Common Law Legal Education in Canada's Age of Light, Soap and Water*

W Wesley Pue**


** W Wesley Pue is a lawyer and the Nemetz Professor of Legal History at the Peter A. Allard School of Law at the University of British Columbia. He also served as President of the Canadian Law and Society Association.
Common Law Legal Education in Canada’s Age of Light, Soap and Water

BY W. WESLEY PUE

I. Introduction

Paul Axelrod and John G. Reid introduced a recent collection of essays with the optimistic assertion that Canadian educational history has come of age:

Once the domain of boosters and builders, preoccupied with administration evolution and antiquarian detail, the historiography of Canadian education now embraces a wider range of issues and probes them more deeply. Studies of the relationships between education and social class, social control, and economic change have been augmented by critical, informative analyses of the motives and activities of school promoters and teachers. The social history of Canadian education has become a vibrant and promising field of inquiry.1

Unfortunately, it is far too early to extend such optimistic appraisal to histories of legal education. Despite indications of renewed interest by some of Canada’s finest legal historians, this field remains dominated by the sort of work more familiar during the “bad old days”: “Fawning, celebrationist biographies of great individuals and impressive buildings, written by ex-administrators instead of professional historians.”2

Three storylines persistently re-appear in accounts of the development of legal education in common law Canada. The first is a tale of progressive development. From tiny acorns, great oaks do grow: from small, infrequent, voluntary, and ad hoc lectures by busy practitioners grew patterns of experimentation, a trial-and-error which culminated in the post-World War II adoption of mandatory, effectively post-graduate, three year L.L.B. programmes across English Canada.

The second involves variations on the theme of heroic struggles fought by great (academic) men to establish an academic university education in law as the principal professional qualification. These heroic individuals were all but stymied by the opposition of hostile, small-minded legal practitioners. Despite set-backs, difficulties, humiliation and unimaginable anguish, the great men prevailed to lay the foundations of a wonderful place called “now”: late twentieth century legal education.

The third storyline is a largely unwanted American import. In this account the move toward formalised university legal education forms but one component of a self-seeking project by which lawyers secured an extensive economic monopoly.

2 Ibid.
reduced competition, suppressed ethnic minorities or otherwise advanced their own
economic or social status. It is most frequently developed in Canadian writing only
to show its wrong-headedness and in order to lay the groundwork for one of the other
two, more orthodox, accounts.

The three accounts are not mutually exclusive. They can be mixed and matched
in any number of creative ways. Of necessity, this threefold classification involves
coarse characterizations of the sorts of ways in which the history of legal education
has been addressed in Canada. No one piece of writing fits precisely within any
category and many historians of common-law Canadian legal education are sophis-
ticated, first-rate scholars whose products cannot properly be reduced in such a
simplistic fashion. Nonetheless, these themes will be recognisable to any reader
familiar with the existing literature. This threefold taxonomy represents caricature,
not fabrication; ideal-types, not the messiness of raw data.

The dominance of these ways of looking at legal education subordinates many
important themes which might otherwise be developed. One serious shortcoming of
Canadian legal historians has been our failure to sufficiently locate developments
in legal education within their appropriate “cultural and regional milieus.” The types
of account which dominate tend to either isolate “great men” from their social context
or, conversely, to subordinate individuals and context alike into a larger tale of
ineluctable historical forces. The failure to situate our studies within a larger cultural
history has resulted in a seriously distorted appreciation of the history of legal
education in Canada. Distortion runs in at least five directions:

1. the false impression that law marches on unaffected by its larger society, hence
   the related Whiggish notion of “progress”;

2. mischaracterization of issues as reducible to debates between legal practitioners
   and academics;

3. under-appreciation of the period 1910-1920 in establishing the foundations of
   modern legal education;

4. under-recognition of regional importance — the west and Manitoba in particular;

5. failure to appreciate the cultural meanings of legal education.

II. The March of Progress

The notion of “the university as merely an ivory tower, somehow levitating above
the hard realities of Canadian society” has been thoroughly discredited by Canadian
historians of education. For contemporary social historians of education, the obser-

3 Ibid. at xii. Three very important exceptions to this pattern are G. Blaine Baker’s excellent study
of early Ontario, “Legal Education in Upper Canada 1785-1889: The Law Society as Educator,” in
David H. Flaherty, ed., Essays in the History of Canadian Law, volume II (Toronto: The Osgoode So-
ciety, 1983) at 49; Philip Girard’s fine study of “The Roots of a Professional Renaissance: Lawyers in
Nova Scotia 1850-1910” in Dale Gibson and W. Wesley Pue, eds., Glimpses of Canadian Legal His-
tory (Winnipeg: Legal Research Institute, 1993) at 155; and David G. Bell, Legal Education in New
Brunswick: A History (Fredericton: University of New Brunswick, 1992). Work on Canada’s civil law
legal history is often less insensitive to culture and place. In the area of legal education see for example
David Howes, “The Origin and Demise of Legal Education in Quebec (or Hercules Bound)” (1989)
38 University of New Brunswick Law Journal 127; Roderick Macdonald, “The National Law Pro-
vation that "the world" has always "directly and powerfully ... impinged upon university life" passes for common sense. It has no power to startle; it does not pass for fresh insight.

By and large, however, "the world" remains a shadowy presence in histories of legal education. Regrettable though that may be, this is understandable in the state of the art as it now stands. A great deal of work remains to be done simply in identifying the constituencies and individuals who played key roles in particular developments. The immense labour required to document chronologies of legislative, curriculum and regulatory changes surrounding legal education in each of Canada's provinces still lies before us. Consequently, even outstanding recent contributions to the literature, Kyer and Bickenbach's *Fiercest Debate* or Peter Sibenik's very fine account of legal education in Alberta for example, remain in large part "internal accounts" of developments in legal education: a world in which changes in legal education are accounted for by reference to the actions and ideas of judges, practitioners, law students, academic lawyers, benchers, and bar associations. The same could be said for the bulk of the earlier generation's writings.

This is classic "within the box" legal history of the sort which has been so thoroughly critiqued by, among others, Robert Gordon, David Flaherty, and Barry Wright. In Gordon's formulation these two approaches can be distinguished as follows:

The internal legal historian stays as much as possible within the box of distinctive-appearing legal things; his or her sources are legal, and so are the basic matters he wants to describe or explain, such as:

4 Axelrod and Reid, supra note 1 at s2.
9 Flaherty, supra note 3, vol. 1 at 3-42.
as changes in pleading rules, in the jurisdiction of a court, the text assigned to beginning law students, or the doctrine of contributory negligence. The external historian writes about the interaction between the boxful of legal things and the wider society of which they are a part, in particular to explore the social context of law and its social effects, and s/he is usually looking for conclusions about those effects.11

The point is not that “inside the box” legal histories should not be written. We need to know much more about the law box. Even those inclined to observe from without would do well to pay a good deal more attention to perspectives from within. The important point is simply that “internal” histories do not begin to exhaust the story of legal education in Canada. There is a good deal to be gained by relocating accounts of common law legal education in the social, intellectual, cultural and political histories of the diverse provinces and territories of Canada.

Social theory has moved on since Gordon’s influential 1976 critique. Contemporary conceptualisations tend to place more emphasis on both the impossibility of ever attaining a ‘god’s eye view’ and the irrationality of assuming that a distinctive legal arena can be identified at all. “Internal” and “external” do not, in other words, represent neatly bounded spaces. The ‘legal’ and the ‘social’ are inter-penetrating, mutually constituting, inseparable. We should not even begin to think of the history of legal education as taking place within a “box,” into which ‘causes’ flow and from which ‘effects’ are excreted.12 Developments in legal education are inseparably part and parcel of the larger Canadian cultural history. We need to strive to transcend any vision of ‘contextualised’ legal history which would simply raid the outside world to identify ‘causes’ or ‘influences’ to be poured into a purportedly discrete institutional and intellectual space called ‘law.’

One consequence of amputating legal education from its cultural context has been that a sort of crude whiggishness intrudes. Absent careful contextualisation, most historical accounts succumb to the logic of chronology: seemingly inevitable, progressive, development rushes into the void left when cultural context is extracted. “Progress,” so central to our culture, overtakes any chronology not deliberately cast within an alternative interpretive framework.

III. Pedants, Practitioners and Prophets

Internal histories of common law legal education frequently focus on debates about alternative schemes. Typically, these are portrayed as involving clashes between the supposedly irreconcilable visions of legal practitioners and academicians. After fierce debates, long periods of frustration, negotiation, manoeuvres, confrontations, almost intolerable tribulation on the part of heroic academic lawyers, the objections of narrow-minded practitioners are overcome. ‘Academic’ legal education is established, the world is put right and the stage is set for even greater


658

educational ‘progress’ from this new and altogether superior baseline. In most 
accounts, such as those of Dalhousie, the University of Manitoba, or Osgoode Hall Law 
School for example, the tale is rendered only somewhat more complex by the 
interjection of an early ‘golden age’ or ‘false dawn’ which subsequently faded, 
slipping into the morass of mere practitioner’s training against which succeeding 
generations of heroic academics struggled.

A pioneering and highly influential article on legal education in Ontario cast the 
history of Osgoode Hall Law School in just such terms. In “Pedants, Practitioners 
and Prophets: Legal Education at Osgoode Hall to 1957,” Brian Bucknall, Thomas 
Baldwin and David Lakin adopt the theme of a struggle between mere practitioners 
and the academically inclined as the sole interpretive framework through which to 
understand the developments they document. While “[s]poradic attempts were made 
to supplement practical training in law with formal and academic lectures from 1848 
onwards there was, in their account, a blinking inability on the part of “practitioners,” 
represented in the Law Society, to appreciate the necessity of academic education.
Repeated failed attempts to establish a law school in Ontario during the nineteenth 
century are said to have resulted from the antiquated beliefs of “the Law Society and 
its out-dated view of training in the practice of law.” Their failings derived from a 
number of factors, most importantly, “the fact that the profession, having itself been 
trained in legal practice, found it difficult to appreciate the claims that Law had to 
being an academic discipline.” Even when a law school was properly established in 
Toronto, its heretic and scholarly principal, William Albert Reeve, was repeatedly 
constrained by the Law Society’s Legal Education Committee. So too was his rather 
less imaginative successor, Principal Hoyles. While some practising lawyers were 
clearly on the side of the ‘gods,’ “practitioners” as represented by the benchers 
were unable to transcend their “Victorian ideas on training in law” until they were 
more or less beaten into submission by the fiery Dean “Caesar” Wright.

Kyer and Bickenbach’s more recent study of legal education in Ontario from 1923 
through 1957 adopts a similar approach. They describe confrontation between “an 
uncompromising Law Society of Upper Canada” and a body of full-time legal 
educators who “stressed the ‘learned’ nature of the profession and the need for the 
educational process to be developed and controlled by professional educators.”
Even the work of the Canadian Bar Association’s Committee on Legal Education, 
which, if we are to adopt the general nomenclature, was unabashedly academic in 
orientation, is presented as a practitioners’ body captured and “used” by academic

13 Bucknall, et al., supra note 7 at 149.
14 Ibid. at 160.
15 Ibid. at 162.
16 Ibid. at 169ff; Newman Wright Hoyles served from 1894 to 1923.
17 Ibid. at 182 and 187 (the Canadian Bar Association and the Lawyer’s Club of Toronto are 
mentioned).
18 Ibid. at 188; this was the era of Dean John D. Falconbridge, 1923-1948.
19 Ibid. at 207ff.
20 Kyer and Bickenbach, supra note 5 at 4-5. The governing body for the Ontario legal profession 
continues to be called by this title despite the disappearance of “Upper Canada” in 1867.
law teachers such as McGill's Dean of Law, Robert Warden Lee, Dalhousie's Dean McRae or Saskatchewan's Dean T. D. Brown.22

Similarly, John Willis invokes a strong contrast between so-called "cultural" (read "academic") education in law and mere technical training throughout his A History of Dalhousie Law School.23 Developments such as Dean Weldon's early pursuit of a "liberal" education in law24 or its replacement by a more narrowly "professionally-oriented" curriculum in 191525 are attributed to the periodic ascendance of either "academic" or "practitioner" influence as the case may be. Jack London's account of legal education in Manitoba similarly posits as a central theme an ongoing war between champions of "law as a science" and apologists for training in mere "technique and mechanics,"26 while John McLaren's important overview follows the established pattern.27

As a sort of quick short-hand way of referring to a bundle of diverse pedagogical assumptions, cultural orientations, and curricular structures, the "academic"/"practitioner" distinction is harmless enough. Indeed, some such awareness of the divergent possibilities for university common law education have persisted at least since the founding of England's earliest modern programme of instruction at Queen's College, Birmingham, in the mid-nineteenth century.28

In historical practice, however, this casual shorthand does great damage. Such terminology insinuates a causal theory, unfashionably a monicausal one at that. It powerfully suggests that the most important influence on the character of legal education has been the interplay between an unchanging practitioner preference for instruction limited to the most mechanical of law office tasks and a countervailing "academic" desire to establish a genuinely "cultural" education in law. Such an explanatory framework rapidly degenerates into a bad-guys vs. good-guys scenario in which short-sighted practitioners constantly frustrate the higher aspirations of law teachers, whose higher sensibilities permit them alone to appreciate the practical necessity of exposing prospective lawyers to a rigorous scholarly education about law. History can be lost when primary sources meet so powerful a conceptual

21 Ibid. at 69 (discussing McRae's "use" of the CBA committee.)
22 Ibid., chapter 2, "The Bar Associations and Legal Education" at 60-79.
25 Ibid. at 68-69, 74, 78-80.
26 Jack R. London, supra note 7 at 74-120, esp. at 75.
framework; primary materials inconsistent with the main story can be too quickly relegated to the antiquarian realm.

The many historical trajectories traced out in Canada's common law provinces are however much more variegated than theory permits. History is much more ambivalent; less easily productive of heroes and villains. The practitioner vs. academic dichotomy fails to capture either the practical utility of an academic legal education or the academic relevance of practical training. Indeed, philosophical positivism and an emphasis on the virtues of "practical knowledge" pervaded middle class English Canadian culture to such an extent, during Victoria's reign and the early twentieth century that any alleged fundamental incompatibility between practical and academic learning in law would, quite literally, have been beyond the comprehension of the men who gave substance to debates about legal education in the period.29 Invocation of this dichotomy does great damage to history, downplaying the very substantial record of a spirited and deliberate advocacy of "cultural" university legal education by elite practitioners. Lost too in such analyses is any notion that there may be a relationship between the forms taken by legal education and developing visions of both legal professionalism and of the future of Anglo-Canadian civilization.

IV. (Yet) Another Formative Era?

One consequence of a too uncritical reliance upon such approaches has been a massive under-appreciation of the importance of the decades on either side of the First World War in giving form to subsequent debates. Over-reliance on one particular interpretive framework has combined with an unapologetic regionalism to virtually obliterate this period from the history books. Ontario-centrism (with apologies to Dalhousie and now New Brunswick) has dominated in this as in many other areas of Canadian legal history,30 with the result that researchers have too often been inclined to locate "origins" in the late nineteenth century and then in the years after World War II. The early twentieth century gets squeezed out.

This has happened despite the opening of three university affiliated schools for professional legal education during the second decade of this century: a development which brought the Canadian common law total from two (Dalhousie and University of New Brunswick) to five. The burst of educational innovation marked by the founding of university affiliated law schools in Alberta, Saskatchewan and Manitoba has been relegated to the realm of antiquarian or strictly local interest only. Over-

29 David Howes, has developed a similar argument with respect to legal education in nineteenth century Quebec, arguing that "... philosophy, history and politics used to be internal to law.... While it is not difficult for us moderns to imagine a lawyer with no grounding in philosophy, to the legal imagination of the 1880s such a creature was unthinkable, i.e. that professional ideology included philosophy. As for history and politics, the main reason they were internal to law is that they had not yet been departmentalized as autonomous branches of knowledge. Law was political history" (supra note 3 at 128). See also Roderick Macdonald, "The National Law Programme at McGill: Origins, Evolution, Prospects" (1990) 13 Dalhousie Law Journal 211.

looking this period also results in giving short shrift to the enthusiasm shown for educational reform by the early Canadian Bar Association, its committee on legal education and similar committees of various provincial and local bar associations during the first quarter of this century. It requires that significant changes at two of the three law schools whose history has been respectively researched be quickly skated over. Both Dalhousie and ‘Osgoode Hall’ experienced important curricular reform and each reached new staffing levels during the decades of the 1910s and 1920s. Beyond this, these decades saw scholarly activity, debate and publication blossom and congeal in new ways. Even the New Brunswick Law School, which David Bell says was becoming “an increasingly remote backwater of Canadian legal education” shifted its affiliation from King’s College to the University of New Brunswick and raised its admissions standards in response to both Canadian Bar Association urgings and local concerns about “spectacular ethical lapses.” New law schools were established by the Law Society of British Columbia in both Victoria and Vancouver. 

Failure to pay careful attention to this period leads to a distorted impression of the trajectory of legal education in Canada. Depending on the researcher’s inclination, this results in either an over-emphasis of continuity and progressive development from nineteenth century ‘origins’ to the present or in an exaggeration of post World War II discontinuity and, concomitantly, portrayal of the entire prior history of Canadian legal education as amounting to little more than dozy inertia, unmarked by noteworthy innovation or change from the 1880s until Dean Wright’s mythologized “shoot out at Osgoode Hall” and defection to the University of Toronto in 1949.

Reclaiming the early twentieth century forces us away from interpreting the past simplistically in terms of either stasis and radical discontinuity or progressive continuity. This lost era reveals that common law education in Canada has developed in particular social contexts affected, to be sure, by its own internal history and by parochial concerns of the legal profession but also, importantly, by greater or lesser responsiveness to the surrounding social, political, and intellectual environments. The period from roughly 1910 to 1920 was important in laying new cultural foundations for modern common law legal education. It produced a melding of persuasive new ideas developed and tested in the USA with longstanding British middle class traditions regarding practical knowledge, honour and authority. For a variety of reasons English Canada’s dominant cultural ethos was receptive to influences of both sorts. The conjuncture of industrialisation and westward expansion dominated English Canadian imperial visions. The west’s relative social fluidity, lack of established institutions and smorgasbord of utopian visions liberated elites from convention. Challenged by a world of ideas which held no traditions sacrosanct, English elites — particularly in the prairie west — were freed and forced

31 Bell, supra note 3 at 130, 118-120, 124-125.
33 So characterized by McLaren, supra note 27 at 111-145.
to reconsider their own futures. This reappraisal included fundamental questions about which sorts of institutional arrangements were best suited to the peculiar position of this new, northern, British, and free people.

V. The West Wants In

It is highly regrettable that prairie historians of law have not produced any sustained, scholarly discussion of legal education in the region. The predictable and unfortunate consequence is that developments in Alberta, Saskatchewan and Manitoba have not been incorporated into the "general literature" on common law legal education in Canada, despite prairie leadership of the Canadian Bar Association and the founding of three prairie law schools in the second decade of this century. Regional imbalances in scholarly production mesh with and reinforce the temporal distortions which dominate our developing perception of Canadian legal education.34

A brief historical gloss provided in the Social Science and Humanities Research Council of Canada's influential 1983 report on Law and Learning is illustrative:

The first successful university law faculties appeared in the oldest areas of settlement, Quebec and Nova Scotia, in the late nineteenth century, and also relatively quickly after the establishment of universities in the newest provinces of Saskatchewan and Alberta, several decades later. These too survived with microscopic full-time faculties, generally supported by a number of part-time lecturers drawn from the bench and bar.35

Manitoba is ignored altogether, developments in Saskatchewan and Alberta dismissed as inconsequential. The entire history of legal education in the prairie west appears only as a two sentence prelude to a discussion of what is thought to be important: the internal disputes at Toronto's Osgoode Hall following the Second World War. Reflections on those events are mixed with some international comparisons to give shape to the nine pages of educational history which follow.

The established pattern in historical writing, at best featuring an almost embarrassed acknowledgment of presumptively insignificant developments in prairie Canada, distorts understanding. The prairie provinces were not in the past the politically and economically dispensable periphery they have since become. The "National Policy" had made Canadian territorial expansion into the west the key element of the new Dominion's developing state idea. "Canada's empire" represented the hope of a (English Canadian) nation. In Gerald Friesen's appraisal, during the "boom of the early twentieth century, the confidence inspired by the western frontier and the social impulse of a new outlook in the Protestant churches was assimilated to the British-Canadian inheritance to create a powerful new regional image that transcended earlier definitions of the national mission: the promise of the

34 The organised legal professions of the region must share the blame with scholars. In sharp contrast to Ontario's practice, prairie law societies have often appeared disorganised, bemused, suspicious and frightened when faced with the possibility that serious historical study of their profession might be pursued. The creation of a professionally managed archive relating to the legal profession in Alberta represents a significant advance.

35 Report to the Social Sciences and Humanities Research Council of Canada by the Consultative Group on Research and Education in Law, Law and Learning (Ottawa: Social Sciences and Humanities Research Council of Canada, 1983), generally identified as the Harry "Arthur's Report."
west became the promise of Canada.\textsuperscript{36} Importantly, this “promise of the west” was a cultural promise which held forth hope for a new vision of social ordering, a new and unique prairie culture which would showcase the way of the future:

[A] militant view of British civilization was a crucial aspect of the western Canadian image. But, if western Canadian leaders were proud of their British heritage, they were not complacent about British social achievements. They insisted that they lived on a frontier and had the freedom to improve upon the parent culture. What better way to create a perfect society than to build it on virgin land, to employ the finest raw material of a dozen lands, and to work to plans inherited from the world’s greatest civilization? The frontier, in western Canada as in the United States, was a land of new beginnings. Where all citizens started as social equals, merit and value rather than class would be rewarded. Where farms and rural life, rather than factories and cities, were the foundations of the economy, true wealth would be created. Where life was lived close to nature, individuals learned the lessons of God at first hand. Calculations of prairie greatness and celebrations of imperial power inevitably ran together; the west would have a population of 100 million; it would be the bread-basket of the world; it would become the centre of gravity of all Canada; and, if it ruled Canada, and Canada led the empire (as it soon would), then, as anyone could see, the west would lead the world.\textsuperscript{37}

One significant though generally overlooked component of the evolving “militant” view of British civilization related to the legal profession, and to the ways in which lawyers were to be educated.

The west, in short, “wants in.” Accounts of legal education in common law Canada cannot be complete until our histories are admitted. While a short article cannot begin to address so systemic an imbalance in the production of history, the next sections provide a brief account of developments relating to legal education in each of the provinces and of prairie leadership through the Canadian Bar Association. Developments in Manitoba are given special emphasis because of the vital role played by Manitobans in shaping the Canadian Bar Association, its Committee on Legal Education, and other aspects of the evangelical visions of professionalism which emerged from that body. All of this is offered in order to lay the groundwork for a preliminary reassessment of the cultural meanings of legal education in early twentieth-century Canada.

A. Saskatchewan and Alberta

The little which has been written about the history of legal education in Saskatchewan and Alberta reveals that the idea of formal instruction in law had been in the air from the earliest years of provincial status.

From the time the University of Saskatchewan was created in 1909 its president, Walter C. Murray, apparently had plans to establish a law faculty. Two of the initial five teaching staff, Arthur Moxon (a classicist and lawyer) and Ira MacKay (a lawyer and political scientist), were fully qualified to provide double service as instructors in “arts” and law. It was not long before their legal talents were put to use in the classroom. In 1913, not one but two law schools were established in the province. The law society established “Wetmore Hall” in Regina as a professional law school, while the University of Saskatchewan opened its College of Law in Saskatoon that


\textsuperscript{37} Ibid. at 342.
same term. Despite similarity of programmes, nothing like an integrated "system" of legal education emerged for several years. Graduates of the College of Law initially earned an L.L.B. degree without exemption from professional examinations, while students at "Wetmore Hall" became fully qualified lawyers without any credit toward a law degree. A limited reciprocity arrangement, was entered into in 1919, foreshadowing closure of Wetmore Hall in 1922. Legal education thereafter was centralized in Saskatoon, effectively making university studies the only route to professional qualification in the province.79 The earliest deans established a tradition of scholarship and the College of Law came under Harvard influences in both pedagogy and in its ways of thinking about law.99

Similarly, the University of Alberta expressed early interest in establishing a faculty of law. In 1909, during his first full year as president of the university, Dr. Tory laid plans for future development before the University Senate, "including provision for applied science and education in the Faculty of Arts and Science, and the establishment of new Faculties of Agriculture, Medicine, and Law." A Senate committee was mandated "to consult with the Supreme Court Justices and the Law Society about holding joint examinations in Law ...."40 A law society committee soon responded with a blueprint for university legal education and in 1912 the University of Alberta approved creation of a "Department of Law" within the Faculty of Arts and Sciences.91 Under the initial arrangement, examinations were administered by the university under the closest possible supervision of the law society. The first lectures were provided by Edmonton lawyers. Not to be outdone, Calgary lawyers made their own arrangements for a lecture series independent of the university, though in collaboration with the law society and Calgary College.42 Facing financial pressures in a period of recession, the law society in 1914 accepted an invitation from Dr. Tory to cede entirely its responsibility for the arrangement of lectures in both Edmonton and Calgary to the University of Alberta.43 When Calgary College closed in 1915, structured legal education became centralized at the university.44

Although the university now arranged lectures for all Alberta law students there were effectively two programmes in place. The L.L.B. programme remained distinct from a narrower range of offerings directed toward professional qualification.45 Degree students were required to complete additional lecture courses on subjects perceived to be of limited practical relevance. Moreover many law students continued to earn professional qualifications without attendance at lectures and without

38 McConnell, supra note 7, chapter 4: "Legal Education in Saskatchewan" at 103-153.
39 McLaren, supra note 27 at 125; McConnell, supra note 7 at 103-153.
41 Peter M. Sibenik, supra note 6 at 439, 440.
42 Ibid. at 440-443.
43 Ibid. at 441.
44 Ibid. at 445.
45 Ibid. at 445-446.
Common Law Legal Education

earning the L.L.B. degree. The university programme adopted a case method of teaching from the start, the 1914 calendar declaring an intention to follow Harvard's state-of-the-art method of instruction. 

Alberta's early enthusiasm for Harvard pedagogy was further evidenced by its eager adoption of a 1919 recommendation by the Canadian Bar Association Committee on legal education that full-time Legal Education should replace part-time programmes. The Law Society of Alberta and the university reached an agreement-in-principle in January 1921 by which "prospective students of the Society would undertake three years of full-time studies leading to the L.L.B. and a year of articling, and then write the Society's examination on provincial statutes." The society continued to advise the faculty and the full-time L.L.B. programme quickly became the normal route to qualification in the province. Alberta's leading historian of legal education has concluded that the Faculty of Law was entirely cast in Harvard's image by mid-1920s: a full-time, three-year programme, entrance standards set at two years of college work, stiff examinations, and instruction by means of "large, well organized casebooks containing leading English and American decisions." All of this was complemented by a "Socratic" classroom experience:

Students were given assignments and cases were discussed in class, under the direction of the instructor, with a view to determining their reasoning and correctness. The instructors sought to instill in the students' minds a capacity for independent thinking which is absolutely lacking under the textbook system.

By the end of the 1920s, Sibenik concludes, "modern" legal education had arrived in Alberta: the university, "the syllabus, the case method, law as science and precedent, and three years of urban life in Edmonton..."

B. Manitoba

The notion of university legal education had also been in the air from Manitoba's earliest years as a province. The eventual establishment of a law school in 1914 was the product of work by law students, elite lawyers, university officials, and royal commissioners during the first years of the twentieth century. Their ideas jelled and gained widespread currency with surprising speed in response to peculiar outside pressures during the second decade of the twentieth century.

The chronology of developments affecting Manitoba legal education has been well documented. It is generally agreed that the years from the founding of the

46 Ibid. at 454, reporting that 1/3 of the students in 1915 --- mostly in rural locations --- were in this situation.
47 Ibid. at 447.
48 Ibid. at 457.
49 Ibid. at 459-460.
50 Ibid. at 458, 461, 462. This form of reliance on case-law was apparently designed to facilitate the career mobility of lawyers amongst common law jurisdictions. See Sibenik, supra note 6 at 461, note 175, citing correspondence with W. A. R. Kerr to Howe, n.d..
51 Ibid. at 461-462. The quotation is from correspondence between William A. R. Kerr, Dean of Arts and Sciences, and Howe, n.d.
52 Ibid. at 464.
Manitoba Law School in 1914 through to significant changes in 1931 amounted to a crucial "formative period." While the University of Manitoba had formally established an LL.B. degree as a reading course in 1885, aspiring lawyers rarely took the degree until its virtual merger with the professional courses of the Manitoba Law Society in 1914.

More significant origins of modern Manitoba legal education are found within the profession, not within the academy. During the late nineteenth and early twentieth centuries, apprenticing lawyers frequently petitioned the law society to establish a course of lectures for their benefit. Manitoba's first such lectures had been delivered by Chief Justice Wood in 1877 and some form of more or less unstructured expository teaching tradition developed in the following years. Law Society lectures lapsed in 1905, and probably at other times, to be revived by James Aikins and Isaac Pitblado acting as a committee of the Law Society. By the end of the first decade of the twentieth century a more or less regular pattern of lectures had been established by the benchers. At least one lawyer pressured the law society to take steps to formalise legal education in the province. The university's LL.B. programme meanwhile continued independently as a reading course unaffected by these initiatives from within the profession.

The idea of the university playing an important role in professional legal education was advanced in the 1909 report of two members of a Royal Commission on Manitoba University Education. Aikins, who was omnipresent, and Chevrier suggested that: "a law school [should] be established in connection with the University of Manitoba." Building on the precedent of existing arrangements for university

---

53 The extraordinary work of Dale Gibson and Lee Gibson, supra note 7, holds pride of place in this as in many other aspects of Manitoba legal history. A pamphlet prepared on the opening of "Robson Hall" in 1970 covers much of the same ground. See also: London, supra note 7 at 74; L. Gibson, supra note 7 at 18; Buchwald, supra note 7 at 77-82; and Williams, supra note 7 at 759-79; 880-892.
54 London, supra note 7 at 77.
55 L. Gibson, supra note 7 at 33.
56 12 January, 1903, Report of Law Society of Manitoba Examining Committee (establishing a course of lectures pursuant to student petition), Archive of Manitoba Legal History, Faculty of Law [hereinafter AMLH]; Law Society of Manitoba Minute Books, 7 December 1906 (Petition from the Law Students' Society asking for a course of lectures, referred to a special committee of the President, Mr. Wilson and Mr. Cameron).
57 Gibson and Gibson, supra note 7 at 129.
58 Law Society of Manitoba Minute Books, 7 February 1905.
59 Letter to L.G. McPhillips of Vancouver, author unknown, dated 29 May 1909 (AMLH file A225). A limited range of lectures were approved by the Law Society at various times prior to and after the date of this letter, see, for example, Law Society of Manitoba Minutes for: 7 January, 1907, 9 October 1907, 28 October 1907, 14 October 1907, 11 November 1908 and 28 October 1909.
60 29 September 1908, Law Society of Manitoba, Minutes, that "in response to a letter from Mr. W.H. Traeman, secretary, to write and say no idea of establishing a Law School at the present time." Traeman also appeared frequently as a lecturer in the early courses and in 1915 was briefly named head of the teaching staff of the new Manitoba Law School: 19 February 1915, Law Society of Manitoba, Minutes.
61 Report by J.A.M. Aikins and Rev. A.A. Chevrier on the university and professional training: Commission appointed 26 September 1907. Report delivered in the fall of 1909, 73: (University of Manitoba Archives, UA20, Box 7, Folder 5, P378.7127 W B MS.) This recommendation is similar to
training in other professions such as medicine and engineering, they called for the creation of a university-affiliated college of law:

We believe it would not be difficult for the University to make an arrangement with the Law Society whereby a regular course of instruction would be given to those studying, the University establishing Chairs in some subjects such as Constitutional, Municipal, Commercial and Criminal Law, and the Law Society providing Lectures in the other subjects. If the University has the funds available to do so, we recommend such a course ...

If the University has not the funds to do so after providing for the teaching of those subjects which we have previously recommended as University subjects, then we recommend that State aid be granted so as to place the Students of these Professions on a somewhat equal footing in respect of a regular course of instruction in their intended vocations, and that when regular teaching as Law is undertaken by the Law Society with the aid of the State or of the University, then the Law Society should be affiliated with the University in respect of such teaching or of the School or College it may establish for such purpose.62

Although Aikins chaired the Royal Commission, he and Chevrier failed to carry the other commissioners and the Commission's widely divergent reports were, in any event, largely ignored by the Roblin government. Nonetheless, their views provide testimony to a developing "common-sense" about legal education. Pitblado was emboldened a few months later to prod his fellow benchers on the matter of creating a Manitoba Law School.63

Pressed by student demands64 the benchers implicitly acknowledged the value of systematic legal instruction in 1910 when they "agreed to allow up to a year's leave of absence to a student wishing to study law at a law school in Canada, the United States of America, or England."65 Between 1910 and 1914 aspiring lawyers voted

one made by Ontario's 1906 Royal Commission on the University of Toronto, chaired by Joseph Flavelle, which recommended "that a Faculty of Law should be established in the University, and that, if possible, arrangements should be made with the Law Society by which the duplication of the work which is common to both in the courses of instruction may be avoided." The Law Society of Upper Canada rejected this notion altogether (quoted in Kyer and Bickenbach, supra note 5 at 36.)

62 ibid. at 73-74. The analogies provided by the constitutive colleges of the University of Manitoba would have been particularly influential in the thinking of Aikins and Chevrier. Their report has been characterized by W.L. Morton, One University: A History of the University of Manitoba, 1877-1952 (Toronto: McClelland & Stewart, 1957) as follows: "... a full, historical defence of the founding colleges and of the autonomy of the university as organized in 1877 ... proposed a reorganization which would have kept the colleges constituent parts of the university while effecting a separation of financial and academic administration ..." (at 77). Elsewhere Morton describes Aikins and Chevrier as "traditionalists" who "accepted the original organization of the university with its denominational control through the constituent colleges supported by the churches and private benefactors, but coupled with a medicum of state aid for the maintenance of an examining body and a teaching faculty limited to the natural sciences." (at 65).

63 Law Society of Manitoba Minutes, 15 February 1910: "Mr. Pitblado gave notice that he would move at the next meeting That the time has come when a Law School should be established either by the Law Society, or in connection with the University of Manitoba and that a Committee of the Benchers be appointed to consider the matter and report."

64 Law Society of Manitoba Minutes, 17 December 1909. ("Letters from Adamson, Baker and Martin re attending a law school; request denied but should ask for legislation to amend The Law Society Act.")

65 L. Gibson, supra note 7 at 33. See Law Society of Manitoba Minutes, 6 May 1910; AMLH, Newspaper Clippings files, 6 June 1910
with their feet, as at least a dozen Manitobans took advantage of the opportunities provided.66 In 1910 a Winnipeg newspaper reported that law students, who one suspects were urged on by legal practitioners, had expressed a need for a “less indirect, more controlled education” and were giving serious consideration to petitioning the university to hold their examinations under its auspices.67 In 1911 the students again made formal demands for a course of lectures. They asked that a law school be created and threatened a student exodus to Saskatchewan if nothing were done.68 The Manitoba Bar Association also joined in the call for the creation of university legal education, at its inaugural banquet in November of 1911.69 The hand of J. A. M. Aikins, founder of both the Winnipeg Bar Association and its successor Manitoba Bar Association, was most certainly at work here.

These attempts at persuasion were not alone sufficient to overcome professional inertia. It was only when the benchers were confronted by the unseizable horrors of the free market that they moved decisively to occupy the field of professional education. When education-for-profit threatened to fill the void left by the failure of both the Law Society and the University to provide structured legal education in Manitoba the benchers responded with surprising speed. In March 1912 the Manitoba Legislature gave consideration to a University Extension Bill which would have conferred powers upon a private business to give degrees by correspondence or instruction in the fields of “law and business.” Although (or because) private “crammers” of one sort or another had long been in existence in England and the U.S.A., the prospect was not greeted with equanimity by Manitoba lawyers.70 Objections were raised in the legislature by Coldwell who objected that any such development would infringe on the provisions of the Law Society Act. He expressed the fear that it would “cause many to shirk the more thorough training in law demanded under the terms of the Law Society Act,” objected to a correspondence school granting degrees71 and raised the spectre of a private law school throwing “the province open to professional men without training.”72

66 Law Society Manitoba Minute Books: 14 June 1910, (e.g. P. Balzer, W. Martin and A.E. Dilts); 27 September 1910, (“four students”); 7 June 1912 (G.C. Lindsay); 14 May 1913, (L.P. Napier); 10 June 1913 (William Nash(?)); 30 September 1913, (C.D. Roblin; F.C.S. Davison).

67 “Desire University Control” 15 December 1910, (AMLH, Newspaper Clipping file 1889-1963, 12): “The law students of the city have been for some time considering some improvements which they think might be made in their course of study and examinations. A hint dropped at one of their most recent by the attorney-general who was acting as judge, has given an encouragement to their purpose, and it is probable that they may petition the university regarding the holding of their examinations under its auspices.”

68 Letter to the Benchers from Mr. E. D. Honeyman, dated 20 February 1911, (AMLH, A225). The Benchers’ minutes for 21 February record receipt of a letter from the Law Students’ Association requesting lectures and authorizes lectures to be given at remuneration of $25 per lecture. Again, the Law Society of Manitoba Minutes for 28 November 1911 record that a series of lectures was to be arranged in response to a request from the Winnipeg Law Students’ Society.

69 “Manitoba Bar Association Born at Banquet” 10 November 1911, Winnipeg Telegram (AMLH Newspaper Clippings file, 1911); See also: “Aikins Entertains Local Barristers” 1911, n.d., (AMLH Newspaper Clippings file, 1911).

70 Law Society of Manitoba Minutes, 8 March 1912, record that a Bill for An Act to Incorporate the University Extension Society of Canada was opposed by the Benchers.

71 7 March 1912, Winnipeg Telegram, “Would Give Women Right To Practice Law in Province”
These fears seem unduly alarmist, particularly when it is recalled that the law society failed entirely to provide anything even remotely approaching a programme of systematic legal education. Why exactly the very idea of a private initiative was so disturbing to the benchers and their friends is unclear as direct evidence is both sparse and ambiguous. Certainly it seems unlikely that they might have thought that any private system of education could have possibly been less thorough or rigorous than the law society’s system of lectures: sporadically offered, irregularly attended, complemented only with a dose of unregulated law office employment and undemanding examinations. The introduction of a proprietary law school in Manitoba would, of course, have challenged the law society’s role as the sole authoritative voice in such matters and certainly would have diminished its cultural authority. Judging by U.S.A. experience, a privately operated law school would also almost certainly have opened the door to legal careers for much larger numbers of young men (and women?) of working class or minority ethnic background.33 This prospect would not have been viewed with equanimity by Manitoba’s Anglo élite, who were embedded in a culture which was fiercely pro-British and hierarchical, nativist, even xenophobic.34

It may be too that élite lawyers shared a trans-boundary vision of professional culture reflected in Julius Cohen’s 1916 commentary on proprietary law schools in the U.S.A. Relying heavily on University of Michigan Law Dean Henry M. Bates’ report for the U. S. Bureau of Education,36 Cohen complained that,

[T]here are still proprietary schools run for profit, which do not take into account the larger interests of the State, the profession, and the requirements of justice and which grant diplomas on low standards of admission and of work. Unless this tendency is checked, much of the good that the better university schools are attempting to accomplish, at the expense of less in students and money to themselves, will be offset by the schools run mainly for revenue only.37

Over twenty years after the defeat of the University Extension Bill, E. H. Coleman (then Dean of the Manitoba Law School) expressed dismay at U.S.A. commercial law schools which, he said, admitted students ill-equipped “by education, character or temperament” for legal practice, producing graduates with “little conception of ethical standards and who enter on practice without any idea that the profession has

AMLH Clipping, 1912, 24.

72 AMLH, Clipping file, 1912, 21.


74 See discussion infra, text to notes 141-143.


76 Julius Henry Cohen, The Law: Business or Profession? (New York: Banks Law Publishing Co., 1916) at 138-139. Interestingly, Cohen concludes this chapter with the comment that “Education for the Bar must include moral training — if it is to be education for the Bar.” (at 141), original emphasis. It should be noted that though couched in the language of public interest and objective standards, the attempts of the “better university schools” to raise their standards may have been the result of discriminatory and exclusionary motivations. See Auerbach, supra note 73, chapter 3, at 94-101.
any other end or duty than the making of money by the practitioner." Coleman was
relieved that Manitoba had been spared these unspeakable evils and expressed his
satisfaction regarding the "advantage" Manitoba enjoyed in "having the control of
legal education lodged in our official society." In apparent reference to the 1912
University Extension Bill, he observed that

Had the Law School not been established, I think I may say quite safely that you would have in Win-
nipeg a commercial law school, probably a baneh of one of the institutions in Chicago or Minneapo-
lis, the only aim of which would be the profit of the owner with the result that there would be pumped
out each year an army of graduates, whose chief qualifications, so far as the Law School would be con-
cerned, would be the payment of fees. 77

For whatever reasons, the 1912 initiative was defeated. 79 Manitoba was spared the
ravages of free enterprise in legal education, and a university-affiliated law school
was quickly created to occupy the field.

Other developments continued apace throughout this period. From 1911 to 1913
the Law Society organized lectures for students 80 and Robson continued his personal quest
for the creation of a law school in the province. He prodded apprenticing
lawyers to "keep hammering at the question" of legal education until a law school
was established, 81 and kept hammering himself. Even so, as late as September
1913, the creation of a law school in Manitoba seemed a distant likelihood at best.
Correspondence between Robson and the University of Manitoba's new President,
James Alexander MacLean, indicates that despite MacLean's apparent enthusiasm
for university education in practical law the "Law School idea" was only "developing slowly." 82

The cause of a Manitoba law school gathered further momentum following the
opening of Saskatchewan's two law schools in October 1913. Robson was authorized by
the benchers to "lay plans for the establishment ... of a permanent law school
modelled after Osgoode Hall," a project in which he was assisted by a recent Osgoode
Hall graduate, E. K. Williams. 83 Robson took full advantage of the opportunity thus

77 E. H. Coleman, "Legal Education" (1933) Manitoba Bar News 1 at 2. Coleman's comments are
equally derivative of the cultural web which peripatetic Josef Redlich, The Common Law and the Case
Method in American University Law Schools (New York, 1914) to comment that proprietary schools
"supply the needs primarily of those social strata whose sons are not thinking of university education
in either the American or the continental sense. They consider the legal profession as a trade like any
other, and regard legal education in the same light as commercial education in a commercial school.
" (as quoted in Robert Stevens, supra note 73 at 113).

78 E. H. Coleman, ibid. at 2.

79 The Law Society Manitoba Minute Books for 26 April 1912 indicate that the University Extension
Society Bill was withdrawn.

80 L. Gibson, supra note 7 at 33.

81 A newspaper article of 23 November 1912 under the heading "Annual Banquet of Law Students"
reports that in an address to law students Robson commented: "The modern tendency to over-
much reform must be checked. Remember the ethics and the etiquette of your profession so that you
may maintain the high standards. You must keep off all trespassers for the benefit of the profession and
the community. A very necessary reform, however, is the establishment of a law school." (A.M.I.H.,
Newspaper Clippings files for 1912, 71).

82 Letter to J.A. MacLean from H.A. Robson, 19 September 1913 (University of Manitoba
Archives, UA 20, Box 10, Folder 53).
afforded him. Taking considerable liberty in his interpretation of the Osgoode Hall model, he persuaded the law society to move rapidly toward creation of a law school in collaboration with the University of Manitoba. During the spring of 1914, only nine months after Robson’s pessimistic assessment, Isaac Pitblado asserted confidently that “the Law society was determined to establish a law school, and that it would be a great mistake if the university did not take it under its wing.”\(^3\) What emerged was an innovative arrangement under which a professional law school was to be run as a sort of joint enterprise governed by a “Board of Trustees” appointed equally by the university and the law society.\(^4\) In June 1914 the University of Manitoba approved the plan.\(^5\) The first board of trustees took office with Robson as Chair.\(^6\) Academic matters affecting the law school were to be subject to Law Society review\(^7\) and the Benchers also exercised considerable informal and formal control through their appointees to the board of trustees, their ability to make rules for admission to practice in the province\(^8\) and, no doubt, general habits of deference in matters of legal expertise.

On this basis formal legal education in Manitoba commenced. The first classes were taught in the Y.M.C.A. building on 5 October 1914. It was not a particularly auspicious start: part-time, no dean, no intellectual agenda, no developed pedagogy, no teaching staff other than a “recorder,” R. P. Hills, “assisted by seven practising lawyers as part-time lecturers.”\(^9\) The school offered two distinct three year programmes, taken concurrently by most students. Different course and examination structures existed for admission as an attorney at law, for call to the bar, and for the L.L.B. degree. It continued to be possible to qualify for practice by service of articles and examination alone.\(^10\) Even law school students were required to provide law office service concurrently throughout the three year programme. Nonetheless, “[t]he seeds of didactic legal education as a basic component of training had,” according to London, “been firmly sown ....”\(^11\)

\(^3\) Robson Hall Pamphlet, supra note 7 at 6; Gibson and Gibson, supra note 7 at 216.
\(^4\) Unidentified newspaper clipping (probably from the Tribune of 15 or 16 May 1914, University of Manitoba Archives, A 20, Box 8, Folder 2. The arrangement would, Pitblado said, be similar to that between the university and the school of medicine.
\(^5\) L. Gibson, supra note 7 at 33-34; Gibson and Gibson, supra note 7 at 216.
\(^6\) By motion of 14 June moved by President MacLean, seconded by C.K. Newcombe, (Letter from W.J. Spence, Registrar of University of Manitoba to Benchers, Law Society, 25 June 1914) AMLH, A440.
\(^7\) Law Society of Manitoba Minutes for 17 July 1914 indicate that the first board of trustees consisted of Edwin Loftus and Rev. Dr. G.B. Wilson (university representatives) and I. Campbell and J.H. Munson (law society representatives. The law society suggested that Robson chair the board.
\(^8\) Ibid.; also see 1914, AMLH, A440.
\(^9\) L. Gibson, supra note 7 at 34.
\(^10\) L. Gibson, supra note 7 at 34. The recorder was “R. P. Hills, LL.D.” (Robson Hall Pamphlet, supra note 7 at 6).
\(^11\) Curriculum of the Manitoba Law School under the University of Manitoba and The Manitoba Law Society, Winnipeg, June 1915; AMLH, A100, 1-2.

London supra note 7 at 77-78. In 1915, the Law Society Act was amended in order to retroactively authorize the arrangements.
Despite the law school's modest resources and humble start, the early board of trustees sought to put Manitoba at the forefront of North American legal education. Their professional vision incorporated all that was thought to be state-of-the-art amongst elite U.S.A. lawyers at the time: wholesale endorsement of the case method, a desire to make attendance at law school the necessary and sufficient method of qualification for the legal profession, an ambition to create a full-time staff of professional law teachers, and a pedagogical vision which encompassed "cultural" legal education imbricated within "practical" training. There were also early indications of a desire to raise admission standards, perhaps to the point of requiring that all law students hold university degrees prior to admission.

These were highly innovative ideas for their time and place: outright radical by Ontario standards. It is not to be expected that all Manitoba lawyers would have shared equally in the spirit of reform, nor indeed that law school lecturers or the trustees themselves were uniformly committed to a single vision. Nonetheless, the model of legal education which emerged incorporated each of these elements.

The first "Dean" took office in May 1921. J. T. Thorson, a graduate of Manitoba College, Rhodes Scholar and Manitoba lawyer, presided over a brief "golden age" of Manitoba legal education. Following recommendations of the Canadian Bar Association's Committee on Legal Education, the system of concurrent articles

---

93 There is abundant evidence of a strong desire to adopt the case method. See: Second Draft of Proposed Curriculum, Manitoba Law School — AMLH, A369; Letter from H.A. Robson to Isaac Piñado, 30 April 1915, AMLH, A369; Letter from H.A. Robson to Isaac Piñado, 20 April 1915, AMLH, A369; Williams, supra note 7 at 771-772 (reporting that in 1914 the Board of Trustees had established a committee under Robson and Hugg to consider the utility of the "case system"); Letter from H.A. Robson to Isaac Piñado, 18 May 1915, AMLH, A369; "Formal Opening of the Manitoba Law School. Inaugural Address to the Students by Sir James Aikins, K.C., M.P." (1914) 34 Canadian Law Times, 1183 at 1188. Lecturers at the school were active in the preparation of published casebooks. For example, H. A. Robson, K.C. and J. B. Hugg, Leading Cases on Public Corporations (Toronto: Carswell Co., 1916); H. A. Robson and J. B. Hugg, Cases on Company Law (Toronto: The Carswell Co., 1916). R. F. McWilliams, edited the second edition of Left's Leading Cases in Canadian Constitutional Law during this period: Gibson and Gibson, supra note 7 at 251. Over and above any assigned treatises or casebooks the school in its early years produced pamphlets listing cases which were recommended for reading in various courses.

94 H. A. Robson to J.A. MacLean, 3 April 1914, University of Manitoba Archives, UA20, Box 10, Folder 5 (also appears in AMLH, A440, Board of Trustees Minutes (memorandum recording view that the teachers should be professional, full-time instructors) and also A205/2.

95 University of Manitoba Archives, UA20, Box 10, Folder 5; also appears in AMLH, A440, Board of Trustees Minutes (memorandum recording view that the teachers should be professional, full-time instructors) and also A205/2.

96 The Manitoba Law School curriculum from 1914 to 1920 was notable for its inclusion of a wide range of courses which advanced a general "cultural" education rather than merely providing training in the mundane tasks of work—a-day legal practice. University President Dr. J. A. MacLeon, a classicist who came to Manitoba from the presidency of the University of Idaho, took an early active interest in the business of the law school and, apparently, did what he could to prevent slippage into a narrowly practical curriculum, a task which he shared with Robson. See: Letter to J.A. MacLean from H.A. Robson, 30 April 1915; Letter from H.A. Robson to J.A. MacLean, President of the University, 31 December 1915; Letter from MacLean to H.A. Robson, 7 January 1916 (University of Manitoba Archives, UA20, Box 10, Folder 5).

97 Curriculum of the Manitoba Law School, Session 1919-20, AMLH, A100 indicates that by 1919-1920 admission standards had been raised to completion of "First Year in Arts of the University of Manitoba or its equivalent ...."
Common Law Legal Education was all but abolished in 1921, supplanted by an arrangement under which “students were required to serve only one year in law offices, simultaneously with the Law School programme in the case of university graduates, and after completion of the programme in the case of nongrads.” This was to be a full-time educational programme and teaching hours for the first time extended “throughout the business day,” daily except for Saturdays and holidays. Manitoba also became the first Canadian law school to adopt the new model curriculum of the Canadian Bar Association. Manitoba’s place at the forefront of Canadian legal education was confirmed when two further full-time law professors were hired, bringing the school’s staff to the level attained by Dalhousie Law School at the beginning of its own “golden age” and surpassing Osgoode Hall’s beleaguered and solitary full-time instructor. The law school raised its minimum admission standards to completion of second year arts or equivalent.

The newly structured school quickly established Canadian and international reputations for excellence. It was hailed as a model worthy of emulation by the chair of the Canadian Bar Association’s Committee on Legal Education in 1923 and was evaluated as Canada’s best law school in both 1926 and 1927 by the Carnegie Foundation.

Though the notion that Manitoba was once a leading force in educational reform will strike many students of Canadian legal history as little short of heresy, it was in fact entirely logical that the provincial school of law should have moved so far and so fast. These developments were a natural outcome of the directions in which the school had been moving since its inception. More importantly, the Canadian Bar Association and its Committee on Legal Education were themselves very largely Manitoba creations. It is much nearer to the truth to conceive of the recommendations of the Canadian Bar Association as embodying the thinking of elite Manitoba lawyers than it is to think of the Association as an outside force prodding sleepy prairie lawyers to wakefulness. Canada’s great “academic” project of legal education was initiated in the offices of elite Winnipeg lawyers.

For reasons which remain mysterious, Manitoba’s bold experiment in legal education was entirely expunged shortly after its period of greatest flourishing.
674

Between 1927 and 1931 the Manitoba Law School purged itself of all traces of full-time legal education, delivering a serious blow to the academic study of law from which the institution has long struggled to recover. Nonetheless, this brief flourishing of thought and practical action left its imprint on Canada at large. Manitoba's common sense was translated to the national stage, and the culture which produced the Manitoba experiment continued to speak to a larger Canadian constituency, even as it faded within the province.

VI. Canadian Bar Association as a Prairie Cultural Expression

The early Canadian Bar Association was pre-eminently an embodiment of prairie social thought, political vision and legal culture. Founded in the west, directed by Manitobans, it was an important vehicle through which elite prairie lawyers sought to communicate their visions of professionalism to the wider Canadian public. Sir James Aikins of Winnipeg founded the Canadian Bar Association and served as its President from 1914 through to 1927.107 Manitoba's H.A. Robson headed the first CBA committee on legal education and laid the foundation from which the association's "Lee committee," developed its crucial 1918 report.108 A distinct but related CBA committee on legal ethics was chaired by Manitoba's Chief Justice Mathers.109 Manitoba Law Society President Isaac Piblado, who served as chair of the University of Manitoba's first Board of Governors110 and had earlier been involved in the establishment of the Manitoba Law School,111 enthusiastically endorsed the CBA committee's 1918 report.112 When the CBA committee on legal education subsequently struck a sub-committee to consider curriculum, Robson was appointed.113

107 Harvey, supra note 7 at 222-227, 225-226.
109 "Legal Ethics: An Address by Chief Justice Mathers" ibid. at 269-301; Pue, "" Becoming Ethical": Lawyers" Professional Ethics in Early Twentieth Century Canada" (1990) 20 Manitoba Law Journal 227 (also published in Gibson and Pue, eds., supra note 5 at 337-377.)
110 Harvey, supra note 7 at 231-34.
111 On 7 February 1905, Aikins and Piblado formed a committee to discuss with the University of Manitoba a course of lectures in connection with the LL.B. course. (Law Society of Manitoba Minute Books). Piblado's subsequent interventions in favour of university legal education are recorded in: Law Society of Manitoba Minute Books, 15 February 1910; and University of Manitoba Archives, UA20, Box 8, Folder 2 (unidentified newspaper article).
112 Minutes of the Proceedings of Canadian Bar Association (1919) 150 (as cited in Kyer and Bickenbach, supra note 5 at 66).
113 However he found himself unable to participate. The result was that Brown represented both the Saskatchewan and Manitoba law societies. Brown consulted "with Judge Robson, with the head of the Manitoba Law School, and with some of the benchers of the Law Society ..." (Proceedings, CBA, 1920, "Committee on Legal Education, Standard Curriculum" 250 at 252).
alongside McGill’s Dean R. W. Lee. When the CBA committee on legal education subsequently struck a sub-committee to consider curriculum, Robson was appointed alongside McGill’s Dean R. W. Lee, Dalhousie’s Dean MacRae, Wetmore Hall’s Dean T.D. Brown and W.F. Kerr of the Law Society of Upper Canada.

A sub-committee report recommending a standard curriculum modelled on the Dalhousie programme, was adopted by the Canadian Bar Association at its 1920 meeting. While Kyer and Bickenbach disparagingly assess this as only “a minor victory for the university-minded members of the committee,” it was in truth much more. The CBA reports established the terrain over which all subsequent battles concerning legal education in common law Canada have been fought. Their curriculum proposals, which sought to combine knowledge of legal doctrine with some exposure to what we now think of as the sociology and history of law, remained the strongest influence on contemporary law school curriculum. There is little in current structures of legal education which was not contemplated, developed, and advocated during these years of Canadian Bar Association activity.

VII. Regenerating Law

It is unhelpful to attempt to stuff the story of educational developments during this period into convenient and readily available conceptual packages. While some prominent Ontario lawyers acting on their own or through the Law Society of Upper Canada opposed developments of this sort, it makes little sense to speak of a practitioner/academic divide as the defining characteristic of debates about legal education in early twentieth-century Canada. The individuals directly involved were aware of no such polarity. On the contrary, the most vigorous proponents of what might be called a “cultural” agenda in legal education were prominent, energetic, busy, successful practising lawyers. All were either born into the Anglo élite or thoroughly integrated into it. All were active in matters of law society governance or in the activities of bar associations. Most played on both stages.

A dichotomy which seems entirely natural to us formed no part of early twentieth-century structures of thought. Yet the cultural assumptions of individuals in that period must be assessed if we are to make any sense of the history of common law legal education in Canada. If we are to understand at all, we have to begin to understand the intellectual climate of the élite, British, Protestant world in which these men lived. While certain core ideas may have been most often or most elegantly expressed by law teachers, the currency of these notions was far wider. Their origins are found far beyond the charmed circle of élite lawyers.

114 Ibid. at 250-257.
115 Kyer and Bickenbach, supra note 5 at 69.
116 Such is conceded in supra note 35 at 13: “In principle, the university law schools and the professional schools ought to have provided dramatic contrasts, reflecting the ethos and objectives of their parent bodies ... However, in practice no such clear-cut opposition of styles seems to have developed ... The two traditions, in fact, coexisted without undue overt conflict.” The report continues to remark that “Only in 1948-49 did a clear polarization of positions occur” (at Osgoode Hall). It is regrettable that the Ontario trauma of 1948-49 has been read backward and forward into the history of legal education in Canada ever since.
676

Nonetheless, early twentieth century commentators did bear a dichotomy in mind as they contemplated arrangements relating to legal education. Their dichotomy reflected a divergence but not a divorce between a purely practice-oriented training and a more rounded legal education. Words too readily mislead here and, though they disparaged narrow training in the mechanics of legal practice, this did not connote a sweeping denunciation of "practical" education. All education was to be "practical" in the sense of meeting certain minimum standards of practical utility. Their objective was to forge a body of learned practitioners working to serve the larger society, knowledgeable in law, and sensitive to community needs. Theirs was a holistic vision; an integrated conceptualization which could not be parsed. All of legal education was to be drawn upon in the day-to-day work of the future practitioner and all practical work was to advance a cultural agenda: a 'great commission' peculiar to those learned in the law. The character of this legal mission is sketched in the writings of the three early twentieth-century lawyers whose views are discussed in the following sections.

A. Ira MacKay

Ira MacKay's comments to a general meeting of the Alberta Law Society in 1913 are illustrative of these themes:

So long as students are allowed to gather their legal knowledge scrap by scrap in the hundred different offices in which they serve their time, no consensus of legal opinion and honor is possible. The clerks in the offices spend most of their time doing clerical work which they will not do for themselves but which they will require their own clerks to do for them when they themselves begin to practise. The result is a profession of apprentices without principals. These clerks receive absolutely no instruction and scarcely any assistance in their work. If once and again they are delegated to gather law on some matter in litigation they only succeed in gathering information which is wholly one-sided and misleading for purposes of impartial and effective legal advice. The only studying they do is during tired after hours by reading legal text books or hand books, most of which are so condensed and the number of authorities so great and so confusing that thorough study is wholly out of the question. This system may possibly produce collectors, conveyancers, money lenders and real estate dealers but it cannot produce lawyers. Clearly this system is only designed to degrade the profession into the position of a mere stepping stone for purely mercenary ends.117

MacKay's comment was partly directed toward finding an efficient way of teaching future lawyers the positive law. That was not, however, his principal concern. This passage makes it clear that his most earnest hope for legal education was to develop a "consensus of legal opinion and honor" and to prepare aspiring lawyers to give "impartial and effective legal advice" not distorted by the desires of their clients. The last two sentences in the quotation make it apparent that "lawyer" represented an ideal, a man (almost certainly) of honour and integrity, dedicated to the public good.

The lawyer was no mere sum of the mechanical tasks performed in law-work (e.g., debt collection, conveyancing, etc.).

MacKay saw the rapid development of university legal education as a precondition of science, progress, reform, community integration, social peace, order, good

government and human welfare! The structure of his 1913 speech reflected the approach — and perhaps the mentality — of a modern-day televangelist: a litany of great changes (in transportation, economics, and social organisation) assails the complacency of the audience (the word “reform” appears four times in the second paragraph of the address; the words “advance” or “progress” five times). There follows an alarming observation that “English Law” had become “the least learned of all the noble professions”\textsuperscript{118} and this combination of social change and legal unpreparedness is presented as a formula for catastrophe. MacKay thought of law as foundational, “the most far-reaching, fundamental and vital of all branches of knowledge.” Law had, however, become fragmented and unintelligible. The very success of the Empire had led to a situation in which common law threatened to implode. Courts in “nearly one hundred distinct and separate jurisdictions” were, in theory, “making law for all the others.”\textsuperscript{119} The problem was especially severe in western Canada where lawyers had fallen “into the habit of consulting ... not only our own local authorities but also the authorities of the other Canadian provinces, of Ireland, of England and even of the more than 40 separate states in the American Union.”\textsuperscript{120} This explosive increase in the production of “law” threatened lawlessness.

The difficulties posed by so daunting a search for authority were amplified by social conditions prevalent in prairie Canada. MacKay adopted the surprisingly radical ‘realist’ position that “[t]he law is what the consensus of legal opinion in the community believes it to be, first the judges, next the lawyers, and finally the mass of intelligent laymen who direct the organized activities of the state.”\textsuperscript{121} Both caselaw and statute were, in the absence of professional consensus, mere chimera ("statute law is as much a creation of the judiciary and the lawyers as case law"). In prairie Canada however prevalent conditions impeded the development of any such consensus of professional opinion. Overwhelmed by myriad authorities, geographically dispersed across a vast region, western Canadian practitioners lacked the opportunity English lawyers enjoyed of forming professional consensus through regular meetings “in chambers, in court, in the inns of court, in the clubs and on the circuit.”\textsuperscript{122} The problem was compounded by the social and legal pluralism which characterized the western legal professions:

\textsuperscript{118} Ibid. at 105. In referring to “English law” MacKay meant to include the laws of the United Kingdom, Empire and the United States of America.

\textsuperscript{119} Ibid. at 107.

\textsuperscript{120} Ibid.

\textsuperscript{121} Ibid. at 108.

\textsuperscript{122} Ibid.

\textsuperscript{123} Ibid. at 107. This account of the English legal profession has little application to the vast majority of English lawyers who worked on the solicitor’s side of the profession. Even with regard to the bar, the portrait of some happy professional consensus generated through work and social institutions was a highly distorted, idealised impression. For a brief discussion and reference to further literature see: W. Wesley Pue, “Trajectories of Professionalism: Legal Professionalism after Abel” in Alvin Esau, ed., \textit{Manitoba Law Annual}, 1989-1990 (Winnipeg: Legal Research Institute, 1991) 57, esp. “The Peculiarities of the Yanks” at 67-76.
MacKay saw no end of evil in this state of affairs. Anarchy threatened. The disintegration of the state, the destruction of western Canadian civilization was near. Apocalypse was imminent. Fortunately, the road to salvation was clearly sign-posted: "Create this consensus of legal opinion and you create the state; allow it to perish and peace, good order, and good government must perish with it." Conditions in the prairies amplified more general concerns, yet also permitted unconstrained utopian visions because "in the new western land ... we are laying the foundations of a system of law and government upon which the peace, happiness and welfare of all those who come after us will largely depend." The effective pursuit of collective ends rested, in MacKay's view, on the micro-politics of lawyers' work. "Community" social progress, and the state itself emerged from the aggregation of even the most mundane tasks:

The lawyer's office is unquestionably the most important office in the community, and that for the obvious reason that the lawyer is the really the only man in the community who really makes it his business to understand the delicate and complex organization of government and law by which the community directs its activities for common ends. I have already mentioned some of the advances which have been made in recent years in practical economics and government. Even the lay mind can see at a glance that these advances are almost wholly creations of the legal profession. All the projects, hopes, fears and plans of financiers, captains of industry and statesmen are only so much raw material until legal machinery is devised and set up by which they may be turned to account for human uses. All our institutions depend implicitly upon their solicitors to guide them in every new venture, and upon counsel to deliver them from any dangers which they may encounter. In the last analysis every simple contract made between private individuals is wholly a matter of law. The state itself is an edifice constructed solely out of legal material. It is literally made of law.

Reduced to its barest essentials, MacKay's thinking ran along lines something like these: the British people have created the highest civilization known to humankind. Science, technology, British government have advanced human welfare. All such achievements rest on law. Law however is nothing more than the culmination of professional consensus. Hence, in the absence of professional consensus there will be anarchy. The state will crumble, progress will be reversed, community goals will be incapable of attainment, humans will suffer. The attainment of professional consensus is daily more difficult; conditions in western Canada make this an especially elusive objective. The salvation of civilization requires the development of some mechanism by which professional consensus can be formed, anarchy avoided, and the path of progress followed.

Fortunately, in MacKay's view, such a mechanism was available, ready to be implemented by men of sufficient insight. One of the great innovations of the age

124 I. A. MacKay, supra note 117 at 108.
125 Ibid.
126 Ibid. at 115.
127 Ibid. at 115.
was at hand: formal university education in practical subjects. The creation of proper university law schools alone could ensure a "uniform standard of legal opinion," a "professional consensus of opinion and a professional esprit de corps." Unnecessary litigation would be avoided, professional honor advanced, and social integration ensured.\textsuperscript{128} The options, in a nutshell, were stark: law school or chaos. It is all too easy from our vantage point to dismiss MacKay's apocalyptic forebodings and messianic visions alike. Apparently idiosyncratic and absurd, the temptation is strong to ignore the utopian vision and moral reform components of such addresses as mere padding, meaningless colour, empty phrases, overindulgent rhetorical flourish. By carefully excising these sorts of comments from contemplation it is indeed possible to make MacKay's speech into a simple and straightforward appeal for the displacement of "irrational" apprenticeship mechanisms with university-based education. That however is not what he said. Any such reading does great damage to the integrity of MacKay's thought and must be resisted. The urge to reform was central to social thought in middle class English Canada at the time and this ethos motivated educational reform. MacKay's vision of his profession and its education would have been endorsed to greater or lesser extent by most promoters of educational reform within the profession. It amounted to a sort of common sense shared by much of the profession's élite.

B. James A. M. Aikins

Sir James Aikins provides a corroborative case study. Arguably the prime mover in developments affecting the early twentieth-century Canadian legal professions, Aikins is a necessary point of reference. Founder, in rapid succession, of the Winnipeg Bar Association, the Manitoba Bar Association, and the Canadian Bar Association, he aspired to create conditions under which lawyers would play a pivotal role in the preservation of British virtues. Like MacKay, he felt that Canadian society was enveloped in enormous social, economic and political transformations which threatened the vitality of British civilization in Canada. In the face of crisis, "law" provided a panacea. Legal education would shore up law, British legality and, therefore, civilization itself.

In his important presidential address to the Canadian Bar Association's first annual meeting in 1915, Aikins outlined a vision respecting "The Advancement of the Science of Jurisprudence in Canada." He laid heavy emphasis on the key role of lawyers in popular governance. Lawyers, he said, were:

not only with the people, but of the people, working among men, advising in their personal affairs, sympathising in their efforts, guiding in their business, aiding in their social movements for reform, taking share in all the departments of public government, yet, withal, maintaining the professional ideals of the past, their intellectual attainments, dignity, strength of honour and independence of character, which will not cringe before courts or be carried away by popular emotions or a hostile press.\textsuperscript{129}

\textsuperscript{128} Ibid.

\textsuperscript{129} James Aikins, "The Advancement of the Science of Jurisprudence in Canada" (1915) 51 Canada Law Journal 161 at 163-164.
Akins also shared both the Canadian imperialists’ puffed-up vision of future Canadian greatness and MacKay’s concern that only committed public leadership by the legal profession could ensure that centrifugal forces did not deny Canada her destiny. Canada’s diversity was at once a source of strength and of great weakness:

However excellent the British North America Act as constitution of our country, however wise its distribution of legislative powers, it cannot create or assure a real united Canada unless the spirit of union and co-operation is pervasive among the people. Our provinces are far-flung, and feelings of mistrust, lack of sympathy or cordiality, asperities which may have happened between the respective bodies of citizens in the different provinces arises very largely from the fact that the separated communities do not know or understand each other or their aims and ideals or the various steps which may have been taken toward the development of those ideals and the accomplishment of those aims. Yet every true Canadian in his heart purposes a strong, united Canada, founded upon that spirit of freedom, justice and honour inherited from our great ancestors.

True it is that, owing to our historic beginnings, there will be diversity in our population, but that will not prevent oneness. That very diversity in our unity may make for our safety and ennoblement. Different gifts on the one national stem, nourished by the same soil, refreshed by the same showers, gladdened by the same sunshine, bringing forth blossoms of various hues, the people of Canada should produce the one rich fruit - one true and virile Canadianism. In this our profession has an important and essential part to play.

The legal profession was poised to tip the balance between national disintegration and the flourishing of a “virile Canadianism.” Adopting middle class reform’s rhetoric, Akins identified lawyers as “children of Light” who, when united in the cause of “good” would “confer a benefit upon the country more general and lasting than that of statesmen and politicians.” This was crucial to the fulfillment of Canada’s manifest destiny: “This youngest of the nations, heir of all the ages, was not born for a position of insignificance but of greatness. It needs the leadership of our best jurists and lawyers.” In a 1916 speech Akins called upon lawyers to become “an influence for the good ... for the people and the nation.” His meaning was augmented and clarified by Isaac Campbell, with whom he shared the podium: lawyers were to work in the resolution of post-war dislocations, “withstanding the remedies for these problems which would be suggested by demagogues and anarchists.”

Like MacKay, Akins emphasised that the work of lawyers in private practice had a “public” dimension “far beyond those resting upon persons in other employments.” This necessitated the development of an “esprit de corps.”

---


131 Akins, supra note 129 at 165-166.


133 Akins, supra note 129 at 177.

134 *Ibid.* at 175. Three years later Akins wrote: “Canada has this faith that it was born for a great world purpose, to help in maintaining peace and to aid other nations toward the attainment of the same freedom of self-government, and similar elevated ideals it possesses ...” James Aikins, “Inaugural Address of the President, Sir James Aikins, K.C., K.C., Lieutenant-Governor of Manitoba” (1918) 54 *Canada Law Journal*, 344-357, at 354.

135 “Sir James Aiken Host of Bar Association Banquet” *Calgary Albertan*, 20 May 1916.
overwhelming volume, and confusion, of case law, he called for codification, asking Canadian lawyers to imitate Roman jurisconsults, gathering "knowledge in the secret places of wisdom and giving it to the people among whom they dwelt." The "law" which lawyers would give to the people was to be a "responsive expression of its social and business life" and would, over time, come to approximate "the inherent laws of human nature which are as constant as matter and its universal laws."\(^{338}\)

Aikins' vision evolved from this baseline. In the midst of the social upheavals which rocked Canada following the Great War, his rhetoric, like that of many "respectable" Canadians, became more alarmist, his social vision less tolerant. Noting the "intellectual, temperamental and spiritual ferment" of the age, he expressed distaste for the social gospel, contempt for "anarchistic uprisings," and alarm at political movements advocating "collectivism and enslavement to system," "class control," and "Bolshevism."\(^{339}\) In times of change, he thought, new laws should be developed, but only under the guidance of a legal profession working in a "co-operative spirit."\(^{140}\) Lawyers were called to a great public duty:

The leaven of law-making is working among the Canadian people just as it did among the English in that distant period where the common law grew up. Those to whom the privilege has come of knowing our jurisprudence and laws and their efficacy, and who understand the principles of responsible self-government, must unite in so wisely and patiently guiding the law-making multitude that there may be sane and steady national progress and no set-back, and that the noblest purposes and best impulses and finest ideals of the people may be expressed in the rules of conduct or laws which they are making for themselves. Thus will our profession do its essential part in the realizing by Canada of that larger nationhood to which, by the worthy aspirations, energy and sacrifice of its people, it has been admitted by the great world powers.\(^{141}\)

As "agents and ministers of the law" lawyers had a special duty to serve as "safe and constructive advisers and leaders in national activities," holding fast always to "laws and customs which have been of value in the past." Lawyerly intervention between the people and the reform of their law was essential. Otherwise, Aikins believed, "popular suffrage" carried with it an "imminent danger of the despotism not so much of individuals as of classes, organized on the principle of every one for himself and the de'il take the hindmost, which results as the de'il would have it in his taking all."\(^{142}\)

A revitalised programme of legal education was nested within this larger strategy of placing lawyers on the front lines of a titanic struggle for the future of civilization. Legal education was a key component of a much larger programme to buttress lawyers' professionalism. The profession was to be reconstructed from the bottom.

\(^{136}\) Aikins, supra note 129 at 165.
\(^{137}\) Ibid. at 177.
\(^{138}\) Ibid. at 176.
\(^{139}\) James Aikins, "[Presidential] Address to the Canadian Bar Association" (1919) 39 Canadian Law Times 537 at 539-540.
\(^{140}\) Ibid. at 548.
\(^{141}\) Ibid. at 548.
\(^{142}\) James Aikins, "The President's Address" (1920) 56 Canada Law Journal 308 at 309.
up. Akins argued that only those “who possess the qualifications of mind and character”\textsuperscript{143} which could be formed into true lawyers should be permitted to begin legal studies. In the post-War period this formulation would probably be viewed as effectively excluding most so-called ‘ethnic’ Canadians,\textsuperscript{144} as well as British Canadians of lower class origins and probably women. His longtime ally in educational reform, H. A. Robson, had secretly recorded his approval of a “pious fraud” employed by one U.S.A. institution in order to deter men of “an undesirable class” from entering the profession in 1914.\textsuperscript{145} Akins’ somewhat more subtle comments for public consumption leave little doubt that he shared this sentiment.

Student lawyers selected according to appropriate ethnic, class, and gender criteria were to be taught so as to become “masters in their calling,” “happy in their work ... and helpful to the community.”\textsuperscript{146} Whatever else might be necessary, legal education should not be confined to merely imparting legal knowledge but should aspire to develop “the right spirit,” a “professional spirit,” “gentlemanly instincts” and to inculcate the student with the “ethics of the Bar.” The objective was to form a highly public-spirited profession for the advancement of Canada: “As are ministers or agents of the law, the habit of our thought in all our professional and public activities should be, Does this serve the State?”.\textsuperscript{147} A crude “content analysis” of Akins’ address at the formal opening of the Manitoba Law School in 1914 reveals a virtual disregard for technocratic knowledge and an obsession with the inculcation of “gentlemanly” values: law school as finishing school for boys. The version of the speech which appeared in the Canadian Law Times, occupies only seven full pages. Two of these advise students to apply themselves fully to the study of law, to “control” themselves, making sure to avoid any “excesses,” including especially the evils of alcohol.\textsuperscript{148} The next two pages emphasize the importance of “integrity,” “moral fibre,” “character,” “honour” and the “habit of industry.”\textsuperscript{149} The address

\begin{quote}
\textsuperscript{143} Akins, supra note 139 at 546.

\textsuperscript{144} Given Canada’s predestined greatness in world affairs, Akins, argued, “it should religiously guard against the introduction of strangers from other countries who may hinder in the performance of that duty to itself and to its citizens, and in the attainment of that world purpose .... Even before the war that error was made manifest in industrial dissensions, in the ignorant, too often corrupt, use of the franchise and failure to understand the privileges and responsibilities of our free institutions and government, in the denationalizing and too frequently demoralizing force of undesirable foreigners. Detached by distance from their own people they are generally all for self and none for adopted nation. If then, larger numbers are admitted to asylum in Canada from foreign lands, of different race, traditions, language and spirit that it can quickly and quietly absorb, Canada will be a sick nation with a long period of convalescing weakness”: James Akins, “Inaugural Address of the President, Sir James Akins, K.C., Knt., Lieutenant-Governor of Manitoba” (1918) 54 Canada Law Journal 344 at 354-355. Fear of the foreigner pervaded early debates concerning the development of a Canadian Bar Association’s Ethical Code. See Fue, supra note 109 at 227-261. For further discussion of the extent to which concerns about “race” pervaded English Canada’s middle class consciousness at this time see: Valverde, supra note 132; Angus McLaren, Our Own Master Race: Eugenics in Canada, 1885-1945 (Toronto: McClelland & Stewart, 1990)

\textsuperscript{145} Memo, Robson to MacLean, 22 April 1914. (University of Manitoba Archives, UA20, Box 10, Folder 5)

\textsuperscript{146} Akins, supra note 139 at 546.

\textsuperscript{147} Ibid. at 545.

\textsuperscript{148} Akins, supra note 155 at 1183-1190, at 1183-1185.
\end{quote}
Common Law Legal Education

conclude with a plea for law students “not only to aspire to be the thorough lawyer, but to be the best Canadian.” In characteristic form Aikins implored them to use wisely the “wide-spread influence” which lawyers enjoyed. Lawyers, he said, should hope to create a sentiment and ideals among the people with whom you come into contact which will place them upon a higher level and justify your influence. You should aim to be leaders in thought, promoters of the intellectual and moral development of our young nation, so that it may become a strong and forceful leader in the Empire.150

His expressed vision for the law school was, thus, sandwiched between a lecture on personal “moral fibre” and a resounding commission. Not surprisingly, perhaps, this too developed themes of self-improvement, responsibility, and morality.

The purpose of the law school was variously said to involve teaching “law in a big way,” promoting “profound knowledge,” and creating “an inextinguishable desire to become perfect as students, ambitious to know thoroughly the law.”151 It is plain the new institution was only minimally concerned with developing more efficient ways of communicating information to students. Effective teaching of legal rules was not its purpose. Far more ambitiously, law school was intended to make better “men.” Aikins expressed contempt for the notion that “smartness” unencumbered “by any other knowledge than the latest edition of the Digest, the last Consolidated Statutes, and a text book on some particular branch of the law” was adequate.152 “Bigness” implied “that culture which can come from a broad study of subjects which are more or less connected with the law,” but also a concern with “the highest interests of man in practical affairs” and, importantly, the development of “dignity of moral feeling and profound knowledge.”153 Aikins’ cultural context and personal values resonated with the sentiment expressed by a New York lawyer who sought to establish “a method of education which educates jurists rather than mere lawyers, having in mind the thought that a jurist seeks to conform law to current ideas of moral rectitude, while a lawyer is too prone to perpetrate existing monstrities of artificial wrong.”154 Presumably too, proper education through the case method155 would inevitably lead students to adopt those (liberal) political values which Aikins felt to be obvious, uncontroversial and entirely natural outgrowths of a deep understanding of the law. In short, law schools were to develop individual character. They were intended to transform individuals who in turn might transform Canada, the Empire, the world. Like MacKay, Aikins thought his age was poised on an historic knife edge between apocalyptic terrors and utopian visions. His concep-

149 Ibid. at 1186-1187.
150 Ibid. at 1190.
151 Ibid. at 1188-1189.
152 Ibid. at 1188.
153 Ibid. at 1187, 1188.
154 Charles A. Boston, “Some Neglected Fields in Legal Education. Address of Chairman. Delivered before the Section of Legal Education of the American Bar Association at Washington, D.C., October 20, 1914” (1914) 34 Canadian Law Times 1081 at 1091.
155 Aikins, supra note 93 at 1183-1190, 1188-1189.
tion of legal education transcended entirely the more trivial dichotomy between “practical” training and “academic” education.

C. Robert W. Lee

McGill’s Law Dean R.W. Lee, succeeded Robson as chair of the Canadian Bar Association’s Committee on Legal Education. He too subscribed to the early twentieth century’s common-sense view that university legal education would create an altogether new and superior sort of legal practitioner, someone who was learned, reflective, ethical, and public spirited: a “man” entirely suited to the leadership role the new world demanded.

Lee expressly disavowed the view that university legal education could appreciably assist in making students into skillful lawyers: “You cannot teach a man in your class-rooms to practise law, any more than you can teach him to play the fiddle by lecturing to him on fiddling.” While he thought it was appropriate for the modern university “to impart the theoretical knowledge which is necessary to the mastery of a profession,” his advocacy of university legal education was not motivated by a belief that this provided the most efficient way of cramming rules or procedures into student heads. The narrowness of learning which such an approach would impart was less than ideal and, perhaps, harmful. The real forte of the university was in relation to the “scientific study of law,” meaning a comparative and historical study of the legal systems of the world. Students engaging in such studies would literally be exposed to a glimpse of heaven. Lee sought to instill “the vision of a divine justice transcending the imperfections of human justice, a vision which has seemed to many to be reflected in the classical definition of jurisprudence as …” the knowledge of things divine and human, the science of the just and the unjust.156

A “scientific” approach to legal education emphasizing comparative law, legal history, jurisprudence, constitutional law and public international law157 would enlarge “the mental horizon” while simultaneously quickening “the understanding.”158 The object was to “make citizens” capable of leadership, not merely to turn out “complete lawyers.”159 Modelled on programmes at Oxford and Cambridge, Lee hoped that this plan would instill “into the student a sense of professional honour and of civic duty; … legal education should be directed to producing not only competent practitioners, but men who by their wise and sympathetic handling of the problems of our national life, will add to the dignity and influence of the great profession of the Law.”160

157 Ibid. at 115.
158 Ibid. at 114.
159 Ibid. at 115.
VIII. U.S.A. Influences on Canadian Thought

The writings of Aikins, Lee and MacKay demonstrated that a considerable degree of consensus had developed among elite lawyers as to the desirable path of legal education. A renewed, structured legal education was thought necessary to preserve the purity of the profession, to channel social diversity and, ultimately, to save the state from disintegration.

In thinking such thoughts and planning such plans Canadian lawyers were not bravely sallying forth into unchartered territory. Their perception of social crisis and of the legal profession’s role was derivative of both the thinking of elite U.S.A. lawyers and of the general intellectual climate which enveloped them in Canada. Much of Aikin’s writing, for example, amounts to little more than a re-hashing of ideas worked out in U.S.A. writings and bar association speeches, while Alfred Z. Reed’s 1921 Carnegie Foundation report on Training for the Public Profession of Law could as easily have been generated from within the ranks of elite Canadian lawyers. MacKay, Aikins, or Lee, as easily as Reed, might have penned words such as these:

practising lawyers do not merely render to the community a social service, which the community is interested in having them render well. They are part of the governing mechanism of the state. Their functions are in a broad sense political. This is not primarily due to the circumstance that a large portion of our legislative and administrative officials, and virtually all of our judges, are chosen from among this practically ruling class .... It springs even more fundamentally from the fact, early discovered, that private individuals cannot secure justice without the aid of a special professional order to represent and advise them.

IX. Taking Civilization’s Survival Seriously

All of this reveals that the attainment of university legal education in common law Canada represents neither the inevitable working out of “progress” nor the outcome of a struggle in which great men with demonstrably superior ideas eventually overcome the petty objections of lesser beings. It is, rather, the product of a very specific cultural vision which attained ascendance among a portion of Canada’s Anglo elite during a particular period of time. On the evidence of those most closely involved, the primary motivation for the rapid development of university education

---


162 Alfred Z. Reed, Training for the Public Profession of the Law: Historical Development and Principal Contemporary Problems of Legal Education in the United States, with Some Account of Conditions in England and Canada (New York: Carnegie Foundation, 1921) 3 (as quoted in Stevens, supra note 72 at 113.)
in law during the first quarter of this century had little to do with dissatisfaction concerning the technical abilities or general competence of lawyers trained by apprenticeship—recall for example that MacKay had expressly disavowed the view that university education would make better lawyers in this sense. University legal education was, rather, to be moral education. Its object was to turn out better “men,” capable of ensuring the continuing integration of a pluralistic society in an era of immense upheaval.

This vision seems very nearly unintelligible from our vantage point. It is much more natural for us to either overlook the moral reform and national survival components of speeches, reports, or articles from the period, or to dismiss any and all seemingly altruistic motivations as empty rhetoric, a ploy, a verbal Trojan horse crudely employed by lawyers in order to sneak a monopolistic professional strategy past public defences. And yet, the notion that individual and national regeneration could be achieved through the university education of aspiring lawyers provided a neat fit with the dominant culture of the English Canadian middle class during this period. The rhetoric, programme, plans and social vision of those intent on reforming legal education nested within a hegemonic culture coloured at all levels by the concerns of “moral and social reformers.” Mariana Valverde’s brilliant treatment of the era argues that middle class English Canada’s cultural lodestar was found in the linked metaphors of “light, soap, and water”: though originating in the temperance movement, “[t]he image of reform as illuminating society while purifying or cleansing it” had widespread currency.163 The projects of elite lawyers with respect to legal education and their hopes of producing more upright individuals, thereby saving Canada from disintegration, seemed neither naive nor preposterous within the discursive world they inhabited. Lawyers were, in their work, perfectly situated both to constrain evil and to positively advance the good. The professional programmes which have been reviewed above emerged within a context in which:

The building of a nation was rightly equated with the organization of consent, not just outward conformity to legal and administrative rules. This is one reason why the outright punishment of political and moral deviants came to be seen as a last resort and as an admission of failure. While the criminal, the fallen, and the destitute were being increasingly seen as subjects of treatment, through the medicalization of crime, sexuality, and poverty, non-criminal populations and in particular youth were being seen as requiring a process of character-building, the individual equivalent of... nation-building... An individual without character... was a miniature mob: disorganized, immoral, and unhealthy as well as an inefficient member of the collectivity. Character was not to be acquired bureaucratically, by learning information or following rules. What Clark called the production of self and others called character-building was an inner, subjective task. It involved learning to lead a morally and physically pure life, not only for the sake of individual health and salvation but for the sake of the nation.164

It is crucial both to Valverde’s assessment of the period, and to the understanding of legal education in this essay, that “language is not a transparent window giving access to the world but is rather itself a part of the world, a kind of object among objects”; that “practical social relations are always mediated and articulated through linguistic and non-linguistic signifying practices.”165 In studies of legal education,

163 Valverde, supra note 132 at 17-18.
164 Ibid. at 26-27.
just as in other areas of social or intellectual history, it is important to take seriously patterns of discourse which have all too readily been "dismissed as the flowery rhetoric of the time." Moral reform discourse, according to Valverde, entirely obliterates dichotomies such as those between theory and practice or science and charity, displacing these with "a holistic image of a knowledge that would be simultaneously scientific and charitable, true and useful." It is this general cultural displacement which screams through the rhetoric of reformers of legal education and not the narrowly technocratic vision which most subsequent commentators have chosen to perceive. Moreover, just as the prevalent discourses of moral and social reform were characterized by "slippages," whereby words apparently directed toward one problem might contain a "strong and complex subtext" on another aspect of social life, so too cultural context rendered pronouncements on superficially narrow issues of legal education into simultaneously powerful commentaries on race, gender, or class hierarchy, as perceived from the viewpoint of an ethnocentric, male, Anglo, elite.

The cultural logic within which these historical actors lived set was one in which some vision of "professionalism" seemed to offer a panacea to the problems of democracy, authority, and social integration in a society rent by centrifugal forces. England’s developing “professional ideal” and the U.S.A.’s “culture of professionalism” provided a pervasive cultural ethos, the logic of which could be, and was, worked out in all social interstices. It should not be surprising to find that the same generation which contributed Durkheim’s Professional Ethics and Civic Morals to the world of ideas also produced “on the ground” new professional visions implemented through new educational schemes.

The origins of modern Canadian legal education are, therefore, to be found in neither a natural evolution of rational expert training structures nor in some crude conspiracy of a particular group to advance its own financial well-being by the suppression of potential competitors. To reduce the interaction of so many and diverse social forces to a mere self-interested urge for market control is to miss the mark. Such analyses paint with far too broad a brush, effectively substituting economic or ideological principle for historical understanding.

165 Ibid. at 10, 11.
166 Ibid. at 34.
167 Ibid. at 35.
168 Ibid. at 14.
172 For a fuller critique of this line of interpretation see Pue, supra note 123 at 57-92. The writings of Weber have been relied upon in turn by (the early) Magali Larson and by Richard Abel to develop a model of professionalism as being essentially concerned with the collective pursuit of market control. See for example: Max Weber, Wirtschaft und Gesellschaft, 1922, reprinted in Hans Gerth and C. Wright Mills, eds., and trans. From Max Weber: Essays in Sociology (London: Routledge and Kegan Paul, 1948) 240-244 (excerpted as “The ‘Rationalization’ of Education and Training” in B.R. Cosin,
Professional projects, including those relating to education, are much more significant—and ultimately, perhaps, much more disturbing—than is suggested by any analyses limited to exposing narrowly-defined professional self-interest.
