

**TEACHING THE COMMON LAW IN QUEBEC:
REFLECTIONS ON THE PROLIFERATION OF SEPARATE,
SUPPLETIVE DEGREE PROGRAMS**

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1. Introduction

Since 1998, one particular Canadian law faculty—the Faculty of Law at McGill University in Montreal, Quebec—has eschewed separate common law and civil law programs in favor of a single, integrated curriculum (Arthurs, 2005, p. 709). This move was much publicized at the time, having been the subject of a number of law journal articles and even an entire issue of the McGill Law Journal in 2005 (Bédard, 2001; Morrissette, 2002; Kasirer, 2002; Kasirer, 2003; Van Praagh, 2005; Arthurs, 2005; Jukier, 2005; Macdonald & MacLean, 2005; Glenn, 2005; Jukier, 2006).

Almost twenty years later, McGill’s mandatory integrated curriculum remains unique among Quebec law schools, most of which also offer some measure of training in both the civil and common law in their own right.¹ These schools have been either unwilling or unable to follow McGill’s lead, and have instead continued to offer—and even introduced—one-year common law degree programs that can be best described as “suppletive.” Accordingly, the objective of these programs is less to introduce students to inherently comparative thinking than it is to complete the training the students have already received in the civil law with additional common law qualifications. They are thus largely reminiscent of McGill’s earlier “national program,” which allowed students who had received a three-year education in either common or civil law to complete their training through a one-year program in the second legal tradition (Bédard, 2001, pp. 240-241).

This paper seeks to explore some of the reasons why this second model, which favors the elective, separate training of students in a second legal tradition, remains by far the dominant model of common law teaching in Quebec. Indeed, the only exceptions in this regard are the program at McGill University and a small, integrated program named the “*Programme de droit canadien*” that has been offered at the University of Ottawa alongside more traditional program options since 2009.² As I will argue, practical difficulties with the replication of in-

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1 For the purposes of this paper, the following are included among Quebec law schools: McGill University, the University of Ottawa (located in the neighboring Province of Ontario, but dispensing full degree programs in Quebec civil law), l’Université de Montréal, l’Université du Québec à Montréal, l’Université de Sherbrooke, and l’Université Laval; of these, all but two—l’Université du Québec à Montréal and l’Université Laval—offer some form of common law degree program.

2 The program is also known as the “Canadian Law Program,” though its name is not usually translated into English; upon completion, graduates earn dual *Juris Doctor* (J.D.) and Licentiate in Laws (LL.L.) degrees in much the same way that McGill graduates earn LL.B. and B.C.L. designations.

egrated programs do not entirely account for this state of affairs. Their limited growth can be explained by at least additional two factors. On the one hand, there are continuing concerns about the capacity of integrated programs to actually transmit knowledge of Quebec's distinctive civilian legal heritage. On the other, the separate, suppletive curricula are more broadly compatible with the model of student choice that has been said to animate comparative legal education in Canada (Valcke, 2005, p. 494).

This latter focus on choice may well amount to the main advantage of the suppletive degree model. It allows students who desire additional training in the common law after completing their first law degree to do so if they choose, while also allowing students who believe that their professional needs require other forms of training to instead pursue more specialized courses of instruction in one or more particular subject areas. The latter market is served by a wide array of specialist LL.M. programs, and it is telling that the largest provider of such programs in Canada, Osgoode Professional Development, offers its own version of a suppletive common law program: an LL.M. in "Canadian Common Law" that targets "[g]raduates of law degree programs from outside Canada, or graduates with a civil law degree from a Canadian university who wish to become licensed to practice in a Canadian common law jurisdiction" (Osgoode Professional Development, 2017).

Before delving further into my argument, at least two prior qualifications are in order. First, my objective here is not to pass judgment on whether or not a focus on student choice offers a pedagogically coherent approach to the teaching of foreign legal systems. Indeed, a number of authors have already made relatively compelling arguments against this essentially vocational attitude to comparative legal education (Réaume, 2001; Pue, 2005; Valcke, 2005). I do not have much to add beyond what has already been said about this subject. Rather, I will simply start from the premise that they have identified, namely that student preferences are an essential component of curriculum design at Canadian law schools, for good or ill, and that these preferences are often shaped by employment prospects (Arthurs, 1998, pp. 21 & 31).

Second, it follows that by adopting this perspective, my approach in this paper is necessarily a "liberal" one that emphasizes the appeal and perceived value of choice for its own sake. However, my focus here is not so much on the factors that may actually motivate students to choose particular programs of study, as it is on what various law faculties *perceive* as motivating students to select their programs. There is no attempt here to provide an exhaustive list of factors on which students rely when they choose certain universities and certain programs over others. Instead, my objective is to propose an explanation for the continued proliferation of the suppletive degree model among Quebec law faculties, even as the McGill model has remained almost exclusively constrained to McGill.

My argument in this respect will proceed in three distinct parts. First, I will outline the manner in which both models of common law education—that is, the integrated curriculum and suppletive degree programs—have actually been implemented in Quebec law schools. Second, I will canvass some—though, it should be said, not *all*—of the possible explanations for the slow expansion of integrated curricula beyond the confines of McGill's Faculty of Law. Finally, I will turn to some of the advantages of suppletive common law programs that may explain their persistent—and proliferating—status as the primary method of teaching multiple legal systems in Quebec.

2. Integrated and Suppletive Programs: Two Competing Approaches to Common Law Education in Quebec

As is well known, Quebec's unique legal system incorporates a largely civilian private law within a broader common law institutional framework—an arrangement that often earns Quebec the label of “mixed jurisdiction” (Valcke, 1995; Van Hedel, 2007; Jukier, 2011).³ It is perhaps not surprising, then, that a particularly strong need to teach students aspects of both the civilian and common law legal traditions exists in that province, contrasting with the much lower demand for comparable civilian training in the rest of Canada. To some extent, common law training is already part of the entry-level three-year programs offered by every one of Quebec's law faculties, which incorporate both the teaching of Quebec's distinctive civilian private law, on the one hand, and those common law concepts that govern public law in the province, on the other (Valcke, 1995, pp. 62-63; Bédard, 2001, pp. 247-248).

Going further, however, the majority of Quebec's law schools have also felt compelled to offer some measure of *additional* training in those aspects of the common law that are not covered in these entry-level civil law programs—that is, in those private law subjects like contract, tort and property. With the exception of McGill, they have each done so by developing entirely separate curricula for their common law programs, which are structured according to the one-year, suppletive degree model that had been originally set by McGill's now-defunct national program. These programs are very popular—far more so, it would appear, than those of comparable training in the civil law outside of Quebec. To take just one particularly illustrative example, the suppletive common law program at the University of Ottawa admits up to 80 students per year, which is almost certainly a much higher number than the unspecified amount admitted to the suppletive civil law program offered at the same institution (University of Ottawa Common Law Section, 2017b).⁴

As I will now argue, the much wider prevalence of suppletive degree programs points to their being much more practicable than the integrated programs offered by these two latter institutions. Indeed, the limited expansion of integrated programs into other Quebec law faculties suggests that this curricular model faces important challenges and may be difficult to replicate elsewhere. This much appears to be recognized by the proponents of McGill's integrated program, many of whom have noted that the development of its curriculum owed much to that institution's particular history and culture (Morissette, 2002, pp. 16-17; Arthurs, 2005, pp. 712-713; Jukier, 2006, pp. 175-176).⁵ By contrast, the continued dominance of separate civil and common law curricula indicates that these programs offer important practical, if not necessarily pedagogical, advantages that should not be entirely overlooked by those interested in law curriculum reform.

3 In this respect, Quebec's legal system is often lumped together with those of Scotland and the State of Louisiana in the United States.

4 Since McGill's transition towards an integrated curriculum, the University of Ottawa is the only Quebec institution that offers suppletive degrees in both the common and civil law traditions.

5 The University of Ottawa, which has also made a partial transition towards integrated degree programs, is also a bilingual institution with a comparable history of teaching both the civil and common law traditions.

2.1. The limited expansion of integrated curricula in Quebec.

Beginning with the place that integrated curricula now hold in the ecosystem of Quebec legal education, it is worth noting from the outset that McGill had historically been one of two major institutions, alongside the University of Ottawa, to offer a “national program” allowing a student trained in one legal tradition to obtain a one-year suppletive degree in the other. Although now defunct at McGill, the University of Ottawa continues to operate its version of that program alongside full three-year degree programs in both the civil and common law, as well as the aforementioned integrated two-degree program (University of Ottawa Civil Law Section, 2017; University of Ottawa Common Law Section, 2017e). At McGill, by contrast, the move towards a mandatory integrated curriculum can be understood to have made the optional year spent learning a second legal tradition (either the civil or the common law, depending on which program the student enters first) into a mandatory component of its entry-level degree program. As a result, students undertaking the integrated McGill program are meant to complete their degree requirements in three and a half or four years rather than the three years taken to complete entry-level law programs at other law schools in both Quebec and common law Canada (McGill University Faculty of Law, 2017a).

This being the case, many authors involved in McGill’s move towards an integrated curriculum have suggested that its primary purpose was to replace the separate, sequential teaching of the positive laws of Quebec and the rest of Canada that had been the norm until that point (Kasirer, 2003, pp. 498-499; Jukier, 2006, p. 174). At least part of the outcomes being pursued by doing so were undoubtedly vocational, in that some authors believed that the integrated program was better able to instill even practical knowledge of multiple legal systems upon its students (Jukier, 2006). Indeed, the program website still takes care to note that it “qualifies students for the Bar Admission Programs in all Canadian provinces, as well as some U.S. Jurisdictions (i.e. New York and Massachusetts)” (McGill University Faculty of Law, 2017a).

At the same time, it is hard to deny that the primary impetus for McGill’s move towards an integrated curriculum was ideological, in the sense of being based on a deeper intellectual project. This much is heavily implied in the very existence of scholarly articles dedicated to outlining and reflecting upon the pedagogical aims of the project. What was hoped, among other things, was that students would no longer feel an attachment to one particular legal tradition—usually, the tradition that they happened to start with—and thus be compelled to fully immerse themselves in the comparative opportunities offered by the law school’s curriculum (Kasirer, 2003, pp. 499-500). At the same time, the move was seen as one away from black letter education as a whole, and towards the study of legal systems and traditions in a way that sought to discern their underlying principles and modes of reasoning rather than their particular differences (Jukier, 2006, p. 179). Some authors even saw the integrated McGill program as creating renewed possibilities for the study of other forms of common and civil law, as well as legal traditions entirely different from those that had traditionally been studied at McGill (Kasirer, 2003, p. 499; Macdonald & MacLean, 2005, pp. 737-738).

These were lofty objectives, and most of these same authors recognized that the McGill program would inevitably fall short of them in many respects (Kasirer, 2003, p. 499; Macdonald & MacLean, 2005, 738-739; Jukier, 2006, p. 180). Still, if we assume that the fundamental insight animating the shift towards an integrated curriculum at McGill was true—that is, if the integrated degree program really does offer some kind of pedagogical advantage to

its students, which I have no reason to doubt is true on at least some level—then it is worth asking what additional factors may explain why McGill remains the only Quebec law school to have fully committed to this approach almost twenty years after it pioneered the transition. Indeed, even the University of Ottawa’s integrated degree program—the *Programme de droit canadien*—has not entirely followed McGill’s move towards an integrated curriculum, and has even reproduced some of the issues with the national program model that the architects of McGill’s integrated curriculum had sought to avoid.

First and foremost among these is undoubtedly the problem of students identifying with one or another legal tradition, which Julie Bédard in particular has argued amounts to a likely outcome where students spend their first three years attached to the study of either common law or civil law, with only limited opportunities to study the other tradition (Bédard, 2001, pp. 273-274).⁶ If this assessment of student behavior is correct, then it is rightly identified as running contrary to the objectives of integrated curricula. And yet, the University of Ottawa’s integrated program largely reproduces the causes associated with this alleged difficulty, in that students begin their first year studying core common law topics—in French, no less—before moving on to civil law topics in their second year of study. Only one class in the first year curriculum currently defies this general distribution, namely the two-semester-long “bijural” course that combines elements of common law torts with those of Quebec’s civilian extra-contractual responsibility (University of Ottawa Common Law Section, 2017d).⁷

By contrast, one of the core elements of McGill’s integrated curriculum has been the implementation of classes offering simultaneous training in the principles underlying both legal traditions from the moment that students enter the program (Jukier, 2005, p. 795). True to their underlying pedagogical objectives, these integrated classes (or “transsystemic” classes, as McGill calls them) form the bulk of the first and second-year law curriculum at that institution. The list of such courses now includes a second year integrated property law course, which only recently replaced separate civil and common law courses on the topic (McGill University Faculty of Law, 2017b).

That being said, even this commitment to an integrated education has its limits at McGill, and one quickly notices that many upper year elective classes do not aim to cover civil and common law topics simultaneously.⁸ Instead, students must take a minimum of three credits in civil law courses designed to allow them to gain a more in-depth understanding of a particular topic in that legal tradition, as well as a minimum of three credits in similar immersive

6 Under McGill’s now-defunct national program, students would need to complete the three-year degree in one legal tradition before they would be able to pursue additional training to earn their diploma in the other; the same remains true of the version of the national program that still operates at the University of Ottawa.

7 According to the course sequence, this two-part class (*Délits civils et responsabilité contractuelle I* and *Délits civils et responsabilité extra-contractuelle II*) is one of only two in the program to currently be taught in a bijurally—that is, by integrating concepts from both the common and civil law traditions; the other is the mandatory second year course that covers private international law (also known as conflict of laws) as it applies in both common law Canada and in Quebec civil law.

8 As of 2016-2017, the faculty offers integrated approaches in upper year elective courses focusing on medical liability, employment law, statutory interpretation, agency and mandate, and property law: see McGill University Faculty of Law (2016); of these five classes, however, three (medical liability, employment law, and statutory interpretation) appear to adopt approaches that are largely analogous to the interdisciplinary courses in covering similar subjects at other law faculties.

courses focusing on particular topics relating to the common law tradition. To this, the faculty now also adds a three-credit requirement in a third basket of courses labelled “Social Diversity, Human Rights and Indigenous Law Courses” (McGill University Faculty of Law, 2017b).

All things considered, the move towards an integrated curriculum has thus not been as strong as might be expected even at McGill, especially since it was that institution that set out to champion the integrated approach in the first place. As for the University of Ottawa, its move towards the integration of its existing programs is for the moment even more limited. What the experiences of both institutions suggest, then, is that there are important limits—be they practical or even pedagogical—to imposing the fully integrated curriculum that appears to have been intended by at least some of the architects of the McGill program. I will focus on some of these potential limitations in Part II, below. For now, however, I turn to the much more prolific—and proliferating—alternative adopted by most Quebec law schools, namely suppletive one-year common law degree programs.

2.2. Suppletive common law programs: A model for proliferation.

While McGill has phased out its old national program in favor of its mandatory integrated curriculum, the approach it pioneered in the 1960s remains by far the dominant model of common law education in Quebec. In addition to the University of Ottawa’s still-running version of the national program, two more major Quebec institutions, namely the Université de Montréal and the Université de Sherbrooke, began to offer their own separate, suppletive degree programs based on this model shortly after McGill’s transition away from it.

The significance of these initiatives for both institutions should not be underestimated. Aside from McGill itself, Quebec’s law schools have often been perceived—rightly or wrongly—as resistant to deeper overtures towards the common law out of attachment to Quebec’s distinctive legal tradition as a vehicle of Francophone culture (Costonis, 2002, p. 7). This idea is at least implicit in the suggestions outlined above, according to which McGill’s move towards a fully integrated curriculum was only possible because of its particular (i.e. historically Anglophone) culture (Morissette, 2002, pp. 16-17; Arthurs, 2005, pp. 712-713; Jukier, 2006, pp. 175-176). This historical identity likely contributes a great deal to McGill’s continued ability to attract large numbers of law students from across Canada, and which in turn continues to justify the existence of the integrated curriculum.

By contrast, and true to its predominantly francophone identity (and student body), the Université de Montréal instead offered a form of suppletive common law training through a partnership with another institution, namely Osgoode Hall Law School in Toronto (Popovici, 2002, p. 809). That program continues in the form of the joint *Juris Doctor*/Bachelor of Civil Law offered in partnership by both faculties, which—following the common theme of this paper—largely operates according to the model provided by McGill’s now-defunct national program (Osgoode Hall Law School, 2017).⁹

The comparatively more radical decision to offer a suppletive common law degree program at the Université de Montréal proper—instead of through a partner institution like Osgoode Hall—can be understood as a reaction to the globalization of the legal curriculum

⁹ According to the program website, students spend three years at their home faculty, followed by one year at the other faculty in order to earn their second degree.

rather than the reflection of a concerted effort to teach Canada's other, dominant legal tradition. This much appears in the way that the Université de Montréal has labelled and designed its program: it is a *Juris Doctor* in "North American Common Law," which was apparently meant from its inception to focus primarily on the laws of the United States (Popovici, 2002, p. 809). Relying on the program website, the curriculum appears to remain at least partly true to this original mission even fifteen years later—though most course descriptions suggest a focus on common law principles applicable in both the United States *and* Canada (Université de Montréal, 2017c).¹⁰

This focus on the international and transnational applications of a common law education is even more explicit in the suppletive degree program offered by the Université de Sherbrooke. The program, which grants a "*Diplôme de 2e cycle en common law et droit transnational (Juris Doctor)*," incorporates elements of both the formal common law training present in the suppletive programs at the University of Ottawa and the Université de Montréal, as well as seminars and practice-oriented courses in transnational legal subjects (Université de Sherbrooke, 2017).¹¹ Like the Université de Montréal program (and the McGill program, for that matter), the Sherbrooke program is also marketed in part towards students hoping to enter the legal market in the United States, with the course website noting that the program allows them to access the legal profession in both common law Canada *and* New York State (Université de Sherbrooke, 2017).

That being said, it is relatively clear that the focus of the suppletive degree programs at both the Université de Montréal and the Université de Sherbrooke remains—like the national program at the University of Ottawa and the former national program at McGill—firmly focused on those private law topics that are specific to the common law legal tradition. Indeed, students in both the Université de Montréal and Université de Sherbrooke programs are expected to learn the core common law subjects of torts, contracts and property, along with additional topics such as trusts and remedies (Université de Montréal, 2017c; Université de Sherbrooke, 2017).¹² With the exception of the separate courses and practical initiatives in transnational law offered by Sherbrooke, which may constitute genuine innovations in legal education, the programs can thus be understood as boasting a curriculum that is little different from the national program model first developed—and now abolished—at McGill.

This conclusion raises a number of further questions. First among them is the *why*—that is, why the value of these types of separate, suppletive common law degree programs remains so high in Quebec. True to its name, the national program model had been developed in the late 1960s as a way of providing suppletive training in *Canada's* other major legal tradition, as the case might have been, rather than to prepare aspiring lawyers for the

10 For example, the description attached to the course titled "*Fondements et méthodes de la common law*" (literally, "Foundations and Methods of the Common Law") explains that the course will focus on the relationship between legal sources and institutions in the Anglo-Canadian and United States legal systems.

11 These course requirements are consistent with the degree obtained upon completion of the program, which can be translated as a "Graduate diploma in common law and transnational law (*Juris Doctor*)"; the program further distinguishes itself by being offered exclusively on a full-time basis over the summer, as opposed to the University of Ottawa and Université de Montréal programs, which are offered on either a full or part-time basis over the regular school year.

12 Beyond these requirements, the program at the Université de Sherbrooke requires that students complete an additional course in family law that is absent from the suppletive degree curriculum at the Université de Montréal.

challenges of globalization (Macdonald, 1990, p. 313). However, instead of moving away from this model, and towards something like the mandatory integrated curriculum now favored by McGill, it appears as though the appeal of suppletive common law degree programs has only increased in Quebec in the wake of globalization.¹³ As I will argue in Parts II and III below, there are at least two distinct factors that seem to explain this development. The first are the inherent challenges posed by the replication of integrated degree programs in institutions with a long history of teaching only one legal tradition. The second are the advantages that the suppletive degree model continues to offer in terms of the degree of control students have over their own education.

3. Explaining the Limited Growth of Integrated Programs

As I have outlined above, Quebec law schools present us with two alternative approaches to the teaching of multiple legal traditions. Namely, these are the integrated curriculum exemplified by the program at McGill, on the one hand, and the separate curricula that characterize the suppletive programs that now exist in most Quebec law schools, on the other. As between the two, I have argued that the latter approach has seen a much greater proliferation than the former, suggesting that there may be important limits to the wider dissemination of integrated programs at other universities besides McGill itself.

With this in mind, my objective in this part of the paper is to expand upon the factors that may potentially limit—and may have in fact have already limited—the growth of integrated degree programs in Quebec. As I will argue, the practical limitations to the replication of these programs do not give us the whole picture. Indeed, McGill's integrated curriculum raises broader pedagogical concerns about its actual ability to pass on knowledge of the two or more legal traditions it purports to cover. These concerns about transmission are particularly important in respect of Quebec's distinctive civilian heritage, which successive generations of scholars have portrayed as threatened by both the institutional and cultural encroachment of the Anglo-Canadian common law (Azard, 1963, pp. 7-8, Valcke, 1996, p. 114, Crépeau, 2005, p. 28).

3.1. The practical limitations of integrated programs.

Before turning to the more difficult pedagogical limitations of integrated civil and common law programs, it is worth examining the more practical difficulties that may have impeded the replication of McGill's curriculum by other Quebec law schools. While this is by no means a complete list, at least two potential roadblocks spring to mind, namely student demand for integrated programs, on the one hand, and difficulties relating to faculty hiring and administration, on the other.

The first of these concerns, student demand, is admittedly less relevant in Quebec than it is in a smaller mixed jurisdiction like Louisiana. There, the issue has often been one of justifying the integration of *civilian* courses into legal curricula at many institutions (Costonis, 2002). Quebec, by contrast, is large and relatively important enough within the Canadian federal structure to justify that aspiring lawyers be trained primarily in its own, civilian private law.

13 In this context, it may be worth asking whether Quebec's two other law faculties—namely those at the Université Laval in Quebec City and the Université du Québec à Montréal—will begin to offer similar suppletive degree programs of their own. Although the market for suppletive degrees is probably saturated at the moment, this situation may well change.

When combined with the high demand for common law training to which I have already alluded above, it becomes relatively clear that the market for some form of multijural education in the province may be particularly strong.

A variation on this same theme is student demand not so much for specifically civilian or common law training, but rather demand for legal education in a language *other than French*, and particularly in English or in a combined French-English format. One might expect that law schools in Quebec, a province whose recent history has been marked by political crises tied in large part to the preservation of the French language, would be particularly resistant to offering programs in English. Similarly, one might think that students—many of whom, particularly outside of urban centers, may not have mastery of the English language—would be dissuaded from pursuing such a program of study. Some schools, namely the University of Ottawa and the Université de Moncton,¹⁴ offer suppletive common law programs in French that are likely tailored to this demographic (University of Ottawa Common Law Section, 2017c; Université de Moncton, 2017b).

On the whole, however, the experiences of the Université de Montréal, the Université de Sherbrooke, and the University of Ottawa all suggest that this concern poses fewer limitations on the growth of suppletive common law programs than might have been expected. Indeed, the suppletive common law program at the Université de Montréal is intentionally taught in both French *and* English (Université de Montréal, 2017c). The same is true of the program at the Université de Sherbrooke (Université de Sherbrooke, 2017). The University of Ottawa, which is one of two institutions to offer a suppletive common law degree program entirely in French, also offers an English version of that same program that may well be more popular than its French counterpart (University of Ottawa Common Law Section, 2017a).¹⁵

By contrast, Quebec law schools are not so free from the second of the problems identified above, namely the availability of qualified instructors capable of properly dispensing an integrated curriculum. The problem in Quebec is of course the exact opposite than the one that plagues Louisiana law schools, in that it appears that quality *common law* professors, rather than civilian faculty members, are often lacking. Indeed, the suppletive program at the Université de Sherbrooke boasts that it is offered over the summer term rather than during the regular academic year for precisely this reason, in that it is thereby capable of attracting common law professors and practitioners who may normally be working elsewhere in Canada or around the world (Université de Sherbrooke, 2017). The situation is somewhat different at the Université de Montréal, which has managed to attract a relatively impressive array of common law specialists. Even there, however, it is clear that the primary expertise of tenured faculty remains those subjects that are part of the traditional Quebec civil law curriculum: among fifty full-time faculty, only three list an expertise in core common law subjects (Université de Montréal, 2017a).

14 The Université de Moncton is a French-language University in New Brunswick that offers a three-year common law degree program in French, along with a one-year suppletive common law degree program for students with a prior degree in civil law. It does not offer programs in Quebec civil law. (Université de Moncton, 2017a)

15 Until recently, the University of Ottawa also offered a one-year suppletive *civil law* degree in English, though this program appears to have been discontinued. Provincial legislation requiring all lawyers in Quebec to demonstrate French-language competency was probably a strong contributing factor: see *Charter of the French Language*, CQLR, c C-11, s 35.

This being the case, it is understandable that both the Université de Sherbrooke and the Université de Montréal would favor the creation of a separate, suppletive common law degree program over the integration of mandatory common law courses into their existing civilian curriculum. The former simply offers the institutions more flexibility in terms of hiring professors with actual expertise in the core common law subjects being taught. This is even more true when one considers what is perhaps the most distinctive element of McGill's integrated program, namely those courses that involve the simultaneous teaching of both civil and common law concepts. McGill has access to faculty members that are capable of properly dispensing these courses, many of whom are in fact drawn from its own law school alumni (McGill University Faculty of Law, 2017c). However, the same is not necessarily true of Quebec's other, historically civilian law faculties, including the University of Ottawa. To the extent that the common law and civil law programs at that institution have been and continue to be administered separately from one another, this may in turn explain why its integrated program boasts only two properly bijural civil and common law courses (University of Ottawa Common Law Section, 2017d).¹⁶

In other words, the move towards an integrated civil and common law curriculum may require an established institutional practice of teaching both legal traditions in concert, allowing for access to an existing professorial body with expertise in both relevant legal traditions. Meanwhile, the prior existence of entrenched institutional structures favoring the *separate* teaching of both traditions may instead create *additional* difficulties with respect to the dispensation of integrated law programs. Once again, this has been particularly true at the University of Ottawa, which, despite having a single Faculty of Law, maintains two deans in charge of their own respective civil and common law "sections" (University of Ottawa, 2017). Each of these sections is in turn given responsibility for its own three-year entry-level and one-year suppletive programs (University of Ottawa Civil Law Section, 2017; University of Ottawa Common Law Section, 2017e). The Faculty of Law at McGill, by contrast, has always been fully integrated from an administrative point of view (Macdonald, 1990, p. 312). This arrangement alone probably made the decision to replace separate civil and common law degrees with a single, integrated program much easier to complete than it would be at other institutions.

3.2. Pedagogical concerns with integrated programs.

As I have argued above, the faculty of law at McGill is relatively unique in having always had faculty members with expertise in both the civil and common law traditions, as well as an integrated administrative structure that greatly facilitated its transition towards an integrated civil and common law degree program. As I will now argue, however, these factors are far from the only ones that might account for the unique position in which the McGill program still finds itself today, almost twenty years after it was first implemented. Indeed, the program has faced persistent pedagogical concerns over the years, which, though undoubtedly exaggerated in many respects, may not be entirely without merit.

For the most part, these pedagogical concerns can be traced back to the fact that admission to the legal profession in Quebec, like in the rest of Canada, requires that aspiring lawyers obtain a degree from a recognized university (*Règlement sur la formation professionnelle des*

16 See the text of note 7 above.

avocats: section 5, paragraph 2).¹⁷ This means that law programs must inevitably deal with two sometimes competing objectives, namely the study of law as an *academic* discipline, on the one hand, and the pursuit of professional goals tied to the anticipated entry of students into the legal profession, on the other. In common law Canada, the academic portion of this dual function is a relatively recent development, in that the integration of professional legal training into universities in the largest Canadian province—the Province of Ontario—was only fully achieved in the late 1960s (Arthurs, 1998, p. 16). It is this development which in turn allowed McGill to offer its own version of a recognized common law degree program (Macdonald, 1990, p. 302).¹⁸

Where the pedagogical concerns with McGill's curriculum arise, then, is largely in respect of this second, professional function that is now served by both Quebec and Canadian law schools. Specifically, concerns have been expressed with respect to the ability of integrated programs to provide students with the more practical foundations that they require to be properly integrated into the legal profession (Bédard, 2001, pp. 280-282). The addition of mandatory upper-year classes in advanced civil and common law topics appears to be designed in part to address these worries (Jukier, 2006, p. 179). As at least one proponent of the McGill program has argued, this requirement is meant to allow students to “examine more deeply and critically the understanding of the overall mentalities and methodologies of the two great occidental legal traditions” (Jukier, 2006, p. 179).

This particular argument suggests that the real concerns underlying the vocational adequacy of the McGill program may have less to do with the requirements of lawyering *per se* than they do with the capacity of the program to transmit legal culture—and specifically, the legal culture of the Province of Quebec. Implicit in the response given to the critique of vocational adequacy, then, is a recognition of what I have already noted above, namely the precarious position in which many authors believe Quebec civil law finds itself (Azard, 1963, pp. 7-8; Valcke, 1996, p. 114; Crépeau, 2005, p. 28). Indeed, Valcke in particular argues that even Quebec's ostensibly civilian law schools fail at their basic mission of imparting a truly “civilian” way of thinking about law upon their students (Valcke, 1995, p. 65).¹⁹ This sort of argument is even stronger in respect of McGill's integrated program. Thus, Bédard takes pains to note that the lack of insistence on doctrinal scholarship in the classroom—which she believes is an essential element of the civil law method—is compensated by the fact that these materials are often included on assigned reading lists (Bédard, 2001, p. 265).

In hindsight, these concerns have largely proven to be unfounded in McGill's particular case. Its integrated program appears by most metrics to be quite capable of fulfilling both of its academic and vocational functions, including the transmission of Quebec's particular civilian legal heritage. For example, graduates of the program have tended to perform fairly well

17 The requirements are different in Quebec and in common law Canada; accreditation in the latter is determined by the National Committee on Accreditation of the Federation of Law Societies of Canada, which among other things is charged with assessing the qualifications of applications who hold Quebec civil law degrees: see Federation of Law Societies of Canada (2017).

18 The oldest law school in Quebec is McGill's Faculty of Law, established in 1848; the second oldest is the law school at the Université Laval in Quebec City, which was established in 1852.

19 Of course, these law schools are only “civilian” when dealing with private law; the public law concepts that they teach are those of the common law, as these apply equally across Canada, including in Quebec.

on the Quebec bar entrance exams. This trend has been relatively consistent: in 2014-2015, 92.86% of its direct-entry students obtained a passing grade, giving McGill a second-place ranking among Quebec's six law schools (École du Barreau, 2015).²⁰ In 2013-2014, a somewhat lower proportion of its students passed the bar exams—91.23%—though this earned the school a first place ranking during that year (École du Barreau, 2014). Even in exceptional years like 2015-2016, where McGill's direct-entry students had the second lowest overall pass rate of any institution, that pass rate remained at a relatively impressive 87.18% (École du Barreau, 2016).

This being the case, the pedagogical concerns regarding the transmission of civilian legal culture may have less to do with the status of combined civil and common law training at McGill than they do with the potential for the replication of that program in Quebec's other law faculties. Like the university itself, McGill's law faculty has long been associated—for good or ill—with Quebec's Anglophone minority (Macdonald, 1990, pp. 232 & 304-305). In this sense, it is probably the best placed to provide added value to an integrated degree program, all the while justifying its decision to impose the mandatory curriculum on students as a way of exposing Anglophone students from outside of Quebec to that province's particular legal tradition. By contrast, Quebec's other law schools have a much different cultural identity. While exact numbers are not available, it is likely that most of their graduates will end up practicing law within Quebec, if they choose to practice at all. The decision to offer separate, suppletive degree programs allows these institutions to grant much more flexibility to their largely Quebec-bound students than is possible under McGill's integrated curriculum, including with respect to the study of law in different combinations of French and English,²¹ all the while preserving the core civilian character of their entry-level degree programs.

4. Explaining the Relative Appeal of Suppletive Common Law Programs

In the first part of this paper, I argued that Quebec law schools present two distinctive approaches to the teaching of multiple legal traditions, namely the integrated curriculum exemplified by McGill, and the separate, supplemental common law degrees offered by most other law schools with three-year civil law programs. Of the two approaches, I concluded that the second has been more prolific. Meanwhile, the McGill integrated model has been only partially replicated at one other institution, namely the University of Ottawa. In the second part of this paper, I then argued that the limited growth of the integrated approach could be attributed not only to practical difficulties related to its widespread implementation, but also to persistent concerns over the capacity of these programs to properly and consistently fulfill the vocational functions of a university-level legal education. As I further suggested, these concerns may be compounded in a jurisdiction like Quebec, where transmission of black letter legal knowledge is often viewed as essential to the survival of the province's particular legal tradition.

In the third and final part of this paper, I will turn to the relative advantages offered by separate, suppletive common law degree programs that are designed to complement legal

20 By "direct entry," I mean those students who did not take the six-month preparatory courses that are offered as an option for most students before entering Quebec bar school.

21 For example, the author took advantage of the University of Ottawa's more unique curricular offerings to complete most of his common law training in French, and most of his civil law training in English.

training already received in the civilian legal tradition. As I will argue, these advantages persist even as the move towards an integrated curriculum at McGill might have suggested their gradual replacement in favor of more innovative curricula. Not only are these suppletive programs easier to implement and maintain than their integrated analogues, but they also tend to be designed with largely vocational, rather than academic, objectives in mind. This makes suppletive programs particularly appealing to law faculties eager to attract those large numbers of law students and practicing lawyers who are looking for a legal education tailored to their particular professional needs, rather than to pursue the more properly academic objectives that McGill has also used as selling points for its integrated curriculum.

4.1. The practical advantages of suppletive common law programs.

Having outlined the practical limitations of integrated civil and common law programs above, I do not need to spend much more time on the relative advantages that separate, suppletive programs offer in this respect. However, there are a few more points that may be raised about the effects of an operative distinction between civil and common law programs beyond what has already been said—that is, beyond the challenges that this arrangement appears to have created for the implementation of integrated degree programs outside McGill. Specifically, I want to briefly suggest that there may instead be an *advantage* to keeping the administration of suppletive degree programs separate from that of the entry-level three-year degrees, particularly in those faculties where the presence of a second legal tradition is much more limited, and not necessarily tolerated to the same extent.

Even McGill itself has not been immune from the concerns that might favor separate degree program structures. As Nicholas Kasirer has related, some civilian professors at the university believed that the status—and purity—of education in the civil law might decline relative to that of the common law under an integrated degree program (Kasirer, 2002, p. 30). Once again, this desire to maintain the primary focus of legal education on Quebec civil law can simply be understood as reflecting an attachment to a particular, mostly francophone cultural identity.²² Rather than moving towards an integrated degree program like that of McGill, which would almost inevitably undermine that cultural identity by attracting students from elsewhere in Canada who hope to focus on the common law, offering suppletive degree programs thus allows students to separately broaden their horizons once their primary instruction in the civilian legal tradition is complete.

In many respects, these concerns about the preservation of Quebec's distinctive legal heritage once again echo the views expressed by those authors who believe that the primary purpose of legal education is the transmission of a form of culture—learning to “think like a lawyer,” which in this case largely means thinking like a *civil* lawyer, with a mode of reasoning that is closer to scientific inquiry—rather than a means of passing on a purely technical, black-letter understanding of the legal subject matter (Valcke, 1995, p. 78). The particular advantages that suppletive degree programs may offer in this context are thus less vocationally-oriented than they are aimed at achieving higher ideals.

22 That being said, it appears that some common law specialists on the McGill Faculty also opposed the move towards an integrated curriculum, and for reasons that largely mirrored those of their civilian colleagues.

At the same time, there remains a strong degree of compatibility between sectioning off common law training from the core civil law curriculum in order to preserve the integrity of the latter, on the one hand, and the marketing of suppletive common law degrees towards primarily vocational ends, on the other. Indeed, while full three-year civil law programs remain tied on this model to a one-size-fits-all curricular approach that is also implied in the mandatory nature of the McGill program, schools like the Université de Montréal, the Université de Sherbrooke, and even the University of Ottawa are free to tailor their suppletive degree programs to the more practical reasons that might motivate students to pursue training in a second legal tradition.

4.2. The perceived pedagogical advantages of suppletive common law programs.

As I have argued in Part II of this paper, the vocational aspect of legal education in Quebec may well explain McGill's continued emphasis on separate courses of study in common law and civil law topics in the upper years of its integrated program. These same pedagogical objectives appear to be pursued—rightly or wrongly—through those separate, suppletive common law degree programs like those now offered by the Université de Montréal and the Université de Sherbrooke, and can in turn be said to provide at least a *perceived* advantage that accounts for the continued proliferation of this program structure.

The major advantage that these latter two programs offer in this respect, however, is that they are more broadly consistent than even the upper year choices offered at McGill with the model outlined by some scholars, according to which students are perceived to be best positioned to determine the actual content of their professional needs (Arthurs, 1998, pp. 20-21 & 31; Valcke, 2005, pp. 497-498). Valcke in particular has even noted that McGill's integrated degree program “bucks the trend” towards a consumer model legal education (Valcke, 2005, p. 494). This focus may in turn largely explain why most of Quebec's law schools have opted to offer suppletive common law degree programs in the first place—and why these programs have proliferated even as McGill's move towards an integrated curriculum might have been expected to call their relative value into question.

Of course, even proponents of McGill's approach at least partially justified the move towards an integrated curriculum on the basis that it would offer its graduates a strong vocational advantage over those not trained in both the civil and common law traditions (Morissette, 2002, p. 17; Kasirer, 2002, pp. 30-31). I do not really wish to challenge the merits of that argument here, particularly as I am largely inclined to agree with it in many respects. Nonetheless, the suppletive degree model at least *appears* to be more vocationally inclined than the integrated curriculum, simply because it offers students a greater degree of control over their legal education. Following this model, the choice to undertake further training beyond an entry-level law degree belongs to the students, many of whom will undoubtedly—though of course, not necessarily—make their decision on the basis of their belief that knowledge of a second legal tradition—the common law—will actually further their career objectives.

Accordingly, one might expect the curriculum of a suppletive common law degree program to be focused less on high principle, and more on the formal foundations and black letter of the common law than is the case with McGill's integrated program. These expectations are largely borne out in the way that the programs present and market themselves—regardless of whether that marketing is actually reflected in practice. Thus, McGill presents its integrated

program as a “transsystemic” one that focuses on the comparative learning of—and dialogue between—the civil and the common law (McGill University Faculty of Law, 2017d).

By contrast, the suppletive common law degree programs offered by other Quebec law schools introduce students to the common law on precisely the grounds that the McGill program ostensibly seeks to avoid—that is, on the basis that the common law underlies most of the positive law in the rest of Canada and in the United States (University of Ottawa Common Law Section, 2017a; Université de Montréal, 2017b; Université de Sherbrooke, 2017). This is why these suppletive programs are almost invariably structured in the manner set out in Part I of this paper, with one course devoted to the formal foundations of the common law, and the rest covering core private law subjects in the common law tradition. The underlying idea is that students already have knowledge of basic civilian principles and black letter legal concepts, and now come to complete their training by focusing primarily on what’s *different* about the common law.²³ That this approach presents strong comparative dimensions is thus undeniable, though the objectives being pursued through this form of comparative inquiry remain fundamentally different on the whole from those that animate McGill’s integrated curriculum.

This sort of pragmatic emphasis on difference, rather than the common principles that underlie both civil and common law—and perhaps even all legal traditions—may be particularly useful in a number of relatively specialized professional settings. In the context of the University of Ottawa program, for example, many graduates aspire to work in the Canadian federal public service—which, it should be noted, operates primarily in the federal capital, Ottawa. There, graduates of suppletive programs gain a particular advantage when dealing with federal legislation that operates both bilingually and bijurally, meaning that it interacts in both English and French with provincial laws that may be based on either of the common law or civil law traditions (Gaudreault, 2006, p. 205; Touchette, 2002, p. 126).²⁴ This has proven to be especially true in distinct practice areas such as federal taxation and bankruptcy and insolvency (Vauclair & Tassé, 2003; Duff, 2009). Accordingly, legislative drafters and lawyers involved in the law-making process must confront particular challenges presented by Quebec’s distinctive civilian private law heritage—a relatively recent realization that the federal Parliament has since decided to tackle head-on with a series of harmonization statutes.²⁵

With these sorts of professional uses of comparative law in mind, it can thus be argued that a separate education in multiple legal systems offered through suppletive degree programs serves a fundamentally different purpose than the comparative components of McGill’s integrated curricula. Where the context requires it, suppletive degree programs may be particularly useful as a means of offering targeted training that allows students to learn a second legal tradition and—perhaps just as importantly—the manner in which that tradition is actually

23 That the program focuses primarily on differences is almost necessarily implied by the separate and *suppletive* nature of the legal curriculum used in these programs: they are meant to fill a particular gap in knowledge, though the student is presumed to be perfectly capable of working as a lawyer in Quebec or in other civilian jurisdictions without that knowledge.

24 Under Canada’s *Constitution Act, 1867*, power over private law matters is largely left to provinces, but the federal Parliament retains legislative power over a number of legislative subjects that intersect with private law issues: see *Constitution Act, 1867*, s 91, 92.

25 These are the *Federal Law-Civil Law Harmonization Act, No. 1*; *Federal Law-Civil Law Harmonization Act, No. 2*; and *Federal Law-Civil Law Harmonization Act, No. 3*.

applied in a particular jurisdiction. Of course, it remains to be seen whether existing suppletive degree programs in Quebec actually live up to these objectives in practice.

5. Conclusion

As I have argued above, McGill's transition away from separate common law and civil law programs and towards a single, integrated curriculum has had a relatively modest impact on the overall approach to the teaching of multiple legal systems in Quebec law schools. Indeed, only one school—the University of Ottawa—has introduced an integrated program of its own, and it has done so all the while maintaining separate, suppletive one-year programs in the common and civil law designed for students already trained in the other legal tradition. Meanwhile, the number of such one-year suppletive programs offering training in the common law has proliferated, with both the Université de Montréal and the Université de Sherbrooke now offering their own particularly focused versions of this separate curriculum to complete their existing three-year civil law programs.

That being said, the reasons for the proliferation of these suppletive programs, and the comparatively limited growth of integrated curricula based on the McGill model, are more difficult to ascertain. As I have suggested, some of these reasons are undoubtedly practical. Above all, it is difficult to hire faculty capable of dispensing courses in more than one legal tradition, let alone in two traditions at the same time. Faculty members may also feel threatened by the integration of law programs, especially when the focus of their research lies in Quebec civil law, a legal system and tradition whose existence they feel may be undermined by the presence of another, more dominant legal tradition. Indeed, this threat may be perceived all the more acutely given that Quebec's public law—and hence the public law curriculum of its law schools—is already rooted in that other tradition.

At the same time, the move towards a mandatory integrated curriculum—as McGill has done—also presents challenges of a more substantive nature. For one, ongoing concerns about the capacity of integrated programs to transmit knowledge of black letter law—regardless of whether these concerns are actually founded—become relevant as students attempt to make choices that will direct the course of their future development. This is particularly true in that the suppletive common law degree programs are marketed with largely vocational goals in mind, and therefore focus primarily on the teaching of black letter legal principles. McGill's integrated curriculum, by contrast, can be understood as a primarily intellectual project with ancillary vocational objectives. While McGill's already high standing and historically anglophone culture may attenuate vocationally-related concerns and allow it to attract qualified students from outside of Quebec to its particular integrated program, it is not so clear that other Quebec law schools can afford to make the same leap of faith.

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