based legal education.

[1054] See Jones, *supra* note 784 at 400—01; see also text accompanying *supra* note 1030.

[1055] E.g. the *Programme court* and DESS are open to applicants with undergraduate degrees in law as well as disciplines other than law whose academic record meets a grade average threshold (3.2/4.3) or who have "relevant" professional experience.

classes so that students may work during the day if they need to maintain an income during their studies. For instance:

> QC05: On est une université de proximité, on est hyper accommodants du point de vue de l'enseignement, il y a des cours en soirée, des cours de jour, on offre des programmes à temps partiel, à temps plein. [C'est le cas depuis le début afin de] faire de la place à une diversité de profils, parce que ce n'est pas tout le monde qui est sur-performant, ce n'est pas tout le monde qui est disponible le jour.[1056]

> QC07: Nous sommes le seul programme qui est disponible à temps partiel […]. Ça fait partie de la mission d'accessibilité qu'on s'est donné. Ça c'était très important la mission d'accessibilité.[1057]

A majority of the students enrolled in DSJ UQAM's Certif program (60%) is studying part-time; nearly a quarter (24%) of those enrolled in the LL.B. are in the same situation.[1058] Nearly all those taking the DESS (87%) and all students in the Programme court are also studying part-time.[1059] The proportion varies greatly by concentration at the LL.M. level: the employment law LL.M. program features a majority (57%) of part-time students and the law and society LL.M. just over a third (35%).[1060] The interviews and the figures reproduced here show that part-time studies across DSJ UQAM's programs is a widespread reality and that participants accorded great significance to it as an avenue to pursue their social justice aspirations by making legal education accessible to a wider public, including those needing income to support themselves or their family during their studies.[1061] The Arthurs Report affirmed that that "law study […] is likely to remain [beyond the reach of many able but disadvantaged individuals] as long [legal

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[1056] QC05.

[1057] QC07; see also QC03 ("Nous on a la particularité aussi d'accepter beaucoup d'étudiants à temps partiel, c'est possible de faire un bac à temps partiel chez nous, donc beaucoup d'étudiants qui travaillent le jour à temps plein, qui étudient le soir à raison de deux trois cours de soir."), QC04 ("On donne des cours du soirs. [On est le] seul programme de droit qui permet de le faire en temps partiel.").

[1058] UQAM, *Statistiques d'inscription*, *supra* note 966 at 52—54 (data for Fall 2017 only).

[1059] *Ibid* at 55—56 (data for Fall 2017 only).

[1060] *Ibid* at 57—60 (data for Fall 2017 only, excluding students registered in additional sessions writing their thesis). The portion in the international law LL.M. is 4% and 21% in the international law and politics masters' program.

[1061] See also Chapter 2, Section 2.4, *above*, for more details on the paradoxes of this situation at DSJ UQAM.

education is only available as] full-time study."[1062] It is this very issue DSJ UQAM is committed to addressing throughout its program offerings.

More Faculties opened or considered possibilities for part-time and non-qualifying undergraduate programs in law in the mid-1980s, the same period when DSJ UQAM opened the Certif.[1063] DSJ UQAM is the only institution in this study currently allowing students to pursue their study part-time. At UAlberta, this possibility is capped to a maximum of 5% of the J.D. class, and in the past two decades the ratio of part-time students has never exceeded 1.4%;[1064] therefore, it is an exception to the overwhelming rule for full-time studies. At Droit UMoncton, the option simply does not exist. This characteristic is central, enduring and distinctive for DSJ UQAM.

Before turning to the undergraduate programs other than J.D. at Droit UMoncton and UAlberta Law, we can say a few words about a kind of program that DSJ UQMA does not offer. Legal professions in Quebec are split between *avocats* and *notaires*, each featuring their own professional corporation. While access to the Quebec Bar School (*Ecole du Barreau*) to become *avocat* is possible after obtaining an LL.B., access to the *notaire* profession is restricted to graduates of a specialized masters level program (*maîtrise en droit notarial*).[1065] Although graduate level in designation, these programs are intended only for

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[1062] *Arthurs Report*, *supra* note 5 at 19.

[1063] Jobin, "Biographie DSJ UQAM 1981-1986", *supra* note 711 at 10; see also Louis Perret, "Des cours obligatoires et des cours à option dans les facultés de droit du Québec ou: de l'incidence des conditions d'accès aux professions juridiques sur icelles" in Matas & McCawley, *supra* note 53 at 246 (indicating that ULaval also allowed part-time study for the LL.B. at the time). Arthurs noted in 1983 that "non-professional, certificate programs are beginning to appear involving part-time study (e.g. Osgoode Hall, Ottawa-Civil, Laval, Montreal)," but that provincial law societies outside of Quebec required full-time study for admission to practice (see *Arthurs Report*, *supra* note 5 at 27. Today, the FLSC *National Requirement, supra* note 9 at s C(1.1) sets the length of an approved Canadian (common law) law degree to "three full-time academic years or equivalent," leaving the door ajar while making full-time study the norm.

[1064] See UAlberta Law, *Law Faculty Council Policy Manual* (17 November 2015) s 27, online (pdf): <https://cloudfront.ualberta.ca/-/media/law/about/lfcpolicymanual.pdf>; UAlberta *Statistical Report*, *supra* note 966.

[1065] This formula was created in 1971 by four Faculties (presumably Droit ULaval, Droit UMontréal, Droit USherbrooke and UOttawa Civil) in consultation with the Chambre des notaires, see Jean-Marie Lavoie, "La Faculté de Droit de l'Université de Sherbrooke" (1985) 9:3 Dal LJ 762 at 775.

professional training and are therefore more akin to a professional specialization after an LL.B. degree. ULaval, UMontréal, USherbrooke and UOttawa Civil all offer such a program.[1066] Therefore, it is remarkable that DSJ UQAM does not. A *notariat* program would seem to have solely professional ends, thus running counter to DSJ UQAM's aspirations for law not to be studied exclusively in this perspective. Nonetheless, one could imagine the interdisciplinary and social justice perspectives being deployed to the fields of notarial practice, especially as a few participants affirmed that some of DSJ UQAM's LL.B. students would end up joining this profession.[1067]

Droit UMoncton offers a short program at the undergraduate level, leading to the DECL, which does not lead to professional qualification in Canada. It is geared toward enabling foreign-trained lawyers to acquire knowledge of the common law in French without the burden of taking up an entire degree program. To this extent, it appears comparable to the programs at DSJ UQAM described in the previous paragraphs, minus the part-time possibility. However, the programme nonetheless requires students to have obtained legal credentials abroad before enrolling. It is quite different from the *Certificat en sciences juridiques* program that the Faculty considered opening in the early 1980s and which would have more closely resembled DSJ UQAM's offers.[1068] In addition to borrowing DSJ UQAM's "sciences juridiques" label, this program would have rendered legal education accessible to non-jurists who could not commit to or succeed in the full J.D. Evening courses were even considered for this program. According to Vanderlinden,

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[1066] UMontréal previsouly offered a specialization for *notariat* careers as a fourth year of the undergraduate law degree since 1953, see Pierre Ciotola & Jean Hétu, *La Faculté de droit de l'université de Montréal et le notariat: 125 ans de formation* (2004) at 70, and that USherbrooke already offered specialized courses to the same effects since 1963, see Lavoie, *supra* note 1065 at 765; see also Normand, *Le droit comme discipline universitaire*, *supra* note 40 at 249.

[1067] QC03 ("Le bassin d'étudiants qui seraient intéressés potentiellement à venir à l'UQAM […] c'est des étudiants généralement qui veulent devenir avocat ou membre de la chambre des notaires. […] On ne forme pas beaucoup de notaires. […] Même si c'est possible pour nos étudiants d'aller passer des examens de la chambre des notaires, on n'a pas la réputation de former beaucoup de notaires."), QC11 ("Nos étudiants, la plupart d'entre eux en tout cas, ils viennent ici parce que après ils veulent aller soit à la chambre des notaires soit au Barreau."), QC06.

[1068] Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 115; the timing corresponds with the creation of similar programs at other law Faculties across Canada, see *supra* note 1063 and accompanying text.

the Faculty eventually decided that it could not invest the time and resources necessary to give life to this project.[1069] Moreover, Droit UMoncton's DECL embodied the CICLEF's aspiration to demonstrate internationally that "la common law exprimée en français pouvait exister sous toutes ses facettes au-delà du contexte spécifique d'une culture minoritaire, celle des Acadiens du Nouveau-Brunswick."[1070] With CICLEF's replacement by OIDL, it remains to see whether the DECL program will remain, especially given the absence of students enrolled in the program at the time of my fieldwork.

Finally, Droit UMoncton and UAlberta Law both offer an additional undergraduate program designed for professional qualification other than the J.D. Foreign-trained lawyers can complete courses at UAlberta Law instead of taking National Committee of Accreditation (NCA) examinations on their own, and thus qualify for joining a Canadian common law provincial law society. Graduates of a civil law program in Canada can obtain a common law qualification (J.D.) thanks to Droit UMoncton's conversion program. At Droit UMoncton, conversion students enroll in the same courses as J.D. students; this is also the case for most of UAlberta Law's NCA students' courses.[1071] A participant affirmed that admitted NCA students fill up seat lefts empty by students admitted in the J.D. program but who eventually decided not to attend UAlberta Law.[1072] Accordingly, NCA students represent only a fraction of J.D. students; at Droit UMoncton too, there are very few conversion students every year and none at the time of my fieldwork. These two programs are functional equivalents of J.D. programs, for students who already have some foreign legal credentials, to the extent that it offers them a path toward joining a common law Bar in Canada.

[1069] Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 115.

[1070] Jacques Vanderlinden, "Demain" (2008) 10:1 RCLF 18. See also *above*, Chapter 3, Section 3.2, for more details on CICLEF and OIDL at Droit UMoncton.

[1071] There are NCA students-only sections in the following three courses at UAlberta Law: Foundations to Law, Administrative Law, Professional Responsibility. While students take only the courses outlined in their individual NCA assessment, UAlberta Law includes 10 courses in the indicative list for NCA students (see UAlberta Law, "Internationally Trained Lawyer Pathway", online: <https://www.ualberta.ca/law/prospective-students/itlp>).

[1072] AB01.

To conclude on the topic of programs other than the J.D. or LL.B., numbers may once again speak for themselves: at DSJ UQAM, such programs account for nearly half (46%) of the Faculty's overall student body, whereas at UAlberta Law and Droit UMoncton they include only a very marginal portion of students (6% and 2%, respectively). These figures and the analysis in the above paragraphs confirm the much greater emphasis on professional education at UAlberta Law and Droit UMoncton, as expressed by participants when discussing their institution's mission.[1073]

2. The J.D. or LL.B. Program

Even as we examined graduate programs and certain undergraduate programs in the previous section, it transpired that the J.D. or LL.B. program was a central point of reference for the Faculties and participants. Let us then turn to an exploration of the meanings attached to key aspects of this hegemonic object at DSJ UQAM, UAlberta Law and Droit UMoncton. There is no doubt that this inquiry will lead us to ascertain further central, enduring and distinctive meanings constitutive of the Faculties' institutional cultures.

Building on the insights we gained from examining the Faculties' own labels as sites of meanings, we will start our exploration of the J.D. and LL.B. by paying attention to the designation of these programs and degrees (*section 2.1*). Informed by the many references to the question of required courses that UAlberta Law included in discussing their Faculty's mission, we will then turn to this matter as an additional site of meanings at each Faculty (*section 2.2*). Finally, we will look more generally at the curriculum *découpage* into a given set of discrete courses and the program architecture (*section 2.3*).

[1073] See Chapter 2, Section 3.1, 4.2, *above*.

2.1 Degree and Program Designations

As we have seen for the Faculties themselves, ascribing a label is a "process [through which] the world becomes an object of significance beyond its raw materiality and that it can therefore become an object of thought."[1074] The same is true for the designation of the main program and degree that each Faculty offers. Twining offered an apt satire of this phenomenon when he described a hypothetical new law Faculty deciding to inaugurate a Bachelor (or Doctor) of Facts program.[1075] He also reminded us that "the notion that curriculum is the beginning and end of all discussion about legal education" is one of the "familiar canards" of the field.[1076] Therefore, starting with labels, here again, is pertinent both to question the usual approaches to legal education as well as to tease out further the meanings constitutive of each Faculty's institutional culture. The interviews indeed confirmed that an ascribing process was at play in the designation of the main undergraduate program and degree at the (real) Faculties studied here.

At DSJ UQAM, one participant spoke of the adoption of the current designation, *baccalauréat en droit*, as a marking moment for the Faculty in the following terms:

> QC07: [Le changement de nom du programme] a eu lieu dans les années 90. Il y avait [une certaine] réticence […] parce que l'on disait on ne veut pas faire du droit simplement comme certains font de la théologie, c'est-à-dire essayer de l'intérieur comprendre le droit, et trouver sa vérité, ou trouver la meilleure interprétation, mais de voir le droit aussi comme les sciences religieuses le voient, c'est-à-dire comme un phénomène externe dans la société, le situer dans son contexte social, économique, politique, et pouvoir l'utiliser à des fins d'émancipation. Appeler ça 'bac en droit' pour certains c'était déchirant parce qu'ils avaient peur que cet esprit initial se perde en partie. Mais en même temps, il y avait un enjeu de reconnaissance à l'extérieur pour nos diplômés. Il y avait notamment une confusion : ce n'est pas tout le monde dans le domaine juridique qui saisissait de quoi il s'agissait un 'bac en sciences juridiques'; les gens [se

[1074] Legrand, *supra* note 145 at 375; see also Chapter 3, Section 1, *above,* for application to the Faculties' own name.
[1075] Twining, "Taking Facts Seriously", *supra* note 275 at 52—53 (counting an hypothetical meeting of the founding faculty at a new institution where a member proposed to focus the new program on facts, as they are so important to the practice of law, and accordingly call the new degree "Bachelor of Facts"; facing some opposition, the same member offered a "crucial concession": "'It need not be a bachelor's degree," he said, 'there are good American precedents for calling the undergraduate law degree a doctorate. To call our graduates Doctors of Facts will not only attract students and attention, it will also signal that we are well aware that reality is a social construction and not something out there waiting to be found.'").
[1076] *Ibid* at 53.

> demandaient] « est-ce que ça mène au barreau ? ». [Il y a avait une] confusion avec la technique juridique qui est offert au CEGEP, [alors que c'est très différent]. Donc [changer le nom du diplôme] était une question de mieux faire comprendre la formation qui était offerte, le caractère universitaire de la formation qui était offerte.[1077]

DSJ UQAM's founding program was initially called *baccalauréat en sciences juridiques*, and gave its distinctive name to the Faculty itself as the program's creation and labelling preceded the constitution of the Faculty into an academic unit.[1078] As the above extract highlights, the same reasons and meanings were associated with the name of the program and associated degree as that of the Faculty.[1079] For about a decade and half, this program was the only one offered by DSJ UQAM, and the Faculty perceived the administrative unit and the educative program as two sides of the same coin as vehicles to further the same socio-politically progressive project.[1080] Nearly thirty years after its creation, Jobin affirmed that the *baccalauréat en sciences juridiques* "a toujours détenu et doit conserver le statut de programme fondamental et principal pour le D.S.J."[1081] As we have seen earlier in this chapter, this statement may have lost some relevance as graduate programs and the BRIDI have taken on a greater role since it was made; nonetheless, Jobin's statement embodies the original intimate connection between the program and the Faculty.

Another participant affirmed that DSJ UQAM changed the name of the program to *baccalauréat en droit* in the 1990s "quand les étudiants ont insisté pour avoir davantage de droit positif, se sentaient stigmatisés dans la profession, et ont milité pour justement changer 'sciences juridiques' en 'droit' à peu près partout sauf dans le nom du département."[1082] The new name appears for the first time in UQAM's calendar for 2000-2001, the year following the creation of the Faculté de science politique et *de droit*

[1077] QC07.
[1078] Jobin 1972-76, at 10
[1079] See Chapter 3, Section 1.4, *above*.
[1080] Jobin 1976-80, at 6 ("On ne faisait pas de réelle différence entre le département et le programme.").
[1081] Jobin, *Réflexions sabbatiques, supra* note 1050 at 120.
[1082] QC01.

(FSPD).[1083] We should note that this change was to the name of the program itself, as the designation of the degree itself had been that of *baccalauréat en droit* (LL.B.) since 1977-1978, the initial designation of *baccalaurat spécialisé en sciences juridiques* (B.Sp.Sc.Jur.) having lasted only a couple of years, probably to signal that graduates could indeed join the *Barreau du Québec* with this degree despite the distinctive name of their program.

Until the second third of the 20th century, French-language law Faculties in Quebec used to award both *licence en droit* (LL.L.) and *baccalauréat en droit* (LL.B.) degrees for completion of their undergraduate law program; the former recognized a higher level of achievement than the former. ULaval abandoned the LL.L. (which most graduates had obtained since the late 19th century) and decided to award only LL.B. in the wake of extensive reforms of its program in 1972.[1084] UMontréal adopted the same policy in 1977, reversing a 1965 decision to abandon the LL.B. and award only the LL.L., in order to harmonize its practice with that of other law Faculties across Canada.[1085] USherbrooke also changed its LL.L. into an LL.B. in 1977.[1086] To date, uOttawa remains the only Faculty to retain an LL.L. instead of LL.B. in the Canadian civil law sphere. Lastly, McGill has maintained the B.C.L. (*bachelor of civil law)* designation for to indicate the civil law content of its double degree program.[1087]

The quotes reproduced above show that participants attributed the change of designation at DSJ UQAM to pressure from the students regarding the legibility and recognition of their credential in the legal profession. The change came some twenty odd years after a wake of harmonization among the civil

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[1083] See UQAM, *Annuaire 2000-2001*, online: <https://registrariat2018.uqam.ca/statistiques-officielles/>.
[1084] See Normand, *Le droit comme discipline universitaire*, *supra* note 40 at 77, 224.
[1085] See Hétu, *Album souvenir, supra* note 30 at 70—80.
[1086] See e.g. USherbrooke, Secrétariat de l'évaluation périodique des programmes, "Résumé de l'évaluation périodique du programme de Baccalauréat en droit (LL.B.)" (December 2003) at 1, online: <https://www.usherbrooke.ca/sepp/fileadmin/sites/sepp/documents/Resumes_1/bac_droit_dec2003.pdf>.
[1087] At McGill, the LL.B. corresponds to the common law components of the undergraduate degree, see also text accompanying *infra* note 1092. See also *Regulation respecting the diplomas issued by designated educational institutions which give access to permits or specialist's certificates of professional order*, OC 1139-83 (1983) GOQ II, 2878, s 1.03 (which until a 2011 amendment still indicated the older designations for each university, see online: CanLII, <http://canlii.ca/t/6bl06#art1.03>).

law Faculties. The *baccalauréat en droit* designation had imposed itself as standard and expected program and degree name for lawyers in Quebec; it is in this context that the students' concerns convinced their professors at DSJ UQAM to abandon the original label despite it embodying important meanings for the Faculty.

At Droit UMoncton, a participant mentioned the recent change of degree designation from *baccalauréat en droit* (LL.B.) to Juris Doctor (J.D.) to illustrate a similar phenomenon and show that the Faculty was not immune to the normative trends phenomenon taking hold across Canadian legal education.[1088] The same participant affirmed that the arguments for such a change had relied on the fact that all the common law Faculties in Canada had adopted the J.D. designation.[1089]

The LL.B. was the initial name of the undergraduate law degree leading to professional qualification at Droit UMoncton as well as UAlberta Law.[1090] Both Faculties switched to the J.D. in the early 2010s, following the bulk of the Canadian common law Faculties.[1091] After UToronto first adopted this designation in 2001 to align itself on the American standard, the harmonization trend that followed across Canada became complete in 2019 when McGill eventually also accepted to initiate the process of transformation of it its LL.B. into a J.D.[1092]

[1088] NB05 ("Cet exemple montre que la faculté n'est pas isolée des courants normatifs ailleurs au Canada" also expressing personal prefence for the LL.B. designation for the following reasons : "il s'agit du premier contact avec le droit, ce qu'indique le baccalauréat. Prétendre que c'est autre chose est prétentieux.").

[1089] NB05.

[1090] See Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 106, Law & Wood, *supra* note 633 at 5ff.

[1091] UAlberta Law adopted the J.D. in in 2011 (UAlberta Law, News Release, "LL.B. to J.D. Conversion" (9 February 2011), online: <https://www.ualberta.ca/law/about/news/main-news/2011/february/llbtojdconversion>) and Droit Moncton in 2012 (Droit UMoncton, "La Faculté de droit passe au J.D.", online: <https://www.umoncton.ca/umcm-droit/node/105>).

[1092] A motion to this effect was adopted by McGill Law's Faculty Council on 10 April 2019; approval from relevant university and ministerial authorities is still required for the change to become effective.

The J.D. designation had become the norm in American law schools in the 1960s in an effort to enhance the social status of the legal education and legal professions.[1093] UAlberta Law, Droit UMoncton and other Canadian common law Faculties aligned themselves on the American standard on the basis of arguments strikingly similar to those articulated South of the border half a century prior. First, a belief that the degree designation should reflect the fact that law students usually already completed a first university degree before entering law school, unlike for instance England's LL.B. graduates. Second, a wish to see graduates' credentials be considered at par with similarly educated competitors, whether in the United States or in Toronto. Actual competition between American and Canadian law graduates remains a marginal phenomenon. That this seemed to have driven the change illustrates the cultural permeability of Canadian common law education to American "pervasive influence," in Arthurs' words, and a form of "colonization by the herd," according to Macdonald and McMorrow.[1094]

The few comments participants offered on degree and program designation at their Faculty illustrated the harmonization tendencies within Canadian legal education. Although the civil law and common law spheres each have featured their own dynamics in this respect, Faculties in both have changed the name of their main undergraduate law degree to ensure recognition of their graduates'

[1093] See e.g. John G Hervey, "Law School Graduates Should Receive Professional Doctorates: Time for a Change from LL.B. to J.D. Degree" (1965) 10:5 Student Lyer J 5 (leading proponent of the switch to J.D.); see also George P II Smith, "Much Ado about Nothing - The J.D. Movement" (1966) 11:7 Student Lyer J 8 (responding to Hervey); Garrett Power, "In Defense of the J.D." (1967) 20:1 J Leg Educ 67; George P II Smith, "When You Wish upon a Star--The J. D. Fantasy" (1968) 21:2 J Leg Educ 177 (responding to Power). All US law schools had switched to the J.D. by 1971, see David Perry, "How Did Lawyers Become 'Doctors'?" (2012) 84:5 NY State Bar J 20. This change did not go unnoticed in Canada, as "around 1970," some students at Dalhousie lamented "Faculty Council's refusal to change the name of the degree from bachelor of Laws to Doctor of Law," a criticism Willis called "self-serving and trivial," see Willis, *supra* note 32 at 236—37. The topic had already been discussed in the United States in the first years of the 20th century, see e.g. Association of American Law Schools, Special Committee on Law Degrees, "Report of Special Committee on Law Degrees" in *Proceedings of the Second Annual Meeting of the Association of American Law Schools* (1902) 8 (e.g. "It has recently been suggested [that] in some American law schools the requirements for admission are so high as to justify the discarding of the baccalaureate degree in law and the establishing of a doctorate." at 9).

[1094] Arthurs, "So Far From God", *supra* note 87 at 382—83 (qualifying the absolute numbers of Canadian law graduates seeking careers in the US as "small, and in percentage terms insignificant"); Macdonald & McMorrow, *supra* note 236 at 731—32.

credentials on an equal footing with their competitors, leaving behind meanings attached to historical designations. We can see here the influence of external trends in the policies that law Faculties adopt, in spite of the unique nature of their institutional culture.

2.2 Required Courses

At UAlberta Law, no participant commented on the degree designation. However, as we previously mentioned when analyzing the question of the Faculty's mission, many participants at UAlberta Law spoke about the required courses in the J.D. curriculum at their Faculty. Notably, they talked about the number of such required courses as an enduring marker of the Faculty's attachment to foundational legal education as we have analyzed it in a previous chapter.[1095] Here is what some shared on the topic:

> AB08: Certainly you would have heard that the U of A had mandatory courses [in upper years] at a time when other law schools were not doing that […] It is historically unique in the sense that U of A had more mandatory courses than I think probably every other law school in Canada, which relates back to my first point which is that this law school felt that those professional courses were essential really for any graduating lawyer to go out and practice law.[1096]

> AB03: We have pretty much done since 1970 much the same sort of things and just modified it in either method of delivery, but not so much in what we see as the appropriate core of the law school curriculum. […] I think if you ask in the areas of doctrine, "which areas of doctrine does virtually all lawyers encounter?", the key ones outside of first year, are clearly Corporations, Administrative Law and the Administrative State, […] and certainly […] Conflicts of Laws […] and […] Trust […] because it too is at the heart of what law is in the common law world […]. Something like that. I mean we can argue about whether subject A should be in or out, that's fine, and I think you should not be overly prescriptive, but I defy anyone to tell me what is wrong with the statement that "every lawyer who graduates from law school should have taken Administrative Law, Corporations, one or two others we can argue about."[1097]

> AB02: One of the things that distinguish U of A from a lot of other law schools in Canada is that we have a lot more required courses that students need to do, and so when people are hiring U of A graduates they know that they are getting somebody who has studied, you know the basic

[1095] See Chapter 2, Section 3.2, *above*.
[1096] AB08.
[1097] AB03.

> first-year courses, but also corporations, and administrative law, and evidence, all those kinds of foundational courses that are necessary for practice.[1098]
>
> AB06: Traditionally the U of A has had a larger number of required courses than other institutions. That wouldn't be my particular preference as an institution, as I prefer a more open-ended and self-directed approach to legal education, [but] I suppose that is one of the signals that is being sent about [the] core foundational competencies in legal education that the U of A remains attached to.[1099]

An additional interviewee spoke about required courses in administrative law and professional responsibility as markers of the Faculty's approach to legal education.[1100] Finally, another participant affirmed that the first year was "spoken for" in terms of courses, implying that first year (1L) courses were not variables that the Faculty could adjust according to its priorities, and added that students enjoyed 1.5 years of optional courses, which reflected the Faculty's attempt to strike a balance between options and requirements.[1101] From the volume and content of these remarks, we can see that having a high number of required courses in the J.D. curriculum is experienced as a central, enduring and distinctive feature of UAlberta Law and a reflection of the Faculty's self-defined approach to legal education.

UAlberta Law's required courses, including in 1L, account for a majority of the credits necessary for the obtention of the J.D.[1102] At Droit UMoncton, the proportion is even higher as it corresponds to slightly more than two-thirds.[1103] At DSJ UQAM, just over half of the necessary credits must come from specific courses,[1104] while the remaining ones must nearly all come from specified baskets of courses.[1105]

[1098] AB02.

[1099] AB06. See also AB09 (also expressing an implicit preference for less required courses and affirming that "there are big divides across the Faculty on all sorts of educational related matters, [including] the extent to which the curriculum should be mandatory.").

[1100] AB07.

[1101] AB01.

[1102] 53 of 92 credits (58%).

[1103] 63 of 93 credits (68%).

[1104] 53 of 98 credits (54%).

[1105] Students must complete at least 9 credits in each of the following *modules*: *Enjeux socio-juridiques*, *Droit social et du travail,* and *Droit international, comparé et cultures juridiques* as well as 12 credits in the *série Approche critique et multidisciplinaire*. Overall, students must complete between 36 and 45 credits from courses listed in these categories. In addition, they may complete up to 9 credits with courses from the *série* titled *Approche pratique, clinique, et intervention socio-juridique*.

At Droit UMoncton and UAlberta Law, students may earn their remaining credits freely among available elective courses.[1106]

UAlberta Law's J.D. program is consequently the least guided among the three examined here. This observation runs counter to the perceptions expressed by UAlberta Law's participants that their institution has historically distinguished itself with the highest number of required courses. However, their perception needs to be contextualized to properly understand its historical relevance.

Starting in Ontario in 1969, there was a marked reduction of the number of required courses in Canada's common law Faculties for several decades. Osgoode Hall, for instance, had abandoned all requirements after the first year, and UWindsor Law only retained constitutional law as a required upper-year (UP) course. [1107] Opponents of this trend at the time offered a discourse closely resembling that observed at UAlberta Law today as it was articulated around a worry that students would graduate "with gaps in their knowledge of the substantive core that is essential for practice."[1108] In the 1980s and 1990s, external and internal commentators observed that UAlberta Law's curriculum featured a comparatively high number of requirements in upper-years.[1109]

[1106] But see Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 108—09 (describing the curriculum at Droit UMoncton prior to 1997: students had to take at least 6 credits in each of the following baskets: *Pratique privée*, *Droit public*, *Théorie du droit et droit social*, *Droit économique*.); see also Clark, *supra* note 442 at 224 (observing that in the mid-1980s, Droit UMoncton was the only common law Faculty to semi direct all elective credits with such baskets).

[1107] Clark, *supra* note 442 at 215—17 (indicating that in 1969, at the request of Ontario law Deans, the Law Society of Upper Canada cut the list of subjects it law schools had to require from 26 to 7; the reform did not recommend constitutional law in 1L, and this course only became widely accepted as a 1L course in the 1980s, in attempts to "rectify a perceived imbalance in the foundational programme toward private as against public law," see *ibid* at 230—31).

[1108] *Ibid* at 217.

[1109] See *ibid* at 224 (noting that the two highest number of UP requirements were at uOttawa Common (9) and UAlberta Law (7)); Law & Wood, *supra* note 633 at 22 ("whereas many Canadian law schools have made all of the second and third year courses optional, [UAlberta Law] has continued to require its students to take a set of core courses in the belief that it will 'instil in each student a strong foundation in legal knowledge, lawyering skills and professional values.'" [footnotes and internal quotation (of the Faculty of Law Brochure) omitted]).

The meanings attributed to UAlberta Law's volume of required courses come from this period and perpetuate the Faculty's sense that it fosters a generalist legal education to all the foundational knowledge necessary for practice, as it sees it. This is so even as participants expressed awareness that the distinctiveness of their Faculty on this front had eroded due to a certain convergence in the field. Two participants mentioned pressure from the FLSC that lead other Faculties to come back to a higher volume of required UP courses.[1110] Others mentioned that their Faculty now featured "more flexibility around exploring the curriculum [and having] fewer required courses,"[1111] as illustrated by the recent abandonment of the requirement to take Conflicts of Laws, mentioned by a few participants.[1112]

Beyond the lack of historical fluctuations regarding the volume and nature of required courses, UAlberta Law participants also expressed awareness that their J.D. curriculum was greatly similar to that of other common law Faculties. One of them affirmed that "every law school teaches basically the same" and that only "emphasis may differ."[1113] Another offered the following remarks:

> AB06: For me, it is significant that the curriculum is virtually identical at every Canadian law school. Now there is going to be differences at the margins, there is going to be differences on the scope of the course offering, but by in large the classes that you take, and the order in which you take them, is almost identical across Canada. I think that when you discuss the individual nature of institutions, sometimes there is a tendency to magnify small differences in a way may, in fact, be distorting. If you are an alien that dropped down from space and were told to visit seven Canadian law schools, I think the alien would find remarkable commonalities as opposed to immense differences between them. So that said, I think of the U of A as of being, in the main, in keeping with the tradition of Canadian legal education in its self-conception and its practices.[1114]

[1110] AB06 ("In some ways other law schools had to actually move closer to the U of A law school because the Federation of Law Societies required a larger, an expanded required curriculum, and so in fact there has been a fair bit of convergence there as well"), AB08 ("[UAlberta Law number of required courses] was unique in that respect, because the Federation of Law Societies has now required common law law schools to ensure that their students have taken certain foundational courses.").
[1111] AB07.
[1112] See e.g. AB03, AB11.
[1113] AB01.
[1114] AB06.

We can thus see that UAlberta Law's perception of its curricular distinctiveness concerns only the volume of required courses, as the content of such courses is overwhelmingly similar to that of other law Faculties across Canada.[1115]

At Droit UMoncton, a few participants commented on the required courses in their J.D. curriculum. There is a marked difference in content and frequency of such comments compared to UAlberta Law, showing that this question is not perceived as a defining feature of the institution. A participant affirmed that Droit UMoncton J.D. students took the same courses as elsewhere in common law Canada.[1116]

What could be surprising given the core, enduring and distinctive character of language rights issues at this Faculty is that no course on the topic has ever been required for completion of the program. Two optional courses focus on such issues: *droits linguistiques*, and *jurilinguistique*. The same participant spoke to this incongruity, immediately after highlighting the importance of language questions for the Faculty and explained that the language rights course was not required because the Faculty aimed to train lawyers rather than language rights specialists.[1117]

Two participants shared that they attempted to integrate language issues in the courses they taught in diverse areas.[1118] Another participant expressed a preference for such a course not to be

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[1115] See Appendix C, *below,* for more details on the required components of UAlberta Law's J.D. program and comparison with those of DSJ UQAM' LL.B. and Droit UMoncton's J.D. programs.

[1116] NB05.

[1117] NB05 ("Le cours de droits linguistiques n'est pas obligatoire. On forme des avocats, pas des spécialistes en droits linguistiques.").

[1118] NB04 ("[J']ai intégré [dans mes cours la question linguistique, dans la mesure du possible »), NB07 ("J'incorpore des éléments linguistiques pratiquement tous les jours dans mes cours. Souvent je vais donner des équivalents anglais, ou je vais dire 'ce mot n'existe pas en français et je vais vous expliquer pourquoi c'est un problème.' Souvent il y a confusion terminologique. [De telles confusions existent parfois dans la jurisprudence en anglais], c'est critiqué dans les manuels en anglais, ce genre de confusion terminologique, et c'est encore pire en français parce qu'on ne peut même pas faire la différence parce qu'on n'a pas les termes pour expliquer c'est quoi la différence. Souvent ces éléments reviennent dans mes cours et tout ce que je peux faire c'est les expliquer, ou proposer des solutions

required, while at the same time insisting on its importance for Droit UMoncton, especially in comparison to another course that contemporary discourse in Canadian legal education largely advocates making mandatory at all Faculties:

> NB06: Si je compare l'importance des droits autochtones au sein de notre faculté et puis l'importance des droits linguistiques, pour moi il y en a un qui, personnellement, est beaucoup plus important à notre mission que l'autre. Dire que les droits autochtones devraient être un cours obligatoire et pas les droits lingusitiques, pour moi c'est un non sens ici pour notre faculté. [Certains] professeurs [ont proposé dans le passé que droits linguistiques devaient être un cours obligatoire pour tous nos étudiants], mais je n'ai jamais été d'accord non plus [avec ça].[1119]

Without advancing too far in the field of Indigenous issues in legal education, including in the curriculum, that this interviewee raised, as we will examine it in further detail in the next chapter,[1120] we can see that participants perceive a certain tension between the importance of language rights at their Faculty and the absence of any required course on the question in the J.D. curriculum.

At DSJ UQAM, the field that corresponds to Droit UMoncton's historic focus on language rights would be that of labour (and employment) law. At this Faculty, LL.B. students must complete the following courses: *droit des rapports collectifs de travail*, and *droit social*. Moreover, they must complete 9 additional credits from courses listed in the basket titled *droit social et du travail*. Such requirements are unique among Canadian law Faculties, including in the civil law sphere. Several participants expressed their awareness of this situation and suggested that it reflected their Faculty's unique profile.[1121] The meanings they associated with the existence of these curricular requirements further signalled that their Faculty's enduring and distinctive specialty in the field was conceived as central to its institutional culture.

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et expliquer les enjeux, etc. Mais ce n'est pas la seule chose que je recherche dans mes cours, évidemment, moi je suis là [pour] enseigne[r] le droit.").

[1119] NB06.

[1120] See Chapter 5, Section 5, *below*.

[1121] QC09 ("On est le seul programme où il y a le cours de droit social qui est obligatoire au [LL.B.]."), QC08 ("Ici […] il y a quand même un profil en droit social, il y a un cours obligatoire en droit social, et il y a tout un tronc en fait qui se veut justement approche sociale, il y a des cours ici qui se donnent nulle part ailleurs. […] Pour certaines personnes [la mission] c'est le droit social, le droit du travail, etc. C'est comme si on réalisait notre mission simplement parce que on a des cours dans ces domaines-là, qui sont des cours qui ne sont pas nécessairement donnés ailleurs.").

Another participant at DSJ UQAM spoke about a different required course that distinguished the Faculty early on:

> QC10: La Charte est entrée en vigueur en 1982 et en 1985 on a commencé dès le début à avoir un cours obligatoire de droits et libertés. C'est une spécificité par rapport à d'autres universités où il y avait seulement [le cours de droit] constitutionnel classique, mais [où] il n'y avait pas de cours directement [dédié aux] droits et libertés.[1122]

The Supreme Court of Canada rendered its first ruling on the basis of the Canadian Charter of Rights and Freedoms in May 1984, two years after the new constitutional document came into effect.[1123] Although implicit in this participant's discourse, the idea that DSJ UQAM was the first Faculty to offer a dedicated required course on this topic showed the institution's commitment to law as a means of emancipation, for instance through constitutional rights and freedoms.

Of course, DSJ UQAM was not the only Faculty teaching the Canadian law of rights and freedoms as part of the required curriculum. However, what set it apart according to the same participant was the creation of a dedicated course on the topic. This raises the question of courses and curriculum *découpage*, which is the object of the next section.

2.3 Curriculum *Découpage*

Rod Macdonald lamented that legal pedagogy, in all Canadian law Faculties, remained "organized around the same subject headings – contracts, property, torts, etc. – that reflect the same doctrinal *découpage* as always."[1124] He further argued that "every law [F]aculty ought to have its own distinctive curriculum, and its own subject matter *répartition*, driven by its own intellectual agenda, its own methodological perspectives, and its own theoretical approaches."[1125] In his view, the distinction in

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[1122] QC10.
[1123] *Skapinker v Law Society of Upper Canada* [1984] 1 SCR 357.
[1124] Macdonald, "Still 'Law' and Still 'Learning'?" *supra* note 5 at 15.
[1125] *Ibid*; note that this is another take on the genuine pluralism recommended in by Arthurs, see *Arthurs Report*, *supra* note 5 at 153.

institutional cultures that the present inquiry demonstrate could, and even should lead to different headings and course organization in the law Faculties. In his own study, Sandomierski also recently remarked that "no school […] has gone the way of reorganizing the curriculum significantly away from the Langdellian conceptual categories,"[1126] though he later perceived curricular initiatives at UVic Law (transsystemic courses for its JD/JID program) and Ryerson Law (abandoning in part the semesterized course regimes) as having the potential "to up-end the conventional offerings and to imagine possible variants of the typical law school staples."[1127]

This is true of the three Faculties included here. Some small differences may suggest otherwise, but a closer look refutes this idea. For instance, Droit UMoncton created in the late 1990s a required course on *droits fondamentaux* (3 credits),[1128] which covers Charter rights and thus corresponds to DSJ UQAM's *droits et libertés* discussed above. At UAlberta Law, there is no required course solely dedicated to this field, but the same content is included in the year-round 1L constitutional law course (5 credits), whereas Charter rights are not part of Droit UMoncton's 1L *droit constitutionnel* (3 credits), which only comprises federalism issues.[1129] Course titles alone allow only for very limited comparisons. Clark gave eloquent examples of the discrepancies between course titles and commentators' assumptions as to what content such course would cover.[1130]

[1126] Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 411; see also Blanc, *supra* note 3 at 88 (concurring with Sandomierski that the immense resilience of the paradigmatic organisation of inherited from Langdell has largely inhibited transformations of legal education: "[l]es difficulté de faire de la question culturelle un facteur de transformation de l'enseignement du droit, résidaient, en partie, dans l'influence du modèle de Langdell dans l'organisation du raisonnement juridique et dans les modalités d'enseignement du droit.").

[1127] David Sandomierski, *Aspiration and Reality in Legal Education* (Toronto: University of Toronto Press, 2020) [forthcoming] at 333 [Sandomierski, *Aspiration and Reality in Legal Education*].

[1128] See Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 109—10.

[1129] See Droit UMoncton, Répertoire – 2019-2020, Description des cours, online: <https://www.umoncton.ca/umcm-droit/node/9> ("DROI 3234 Droits fondamentaux" and "DROI 1221 Droit constitutionnel I").

[1130] Clark, *supra* note 442 at 218—19.

Acknowledging this limitation and relying on course descriptions to verify whether different course titles refer to the same content, we can see that despite their distinctive conceptions of legal education and socio-political perspectives, the Faculties employ the overwhelmingly similar course vocabulary and architecture for their LL.B. or J.D. programs.[1131] Moreover, the course of study is largely organized in the same way with students taking four or five 12-or-so weeks long courses during two terms per year.[1132] We can observe, overall, "remarkable commonalities as opposed to immense differences."[1133] This signals that the design and organization of building blocks of legal knowledge correspond to shared epistemological premises about law and legal education in spite of their different institutional cultures.

One participant at DSJ UQAM affirmed that DSJ UQAM marked its unique approach in the title it gives to courses, the content of them even when titles are more classic, and more generally the architecture of its program:

> QC05: On le voit juste dans le libellé des cours. Des cours de droit social, des cours de droit du travail, des cours sur le chômage au bac, écoute c'est la seule université au Québec, voire au Canada, qui va avoir ce cours-là. Donc il y a un marqueur qui est très très fort dans les libellés de plusieurs cours. Par la suite, il y a les cours de base, en droit de la responsabilité, en criminel, etc. ; encore là il y en a beaucoup qui sont connotés. Ils sont structurés de façon vraiment à passer un message qui est quand même assez clair : comment on peut mobiliser le droit pour poursuivre des objectifs de justice sociale. Bon dans le libellé des cours, sur la façon dont on construit le contenu du cours, c'est là, par la suite on le voit dans la construction du contenu des programmes.[1134]

Differences remain greater between DSJ UQAM and the two common law Faculties in this study than among the two latter. Even when looking at the LL.B. curriculum of other civil law Faculties, DSJ UQAM's

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[1131] See Appendix C, *below,* for a comparison of the required components of the Faculties' LL.B. or J.D. programs.
[1132] Something two participants (NB01, NB08) contrasted with the Oxford tutorial regime where students only take two courses at a time over the course of an academic organized in three eight-weeks long sessions.
[1133] See AB06, quote accompanying *supra* note 1114.
[1134] QC05.

course *découpage* stands out slightly more than other that of its counterparts. It appears that this Faculty expresses its institutional culture more distinctively in the architecture of its LL.B. curriculum.

Nevertheless, we need to consider two nuances. First, a participant's remarks suggest that some nurture the distinctive meanings attributed to certain courses, while abandoning other components of the curriculum to mainstream conceptions:

> QC08: Il y a des cours ici qui se donnent nulle part ailleurs quand même, je pense à droit du logement, […] droit psychiatrique, […] etc. […] Il y a une dissension […] implicite […] sur une certaine conception de la mission. En fait, pour certaines personnes, c'est le droit social, le droit du travail, etc. C'est comme si on réalisait notre mission simplement parce que on a des cours dans ces domaines là, qui sont des cours qui ne sont pas nécessairement donnés ailleurs, mais dans les faits dans les autres matières, tant pis on laisse ça comme ça.[1135]

Therefore, it is not throughout its LL.B. curriculum that DSJ UQAM expresses its unique culture, but rather in discrete components of it.

Second, several participants commented on the fact that DSJ UQAM's course *découpage* used to distinguish their Faculty more clearly from others. For instance :

> QC07: À l'origine, lorsque le programme a été ouvert, […] les cours étaient enseignés de façon assez différente : plutôt [que] par catégorie de domaine, on enseignait beaucoup par problème. Donc on pouvait dire pour enseigner le droit de la responsabilité, droit contractuel, droit administratif, droit des biens, tout ça, on partait d'un cas. On [disait] : « Jean a besoin d'une voiture », donc on va examiner les options : la location, donc on va regarder toutes les règles qui touchent la location ; l'achat, on examinera les règles de propriété, […] tatata, c'est quoi les règles du contrat de vente, les garanties associées, donc le droit de la consommation. Tout ça était fait de manière intégrée, un peu comme on fait maintenant en médecine. [Ensuite] on dit « Jean a pris sa voiture, et il fait un accident », donc les enjeux de responsabilité, puis ensuite s'il y avait une assurance, les enjeux de droit administratif qui peuvent toucher— donc c'était organisé autour de problème et […] les problèmes pouvaient être construits autour des besoins de groupes communautaires. Un peu comme des cliniques au le fond, mais c'était vraiment au cœur du programme.[1136]

[1135] QC08.
[1136] QC07.

In the original design of the program, the last year of study (fifth and sixth terms) were dedicated to courses of the type described here. The students had already learned how to qualify issues legally in courses organized around the traditional legal categories (second and third term) and had also been exposed to the realities of legal practice and people's legal problems during their mandatory internship (fourth term). They could thus work toward the resolution of concrete situations thanks to the theoretical and practical knowledge they had previously acquired.[1137] The courses organized in this way bore titles such as the following: *Automobile; Citoyens face au pouvoir; Droit et le travailleur; Logement, habitation et immeubles; Sécurité du revenu; Syndicalisme; Endettement.*[1138]

However, the same participant explained that this program architecture had not lasted very long and offered the following reasons:

> QC07: Ça se fait assez bien quand on a des petits groupes, mais graduellement il y a eu une augmentation du nombre d'étudiants, et ça devient plus difficile d'enseigner de cette façon-là. Et avec le temps, il y a eu des cours plus standards qui se sont créés.[1139]

Another participant affirmed that courses organized around issues and situations such as that described above would correspond better to DSJ UQAM's aspirations and sense of mission:

> QC08: Pour moi [la justice sociale] est quelque chose qui devrait être un élément de réflexion dans tous les cours, […] dans toutes les matières, dans tous les domaines. Je pense qu'il y a des enjeux, qui sont différents bien entendu, mais qui sont très très concret dans l'ensemble de domaines. Donc je pense que si on voulait pousser notre mission pour de vrai, on devrait par exemple construire des cours qui ne seraient plus « obligations » « personnes » et « compagnies », mais beaucoup plus autour d'enjeux sociaux. […] Ça serait beaucoup plus cohérent avec notre mission. Donc je ne sais pas, des cours sur « itinérance », des cours sur « les jeunes », bon c'est un ensemble de situations, de groupes, d'institutions, je n'ai pas nécessairement des exemples comme ça, mais je pense que ça permettrait de rendre très concrète notre mission.[1140]

[1137] See MacKay, *supra* note 322 at 80—83.
[1138] See e.g. UQAM, *Annuaire 1979-1980 Études de premier cycle,* (Montreal: UQAM, 1979) at 341—42, online: <https://registrariat2018.uqam.ca/statistiques-officielles/> [UQAM, *Annuaire 1979-1980*]
[1139] QC07. Compare e.g. UQAM, *Annuaire 1989-1990* (Montreal: UQAM, 1989), online: <https://registrariat2018.uqam.ca/statistiques-officielles/> at 182 to with UQAM, *Annuaire 1979-1980*, *supra* note 1138 at 341—42 (10 years later, courses titles had become a lot more standard, along the lines of "law of X domain").
[1140] QC08.

The same participant later recalled that this had initially been attempted at the Faculty and explained the later adoption of more traditional *découpage* as follows:

> QC08: [Les fondateur.rice.s du DSJ UQAM] ont eu des initiatives qui étaient vraiment très intéressantes. Par exemple ce que je [mentionnais] tout à l'heure d'enseigner par thème et non par domaine de droit, ils l'ont fait quelques années ici, et ça je pense que c'était vraiment porteur mais le problème ça restait le barreau. Parce qu'après les étudiants n'étaient pas formé « style barreau », ça devenait un peu compliqué pour eux de réussir. Ils ont dû se rabattre sur une formation plus classique je dirais.[1141]

Strikingly, one Droit UMoncton participant offered a similar discourse favoring the use of issues and situations rather than traditional doctrinal categories. However, their arguments did not relate to their Faculty's mission but more generally to a better preparation for the practice of law:

> NB01: [Dans les années 2000, on proposait] des cas pratique où il y avait du droit des biens, délits, et droit des contrats. [..] On le voit moins maintenant. […] C'est très utile car en pratique un client ne vient pas dans le bureau en disant qu'il a un problème de délit. […] On parlait de regard transversal, d'approche transversale.[1142]

The transversal exercises mentioned here were not reflected in a different courses *découpage* but rather in assignments or exams shared by several professors teaching traditional courses. The same participant affirmed that the Faculty would encounter great resistance for the local bar if it tried to organize courses in non-traditional ways.[1143]

We can see from the two participants quoted here that law Faculties do not decide how to organize their curriculum and title their courses in a vacuum. They respond to the explicit requirements and implicit expectations of law societies (and now the FLSC) who decide whether their degree will enable graduates to practice. At UAlberta Law, a participant affirmed that the requirement for J.D. students to

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[1141] QC08. See also MacKay, *supra* note 322 at 93 ("il est nécessaire de rappeler que le programme des sciences juridiques ne vise pas essentiellement à former des étudiants qui se destinent au Barreau. […] Nous avons réussi à créer un programme qui intègre des analyses sociales, politiques et économiques dans le champ du droit et nous entendons maintenir et développer cette perspective, quels que soient les résultats des diplômés aux examens du Barreau. Nous refusons de céder aux pressions faites par le Barreau pour imposer un profil obligatoire de cours qui détermine des parties si larges du programme et conditionne tellement les étudiants qu'il réduit à toutes fins pratiques les études de premier cycle à une anti-chambre des officines d'avocat.").

[1142] NB01.

[1143] NB01.

take a course in Professional Responsibility and in Administrative Law, at a time when this was not the norm in common law Faculties, was "a response to the [local] bar."[1144]

Faculties also respond to students' own expectations. A DSJ UQAM participant expressed it in the following way:

> QC03: Le [LL.B.] c'est un [diplôme] qui mène à un statut de professionnel. Donc on a une certaine obligation de bien former nos étudiants pour passer les examens, et ensuite être de bons professionnels. Parce que si on ne fait pas ça on va perdre notre crédibilité, ça reste un impératif pour nous. Ce qui a une incidence sur les cours qu'on offre, sur le tronc commun, sur le cheminent qu'on propose à nos étudiants. On n'a pas une liberté absolue. On ne pourrait pas dire « les étudiants qui arrivent chez nous on les bourre de cours théoriques puis de philo du droit, puis d'histoire du droit, puis allons-y, dix cours obligatoires d'histoire ou de philo puis de droit et société puis d'approches externes. » Non, on ne peut pas faire ça. En deuxième et troisième cycle c'est autre chose. Les étudiants viennent chercher une spécialisation, ils s'attendent peut-être à ce genre de formation-là, donc on a peut-être une liberté un peu plus grande de ce côté-là en termes d'innovations, et on peut sortir des sentiers battus en deuxième ou troisième cycle ou dans des programmes alternatifs qui ne sont pas nécessairement des programmes professionnalisant comme le [BRIDI].[1145]

Debating the perennial issue of the relative place of electives and required courses in legal education early in the 20th century, the Dean of the University of Chicago Law School had already demonstrated that undergraduate law students often behave as if certain courses were required, even if they truly have the choice whether to take them.[1146] After the sharp decrease in required courses in

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[1144] AB07.

[1145] QC03. Compare MacKay, *supra* note 322 at 93 (affirming in 1979 that the Faculty rejected any sense of obligation to train students for the bar exam, see quote reproduced at *supra* note 1141, notably: "Nous refusons de céder aux pressions faites par le Barreau pour imposer un profil obligatoire de cours qui détermine des parties si larges du programme et conditionne tellement les étudiants qu'il réduit à toutes fins pratiques les études de premier cycle à une anti-chambre des officines d'avocat.").

[1146] See James Parker Hall, "Practice Work and Elective Studies in Law Schools" (1902) 1:10 Am L School Rev 328 at 336 ("the principal law courses are generally elected by all but a small percentages of students," relying on course enrolment statistics from the few American law schools where an electives system was in place, i.e. Stanford, Chicago, Columbia, Harvard, Wisconsin, Northwestern). Note that the courses Hall included in this category (e.g. equity, evidence, sales, wills, property, corporations, agency, bills and notes) were the same as those defined as most important by Huffcut, then President of the Association of American Law Schools, in his own arguments against the elective system, see H Ernest W Huffcut, "The Elective System in Law Schools" (1904) 27 Ann Rep Am B Assoc 570 at 579 (affirming that "many students under an elective system choose the path of least resistance or of most agreeable aspect").

Canadian law Faculties in the 1970s onwards,[1147] students overwhelmingly chose "bread and butter" courses, i.e. those that professional orders signalled as important for future practice.[1148] In Rod Macdonald's words, students are inculcated with expectations that their curriculum ought to be instrumentalist, pragmatic, and formalist:

> Students are inculcated with the belief that education has no value on its own; it is only useful as a means to some other end (instrumentalism). They are inculcated with the belief that understanding the world is an unworthy endeavour; as Marx affirmed, the point is to change it (pragmatism). And they are inculcated with the belief that the only type of knowledge worth acquiring is explicit knowledge that is explicitly labelled; if one does not take a course called civil procedure, one does not learn civil procedure (formalism).[1149]

Students' perceptions of which elective courses they ought to choose is largely shaped by the representations law professors and law professionals make of them. For instance, although not officially required in either of the Faculties studied here, Insurance Law is often perceived among students in the three institutions as de facto required to prepare their legal careers. At UAlberta Law, the number of sections offered for this course in a single year testifies to the students' demand.[1150] At DSJ UQAM, the same course appears on the list of optional courses "that may be useful for Bar School" as per the Faculty's professional development centre.[1151] In New Brunswick it appears on the Law Society of New Brunswick's

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[1147] See also text accompanying *supra* note 1107.

[1148] See Edward Vink & Edward Veitch, "Curricular Reform in Canada" (1976) 28:4 J Leg Educ 437 at 438 (advocating for "some student 'reeducation' […] in order to quieten the loud demands of some for a 'practical" training); Clark, *supra* note 442 at 220—22; Christie, cited in Willis, *supra* note 32 at 241—42 ("Experience at Dalhousie and right across North America demonstrates that an optional curriculum in second and third years does not result in students flocking to 'bird' courses. There are exceptions but the law courses actually taken by ninety-five per cent of next year's graduates will differ only peripherally from what every body had to take ten years ago." [writing in 1976]); Perret, *supra* note 1063 at 248 (observing the same phenomenon in Quebec, where he affirmed that civil law Faculties decide which course should be required on the basis of their understanding of the course's relative importance in a generalist legal education rather than the topics that constitute the examinations of the professional orders, at 247—48); Rochette & Pue, *supra* note 99 at 183—85 (finding that most UBC Law students selected at least 60% of their courses within the "core" curriculum); see also Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 107—08.

[1149] Macdonald, "Still 'Law' and Still 'Learning'?" *supra* note 5 at 28.

[1150] For instance, 3 different sections were offered in 2017-2018.

[1151] DSJ UQAM'S Career Development Office (CPD) offers an indicative list of 16 courses "that may be useful for Bar School" (my translation), but recommends that students do not choose their electives on this basis, online: FSPD UQAM, Centre de Développement Professionnel, "Infolettre du 26 septembre 2016", <ofsys.com/T/OFSYS/SM2/390/2/S/F/6688/233/kecRSnJI.html> (offering "à titre indicatif une liste non exhaustive,

(LSNB) list of "recommended courses for law students,"[1152] which LSNB publishes with the following explicative note:

> Although students are not required to take these courses in order to qualify for admission as a student-at-law, the Law Society feels that these courses will provide basic knowledge of the substantive law required to facilitate the work of students-at-law during their articling period and will be useful throughout their entire legal career.[1153]

This set of pressures explains that we observe so much commonality across the Faculties in the *découpage* of their J.D. or LL.B. program. While DSJ UQAM, and even Droit UMoncton,[1154] had initially displayed a greater level of distinctiveness corresponding to their institutional culture, even they now display "ce qu'on peut appeler, sans y attacher aucun jugement de valeur, un conservatisme certain"[1155] in this regard.

Conclusion

Interesting patterns emerged from the interview data regarding academic programs. Regarding LL.B. and J.D. programs, professors accorded significance to relatively marginal differences, as powerful standardization forces have eroded the greater variations that once existed among them. Where political

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en ordre numérique (et pas en ordre d'importance), de cours complémentaires qui peuvent être utiles pour l'École du Barreau.").

[1152] Law Society of New Brunswick, "Recommended Courses", online: <lawsociety-barreau.nb.ca/en/becoming-a-lawyer/recommended-courses-for-law-students> [LSNB, "Recommended Courses"]; see also Clark, *supra* note 442 at 219—20 (explaining that in 1985, LSNB was concerned by the trend toward optionalization of the curriculum in law Faculties and issued a list of 16 courses recommended for students intending to practice in New Brunswick; the list included, among others, "Administrative law, Business Organizations, Taxation, Wills and Trusts, and Family Law [but excluded] Commercial Law").

[1153] LSNB, "Recommended Courses", supra note 1152 (including for instance: creditors rights, real estate law, wills/estate and trust, insurance law, employment law, family law).

[1154] See Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 107 ("après un semestre de fonctionnement, le doyen fondateur, Pierre Patenaude, sous la rubrique 'L'originalité de la Faculté', souligne que l'un de ses caractères est de pourvoir aux besoin de la communauté francophone hors Québec et il justifie par ce caractère l'inclusion dans le programme de cour tels que le droit et la pauvreté, le droit des minorités, le droit des coopréatives, etc.").

[1155] *Ibid* at 110 (see also *ibid* at 106: "le programme de la première année d'études, telle [sic] qu'il se présente en 1978 (et encore aujourd'hui [1998]), est des plus classiques.").

economy pressure from regulatory professional bodies and students has been far less, Faculties, and most notably DSJ UQAM, express greater uniqueness in shaping their other programs. The meanings and importance accorded to the different programs echoed and relied on those previously analyzed regarding the mission and the structures of each Faculty.

Thanks to the layers of meanings that we have analyzed in all three Faculties so far, we now have a rich portrait of institutional cultures at DSJ UQAM, UAlberta Law and Droit UMoncton. Throughout the two preceding chapters and the present one, we can gain a sense that professors experience such bundles of meanings as endowed with a normative character. A participant offered a befitting summary of the role they perceived institutional cultures to play in legal education:

> QC05: Tout ça en fait ça constitue une masse qui n'est pas claire, comme une nébuleuse. Il y a comme un centre gravitationnel, on n'est pas capable de l'identifier clairement, de le nommer précisément, mais ce centre gravitationnel là il y a beaucoup de choses qui viennent s'agglutiner autour, ça exerce énormément de force sur tout le monde. Des forces de répulsions, pour certains, des forces d'attraction pour d'autres, mais ça exerce énormément de force, en dépit du fait qu'on ne sait pas comment le définir clairement. Mais ça reste. [Par exemple à DSJ UQAM] la justice sociale, c'est vague, c'est vaste, mais en même temps c'est quand même assez précis, il y a une idéologie qui sous-tend ça ici en tout cas, puis en même temps on ne sait pas ce que c'est exactement. Mais ça exerce énormément de force d'attraction.[1156]

From the interviews and observations analyzed in this and preceding chapters, we can see in each Faculty that there is such an intangible, nebulous, social reality underlying many aspects of legal education. Whether they express adhesion or rejection, professors place this cloudy mass at the heart of their discourses. It competes with other gravitational forces, such as those exercised by professional bodies and students, to shape legal education at a given institution.

This metaphor offers an apt pathway to understand the complex but important role of institutional cultures in Canadian legal education. To reconcile it with the analogy of "path dependence"

[1156] QC05 (primarily speaking about "Les titres de cours, les contenus des cours, les titres de programmes, même les profs.").

used by Sandomierski,[1157] we could say that the cultural features of each institution analyzed thus far exert a gravitational force on professors, pulling them toward prolonging the same paths and hindering the possibilities of innovation. Breaking away from this path dependence requires a force greater than the gravitational attraction of institutional cultures; exercising agency to explore in a new direction is possible but harder than doing otherwise. This describes the normative weight of institutional cultures in law professors' decisions to pursue new possibilities in legal education at their Faculties.

This chapter has revealed the culturally contingent character of many assumptions regarding the importance of a J.D. or LL.B. program in a law Faculty as well as the educational components of such a program. It highlighted the possibility of strong and differentiated programs, at the undergraduate or graduate level, different from the J.D. or LL.B.; it also showed how the significations attached to required components and the organization of the curriculum also rely on similar assumptions. Becoming aware of this phenomenon and its importance in legal educator's ability to challenge the status quo enables them to imagine and pursue new horizons in legal education. Previous authors had analyzed the strong harmonizing forces, coming from within as well as outside of the legal academia, pushing toward greater harmonization of legal education programs and pedagogies.[1158] The analysis of the cultural contingency of attitudes on academic matters in law Faculties throughout this chapter equips legal educators with new tools to take conscience of the normative phenomena and its hindering effect on their agency, as well as empower them to broaden the range of options they consider when tackling today's and tomorrow's challenges.

The next chapter focuses on the ongoing dialogues within law Faculties regarding reconciliation with Canada's Indigenous Peoples. While the reader will find additional elements to complete our portrait

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[1157] See Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 385ff.
[1158] See e.g. Arthurs, "The Political Economy of Canadian Legal Education" *supra* note 87 and Macdonald & McMorrow, *supra* note 236, discussed at *supra* note 610, as well as Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 385ff.

of DSJ UQAM, UAlberta Law and Droit UMoncton's institutional cultures, it primarily offers an illustration of the role of cultural characteristics in Faculties' responses to a specific and prominent contemporary challenge.

Chapter 5: Understanding the Ongoing Dialogues on Indigenous Issues Through the Lens of Institutional Cultures

Introduction

On the 30th of August 2017, at 12:30 PM, the Dean of the Faculté de Science Politique et de Droit (FSPD) welcomed the incoming students into UQAM's law and political science programs. Toward the beginning of his address, he included an acknowledgment that the meeting was taking place on the unceded traditional territory of local Indigenous peoples. One hour later, as the FSPD's governing body (*conseil académique facultaire*) met, one of the professors distanced himself from the Dean's land acknowledgement in unequivocal terms. The said professor proclaimed that he objected to the Dean's acknowledgment, insisting on communicating his disapproval of the practice to all attendees. These combined events happened on the first day of my fieldwork, stressing the sometimes contentious, and indisputably current character of Indigenous issues in Canadian law Faculties.

The data I collected during interviews and observations allowed me to identify patterns in approaches and attitudes toward Indigenous issues in legal education. These patterns are sometimes ones of commonality across Canada and sometimes of diversity echoing the differences in institutional cultures from one Faculty to the next. First, I observed that the Truth and Reconciliation Commission of Canada (TRC) Calls to Action have been transformative in shaping discourse and attitudes toward Indigenous issues in legal education. Whether legal educators embrace it or object to it, and whether similar previous reports or literature had already made an impact on them, the TRC report and Call to Action 28 occupy a central place in discourses about legal education and Indigenous issues. Second, the importance of Indigenous issues for each Faculty differed according to participants' perception of Indigenous presence in their social and culture space as well as the extent to which Indigenous issues resonated with the Faculty's self-defined mission. For instance, we can see that where the presence of Indigenous Peoples

has not been a tangible part of social reality, their sudden inclusion in discourses is easily perceived as artificial. On the other hand, we can see greater engagement even where the social and cultural context does not seem to warrant it when there is a deep-rooted political and intellectual sensibility to the issues touching Indigenous communities.

As the discourse on Canadian legal education too-often relies on broad brushstrokes, identifying such patterns and understanding them in context is crucial to engage meaningfully in the dialogue about Indigenous issues in legal education. Analyzing discourses and attitudes in three law Faculties on a socio-political theme that animates contemporary debates in Canada provides an opportunity to understand better how they perceive their role in society, and the role of their respective institutional cultures. The theme of reconciliation between mainstream Canadian society and Indigenous Peoples offers the dual advantages of being prevalent in public debate across Canada nowadays and having manifold implications for legal education specifically. Reconciliation has become a central theme of public debates and policies in Canada in the past two decades.[1159] The first section of this article will provide context for the recent rise of this theme in the public space; it will also demonstrate that the TRC Calls to Action pushed this issue to the forefront of contemporary debates on legal education in Canada (*section 1*).

I will then analyze patterns of participants' engagement with Indigenous issues in interviews (*section 2*). This broad picture will reveal a sharp contrast between UAlberta Law and Droit UMoncton, whereas in previous chapters we often observed the most marked divide to be between UAlberta Law and DSJ UQAM. We will explore this phenomenon further in later sections. I will also provide additional

[1159] The word "reconciliation" denotes a certain political project, largely driven by mainstream Canadian institutions; it could be contrasted with notion such as "assimilation" (the key policy objective of Canadian governments for most of their history) or "decolonization" for instance. In the present work, I will speak of "reconciliation" as it is the prevalent vocabulary and philosophy in Canada today, while remaining aware that it constitutes an "abstract aspiration" (John Borrows, "Unextinguished: Rights and the Indian Act" (2016) 67 UNBLJ 3 at 4). There are ongoing political struggles between various actors to define its meaning and shape its implementation. On the use of "reconciliation" in South Africa and the construction of a "post-evil" discourse, see e.g. Robert Meister, *After Evil* (New York: Columbia University Press, 2011) at 50—82.

methodological remarks to highlight the limitations of this exercise, such as differences in interviewing strategy between early and later interviews. Even with this caveat, we will see that the institutional patterns are remarkable.

The third section will focus on the perceptions of proximity with and importance of Indigenous issues at each Faculty in light of their social and cultural context (*section 3*). It will demonstrate how Indigenous issues and the idea of reconciliation resonate differently depending on the demography, history, and society of each Faculty. It will provide insights allowing us to reach a better understanding of the patterns examined throughout this chapter.

As the opening paragraph highlights, the first aspect of Indigenous issues in legal education that I encountered during my fieldwork was the question of land acknowledgments. It is not specific to legal education and plays out in all kinds of situations. I will dedicate the fourth section of this chapter to participants' attitudes on this matter (*section 4*) to reflect the fact that while legal education faces unique questions regarding the place of Indigenous legal perspective in the teaching of and research about law in Canada, it is also confronting some of the same questions as the rest of society. This will also serve to remind us that the place of Indigenous legal perspectives in the undergraduate law curriculum is not legal educators' only concern.

Harland articulated that we have shifted from debating *why* Indigenous laws matter in Canadian legal education to *how* they should be taught.[1160] Napoleon, Friedland, Borrows and Mills have put forth

[1160] Fraser Harland, "Moving from the Why to the How of Indigenous Law" (2016) 61:4 McGill LJ 721 [Harland, "from the Why to the How"]. See also Aaron Mills, "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today" (2016) 61:4 McGill LJ 847 at 856 ("It's becoming part of the orthodoxy of legal education in Canada that Canadian law needs to relate with Indigenous legal orders."). But see Karen Drake, "Finding a Path to Reconciliation: Mandatory Indigenous Law, Anishinaabe Pedagogy, and Academic Freedom" (2017) 95:1 Can B Rev 9 (making the case for mandatory inclusion of Indigenous legal orders in the Canadian law curriculum, indirectly showing that the argument has not yet become trivial).

robust proposals to move forward in this direction.[1161] As Hewitt argues, curricular matters are only one part of the equation, and we need to consider deeper institutional changes to move forward.[1162]

We will turn to attitudes regarding the inclusion of Indigenous issues and perspectives in the curriculum in the next section, whether in dedicated mandatory courses as recommended by the TRC or within traditional courses (*section 5*). This topic will lead us to finally consider attitudes toward the recruitment of Indigenous faculty members and students into each Faculty's community (*section 6*). The issues raised in these two sections are intimately connected to each other and dominate the discourse about Indigenous issues in legal education. We will see there again that patterns specific to each Faculty emerge from the data, echoing the meanings attributed to other aspects of legal education that we have explored in ascertaining their respective institutional cultures.

My goal throughout this chapter is not to offer prescriptive arguments as to how Canadian legal education should assume its responsibilities in the pursuit of reconciliation. I take seriously the "duty to learn,"[1163] and I recognize my own lack of knowledge regarding Indigenous legal cultures. I thus defer to experts, such as those cited above, to identify challenges and avenues for reform in Canadian legal education. My objective here is a more modest contribution.

[1161] Val Napoleon & Hadley Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions through Stories" (2016) 61:4 McGill LJ 725; Borrows, "Outsider Education", *supra* note 16; John Borrows, "Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education" (2016) 61:4 McGill LJ 79 [Borrows, "Heroes, Tricksters, Monsters, and Caretakers"]; Mills, *supra* note 1160. See also Hannah Askew, "Learning from Bear-Walker: Indigenous Legal Orders and Intercultural Legal Education in Canadian Law Schools" (2016) 33:1 Windsor YB Access Just 29.

[1162] Jeffery G Hewitt, "Decolonizing and Indigenizing: Some Considerations for Law Schools" (2016) 33:1 Windsor YB Access Just 65.

[1163] Justice Lance S G Finch, "The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice" (Paper delivered at the British Columbia Continuing Legal Education "Indigenous Legal Orders and the Common Law" Conference, Vancouver, 15 November 2012) at 7, online (pdf): *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec* <https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Documents_deposes_a_la_Commission/P-253.pdf>.

First, given the preeminence of this topic in Canadian legal education today, examining the meanings attached to some of its facets provides an opportunity to tease out additional dimensions of DSJ UQAM, UAlberta Law and Droit UMoncton's instutional cultures. While the aspects examined in previous chapters are largely perennial in legal education, attitudes on Indigenous issues are rapidly changing; observing them at this time offers insights regarding the shaping of cultural elements at Canadian law Faculties. In that sense, this fifth chapter is a continuation of my portrayal of the webs of meanings of each law Faculty. It is why I rely on the same methods, interviews and observations, instead, for instance, of examining in detail the policies or pedagogies deployed in connection to Indigenous issues at these institutions.

Second, this chapter also offers an opportunity to showcase the pertinence of institutional culture as a framework for understanding legal education. Leveraging the lessons learnt about each Faculty in preceding chapters, we will see how cultural features of each institution correlate with their approach to reconciliation and Indigenous issues. The greatest contribution of this last segment of my thesis will be to demonstrate the importance of the Faculties' cultural characteristics to apprehend their responses to a prominent contemporary challenge. By showing legal educators the normative force that institutional cultures hold in such processes, I aim to empower them to exert their agency and consider new alternative paths for Canadian legal education. Whether they pursue such paths will then be up to them.

I will therefore offer contextualized insights into how the dialogues on such matters are unfolding in select Canadian law Faculties. In so doing, I hope that my research will strengthen legal educators' collective understanding of the diverse realities of legal education across Canada beyond the anecdotal information they may already posses on other law Faculties. Establishing the truth for reconciliation requires an acknowledgment that while the challenge is common, it bears different meanings for different

Faculties.[1164] Engaging meaningfully and respectfully with Indigenous issues and legal orders in legal education is a formidable challenge; my work here should present Canadian law Faculties with a mirror through which they can perceive themselves and their peers more accurately, and choose future directions based on refined reflections. Beyond my own analysis, it also gives others access to data that would otherwise remain unwritten and unpublished. This timestamped and contextualized data will provide a milestone for future researchers to assess and understand our journey on these important questions. Lastly, my project is the first empirical project of this scale on legal education in Canada to come after the TRC Call to Action 28, and therefore addresses a gap in the literature.[1165] However, it is not an assessment of the Faculties' progress toward responding to the TRC Call to Action 28; at least one other empirical research project is underway to explore this very aspect at five different law Faculties in Canada.[1166]

1. Pivotal Character of the TRC Calls to Action

The question of the relationship between the Canadian state and Indigenous Peoples in what is now Canada constitutes a prevalent socio-political issue across the country. The Oka crisis in 1990 sparked the creation of the Royal Commission on Aboriginal Peoplesand certainly started a process of widerspread engagement in the Canadian public with Indigenous issues.[1167] In the following years, recognition of the

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[1164] See also Borrows, "Issues, Individuals, Institutions and Ideas", *supra* note 16 at xiii—xiv and Borrows, "Outsider Education" *supra* note 1161 at 10 (acknowledging that the intensity and type of engagement will vary by institution).

[1165] Sandomiersky, for instance, did not substantially engage with Indigenous issues in legal education in his thesis, but adressed the matter in a revised version of the same work coming out in a book format a few years later, see Sandomierski, *Aspiration and Reality in Legal Education, supra* note 1127 at 213—18.

[1166] Kory Smith, a doctoral candidate in sociology at Carleton University is preparing a thesis provisionally titled "Unsettling the Colonial Structure of Canadian Legal Education: An Examination of Canadian Law Schools' Responses to the Truth and Reconciliation Commission's Call to Action 28."

[1167] *Report of the Royal Commission on Aboriginal Peoples, Vols 1-5* (Ottawa: Canada Communication Group, 1996), online: *Library and Archives Canada*, <www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/final-report.aspx> [*RCAP Report*]. The Oka crisis consisted in a two-and-half months long armed standoff between Mohwak warriors and the Canadian army, as the former blocked access to a land on which

harmful and discriminatory character of Canada's long-standing Residential Schools grew, leading for instance to the Indian Residential School Settlement Agreement in 2007 and the official apology to former students of Indian Residential Schools the following year.[1168] The TRC final raport in 2015 represents a culmination of this long process. Through the past decades, we can see a change of paradigm in public discourse, now focused on pursuing "reconciliation." It takes the form of a general awakening among non-Indigenous Canadians to the history of violence and broken promises suffered by Indigenous Peoples at the hand of the Canadian state, and a growing recognition of the equal dignity of Indigenous cultures compared to dominant Canadian cultures. The works of the TRC has been a catalyst in this process.

There are many more facets to the recent history of the relationship between Indigenous Peoples and the Canadian state than the TRC, as the later National Inquiry into Missing and Murdered Indigenous Women and Girls (NIMMIWG) demonstrated,[1169] or the continuing gap in living conditions between many reserves and mainstream Canadian society illustrate.[1170] The legal world has also engaged in public debates regarding, for example, the inadequacy of the *Indian Act*[1171] and the adoption and implementation of *UNDRIP*.[1172] The developments on the question of residential schools nonetheless

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they had long historical claims but where the municipality of Oka, Quebec, was attempting to erect a gold course (see *ibid* at vol 1, 196—98).

[1168] Governement of Canada, *Statement of apology to former students of the Indian Residential Schools* (11 June 2008), online: *Indigenous and Nothern Affairs*, <https://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649>.

[1169] See National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place* (Gatineau: National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019), online: <www.mmiwg-ffada.ca/final-report/> [NIMMIWG *Final Report*].

[1170] For instance, the 2016 Census revealed that 44% of First Nations with registered or treaty Indian status living on reserves resided in a dwelling that needed major repairs, as opposed to 14% off reserve and only 6% of the non-Aboriginal population, see Statistics Canada, "The housing conditions of Aboriginal people in Canada" (25 October 2017), Catalogue no. 98-200-X2016021, online: <https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016021/98-200-x2016021-eng.cfm>. Another telling example is that as of 31 May 2019, the Canadian government counted 58 long-term drinking water advisories on public systems on reserve in effect, see Indigenous Services Canada, "Ending long-term drinking water advisories", online: <www.sac-isc.gc.ca/eng/1506514143353/15333171306602>.

[1171] RSC 1985, c I-5.

[1172] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007).

marked a turning point in public awareness and perception of Indigenous issues in general as well as the place of this topic in the public debate nationally.[1173] A high point of this debate happened in 2015 when the TRC issued its final report and labelled Canada's Aboriginal policy for over a century a "cultural genocide."[1174] In order to "advance the process of Canadian reconciliation," the TRC also issued recommendations in the form of 94 Calls to Action, including the following addressed specifically to legal educators:

> 28. We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.[1175]

The legal context that led to the TRC, the deeply political nature of the process, and the publicity it garnered ensured that such a call to action could not go unnoticed in the legal education community. While some law Faculties had already been engaging with Indigenous issues generally for some time, most often from the perspective of improving access to legal education for Indigenous students,[1176] this public

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[1173] See e.g, Environics Institute for Survey Research, *Canadian Public Opinion on Aboriginal Peoples Final Report* (June 2016) at 19, 29—31, 35, online (pdf): *National Centre for Truth and Reconciliation*, <nctr.ca/assets/reports/Modern%20Reports/canadian_public_opinion.pdf> (showing an evolution in responses between 2008 and 2016 to questions regarding challenges facing Aboriginal peoples, the Indian residential schools, and the role of individual Canadians in bringing about Reconciliation).

[1174] TRC, *Final Report*, supra *note 14* at 1.

[1175] TRC, "Calls to Action", *supra* note *14*. The TRC also addressed a very similar call to the Federation of Law Societies of Canada (no. 27), as well as to other educational institutions: medical and nursing schools (no. 24), Kindergarten to Grade Twelve instructors (nos. 62 & 63), schools of theology and religious training centres (no. 60), and journalism programs and media schools (no. 86).

[1176] The eldest sustained initiative in this direction is probably the Program of Legal Studies for Native People at USaskatchewan established in 1973 (see Roger Carter, "University of Saskatchewan Native Law Centre" (1980) 44 Sask L Rev 135); see also Donald Purich, "Affirmative Action in Canadian Law Schools: The Native Student in Law School" (1986) 51 Sask L Rev 79; Hugh MacAulay, "Improving Access to Legal Education for Native People in Canada" (1991) 14 Dal LJ 13). Beyond the question question of access, see also Borrows, "Issues, Individuals, Institutions and Ideas" *supra* note 1164 at xiii—xvi (describing successive waves of reforms in Canadian law Faculties toward greater engagement with Indigenous issues); Kerry Sloan, *A Global Survey of Indigenous Legal Education and Research* (Indigenous Bar Association, Access to Justice and Reconciliation, 2013), online (pdf): <https://indigenousbar.ca/indigenouslaw/wp-content/uploads/2013/04/KLS-World-Indigenous-Legal-Education-Complete1.pdf> at 46—54 (summarizing initiatives at 16 universities teaching law across Canada to include Indigenous issues a few years before the publication of the TRC final report).

and forceful invitation, in a context of increasing awareness and interest for the relationship between Indigenous Peoples and mainstream Canadian society, not only sparked renewed consideration but also shaped how legal educators would engage with the topic. A participant at UAlberta Law shared that efforts such as those aimed at reflecting the presence of Indigenous Peoples in society within the law Faculty were "unheard of" several decades ago.[1177]

There have been other marking events through which legal educators have engaged with Indigenous issues lately. In February 2018, in between my fieldworks, the trial and acquittal of Gerald Stanley for the fatal shooting of Colten Boushie, a member of the Cree Red Pheasant First Nation in Saskatchewan, ignited a large public debate about the absence of Indigenous jurors from juries, among other systemic biases against Indigenous persons in the criminal justice system.[1178]

Legal educators, like many other stakeholders, reacted publicly to this verdict and the systemic issues it raised. For instance, UWindsor Law issued a collective statement that read in part: "Canada has used law to perpetuate violence against Indigenous Peoples and too often protects those who commit acts of violence against Indigenous Peoples. Just like racism, law is learned. This means legal education is part of the problem too."[1179] A law professor at Queen's University took issue with this institutional position and published an opinion piece in the conservative newspaper *National Post* titled "The social

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[1177] AB03.

[1178] See generally Kent Roach, *Canadian Justice, Indigenous Injustice The Gerald Stanley and Colten Boushie Case* (Montreal: McGill Queens Press, 2019). The question of Indigenous participation in juries had already been the object of a dedicated inquiry in Ontario, see Hon Frank Iacobucci, *First Nations Representation on Ontario Juries: Report of the Independent Review* (2013), online: *Government of Ontario* <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/iacobucci/First_Nations_Representation_Ontario_Juries.html>.

[1179] University of Windsor Faculty of Law, "A Statement on Stanley Trial Verdict" (16 February 2018), online: <www.uwindsor.ca/law/2018-02-16/windsor-laws-statement-stanley-trial-verdict>; the version of the statement now available on the institutional website is dated 27 February 2018 and is identical to the original version approved by Faculty Council; the original publication can be found at <archive.li/oDZzM>.

justice revolution has taken the law schools. This won't end well" shortly after.[1180] Two of his own colleagues at Queen's responded with a piece in the *Globe and Mail* a month later, arguing that "law schools must be political."[1181] This series of public interventions are only a few among many contributions from legal educators to the public debate that followed the verdict in the Stanley trial.[1182]

They illustrate how events more discrete than the TRC's lengthy proceedings and reports, can also bring legal education communities to contend with social and political issues as they implicate Indigenous Peoples. Such events can certainly shape the conversations, and maybe the decisions, in law Faculties on how to engage with Indigenous issues. The official character of the TRC, the national scope of its extensive works, and the targeted requests it formulated conferred upon its final report an undisputable aura and authority that made it truly pivotal.

In all three institutions I visited, interview participants recognized the catalytic character of the TRC report with respect to legal education. One of the participants characterized it as "galvanizing."[1183] Another explained that the issues it raised "have been transformative in term of focus."[1184] Eight participants explicitly referred to the TRC or its report, most often to say that conversations about Indigenous issues in legal education in their community centred around responding to the Calls to Action. The same pattern can also be found in responses that did not mention the TRC by name, for instance at Droit UMoncton when participants started sharing their view on Indigenous issues in legal education by

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[1180] Bruce Pardy, "The social justice revolution has taken the law schools. This won't end well" *National Post* (27 February 2018), online: <http://nationalpost.com/opinion/the-social-justice-revolution-has-taken-the-law-schools-this-wont-end-well>.

[1181] Lisa Kerr & Lisa Kelly, "Yes, law schools must be political" *The Globe and Mail* (31 March 2018), online: <https://www.theglobeandmail.com/amp/opinion/article-yes-law-schools-must-be-political/>.

[1182] See e.g. Lisa A Silver, "Tracing the Likeness of Colten Boushie in the Law Classroom" (22 February 2018), online (pdf): *ABlawg*, <ablawg.ca/wp-content/uploads/2018/02/Blog_LAS_Boushie.pdf>; Lorne Sossin, "'Love and Hope' – How Colten Boushie's Death and Gerald Stanley's Trial Will Change Canadian Law" (14 February 2018), online (blog): *Dean Sossin's Blog*, <deansblog.osgoode.yorku.ca/2018/02/love-and-hope-how-colten-boushies-death-and-gerald-stanleys-trial-will-change-canadian-law/>.

[1183] AB09.

[1184] AB04.

positioning themselves on the question of a mandatory course on Aboriginal People and the Law, the object of the Call to Action 28. In a recording of the Orientation event at UAlberta in September 2017, which will be analyzed in greater detail below, we can hear that the Dean started his speech to the new students with a reference to the TRC Calls to Action and the efforts his institution was undertaking to respond to them.[1185] At this time, a dedicated working group within the FLSC is still considering the role it may play in the FSLC national requirements for common law degrees.[1186] Therefore, we can see that the TRC report, a few years after its publication, occupies a central place in the legal education discourse in Canada.

During the final drafting stages of this thesis, the NIMMIWG released its final report in June 2019. NIMMIWG and TRC share many characteristics in their setup and the publicity they received, as well as their respective finding of genocide and cultural genocide. It is too early to say whether NIMMIWG's conclusions and recommendations will have the same force as the TRC's. NIMMIWG specifically targeted some of its Calls to Justice to "attorneys and law societies,"[1187] "post-secondary institutions"[1188] and "all Canadians;"[1189] while we can hope for profound effects in many aspects of Canadian society, the absence of an equivalent to TRC Call to Action 28 explicitly calling on law Faculties to take on certain responsibilities suggests that the impact of the NIMMIWG will not compare to that of the TRC in the world of Canadian legal education.

The TRC Call to Action 28 constitutes a pivotal moment in Canadian legal education's engagement with Indigenous issues. Some engagement existed prior to the TRC report, and not all engagement

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[1185] UAlberta Law, "UAlberta Law Orientation 2017" (8 September 2017) at 00h:06m:36s, online (video): *Youtube*, <https://youtu.be/kgPU3QGH6lQ> ["UAlberta Law Orientation 2017" Video].
[1186] See e.g. FLSC, News Release, "Federation of law societies commits to effective response to TRC" (11 March 2016), online: <https://flsc.ca/federation-of-law-societies-commits-to-effective-response-to-trc-report/> (announcing the creation of the working group).
[1187] NIMMIWG *Final Report, supra* note 1169, vol 1b at 193 (calls 10.1.i—iii).
[1188] *Ibid* at 193—94 (calls 11.1—2).
[1189] *Ibid* at 199 (calls 15.1—8).

following it is the direct result of Call to Action 28. As we will see below, attitudes toward Call to Action 28 are mixed and some participants clearly rejected the recommendation. Nonetheless, the TRC report and Call to Action 28 have become significant cultural references for Canadian law Faculties, a locus of meanings, now shaping adhesion and critique to dominant attitudes regarding Indigenous issues. In a previous chapter, we saw that hiring decisions, especially to replace retiring key members, were pivotal moments for Faculties to engage with and express their self-conception of their mission.[1190] The TRC report has played a comparable role at the scale of the whole of Canadian legal education, that of a cultural pivot. The summary of "initiatives to ensure meaningful and effective engagement with the Truth and Reconciliation Commission Calls to Action" at each law Faculty in Canada compiled by the Council of Canadian Law Deans further shows that engaging with Indigenous issues is now universal among Canadian law Faculties and is done through the lens offered by the TRC Call to Action.[1191] We will see below how the perceptions of and attitudes toward such engagement is specific to each of the Faculty included here and varies by issues considered.

2. Patterns of Engagement

Examining whether, when, and how participants provided their views on the topic of Indigenous issues and legal education provides helpful insights with respect to the separate analysis of the content of their responses. First, not all participants expressed their views on the topic of reconciliation and legal education: only 24 of 30 interview participants explicitly engaged with the topic. It is important to bear in mind that the general theme of interviews was much broader, and that participants were invited to share their views on "the institutional cultures about legal education and the role they may play at select law Faculties across Canada." Nearly half of DSJ UQAM participants did not engage with this topic, whereas

[1190] See Chapter 2, Section 1, *above*.
[1191] *CCLD TRC Report, supra* note 15.

all but one did at UAlberta Law, and all of them did at Droit UMoncton. Differences in the range of topics tackled in interviews and the specific questions I asked participants prevent any significant conclusion fueling directly from differences in raw figures (e.g. that this topic would be more present at Droit UMoncton than DSJ UQAM). The initial interview guide I designed and relied on during the first few interviews did not include specific questions on Indigenous issues. Three of the six participants who did engage explicitly with the topic are the first three participants I interviewed at DSJ UQAM, which was the first leg of my fieldwork; in contrast, the last 18 participants I interviewed (at UAlberta Law and Droit UMoncton) all spoke on the topic. This is because I adapted the phrasing of some questions over time to invite participants to share their views on Indigenous issues and started asking questions mentioning explicitly this topic when the participants had not mentioned them themselves during the interview. As the importance of including this topic in my data became clear, I started using a twofold interview strategy based on a vague prompt to invite participants to talk about Indigenous issues (e.g. "*R: Do you see social or political issues of the day finding an echo in debates or discussion within the Faculty?*") and an explicit prompt toward the end of the interview if the participant had not yet referred to Indigenous issues explicitly (e.g.: "*R: A topic that we have not yet talked about today and that often comes up in discussions about legal education nowadays is that of Indigenous issues. Would you like to add anything on this topic?*").

We cannot infer much from the absence of the topic in six interviews besides that this topic was not sufficiently on the top of the participants' mind for them to mention it spontaneously in the course of the interview. These six participants would have engaged with the topic if I had offered the explicit prompt to them; we can assume as much from the fact that no participants explicitly asked about it refused to share at least some ideas on this theme. For this reason, mention of the topic after an explicit prompt and absence of the topic altogether can be considered as functional equivalents for the present purpose.

The following table (Table 5.1, *below*) presents a breakdown of the number of interviews by Faculty where the participants engaged with the topic, and the circumstances in which they did so.[1192]

	DSJ UQAM*	UAlberta Law	Droit UMoncton	Total
Engaged spontaneously	0	4	1	5
Engaged after vague prompt	5	6	0	11
Sub-total (spontaneous + vague prompt)	5	10	1	16
Engaged after explicit prompt	1	0	7	8
Did not engage explicitly	2	1	0	2
Sub total (explicit prompt + absence)	3	1	7	11
Total	8	11	8	27

Table 5.1: Summary of circumstances when participants engaged with Indigenous issues in interviews where the same two prompts strategy was deployed[1193]

The most significant result that this table shows is the contrast between UAlberta Law and Droit UMoncton regarding faculty members' engagement with the topic. There is a clear trend at UAlberta law to discuss Indigenous issues spontaneously or after only a vague prompt, and an equally clear opposite trend at Droit UMoncton to only engage with the topic after an explicit prompt.

Once we account for the methodologival discrepancy in the first few interviews at DSJ UQAM and retain only those where I implemented the same two prompts strategy as I later did at UAlberta Law and Droit UMoncton (eight of eleven), we can see that most eligible DSJ UQAM participants engaged with the

[1192] The category "engaged spontaneously" corresponds to the cases when the participant mentioned aboriginal issues in the general description of their institution; the category "engaged after vague prompt" corresponds to participants who mentioned the topic when asked about "contemporary socio-political issues"; the category "engaged after explicit prompt" corresponds to cases when participants only mentioned the topic after an explicit question about it; the "did not engage explicitly" category encompasses the interviews where the participants mentioned neither of the terms "reconciliation", "réconciliation", "indigenous", "aboriginal", or "autochtone." We must bear in mind that no participant in this last category was asked to engage with the topic through an explicit prompt.

[1193] * I excluded three interviews at DSJ UQAM where I had not deployed the two prompts strategy; these three interviews would otherwise inflate the number in the "did not engage explicitly" category.

topic after a vague prompt only. The trend in this Faculty in the circumstances leading participants to engage with Indigenous issues during my interviews therefore resembles that described at UAlberta Law.

3. Perceptions of Proximity & Importance

The previous section suggested that whether participants mentioned Indigenous issues spontaneously depend on how close to such issues were to the preoccupations of each Faculty. Let us now turn to the substance of participants' contributions to analyze if we can indeed ascertain different degrees of proximity with Indigenous issues for each institution. We will also situate participants' perceptions in their geographic and cultural context thanks to contemporary statistical data and historical information, as they often refer to such elements themselves. This will add to our portraits of each institution's cultural features.

One participant at UAlberta Law included the following comment when drawing a general portrait of the institution: "because we are in Western Canada, we have a community that has one of the highest urban population of Aboriginals, and that is something that shapes the university."[1194] Edmonton features a much larger Aboriginal population (76,205) than either Montréal (34,745) or Moncton (3,515).[1195] In fact, among Canadian cities, Edmonton is second only to Winnipeg with regards to the number of Aboriginal individuals living in the metropolitan area, even as other smaller urban centers feature higher ratios.[1196]

We must keep in mind that these facts are only one way to describe the presence of Indigenous individuals in the societies within which the three law Faculties evolve. They are an imperfect snapshot

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[1194] AB02.

[1195] Statistics Canada, *Census Profile, 2016*, Catalogue no. 98-316-X2016001, online: <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm> [Statistics Canada, *Census Profile, 2016*]. All figures for cities are based on Census Metropolitan Areas (CMA).

[1196] Winnipeg: 92,810 (12.2% of 761,540 inhabitants, compared to 5.8% of 1,297,275 Edmontonians), see *ibid*.

subject to the flaws of the method of collection and processing, as well as to the political climate of the time. For instance, Aboriginal identity here is based on self-identification by the Census respondents,[1197] and the figures available concern only those in private households. Despite these limitations, they provide an entry point to describe social reality thanks to comparable metrics.

The same participant's statement indicates that the numerical presence of Indigenous Peoples bears on the importance non-Indigenous inhabitants accord to Indigenous issues. The greater presence of Indigenous Peoples in the urban space in Edmonton and in Prairies society more generally coincides with the fact that all but one UAlberta Law participant spoke of Indigenous issues spontaneously or after a prompt as vague as a question about contemporary socio-political issues.[1198]

Inversely, the small presence of Indigenous Peoples in New Brunswick and Acadian society in particular coincides with the fact that all but one Droit UMoncton participants spoke of Indigenous issues only once I had explicitly prompted them to do so. One participant at Droit UMoncton shared the following:

> NB08: Il y a des problèmes qui existent dans certaines parties du pays qui n'existent pas forcément ailleurs. […] Par exemple au Saskatchewan les autochtones représentent maintenant […] près de 20% de la population de la province. Donc les autochtones au Saskatchewan ont une présence sociale dans le vécu de tous les jours des gens, qu'ils n'ont pas par exemple […] au Nouveau Brunswick. […] Au Nouveau Brunswick la population autochtone est très petite, et je pense qu'il y a des choses plus présentes dans l'esprit des gens pour cette raison-là.[1199]

[1197] Self-identification and reporting of Aboriginal identity will change from one data collection to another and is subject to several factors; among them, Statistics Canada recognizes that "[c]hanging attitudes about Aboriginal identity, judicial decisions or anticipated legal changes, the social climate and other factors may influence how people identify themselves," see Statistics Canada, *Aboriginal Peoples Reference Guide, Census of Population, 2016* (25 October 2017), Catalogue no. 98-500-X2016009, online: <https://www12.statcan.gc.ca/census-recensement/2016/ref/guides/009/98-500-x2016009-eng.cfm>. Changes in self-identification are the second main factor in the growth of the Aboriginal population (after natural growth), and Statistics Canada affirms that "more people are newly identifying as Aboriginal on the census" and that this is the "continuation of a trend over time," see Statistics Canada, "Aboriginal Peoples in Canada: key results from the 2016 Census" (25 October 2017), online: <https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm>.

[1198] Alberta counts 258,640 Aboriginal (6.5% of 3,975,145 inhabitants), and the Prairies (MB, SK and AB) 656,970 (10.5% of 6,286,400), see Statistics Canada, *Census Profile, 2016 supra* note 1195.

[1199] NB08.

Another participant expressed the same idea in different terms: “On ne connaît pas les autochtones. Je n’ai pas d’amis autochtones, mes enfants non plus. J’ai dû aller à un pow-wow deux fois. On va voir les autochtones uniquement quand des européens nous rendent visite et veulent voir ça.”[1200]

Edmonton alone counts nearly twice as many inhabitants than the entire province of New Brunswick; it may thus not be surprising that the number of Aboriginal inhabitants in the Moncton area is extremely modest compared to that of Edmonton. However, the proportion is nearly half that observed in Edmonton and the absolute number indicates the absence of a critical mass to shape perceptions of the social space. Indeed, 2.5% of Moncton’s 141,525 inhabitants (i.e. 3,515) are Indigenous, compared to 5.8% of Edmonton’s 1,297,275 (i.e. 76,205).[1201]

An additional aspect also plays an important role here: language communities. Several participants at Droit UMoncton affirmed that Indigenous New Brunswickers were not part of the same language community as them and that of the University. One asserted that “aujourd’hui les autochtones du Nouveau Brunswick, MicMacs et Malécites, ne parlent pas français.”[1202] Another offered more nuances in declaring that “la plupart des autochtones parlent la langue des premières nations, que ce soit MicMac ou Malécite et anglais; ils ne parlent pas français,” evaluating to a few thousand only the number of French-speaking Indigenous New Brunswickers.[1203]

The number of French-speaking Indigenous individuals in New Brunswick is disproportionally small. French speakers in New Brunswick represent about a third of the province’s population. For the entire province, only 11,685 persons reported identifying as Aboriginal and knowing French, i.e. 1.6% of

[1200] NB05.
[1201] See Statistics Canada, *Census Profile, 2016 supra* note 1195; in Montreal, the 34,745 Indigenous inhabitants represent only 0.8% of the metropole’s 4,098,927 total.
[1202] NB04.
[1203] NB02.

the total population.[1204] While this represents nearly 40% of the provincial Aboriginal population, it is mostly the Métis who compose this group;[1205] less than 10% of First Nations people living on reserve reported knowing French and only 40 indiviudals in this category indicated that French was the only official language they knew.[1206] These figures show that French is not the primary official language spoken by New Brunswick's Indigenous Peoples.

One participant qualified the current relationship between the Acadians and the Indigenous Peoples since then as "deux solitudes"[1207] and another explained that "il n'y a pas une grande présence [autochtone à Droit UMoncton] à cause de la langue."[1208] However, Acadians and local Indigenous communities had strong connections prior to the British waging war on the later and organizing the forced displacement of the former in the mid-18th century. One participant elaborated further in the following terms:

> C'est une des raisons, suivant ma recherche, qui a motivé la déportation acadienne. Les Anglais voyaient un rapprochement entre les Acadiens et la communauté Micmac et Malécite. […] Faragher […] parle d'une approche de colonisation acadienne tout à fait originale, qui n'a pas d'autre exemple en Amérique du Nord. Il [affirme] que si la déportation n'avait pas eu lieu, on pourrait peut-être parler d'une réconciliation ethnique, parce qu'il y avait un métissage qui se passait entre les deux peuples, vraiment une collaboration, et aussi même un dialecte de vieux français-autochtone, donc les deux pouvaient communiquer. […] Les Autochtones préféraient les français pour le commerce, et donc c'était une frustration chez les Anglais [qui voulaient] commercer avec les Autochtones. Et aussi politiquement, numériquement, je pense que ça [leur] faisait peur se rapprochement-là. Et donc les Acadiens ont été déportés et les Anglais ont commencé à avoir le monopole des relations commerciales avec les Autochtones. […] Tout ça

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[1204] Statistics Canada, *Data tables, 2016 Census*, "Knowledge of Aboriginal Language (90), Knowledge of Languages: Single and Multiple Language Responses (3), Aboriginal Identity (9) […]," (25 October 2017), Catalogue no. 98-400-X2016157, online: <https://www150.statcan.gc.ca/n1/en/catalogue/98-400-X2016157> [Statistics Canada, *2016 Census Language*].

[1205] 5,635 (48%) of 11,685 identified as Métis, see *ibid.*

[1206] All 40 individuals live in one community (Madawaska). In addition, 715 individuals (8.9%) reported knowing both French and English, see *ibid* and the profiles of each First Nations communities listed by the provincial government: Government of New Brunswick, Department of Aboriginal Affairs, "First Nations Communities", online: <https://www2.gnb.ca/content/gnb/en/departments/aboriginal_affairs/fnc.html>.

[1207] NB04.

[1208] NB02.

> pour dire que aujourd'hui des Autochtones du Nouveau Brunswick, Micmacs et Malécites, ne parlent pas français.[1209]

Other historical sources attest the existence of early mingling and of an alliance between the Mi'kmaq and the French communities in the region,[1210] even as they nuance Faragher's claims by showing that the French presence was no less part of a colonial enterprise in Mi'kma'ki than that of the British and that tensions arising from mutual misunderstanding on the terms of the alliance (whether it was solely commercial or also political and military) arose before the deportation of the Acadians.[1211] After *le grand dérangement*, the relation between the two communities never recovered. As Acadians took part in squatting and grabbing reserve lands and building an industry of the exploitation of the resources essential to the Indigenous way of life,[1212] the new language dynamics further entrenched the mutual isolation of Acadians and Mi'kmaqs.

[1209] NB04; the reference is to John M Faragher, *A Great and Noble Scheme: the Tragic Story of the Expulsion of the French Acadians from their American Homeland* (New York & London: W W Norton & Company, 2005) at 48 (arguing that the Acadians and local Indigenous Peoples exchanged knowledge, built mixed families, and even started crafting common linguistic structures: "*métissage* played a prominent pat in the prevailing climate of cooperation during the early years of the settlement. From the Míkmaq [the French settlers] learned the indigenous arts of fishing and hunting, methods of making clothing and mocassins from skins, furs and animal sinew, and the many uses of birchbark. A jargon composed of Míkmawisimk and French became the lingua franca of the countryside," and affirming that the Deportation "aborted a promising experience of ethnic reconciliation").

[1210] See e.g. *RCAP Report, supra* note 1167, vol 1 at 106 (showing that in 1715, the Mi'kmaqs affirmed to the British, then trying to persuade them to swear allegiance to the British Crown after the French cession of Acadia, that "they had always been independent peoples, allies and brothers of the French").

[1211] See William C Wicken, "Re-examining Mi'kmaq-Acadian Relations, 1635-1755" in Sylvie Dépatie et al, eds, *Vingt ans après, habitants et marchands: lectures de l'histoire des XVIIe et XVIIIe siècles canadiens* (Montreal & Kingston: McGill-Queen's University Press, 1998) 93 (confirming the existence of strong cultural connections between Acadians and Mi'kmaqs early on, but arguing that opposed economic lifestyles and demographic evolution had already distanced Acadian and Mi'kmaq communities in the few decades preceding the Deportation. According to him, social and political tensions arose between the two when the imperial struggle between England and France in the region escalated, especially as the Acadians insisted on their neutrality whereas the Mi'kmaqs expected the support of those they considered as their ally and kin in the armed struggle against English troops); Mark W Landry, *Pokemouche Mi'kmaq and the Colonial Regimes* (Masters thesis, Saint Mary's University, 2010) [unpublished] (affirming: "The relationship between the French and Mi'kmaq would be one of turmoil and […] the alliance between these two powers occurred, not because of amicable features or similarities between the two, but simply because the French colonized Mi'kma'ki first." at 13); Andrea B Nicholas, "Wabanaki and French Relations: Myth and Reality" (1991) 24:1 Interculture 12 (deconstructing the myth of the "benevolent French embrace").

[1212] See generally Landry, *supra* note 1211.

I previously mentioned the acquittal of Gerald Stanley for the killing of Colten Boushie and the vivid public debate it sparked across Canadian society and the legal community in particular.[1213] These events had a very small echo in the Acadian community: the archives of the main local French newspaper, *l'Acadie Nouvelle*, contain only one article featuring the name of Colten Boushie in the months following the acquittal of Gerald Stanley.[1214] This further illustrates that Indigenous issues, especially when they happen and are commented on primarily in English, are much less present in the public debate among Acadians than other parts of Canada.

Distance with Indigenous issues is not unique to the Acadians. A participant advanced that French speakers generally in Canada felt less concerned by the topic than English speakers.[1215] His explanation for this phenomenon relied on the colonial history of and in Canada: "[l]es anglophones, c'est la puissance coloniale. Les francophones on a été colonisateurs, mais pas de la même façon, et on a été nous-mêmes colonisés par les anglais. Donc dans la mesure où il y a eu oppression et marginalisation des autochtones, je ne pense pas que les francophones se sentent responsables au même degré que les anglophones."[1216] Another participant offered a similar view on the difference between French and English in colonizing the land, although with romantic and idealized undertones: "au début de la colonisation, les acadiens ont été de très mauvais colonisateurs. On n'a pas colonisé les autochtones quand on est arrivé ici. On leur a demandé beaucoup d'aide en fait, et on leur a fait des enfants. On les a aimés, on ne les a pas colonisés."[1217] The idea that French Canadians too have suffered oppression from the English came back

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[1213] See text accompanying *supra* notes 1178—1182.

[1214] Search conducted with Eureka (online: <https://nouveau.eureka.cc/>) on 31 October 2018. *L'Acadie Nouvelle* is a small local publication, and Acadians turn to other news sources for coverage of national issues; we can nonetheless note the sharp gap with the equally local but English-language newspaper *Moncton Times and Transcript,* which featured 6 articles on the topic, all published between 12 February and 9 March 2018. By comparison, the *Globe and Mail* and the *Toronto Star* featured respectively nearly 150 and 80 articles containing the name of Colten Boushie by 31 October 2018.

[1215] NB08.

[1216] NB08.

[1217] NB04; the same participant later showed some distance with this romantic view ("les femmes diraient peut-être 'vous avez colonisé nos corps.'"). But see Faragher, *supra* note **Erreur ! Signet non défini.** at 37 (affirming that there w

in another participant's discourse on the topic: "les acadiens on a aussi été opprimé. On a été déporté. Les canadiens français ont 200 ans de lutte pour en arriver à la situation d'aujourd'hui. Les autochtones commencent à être sur la *map*, nous ça fait 200 ans qu'on lutte pour ça."[1218] We can see here that in spite of the distance I highlighted, some Droit UMoncton members perceive a comparable experience of oppression at the hands of the British between Acadians, or even French Canadians, and Indigenous peoples. The last quote can even suggest a form of competition for public attention between the two groups.

One participant asserted that the 1999 Supreme Court decisions in the Marshall case had confronted Acadians with Indigenous issues for the first time in recent history and through confrontation:

> NB05: Cette décision a été la première manifestation tangible de l'article 35. Elle portait sur les pêches, et elle a eu des conséquences directes ici, dans l'industrie de la pêche. Il y a eu des manifestations violentes. Les pêcheurs étaient inquiets, avaient l'impression d'une chasse gardée; [ils se disaient:] 'c'est nous qui avons développé [ce secteur économique] et maintenant on va le donner aux autochtones ?'[1219]

The Supreme Court found that Mi'kmaq and Maliseet people on the East Coast continued to have treaty rights to hunt, fish and gather to earn a moderate livelihood on the basis of the Peace and Friendship Treaties signed in 1760 and 1761 between the British Crown and local Indigenous Nations.[1220] In the weeks that followed the decisions, violent tensions arose in New Brunswick between Indigenous and non-Indigenous fishermen, for instance with the Mi'kmaq people of the Burnt Church First Nation.[1221] In the aftermath of this legal decision, there were great concerns regarding the future of this economic asset,

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as a "custom of sexual freedom among young, unmarried [Mi'kmaq] women that was eagerly exploited by [French] fishermen and traders" and that "[w]hile girls were free to accept or reject lovers, however, the Míkmaq had no patience with forced sexual relations or rape.").

[1218] NB06.

[1219] NB05.

[1220] *R v Marshall (No 1)* [1999] 3 SCR 456 and *R v Marshall (No 2)* [1999] 3 SCR 533.

[1221] See e.g. documentary film *Is the Crown At War With Us?* (2002) directed by Alanis Obomsawin, online (video): *National Film Board* <https://www.nfb.ca/film/is_the_crown_at_war_with_us/>.

central to the Acadian culture.[1222] The emergence of Indigenous issues in the modern Acadian social space came with this confrontation.

Indigenous topics also acquired a visual presence in Moncton very recently: during the summer of 2017, British artist Wasp Elder painted a 41-metre high mural depicting Molly Muise, a female Mi'kmaq Elder from 19th-century Nova Scotia on the Lafrance residence building.[1223] This building is the highest on UMoncton campus, and the painting is one of the first sights of the area that visitors encounter from the highway. The mural was still a recent monumental addition to the visual landscape when I conducted my fieldwork. In the weeks preceding my arrival, historian Maurice Basque had given a widely publicized talk at UMoncton on the context for the painting and the history of Molly Muise herself.[1224] This explains why a participant started responding to my question regarding Indigenous issues by a reference to this painting and this conference. The interviewee shared that the choice to depict Molly Muise, instead of an Acadian figure, triggered surprise, and even shock for some.[1225] Situating this artwork, chosen by the University among several proposals, in a broader attempt to convey a strong connection between Acadians, the University, and Indigenous peoples, the same considered the effort to be "artificial."[1226]

Despite this historical distance, Indigenous issues have started garnering attention at UMoncton.[1227] A press release dated 24 April 2018 from the University announced the creation of a

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[1222] See e.g. P D Clarke, "Pêche et identité en Acadie : nouveaux regards sur la culture et la ruralité en milieu maritime" (1998) 39 :1 Recherches sociographiques 59 (discussing the centrality of fisheries in Acadian cultural practices and identity).

[1223] See e.g. Wasp Elder, "Mi'kmaq Molly Muise, Canada 2017", online: *Wasp Elder* <www.waspelder.com> (showing a visual of the painting).

[1224] BiblioChamplain, "Qui est Molly Muise, l'Amérindienne mi'kmaq qui est représentée sur la façade du pavillon Lafrance?" (15 February 2018), online (video): *Youtube*, <https://www.youtube.com/channel/UC_urb5SaxO5HlhOyHftpcmQ> [Basque "Qui est Molly Muise?"] (recording of Maurice Basque's presentation on 15 February 2018 at the Champlain Library of UMoncton).

[1225] NB05 (mentioning Zachary Richard, a popular singer and song writer from Acadian Louisiana, as an example of Acadian figure that the university could have chosen to honour instead).

[1226] NB05; université de Moncton chose this proposal among a total of three, none of which included an Acadian figure, see Basque "Qui est Molly Muise?", *supra* note 1224.

[1227] NB04, NB05.

working group on reconciliation with Indigenous peoples. The document opened with the following statement: "[l]e mouvement de réconciliation avec les peuples autochtones, amorcé depuis plusieurs années à travers le pays, *fait ses premiers pas au campus de Moncton*" and mentioned the mural painting of Molly Muise and several events that had taken place during the 2017-2018 academic year to support this idea.[1228] It also stated that the first course on the theme ("langues et cultures autochtones") had been offered during the winter 2018 term and qualified it as a first step toward indigenizing the curriculum.

The university is not isolated from the general shift in political and public attitudes toward Indigenous peoples that has accelerated in the past few years across Canada and also feels the increased presence of Indigenous topics in academic discourse and research. There are currently incentives for academics to pay greater attention to this theme. Two participants affirmed that using appropriate "buzz words" and connecting proposed research to Indigenous issues in grant proposals, for instance, increased success prospects and testified to the political push for universities to take interest in the field.[1229] One of them even shared a belief that much of the academic discourse on the topic was primarily opportunistic.

Three quarters of Droit UMoncton participants (six) qualified an aspect or another of the discourse emphasizing Indigenous issues in legal education as either artificial, or akin to a fad, for instance: "c'est une mode passagère,"[1230] "c'est à la mode aujourd'hui,"[1231] "c'est dans l'air du temps,"[1232] "j'ai l'impression que c'est dans l'air du temps."[1233] This stands in sharp contrast with both DSJ UQAM and

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[1228] UMoncton, News Release, "Un groupe de réflexion sur la réconciliation avec les peuples autochtones se forme à l'Université de Moncton" (24 April 2018), online: <www.umoncton.ca/nouvelles/info.php?page=1&id=20715&campus_selection=all#.WuKJgRZKuEe> (emphasis added).

[1229] NB04 ("Là politiquement on est dans un discours plus favorable, mais je trouve souvent, si les autochtones intègrent le discours, c'est par opportunisme politique, ou même à des fins de subventions de recherche parce que l'on sait que c'est un *hot topic*. Avec les bons *buzz words* on va pouvoir avoir un CRSH."), NB05: ("Quand le politique veut nous orienter, il cible les subventions. [En ce moment] les subventions sont ciblées autour [des questions autochtones]. En mettant les bons mots dans une demande de subventions, ça aide à l'obtenir.").

[1230] NB01.

[1231] NB07.

[1232] NB05.

[1233] NB08.

UAlberta Law, where no participant shared similar views. Most often, the perceived fad and what triggered rejection was the TRC's demand to establish a mandatory and dedicated course on Aboriginal People and the Law. We will see in greater detail through the next sections the attitudes they expressed on this specific issue and others. It was apparent from their discourse that the TRC prescription of such a course was their primary entry point to discuss Indigenous issues in legal education. Droit UMoncton members did not express opposition to the principles underlying reconciliation, sometimes even manifesting support for the overall enterprise; rather, they were critical of the uniform discourse on the topic, which they perceived to sound hollow in their local context, and of the blanket modality mandated to all law Faculties. Accounting for their institution's central, enduring and distinctive focus on empowering and contributing to the cultural survival of a given community, the Acadians, who have historically been remote from Indigenous issues, is key to understanding that attitude.[1234]

The situation is very different at UAlberta Law. As we have seen above, participants situated their Faculty in the broad cultural sphere of Western Canada where Indigenous peoples have long enjoyed a much stronger presence in the canvas of society perceived. UAlberta features a well-established Faculty of Native studies, reflecting the place that Indigenous issues acquired in university teaching and research decades ago. The academic unit came to life and started offering a dedicated degree program in the

[1234] See e.g. NB01 (speaking about opposing a dedicated mandatory course on Aboriginal people and the Law: "La faculté ici prend une position que je crois être exceptionnelle. Les autres doyens ont tous accepté sans contestation l'exigence d'avoir un cours de droit autochtone. Pour eux un cours de plus ça ne change pas grand-chose. Ils ont les moyens d'accommoder cette demande. Ici ça ne rentre pas dans la mission, surtout avec le peu de ressources qu'on a.").

1980s.[1235] UAlberta Law created an Indigenous Law Program in 1991.[1236] In contrast, UQAM only started offering an undergraduate concentration in Indigenous studies in 2016 within its Faculty of Human Sciences,[1237] while UMoncton does not offer any dedicated program on a similar theme.

Certain UAlberta Law participants spoke of a consensus for greater efforts toward reconciliation,[1238] thus highlighting that beyond individual attitudes, engaging with Indigenous issues has become an established and expected practice at this Faculty. Indigenous Peoples are one of the several constituencies whose needs UAlberta Law considers its mission to serve with its generalist approach to legal education and mainstream conception of the public good.

The quantitative look at circumstances leading to discussing Indigenous issues in interviews suggested that DSJ UQAM was comparable to UAlberta Law in that regard. However, a qualitative analysis of the responses shows a much different approach. In Montreal and the province of Quebec in general, Indigenous peoples have not had the same presence in mainstream society as in the West.[1239] Nonetheless, a defining feature of DSJ UQAM is its deep commitment to social justice ideals. This includes awareness and sensibility to the issues touching those who have suffered a history of oppression and marginalization. In furtherance of this mission, UQAM is located in a part of Montreal where many homeless or otherwise vulnerable persons gather and find services dedicated to helping them. As in other

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[1235] See the testimony of Carl Urion, a Métis and one of the founders of the unit, in Shoeck*, supra* note 733 at 497—98; it is currently the only independent Faculty of native studies in North America, offers 4 undergraduate programs, a master program and a Ph.D. program, see Juris Graney, "Five Indigenous students make history by undertaking PhD in native studies at University of Alberta*" Edmonton Journal* (8 November 2017), online: <edmontonjournal.com/news/local-news/five-indigenous-students-make-history-by-undertaking-phd-in-native-studies-at-university-of-alberta>. See generally UAlberta Faculty of Native Studies, online: <https://www.ualberta.ca/native-studies/>.

[1236] Law & Wood, *supra* note 633 at 22; see also Borrows, "Issues, Individuals, Institutions and Ideas", *supra* note 16 at xvi, n 19.

[1237] UQAM, "Concentration de premier cycle en études autochtones", online: <https://etudier.uqam.ca/programme?code=F019>.

[1238] E.g. AB02 (also expressing that some professors had concerns regarding resources to do so).

[1239] See e.g. QC05 ("Au Québec on est en retard […] sur la Colombie Britannique par exemple, possiblement l'Alberta et possiblement l'Ontario.").

urban centers, Indigenous individuals are over-represented among the Montreal homeless population.[1240] Therefore, DSJ UQAM predisposed itself for an intellectual sensibility and physical proximity with Indigenous issues. A participant affirmed the following: "ça fait très sens de dire que [les enjeux autochtones sont] importants à l'UQAM et au département des sciences juridiques."[1241] Another participant asserted that such questions were novel for the Faculty.[1242] As the Faculty's conception of social justice evolves over time,[1243] Indigenous issues are now integrating the range of considerations that DSJ UQAM nurtures.

The Faculty's central, enduring and distinctive commitment to a social justice approach may make it more sensitive to Indigenous issues than other law Faculties in Quebec. For instance, a participant at Droit UMoncton who spoke of a French/English divide in engagement with Indigenous issues[1244] asked me if my own study showed such a trend. I replied that the only other Francophone university included in my project was UQAM, and the participant acknowledged that it would not be representative or support the point: "ça me surprendrait que l'université de Montréal, Sherbrooke, Laval soient aussi accrochées sur les questions autochtones que l'UQAM. L'UQAM c'est [*pause*] l'UQAM!"[1245] This did not prevent an insider participant from perceiving that engagement with Indigenous issues within DSJ UQAM could be "un intérêt un petit peu superficiel."[1246]

[1240] See Eric Latimer et al, *I Count MTL 2015: Count and Survey of Montreal's Homeless Population on March 24, 2015*, (Montreal: City of Montreal, 2015) at vi, online (pdf): <ville.montreal.qc.ca/pls/portal/docs/page/d_social_fr/media/documents/I_Count_MTL_2015_report.pdf>. (reporting that Indigenous people made up 10% of Montreal homeless population, whereas they only made up only 0.6% of the general population; in addition, 41% among them were Inuits, whereas Inuits make up only 10% of Montreal's Indigenous population).

[1241] QC06 (also speaking of "incohérences" or "décalages" in the way such issues are integrated within the Faculty's teaching and research and perceiving that "une partie de l'institution est dans l'urgence d'agir et pourrait le faire d'une manière qui pour moi n'est pas la bonne.")

[1242] QC08 ("Vous avez parlé de la question autochtone, c'est quelque chose de tout récent.").

[1243] See Chapter 2, Section 2.3, *above*.

[1244] See *supra* note 1216 and accompanying text.

[1245] NB08.

[1246] QC06 ("Je sens qu'il y a un intérêt un petit peu superficiel derrière tout ça.").

Consequently, we can confirm that there are Faculty-specific patterns in approaches and attitudes toward Indigenous issues. We see once again that the TRC Call to Action has played a pivotal role in transforming discourse and attitudes toward Indigenous issues among legal educators. Second, we can see remarkable coincidences between the universities' social and cultural context as well as the Faculties' conceptions of their own mission and the ways participants engaged with Indigenous issues. Indigenous issues resonate very differently with the meanings associated with legal education at each Faculty and constitutive of their institutional culture. A lesser presence of Indigenous peoples in mainstream society's social reality surrounding each Faculty correlates with perceptions that the sudden preoccupation for Indigenous issues is artificial. On the other hand, a deep-rooted political and intellectual sensibility to the issues touching vulnerable communities corresponds to greater engagement with Indigenous issues, even where the social context does not seem to suggest it. I do not aim to infer conclusions generalizable across the landscape of Canadian legal education and the correlation I point to here may not exist everywhere in Canada; it appears clearly in the three case studies included here and helps us see the role of institutional meanings in legal education at these institutions.

With these two points in mind, we can now turn to an analysis of the attitudes of DSJ UQAM, UAlberta Law and Droit UMoncton participants on three aspects of legal education in relation to Indigenous issues: the acknowledgment of traditional territories, the inclusion of Indigenous issues in the curriculum through dedicates courses or into traditional courses, and the recruitment of Indigenous members in their communities, as faculty and students.

4. Land Acknowledgements

In recent years, some individuals and institutions have started acknowledging the traditional relationship of certain Indigenous peoples with the land on which they gather during important events or

even in the conduct their usual activities. This echoes a long-standing practice in many Indigenous cultures. The following section will analyze attitudes and practices in the three Faculties regarding such territorial acknowledgements. Publicly acknowledging this relationship does not appear among the recommendations formulated by the TRC, although as we will see below at least one actor who engages in this practice does so in direct response to the TRC report. Before turning to this practice in more details, it is important to situate the three Faculties in relation to the history of the land on which they stand today, especially as it concerns Indigenous peoples. The previous section offered a contemporary portrait of statistical Indigenous presence; what follows will add a historic and cultural layer to our understanding of the current situation as well as provide context to discuss the practice and content of territorial acknowledgments. Incidentally, this is also an opportunity for me to acknowledge the land on which I conducted my research.

The inhabitants of present-day New Brunswick prior to contact with the French in the early 1600s were the Mi'kmaq, the Maliseet, and the Passamaquoddy peoples. The Haudenosaunee and Anishinabeg peoples were the main inhabitants in the region of Montreal. By the mid-18th century, the British Crown established its control over the land and the peoples living in these regions. It engaged in treaty making with the Mi'kmaq, the Maliseet, and the Passamaquoddy through the 1760-61 treaties discussed in the Marshall decisions.[1247] The first Europeans in Edmonton's region were French and English fur traders who only arrived in the late 1700s. The main First Nations in this region were the Cree and the Blackfoot, and the Metis people soon emerged. The area where Edmonton is located was the object of Treaty 6 signed in 1876. The total area covered by Treaty 6 stretched from Western Alberta into Manitoba and included

[1247] *R v Marshall* (nos 1 & 2), *supra* note 1220.

50 First Nations.[1248] Treaty 6 was part of Canada's efforts to pave the way for political and economic integration of these lands and peoples into the Dominion shortly after Confederation.[1249]

The first event I observed for the present study was the welcome ceremony for new students in law and political science at UQAM on 30 August 2017. As explained in the opening paragraph of this chapter, the Dean of UQAM's FSPD included in the very beginning of his welcome speech an acknowledgement that the ceremony was happening on unceded traditional Indigenous territory. During an interview, he offered the following explanation for engaging in this practice : "c'était dans une perspective de réconciliation que l'on reconnaissait [que nous sommes présentement en territoire traditionnel autochtone non cédé], et que l'on devait, comme nous appelle à le faire le rapport de la Commission de vérité et réconciliation, se rappeler de ce fait là dans les moments solennels."[1250] He added that the aim was to extend a friendly hand, and "espérer pouvoir construire de meilleurs rapports avec les Premières Nations dans le respect."

The same opening paragraph refers to a statement made by a member of the *conseil académique facultaire* during the meeting that took place immediately after the welcome ceremony. This professor proclaimed that the Dean had not spoken in his name or in the name of the program they represented when performing the acknowledgement.[1251] The Dean also came back on this event during the interview a few weeks later. He made sure to impart that this individual was a professor in the political science

[1248] See Indigenous and Northern Affairs Canada, "Copy of Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions", online: <www.aadnc-aandc.gc.ca/eng/1100100028710/1100100028783>.
[1249] See Howard Palmer & Tamara Palmer, *Alberta A New History* (Edmonton: Hurtig Publishers, 1990) at 41.
[1250] QCXX (attributed with permission).
[1251] The question of the unceded character of the island of Montreal became a topic of public debate in the following weeks and months : see the series of articles in local newspapers La Presse (between 26 September and 1 October 2017) and Le Devoir (23 May 2018) and responses from the Mohwak Council of Kahnawà:ke (online: Answers Back, <www.kahnawake.com/answersback/>).

department representing a program from this unit, and not a member of DSJ UQAM.[1252] He did so to illustrate the difference between the law department and its political science counterpart in attitudes toward reconciliation in general.

According to the Dean, political science faculty members entertained a debate regarding whether reconciliation was an appropriate concept at all in the circumstances, and the nature of duties that emerged from it, if any. On the contrary, the idea of reconciliation, and the specific practice of acknowledging that UQAM is located on a traditional land that Indigenous peoples never ceded to settlers was not an issue within DSJ. There was a form of consensus about it, even though there could be some discussions about when and how often such acknowledgment should occur in order to avoid stripping the practice of its symbolic meaning ("le banaliser"). As we will see below, this does not mean that DSJ members all share the same attitudes on other aspects, such as the recruitment of Indigenous members or indigenizing the curriculum, as the interviews with other faculty members demonstrate.

On 5 September 2017, after brief introductions by the Vice-Dean and the Dean, the Orientation event at UAlberta Law in September 2017 opened with an invocation by two Cree Elders, Adelaide McDonald and Mabel Wanyandie from the Aseniwuche Winewak Nation.[1253] Mrs. McDonald and Wanyandie had acted as co-instructors for a summer course in their community for students in UAlberta Faculties of law and Native studies; an experience the Dean described as "the inaugural Wahkohtowin Project, an on-the-land, for-credit course, focused on Indigenous legal concepts and practices."[1254] Since

[1252] The member of the Faculty council at UQAM FSPD act as representatives of a constituency that elected them, such as an academic program; only those representatives attend and participate in the meetings of the council. See e.g. text accompanying supra *note 713*.
[1253] The official speeches at the welcome ceremony for new law students at UAlberta on 5 September 2017 were all video recorded and are publicly available: "UAlberta Law Orientation 2017" Video, *supra* note 1185. It was impossible to attend in person the orientation at the three institutions as they all happened in a short period; public documents such as this video, and the published program of the event [document on file with the author], offer the best proxy for comparisons in spite of the inherent limitations (e.g. limited frame, potential editing, promotional character of the public documents, etc.).
[1254] "UAlberta Law Orientation 2017" Video, *supra* note 1185 at 00h:01m:00s.

2014, UAlberta Law has invited Elders to address the incoming class during Orientation.[1255] During several minutes, Mrs. McDonald and Wanyandie welcomed the students and guests in Cree, telling them that they were thankful and grateful for their presence.[1256] Inviting Elders to welcome newcomers in their own language goes further than having settler leaders acknowledge the Indigenous character of the land. In doing so, UAlberta Law recognizes and celebrates the traditional connection of the Crees with the land on which it carries its activities.

Moreover, the University encourages all of its members to use statements of territorial acknowledgements, whether those it developed through the Provost Office and in consultation with several stakeholders, including Indigenous faculty and staff,[1257] or their own words to the same effect, as "part of the words of welcome for […] public events held on campus, or as part of written documents."[1258] The UAlberta Calendar, for instance, starts with the following statement: "The University of Alberta acknowledges that we are located on Treaty 6 territory, and respects the histories, languages, and cultures of the First Nations, Métis, Inuit, and all First Peoples of Canada, whose presence continues to enrich our vibrant community."[1259]

On 25 October 2017, I observed in person an official event at UAlberta Law: the signing of a Memorandum of Understanding between the Faculty of Law and the Judge Advocate General (JAG) of the Canadian Armed Forces. It was a ceremony with military personnel in dress uniforms, a choir singing the national anthem and many flags on display. While no Indigenous Elders took part in the event, unlike at

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[1255] *Ibid* at 00h:00m:40s.
[1256] *Ibid* at 00h:05m:45s.
[1257] UAlberta, "Acknowledgement of the Traditional Territory", online: <https://www.ualberta.ca/toolkit/communications/acknowledgment-of-traditional-territory>; see also UAlberta, "University of Alberta Developed Territorial Acknowledgments", online (pdf): <https://cloudfront.ualberta.ca/-/media/ualberta/aboriginal-hub/territorial-acknowledgements-english-french-27july16.pdf>.
[1258] *Ibid.*
[1259] UAlberta, *Calendar 2018-2019*, "Territorial Statement", online: <https://calendar.ualberta.ca/index.php?catoid=28>.

the Orientation event, the Dean acknowledged that it was happening on Treaty 6 territory. The practice of acknowledging the traditional territory is therefore well-established and encouraged at the highest institutional level at UAlberta. No participant shared their views on this specific practice during interviews. While we should be cautious of inferring anything from silence, the overall tone of the conversations on the broader topic of reconciliation and Indigenous issues in legal education leads me to believe that this practice is rather consensual; at the very least, it is not the object of heated debate in the community of the kind observed between political science and law professors at UQAM.

At Droit UMoncton, no recording or published program of the welcome event was available.[1260] A participant shared that the Faculty had never organized a Pow-Wow, "dans le sens autochtone," even though they believed it could easily be done.[1261] My presence on site coincided with the most important official event of the year at Droit UMoncton: the 11th J-F Landry Conference that took place on 15 March 2018. The guest speaker was the Right Honourable Michaëlle Jean, former Governor General of Canada and then Secretary-General of the Organisation Internationale de la Francophonie (OIF). While they had different purposes, this event was comparable with the signing ceremony with JAG at UAlberta in light of its very official character, as I could gather from the visual signals on display (red carpet, numerous flags, etc.) and the presence of many local dignitaries. At no point during this event did any speaker mention the traditional relationship of local Indigenous Peoples with the land on which they had gathered.

During interviews, two participants shared diverging views on the practice.[1262] While none spoke specifically about the presence or absence of such a practice during Droit UMoncton events, it was clear from the context that this practice did not take place. One participant recalled recently attending a course or a conference elsewhere where the printed materials that had been circulated to attendees included a

[1260] We can note that the Cree Elders invocation did not appear on the published program of the UAlberta Law Orientation event [document on file with the author].
[1261] NB02.
[1262] NB03, NB08.

statement at the bottom acknowledging the traditional Mi'kmaq territory that had never been officially ceded; this participant approved of this practice.[1263] On the other hand, another participant expressed skepticism about it, having witnessed similar statements at other universities. The same called it a form of tokenism or lip service: "c'est un vœu pieux, c'est un geste complètement creux. Ça sert à quoi de dire ça si on n'est pas prêt à leur céder les terres nous-mêmes, si on n'est pas prêt à compenser ces sociétés là pour la perte de terres qu'ils revendiquent ?"[1264] and offered an illustrative analogy to explain the position: "c'est comme si je te volais ta bicyclette et je continuais à m'en servir, mais je disais 'je reconnais que c'est ta bicyclette, mais tu ne peux pas la ravoir.' Je ne sais pas, je trouve ça un peu étrange."[1265] The core of this participant's critique lies with the qualification of the territory as unceded and corresponding political and legal consequences, or the otherwise recognition of outstanding legal claims to the land by Indigenous communities; it is not an opposition to recognizing the cultural and historical character of the land for local Indigenous communities, but rather a critique of the apparent hypocrisy.

Beyond the diverging feelings and concerns about the practice that interviews revealed, we can infer that this practice is indeed not established at Droit UMoncton. There does not seem to be an ongoing debate about it within the institution's governing organs either, as is the case at DSJ UQAM. This further illustrates that Droit UMoncton is an outlier compared to the two counterparts included in this study regarding Indigenous issues and that this Faculty has only very recently started engaging with such questions.

The practice and attitudes regarding the recognition of the traditional character for local Indigenous peoples of the land on which the Faculties operate vary greatly between the three institutions

[1263] NB03 ("J'ai pris un cours, [ou bien c'était] à une conférence, il y a avait un message en bas disant 'j'aimerais faire remarquer que nous sommes présentement sur le territoire Micmac qui n'a jamais été officiellement cédé par les micmacs' et ça j'avais trouvé ça très bien.").
[1264] NB08.
[1265] NB08.

in this study. Individual sensibilities and institutional engagement with Indigenous issues play a large role in such variations. We can see the Faculties' institutional cultures at play in the patterns of attitudes toward acknowledging the traditional character of the territory for local Indigenous peoples.

5. Indigenous Curricular Content

The TRC Call to Action 28 asked law Faculties to "require all law students to take a course in Aboriginal people and the law."[1266] It included Indigenous law in the specified content for such a course, changing the paradigm. Until then, the presence of Indigenous issues in Canadian law Faculties mainly consisted in the teaching of Canadian law as it relates to Aboriginal rights (Aboriginal law), with a few notable exceptions.[1267] Whereas Supreme Court jurisprudence highlighting the obligation for laywers and judges to engage with Indigenous laws when dealing with Aboriginal law had long preceded the TRC report,[1268] it is the latter that really placed the spotlight on the place of Indigenous legal traditions in the law curriculum and triggered legal educators to consider how they could include Indigenous legal traditions, concepts and practices in their teaching.

In accordance with the Call's phrasing, comments often focused on the question of a mandatory dedicated course in Aboriginal People and the Law, as we will see from interviews at Droit UMoncton. However, as we will see mostly from interviews at UAlberta Law, there is growing consideration for the

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[1266] See TRC, "Calls to Action", *supra* note 1174 at no. 28.

[1267] See e.g. Borrows, "Issues, Individuals, Institutions and Ideas" *supra* note 16 at xv (affirming that "Deans, professors, and students […] could quote the cases dealing with [Indigenous peoples'] issue" before they considered learning about Indigenous laws), xv—xvi (pointing to, the Native Law Centre in Saskatchewan, estavlsihed in 1973, the First Nations Legal Studies Program at U.B.C., established in 1975, Akitsiraq program at UVic Law in the early 2000s, the Intensive Program in Lands, Resources and First Nations Governments at Osgoode, estavlished in 1994, and the June Callwood Program at the University of Toronto, and UAlberta Law's Indigenous Law Program); see also Sloan, *supra* note 1176.

[1268] See e.g. *R v Sparrow*, [1990] 1 SCR 1075 at 1112; *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 at para 147, 66 BCLR (3d) 295; *Tsilhqot'in Nation v British Columbia* [2014] 2 SCR 256 at paras 34,35; see also Drake, *supra* note 1160 (providing examples of failures on the part of judges to do so properly, often in spite of their best intentions).

indigenization or decolonization of the traditional law courses. A literature on the topic is burgeoning,[1269] mostly in English,[1270] and responding to the TRC's Call to Action is a pressing challenge that every law Faculty in Canada faces. While some have already announced ambitious initiatives to this end,[1271] the discussion is ongoing everywhere. To date, the FSLC is still studying how to include this element in the National Requirement. There is no doubt that we should expect further changes in the coming years.

Discussions on this topic have concerned exclusively LL.B. and J.D. programs,[1272] perhaps unsurprisingly given the hegemonic place of professional undergraduate programs in legal education.[1273] This is in spite of the all-encompassing phrasing of the Call to Action referring to "all law students." The next generation of law scholars and teachers in Canada would benefit greatly from robust methodological training to conduct research in the field and adequate preparation to integrate Indigenous legal traditions in their teaching; this is apparent from several interviewees calling for more resources to develop their abilities for the task.[1274]

[1269] See e.g. the special issues of two prominent law journals in Canada on the topic in 2016, a few months following the TRC report: the McGill LJ on "Indigenous Law and Legal Pluralism" (61:4), the Windsor YB of Access to Justice on "Indigenous Law, Lands, and Literature" (33:1), including most of the works by Harland, Mills, Napoleon, Friedland, Borrows, Hewitt, cited in *supra* notes 1160—1162, and the Reconciliation Syllabus project, a collaborative collection of TRC-inspired materials for teaching law, online: <https://reconciliationsyllabus.wordpress.com/>.

[1270] There are remarkably few publications in French on the topic. The limited examples published in French-language law journals include Sheilah L Martin, "La reconciliation: notre reponsibilité à tous" (2019) 60:2 C de D 559 at 576ff and Ghislain Otis, "La production du droit autochtone: comportement, commandement, enseignement" (2018) 48:1 RGD 67 (only discussing the question of curriculum or university legal education more broadly in passing).

[1271] The most ambitious initiative remains the UVic Law's J.D./J.I.D. program (see UVic Law, "Joint Degree Program in Canadian Common Law and Indigenous Legal Orders JD/JID", online: <https://www.uvic.ca/law/about/indigenous/jid/index.php>). See also McGill Law's Property course integrating "common law, civil law and indigenous traditions in respect of property" (see McGill, *eCalendar*, "LAWG 220D1 Property", online: <https://mcgill.ca/study/2018-2019/faculties/law/undergraduate/programs/bachelor-civil-law-bcl-and-bachelor-laws-llb-law>).

[1272] The only counter example I found is Borrows, *supra* note 1161 at 22ff (discussing how he fostered land-based learning of Indigenous laws for his graduate students).

[1273] See e.g. Chapter 4, Section 1.2, *above,* for more details on the different importance accorded to undergraduate and graduate studies in law.

[1274] See e.g. AB02, quote accompanying *infra* note 1288.

As we have seen in a previous chapter, the required components of the LL.B. or J.D. curriculum and the courses *découpage* can be perceived as core to the identity of a Faculty.[1275] In analyzing attitudes toward the place each institution gives to Indigenous issues in its undergraduate students' educational journey and how professors perceive pedagogical expectations to that effect will further demonstrate the relevance of the Faculties' cultural patterns we have ascertained thus far and provide additional insights to better understand their role in contemporary legal education.

First, interviews revealed that the discussion about *how* to integrate Indigenous legal content in the curriculum is taking place in all three Faculties included in this study.[1276] The terms of the discussion are not the same everywhere, and as we will see, some still question the *whether* and *why*; it remains that everyone is talking about the *how*, even if they feel forced to do so. Regardless of their differences regarding geographical location, language, legal tradition, history, intellectual sensibility and the communities they serve, all three Faculties have to position themselves on this topic. Even if future directions are still uncertain, the TRC has therefore succeeded in imposing a Canada-wide dialogue on the role of Indigenous laws in the law curriculum.

A participant at UAlberta Law affirmed that there is "an expectation that Indigenous issues be addressed in all sort of classes."[1277] Another professor considered that there was "less of a debate and more of an accepted fact that we need to do more" to incorporate Indigenous perspectives in various courses.[1278] It is on this front that the discussion is developing at UAlberta Law. At the time of my fieldwork, the Faculty offered a small number of courses dedicated to Indigenous legal perspectives and

[1275] See Chapter 4, Section 2, *above*.
[1276] See Hardland, "from the Why to the How," *supra* note 1160.
[1277] AB04.
[1278] AB03.

course descriptions indicate that about half a dozen traditional courses included considerations of Indigenous issues.[1279]

A professor affirmed being "very excited" to engage with the question, and that finding the role for Indigenous legal perspectives was a "critical part" of the "national objective of reconciliation."[1280] Another participant affirmed that "[professors] ha[d] talked a lot in serious ways [about] the integration of material in [their] curriculum and [their] courses related to the experience of Indigenous Peoples and Indigenous law, so responding to the TRC recommendations."[1281] Asserting that it was an important conversation, the same added that although "[they] have a long way to go to accomplish that, [they] are actively thinking about and working on doing that better."[1282] Another participant affirmed knowing that "a number of people have tried to incorporate Indigenous content into their courses."[1283]

Several participants perceived that Indigenous perspectives could more readily find a place in certain courses than others. The participants generally cited private law courses as examples of a greater struggle to integrate Indigenous content.[1284] For instance, about Contracts, one of them affirmed that their own efforts had proven unsatisfactory in this regard. Citing a colleague at uOttawa and affirming that she had done "the best job she can in integrating Indigenous perspectives on Contracts," the same

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[1279] UAlberta Law, "Faculty of Law 2017-2018 Course Descriptions" (on file with the author). In 2017-2018, the Faculty the following courses focused on Aboriginal Peoples, Indigenous laws or Indigenous perspectives: "Aboriginal Peoples and the Law," "Indigenous Peoples, Law, Justice and Reconciliation," "Indigenous Laws: Questions and Methods for Engagement," "Wahkotowin Intensive: "Miyowîcêhtowin Principles and Practice" (summer course happening partly in Aseniwuche Winewak territory), "Gladue Seminar & Externship" (with Alberta Justice in criminal law and sentencing), and the Kawaskimhon moot on Aboriginal law. Of the 125 courses listed for the same year (excluding 1L courses), we can find the words "Aboriginal" or "Indigenous" in the description of only half a dozen other courses ("Water Law"; "Women Law & Social Change"; "Jurisprudence: Property Rights"; "Constitutional Litigation"; "Basic Oil and Gas"; "International Human Rights Law."). We should keep in mind the inherent limitations in relying on course descriptions to assess their content. To this list we can add the blanket exercise in the 1L introductory Foundations of Law course.

[1280] AB03.

[1281] AB08.

[1282] AB08.

[1283] AB02.

[1284] ABXX, ABXX (unfortunately, providing the precise course titles here would jeopardize the anonymity of participants who requested it).

had to admit that "in the end, it is pretty disappointing."[1285] On the other hand, participants maintained that one could "certainly incorporate Indigenous perspectives" in certain other courses.[1286]

As we can see, many professors are engaging with the issue. This discussion takes many forms, as a participant affirmed the following:

> AB11: There has been a significant number of us, individually, institutionally, and institutionally both sort of led from the top down and from the faculty up, [engaged with] how to integrate the recommendations of the truth and reconciliation commission and indigenous issues in general into our curriculum, into [their] teaching, into [their] own courses, into new courses and new programs, and there has been a lot of discussions.[1287]

This discussion is ongoing, although it may not be organized or formalized, as at least one participant expressed the view that indeed things were happening, but more so from individual initiatives than institutionally:

> AB02: I would say more that there hasn't been an institutional push to do it. […] I mean […] we have got funds this year to hire somebody who is of Indigenous heritage, and that has come from the Provost […]. But a lot of what has been happening in the school is more individual initiatives. […] A group of [professors] got together and read the Truth and Reconciliation Report and talked about it, but that was very much just a group of professors deciding that we were going to do that. We did have a meeting about doing more, and one of the concerns was: 'yeah that is fine we will do more, but we are going to need resources, and if you are not giving us resources, don't expect us to do this.' I know a number of people have tried to incorporate Indigenous content into their courses and there is a person through [the] Center for Teaching and Learning who is tasked with helping people incorporate Indigenous content into their courses. I would say she has a very challenging job because she is not even a lawyer [and] she is helping all the Faculties. […] There are some resources out there, but really what has happened in the Faculty has been largely the initiatives of people who think that is something that we should do that's important, as opposed to a consensus, or a lengthy discussion about how we are going to proceed.[1288]

[1285] ABXX ("In fact we tried to find a way to do that in Contracts this year. Unsuccessfully. There is a woman called Jane Bailey at Ottawa who has done the best job she can in integrating Indigenous perspectives on Contracts, but you would have to say in the end it is pretty disappointing."). See also Sandomierksi's insights on Indigenous issues in the teaching of contracts in *Aspiration and Reality in Legal Education, supra* note 1127 at 213—18.
[1286] E.g. ABXX (citing courses relating to natural resources).
[1287] AB11.
[1288] AB02.

From this interview, we can see that there exist some institutional incentives and resources. The Dean affirmed that UAlberta Law would be "very much part of things […] doing with Indigenous initiatives, which is a priority for the university."[1289] Official communications also promote the same message and advertise efforts made in this direction.[1290] Promotion, however, does not amount to coercion. One of the participants who found it difficult to integrate Indigenous perspectives in their teaching area affirmed that "this Faculty [had] always been […] very respectful of individual professors being autonomous and deciding how they want to handle any sort of pedagogical issue, including content."[1291] As such, this participant did not feel pressured to include more Indigenous content than they had determined to be adequate. They thought that it was "overall a good thing."[1292]

The previous participant who commented on a perceived lack of institutional push was not advocating for the administration to mandate content in certain courses. The remarks rather expressed frustration due to lacking or ineffective support for those professors who did want to take the time to revise their materials and practices in order to give a greater place to Indigenous legal traditions.[1293] Transforming one's teaching takes a lot of time and effort as it requires researching and familiarizing oneself with new practices and materials; the cultural gap between mainstream Canadian and Indigenous perspectives makes this all the more difficult.[1294] In the extract reproduced above, we can see that the

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[1289] ABXX (attributed with permission).

[1290] See e.g. UAlberta Law, News Release, "Orientation concludes with impactful exercise on Indigenous-Canadian history" (12 September 2017), online: <https://www.ualberta.ca/law/about/news/main-news/2017/september/blanket-exercise>; the same exercise had taken place in 2016 too, see UAlberta Law, News Release "First-year Law Students Participate in KAIROS Blanket Exercise" (19 September 2016), online: <https://www.ualberta.ca/law/about/news/main-news/2016/september/kairos-blanket-exercise>; AB02 also mentioned this during the interview.

[1291] AB04.

[1292] AB04; compare Drake, *supra* note 1160 (debunking usual concerns about academic freedom on the topic).

[1293] AB02.

[1294] On the incommensurability between the liberal philosophy embedded in the Canadian legal system and Indigenous legal traditions, see e.g. Mills, *supra* note 1161, and Gordon Christie, "Culture, Self-Determination and Colonialism: Issues around the Revitalization of Indigenous Legal Traditions " (2007) 6:1 Indigenous LJ 13; but see Borrows, "Heroes, Tricksters, Monsters, and Caretakers" *supra* note 1161 and Napoleon & Friedland, *supra* note 1161 (both using reasonings and tools of Canadian common law to approach and teach Indigenous laws).

same participant had sought help from a UAlberta's Center for Teaching and Learning's staff member specializing in helping educators bring indigenous perspectives into their teaching and that [1295] had not proven as helpful as expected, mainly because the suggestions were not perceived as being relevant to the subject areas of the course.[1296] The encouraging discourse does not seem to be enough for professors to do this in a meaningful way; it requires specialized resources or incentives to achieve this objective. This is especially the case in an environment where research in the form of grant applications and publications often takes precedence over teaching performances in career advancement.

The conversation about the place of Indigenous content in the law curriculum was very different at Droit UMoncton. First, several participants spoke against the mandatory course recommended by the TRC. They generally did not distinguish whether their opposition was to a required course on Aboriginal law, Indigenous legal traditions or both.[1297] One of them recognized that Indigenous issues formed part of the legal history that the Faculty should teach, implicitly condemning the previous absence of discussion about them: "Ça fait partie de l'histoire du droit qu'on devrait enseigner à nos étudiants. Autant droit civil, Québec, common law, droits linguistiques, droits autochtones, selon moi ça fait partie d'un apprentissage de notre histoire."[1298] Contrasting it with the traditional content of legal history courses ("l'histoire du Royaume-Uni et puis des reines et des rois"), the same participant insisted that Indigenous legal perspectives formed part of "notre histoire à nous."[1299] However, they also affirmed that mandating a dedicated course was pushing the metaphorical pendulum "d'un extrême à l'autre."[1300]

[1295] See UAlberta Centre for Teaching and Leaning, online: <https://www.ualberta.ca/centre-for-teaching-and-learning>.
[1296] AB02 ("You say: 'what should I be doing in [this course]?,' and she says: 'what about this?,' and you say: "this is not really related to anything I cover in [this course],' which is fine because you do not expect her to know [this field of law].").
[1297] This is partly because in French, at least in oral conversations, the terms "droit(s) (des) autochtone(s)" do not allow for the same clear distinction as between "Aboriginal law" and "Indigenous law(s)."
[1298] NB06.
[1299] NB06.
[1300] NB06.

Another participant also expressed opposition to the requirement, calling it a fad ("mode passagère"). Nonetheless, they continued with an explanation that there wasn't much debate to be had about it because the Faculty would be compelled to follow the FSLC's requirements in any case.[1301] We saw in a previous chapter that enabling Francophones to join common law bars was Droit UMoncton's *raison d'être*;[1302] as the FLSC and provincial law societies hold the privilege of granting entry to the legal professions, the Faculty will follow the requirements they set to continue fulfilling its mission. The same participant implied that opposition to this specific requirement was widely shared at Droit UMoncton but also acknowledged that the Faculty's position stood out compared to its counterparts: "la faculté ici prend une position que je crois être exceptionnelle. Les autres doyens ont tous accepté sans contestation l'exigence d'avoir un cours de droit autochtone."[1303]

> Several participants exposed comparable perspectives justifying this stance
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> NB01: Pour [les autres facultés] un cours de plus ça ne change pas grand-chose. Ils ont les moyens d'accommoder cette demande. Ici ça ne rentre pas dans la mission, surtout avec le peu de ressources qu'on a.[1304]
>
> NB06: Si je compare l'importance des droits autochtones au sein de notre faculté à l'importance des droits linguistiques, pour moi il y en a un qui, personnellement, est beaucoup plus important à notre mission que l'autre.[1305]
>
> NB07: Ici on est une minorité linguistique, donc vraiment la question qui nous préoccupe c'est de pouvoir continuer à enseigner le droit dans la langue de la minorité linguistique et pouvoir s'assurer qu'on a les ressources nécessaires pour le faire. Donc c'est déjà une grande préoccupation. Bien sûr, parce qu'on est une université, on s'intéresse à la question autochtone, mais on est quand même préoccupé par cette question principale [i.e. la situation de minorité linguistique].[1306]

[1301] NB01.
[1302] See Chapter 2, Section 4, *above*.
[1303] NB01.
[1304] NB01.
[1305] NB06.
[1306] NB07.

Yet another participant stated that Indigenous issues "ne tombent pas naturellement dans [leur] champ d'intérêt ou [leur] champ d'affaires."[1307]

We can see two themes emerging from these explanations: a perceived insufficient congruity with the Faculty's mission and a need to allocate scarce resources to other parts of the curriculum. The question of resources is indeed more pressing at Droit UMoncton than elsewhere as it is the smallest law Faculty in Canada. In September 2017, its entering J.D. class was about a quarter the size of UAlberta Law's (46 compared to 185); moreover, UAlberta Law could count on 36 full-time professors and offer a range of 125 courses in upper years, compared to only 12 full-time professors and 36 courses offered in upper years at Droit UMoncton.[1308]

The allocation of resources derives from institutional preferences and priorities, and, therefore, the two themes are intertwined and complement each other. Droit UMoncton's perception of its mission lies at the core of these preferences. It focuses on empowering the minority official language community in New Brunswick and improving the socio-economic prospects of its members. The Faculty pursues these objectives through two main activities: educating common lawyers in French and researching and advocating for language rights. When we consider this central, enduring and distinctive mission in connection with the historical distance between the Acadian community and Indigenous issues in general, we can see how allocating scarce resources to a specific course dedicated to preoccupations that are remote from the Faculty's essential objectives would encounter resistance.

One participant, however, perceived a slow change in the institution's mission that could affect this situation. While acknowledging that serving the French language minority had been the almost exclusive historical focus on the Faculty and that this would undoubtedly remain core to Droit UMoncton's

[1307] NB02.
[1308] The number of courses includes externships listed as courses but excludes moot court options.

activities, they expressed witnessing an incremental widening of the approach toward the protection of minorities generally.[1309] This resulted from the series of recent hires bringing in younger individuals with more diverse backgrounds than the previous generation of founders then retiring. The same participant saw this context as an opportunity to pay greater attention to Indigenous issues. Moreover, they also pointed to the fact that an international specialist of minority rights had taught the Aboriginal law course the previous year to illustrate this idea. Another participant, who is not a recent hire, shared similar ideas: "c'est une faculté qui est basée sur les droit des minorités. Tu ne peux pas ignorer les autochtones."[1310]

The discourse opposing a dedicated course as recommended by the TRC also featured rhetoric about consistency. The course on language rights is not mandatory at Droit UMoncton, even though it is closely connected to the institution's mission.[1311] A participant affirmed: "dire que les droits autochtones devraient être un cours obligatoire et pas les droits linguistiques, pour moi c'est un non-sens *ici pour notre faculté*."[1312] They nonetheless insisted that they did not advocate for language rights to be a mandatory course either. We can see here that the opposition to the mandatory character of the course lies in a comparison with other courses.[1313] When compared to a course closely connected to the institution's mission that has never been required in the J.D. curriculum, Indigenous legal perspectives are not perceived important enough to warrant rising to the level of a dedicated mandatory course.

[1309] NB03 ("La faculté de droit ici, […] en tout cas de ma vision, et de plus en plus avec le corps professoral qu'on a, c'est beaucoup 'protection des minorités.' Je trouve que ce thème-là revient beaucoup au niveau des minorités linguistiques, mais aussi au niveau des minorités autochtones. […] Donc c'est un peu une sorte de trajectoire qu'on est en train de creuser je crois."); see also Chapter 2, Section 4.3, *above*.

[1310] NB02.

[1311] See also *above,* Chapter 4, Section 2.2, for more details on required courses.

[1312] NB06 [emphasis added]

[1313] The same participant also compared the relative importance of learning about indigenous issues with other socio-legal issues in the following terms: compared the importance of learning about indigenous issues with other legal topics also compared it with other social issues: "L'analyse féministe est aussi importante que l'analyse des enjeux autochtones. Les enjeux autochtones c'est un enjeu qui est d'actualité […] où il y a eu des problèmes marqués, qui n'ont jamais été résolu et maintenant qui débordent. On dit que c'est un problème social. Oui, mais l'égalité des femmes est un problème social. […] il y a eu des progrès, mais il y a encore des progrès à faire […] les femmes sont 50 pourcents de la population, et souvent on oublie le progrès encore qui reste à faire." (NB06).

The comparison was not only to language rights, as the same participant also stated the following: "je ne pense pas que le droit autochtone soit un des cours les plus importants pour s'assurer que l'avocat pratique bien le droit [en pratique privée]. Il y a beaucoup de matières qui devraient être obligatoires avant que cette matière soit obligatoire."[1314] They did not perceive learning about Aboriginal law or Indigenous legal traditions to contribute substantially to preparing students for the legal profession and private practice; for instance, they later suggested that gaining exposure to both the civil and common law traditions was more important to fulfil this objective.[1315]

This stands in contrast with the attitudes at UAlberta Law. There, "providing foundational legal education to people who want to practice law,"[1316] most often for private practice, is understood as the Faculty's mission. Professors conceived Indigenous legal perspectives to form part of the fundamental building blocks of law that students need to learn to become well-rounded lawyers.[1317] The idea of a comparatively high number of required courses also takes on significant important at this Faculty.[1318] The lack of opposition at UAlberta to the mandatory character of a dedicated curricular component testifies to their perception that a greater understanding of Indigenous peoples relationship to law forms part of the generalist education they want to provide, and is one of the fundamental elements to acquire before practicing law.

Droit UMoncton participants shared the premise that Indigenous legal traditions should form part of their students' "culture juridique,"[1319] but this did not lead them to embrace the idea of a dedicated mandatory course for that purpose. Only one participant came close to the idea, affirming that it was necessary for jurists to gain a better legal and political understanding of Indigenous realities and stating

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[1314] NB06.
[1315] NB06 ("Est-ce que les enjeux autochtones sont plus importants que connaître droit civil/common law partout ?").
[1316] AB04.
[1317] See Chapter 2, Section 3.2, *above,* for more details on UAlberta Law's approach to foundational legal education.
[1318] See Chapter 4, Section 2.2, *above,* for more details on required courses.
[1319] NB08, see quote at *infra* note 1320.

that it would be "intéressant d'enseigner […] un cours qui par exemple fait la comparaison entre un système de droit autochtone et le système de droit canadien, pour faire ressortir les différences, et qui pourrait faire guise d'introduction à un système de droit autochtone."[1320] The opponent mentioned above indeed insisted that what they opposed was a 3-credit mandatory course on Aboriginal People and the Law, Indigenous legal traditions, or even Aboriginal Law, but proposed that Indigenous legal perspectives be included in a broader required course such as Legal History.[1321] The same went on to say that "une composante [autochtone] devrait être matière obligatoire, et devrait être enseignée, et les professeurs devraient être encouragés d'inclure cette matière dans leurs cours."[1322]

Other professors at the same Faculty expressed enthusiasm for the inclusion of Indigenous issues and perspectives in their teaching in a larger range of courses. One of them affirmed trying to integrate Indigenous perspectives in their courses and spending a considerable amount of class time on them in a specific course.[1323] Another participant declared trying to incorporate an Indigenous perspective in all of their courses, insisting that they did not teach the Aboriginal law course.[1324] Nonetheless, echoing remarks heard at UAlberta Law, the same admitted that in certain courses, "ça ne s'y prête pas."[1325] A third

[1320] NB08 (continuing as follows: "Je pense que ça serait intéressant que ça fasse partie de la culture juridique de nos étudiants. Et ça pourrait également être un moyen d'augmenter nos contacts entre nos étudiants et la communauté autochtone si on faisait venir un des experts en droit autochtone pour enseigner une certaine partie du cours. Et je pense que c'est une réalité à laquelle le Canada devra faire face dans les décennies à venir: comment conceptualiser les rapports entre la […] *mainstream Canadian society*, qui est définie en partie par un certain système juridique, […] et les diverses sociétés autochtones qui ont été repoussées vers les marges par ce système-là. Il va falloir réfléchir à comment on fait pour intégrer ces deux réalités là et bâtir un certain vivre ensemble qui convient suffisamment à tout le monde. Et pour faire ça il va falloir une meilleure connaissance de l'autre, et donc je pense qu'il va être nécessaire pour les juristes d'avoir une meilleure connaissance, une meilleure compréhension des réalités autochtones sur le plan juridique et politique.").
[1321] NB06, quotes accompanying *supra* note 1298 (affirming that students should learn about it as part of Canada's legal history). Droit UMoncton J.D. students must take either Legal History or Legal Philosophy and Sociology in upper years, see Appendix C, *below.*
[1322] NB06.
[1323] NB04 (the said course was in the field of public law).
[1324] NB03 ("J'essaie d'intégrer la question autochtone dans chacun de mes cours. C'est certain que ce n'est pas moi donne le cours de droit des autochtones, mais c'est un sujet qui revient, une thématique qui revient un peu dans chacun de mes cours.").
[1325] NB03.

participant shared that "le droit autochtone s'insère certainement" in the topic they taught.[1326] However, these participants expressed awareness and regretted that not all of their colleagues endeavoured to do the same, for instance: "je pense que mes collègues de la faculté de droit n'intègrent pas beaucoup la thématique autochtone."[1327]

We can therefore see that there is widespread opposition to a mandatory course on Aboriginal People and the Law as recommended by the TRC at Droit UMoncton, even though there is support for the integration of Indigenous issues and perspectives throughout the rest of the curriculum. At UAlberta Law, doing both appeared to be a consensual idea. In both Faculties, professors expressed attempting to do so in a variety of courses but affirmed that certain areas of law were more adequate venues.

At DSJ UQAM, only two participants talked about the role of Indigenous legal traditions in teaching. Current debates regarding Indigenous issues seemed to be more around the recruitment of Indigenous students and professors, as we will explore in the next section. What one participant shared was nonetheless very informative:

> QC06: Je sens une volonté mais je sens aussi […] un décalage et peut-être une pression. […] Je sens une pression, une urgence d'inclure ces enjeux-là notamment au plan du parcours des étudiants puis de la manière d'inclure notamment les étudiants autochtones, et donc peut-être un manque de maitrise parce que l'on ne peut pas faire cela n'importe comment, on ne peut pas— il y a tout un historique de nos relations entre allochtones et autochtones, […] et donc une démarche avertie à entreprendre. Donc on ne peut pas agir dans l'urgence, et je sens qu'une partie de l'institution est dans l'urgence d'agir, et pourrait le faire d'une manière qui pour moi n'est pas la bonne. […] Au niveau des enjeux autochtones je sens que oui, ça fait très sens de dire que c'est important à l'UQAM et au département des sciences juridiques que ce champ-là de recherche et d'enseignement fasse partie du département, mais après comme je disais je sens des incohérences ou des décalages par rapport à comment intégrer et à quel niveau on intègre, à

[1326] NB07.

[1327] NB04 (adding "Je ne pense pas que c'est de la mauvaise foi, je ne pense pas que c'est du racisme, je pense que ce sont des questions hyper compliquées. Ce n'est pas facile d'intégrer ou d'assimiler le droit autochtone […] et je pense aussi qu'il faut être très critique par rapport à ça. Parce que ce sont des concepts qui sont une invention de la perspective colonisatrice. Si on demandait aux autochtones, ils auraient un point de vue complètement différent sur l'état du droit. Donc il y a cette tension là à enseigner des droits autochtones qui vraiment ne font que perpétuer un rapport de domination qu'on constate aujourd'hui.")

> quel degré. […] Cette volonté affichée d'intégrer ce champ-là du droit et du social […] j'ai l'impression, je ne sens pas un intérêt profond, je sens qu'il y a un intérêt un petit peu superficiel derrière tout ça. Puis une urgence d'intégrer les enjeux autochtones au parcours du département.[1328]

We can see in these extracts that the conversation about including Indigenous issues in the law curriculum was happening within DSJ UQAM, even if it arose only in few interviews. This participant shared observing a sense of urgency within the Faculty to respond to this challenge. This gave rise to concerns about doing so meaningfully and respectfully.

At UQAM, only one law course seemed dedicated to Indigenous issues in 2017-2018 and concerned Aboriginal law.[1329] The course catalogue indicates the existence of a course on Aboriginal People and the Law, which description matches the TRC's Call to Action 28 as it integrates Indigenous legal traditions, intercultural literacy, and conflict resolution in Indigenous communities; this course, however, is offered by the law department to non-law students and does not form part of the LL.B. offering.[1330] A review and reform of the LL.B. curriculum were in early stages at UQAM when I conducted my fieldwork there; the documents and decisions that will come out of this process will certainly affect this initial picture.

Another participant confirmed that debates on such topics within DSJ UQAM revolved around the extent and manner of doing so. They affirmed that the idea of creating a new course to sensitize students to issues surrounding reconciliation did not trigger opposition among law professors and gave rise to

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[1328] QC06.

[1329] UQAM, "JUR6540 - Droit des autochtones", online: <https://etudier.uqam.ca/cours?sigle=JUR6540>; but note that the format in which the course descriptions are made available at UQAM (one dedicated web page per course) has not allowed me to survey all course descriptions and compare data to the UAlberta Law figures presented in *supra* note 1279 (relying on a compilation of all course descriptions in a single PDF document provided by the Faculty).

[1330] UQAM, "JUR1056 - Droit et peuples autochtones", online: <https://etudier.uqam.ca/cours?sigle=JUR1056>.

debates “sur le comment,” whereas their political science colleagues had expressed concerns regarding academic freedom and made it “un enjeu de principe.”[1331]

The literature now offers forceful justification for making space in university legal education for Indigenous legal traditions and exposed the problematic meaning of not doing so.[1332] Nonetheless, we can see that there remain significant obstacles on the way. Professors most willing to engage with Indigenous legal traditions face great difficulties with regards to accessing resources and acquiring the expertise to do so meaningfully and respectfully. This kind of obstacle is heightened when they evolve in an environment that does not incentivize engaging in this enterprise, and rewards other activities (such as research and publication). Institutional cultures regarding legal education, including the Faculties’ self-conception of their mission and their intellectual sensibilities, also play a primordial role in shaping how they approach the inclusion of Indigenous issues and legal perspectives in their undergraduate law curriculum, through a dedicated mandatory course in accordance with the TRC’s Call to Action 28 or through more diffuse inclusion in a broad range of courses.

6. Indigenous Recruitment

At the same time as law Faculties across Canada are debating the extent and manner of incorporating Indigenous legal perspectives and traditions in their curriculum, most of them are also looking to hire Indigenous professors. This responds to two ambitions. First, Faculties seeking to increase

[1331] QC07 (“Les discussions de créer un cours pour sensibiliser [les étudiants à la réconciliation], du côté de sciences juridiques la question ça va être ‘est-ce qu’on a les moyens appropriés pour prendre soin des personnes qui auraient pu avoir été victimisées si on donne le cours pour qu’elles puissent se retirer, pour qu’elles soient accompagnées, qu’elles ne soient pas laissées seules?’ Donc c’est sur le comment. Du côté de science politique, la question va être ‘si c’est un cours universitaire, c’est un cours universitaire: il faut laisser la liberté entière d’expression et l’indépendance du professeur sur les approches qu’il va choisir. […] Donc là c’est un enjeu de principe, on va poser par exemple le principe de l’indépendance universitaire.”); on the topic of academic freedom in discussions regarding inclusion of Indigenous perspectives in university courses, see also Drake, *supra* note 1160 at 33—45.

[1332] See e.g. Borrows, “Heroes, Tricksters, Monsters, and Caretakers” *supra* note 1161 at 807.

the presence of Indigenous issues in their curriculum are looking for candidates with expertise in at least one Indigenous legal culture. Indigenous professors are obvious candidates to fulfil this role. Nevertheless, having an Aboriginal identity is neither sufficient nor necessary to have expertise in Indigenous perspectives. Indeed, one can come from Aboriginal descent without having been exposed to his ancestors' culture, for instance as a legacy of the residential school regime or other assimilationist policies. On the other hand, someone may acquire significant knowledge of Indigenous perspectives through repeated and prolonged exposure, through research for example, without having themselves an Indigenous heritage. Competency to bring an Indigenous perspective in law teaching, therefore, does not depend on one's identity, although there is certainly a correlation. Some disagree with this view and there are ongoing debates in academia on who can speak for whom more generally.[1333] The second reason many law schools are trying to recruit more Indigenous faculty members is not connected to the ability to teach certain topics or concepts. It lies in a broader concern to represent the various identities constituting society. It is similar to the concerns regarding the presence of sexual, gender, and racial minorities.

The attitudes expressed at UAlberta Law illustrate these ideas. At least three participants explained that their Faculty was looking to hire a few more Indigenous professors or professors with expertise in the area of Indigenous legal traditions.[1334] In the months preceding my fieldwork, UAlberta Law had already recruited one professor whose expertise lies in the Cree legal tradition, adding to the small pool of expertise already present.[1335] The upcoming hires the participants mentioned would further strengthen the presence of experts in the area. There seems to be consensus on pursuing this goal, as one participant affirmed that they were "trying to hire one or two Indigenous faculty members at the moment.

[1333] E.g. Sandrine Branchotte, "The Canadian Case Ktunaxa: How Can Courts Deal with Intermingled Rationalities: Using the Intellectual Style of Conflicts of Law to 'Carve Up' Indigenous Ontologies, State Law and Business Ethos" (Paper delivered at the Graduate Students in Law Etudiant(e)s Diplômé(e)s en Droit Conference, Ottawa, 11 May 2018) [unpublished] (discussing the criticisms she had received from colleagues at the University of Toronto for researching Indigenous legal concepts as a white European person).

[1334] AB02; AB03; AB06.

[1335] Hadley Friedland.

And no one is actually arguing with it."[1336] The same thought that it was "very exciting" but not easy as the "pool of available applicants is not big" and "every law school in Canada" is trying to attract them.[1337]

In response to a question about socio-political issues and their echo within the Faculty, another UAlberta Law participant shared the following thoughts:

> AB06: There is a sub-current in our hiring practices in doing a better job at having a Faculty that is reflective of the culture or the population that we are serving. [Coming from] the sense that we are under-representative as a teaching Faculty, both on racial and gender diversity. [It raised questions regarding] what are the obligations that the institution has to become representative or more representative.[1338]

The same immediately continued the discussion by engaging with Indigenous issues:

> AB06: What is the obligation of the institution to deal with colonialism and the issues facing First Nations and Indigenous Peoples in Treaty 6 territory? Those are issues that the Faculty has to and does, I think, grapple with increasingly. And some of that attaches specifically to who we hire or who is part of this community. But it's also I think about, especially on the Indigenous issues side, what does our curriculum look like, what is being taught, who is teaching it.[1339]

As we have seen, hiring decisions engage the Faculties as communities with their sense of identity and mission, revealing the values they hold.[1340] We can see here that UAlberta seeks to include more Indigenous persons and experts of Indigenous legal perspectives in its community both in order to be able to offer expertise on these topics as well as to reflect the society in which it finds itself.[1341]

At DSJ UQAM too, some participants shared their views on the recruitment of Indigenous experts. One of them remembered that in the most recent hiring process, they had advocated, alongside others, for the position to be advertised in Indigenous law as they considered it a necessity to have at least one professor expert in the area.[1342] This proposal had encountered substantial resistance ("il y avait vraiment

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[1336] AB03.
[1337] AB03.
[1338] AB06.
[1339] AB06.
[1340] See Chapter 2, Section 1.1, *above,* for more details on hiring decisions as pivotal moments.
[1341] See also ABXX (insisting that the Faculty should hire and promote more persons of color, thus emphasizing that issues of racial diversity on the faculty are not unique to Indigenous groups).
[1342] QCXX.

une grande résistance") from colleagues, more so than they expected, and that this not how the position was eventually advertised. This testimony revealed two kinds of resistance. A first group questioned the existence of Indigenous laws, or at least the pertinence of expertise in the field (for instance asking: "'Qu'est-ce qu'elle va enseigner cette personne-là?'"). Another type of concern arose from other colleagues, more supportive of the idea, but worried that the move would do little more than buying the Faculty a good conscience.[1343] It is worth noting that on the same day, the Faculty debated how to advertise the new position and potential recipients of an honorary degree; this second discussion included a proposal to award the honour to a successful alumnus of Aboriginal heritage. It is therefore hard to distinguish from this testimony whether the criticisms regarding the artificial or even 'tokenist' character of the proposal were directed at the advertised position or the honorary degree. The former is, evidently, a greater commitment, whereas the latter carries primarily a symbolic weight. Nevertheless, we can see that what was the object of a wide consensus at UAlberta Law was a site of heated debate at DSJ UQAM. Although the institution had not advertised the position for this specialty, UQAM nonetheless recruited an expert in Indigenous legal perspectives in the months preceding my fieldwork.[1344]

At the other end of the spectrum, no participant at Droit UMoncton mentioned any discussion regarding initiatives or resistance to the hiring of Indigenous legal experts. The closest remark one of them offered to this idea was an observation that the Faculty did not have anyone competent to introduce students to an Indigenous legal tradition.[1345] This statement fell short of expressing an opinion as to whether Droit UMoncton should seek to hire such a person. As usual, we should be cautious to infer anything from silence. However, the comments analyzed above regarding the role of Indigenous legal

[1343] QCXX ("il y avait des gens qui disaient 'c'est vraiment comme si on veut se donner bonne conscience' donc on dit 'on va mettre entre parenthèse droit autochtone sur notre affichage et on va bien dormir le soir, […] tout le monde se dit 'on est tellement sympas, on est tellement ouverts, mais que dans les faits, dans les pratiques il n'y a rien qui change vraiment.'")
[1344] Doris Farget.
[1345] NB08 ("je doute qu'on ait quelqu'un qui soit compétent à enseigner un tel cours", speaking of the course described in in the quote accompanying *supra* note 1320).

traditions in the curriculum at Droit UMoncton allow us to elaborate here. Given the resistance to creating and mandating courses dedicated to Aboriginal people and the Law, it would be highly surprising if Droit UMoncton made it a priority to recruit an expert in the field. Moreover, due to the low number of professors and the necessity that they teach a wide range of topics, faculty members in this Faculty cannot specialize in one teaching area.[1346] Even as it is necessarily smaller than in bigger institutions, the course offering still needs to meet the requirements set by the FLSC, and the expectations of both the New Brunswick bar and the students themselves. Therefore, in general, Droit UMoncton prioritizes wider fields of expertise that can inform teaching in a variety of courses.

Two Droit UMoncton participants, however, offered pronouncements on the recruitment of Indigenous students. This is a different idea than recruiting experts to teach about Indigenous legal traditions. However, it similarly reveals attitudes as to who ought to be part of the Faculty's community. In addition, the perceived obstacles to recruiting Indigenous students at Droit UMoncton would apply equally to the recruitment of professors. The two participants both spoke of the same obstacle to recruit Indigenous members: the very limited pool of candidates. As described above, there are very few French-speaking Indigenous individuals in New Brunswick.[1347] One affirmed that "un des problèmes en ce qui concerne l'inscription des autochtones ici c'est la langue": being able to understand and communicate in French, written and oral, is the "principe de base" for admission in Droit UMoncton.[1348] The same further insisted that contrary to Quebec, most of the Indigenous Peoples in New Brunswick do not speak French.[1349] Another affirmed that language competency constituted "un obstacle presque insurmontable […] pour avoir plus d'autochtones dans [leur] programme de droit"[1350] and further asserted that

[1346] E.g. two participants reported having taught 7 different courses in the last 3 years.
[1347] See text accompanying *supra* notes 1202—1208.
[1348] NB02.
[1349] NB02.
[1350] NB04.

"l'assimilation vers l'anglais des autochtones bloque, ou rend très difficile l'accès à notre institution."[1351] The first one suggested that advertising in targeted communities might yield some results.[1352] The recent agreements between Droit UMoncton and French-language colleges in other parts of Canada, including some with a greater Indigenous presence, to facilitate access to the J.D. program may widen the pool of potential candidates, although it adds the barrier of distance.[1353] In his 1998 history of the institution, Vanderlinden reported that the Faculty had already admitted Aboriginal students, but none of them had eventually registered in the program due to language and financial obstacles.[1354] Given this context, it is therefore remarkable that the Faculty's admissions policies features specific accommodation provisions for Indigenous applicants.[1355] Droit UMoncton's niche specialization and *raison d'être*, offering a common law program in French in New Brunswick, constitutes the very obstacle to attracting Indigenous students in the current socio-linguistic landscape of the region.

This shortage of potential Indigenous students competent in the language is unique to Droit UMoncton among the Faculties included in this study. It was not a concern in Montreal or Edmonton. At UAlberta Law, recruiting more Indigenous students is not only feasible, but there seems to be large support to do so:

> AB08: There is wide consensus, if not a universal consensus on [recruiting and supporting more indigenous students]. I think that the discussions are not about whether [UAlberta] should do it, but how we should do it […] We are just trying to gather information and ideas and experience that would help guide us in how we should do it.[1356]

[1351] NB04.
[1352] NB02.
[1353] See supra *note 584* and accompanying text (agreements between Droit UMoncton and Université Ste Anne (Nova Scotia), Université St Boniface (Manitoba) and Campus St Jean (Alberta)).
[1354] Vanderlinden, *Genèse et jeunesse Droit UMoncton, supra* note 34 at 96; see also NB02 (stating that there had already been at least one Indigenous student in the program).
[1355] See UMoncton, "*Juris Doctor* (pour étudiante ou étudiant régulier)" at s 1.1.3, online: <https://www.umoncton.ca/institutionnel/includes/repertoire_description.inc.php?programme_print=1&id=81> ("consciente de la discrimination systémique subie par les autochtones au Canada, la Faculté de droit tiendra compte de ce facteur dans l'évaluation des candidatures d'autochtones").
[1356] AB08.

In that sense, "there is no real debate about, it is more a learning process."[1357]

As we observed above, UAlberta Law's region features one of the largest urban Indigenous population in Canada, and almost all of the potential candidates speak English.[1358] Seeking to welcome more Indigenous law students is moreover consistent with the attitudes analyzed above regarding the role of Indigenous perspectives in the curriculum and recruiting Indigenous professors.

At DSJ UQAM, one participant asserted the main socio-political issue the Faculty wrestled with was admitting more Indigenous students:

> QC05: L'admission des autochtones […] ça c'est une grosse affaire. En dépit du fait qu'on voudrait juste accueillir [environ] trois étudiants. Mais c'est immense. Ça c'est un gros enjeu, c'est un sacrément beau projet […] Au Québec on est en retard, sur la Colombie Britannique par exemple, possiblement l'Alberta et possiblement l'Ontario. En tout cas je sais que la Colombie Britannique sur l'intégration des autochtones dans le système éducatif, puis dans l'éducation supérieure, on est à des années lumières de ce qu'ils font.[1359]

The remainder of the same participant's observations indicates that while there seems to be a wide consensus to promote such recruitment in the law department, there again there are tensions with the political department on this topic:

> QC05: Le problème c'est que en science politique ça ne passe pas chez certaines personnes. Fait que là on est comme pognés. Donc on ne sait pas si ça va fonctionner, et on ne sait pas si on va avoir un budget pour les accueillir, puis les faire réussir, c'est ça le but aussi. On ne pas les accueillir pour qu'ils échouent, c'est les accueillir pour les placer dans des conditions où ils vont réussir, ça c'est sans qu'on fasse de compromis sur le programme, donc la mission et tout ça.[1360]

Dedicating a budget line to the project is the reason why DSJ UQAM needs the buy in of the political science department. Budgetary matters are decided at the FSPD level. While DSJ UQAM could very well pursue targeted recruitment on its own, it would only like to do so if it can provide educative or cultural

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[1357] AB08.
[1358] See Statistics Canada, *2016 Census Language*, *supra* note 1204 (indicating that nearly 100% of individuals reporting an Aboriginal identity in Alberta also indicated knowing English, as opposed to 4.6% for French).
[1359] QC05.
[1360] QC05.

support for Indigenous students. As we have seen above, there are deep ideological differences regarding the very idea of reconciliation between the two departments.

The remarks quoted above regarding a sense of urgency and concerns for hasty decisions applied equally to the inclusion of more Indigenous individuals in the student body as to curricular matters.[1361] The author's tone on this issue and background spoke to genuine preoccupations to avoid the pitfalls of tokenist policies rather than insincere objections in an attempt to delay and deprioritize the project. In May 2018, UQAM joined the vast majority of law Faculties across Canada, including UAlberta Law and Droit UMoncton, featuring special admission streams for Indigenous applicants.[1362] It issued a call for applications from Indigenous candidates and reserved four seats for Indigenous candidates seeking admission in September 2018.[1363] Therefore, it appears that the debate within FSPD evolved in the few months following my fieldwork so as to make this pilot project possible.

Conclusion

We can see that the attitudes toward the recruitment of Indigenous professors and students are intimately connected with the meanings associated with other aspects of legal education at each Faculty. The discourses and attitudes at DSJ UQAM, UAlberta Law, and Droit UMoncton differ greatly with regards to acknowledging the traditional character of the land on which they sit, the place of Indigenous content in their undergraduate curriculum, and the recruitment of Indigenous professors or students. The interviews and observations I conducted revealed divergences on these topics among participants at each

[1361] See QC06, quote accompanying *supra* note 1328.
[1362] As of March 2019, only uOttawa Civil and UWindsor Law (holistic review of applications) do not feature a special stream of admissions for Indigenous applicants; for UAlberta Law, see UAlberta Law, "Admissions", online: <https://www.ualberta.ca/law/programs/jd/admissions>, and for Droit UMoncton see text accompanying *supra* note 1355. See also Larry Chartrand et al, *supra* note 97 at 215 (indicating that in 1992-95, law Faculties at UAlberta, Dalhousie, Western, and Windsor, but not UMontréal, featured a separate category for Aboriginal students).
[1363] See DSJ UQAM, "Appel à des candidatures d'étudiantes et d'étudiants autochtones" (May 2018), online (pdf): <https://juris.uqam.ca/wp-content/uploads/sites/49/2018/05/Appel-a-Candidature-ProjPilote.pdf>.

institution but also distinct trends that define how the collective engages with the issues. These trends are remarkably consistent with the core, enduring, and distinctive characteristics and institutional meanings at each Faculty, in connection with their history, organizational structure and social space. The discourses and attitudes on Indigenous issues in the law Faculties I studied correspond to their institutional cultures.

Reconciliation and Indigenous issues have come to form part of DSJ UQAM's conception of social justice, a central theme of its culture. This is so even as key characteristics of this institution hinder its ability to implement the policies it would like in this regard; we had seen in previous chapters how such characteristics, such as collegial decisions making and the organizational entanglement with other branches of the university, hold great significance within the institution. The new focus on Indigenous issues in legal education resonated with long-standing proximity with such issues in UAlberta Law social and university environment. The generalist approach to legal education that characterizes it has come to integrate these concerns among the essential foundational components of legal education, although difficulties and debates remain vivid regarding the room that should exist for these considerations in a number of courses. On the other hand, the striking example of Droit UMoncton showed that Indigenous issues were often perceived as foreign within an institution which raison d'être is to serve a specific, distinct, minority, especially as the strong ties that once united the Acadian and Indigenous communities have long ceased to exist. Additionally, the challenges attached to Droit UMoncton's size and specialty further impede the recruitment of Indigenous professors and students.

The institutional cultures and what they tell us of how Faculties relate to their environment are a primordial element to understanding the ongoing dialogue regarding the response to the TRC Call to Action 28 at DSJ UQAM, UAlberta Law and Droit UMoncton. Without the insights gained from the detailed picture of their institutional cultures, we would only obtain a very partial comprehension of their attitudes toward questions related to Indigenous issues in legal education. For instance, the CCLD'S summary of

initiatives at each law Faculty regarding the TRC report suggests that all Faculties share the same attitude toward responding to the Call to Action 28 even though their individual initiatives may vary.[1364] The data and analysis offered throughout this chapter demonstrate clear distinct patterns specific to each Faculty with regard to such attitudes. Although institutional cultures are subject to constant change, contested and sometimes contradictory, we can see how they form a loosely coherent web of significances that defines each Faculty in comparison with each other and seems to play an important role in how they address contemporary challenges.

Canadian law Faculties have now been warned,[1365] repeatedly, of the necessity to engage meaningfully and respectfully with Indigenous legal traditions. The contextualized portrait of ongoing dialogues on Indigenous issues at DSJ UQAM, UAlberta Law and Droit UMoncton that I offer here should assist all actors in knowing better why and how responses vary. Knowing the truth about ourselves and our peers is a necessary step on the way to reconciliation in legal education and should enlighten the path forward. Faculties need to account for the diversity among Indigenous cultures in designing meaningful and respectful responses to this immense challenge; our own discourse about legal education more broadly and how to improve it would also gain from engaging with the cultural plurality of law Faculties across Canada.

[1364] *CCLD TRC Report, supra* note 15.

[1365] See Hewitt, *supra* note 1162 (relying on the story of the nightbirds as cautionary tale against "an exhaustion of patience by those who are watching and contributing in quiet but profound ways, such as the Animiiki, who may harshly correct us if we fail to do it ourselves" at 83).

General Conclusion & Implications

As we are now closing this thesis, let us look back at the journey and the grounds we covered and envision the implications of the present work. We started with identifying the lack of scholarship studying legal education comparatively with a focus on the institutional level of analysis, even though the literature is replete with indications that this is a promising avenue of inquiry; we then defined a conceptual and methodological path to conduct such an endeavour in the form of case studies at three Canadian law Faculties. Guided both by scholarly insights and the patterns emerging from the data, we deployed this approach on a set of loci of meanings, including the mission, the structures and the academic programs. This allowed us to tease out a portrait of DSJ UQAM, UAlberta Law and Droit UMoncton's respective institutional cultures.

The analysis of interview and observation data showed that we could identify patterns specific to each Faculty in terms of the core, enduring and distinctive meanings that they nurture about many aspects of legal education's ends and modalities. Professors experience such meanings as bearing normative weight in their institution's activities and decisions. Such meanings are subject to change and contestation but nonetheless form, at each Faculty, a coherent web of significance that law professors spin as they are suspended in it.[1366]

Finally, we teased out additional characteristics of the Faculties' institutional cultures by examining attitudes regarding a common and prominent contemporary challenge. We saw that although the manners to address reconciliation may take similar forms, they carry profoundly different meanings for each Faculty. Leveraging the insights gained on each Faculty throughout the thesis to understand this phenomenon demonstrated the importance of accounting for institutional cultures to enhance our

[1366] See Geertz, *supra* note 125.

comprehension of law Faculties' responses to contemporary challenges and of the ways legal education perpetuates and transforms itself.

Arthurs and Macdonald strongly advocated for genuine pluralism in the field of Canadian legal education, for instance calling on law Faculties to design diverse courses of study according to their own "[r]egional and local resources, needs, traditions and strengths"[1367] or "[their] own intellectual agenda[s], [their] own methodological perspectives and [their] own theoretical approaches."[1368] Building on, and contributing to, the burgeoning scholarship addressing "what *actually* happens in [Canadian] legal education,"[1369] this study provides ample empirical evidence confirming their premise that law Faculties indeed feature meaningful and important unique characteristics on which they could build such variations in the provision of legal education. This study also confirmed empirically Blanc's assertion that the ends and modalities of legal education are inseparable from the expression of cultural identity.[1370]

While these conclusions may not come as a surprise in the multicultural landscape of a wide and diverse country, the essentially local cultural element highlighted here needs to form part of our approach to formulating questions and proposing answers in the field, especially as the issues in legal education are often similar, within Canada but also internationally.[1371] New takes on the "familiar canards"[1372] and "perennial debates"[1373] that cyclically structure debates among legal educators, such as the perennial tinkering with the J.D. curriculum, should now account for the fact, now corroborated, that law Faculties indeed do have meaningfully distinct institutional cultures.

[1367] *Arthurs Report supra* note 5 at 155.
[1368] Macdonald, "Still 'Law' and Still 'Learning'?" *supra* note 5 at 15.
[1369] Rochette & Pue, *supra* note 99 at 167—68 [emphasis in original].
[1370] Blanc, *supra* note 3 at 83.
[1371] See e.g. Cownie, *Global Issues, Local Questions, supra* note 237.
[1372] Twining, "Taking Facts Seriously", *supra* note 275 at 53 (including "the notion that curriculum is the beginning and end of all discussion about legal education" in the list).
[1373] Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 226 (speaking about the tension between theory and practice).

My efforts, and those of the few who have preceded me in leveraging the tools from other disciplines to explore legal education empirically, add another building block to our understanding of the diverse reality of Canadian law Faculties. Drawing the portraits throughout this thesis of the institutional cultures of three Faculties across Canada opened windows to observe plurality as it currently exists in the country. In keeping with Legrand's proposal, the thick description of plurality within Canadian legal education that I offer should assist all those concerned to identify and characterize "the limitations, incoherences, and poverty of resources of [one's] own beliefs."[1374] The present study achieved to "exoticize the domestic" and "make the familiar strange,"[1375] in Cownie's words, so that those interested in legal education understand the socially constructed character of the norms they take for granted at their Faculty and engage with the differences they notice with others in their social complexity. Awakening legal educators to often-implicit assumptions about the ends and modalities of legal education helps emancipate them as it enables them to embrace or reject such assumptions for what they are and broaden their horizons of possibilities by showing that significant differences exist in other comparable institutions. It empowers them to retain their agency against the strong structural forces pulling them toward greater uniformity. Pursuing new paths or continuing on the old ones should be their choice; awareness of the multiplicity of options and of the normative character of their environment is crucial for such a choice to be genuine.

The exact role and weight of the cultural element in law Faculties remain to be decisively assessed. It is not something that the present project aimed to or could determine. Methodological approaches inspired by process tracing or grounded theory may be apt to achieve this goal. Even without a precise measurement, the preceding chapters provide sufficient indications that institutional cultures are part of complex dynamics shaping legal education. Engaging with the cultural contingency of the meanings we

[1374] Legrand, *supra* note 145 at 373 (citing MacIntyre).
[1375] See Cownie, *Legal Academics, supra* note 128 at 2014.

attribute to various aspects of legal education and acknowledging the plurality of such meanings in the diverse landscape of Canadian legal education are paramount for any serious attempt at forming opinions about legal education informed by reliable data.

In his study focused on the contract law course, Sandomierski found that individual pedagogical choices and theoretical opinions were "apparently more impactful than institutional culture" in shaping the pedagogy and substantive messages in the classroom.[1376] Concerned with the gap between aspirations and reality in legal education, he conceived institutional cultures primarily in terms of structural incentives and "invisible but nearly impermeable boundaries" on the imagination of law professors.[1377] He concluded that taking into account the tenacity of "the ways in which professors believe in and reinforce the structures that condition them" was critical to any transformative project for legal education.[1378]

Blanc approached "[l]e facteur culturel" more broadly than Sandomierski and myself, as I focused on the Faculty as a distinct world of meanings where Blanc adopted lenses adapted for national communities.[1379] Despite this difference, he also concluded that cultures have contributed to transforming legal education and can explain whether "l'enseignement du droit produit des dominés ou des acteurs critiques."[1380] While the cultural aspect as he defined it may not trump the incredibly resilient paradigms inherited from Langdell as to the conception of legal knowledge and reasoning, their organization and the modalities of their transmission, or the different forms of dominations identified by Macdonald and McMorrow,[1381] it remains a crucial dimension of legal education that cannot be dismissed.

[1376] Sandomierski, *Canadian Contract Law Teaching*, *supra* note 93 at 410.
[1377] *Ibid* at 412.
[1378] *Ibid* at 412—13.
[1379] See generally Blanc, *supra* note 3.
[1380] *Ibid* at 98, 83.
[1381] *Ibid* at 88 ("Les difficulté de faire de la question culturelle un facteur de transformation de l'enseignement du droit, résidaient, en partie, dans l'influence du modèle de Langdell dans l'organisation du raisonnement juridique et dans les modalités d'enseignement du droit »; see also Sandomierksi, *supra* note 93 at 370ff, 411), 98 (« si le pluralisme juridique et culturel a été un facteur de transformation de la culture de l'enseignement, [les] différentes formes de domination [exposée par Macdonald & McMorrow, *supra* note 236] pourraient conduire à inhiber la

There is a tension between Arthurs and Macdonald's recommendations to nurture pluralism in Canadian legal education[1382] and the repeated attempts of certain stakeholders to maintain a level of uniformity, for example through to blanket requirements.[1383] I leave to the care of others to determine the extent to which one of these two opposite approaches should prevail here and for our time. As we hope that law Faculties aptly respond to the contemporary challenges that we face, cultural meanings are key to the comprehensibility and implementations of reform and regulation. Administrators, Faculty council voters, professional bodies and maybe even students will benefit from gaining awareness of the different worlds of meanings that each Faculty constitute and the limits that this may pose on their imagination, decision-making and comprehension of the other worlds surrounding them.

fonction critique et humaniste de l'enseignement du droit et reculer tout engagement social des étudiants en droit.").

[1382] See e.g. Macdonald, "Still 'Law' and Still 'Learning'?" *supra* note 5; *Arthurs Report, supra* note 5 at 56ff. See also Jan M Smits, "Trois modèles d'enseignement du droit : une même taille ne convient pas à tout le monde" in Pascal Ancel & Luc Heuschling, eds, *La transnationalisation de l'enseignement du droit* (Larcier: Bruxelles, 2016) 31 at 44 (speaking from a European viewpoint and affirming that "La différenciation entre les programmes de droit doit être encouragée," especially to insist that transnational approaches or programs would not be adequate for all law Faculties).

[1383] We can think here of FLSC *National Requirement*, *supra* note 9.

Bibliography

Legislation & Professional Regulations

Act respecting the Barreau du Québec, CQLR c B-1.

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

Federation of Law Societies of Canada, *National Requirement* (1 January 2018), online: <https://flsc.ca/wp-content/uploads/2018/01/National-Requirement-Jan-2018-FIN.pdf>.

Indian Act RSC 1985, c I-5.

Law Society of Alberta, *Rules of the Law Society of Alberta* (1 July 2019).

Legal Profession Act RSA 2000, c L-8.

Official Languages Act, SNB 2002, c O-0.5.

Official Languages Act, RSC 1985, c 31.

Regulation respecting the diplomas issued by designated educational institutions which give access to permits or specialist's certificates of professional order, OC 1139-83 (1983) GOQ II, 2878.

University Act, SA 1910.

University Act, SS 1907.

Université de l'Ontario français Act, 2017, SO 2017, c 34.

Jurisprudence

Delgamuukw v British Columbia, [1997] 3 SCR 1010.

Law Society of British Columbia v Trinity Western University [2018] 2 SCR 293.

R v Marshall (No 1) [1999] 3 SCR 456.

R v Marshall (No 2) [1999] 3 SCR 533.

R v Sparrow, [1990] 1 SCR 1075.

Skapinker v Law Society of Upper Canada [1984] 1 SCR 357.

Trinity Western University v Law Society of Upper Canada [2018] 2 SCR 453.

Tsilhqot'in Nation v British Columbia [2014] 2 SCR 256.

Secondary Material: Monographs & Theses

American Association of Law Schools & Gallup, *Before the JD: Undergraduate Views on Law School* (Washington, D.C.: American Association of Law Schools, 2018).

Alvesson, Mats, *Understanding Organizational Culture* (London: Sage, 2002).

Bailey, Carol A, *A Guide to Qualitative Field Research*, 2nd ed, (Thousand Oaks, CA: Pine Forge Press, 2007).

Baker, G Blaine, "Juristic Biographies, Homage Volumes, and 'Tracings of Gerald Le Dain's Life in the Law'" in G Blaine Baker & Richard Janda, eds, *Tracings of Gerald Le Dain's Life in the Law* Montreal: McGill-Queen's University Press, 2012) 3.

Banack, Clark, *God's Province Evangelical Christianity, Political Thought, and Conservatism in Alberta* (Montreal & Kingston: McGill-Queen's University Press, 2016).

Banks, Margaret A, *Law at Western: 1959-1984* (London, ON: Faculty of Law University of Western Ontario, 1984).

Bastarache, Michel & Michel Doucet, eds, *Les Droits Linguistiques au Canada*, 3ed (Cowansville, QC: Yvon Blais, 2013).

Bell, David G, *Legal Education in New Brunswick: A History* (Fredericton: University of New Brunswick, 1992).

———, *The Law Society of New Brunswick: an historical sketch* (Fredericton: Law Society of New Brunswick, 1999).

Bourdieu, Pierre, *Homo Ademicus* (Paris: Editions de Minuit, 1984).

———, *Distinction: A Social Critique of the Judgement of Taste*, translated by Richard Nice (Cambridge, MA: Harvard University Press, 1984).

Boutin, Gérald, *L'entretien de recherche qualitatif,* revised ed, (Québec: Presses de l'Université du Québec, 2008).

Brault, Serge et al, *L'affaire des sciences juridiques à l'UQAM* (Québec: Editions Québécoises, 1973).

Bureau, Robert D & Pierre Mackay, eds, *Le droit dans tous ses états* (Montreal: Wilson & Lafleur, 1987).

Canadian Bar Association, *Proceedings of the Fifth Annual Meeting of the Canadian Bar Association held in Ottawa, Ontario September 1st, 2nd and 3rd, 1920* (Winnipeg: Bulman Bros, 1920).

Ciotola, Pierre & Jean Hétu, *La Faculté de droit de l'université de Montréal et le notariat: 125 ans de formation* (2004).

Consultative Group on Research and Education in Law, *Law and Learning* (Report to the Social Sciences and Humanities Research Council of Canada, Chairman Harry Arthurs) (Ottawa: Social Sciences and Humanities Research Council of Canada, 1983).

Cormier, Clément, *Université de Moncton : Historique* (Moncton: Centre d'études acadiennes, 1975), online : *Centre d'études acadiennes Anselme Chasson* <https://www.umoncton.ca/umcm-ceaac/node/47>.

Cownie, Fiona, *Legal Academics* (Oxford: Hart, 2004).

———, ed, *The Law School – Global Issues, Local Questions* (Aldershot: Ashgate, 1999).

———, ed, *Stakeholders in the Law School* (Oxford: Hart, 2010).

———, "Legal Education and the Legal Academy" in Peter Cane & Herbert M Kritzer, *The Oxford Handbook of Empirical Legal Research* (Oxford: Oxford University Press, 2010).

Creswell, John W, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (Thousand Oaks, Cal: Sage Publications, 2014).

Environics Institute for Survey Research, *Canadian Public Opinion on Aboriginal Peoples Final Report* (June 2016), online (pdf): *National Centre for Truth and Reconciliation*, <nctr.ca/assets/reports/Modern%20Reports/canadian_public_opinion.pdf>.

Landry, Mark W, *Pokemouche Mi'kmaq and the Colonial Regimes* (Masters thesis, Saint Mary's University, 2010) [unpublished].

Latimer, Eric et al, *I Count MTL 2015: Count and Survey of Montreal's Homeless Population on March 24, 2015*, (Montreal: City of Montreal, 2015), online (pdf): <ville.montreal.qc.ca/pls/portal/docs/page/d_social_fr/media/documents/I_Count_MTL_2015_report.pdf>.

Faragher, John M, *A Great and Noble Scheme: the Tragic Story of the Expulsion of the French Acadians from Their American Homeland* (New York & London: W W Norton & Company, 2005).

Foucault, Michel, *Surveiller et Punir* (Paris: Gallimard, 1975).

Geertz, Clifford, *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1975).

Glenn, H Patrick, *Legal Traditions of the World*, 5th ed. (Oxford: OUP, 2014).

Groupe de travail sur la récupération des seringues usagées au Québec, *La récupération des seringues et des aiguilles usagées : une responsabilité à partager* (2005), online: *Ministère de la Santé et des Services Sociaux* <publications.msss.gouv.qc.ca/msss/document-001331/>.

Hamelin, Jean, *Histoire de l'université Laval Les péripéties d'une idée* (Québec: Presses de l'Université Laval, 1995).

Harvey, Cameron, ed, *The Law Society of Manitoba 1877-1977* (Winnipeg: Peguis, 1977).

Hétu, Jean, *Album souvenir 1878-1978 Centenaire de la faculté de droit de l'université de Montréal* (Montreal: Yvon Blais, 1978).

Iacobucci, Hon Frank, *First Nations Representation on Ontario Juries: Report of the Independent Review* (2013), online: *Government of Ontario* <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/iacobucci/First_Nations_Representation_Ontario_Juries.html>.

Jamin, Christophe, *La cuisine du droit* (Paris: L'extenso, 2012).

Jobin, Carol, *Réflexions « sabbatiques » sur le département des sciences juridiques* (1993) [unpublished, archived at UQAM Law Library].

Johns, Walter H, *A History of the Faculty of Law* (Edmonton: University of Alberta Faculty of Law, 1978).

Johnson, Allan G, *The Blackwell Dictionary of Sociology*, 2nd ed, (Oxford: Blackwell Publishers, 2000).

Kalman, Laura, *Legal Realism at Yale, 1927-1960* (Chapel Hill: University of North Carolina Press, 1986).

Kuh, George D & Elizabeth J Whitt, *The Invisible Tapestry: Culture in American Colleges and Universities*, ASHE-ERIC Higher Education Report No 1 (Washington, DC: Association for the Study of Higher Education/ The George Washington University, School of Education and Human Development, 1988).

Kyer, C Ian & Jerome E Bickenbach, *The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario: 1923-1957* (Toronto: University of Toronto Press, 1987).

Lawson, F H, *The Oxford Law School 1850-1965* (Oxford: Clarendon Press, 1968).

Matas, Justice Roy J & Deborah J McCawley, eds, *Legal Education in Canada* (Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23-26, 1985) (Montreal: Federation of Law Societies of Canada, 1987).

McConnell, W H, *Prairie Justice* (Calgary: Burroughs & Cie, 1980).

Macdonald, John, *The History of the University of Alberta, 1908-1958* (Toronto: W J Gage, 1958).

McKennirey, John S, *Canadian Law Professors* (A report to the Consultative Group on Research and Education in Law based on the 1981 survey of full-time law professors in Canada) (Ottawa: Social Sciences and Humanities Research Council of Canada, 1982).

Macleod, Rod, *All True Things, A History of the University of Alberta, 1908-2008* (Edmonton: University of Alberta Press, 2008).

Masters, Donald Campbell, *Bishop's University: The First Hundred Years* (Toronto: Clarke, 1950).

Meister, Robert, *After Evil* (New York: Columbia University Press, 2011).

Christopher Moore, *The Law Society of Upper Canada and Ontario's Lawyers 1797-1997* (Toronto: University of Toronto Press, 1997)

National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place* (Gatineau: National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019).

Nicholl, Christopher, *Bishop's University, 1843-1970* (Montreal & Kingston: McGill-Queen's University Press, 1994).

Normand, Sylvio, *Le droit comme discipline universitaire, Une histoire de la Faculté de droit de l'université Laval* (Québec: Les Presses de l'Université Laval, 2005).

Ouchi, William G, *Theory Z: How American Business Can Meet the Japanese Challenge* (Reading, MA: Addison-Wesley Publishing Company, 1981).

Palmer, Howard & Tamara Palmer, *Alberta A New History* (Edmonton: Hurtig Publishers, 1990).

Peters, Thomas J & Peter H Waterman, *In Search of Excellence: Lessons from America's Best Run Companies* (New York: Harper & Row, 1982).

Pilarczyk, Ian C, *"A Noble Roster": One Hundred and Fifty Years of Law at McGill* (Montreal: McGill University Faculty of Law, 1999).

Rawls, John, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

Rochette, Annie, *Teaching and learning in Canadian legal education: an empirical exploration* (DCL Thesis, McGill University Faculty of Law, 2011) [unpublished].

Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples, Vols 1-5* (Ottawa: Canada Communication Group, 1996), online: *Library and Archives Canada*, <www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/final-report.aspx>.

Sandomierski, David, *Canadian Contract Law Teaching and the Failure to Operationalize: Theory & Practice, Realism & Formalism, and Aspiration & Reality in Contemporary Legal Education* (SJD Thesis, University of Toronto Faculty of Law, 2017) [unpublished].

Sandomierski, David, *Aspiration and Reality in Legal Education* (Toronto: University of Toronto Press, 2020) [forthcoming].

Schultz, Majken, *On Studying Organizational Cultures: Diagnosis and Understanding* (Berlin/Boston: De Gruyter, 1995).

Schwartz, Michael Hunter, Gerald F Hess & Sophie M Sparrow, *What the Best Law Teachers Do*

(Cambridge, Mass: Harvard University Press, 2013).

Shoeck, Ellen, *I Was There: A Century of Alumni Stories about the University of Alberta, 1906-2006* (Edmonton: University of Alberta Press, 2006).

Simard, Marc, *Histoire du mouvement étudiant québécois 1956-2013 : des Trois Braves aux carrés rouges* (Québec: Presses de l'université Laval, 2013).

Soberman, Daniel A, *Legal Education in the Maritime Provinces* (Report to the Maritime Provinces Higher Education Commission) (Fredericton: Maritime Provinces Higher Education Commission, 1976).

Stake, Robert E, *The Art of Case Study Research* (Thousand Oaks, CA: Sage, 1995).

Stanley, Della M M, *Au service de deux peuples Pierre-Amand Landry* (Fredericton : Barreau du Nouveau Brunswick, 1987).

Stevens, Robert, *Law School Legal Education in American from the 1850s to the 1980s* (Chapell Hill: University of North Carolina Press, 1983).

Susskind, Richard E, *Tomorrow's Lawyers: An Introduction to Your Future,* 2nd ed (Oxford: Oxford University Press, 2017).

Tremblay, Pierre-André, Michel Roche & Sabrina Tremblay, eds, *Le printemps québécois : le mouvement étudiant de 2012* (Québec : Presses de l'université du Québec, 2015).

Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling the Future* (Summary of the Final Report of the Truth and Reconciliation Commission of Canada) (Toronto: James Lorimer & Company Ltd, 2015).

Twining, William, *Blackstone's Tower: The English Law School* (London: Sweet & Maxwell, 1994)

Vanderlinden, Jacques, *Genèse et jeunesse d'une institution : l'école de droit de l'université de Moncton* (Moncton: Université de Moncton, 1998).

Watts, Alfred, *History of the Legal Profession in British Columbia 1869-1984* (Vancouver: Law society of BC, 1984).

Williams, Raymond, *Keywords: a Vocabulary of Culture and Society*, 2nd ed (New York: OUP, 1983).

Willis, John, *A History of Dalhousie Law School (*Toronto: University of Toronto Press, 1979).

Yin, Robert K, *Case Study Research: Design and Methods* (Thousand Oaks, CA: Sage, 2009).

———, *Applications of Case Study Research*, 3ed (Thousand Oaks, CA: Sage, 2012).

<u>Secondary Materials: Articles, Book Chapters & Papers</u>

Legal Education & Legal Scholarship

"The AALL Institute 1963--Summary Report" (1963) 56:4 L Libr J 402.

Adams, Eric, "The Dean Who Went to Law School: Crossing Borders and Searching for Purpose in North American Legal Education, 1930-1950" (2016) 54:1 Alta L Rev 1.

Anand, Sanjeev S, "Canadian Graduate Legal Education: Past, Present and Future" (2004) 27:1 Dal LJ 55.

Assier-Andrieu, Louis, “Brève théorie culturelle du droit” in Helge Dedek & Shauna Van Praagh, *Stateless Law: Evolving Boundaries of a Discipline* (2016) 83.

Association of American Law Schools, Special Committee on Law Degrees, “Report of Special Committee on Law Degrees” in *Proceedings of the Second Annual Meeting of the Association of American Law Schools* (1902) 8.

Arthurs, Harry W, “The Affiliation of Osgoode Hall Law School with York University” (1967) 17:1 UTLJ 194.

———, “Paradoxes of Canadian Legal Education” (1977) 3:3 Dal LJ 639.

———, “Prometheus Unbound: Law in the University” (1989) 38 UNBLJ 75.

———, “The Political Economy of Canadian Legal Education” (1998) 25 JL & Soc’y 14.

———, “Poor Canadian Legal Education: So Near to Wall Street, So Far from God” (2000) 38:3 Osgoode Hall LJ 381.

———, “The World Turned Upside Down: Are Changes in Political Economy and Legal Practice Transforming Legal Education and Scholarship, or Vice-Versa” (2001) 8:1 Intl J Leg Prof 11.

———, “The State We're In: Legal Education in Canada's New Political Economy” (2001) 20 Windsor YB Access Just 35.

———, “The Spider, the Bee, the Snail and the Camel Legal Knowledge, Practice, Culture, Institutions and Power in a Changing World” (2005) [unpublished, archived at CPLE Paper Series].

———, “Madly Off in One Direction: McGill’s New Integrated, Polyjural, Transsystemic Law Programme” (2005) 50 McGill LJ 707.

———, “The Tree of Knowledge, the Axe of Power: Le Dain and the Transformation of Canadian Legal Education” in G Blaine Baker & Richard Janda, eds, *Tracings of Gerald Le Dain’s Life in the Law* (Montreal: McGill-Queen’s University Press, 2012) 106.

———, “Valour Rather Than Prudence: Hard Times and Hard Choices for Canada's Legal Academy” (2013) 76 Sask L Rev 73.

———, “The Future of Law School: Three Visions and a Prediction” (2013-14) 51 Alta L Rev 705.

Askew, Hannah, “Learning from Bear-Walker: Indigenous Legal Orders and Intercultural Legal Education in Canadian Law Schools” (2016) 33:1 Windsor YB Access Just 29.

Atwood, Barbara et al, “Crossing Borders in the Classroom: A Comparative Law Experiment in Family Law” (2005) 55:4 J Leg Educ 542.

———, “Franchir Les Limites de la Salle de Classe : Une Expérience en Droit Comparé de la Famille” (2008) 24:1 Can J Family L 65.

Bakht, Natasha et al, “Counting Outsiders: Critical Exploration of Outsider Course Enrolment in Canadian Legal Education” (2007) 45 Osgoode Hall LJ 667.

Barnes, John, “The Department of Law, Carleton University, Ottawa” (1977) 3 Dal LJ 814.

Bastarache, Michel, “La pratique du droit en français au Nouveau-Brunswick ; Un commentaire fondé sur la préparation et la Mise en œuvre du Rapport Final du Comité sur l’intégration des deux langues officielles à la pratique du droit au Nouveau-Brunswick (1981)” (2012) 44 Ottawa L Rev 1.

Bedard, Julie, “Transsystemic Teaching of Law at McGill: Radical Changes, Old and New Hats” (2001) 27:1 Queen's LJ 237.

Bell, David G, “Slamming the Door on Brains: Two Early Twentieth-Century Law Schools and the Narrowing of Educational Opportunity” in Constance Backhouse & W Wesley Pue, eds, *The Promises and Perils of Law: Lawyers in Canadian History* (Toronto: Irwin Law, 2009) 31.

Belley, Jean-Guy, “Le programme transystémique de McGill et la transnationalisation du droit” in Pascal Ancel & Luc Heuschling, eds, *La transnationalisation de l’enseignement du droit* (Larcier: Bruxelles, 2016) 139.

Belniak, Theodora, “The History of the American Bar Association Accreditation Standards for Academic Law Libraries” (2014) 106:2 L Libr J 151.

Blanc, Nicolas, “L’enseignement du droit au Canada : la culture, facteur de transformation” in Marie-Claire Ponthoreau, ed, *La dénationalisation de l’enseignement juridique* (Paris: Institut Universitaire Varenne, 2016) 83.

Blonde, Dolores J et al, “The Impact of Law School Admission Criteria: Evaluating the Broad-Based Admission Policy at the University of Windsor Faculty of Law” (1998) 61:2 Saks LR 529.

Borrows, John, “Issues, Individuals, Institutions and Ideas” (2002) 1 Indigenous LJ ix.

———, “Outsider Education: Indigenous Law and Land-Based Learning” (2016) 33:1 Windsor YB Access Just 1.

———, “Unextinguished: Rights and the Indian Act” (2016) 67 UNBLJ 3.

———, “Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education” (2016) 61:4 McGill LJ 79.

Bradney, Anthony, “Liberalising Legal Education” in Fiona Cownie, ed, *The Law School – Global Issues, Local Questions* (Aldershot: Ashgate, 1999) 1.

———, “Can There Be Commensurability in Comparative Legal Education?” (2007) 1 Can Leg Educ Ann Rev 67.

Branchotte, Sandrine, “The Canadian Case Ktunaxa: How Can Courts Deal with Intermingled Rationalities: Using the Intellectual Style of Conflicts of Law to ‘Carve Up’ Indigenous Ontologies, State Law and Business Ethos” (Paper delivered at the Graduate Students in Law Etudiant(e)s Diplômé(e)s en Droit Conference, Ottawa, 11 May 2018) [unpublished].

Brierley, John C, “Quebec Legal Education since 1945: Cultural Paradoxes and Traditional Ambiguities” (1986) 10:1 Dal LJ 5.

Brunet, Mélanie P, *Becoming Lawyers: Gender, Legal Education and Professional Identity Formation in Canada, 1920-1980* (Ph.D. Dissertation, University of Toronto Department of History, 2005) [unpublished].

———, “‘Good Government without Him, is Well-nigh Impossible’: Training Future (Male) Lawyers for Politics in Ontario, Quebec, and Nova Scotia, 1920-1960” in Constance Backhouse & W Wesley Pue, eds, *The Promises and Perils of Law: Lawyers in Canadian History* (Toronto: Irwin Law, 2009) 49.

Buhler, Sarah M, *Painful injustices: clinical legal education and the pedagogy of suffering* (LLM Thesis, University of Saskatchewan College of Law, 2011) [unpublished].

———, “Painful Injustices: Encountering Social Suffering in Clinical Legal Education” (2012-13) 19 Clinical L Rev 405.

———, “Troubling Feelings: A Moral Anger and Clinical Legal Education” (2014) 37:1 Dal LJ 397.

Bureau, Robert D, “Le droit en question et la crise de l’État” in Robert D Bureau & Pierre Mackay, eds, *Le droit dans tous ses états* (Montreal : Wilson & Lafleur, 1987) 1.

Bureau, Robert D & Pierre Mackay, “Présentation” in Robert D Bureau & Pierre Mackay, eds, *Le droit dans tous ses états* (Montreal : Wilson & Lafleur, 1987) ix.

Bureau, Robert D & Carol Jobin, "Les Sciences Juridiques a l'Université du Québec à Montréal: Fifteen Years Later" (1987) 11:1 Dal LJ 295.

Campbell, R Lynn, “Law as a Social Science” (1985) 9:2 Dal LJ 404.

Canadian Bar Association Legal Futures Initiative, *Innovations in Legal Services:* (Canadian Bar Association: Ottawa, 2013), online: <https://www.cba.org/CBA-Legal-Futures-Initiative/Home>.

Cantrell, Deborah J, “Are Clinics a Magic Bullet” (2014) 51:4 Alta L Rev 831.

Carter, Roger, “University of Saskatchewan Native Law Centre” (1980) 44 Sask L Rev 135).

Castonguay, Lynne & Jacques Vanderlinden, “Le Devoir De Mémoire” (2004) 6:1 RCLF 1.

Christie, Gordon, “Culture, Self-Determination and Colonialism: Issues around the Revitalization of Indigenous Legal Traditions” (2007) 6:1 Indigenous LJ 13.

Clark, Donald H, “Core vs Elective Courses: Law School Experience Outside of Quebec” in Justice Roy J Matas & Deborah J McCawley, eds, *Legal Education in Canada Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23-26, 1985* (Montreal: Federation of Law Societies of Canada, 1987) 214.

Cotterrell, Roger, “The Concept of Legal Culture” in David Nelken, ed, *Comparing Legal Cultures* (New York: Routledge, 2016) 13.

Cover, Robert M, “Foreword: Nomos and Narrative” (1983) 97:1 Harv L Rev 4.

Chartrand, Larry et al, “Law Students, Law Schools, and Their Graduates” (2001) 20 Windsor YB Access Just 211.

Dabby, Dia, Bethany Hastie & Jocelyn Stacey, “Doctoral Studies in Law: From the inside out” (2016) 39 Dal LJ 221.

Danner, Richard A, “Law Libraries and Laboratories: The Legacies of Langdell and His Metaphor” (2015) 107:1 L Libr J 7.

Dedek, Helge, “When Law Became Cultivated: ‘European Legal Culture’ between Kultur and Civilization” in Geneviève Helleringer & Kai Purnhagen, eds, *Towards a European Legal Culture* (Münich: C.H. Beck, 2014).

———, “Stating Boundaries: The Law, Disciplined” in Helge Dedek & Shauna Van Praagh, eds, *Stateless Law Evolving Boundaries of a Discipline* (Burlington, VT: Ashgate, 2015) 9.

Dedek, Helge & Armand de Mestral, “"Born to be Wild: The Trans-Systemic Programme at McGill and the De-Nationalization of Legal Education” (2009) 10:6/7 German LJ 889.

Dewhurst, Dale, “The Case Method, Law School Learning Outcomes and Distance Education” (2012) 6 Can Legal Educ Ann Rev 59.

Demers, Annette, “And Social Justice for All: A History of the University of Windsor, Faculty of Law” (2009) 27 Windsor Rev Leg & Soc Issues 31.

Doucet, Michel, “Rapport de Synthèse du Colloque Pour Une Common Law a Notre Image” (1997) 1:2 RCLF 317.

Drake, Karen, “Finding a Path to Reconciliation: Mandatory Indigenous Law, Anishinaabe Pedagogy, and Academic Freedom” (2017) 95:1 Can B Rev 9.

Ferguson, Douglas D, “The State of Experiential Education in Canadian Law School” 2013) 37:1 Man LJ 465.

Finch, Justice Lance S G, “The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice” (Paper delivered at the British Columbia Continuing Legal Education “Indigenous Legal Orders and the Common Law” Conference, Vancouver, 15 November 2012), online (pdf): *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec* <https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Documents_deposes_a_la_Commission/P-253.pdf>.

Florio, Cassandra M S & Steven J Hoffman, “Student Perspectives on Legal Education: A Longitudinal Empirical Evaluation” (2012) 62:1 J Leg Educ 162.

Forcese, Craig, “The Law Professor as Public Citizen: Measuring Public Engagement in Canadian Common Law Schools” (2015) 36 Windsor Rev Leg & Soc Issues 66.

Forray, Vincent, “Qu’est-ce qu’une Faculté de droit ? De la philosophie au droit” in Helge Dedek & Shauna Van Praagh, eds, *Stateless Law Evolving Boundaries of a Discipline* (Burlington, VT: Ashgate, 2015) 175.

Froc, Kerri & Nicole O’Byrne, “Has the Empire Declined? The Predominance of US and UK Trained Law Professors in Canadian Legal Education” (Paper delivered at the Canadian Association of Law Teachers Conference, Kingston, 2 June 2018) [unpublished].

Friedman, Lawrence M, “The Concept of Legal Culture: A Reply” in David Nelken, ed, *Comparing Legal Cultures* (New York: Routledge, 2016) 33.

Frost, Stanley B & David L Johnston, “Law at McGill: Past, Present and Future” (1981) 27:1 McGill LJ 31.

Gallagher, Marian G, “The Law Library in a New Law School” (1969) 1:1 Tex Tech L Rev 21.

Gavigan, Shelley & Sean Rehaag, “Poverty Law, Access to Justice, and Ethical Lawyering: Celebrating 40 Years of Clinical Education at Osgoode Hall Law School” (2014) 23 J L & Soc Pol’y 1.

Glenn, H Patrick, “Legal Cultures and Legal Traditions” in Mark Van Hoecke*, Epistemology and methodology of Comparative Law* (Portland, OR: Hart, 2004) 7.

———, “Doin’ the Transsystemic: Legal Systems and Legal Traditions” (2005) 50:4 McGill LJ 863.

Griswold, Erwin N, “Graduate Study in Law” (1950) 28:2 Can B Rev 172.

Goguen, Yves & Philippe Morin, “Les Mouvements Associatifs et les Droits Linguistiques” (2018) 5 RDL 115.

Goldsmith, Andrew, “Standing at the Crossroads: Law Schools, Universities, Markets and the Future of Legal Scholarship” in Fiona Cownie, ed, *The Law school – Global Issues, Local Questions* (Aldershot: Dartmouth, 1999) 62.

Gordon, Robert W, “J. Willard Hurst and the Common Law Tradition in American Legal Historiography” (1976) 10 L & Soc’y Rev 9.

———, “Critical Legal Histories” (1984) 36 Stanford L Rev 57.

Guth, Delloyd J, “Judge Shadowing at the University of Manitoba & Canada First-Year Law Curriculum” (2013) 37:1 Man LJ 473.

Habermacher, Adrien, “A Hitchhiker’s Guide to the Crisis of Legal Education” (2019), online: *SSRN* <https://ssrn.com/abstract=3374361>.

Hale, Samantha & Neil Gold, “Clinical and Experiential Learning in Canadian Law Schools: Current Perspectives” (2017) 95:1 Can Bar Rev 151.

Harland, Fraser, “Moving from the Why to the How of Indigenous Law” (2016) 61:4 McGill LJ 721.

Harris, Douglas et al, “‘Community without Propinquity’: Teaching Legal History Intercontinentally” (1999) 10:1 L Education Rev 1.

Henderson, Joshua J A & Trevor C W Farrow, “The Ethical Development of Law Students: An Empirical Study” (2009) 72:1 Sask L Rev 75.

Henderson, Stephen E & Joseph T Thai, “Crowdsourced Coursebooks” (2014) 51:4 Alta L Rev 907.

Hervey, John G, “Law School Graduates Should Receive Professional Doctorates: Time for a Change from LL.B. to J.D. Degree” (1965) 10:5 Student Lyer J 5.

Hess, Gerald F, “Qualitative Research on Legal Education: Studying Outstanding Law Teachers” (2014) 51:4 Alta L Rev 925.

Hewitt, Jeffery G, “Decolonizing and Indigenizing: Some Considerations for Law Schools” (2016) 33:1 Windsor YB Access Just 65.

Hobbins, AJ, “Designating the Dean of Law: Legal Education at McGill University and the Montreal Corporate and Professional Elite, 1946-1950” (2004) 27:1 Dal LJ 163.

———, “'A couple of generations ahead of popular demand': The First National Law Program at McGill University, 1918-1924” (2008) 31:1 Dal LJ 181.

———, “No longer 'naked and shivering outside her gates': Establishing Law as a Full-time On-campus Academic Discipline at McGill University in the Nineteenth Century” (2011) 34:2 Dal LJ 373.

Holloway, Ian, “The Evolved Context of Legal Education” (2013) 76:1 Sask L Rev 133.

———, “A Canadian Law School Curriculum for This Age” (2014) 51:4 Alta L Rev 787.

Howes, David, “The Origins and Demise of Legal Education in Quebec (or Hercules Unbound)” (1989) 38 UNBLJ 127.

Huffcut, H Ernest W, “The Elective System in Law Schools” (1904) 27 Ann Rep Am B Assoc 570.

Hughes, Margaret E, “Law Faculty Developments at Calgary, 1984-1989” (1990) 13:2 Dal LJ 778.

Jamin, Christophe & William van Caenegem, “The Internationalisation of Legal Education: General Report for the Vienna Congress of the International Academy of Comparative Law, 20-26 July 2014” in Christophe Jamin & William van Caenegem, eds, *The Internationalisation of Legal Education* (Springer, 2016) 3.

Jamin, Christophe & Mikhaïl Xifaras, “Sur la formation des juristes en France Prolégomèse à une enquête” [2015:2] 150 Commentaire 385.

Jamin, Christophe, “Faculté, école, clinique ? Quel choix ? » (Address delivered at the “Former les juristes: tradition, renouveau, défis” Conference, Paris, 12 October 2018) [unpublished].

Jobin, Carol, “Une certaine biographie des sciences juridiques à l’UQAM – La période 1972-1986 Première partie : l’ère du programme de baccalauréat, phase I : l’implantation (1972-1976)” (2013) 58 Pour la suite du monde (Bulletin de l’APR-UQAM) 10.

———, “Une certaine biographie des sciences juridiques à l’UQAM – La période 1972-1986 Deuxième partie : l’ère du programme de baccalauréat, phase II: les crises (1976-1980)” (2013) 59 Pour la suite du monde (Bulletin de l’APR-UQAM) 4.

———, “Une certaine biographie des sciences juridiques à l’UQAM – La période 1972-1986 Troisième Partie : l’ère de l’affirmation départementale (1981-1986)” (2013) 60 Pour la suite du monde (Bulletin de l’APR-UQAM) 4.

Jones, Frank D, “The University of Alberta Faculty of Law” (1985) 9 Dal LJ 393.

Jukier, Rosalie, “Where Law and Pedagogy meet in the Transsystemic Contracts Classroom” (2005) 50:4 McGill LJ 7.

———, “The Impact of ‘Stateless Law’ on Legal Pedagogy” in Helge Dedek & Shauna Van Praagh, eds, *Stateless Law Evolving Boundaries of a Discipline* (Burlington, VT: Ashgate, 2015) 201.

Jukier, Rosalie & Kate Glover, “Forgotten? The Role of Graduate Legal Education in the Future of the Law Faculty” (2014) 51:4 Alta L Rev 761.

Jutras, Daniel, “Two Arguments for Cross Cultural Legal Education” in Heinz Dieter Assmann, Gert Brüggemeier & Rolf Sethe, eds, *Unterschiedliche Rechtskulturen - Konvergenz des Rechtsdenkens* (Baden-Baden: Nomos Verlagsgesellschaft, 2001) 75.

Kasirer, Nicholas, “‘K’ as a Structure of Anglo-American Legal Knowledge” (1997) 22:4 Can L Libr 159.

———, “Bijuralism in Law’s Empire and Law’s Cosmos” (2002) 52 J Leg Educ 29.

———, “Legal Education as Métissage” (2003) 78 Tulane L Rev 481.

Kennedy, Duncan, “Three Globalizations of Law and Legal Thought: 1850–2000” in David M Trubek & Alvaro Santos, eds, *The New Law and Economic Development: A Critical Appraisal* (Cambridge: Cambridge University Press, 2006) 19.

Kimball, Bruce A, “Young Christopher Langdell, 1826-1854: The Formation of an Educational Reformer” (2002) 52:1&2 J Leg Educ 189.

Konefsky, Alfred S & John Henry Schlegel, “Mirror, Mirror on the Wall: Histories of American Law Schools” (1982) 95:4 Harv L Rev 833.

Lambert, Nicolas, “Demain” (2008) 10:1 RCLF 21.

Langdell, Christopher C, “Teaching Law As a Science” reprinted in “Notes” (1887) 21:1 Am L Rev 121.

Laperrière, René, “A la recherche de la science juridique” in Robert D Bureau & Pierre Mackay, eds, *Le droit dans tous ses états* (Montreal: Wilson & Lafleur, 1987) 515.

Lavoie, Jean-Marie “La Faculté de Droit de l'Université de Sherbrooke” (1985) 9:3 Dal LJ 762.

Law, John M & Roderick J Wood, “A History of the Law Faculty” (1996) 35:1 Alta L Rev 23.

Legrand, Pierre, “Comparative Legal Studies and the Matter of Authenticity” (2006) 1:2 J Comp L 365.

Lockyer, James, “Hier” (2008) 10:1 RCLF 6.

London, Jack R, “The Admissions and Education Committee: A Perspective on Legal Education and Admission to Practice in the Province of Manitoba-Past, Present and Future” in Cameron Harvey, ed, *The Law Society of Manitoba 1877-1977* (Winnipeg: Peguis, 1977).

MacAulay, Hugh, “Improving Access to Legal Education for Native People in Canada” (1991) 14 Dal LJ 13.

McDonald, David C, “The Role of the Canadian Institute for the Administration of Justice in the Development of Judicial Education in Canada” in William Kaplan & Donald McRae, eds, *Law, Policy and International Justice, Essays in Honour of Maxwell Cohen* (Montreal & Kingston: McGill-Queen’s University Press, 1992) 455.

Macdonald, Roderick A, “Law Schools and Public Legal Education: the Community Law Program at Windsor” (1979) 5 Dal LJ 779.

———, “Curricular Development in the 1980s: A Perspective” (1982) 32 J Leg Educ 569.

———, “Préface” in Robert D Bureau & Pierre Mackay, eds, *Le droit dans tous ses états* (Montreal : Wilson & Lafleur, 1987) xi.

———, “The National Law Programme at McGill: Origins, Establishment, Prospects” (1990) 13:1 Dal LJ 211.

———, “Academic Questions” (1992) 3:1 Leg Educ Rev 61.

———, “Recommissioning Law Reform” (1996) 35:4 Alta L Rev 831.

———, “Legal Bilingualism” (1997) 42:1 McGill LJ 119.

———, “Still ‘Law’ and Still ‘Learning’? Quel ‘droit’ et quel ‘savoir’?” (2003) 18 CJLS 5.

———, “Everyday Lessons of Law Teaching -- Le Quotidien de l'Enseignement Juridique” (2012) 6 Can Legal Educ Ann Rev 1.

Macdonald, Roderick A & Jason MacLean, “No Toilets in Park” (2005) 50 McGill LJ 721.

Macdonald, Roderick A & Thomas B McMorrow, “Decolonizing Law School” (2014) 51:4 Alta L Rev 717.

Macdonald, Ronald St John, “An Historical Introduction to the Teaching of International Law in Canada” (1974) 12 Can YB Intl L 67.

———, “An Historical Introduction to the Teaching of International Law in Canada; Part II” (1975) 13 Can YB Intl L 255.

———, “An Historical Introduction to the Teaching of International Law in Canada; Part III” (1976) 14 Can YB Intl L 224.

———, “An Historical Introduction to the Teaching of International Law in Canada; Part IV” (1983) 21 Can YB Intl L 235.

Macfarlane, Julie, “Bringing the Clinic into the 21st Century” (2009) 27:1 Windsor YB Access Just 35.

Mackay, Pierre, “L’Enseignement du Droit dans une Perspective de Changement Social: Bilan de l'Experience du Programme de Sciences Juridiques à l'Université du Québec à Montréal” (1979) 44 Sask L Rev 73.

McLaren, John P S, “Legal Education at Calgary: Blending Progress and Tradition” (1985) 9 Dal LJ 421.

———, “The History of Legal Education in Common Law Canada” in Justice Roy J Matas & Deborah J McCawley, eds, *Legal Education in Canada* (Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23-26, 1985) (Montreal: Federation of Law Societies of Canada, 1987) 111.

McManis, Charles R, “The History of First Century American Legal Education: A Revisionist Perspective” (1981) 59:3 Wash ULQ 597.

Manderson, Desmond & Sarah Turner, “Coffee House: Habitus and Performance Among Law Students” (2006) 31:3 L & Soc Inquiry 649.

Martin, Sheilah L, “La reconciliation: notre reponsibilité à tous” (2019) 60:2 C de D 559.

Mazer, Brian M, “An Analysis of Gender in Admission to the Canadian Common Law Schools from 1985-86 to 1994-95” (1997) 20 Dal LJ 135.

Mills, Aaron, “The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today” (2016) 61:4 McGill LJ 847

Morgan, Cecilia, “‘An Embarrassingly and Severely Masculine Atmosphere’: Women, Gender and the Legal Profession at Osgoode Hall, 1920s-1960s” (1996) 11 CJLS 19.

Mosher, Janet, “Legal Education: Nemesis or Ally of Social Movements?” (1997) 35 Osgoode Hall LJ 613.

Mossman, Mary Jane, “Educating Men and Women for Service Through Law: Osgoode Hall Law School 1963-1988” (1988) 11:3 Dal LJ 885.

Murbach, Ruth, “Editorial” (2003) 18:1 CJLS 1.

Napoleon, Val & Hadley Friedland, “An Inside Job: Engaging with Indigenous Legal Traditions through Stories” (2016) 61:4 McGill LJ 725.

Noakes, Susan “The Effective Role of a Social Worker in a Clinical Legal Education Practice” (2013) 37:1 Man LJ 449.

Normand, Sylvio, “Tradition et Modernité à la Faculté de Droit de l'Université Laval de 1945 à 1965” (1992), 33 C de D 141.

Ogloff, James R P et al, “More Than Learning to Think Like a Lawyer: 'The Empirical Research on Legal Education'” (2000) 34 Creighton L Rev 73.

Organ, Jerome, “How Scholarship Programs Impact Students and the Culture of Law School” (2011) 61:2 J Leg Educ 173.

Otis, Ghislain, “La production du droit autochtone: comportement, commandement, enseignement” (2018) 48:1 RGD 67.

Parker Hall, James, “Practice Work and Elective Studies in Law Schools” (1902) 1:10 Am L School Rev 328.

Pennisi, Carlo, “Sociological Uses of the Concept of Legal Culture” in David Nelken, ed, *Comparing Legal Cultures* (New York: Routledge, 2016) 106

Perret, Louis, “Des cours obligatoires et des cours à option dans les facultés de droit du Québec ou: de l’incidence des conditions d’accès aux professions juridiques sur icelles” in Justice Roy J Matas & Deborah McCawley, eds, *Legal Education in Canada* (Reports and Backgrounds Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, 23-26 October) (Montreal: Federation of Law Societies of Canada, 1985) 244.

Perry, David, “How Did Lawyers Become ‘Doctors’?” (2012) 84:5 NY State Bar J 20

Purich, Donald, “Affirmative Action in Canadian Law Schools: The Native Student in Law School” (1986) 51 Sask L Rev 79.

Pineau, Jean, “Les études supérieures” in Jean Hétu, ed, *Album souvenir 1878-1978 Centenaire de la faculté de droit de l’université de Montréal* (Montreal: Yvon Blais, 1978) 281.

Power, Garrett, “In Defense of the J.D.” (1967) 20:1 J Leg Educ 67.

Pue, W Wesley, “Common Law Legal Education in Canada's Age of Light, Soap and Water” (1995) 23 Man LJ 654.

———, “British Masculinities, Canadian Lawyers: Canadian Legal Education, 1900-1930” (1998-1999) 16 Law Context: A Socio-Legal Journal 80.

———, “A History of British Columbia Legal Education” (March 2000) UBC Legal History Papers WP 2000-1, online: SSRN, <https://ssrn.com/abstract=897084.

———, “Globalisation and Legal Education: Views from the Outside-in” (2001) 8 Int’l J Leg Prof 87.

———, “Educating the Total Jurist” (2005) 8 Leg Ethics 208.

———, “Legal Education’s Mission” (2008) 42:3 The Law Teacher 270.

Risk, Richard CB, “Canadian Law Teachers in the 1930s: When the World Was Turned Upside Down" (2004) 27:1 Dal LJ 1.

Roach, Kent, *Canadian Justice, Indigenous Injustice The Gerald Stanley and Colten Boushie Case* (Montreal: McGill Queens Press, 2019).

Rochette, Annie & W Wesley Pue "'Back to Basics'? University Legal Education and 21st Century Professionalism" (2001) 20 Windsor YB Access Just 167.

Rousselle, Serge, "La faculté de droit et les droits linguistiques" (2018) 5 RDL 130.

Sandomierski, David, "Training Lawyers, Cultivating Citizens, and Re-Enchanting the Legal Professional" (2014) 51:4 Alta L Rev 739.

Sankoff, Peter, "Taking the Instruction of Law Outside the Classroom: How the Flipped Classroom Can Make Learning More Productive and Enjoyable (for Professors and Students)" (2014) 51:4 Alta L Rev 891

Schlag, Pierre, "U.S. CLS" (1999) 10 Law & Critique 199.

Shanahan, Theresa, "Legal Scholarship in Ontario's English-Speaking Common Law Schools" (2006) 21:2 CJLS 25.

———, "Creeping Capitalism and Academic Culture at a Canadian Law School" (2008) 26:1 Windsor YB Access 121.

Sibenik, Peter M, "Doorkeepers: Legal Education in the Territories and Alberta, 1885-1928" (1990) 13:1 Dal LJ 419.

Simons, Martha E, "Innovative Thinking and Clinical Legal Education: The Experience of the Osgoode Mediation Intensive Program" (2013) 37:1 Man LJ 363.

Smith, George P II, "Much Ado about Nothing - The J.D. Movement" (1966) 11:7 Student Lyer J 8.

———, "When You Wish upon a Star--The J. D. Fantasy" (1968) 21:2 J Leg Educ 177.

Smits, Jan M, "Trois modèles d'enseignement du droit : une même taille ne convient pas à tout le monde" in Pascal Ancel & Luc Heuschling, eds, *La transnationalisation de l'enseignement du droit* (Larcier: Bruxelles, 2016) 31.

Sloan, Kerry, *A Global Survey of Indigenous Legal Education and Research* (Indigenous Bar Association, Access to Justice and Reconciliation, 2013), online (pdf): <https://indigenousbar.ca/indigenouslaw/wp-content/uploads/2013/04/KLS-World-Indigenous-Legal-Education-Complete1.pdf>.

Strauss, Peter L, "Transsystemia - Are We Approaching a New Langdellian Moment? Is McGill Leading the Way?" (2006) 56:2 J Leg Educ 161.

Susskind, Richard E, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford: Oxford University Press, 2013).

Tanguay, Guy, "Le bien-fondé du statut particulier de la bibliothèque juridique universitaire" (1969) 10:4 C de D 601.

Thisdale, Louise, "Le Centenaire de la Faculté de Droit de l'Université de Montréal" (1980) 6:2 Dal LJ 374.

Thomasset, Claude & René Laperrière, “Faculties Under Influence: The Infeudation of Law Schools to the Legal Professions” in Fiona Cownie, ed, *The Law school – Global Issues, Local Questions* (Aldershot: Dartmouth, 1999) 190.

Tice, Beatrice A, “The Academic Law Library in the 21st Century: Still the Heart of the Law School” (2011) 1:1 UC Irvine L Rev 157.

Tokarz, Karen L, “A Manual for Law Schools on Adjunct Faculty” (1998) 76:1 Wash ULQ 293.

Tong, Dawna & W Wesley Pue, “The Best and the Brightest: Canadian Law School Admissions” (1999) 37:4 Osgoode Hall LJ 843.

Twining, William, “Taking Facts Seriously” in Neil Gold, ed, *Essays on Legal Education* (Toronto: Butterworth, 1982) 51.

———, “Rethinking Law Schools” (1996) 21:4 Law & Soc Inquiry 1007.

———, “Have concepts, will travel: analytical jurisprudence in a global context” (2005) 1 Int’l J L in Context 5.

———, “A Cosmopolitan Discipline? Some Implications of ‘Globalisation’ for Legal Education” (2010) 8:1 Intl J Leg Prof 23.

Shauna Van Praagh, “Palsgraf as Transsystemic Tort Law” (2011) 6:2 J Comp L 243.

———, “Teaching Law: ‘Historian and Prophet All in One’” in Helge Dedek & Shauna Van Praagh, eds, *Stateless Law Evolving Boundaries of a Discipline* (Burlington, VT: Ashgate, 2015) 23.

Jacques Vanderlinden, “A Propos des Catégories du Droit ou Propos Décousus d'un Juriste Arboricole Contemplant un Jardin de Roses Rampantes” (1998) 2:2 RCLF 301.

———, “Demain” (2008) 10:1 RCLF 18.

———, “Hier” (2008) 10:1 RCLF 20.

———, “Regards D'Un Huron Sur Les Droits Linguistiques: En Guise de Synthèse” (2009) 11:1 RCLF 199.

Veitch, Edward & Roderick Macdonald, “Law Teachers and Their Jurisdiction” (1978) 56 Can Bar Rev 710.

Vink, Edward & Edward Veitch, “Curricular Reform in Canada” (1976) 28:4 J Leg Educ 437.

Voyvodic, Rose, “‘Considerable Promise and Troublesome Aspects’: Theory and Methodology of Clinical Legal Education” (2001) 20 Windsor YB Access Just 111.

Voyvodic, Rose & Mary Medcalf, “Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor” (2004) 14 Wash U J L & Pol'y 101.

Webb, Julian, “Post-Fordism and the Reformation of Liberal Legal Education” in Fiona Cownie, ed, *The Law school – Global Issues, Local Questions* (Aldershot: Dartmouth, 1999) 228.

Williams, E K, “Legal Education in Manitoba: 1913-1950” (1950) 28:7 Can Bar Rev 759.

Other Scholarship

Albert, S & David Whetten, "Organizational Identity" (1985) 7 Research in Organizational Behaviour 263.

Blakesley, Simon, "Remote and Unresearched: Educational Leadership in Canada's Yukon Territory" (2008) 38:4 J Comp & Intl Educ 441 at 445.

Breton, Raymond, "Institutional Completeness of Ethnic Communities and the Personal Relations of Immigrants" (1964) 70:2 Am J Sociology 193.

Charmaz, Kathy, "Grounded Theory: Methodology and Theory Construction" in James D Wright, ed, *International Encyclopedia of the Social & Behavioral Sciences,* 2nd ed (Oxford: Elsevier, 2015) 402.

Clarke, P D, "Pêche et identité en Acadie : nouveaux regards sur la culture et la ruralité en milieu maritime" (1998) 39 :1 Recherches sociographiques 59.

Delamont, Sara, "Just Like the Novels? Researching the Occupational Culture(s) of Higher Education" in Rob Cuthbert, ed, *Working in Higher Education* (Buckingham: Society for Research into Higher Education & Open University Press, 1996) 145.

Dominick, Charles A, "Revising the Institutional Mission" (1990) 71 New Directions for Higher Educ 29.

Doucette, Donald S, Richard C Richardson & Robert H Fenske, "Defining Institutional Mission: Application of a Research Model" (1985) 56:2 J Higher Educ 189.

El-Alayli, Amani, Ashley A. Hansen-Brown & Michelle Ceynar, "Dancing Backwards in High Heels: Female Professors Experience More Work Demands and Special Favor Requests, Particularly from Academically Entitled Students" (2018) 79 :3-4 Sex Roles 136

Epp, Roger, "1996: Two Albertas Rural and Urban Trajectories" in Michael Payne, Donald Wetherell & Catherine Cavanaugh, eds, *Alberta Formed Alberta Transformed*, v 2 (Edmonton: University of Alberta Press, 2006) 727.

Guarino, Cassandra M & Victor MH Borden, "Faculty Service Loads and Gender: Are Women Taking Care of the Academic Family?" (2017) 58 Research in Higher Educ 672.

Klotz, Audie, "Case Selection" in Audie Klotz and Deepa Prakash, eds, *Qualitative Methods in International Relations A Pluralist Guide* (New York: Palgrave, 2008) 43.

Lee, Jung-Sook, "The Attainability of University Degrees and Their Labour Market Benefits for Young Australians" (2014) 68:3 Higher Educ 449.

Mahoney, James & Gary Goertz, "A Tale of Two Cultures: Contrasting Quantitative and Qualitative Research" (2006) 14:3 Pol Analysis 227.

Maas Weigert, Kathleen, "Social Justice: Historical and Theoretical Considerations" in James D Wright, ed, *International Encyclopedia of the Social & Behavioral Sciences,* 2nd ed (Oxford: Elsevier, 2015) 397.

Nicholas, Andrea B, “Wabanaki and French Relations: Myth and Reality” (1991) 24:1 Interculture 12.

Pike, Gary R, George D Kuh & Robert M Gonyea, “The Relationship between Institutional Mission and Students' Involvement and Educational Outcomes” (2003) 44:2 Research in Higher Educ 241.

Rocher, François, “The evolving parameters of Quebec nationalism” (2002) 4:1 Int’l J Multicultural Societies 1.

Sewell, William, “The Concept(s) of Culture” in Victoria E Bonnell & Lynn Hunt, eds, *Beyond the Cultural Turn: New Directions in the Study of Society and Culture* (Berkeley and Los Angeles: University of California Press, 1999) 35.

Swaffar, Janet, “Institutional Mission and Academic Disciplines: Rethinking Accountability” (1996) 45:1 J General Educ 18.

Taras, David, “Alberta in 2004” in Michael Payne, Donald Wetherell & Catherine Cavanaugh, eds, *Alberta Formed Alberta Transformed*, v 2 (Edmonton: University of Alberta Press, 2006) 748.

Tierney, William, “Organizational Culture in Higher Education: Defining the Essentials” (1988) 59:1 J Higher Educ 2.

Trow, Martin, “The Public and Private Lives of Higher Education” (1975) 104:1 Daedalus 113.

Twombly, Susan B, “Values, Policies, and Practices Affecting the Hiring Process for Full-Time Arts and Sciences Faculty in Community Colleges” (2005) 76:4 J Higher Educ 423.

Whetten, David A, “Albert and Whetten Revisited: Strengthening the Concept of Organizational Identity” (2006) 15:3 J of Management Inquiry 219.

Wicken, William C, “Re-examining Mi’kmaq-Acadian Relations, 1635-1755” in Sylvie Dépatie et al, eds, *Vingt ans après, habitants et marchands: lectures de l'histoire des XVIIe et XVIIIe siècles canadiens* (Montreal & Kingston : McGill-Queen’s University Press, 1998) 93.

Zenk, Leslie R & Karen R Seashore Louis, “Mission as Metaphor: Reconceptualizing How Leaders Utilize Institutional Mission” (2018) 120:9 Teachers College Record 1.

<u>Secondary Material: Newspaper Articles, News Releases & News Bulletin</u>

Bourque, Claude, “Le rôle de l’université” *L’Evangeline* (19 March 1975), online: *Université de Moncton* <www8.umoncton.ca/umcm-evangeline/TXT/9110.html>.

Clancy, Clare, “Premier not ‘big fan’ of Suzuki’s honorary degree, but respects choice” *Edmonton Journal* (25 April 2018), online: <https://edmontonjournal.com/news/politics/premier-not-big-fan-of-suzukis-honorary-degree-but-respects-choice>.

Dalhousie University, News Release, “Introducing the Schulich School of Law” (15 October 2009), online: <https://www.dal.ca/news/2009/10/15/schulich.html>.

Duchaine, Gabrielle, “Prolifération de seringues souillées à l'UQAM” *La Presse* (11 April 2014), online: <https://www.lapresse.ca/actualites/sante/201404/10/01-4756507-proliferation-de-seringues-souillees-a-luqam.php>.

Durelle, Jared, “UNB students protest tuition hike” *NB Media Co-Op* (2 April 2018), online: <nbmediacoop.org/2018/04/02/unb-students-protest-tuition-hike/>.

Federation of Law Societies of Canada, News Release, “Federation of law societies commits to effective response to TRC” (11 March 2016), online: <https://flsc.ca/federation-of-law-societies-commits-to-effective-response-to-trc-report/>.

“Globe Editorial: Calls to block honorary degree for David Suzuki are misplaced” *The Globe and Mail* (25 April 2018), online: <https://www.theglobeandmail.com/opinion/editorials/article-globe-editorial-calls-to-block-honorary-degree-for-david-suzuki-are/>.

Graney, Juris, “Five Indigenous students make history by undertaking PhD in native studies at University of Alberta*” Edmonton Journal* (8 November 2017), online: <edmontonjournal.com/news/local-news/five-indigenous-students-make-history-by-undertaking-phd-in-native-studies-at-university-of-alberta>.

HebdoCampus: Bulletin d’information de l’université de Moncton 31:33 (10 May 2001).

Kerr, Lisa & Lisa Kelly, “Yes, law schools must be political” *The Globe and Mail* (31 March 2018), online: <https://www.theglobeandmail.com/amp/opinion/article-yes-law-schools-must-be-political/>.

“La Faculté de droit offrira la maîtrise dès l’an prochain” *L’Acadie Nouvelle* (17 October 2001) 9.

Le Juriste: Bulletin d'informatin de l'Ecole de droit 20 (Summer 2001).

Le Juriste: Bulletin d'informatin de l'Ecole de droit 3 (October 1986).

“Les droits linguistiques des peoples autochtones” *L’Acadie Nouvelle* (8 March 2014) 6.

Pardy, Bruce, “The social justice revolution has taken the law schools. This won’t end well” *National Post* (27 February 2018), online: <http://nationalpost.com/opinion/the-social-justice-revolution-has-taken-the-law-schools-this-wont-end-well>.

Raiche-Nogue, Pascal, “Pour nous, ce n’est vraiment pas la solution” *L’Acadie Nouvelle* (24 October 2013) 2.

Richard, Paul-Emile, “L’impossible se réalise” *L’Evangeline* (29 November 1978), online: *Université de Moncton* <www8.umoncton.ca/umcm-evangeline/TXT/10106.html>.

Rousselle, Serge & Michel Doucet “Des espaces éducatifs distincts francophones à défendre… et à préserver !” *L’Acadie Nouvelle* (23 March 2012) 15.

Trinity Western University, News Release, “TWU Reviews Community Covenant” (14 August 2018), online: <https://www.twu.ca/twu-reviews-community-covenant>.

“Une faculté de science politique et de droit est créée” *L’UQAM* (13 septembre 1999), online: <www.journal.uqam.ca/99-2000/JOURNAL/1/1C.htm>.

Université de Moncton, News Release, “Un groupe de réflexion sur la réconciliation avec les peuples autochtones se forme à l’Université de Moncton” (24 April 2018), online: <www.umoncton.ca/nouvelles/info.php?page=1&id=20715&campus_selection=all#.WuKJgRZKuEe>.

Université de Saint-Boniface, News Release “Les études en droit désormais plus accessibles pour les étudiants de l'USB” (19 January 2017) online: <https://ustboniface.ca/les-etudes-en-droit-desormais-plus-accessibles-pour-les-etudiants-de-lusb-janvier-2017>.

Université du Québec à Montréal, News Release, “La Bibliothèque des sciences juridiques fait peau neuves” (7 October 2010), online: <https://www.actualites.uqam.ca/2010/bibliotheque-sciences-juridiques-fait-peau-neuve>.

Université Sainte-Anne, News Release, “Études en droit plus facilement accessibles pour les étudiants inscrits à certains programmes à l’Université Sainte-Anne” (12 January 2017), online: <https://www.usainteanne.ca/nouvelles/20170112324/nouvelles/etudes-en-droit-plus-facilement-accessibles-pour-les-etudiants-inscrits-a-certains-programmes-a-l-universite-sainte-anne>.

University of Alberta, News Release, “Une collaboration entre Saint-Jean et l’Université de Moncton!” (5 May 2017), online: *Campus Saint-Jean* <https://www.ualberta.ca/campus-saint-jean/a-propos/nouvelles/2017/mai/collaboration-moncton>

University of Alberta Faculty of Law, News Release, “LL.B. to J.D. Conversion” (9 February 2011), online: <https://www.ualberta.ca/law/about/news/main-news/2011/february/llbtojdconversion>.

———, News Release “First-year Law Students Participate in KAIROS Blanket Exercise” (19 September 2016), online: <https://www.ualberta.ca/law/about/news/main-news/2016/september/kairos-blanket-exercise>.

———, News Release, “Orientation concludes with impactful exercise on Indigenous-Canadian history” (12 September 2017), online: <https://www.ualberta.ca/law/about/news/main-news/2017/september/blanket-exercise>.

———, News Release, “11 New Tenure-Track Faculty” (11 June 2018), online: <https://www.ualberta.ca/law/about/news/main-news/2018/june/11-new-tenure-track-faculty>.

Valderrama Chavez, Yessica Paola, “L’UQAM va en grève” *Montréal Campus* (9 November 2011), online: <montrealcampus.ca/2011/11/09/luqam-va-en-greve/>.

Verscheure, Chris, “Robson Hall ‘Finest on Campus’” *The Manitoban* (21 October 1969) 3.

Secondary Material: Institutional Webpages & Publications

Alberta Law Reform Institute, "About ALRI", online: <https://www.alri.ualberta.ca/index.php/about-alri>.

———, "Legislation by Report", online: <https://www.alri.ualberta.ca/index.php/about-alri/legislation/legislation-by-report>.

Alberta Law Review, "About", online: <https://www.albertalawreview.com/index.php/ALR/about>.

Association des Juristes d'Expression Française du Nouveau-Brunswick, Observatoire Internationale des Droits Linguistiques & Société de l'Acadie du Nouveau-Brunswick, "Projet de loi" (13 December 2011), online (pdf): *Observatoire Internationale des Droits Linguistiques* <www.droitslinguistiques.ca/images/stories/Colloque_LLO/Projet_de_Loi_sur_les_langues_officielles_13_dcembre_2011VF.pdf>.

Association of American Law Schools, "Member Schools", online: <https://www.aals.org/member-schools/>.

Barreau du Québec, "Devenir Avocat", online: <https://www.barreau.qc.ca/fr/ressources-avocats/devenir-avocat/>.

Bishop's University, "Historical Timeline 1854-1907", online: <www3.ubishops.ca/library/old-library/historical-timeline/1854-1907.html>.

Canadian Law and Society Association, "Call for papers—Mid-year meeting of the CLSA" (3 April 2019), online: <www.acds-clsa.org/?q=en/content/call-papers-mid-year-meeting-clsa>.

Collectif de recherche en droit et société, online: <https://crds.blog/>.

Communitas, online: <https://communitas.uqam.ca/>.

Council of Canadian Law Deans, "Canadian Law Schools", online: <https://ccld-cdfdc.ca/law-schools/>.

———, *Constitution of the Council of Canadian Law Deans*, online: <ccld-cdfdc.ca/index.php/about-us/constitution>.

———, *TRC Report* (2018), online (pdf): <ccld-cdfdc.ca/wp-content/uploads/2018/07/CCLD-TRC-REPORT-V2.pdf>.

Governement of Canada, *Statement of apology to former students of the Indian Residential Schools* (11 June 2008), online: *Indigenous and Nothern Affairs* <https://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649>.

La clinique juridique de l'UQAM, "Historique de la clinique", online: <https://www.cliniquejuridique.uqam.ca/historique-de-la-clinique/>.

Letter from the Council of Canadian Law Deans to the Federation of Law Societies of Canada regarding Trinity Western University School of Law Proposal (20 November 2012), online: *Federation of Law*

Societies of Canada <https://flsc.ca/law-schools/submissions-to-the-federation-regarding-the-proposed-accreditation-of-trinity-western-universitys-law-program/>.

Federation of Law Societies of Canada, “Canadian Law School Programs”, online: <https://flsc.ca/law-schools/>.

Government of New Brunswick, Department of Aboriginal Affairs, “First Nations Communities”, online: <https://www2.gnb.ca/content/gnb/en/departments/aboriginal_affairs/fnc.html>.

Indigenous and Northern Affairs Canada, “Copy of Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions”, online: <www.aadnc-aandc.gc.ca/eng/1100100028710/1100100028783>.

Indigenous Services Canada, “Ending long-term drinking water advisories”, online: <www.sac-isc.gc.ca/eng/1506514143353/15333171306602>.

La Maison du Père, “A propos”, online: <https://www.maisondupere.org/>.

Law Society of Ontario, Professional Development and Licensure Committee, *Options for Lawyer Licensing* (10 December 2018), online (pdf): <https://lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2018/convocation-dec-2018-professional-regulation-committee-report_1.pdf>.

Law Society of New Brunswick, “Past Presidents” online: <lawsociety-barreau.nb.ca/en/about/past-presidents/>.

———, “Recommended Courses”, online: <lawsociety-barreau.nb.ca/en/becoming-a-lawyer/recommended-courses-for-law-students>.

McGill Univeristy, *eCalendar*, “LAWG 220D1 Property” online: <https://mcgill.ca/study/2018-2019/faculties/law/undergraduate/programs/bachelor-civil-law-bcl-and-bachelor-laws-llb-law>.

McGill University, Faculty of Law, online: <https://www.mcgill.ca/law/>.

Memorial University, *Faculty of Law Proposal* (August 2018), online: <https://www.mun.ca/law/>.

Mohwak Council of Kahnawà:ke, online: Answers Back, <www.kahnawake.com/answersback/>.

Nunavut Artic College, “Nunavut Law Degree”, online: <https://www.arcticcollege.ca/law>.

Pro Bono Students Canada, “Our Chapters”, online: <https://www.probonostudents.ca/ourchapters>.

Pro Bono UQAM, “A propos”, online: <https://www.probono.uqam.ca/a-propos/>.

Roy, Denis, “Mot de bienvenue”, online: *Université de Moncton, Faculté de droit* <https://www.umoncton.ca/umcm-droit/node/2>.

Ryerson University, Aboriginal Education Council, “Egerton Ryerson, the Residential School System and Truth and Reconciliation” (August 2010), online (pdf):

<https://www.ryerson.ca/content/dam/lt/resources/aboriginal_education/egerton%20ryerson_fullstatement.pdf>.

Ryerson University, Faculty of Law, online: <https://www.ryerson.ca/law/>.

Ryerson University, *Proposal for a Juris Doctor Program at Ryerson University* (April 2017) in FLSC, Canadian Common Law Program Approcal Committee, Report on an Application by Ryerson University for Approval of a Proposed Law School Program (December 2017), online (pdf): FLSC, <https://flsc.ca/wp-content/uploads/2017/12/Approval-Committee-Ryerson-Report-Dec-2017-C.pdf>.

Students Legal Services of Edmonton, "Pro Bono Students Canada", online: <https://www.slsedmonton.com/pro-bono-students-canada/>.

———, "Who we are", online: <https://www.slsedmonton.com/about/>.

Université de Moncton, "Coûts d'une année universitaire", online: <https://choisir.umoncton.ca/questions-financieres/couts-annee-universitaire>

———, "*Juris Doctor* (pour étudiante ou étudiant régulier)", online: <https://www.umoncton.ca/institutionnel/includes/repertoire_description.inc.php?programme_print=1&id=81

———, "Politique pour l'appellation des installations physiques, des fonds de dotation, des fonds en fiducie et autres entités à l'Université de Moncton" (2016), online: <https://www.umoncton.ca/dons/fr/qui-sommes-nous-politiques>

———, *Répertoire universitaire 2017-2018*, "DROI6050 Rech. juridique approfondie", online: <https://www.umoncton.ca/repertoire/>

Université de Moncton, Faculté de droit, "Dons", online: <https://www.umoncton.ca/umcm-droit/node/136>.

———, "Faculté", online: <https://www.umoncton.ca/umcm-droit/node/84>.

———, "La Faculté de droit passe au J.D.", online: <https://www.umoncton.ca/umcm-droit/node/105>.

———, "Objectifs", online: <https://www.umoncton.ca/umcm-droit/node/3>.

———, "Pro Bono," online: <https://www.umoncton.ca/umcm-droit/node/24>.

———, Répertoire – 2019-2020, Description des cours, online: <https://www.umoncton.ca/umcm-droit/node/9>.

Université de Montréal, Faculté de droit, "Bourses, ressources et services", online: <https://droit.umontreal.ca/bourses-ressources-et-services/>.

Université de Sherbrooke, Faculté de droit, "Cliniques juridiques", online: <https://www.usherbrooke.ca/droit/etudiants/cliniques-juridiques/>.

Université de Sherbrooke, Secrétariat de l'évaluation périodique des programmes, "Résumé de l'évaluation périodique du programme de Baccalauréat en droit (LL.B.)" (December 2003), online: <https://www.usherbrooke.ca/sepp/fileadmin/sites/sepp/documents/Resumes_1/bac_droit_dec2003.pdf>.

Université du Québec à Montréal, *Annuaire 1979-1980 Études de premier cycle,* (Montreal: UQAM, 1979), online: <https://registrariat2018.uqam.ca/statistiques-officielles/>.

———, *Annuaire 1989-1990* (Montreal: UQAM, 1989), online: <https://registrariat2018.uqam.ca/statistiques-officielles/>.

———, *Annuaire 2000-2001*, online: <https://registrariat2018.uqam.ca/statistiques-officielles/>.

———, "Concentration de premier cycle en études autochtones", online: <https://etudier.uqam.ca/programme?code=F019>.

———, "Conseil des diplômés" online: <https://diplomes.uqam.ca/conseils-de-diplomes>.

———, "Estimation des frais de scolarité par trimestre", online: <servicesfinanciers.uqam.ca/estimation-des-droits-de-scolarite-a-venir.html>.

———, *Politique no 41 sur les services aux collectivités* (2003, last amended in 2018), online: <https://instances.uqam.ca/reglements-politiques-et-autres-documents/politiques/>.

———, "Unités de recherche et création", online: <http://recherche.uqam.ca/unites-de-recherche-et-de-creation.html>.

———, "JUR1056 - Droit et peuples autochtones", online: <https://etudier.uqam.ca/cours?sigle=JUR1056>.

———, "JUR6540 - Droit des autochtones", online: <https://etudier.uqam.ca/cours?sigle=JUR6540>.

Université du Québec à Montréal, Départment des Sciences Juridiques, "A propos", online: <https://juris.uqam.ca/le-departement/a-propos/>.

———, "Appel à des candidatures d'étudiantes et d'étudiants autochtones" (May 2018), online (pdf): <https://juris.uqam.ca/wp-content/uploads/sites/49/2018/05/Appel-a-Candidature-ProjPilote.pdf>.

———, "Regroupement de recherche", online: <https://juris.uqam.ca/recherche-onglet/regroupement-de-recherche/>.

Université du Québec à Montréal, Faculté de Science Politique et de Droit, "Unités de recherche", online: <https://fspd.uqam.ca/recherche-menu/unites-de-recherche/>.

Université du Québec à Montréal, Faculté de Science Politique et de Droit, Centre de Développement Professionnel, "Infolettre du 26 septembre 2016" (26 September 2016), online: <ofsys.com/T/OFSYS/SM2/390/2/S/F/6688/233/kecRSnJl.html>.

Université du Québec à Montréal, Service aux collectivités, “Genèse d’une mission univeristaire”, online: <https://sac.uqam.ca/mission-des-services-aux-collectivites/genese-d-une-mission-universitaire.html>.

Univeristé Laval, Faculté de droit, “Cliniques juridiques”, online: <https://www.fd.ulaval.ca/etudes/cliniques-juridiques-droit>.

Université Libre de Bruxelles, Faculté de droit et de criminologie, “Le doctorat”, online: <https://droit.ulb.be/version-francaise/navigation/la-recherche/les-theses-de-doctorat>.

Universities Canada, “member Universities”, online: <https://www.univcan.ca/universities/member-universities/>.

University of Alberta, “Acknowledgement of the Traditional Territory”, online: <https://www.ualberta.ca/toolkit/communications/acknowledgment-of-traditional-territory>.

———, “University of Alberta Developed Territorial Acknowledgments”, online (pdf): <https://cloudfront.ualberta.ca/-/media/ualberta/aboriginal-hub/territorial-acknowledgements-english-french-27july16.pdf>.

———, *Calendar 2018-2019*, “Territorial Statement”, online: <https://calendar.ualberta.ca/index.php?catoid=28>.

———, *Calendar 2019-2020*, “History of the Faculty of Law”, online: <https://calendar.ualberta.ca/content.php?catoid=29&navoid=7307#history-of-the-law-faculty>

University of Alberta, *For the Public Good* (Edmonton: University of Alberta, 2016), online: <https://www.ualberta.ca/strategic-plan>.

University of Alberta, Centre for Teaching and Leaning, online: <https://www.ualberta.ca/centre-for-teaching-and-learning>.

University of Alberta, Faculty of Law, “About”, online: <https://www.ualberta.ca/law/about>.

———, “Admissions”, online: <https://www.ualberta.ca/law/programs/jd/admissions>.

———, “Faculty of Law 2017-2018 Course Descriptions” (on file with the author)

———, “External Advisory Board” online: <https://www.ualberta.ca/law/about/external-advisory-board>.

———, “Internationally Trained Lawyer Pathway,” online: <https://www.ualberta.ca/law/prospective-students/itlp>.

———, “Juris Doctor, Tuitions & Fees”, online: <https://www.ualberta.ca/law/programs/juris-doctor/tuitions-and-fees>.

———, *Law Faculty Council Policy Manual* (17 November 2015), online (pdf): <https://cloudfront.ualberta.ca/-/media/law/about/lfcpolicymanual.pdf>.

———, “Sessionals”, online: <https://www.ualberta.ca/law/faculty-and-research/sessionals>.

University of Alberta, Faculty of Native Studies, online: <https://www.ualberta.ca/native-studies/>.

University of British Columbia, Peter A Allard School of Law, "About Allard Hall, Home of the Peter A. Allard School of Law", online: <www.allard.ubc.ca/about-us/about-allard-hall>.

———, *Allard School of Law History project*, online: <historyproject.allard.ubc.ca/>.

University of Calgary, Faculty of Law, "Certification in common law in French", online: <https://law.ucalgary.ca/future-students/our-programs/french-certificate>.

———, "Future Graduate Students", online: <https://law.ucalgary.ca/future-students/future-graduate-students>.

———, *Strategic Plan 2017-2022*, online: <https://law.ucalgary.ca/about/strategic-plan>.

University of Manitoba, Robson Hall Faculty of Law, "Bilingual Course Offerings", online: <law.robsonhall.com/programs/jd/bilingual-course-offerings/>.

University of Ottawa, "Tuition fees", online: <https://www.uottawa.ca/university-fees/tuition-fees-can-undergraduate>.

University of Ottawa, Faculty of Law Civil Law Section, "History of the Faculty", online: <https://droitcivil.uottawa.ca/en/about/history-of-the-faculty>.

University of Ottawa, Faculty of Law Common Law Section, "Caroline Magnan", online: <https://commonlaw.uottawa.ca/en/people/magnan-caroline>.

———, "Reunion: Common Law History at the University of Ottawa" (2007), online: <https://commonlaw.uottawa.ca/en/about/history>.

University of Saskatchewan, *University Catalogue 2019-20*, "French Common Law Option", online: <https://programs.usask.ca/law/juris-doctor/common-law.php#Year15creditunits>.

University of Saskatchewan, College of Law, "Nunavut Law Program", online: <https://law.usask.ca/programs/nunavut-law-program.php>.

University of Victoria, Faculty Law, "Joint Degree Program in Canadian Common Law and Indigenous Legal Orders JD/JID", online: <https://www.uvic.ca/law/about/indigenous/jid/index.php>

University of Windsor, Faculty of Law, "A Statement on Stanley Trial Verdict" (16 February 2018), online: <www.uwindsor.ca/law/2018-02-16/windsor-laws-statement-stanley-trial-verdict>.

Secondary Materials: Statistical Data

Association of Atlantic Universities, *Survey of Preliminary Enrolments at October 1, 2017,* online: <www.atlanticuniversities.ca/statistics/aau-survey-preliminary-enrolments>

Department of Finance, *Fiscal Reference Tables* (October 2014), online: <https://www.fin.gc.ca/frt-trf/2014/frt-trf-14-eng.asp>.

McGill University, Enrolment Services, "Enrolment Report Fall 2017" (16 October 2017), online: <https://www.mcgill.ca/es/registration-statistics>.

Statistics Canada, "Aboriginal Peoples in Canada: key results from the 2016 Census" (25 October 2017), online: <https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm>.

Statistics Canada, *Aboriginal Peoples Reference Guide, Census of Population, 2016* (25 October 2017), Catalogue no. 98-500-X2016009, online: <https://www12.statcan.gc.ca/census-recensement/2016/ref/guides/009/98-500-x2016009-eng.cfm>.

Statistics Canada, *Data tables, 2016 Census*, "Knowledge of Aboriginal Language (90), Knowledge of Languages: Single and Multiple Language Responses (3), Aboriginal Identity (9) […]," (25 October 2017), Catalogue no. 98-400-X2016157, online: <https://www150.statcan.gc.ca/n1/en/catalogue/98-400-X2016157>.

Statistics Canada, *Census Profile, 2016*, Catalogue no. 98-316-X2016001, online: <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm>.

Statistics Canada, "The housing conditions of Aboriginal people in Canada" (25 October 2017), Catalogue no. 98-200-X2016021, online: <https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016021/98-200-x2016021-eng.cfm>.

Université de Montréal, Registraire, "Statistiques d'inscription Automne 2017" (1 May 2018) online: <https://registraire.umontreal.ca/publications-et-ressources/statistiques-officielles/>.

Université du Québec à Montréal, Département des Sciences Juridiques, "Characteristics of students enrolled in a law degree (baccalaureate) at Université du Québec à Montréal – Fall 2016" (on file with author).

Université du Québec à Montréal, Registrariat, *La population étudiante de l'UQAM Statistiques d'inscription 2017-2018* (July 2018), online: <https://registrariat2018.uqam.ca/statistiques-officielles/>.

Université Laval, Registraire, "Profil de la population étudiante" online: <https://www.reg.ulaval.ca/>.

University of Alberta, Faculty of Graduate Studies & Research, *Graduate Student Enrolment Report 2017-18*, online: <https://cloudfront.ualberta.ca/-/media/universitygovernance/documents/resources/reports/graduate-enrolment-annual-report-2017-18.pdf>.

University of British Columbia, "Enrolment Statistics 2017/18" (1 November 2017) online: <www.calendar.ubc.ca/archive/vancouver/1819/index1d6b.html?page=appendix1>.

University of Ottawa, Institutional Research and Planning, "Common University Data Ontario" (2017) online: <https://www.uottawa.ca/institutional-research-planning/resources/facts-figures/cudo/2017>.

University of Toronto, Institutional Data Hub, “Common University Data Ontario 2017” online: <https://data.utoronto.ca/reports/cou/cudo2017/>.

York University, Office of Institutional Planning an Analysis, “Common University Data Ontario: York University (2017)” online: <cudo.info.yorku.ca/2017-2018-report/>.

Secondary Materials: Other Resources

Alberta Law Reform Institute Continuation Agreement (2012), online (pdf): Alberta Law Reform Institute <https://www.alri.ualberta.ca/images/stories/docs/2017_2022_Continuation_Agreement.pdf>.

BiblioChamplain, “*Qui est Molly Muise, l’Amérindienne mi’kmaq qui est représentée sur la façade du pavillon Lafrance?*” (15 February 2018), online (video): *Youtube*, <https://www.youtube.com/channel/UC_urb5SaxO5HlhOyHftpcmQ>.

House of Commons, Standing Committee on Official Languages*, Evidence,* 42-1, No 51 (9 March 2017).

“Is the Crown At War With Us?” (2002) (Director: Alanis Obomsawin), online (video): *National Film Board* <https://www.nfb.ca/film/is_the_crown_at_war_with_us/>.

Letter from university of Alberta Faculty of Law OUTLaw to the Federation of Law Societies of Canada regarding Trinity Western University School of Law Proposal (18 March 2013), online: *Federation of Law Societies of Canada* <https://flsc.ca/law-schools/submissions-to-the-federation-regarding-the-proposed-accreditation-of-trinity-western-universitys-law-program/>.

“Mi’kmaq Molly Muise, Canada 2017”, online: *Wasp Elder* <www.waspelder.com>

reconciliationsyllabus, online: <https://reconciliationsyllabus.wordpress.com/>.

Senate, Standing Committee on Official Languages, *Evidence,* 42-1, No 30 (24 October 2018).

Silver, Lisa A, “Tracing the Likeness of Colten Boushie in the Law Classroom” (22 February 2018), online (pdf): *ABlawg*, <ablawg.ca/wp-content/uploads/2018/02/Blog_LAS_Boushie.pdf>.

Sossin, Lorne, “‘Love and Hope’ – How Colten Boushie’s Death and Gerald Stanley’s Trial Will Change Canadian Law” (14 February 2018), online (blog): *Dean Sossin’s Blog*, <deansblog.osgoode.yorku.ca/2018/02/love-and-hope-how-colten-boushies-death-and-gerald-stanleys-trial-will-change-canadian-law/>.

UAlberta Law, “Faculty of Law – Town Hall – Draft of Strategic Plan (Jan 25, 2017)” (31 January 2017), online (video): *Youtube* < https://youtu.be/EMVebG3jTCE>.

UAlberta Law, “Runnymede Society: Diversity or Discrimination? The Trinity Western University Law School Debate” (30 October 2017), online (video): *Youtube* <https://youtu.be/yxkQbU09lh4>.

UAlberta Law, “UAlberta Law Orientation 2017” (8 September 2017) at 00h:06m:36s, online (video): *Youtube*, < https://youtu.be/kgPU3QGH6lQ>.

United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007).

Université de Moncton Campus de Moncton, “Antonine Maillet remet son manuscrit original de La Sagouine à l'Université de Moncton - Partie 2” (8 December 2011), online (video): *Youtube* <https://youtu.be/XFreOjFh3XE>.

Appendix A: Ethics Approvals & Consent Form

Summary of ethics approval by the relevant research ethics boards:

- McGill University

Research Ethics Board I

REB File #: 420-0317

Certificate of Ethical Acceptability of Research Involving Humans

Approved on 22 March 2017

Renewed yearly until closure on 12 August 2019

- Université du Québec à Montréal,

Comité institutionnel d'éthique de la recherche avec des êtres humains (CIEREH)

Recognition of McGill's REB certificate (under Quebec's policy for mutual recognition of ethical assessment for multisite research projects) on 31 March 2017

(No reference number issued; CIEREH's director communicated approval by email)

- Université de Moncton

Comité d'éthique de la recherche

File #: 1617-060

Recognition of McGill's REB certificate and issuance of local certificate on 18 April 2017

Renewed yearly until closure on 3 May 2019

- University of Alberta

Reference #: Pro00073108

Approved on 22 August 2017

Renewed yearly until closure on 24 April 2019

Default consent form for participants:

CONSENT FORM FOR INTERVIEW PARTICIPANTS

Researcher:
Adrien Habermacher
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Supervisor:
Professor Helge Dedek
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@: helge.dedek@mcgill.ca Tel: 514-398-1296

Title of Project:

The role of institutional cultures in legal education at select Canadian law faculties

Purpose of the Study:

As a faculty member at the University of Alberta Faculty of Law, you are invited to take part in a study about legal education. It aims to identify the generally shared ideas around legal education in a few law faculties across Canada (including yours) and analyze their role in shaping how legal education is delivered in these institutions. My name is Adrien Habermacher, and I conduct this study in pursuance of the D.C.L. degree at the McGill University Faculty of Law.

Study Procedures*:*

Your participation in the study will involve answering open-ended questions during an in-person interview of approximately one hour in length. The discussion will revolve around your institution and your approach to legal education.

We will agree on a convenient time and location for the interview. If an in-person interview proves impossible to organize, a video-call (e.g. via Skype) will be arranged.

The interview will be audio-recorded, unless you elect otherwise. This will enable me to produce a complete transcript of the interview for subsequent analysis. I will also take written notes during the interview.

Voluntary Participation*:*

Participation in this study is completely voluntary. You are free to decline to participate, to end participation at any time for any reason, or to refuse to answer any individual question.

If you decide to withdraw after the interview is conducted, any potential recording will be deleted and all other notes of the interview destroyed, unless you give permission otherwise.

You can decide to withdraw after the interview is conducted by contacting me within 6 months after the interview took place, in which case any potential recording will be deleted and all other notes of the interview destroyed, unless you give permission otherwise.

Potential Risks:
There is no expected risk arising from participating in this study.

Potential Benefits:
There may be no direct benefits from participating in this study.

It is hoped that by participating in this study, you will have an opportunity to stimulate reflections on your professional role and that of your colleagues. The views you will share will further contribute to building knowledge about legal education in Canada and help law professors and law faculties across the country to pursue their objectives with greater self-awareness and more effectively.

Confidentiality:
The name of your institution will be identified in disseminated material on this study.

Unless you elect otherwise, all information allowing to identify you directly will remain confidential. I will moreover make best efforts to ensure that your identity cannot be inferred from other information included in published materials.

This study is a component of my doctoral research, and I will thus share its outcome primarily in my doctoral thesis. I will also likely present parts of, or summaries of, the results in conference presentations and academic publications prior to, and shortly after, completion of my doctorate.

I alone will have access to the audio recording of the interview and the interview transcript.

All working documents containing confidential personal information will be stored in encrypted files on a laptop computer and personal external hard drive, both protected by password. The members or editors of journals that may publish the results may also request copies of the interview transcripts, from which I will have removed any identifying information.

Questions*:*

You may contact the researcher or his supervisor (see contact details above) with any questions or requests for clarifications about the project.

The plan for this study has been reviewed for its adherence to ethical guidelines by a Research Ethics Board at the University of Alberta, as well by a Research Ethics Board at McGill University. For questions regarding participant rights and ethical conduct of research, contact the Research Ethics Office of the University of Alberta at (780) 492-2615, or the McGill Ethics Manager at 514-398-6831 or lynda.mcneil@mcgill.ca.

Please sign below if you have read the above information and consent to participate in this study. Agreeing to participate in this study does not waive any of your rights or release the researchers from their responsibilities. A copy of this consent form will be given to you and the researcher will keep a copy.

Do you consent to have your name and/or other identifying information associated to statements you make during the interview in disseminating materials?

YES NO

Do you consent to being recorded for the purposes of participating in this interview?

YES NO

Participant's Name: (please print): _____

Participant's Signature: _____ Date: _____

Appendix B: Interview Guide

This is a copy of the guide I used to conduct interviews. As interviews were semi-directed, not all the questions listed here were asked to all participants. It is a template that I adapted to each interviewee and the content of their responses.

- Does anything jump to mind when thinking about legal education at your Faculty?
- Can you introduce yourself? Please feel free to mention any elements of your background that you think are relevant for me to know.
- What are your roles in the Faculty?
- When and why did you join this Faculty?
- What did you know about this Faculty before joining it?
- Did you have any surprises upon joining and what were they?
- How would you describe your Faculty today?
- Does any thing appear to be unique about it?
- How would you describe your Faculty's mission?
- Has this changed over time?
- Is it a matter of consensus among colleagues?
- Do you see any markers within the Faculty testifying to the mission or values of the Faculty?
- Do you see any counter examples?
- Do you pay attention to your Faculty's history and what do you know about it?
- Does it seem to play a role in the discussions within the Faculty?
- How would you describe your own role as a legal educator?
- Which courses do you teach?

- How would you describe your own teaching philosophy?
- Are you involved in the graduate programs?
- Do you have any views on the role or place of these programs?
- How does your role differ between undergraduate and graduate students?
- Do you have opportunities to exchange with you colleagues on the topics we covered?
- What are the topics of debate within the Faculty?
- How do disagreements on such topics manifest themselves?
- Do you see any other contemporary issues or debates playing out within the Faculty?
- Would you say that the Faculty is politically engaged?
- Do you have anything to say about Indigenous issues in legal education and the TRC Call to action or how you Faculty is engaging with them?
- Is there anything else that you expected to discuss or would like to add?

Appendix C: Comparative Overview of LL.B. and J.D. Curricula

Comparative summary of required courses in the LL.B. or J.D. program at the three Faculties:

DSJ UQAM		UAlberta Law		Droit UMoncton	
Courses	*Cred.*	*Courses*	*Cred.*	*Courses*	*Cred.*
Intro. à l'étude du droit et à la méthod. juridique	4	Foundations to Law	3	Introduction au droit	6
Théorie générale des obligations	3	Contracts	5	Les obligations contractuelles	6
Droit de la responsabilité civile	3	Torts	5	La responsabilité délictuelle	6
Droit constitutionnel	3	Constitutional Law	5	Droit Constitutionnel 1	3
Droit pénal	3	Criminal Law	5	Droit pénal général	3
(Partially included in in Intro. + see method. Course in UP)		Legal Research and Writing	4	(*Included in Introduction)*	

Table C.1: 1L required LL.B. or J.D. courses common to DSJ UQAM, UAlberta Law and Droit UMoncton

DSJ UQAM		**UAlberta Law**		**Droit UMoncton**	
Courses	*Cred.*	*Courses*	*Cred.*	*Courses*	*Cred.*
(No equivalent required course)		Property Law	5	Droit des biens	6

Table C.2: 1L required LL.B. or J.D. courses common only to UAlberta Law and Droit UMoncton.

DSJ UQAM		**UAlberta Law**		**Droit UMoncton**	
Courses	*Cred.*	*Courses*	*Cred.*	*Courses*	*Cred.*
Droit administratif	3	*(see equivalent courses in UP, Figure B4)*			
Droit des affaires	3				
Droit judiciaire 1	3				
Droit social	3	*(No equivalent required courses)*			
Droit des personnes et de la famille	4				

Table C.3: 1L required LL.B. or J.D. courses unique to DSJ UQAM

DSJ UQAM		UAlberta Law		Droit UMoncton	
Courses	*Cred.*	*Courses*	*Cred.*	*Courses*	*Cred.*
(see 1L required courses in Figure C3)		Administrative Law	3	Droit administratif	3
		Corporations Law	3	Sociétés commerciales	3
		Civil Procedure	3	Procédure civile	3
Droit de la preuve civile et administrative	3	Evidence	3	Droit de la preuve	3
Equivalent to credits (12) required from "approche critique et multidisciplinaire"[1384] *basket*		Legal History or Jurisprudence	3	Histoire du droit ou Philosophie et Sociologie du droit	3
(No equivalent required course)		Professional Responsibility	3	Responsabilité professionnelle	3
(No equivalent requirement)		Writing Requirement	3	Mémoire	3
Droits et libertés de la personne	3	*(No equivalent required course)*		Droits fondamentaux	3

Table C.4: Upper-years required LL.B. or J.D. courses common to DSJ UQAM, UAlberta Law, and or Droit UMoncton

DSJ UQAM		UAlberta Law		Droit UMoncton	
Courses	*Cred.*	*Courses*	*Cred.*	*Courses*	*Cred.*
Droit international public	3	*(No unique UP required course)*		Droit fiscal	3
Droit des rapports collectifs de travail	3			Fiducies	3
Approfondissement du droit des obligation	3			Plaidoirie en appel	3
Interprétation des lois	3				
(+ required credits to allocate in baskets of courses)[1385]					

Table C.5: Upper-years required LL.B. or J.D. courses unique to DSJ UQAM, UAlberta Law or Droit UMoncton

[1384] Includes the following electives (from different departments): Sciences de la santé et droit, Éléments d'économie contemporaine, Histoire du droit québécois et canadien, Théorie et fondements du droit, Philosophie du droit, Philosophie du droit, Problèmes politiques contemporains, Introduction aux relations internationales, Politique sociale, Introduction à l'économie politique des relations Internationales, Introduction aux sciences comptables, Sociologie du travail, Sociétés actuelles et mondialisation, Sociologie du droit.

[1385] Students must complete at least 9 credits in each of the following *modules*: "Enjeux socio-juridiques," "Droit social et du travail," and "Droit international, comparé et cultures juridiques" in addition to 12 credits in the *série* "Approche critique et multidisciplinaire." Overall, students must complete between 36 and 45 credits from courses listed in these categories. In addition, they may complete up to 9 credits with courses from the *série* titled "Approche pratique, clinique, et intervention socio-juridique."