

Maximilien Bibaud: Early Canadian Teacher, Scholar and Pundit

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Abstract

Maximilien Bibaud (1823-1887) was a significant voice in the mid-nineteenth century Lower Canadian legal community, and remains a significant figure in Canadian legal history. He was the first full-time law professor in Canada, founding the *École de Droit* in Montreal in 1852. He took a progressive approach to legal education, significantly choosing to include international law among the subjects of study. However, his frequently off-putting defensiveness and vanity came to obscure his impressive accomplishments. As well, though he was a significant legal figure of his time, his public opposition to two important legal reforms – bar admissions, and the codification of the law in Lower Canada – put him on the losing side of history. As such, when, after fifteen years his school was effectively closed through legislative changes, Bibaud retired from the Lower Canadian legal scene in 1867. Bibaud was influenced by the personal and historical circumstances of his life, but was most affected by his own distinctive personality. He should be understood as a polymath who devoted significant time and energy to legal issues and the legal community, but when he felt that community turning its back on him, he retreated, disappearing from the legal world of early Canada.

M. Maximilien Bibaud, décédé le 9 juillet, mérite une mention honorable. Il a publié plusieurs ouvrages de droit, de littérature et d'histoire. On cite avec éloge ses *Sagamos illustres*. Il signait Bibaud *jeune* pour distinguer ses ouvrages de ceux de son père. Sa mort a été pleine d'édification.¹

Introduction

As the first full-time law professor in Canada, Maximilien Bibaud brought a progressive approach toward legal education to his *École de Droit*, which he founded in Montreal in 1852.² Fifteen years later, his school closed: 1867 may be a year of beginnings for Canada, but it marked the end of Bibaud's legal career. Bibaud was a serious reader and prolific writer at a time when legal writing in Lower Canada³ was rare, as well as being a frequent public lecturer and a strong voice against many of the changes taking place in the Lower Canadian legal community. Though his career was relatively short, he had a remarkable impact on the colony, and many of his students would rise to positions of prominence in the new country of Canada.⁴

Maximilien Bibaud was born into a French-speaking family in Montreal at a time when the threat of assimilation by the English was a concern for many of the colony's elite. The Quebec bar had only been incorporated for three years when he joined it on 5 April 1851, and when he started his school, it was the only French language law school in Montreal. Bibaud began teaching law before codification, at a time when determining the law of the land was far

¹ Frédéric Alexandre Baillaigé, *Coups de Crayon* (S.I.: s.n., 1889), 152.

² While the first public lectures which marked the beginning of the school occurred in May 1851, it was not until the next year that the school began holding regular classes.

³ During Bibaud's lifetime, this region was known as "Lower Canada," "Canada East" and "Quebec". For the purposes of this essay, I will use the term "Lower Canada", as that is how Bibaud himself refers to it.

⁴ Students (as of 1862) included a Member of Parliament (P. Faulkner), editors for prominent publications (H. Fabre, J.A. Mousseau, L.V. Sicotte, Ludger Labelle, J.A. Chapeleau, L.V. Fontaine) and a knight of the Roman Order "*Milice Dorée*" (H. Valières). From Maximilien Bibaud, *Notice Historique sur l'enseignement du droit en Canada* (Montreal:

from simple. All of these factors influenced the course of his life, and his approach to the law.

I will begin this paper by examining the historical context of Lower Canada over the course of Bibaud's life, with particular emphasis on the state of the law and the legal community in the mid- to late-nineteenth century. Then I will consider Bibaud's life, including his family life, his career and his legal interests during his life. Finally, I will look at Bibaud's *École de Droit* and his approach to the law more generally.

Maximilien Bibaud was a significant voice in the mid-nineteenth century Lower Canadian legal community, and remains a significant figure in Canadian legal history. His professional life appears to be a mass of contradictions: conservative in his approach to the law compared to his contemporaries, he nevertheless founded a law school with an exceedingly progressive approach to the study of the law and curriculum; a shameless self-promoter, the forward motion of his career seems to be marked by a sense of self-interest, which contrast with the obstinacy and apparent self-sabotage that plagued him throughout his career and led to his unnecessarily early exit from the Canadian legal scene. In this essay, I intend to demonstrate that Bibaud was influenced by the personal and historical circumstances in which he found himself, but that the course of his life was primarily shaped by his own personality and approach to life. He found himself on the losing end of the two main legal debates of his time: the bar admissions reform, and codification.

As well, despite his many accomplishments, few, in fact, had a lasting significance in the Lower Canadian legal system. His impressive *Commentaires sur les Lois du Bas-Canada* (1859), a collection of pre-codification law in Lower Canada, failed to fill the role of a code and stave

off codification, and was of limited usefulness, post-codification. Similarly, his law school closed forever in 1867, and his approach to the study of the law did not take hold in the other law schools of Lower Canada. All of this has combined to obscure his proper place in Canadian legal history. However, Maximilien Bibaud should best be understood as a polymath who devoted significant time and energy to legal issues and the legal community, but when he felt that community turning its back on him he retreated, and disappeared from the legal world of early Canada.

I. Historical Background

I will begin this paper by examining the political, social and economic conditions of Lower Canada, and in particular of Montreal, in the mid-nineteenth century. I will then turn to a discussion of the state of the law in Lower Canada at the time, and finish with a discussion of the state of the legal profession. I believe that understanding the context in which Maximilien Bibaud lived his life will improve our understanding of his actions, and the reasons for his eventual professional disappearance.

Montreal and Lower Canada

Political, economic and social conditions in Lower Canada in the mid-nineteenth century were marked by turmoil and upheaval. While these were exciting times in Montreal, they were not the most pleasant or optimistic. This was a time of tension and deadlock in the political sphere, while the Catholic Church was busy growing and consolidating its powers in the daily lives of Lower Canadians. It was also a time of economic transition and stagnation, which led to

an increased awareness among key members of the colonial elite of the importance of education. Finally, French Canadians experienced pressure to assimilate into Anglophone society throughout the mid-nineteenth century, which caused some to take active steps to prevent the loss of the French culture by creating new opportunities for French language education.

Politics

Politically, this period is marked by the 1837 rebellion of the *Patriotes* and the banishment of these rebels the following year. The British government sent Lord Durham to investigate the reasons for the rebellions in Upper and Lower Canada, and to make recommendations. He focussed his discussion on the situation in Lower Canada, and while he expected to make suggestions for reform of the legal system, he found the division between French and English to be the primary reason for the rebellion:

From the peculiar circumstances in which I was placed, I was enabled to make such effectual observations as convinced me that there had existed in the constitution of the Province, in the balance of political powers, in the spirit and practice of administration in every department of the Government, defects that were quite sufficient to account for a great degree of mismanagement and dissatisfaction. The same observation had also impressed on me the conviction, that, for the peculiar and disastrous dissensions in this Province, there existed a far deeper and far more efficient cause, – a cause which penetrated beneath its political institutions into its social state, – a cause which no reform of constitution or laws, that should leave the elements of society unaltered, could remove; but which must be removed, ere any success could be expected in any attempt to remedy the many evils of this unhappy Province. I expected to find a contest between a government and a people: I found two nations warring in the bosom of a single state: I found a struggle, not of principles, but of races; and I perceived that it would be idle to attempt any amelioration of laws or institutions until we could first succeed in terminating the deadly animosity that now separates the inhabitants of Lower Canada into the hostile divisions of French and English.⁵

⁵ *Report of Lord Durham on the Affairs of British North America, Part I* (1839), 23 August 2000, <<http://www2.marianopolis.edu/quebechistory/docs/durham/1.htm>> (17 April 2007).

He suggested a political restructuring of the provinces in the hopes that French Canadians would be assimilated into English Canada, drawing the ire of many French Canadians, who believed that his report and recommendations were racist.⁶ Lord Durham's infamous report led to the union of the Canadas in 1841, and the resulting political deadlock gave strength to the idea of a British North American union,⁷ which came to fruition with Confederation on 1 July 1867.

Internally, until the 1960 Quiet Revolution, politics in Quebec were marked by a culture of political patronage, and the removal of areas of interest from the political sphere. These areas of governance were usually adopted by the Church.⁸ This movement of services away from the state and toward the Church was supported by the ultramontane religious philosophy that dominated nineteenth century Lower Canada.

Ultramontanism was introduced into Quebec by Bishop Jean-Jacques Lartigue during his time as Bishop of Montreal between 1821 until his death in 1840.⁹ It was successfully taken up and advanced by his successor, Bishop Ignace Bourget, between 1840-1876.¹⁰ Ultramontanism views the state as subordinate to the Church; competing directly with the Gallican ideology, which viewed the state as above the Church.

Inspired by an ultramontane view of the ideal relationship between the Church and state, the Catholic Church began aggressively occupying fields which might otherwise be under state

⁶ Claude Bélanger, "Biographies of Prominent Quebec Historical Figures: Lord Durham" *Quebec History*, 2005, <<http://www2.marianopolis.edu/quebechistory/bios/durham.htm>> (17 April 2007).

⁷ *Reference re Secession of Quebec* [1998] 2 S.C.R. 217 ¶ 59, 161 D.L.R. (4th) 385.

⁸ Heintzman, 40-41.

⁹ Gilles Chaussé and Lucien Lemieux, "Jean-Jacques Lartigue," *Dictionary of Canadian Biography Online*, n.d., <<http://www.biographi.ca/EN/ShowBioPrintable.asp?BioId=37611>> (17 April 2007).

¹⁰ Philippe Sylvain, "Ignace Bourget," *Dictionary of Canadian Biography Online*, n.d.,

control. From 1840-1896, the Church effected a course of action that resulted in its taking over all state responsibilities in the areas of education, health and charity.¹¹ This practice of exclusive religious jurisdiction over areas that were generally matters for the state in other provinces continued until the 1960 Quiet Revolution in Quebec.

Economy

The mid-nineteenth century was also a time of economic diversification in Lower Canada, as the emphasis shifted from furs to fish, wheat, lumber and manufacturing.¹² This change in economic direction brought along with it a change in the social hierarchy, which, starting in the 1840s and 1850s, was “topped by financiers, urban merchants, bulk manufacturers, and intellectuals like lawyers.”¹³ This left French Canadians with limited opportunities for social advancement, as French Canadians were typically disadvantaged and often entirely excluded from the emerging business community.¹⁴ A study of the professions of recent Lower Canadian college graduates from an 1856 study gives an impression of the jobs available to educated members of Lower Canadian society: of the students, 138 went into business, seventy-seven went into the Church, forty-four went into agriculture, twenty-two became doctors, seventeen joined various specialized industries, thirteen became lawyers, ten

<<http://www.biographi.ca/EN/ShowBio.asp?BioId=39507>> (17 April 2007).

¹¹ Claude Bélanger, “The Roman Catholic Church and Quebec,” *Marianopolis College* (23 August 2000), <<http://www2.marianopolis.edu/quebechistory/readings/church.htm>> (20 March 2007).

¹² Ronald St. John Macdonald, “Maximilien Bibaud, 1823-1887: The Pioneer Teacher of International Law in Canada,” *Dalhousie Law Journal* 11 (1987/88): 723.

¹³ G. Blaine Baker, “Ordering the Urban Canadian Law Office and Its Entrepreneurial Hinterland, 1825 to 1875,” *University of Toronto Law Journal* (1988): 182.

¹⁴ Ralph Heintzman, “The Political Culture of Quebec, 1840-1960,” *Canadian Journal of*

became notaries, five went into land surveying, one became a civil engineer; also, eight of the students left the country.¹⁵ It is interesting to note that more than 40 percent of the graduates went into business; however, without knowing whether those students spoke English or French, it is impossible to know whether this supports the widely held belief that Francophones were excluded from business, as would be the case if this group were primarily composed of Anglophones. In any case, this study does support the general trend among the French Canadian population during the mid-nineteenth century, whereby educated Francophones were limited to four main careers: lawyer, notary, doctor and priest.¹⁶

Montreal was becoming more commercially significant, as marked by the founding of the Bank of Montreal in 1822, and was the largest metropolis in Canada throughout the nineteenth century.¹⁷ However, economic disparities were also growing, and they were only exacerbated by the cholera epidemics that plagued British North America starting in 1832, which took their toll on the city. The early 1850s were a time of commercial depression in a city whose population dropped from 65,000 to 58,000 in less than a decade.¹⁸ These economic conditions caused a migration of Lower Canada's youth toward the factories in the northern United States.¹⁹ Between 1851 and 1901, an estimated 530,465 Francophones emigrated to the United States as a result of the lack of economic opportunities in Lower Canada.²⁰ One result of this wave of emigration was an increased awareness among the French Canadian leaders that education could be used as a

Political Science 16 (1983): 11.

¹⁵ Abbé Lionel Groulx, *L'Enseignement Français au Canada: 1 - Dans le Québec* (Montreal: Librairie d'Action Canadienne-Française, 1931), 268.

¹⁶ Heintzman, 11-12.

¹⁷ Baker, 182.

¹⁸ Macdonald, 724.

¹⁹ *Ibid.*

tool to stem this migration by increasing the opportunities in the colony,²¹ as the availability of a skilled workforce would inspire the development of industry within the province. Consequently, providing French language education options became an important political issue as well as a crucial economic determinant.

Social Life

Socially, Lower Canada's French Canadian population was feeling the pressure to assimilate. Montreal had increasingly become an English city,²² and this transformation was supported by important officials in the colonial government, who saw Quebecers' attachment to the French language as backward-looking.²³ As well, a campaign of Protestant proselytising beginning in 1839 was threatening the dominance of the Roman Catholic Church in Lower Canada.²⁴ Worried that young people in Montreal were choosing to attend the Protestant McGill University, which had been teaching law formally since 1848,²⁵ rather than travel to Catholic school in Quebec City, the Bishop of Montreal Ignace Bourget began efforts to start a Catholic university in his city.²⁶ Maximilien Bibaud would take up his cause, leading to the founding of the *École de Droit*.

²⁰ Heintzman, 11.

²¹ MacDonald, 724.

²² *Ibid.*

²³ Groulx, 216.

²⁴ Paul Desjardins, *Le Collège Sainte-Marie de Montréal, vol. 2* (Montreal: Collège Sainte-Marie, 1940), 46.

²⁵ "History of the McGill Faculty of Law: From Humble Beginnings in 1848," *McGill Faculty of Law* n.d., <<http://www.mcgill.ca/law/about/history/>> (19 April 2007).

²⁶ Louis-Philippe Audet, *Histoire de l'Enseignement au Québec 1608-1971, Tome 2*

State of the Law

People who wanted to practise the law in Lower Canada in the mid-nineteenth century were faced with a difficult task just discerning the law of the land, due to its diverse and complicated sources. As a former French colony conquered by the British, the law in Lower Canada was a complicated mixture of the systems of both countries, and of Canadian additions. N.B. Doucet, a contemporary of Bibaud, describes the situation in his handbook for law students in the colony:

The laws of Canada are now composed -- first, of the Roman jurisprudence, when the other laws are silent; second, of the laws of the kingdom of France, with the practice of the court of the parliament of Paris, as they were in 1663; third, of the edicts and royal ordinances of the kings of France, relative to Canada, recorded in the registers of the superior council of Quebec; fourth, the *arrets* and regulations of this council, together with the ordinances and judgments of the intendants, from 1663 to the conquest, 1759; fifth, of the criminal laws of England, as they existed in 1774; sixth, of the jurisprudence of Canada in civil matters, except on land held in free and common soccage, where the civil laws of England rule as to inheritance, dower, matrimonial rights and alienation of lands, from 1829; seventh, of all the statutes of Great Britain relative to Canada, of the ordinances of the governors and legislative council of the province, from 1774 to December, 1791, when the province was divided; eighth, of the statute law of both provinces, in Upper Canada to this day, and in Lower Canada to 1838; ninth, of the ordinances of the special council of Lower Canada to the 10th February, 1841, the provinces being re-united.²⁷

To Bibaud's eyes, the colonial legislature was adding to the confusion by creating hundreds of new statutes every year instead of simplifying the ones they already had.²⁸ This affected

(Toronto: Holt, Rinehart et Winston, 1971), 150.

²⁷ Nicolas Benjamin Doucet, *Fundamental principles of the laws of Canada as they existed under the natives, as they were changed under the French kings, and as they were modified and altered under the domination of England: together with the general principles of the custom of Paris, as laid down by the most eminent authors, with the text, and a literal translation of the text: the Imperial, and other statutes, changing the jurisprudence in either of the provinces of Canada at large: prefaced by an historical sketch... compiled with a view of assisting law students in their studies* (Montreal: s.n., 1841), 6
<<http://www.canadiana.org/ECO/mtq?id=700d059d6d&doc=92324>> (10 April 2006) [emphasis in original].

²⁸ Maximilien Bibaud, *Commentaires sur les Lois du Bas-Canada ou Conférences de*

students' willingness and ability to learn, as revealed by a convocation speech to McGill law students, which describes the students' inclination to recoil in horror and discouragement, concluding that "il n'y a rien de plus incertain que la loi actuelle du Bas-Canada, rien de plus confus que l'état de droit canadien."²⁹ As one anonymous author evocatively described the state of affairs in 1846, Lower Canada's legal system was seen as a "babel légale".³⁰ Thus, the legal system that Maximilien Bibaud first learned, and then taught for fifteen years, was extremely confusing.

State of the Legal Profession

Lower Canada had a history of animosity with respect to the legal profession, which might explain its slow development and lack of a law school before Bibaud's initiative. However, by the time his school had closed, the number of legal professionals increased dramatically, leading to Gonzalve Doutre's campaign to limit their numbers in order to maintain their prestige, despite Bibaud's protestations.

An official report of the Superior Council of New France in 1678 said that the admission of advocates to the colony would be prejudicial. This received royal approval, and the resulting prohibition was renewed in 1746. It is unsurprising, then, that an attempt to found a law school in 1717 in Quebec City, while the prohibition was still in effect, failed.³¹ However, that is not to say

l'École de Droit liée au collège des RR. PP. Jésuites: Suivis d'une Notice Historique, Tome I (Montreal: Érat et Bourguignon, 1859), 4 and 15.

²⁹ Maximilien Bibaud, *Notice*, XXX-XXXII.

³⁰ John E.C. Brierley, "Quebec's Civil Law Codification: Viewed and Reviewed," *McGill Law Journal* 14 (1968), 534.

³¹ William Renwick Riddell, "The First Law School in Canada," *Bench and Bar*, 1 April 1932, 12, final edition.

that the public was uninterested in legal matters, as indicated by the popularity of a series of public lectures delivered in the early eighteenth century with the colony's young and old.³² In fact, legal lectures remained popular, and by the mid-nineteenth century they continued to be the most common way for legal thinkers to share new ideas with one another and with the public. While legal writing in Lower-Canada, pre-codification, was essentially limited to works by Bibaud, a few pamphlets of limited scope and importance,³³ and limited newspaper coverage, legal lectures were a valued diversion.³⁴ Interest in public presentations by students from Bibaud's *École de Droit*, and mock-trials organized a group of young lawyers and law students called the *Institut des Lois*, was not confined to legal professionals, as accounts of these events mention the attendance of ladies, as well as interested members of the clergy.³⁵ A convocation speech from McGill University law school in 1854 gives a sense of public perception, pointing out that the low numbers in their graduating class would not trouble the general public was concerned, since lawyers were still "not a general favorite".³⁶ Despite this, however, the ranks of the profession would swell throughout Bibaud's career. Montreal went from having 70-80 lawyers in 1849 to having 387 in 1866.³⁷ This would spark a movement, led by the young Gonzalve Doutre, who at twenty-one years old had become president of the *Institut des Lois*, to make admission to the Bar stricter, which Bibaud would vehemently, but unsuccessfully, oppose.

³² *Ibid.*

³³ For example, T.W. Ritchie, *Some remarks on the title "of obligations": as reported by the commissioners* (Montreal, 1863) and John Bonner, *An essay on the registry of laws of Lower Canada* (Quebec, 1852).

³⁴ Eric H. Reiter, "Imported Books, Imported Ideas: Reading European Jurisprudence in mid-nineteenth-century Quebec," *Law and History Review* 22 (2004): 450-451.

³⁵ Bibaud, *Notice*, xxxvii, Maximilien Bibaud, *Supplément à la Notice historique sur l'enseignement du droit* (Montreal: L'imprimerie de Louis Perrault et Cie, 1862), LXVIII.

³⁶ Bibaud, *Notice*, xx.

Having completed a brief overview of the historical and professional context of mid-nineteenth century Lower Canada, I will now turn to a discussion of Maximilien Bibaud himself.

II. Biographical Sketch of Maximilien Bibaud

François-Maximilien Bibaud added the given names Uncas (an Aboriginal name) and Marie to his name, used the pseudonym Neilimixam Duabib (his name, spelled backwards), and published under “Bibaud, jeune”. He was born in Montreal on 23 October 1823 to parents Michel Bibaud and Élizabeth Delisle. His brother Jean Gaspard was a doctor and professor. Maximilien Bibaud died in Montreal on 9 July 1887.³⁸

Bibaud’s Family Life

Bibaud was born into a household of books,³⁹ and is widely regarded as having inherited his father’s intellectual curiosity and strong work habits.⁴⁰ Michel Bibaud (1782-1857) was a prominent historian, journalist and civil servant in Lower Canada whose principled neutrality in the 1837-38 rebellion in Lower Canada earned him the scorn of some of his fellow French Canadians.⁴¹ This could account for the underlying hostility of an 1895 biographical sketch, which claimed that “[c]e M. Bibaud est contre tout mouvement de la part des Canadiens, pour

³⁷ Desjardins, 93.

³⁸ André Morel and Yvan Lamonde, “Bibaud, François-Maximilien,” in *Dictionary of Canadian Biography, Volume XI 1881-1890* (Toronto: University of Toronto Press, 1982), 70.

³⁹ Macdonald, 734.

⁴⁰ Léon Lortie, “The Early Teaching of Law in French Canada,” *Dalhousie Law Journal* 2 (1975) 528.

⁴¹ Desjardins, 67.

améliorer leur sort. C'est un *tory* de la vieille roche."⁴² While it is true that Michel Bibaud's political career ended after the 1837 rebellion, it is unclear whether that was by choice or necessity. Given the importance of patronage in Lower Canadian politics, whereby power was used "to aid political friends and punish opponents,"⁴³ it is possible that the political climate of post-Rebellion Lower Canada meant that there was no place for Michel Bibaud in the government of the time. In fact, it seems likely that his decision to remain neutral did not make him popular with either side of the rebellion, thereby dooming his political career no matter which side emerged victorious.

Despite this political stance, at least one contemporary source believed that his retreat from politics was the result of a choice on Michel Bibaud's part, allowing him to concentrate on his many other areas of interest. After describing his impressively varied career, historian Henry James Morgan's 1865 account of his life concludes with the following:

⁴² Philéas Gagnon, *Essai de bibliographie canadienne: inventaire d'une bibliothèque comprenant imprimés, manuscrits, estampes, etc. relatifs à l'histoire du Canada et des pays adjacents avec des notes bibliographiques* (Quebec: Printed for the author, 1895), 41.

⁴³ Heintzman, 15.

We are told that it would have been easy for [Michel Bibaud] to rise to power; but, that he preferred an honest ease and liberty. But a few months before his death, he was engaged, at the age of seventy-five, in translating the reports of the geological commission.⁴⁴

The image that is conjured up, then, is not of a man forced out of politics for his unpopular opinions, but rather of someone who had many interests and who chose to pursue them right until his death. Thus, whether by choice or not, Michel Bibaud's political career ended following the 1837 rebellion in Lower Canada.

⁴⁴ Henry James Morgan, *Sketches of Celebrated Canadians and Persons Connected with Canada: From the Earliest Period in the History of the Province Down to the Present Time* (Montreal: R. Worthington, 1865), 413.

Regardless of his political success or failure, Michel Bibaud was recognized as an important figure in early Canadian writing,⁴⁵ and his success no doubt affected the relationship he had with his ambitious son Maximilien. In his dictionary of historical figures, *Dictionnaire Historique des Hommes Illustres du Canada et de l'Amérique* (1857), Maximilien Bibaud describes his father's accomplishments:

[M]embre honoraire de l'Institut Polytechnique, classes des Sciences et des Belles-Lettres, fondateur et rédacteur de l'Aurore des Canadas, du Spectateur Canadien, de la Bibliothèque-Canadienne, du Magasin du Bas-Canada, de l'Observateur Canadien et de l'Encyclopédie Canadienne, auteur d'un traité d'arithmétique en quatre parties et d'une arithmétique élémentaire, du premier volume de poésie et de la première Histoire du Canada complète en langue française, rédacteur du Voyage de Franchère dernièrement traduit en Anglais, traducteur des Rapports Géologiques de Sir William Logan. La Revue Encyclopédique de Paris contient une Notice Bibliographique sur Les Epitres, Satyres &c. Voir de plus Lebrun, Tableau Statistique des Deux Canadas. Il a deux fils, qui sont les suivans [*sic*].⁴⁶

Similarly, in Maximilien Bibaud's *Catéchisme de l'Histoire du Canada* (1853), a series of questions and answers on Canadian history published for schoolchildren, he singles out his father for special recognition in the following exchange:

Les Canadiens ont-ils fait des progrès notables dans la littérature?

⁴⁵ Morgan, 412.

⁴⁶ Maximilien Bibaud, *Dictionnaire Historique des Hommes Illustres du Canada et de l'Amérique* (Montreal: Bibaud et Richer, 1857), 40.

Leurs progrès ont été tardifs, mais outre Grasset Saint Sauveur, ils comptent aujourd'hui parmi leurs littérateurs Michel Bibaud, dont les principaux titres comme tel sont la Bibliothèque Canadienne et le Voyage de la Franchère... Michel Bibaud est aussi le premier Canadien qui ait écrit l'histoire générale de son pays.⁴⁷

Thus, Maximilien Bibaud recognizes his father's accomplishments in his writing on significant figures in the colony.

Although there is little direct evidence that clarifies the nature of Maximilien Bibaud's relationship with his father, there are many indications that this relationship played an important role in shaping his life. For example, Bibaud's decision to publish under the name "Bibaud, jeune" certainly sounds like it is related to his father. Sources published around the time of Bibaud's death give different reasons for this choice of signature. One obituary notice for Maximilien Bibaud, cited at the opening of this paper, claims that the moniker was in fact developed to distinguish himself from his famous father.⁴⁸ This could have been a concern, as both men could have gone by "M. Bibaud," causing confusion. However, it is not entirely satisfactory as an explanation, as contemporary biographical works that included both men distinguished between them by referring to Maximilien as "F.M.U.M. Bibaud".⁴⁹ Another description of Bibaud credits the name choice to his Roman influences: "à l'exemple de l'historien *Pline le jeune*⁵⁰, il signe modestement la plupart de ses écrits: *Bibaud, jeune*."⁵¹

While employing his signature as a tribute to an Ancient Roman scholar is consistent with his

⁴⁷ Maximilien Bibaud, *Catéchisme de l'Histoire du Canada: À l'Usage des Écoles* (Montreal: s.n., 1853), 111.

⁴⁸ Baillairgé, 152.

⁴⁹ For example Morgan, 759.

⁵⁰ Pliny the Younger, (63 C.E.-113 C.E.): Ancient Roman lawyer, author and natural philosopher.

⁵¹ Gagnon, 41 [emphasis in original].

idealization of Roman law and general interest in Ancient Rome which will be discussed further in this paper, it is interesting to note that the author claimed that this choice of name also implied a degree of modesty. This assessment does not make sense without giving a role to Michel Bibaud: naming yourself after a great Roman historian, Pliny the Younger, does not suggest modesty. The action is only modest if it is seen as both a tribute to the Roman scholar *and* to his father. This act of modesty is especially noteworthy given that his actions in all other respects lead scholars to conclude that he is “not a man of modesty,”⁵² a man not burdened by humility.⁵³ Regardless of his reasons for choosing to sign his work “Bibaud, jeune,” the fact remains that by doing so, Maximilien Bibaud conjured up images of his famous father, and by calling himself “young Bibaud” in the public sphere, Bibaud is effectively publicly calling himself the “junior” Bibaud.

Bibaud recognized the criticism he faced by some members of the legal community that his only qualification in being trusted with opening the first law school in Montreal was his father’s good name, though he seemed to dismiss this as professional jealousy (identifying “M. Taillades” as such a critic).⁵⁴ Although he was happy enough to list his many professional accomplishments on the cover page of his dictionary of historical figures,⁵⁵ his own entry, below that of his father and brother, is uncharacteristically brief: “L’auteur de ce Dictionnaire,

⁵² Macdonald, 740.

⁵³ Librairie O View Bouquins: Livres rares et anciens - Rare books
<<http://www.ovieuxbouquins.com/cat239/cat239quebecA-G.htm>> (20 March 2007).

⁵⁴ Bibaud, *Notice*, XIII.

⁵⁵ Bibaud, *Dictionnaire*, title page. Lists: “Président-Général de l’Institut Polytechnique; Docteur-Honoraire de la Faculté des Droits de l’Université de St. Jean de New-York; Professeur de Législation au Collège [*sic*] St. [*sic*] Marie, etc.”

fondateur de l'École de Droit.”⁵⁶ While it could be that he felt it was unseemly to list his many accomplishments and titles in his own book, this seems unlikely. This is the man whose book on law schools in Canada was just an excuse to contrast what he saw as the many successes of his school with the many failures of competing law schools,⁵⁷ and who referred to himself as “Dean” in his school reports, despite having a faculty consisting of only himself for much of the school’s run.⁵⁸ Perhaps his concern was instead about how his own list of accomplishments would compare to that of Bibaud “the Elder”, his father.

While his relationship with his father seems to have been the most significant in his life, other relatives did make a mark on the life of Maximilien Bibaud. When Bibaud first established his school, he used his connections through his brother’s position in medicine to get the first space for the law school.⁵⁹ As well, an 1895 listing of Bibaud’s *Panthéon Canadien* is noted as having been brought up to date by his nieces, Miss Adèle Bibaud and Miss Victoria Bibaud.⁶⁰ Perhaps the idea that his relatives would continue his work after his death would not have been surprising to Bibaud, as he seemed to see learnedness as a trait that ran in families. For example, in his *Catéchisme de l’Histoire du Canada*, Bibaud asks and answers the question as to whether there are any people of note in the fields of education and law by listing a series of family names, and only occasionally giving the names of particular individuals. Thus, it is reasonable to believe that Bibaud himself would recognize that his family played an important role in his life, not only

⁵⁶ *Ibid*, 40.

⁵⁷ Bibaud, *Notice*.

⁵⁸ Morel and Lamonde, 70.

⁵⁹ Bibaud, *Notice*, IV.

⁶⁰ Librairie J.M. Valois and Cie, *Livres et Brochures sur le Canada: Collection d’un Amateur Commencée Depuis Environ Quarante Ans, la plus rich collection d’ouvrages canadiens* (Montreal: Libraire J.M. Valois, 1895), unnumbered page.

through their actions, but by shaping his personality.

Bibaud's Education and Career

Maximilien Bibaud underwent a religious education from 1833-1843 before deciding to pursue career in law. He spent four years as an apprentice at a law firm⁶¹ and learning the law from books, as was the practice at the time, before his Bar admissions examination. At his examination, he so impressed his testers that they immediately suggested that he consider teaching. In fact, Bibaud had already been contemplating work as a private teacher, and was persuaded to direct his efforts toward establishing a French Catholic law school instead.⁶² The *École de droit* was started in 1852 with six students, and after a brief drop, the class size started to grow, such that, by 1862, more than 300 people had received part of their legal education in Bibaud's institution.⁶³ Coinciding with the changes to the bar admission brought about by Gonzalve Doutre were changes in the laws of Canada, which made it such that of Montreal's three law schools, Bibaud's *École de Droit*, McGill University and Laval University, only the *École de Droit* was unable to grant degrees. These changes, coupled with Bibaud's refusal to align himself with Laval University, led to the closing of his school in 1867.⁶⁴ Bibaud's profound interest in his school caused him to treat it as an "extension of his very being" and he all but disappeared from public life after it closed.⁶⁵

⁶¹ Morel and Lamonde, 70. Bibaud worked in the law offices of Joseph Bourret and Toussaint Peltier.

⁶² *Ibid.*

⁶³ Bibaud, *Notice*, v. In 1853, the school had eleven students, in 1858 it had fourteen, in 1859, seventeen, in 1860, twenty-seven and in 1861, thirty-one.

⁶⁴ Morel and Lamonde, 71.

⁶⁵ Macdonald, 737.

Bibaud's Interests

With a public persona characterized by obstinacy, egotism, and excellence, it is unsurprising that Bibaud was no shrinking violet in the legal debates of his day. While Bibaud took after his father in his vast range of interests, his controversial public life demonstrates that over the course of his legal career, the most important things to him were the law, his school, and his reputation. However, while his professional career was spent serving all three of these interests, it seemed that all too often, efforts to advance himself in one area would only hurt him in another. For example, his *Notice historique sur l'enseignement du droit* (1862), written to sing the praises of his school, hurt his reputation, as it revealed his ridiculous vanity and pretension to others.⁶⁶ Similarly, when Laval University granted honorary degrees to its law and medical professors in 1854, Bibaud was determined to get the same honour for himself. While he was successful the next year, there was concern that this hurt the school by cheapening the value of a university degree.⁶⁷

Although Bibaud lived in very interesting times, the three public debates that really captured his attention demonstrate the priorities that dominated his career. The first, in 1853, was about the operation of religious doctrine: he was involved in a public debate with the *Institut Canadien* of Montreal over Commissioner François-Pierre Bruneau's apostasy, the formal renunciation of his religion.⁶⁸ That debate, however, is beyond the scope of this paper. Instead, I will focus on the other two public debates that captured his attention, both of which were legal in

⁶⁶ Lortie, 530.

⁶⁷ Desjardins, 81.

⁶⁸ Morel and Lamonde, 71.

nature: Bibaud came out on the losing side against civil law codification in Lower Canada,⁶⁹ and lost again against lawyer Gonzalve Doutre (1842-1880) on the issue of apprenticeship and Bar admissions.⁷⁰ Both of these losses can only have hurt his already tarnished reputation. However, Bibaud seemed unable to recognize how his actions might be hurting his interests, and his abrasive personality and insistent vanity caused him to make enemies everywhere he went, even among those initially inclined to support him. The effect of his personality is such that it caused people to forget his incredible talent and innovative approach to legal education, leading “fate [to be] unkind and a little unjust to the man,”⁷¹ and obscuring his important role in Canadian legal history.

Bar Admissions

Bibaud again entered the public debate in 1863 opposing proposed, and eventually successful, changes to the bar admissions system in Lower Canada. During the mid-nineteenth century, the number of men admitted to the bar grew while the economy stagnated, resulting in a situation where the profession was seen as overcrowded, and many lawyers were unable to make an adequate living.⁷² This led some, notably Gonzalve Doutre, the young President of the *Institut des Lois*, to propose changes to the bar admission system in Quebec, first of all requiring a law degree for entry to the bar, and secondly making the bar admissions examinations less frequent and more difficult.

⁶⁹ Reiter, 481.

⁷⁰ Morel and Lamonde, 71.

⁷¹ Macdonald, 740.

Bibaud and Doutre

At that time, law school was not necessary to be a lawyer, although attending a law school reduced the amount of time that an individual would have to act as an apprentice with established lawyers.⁷³ At the same time, there was a public perception that Bibaud's school was part of the problem, churning out lawyers like a "diploma factory."⁷⁴ However, the fact was that Bibaud's *École de Droit* was not officially accredited with the ability to grant degrees.⁷⁵ When the requirements for bar admission were changed, the law schools at McGill and Laval University were granted the ability to confer degrees, but, due in part to a conflict between Bishop Bourget and Laval University, and in part to Bibaud's own stubborn assertions of the superiority of his school, Bibaud chose not to affiliate his school with the law school at Laval University, and following the adoption of Doutre's proposed changes on 15 August 1866,⁷⁶ the *École de Droit* was effectively forced to shut down.⁷⁷ In fact, shutting down Bibaud's school was one of Doutre's goals:

⁷² Heintzman, 12.

⁷³ *Appendice du onzième*, JJ-398.

⁷⁴ Macdonald, 740.

⁷⁵ *Ibid.*, 727.

⁷⁶ Jean-Roch Rioux, "Gonzalve Doutre," *Dictionary of Canadian Biography Online*, n.d., <<http://www.biographi.ca/EN/ShowBio.asp?BioId=39078&query=Doutre>> (17 April 2007) at para. 3.

⁷⁷ Morel and Lamonde, 71.

On June 6 1867, wanting “to put an end to the permanent violation of the law that was occurring at the Jesuit College [Bibaud’s *École de Droit*],” where diplomas were conferred sometimes without due regard for the requirements of the law and for the proper duration of the course, the Institut Canadien set up a law faculty, affiliated to Victoria University at Cobourg; Gonzalve Doutre taught civil procedure for it.⁷⁸

⁷⁸ Rioux at para 5.

Shortly thereafter, on September 1 1867, Bibaud announced his decision to give up teaching and close his school.⁷⁹ Thus, it is clear that this public debate with Doutre had a very significant impact on Bibaud's life, as this failure and the closing of his school mark the end of his legal career.

While Bibaud was initially impressed with Doutre's hard work and ambition,⁸⁰ perhaps recognizing himself in the young lawyer, Bibaud's tone quickly became uncivil as this disagreement came to a head. Like Bibaud, Doutre was born into an "illustrious" family,⁸¹ and like Bibaud, Doutre succeeded early in life, becoming President of the *Institut des Lois* at age twenty (before he was even legally allowed to be admitted to the bar) after studying law at McGill University; secretary-treasurer of the lawyers' association at age twenty-four; and President of the *Institut Canadien* at age twenty-nine.⁸² However, unlike Bibaud, Doutre had a "likeable personality,"⁸³ and when facing conflict, his approach was "combat, conducted with moderation, courtesy, and sincerity."⁸⁴

Reform of the Bar

The overcrowding of the Bar was regarded as a serious problem, as demonstrated by the

⁷⁹ Morel and Lamonde, 71..

⁸⁰ Macdonald, 740.

⁸¹ Rioux at para. 2.

⁸² *Ibid.* at para. 2-7.

⁸³ *Ibid.* at para. 9.

introduction to a letter in the newspaper *L'Ordre* on the matter, which opens:

⁸⁴ *Ibid.* at para. 19.

Nous empruntons au [journal] *Pays* la correspondance ci-dessous dont l'importance sera appréciée par tous ceux qui sont en position de savoir combien les remarques sont *justes* et combien *le mal qu'il signale est grand*... Non seulement les avocats qui tiennent à l'honneur de leur profession sont intéressés à cette réforme [proposée], mais le public surtout a droit de demander que l'on se préoccupe plus sérieusement de ses intérêts. S'il est important que les Ecoles de Médecine ne lancent pas sur la société, des médecins incapables dont l'ignorance pourrait être si funeste, il ne l'est peut-être pas moins que le Barreau ne soit pas composé de nullités qui peuvent chaque jour mettre en danger la fortune des individus.⁸⁵

The author, identified only as "Timon", does not see the problem as something internal to the profession, and calls on the public to recognize the seriousness of the problem of the overcrowding of the bar with sub-par lawyers, saying that incompetent lawyers are as dangerous to their wealth as incompetent doctors are to their health.

The issue was framed in terms of competency because there was a perception that the Bar examination was too easy, and that by making the examination more difficult, the lawyers would be of higher quality and the issue of overcrowding would be addressed. Those arguing for reform painted a picture of an examination that was ridiculously easy: the letter in *L'Ordre* claims that "[j]'ai vu même un jeune homme, qui se promenait dans le corridor du palais de justice, attendant le moment de son examen, rester tout étonné, à la nouvelle qu'il était admis, sans même s'être montré devant MM. les examinateurs."⁸⁶ Thus, the perception was that it was so easy to be admitted to the Bar, that people did not even have to take the examination, and understandably, this led to concerns as to how the profession was regulating the ability of its members.

Bibaud, however, paints a very different picture of the Bar. In his *Notice historique sur l'enseignement du droit en Canada*, he describes at length the difficulties that students attending

⁸⁵ "Les Examens du Barreau," *L'Ordre* (Montreal), 14 September 1863.

⁸⁶ Timon, "Les Examens du Barreau," *L'Ordre* (Montreal), 14 September 1863.

other schools had in the examination, and the ease with which his students passed.⁸⁷ For example, after describing the faults of McGill's course of study and the ways in which it fails to prepare its students for the examination, Bibaud continues: "Chez nous, s'il fallait proclamer tous ceux qui ont subi des examens brillans [sic], il faudrait nommer tous les élèves, moins deux ou trois, dont les examens ont été médiocres."⁸⁸ Bibaud clearly disputes the criticism he faced from Doutre, among others, that his school was not properly preparing his students to practise law, and that as a result of the leniency of the bar admissions procedure, and substandard schooling, there was a wave of unprepared and incompetent lawyers flooding the Montreal legal community.

Although we do not know the truth of the matter, the fact that both those supporting reform of the bar admissions procedure and requirements, like Doutre, and those opposing it, like Bibaud, generally had personal stakes in the outcome calls both accounts into question. Those pushing for reforms were lawyers whose ability to earn a living was compromised with the perceived influx of new law graduates. They had a personal stake in strictly limiting the growth of the profession. Bibaud would often criticize the speed with which Doutre set about reforming the bar, having only been admitted to the bar in August 1863, and yet formally proposing changes in May 1866. Doutre was clearly aware of the criticism lobbed against him, writing in the newspaper *La Minerve* on 29 May 1866:

In a period when I had everything to gain from the present system I wanted to try to have it changed, at the risk of suffering myself as a result. I hope therefore that no one will reproach me

⁸⁷ Bibaud, *Notice historique*, vi-vii.

⁸⁸ *Ibid.*, vii.

with waiting until I cleared the obstacles in order to pull the ladder behind me.⁸⁹

Thus, the fact that the lawyers pushing for reform had a lot to gain by making admission to the profession more difficult was not lost on those involved in the debates. However, as will be discussed in more detail later in this paper, Bibaud also had a lot at stake. He based his curriculum around preparing students for the Bar examination. Thus, to portray the examination as easy undermined the achievements of his students, and his own achievements, as their teacher. In the end, the fact that Doutre's campaign won suggests that the perception that the examination was too easy had significant support at the time.

Codification in Lower Canada

⁸⁹ Rioux, para. 3.

Although Bibaud was recognized as the “most important legal thinker” in Lower Canada at the time of codification,⁹⁰ he was not invited to be a part of the team that drafted the Civil Code of Lower Canada (CCLC). In fact, as the process began, Bibaud was not only a vociferous critic of codification, he was actually one of the only people weighing in on the codification procedure at all.⁹¹ Although the enactment of the CCLC in 1866 barely predates Bibaud’s retirement from public life in 1867, he had viewed at least one draft, and published a brief critique of the code, as well as newspaper articles expressing his opinions.⁹² His interest in the issue though likely lasted beyond it was clear that he had lost this battle, as his personal library includes an autographed gift of the CCLC, signed by George-Étienne Cartier.⁹³ Although as a lawyer with a solid grasp of the daunting law in Lower Canada pre-codification, Bibaud could be seen as having something to gain by keeping the law shrouded in mystery, his opposition to codification seems to be grounded in his genuinely-held beliefs about the law and the state, fuelled by his “profound distrust of modernism.”⁹⁴ Bibaud’s legal conservatism caused him to

⁹⁰ Brian Young, *The Politics of Codification: The Lower Canadian Civil Code of 1866* (Montreal and Kingston: McGill-Queen’s University Press/Osgoode Society for Canadian Legal History, 1994), 81.

⁹¹ Reiter, 481.

⁹² Maximilien Bibaud, *Exegèse de Jurisprudence* (S.I.: s.n., 1854? 1861?), 20. Note that the date of publication of this work is unclear, and has been identified 1854 by Clément LeBel in his *Inventaire du Fonds Chauveau de la Bibliothèque de l’Assemblée Nationale*, compiled in September 2006, as well as 1861 by Reiter in “Imported Books, Imported Ideas” in 2004. Given that the work includes articles critiquing a draft code for Lower Canada, the later date seems most likely.

⁹³ Montreal, Fraser-Hickson Free Library, “Les archives de l’Institut Canadien de Montréal,” 7 “Documents divers,” 7.11 *Ma bibliothèque* (Maximilien Bibaud) (s.d.), 10x16 cm., 27. While I did not have access to the original document, I was able to get a near-complete record of its contents thanks to Eric Reiter, see *infra* note 94.

⁹⁴ Reiter, 485.

value ties to the past, and view the practice of codification as a fad, masquerading as progress.⁹⁵

Bibaud's conservatism and elevation of the work of historical figures over present-day thinkers which is present throughout his writing clearly plays a role in his rejection of codification. A newspaper book review of Bibaud's *Panthéon Canadien* identifies this approach:

C'est dans ce livre que se trouvent rapportées avec un religieux et patriotique respect les nobles et grandes actions de nos ancêtres; elles sont là comme des phares brillants qui doivent éclairer les nouvelles générations dans la nuit sombre qui commence à peser sur nos têtes.⁹⁶

Bibaud believed that any form of codification risked taking Lower Canadian law further away from the guide of Roman law, and therefore further from the divine.⁹⁷ He criticized the apparent ease with which the codifiers abandoned history and tradition: "Et voyons comme on démolit sans réflexion ce qui a été établi après mûre délibération."⁹⁸

Of course it is possible that Bibaud's criticism would have been reduced had he felt the codifiers were showing respect to the proper authorities, but he did not feel that way. Bibaud criticized the codifiers' reliance on the nineteenth century scholars Toullier, Troplong, Marcadé and Zachariae as an anachronism and anomaly.⁹⁹ Criticizing the choice of authorities is a serious criticism for Bibaud to make, given that the primary task of the codification Commission, as set out by statute, appears to have been the assembly of relevant authorities in order to determine what the law in Lower Canada was. If the codifiers were choosing the wrong authorities, they were failing at their most important task.

⁹⁵ *Ibid.*, 483.

⁹⁶ Cyrille Boucher, "La cinquième livraison du *Panthéon Canadien*..." *L'Ordre* (Montreal), 4 January 1859.

⁹⁷ Maximilien Bibaud, *Exegèse*, 42.

⁹⁸ Bibaud, *Exegèse*, 11.

⁹⁹ Bibaud, *Exegèse*, 8.

While the 1857 *Act to provide for the Codification of the Laws of Lower Canada*¹⁰⁰ clearly saw codification as an act of reduction, observation and suggestion, Bibaud saw a more limited role for the codifiers, giving no room at all for suggestion, and he clearly believed that they overstepped their role. Section 6 of the Act directed the Commissioners to embody therein [i.e. in the CCLC] such provisions only as they hold to be then actually in force, and [to] give the authorities on which they believe them to be so; they may suggest such amendments as they think desirable, but shall state such amendments separately and distinctly, with the reasons on which they are founded.¹⁰¹

Thus, the codifiers were first instructed to set out the actual law, and then given the opportunity to note their suggestions for the law. However, Bibaud would have limited the scope of their action even more, saying, “[l]es commissaires sont chargés de nous dire quel est notre droit, et non de l’altérer à leur guise.”¹⁰² In that way, it seems Bibaud might have regarded codification as akin to his own action, writing the *Commentaires sur les Lois du Bas Canada* in 1859. It is interesting to consider whether his own synthesis of the law, had it been completed before codification was already well underway, could have satisfied those like historian John E.C. Brierley, who see the fact that there was “no Canadian Pothier to synthesize this confused body of uncodified law,”¹⁰³ as a key factor that led to codification in Lower Canada. However, it seems likely that this book would have been insufficient, as it often reads like a lecture from Bibaud on his own opinions regarding the proper course of study and the ideal approach to the

¹⁰⁰ *Act to provide for the Codification of the Laws of Lower Canada relative to Civil matters and Procedure*, L.C. 1857, c. 43.

¹⁰¹ *Ibid.*, s. 6. in Brierley, 543.

¹⁰² Bibaud, *Exegèse*, 10.

¹⁰³ Brierley, 540.

law,¹⁰⁴ than a useful synthesis of the state of the law in pre-codification Lower Canada.

Regardless of his narrow conception of the role of the codifiers, it appears that Bibaud believes that the codifiers might have gone beyond their official mandate by changing the law in the body of the code itself, rather than only as a separate list of suggestions. This can be inferred from his criticism that they “citent surbadonamment quand il ne le faut pas, et ne citent pas du tout quand ils parlent de leur cru,”¹⁰⁵ suggesting that their own beliefs were mixed in with the code, and were not sufficiently supported. Thus, overall, Bibaud seems critical of codes in general as examples of modernism in the law, and of the CCLC in particular as being an inaccurate expression of the law as it was and as it ought to be.

Although the CCLC is often seen as an important nationalist document in Quebec, Bibaud believed that it was unnecessary so long as the state’s powers to undermine Quebec nationalism were properly conceived. As stated in the *Private Law Dictionary and Bilingual Lexicons*,

¹⁰⁴ See for example Bibaud, *Commentaires*, 3-15.

¹⁰⁵ *Ibid.*, 8.

[f]rom the time of its enactment, the *Civil Code of Lower Canada* has been considered as foundational for Quebec, not only because of its sweeping expression of the general law but also because it was perceived as a symbol of the survival of the Civilian tradition in Canada.¹⁰⁶

While Bibaud was a great supporter of civilian law, and criticized the common law system, Bibaud's writing did not give the impression that he believed that such an action was necessary for the preservation of the former legal system, given the role of the state in a colonial setting. In trying to make a point about the limitations of the Provincial Parliament, Bibaud demonstrates the absurd results of not recognizing said limitation by pointing out that if it were otherwise, "une majorité haut-canadienne pourrait abolir l'acte de Québec qui nous rend les lois françaises."¹⁰⁷ In choosing this example, Bibaud demonstrates that he did not believe that the civilian law in Quebec required any additional protection by means of a Code, as the law in Quebec was already protected. Thus, Bibaud was not swayed by any feelings of nationalism and protectionism into supporting codification. This is consistent with Brian Young's thesis that codification earned the support of both Francophones and Anglophones out of a desire to advance their common commercial interests,¹⁰⁸ rather than as a project of French nationalism in Lower Canada.

At the same time, Bibaud was not persuaded by arguments that a code would protect French Canadian interests by limiting the discretion of the judiciary, as he appears to have doubted that the codifiers would actually do a better job. According to Brian Young's *The Politics of Codification*, Pre-Rebellion law reformers claimed that "[a] code... would serve to

¹⁰⁶ *Private Law Dictionary and Bilingual Lexicons: Obligations*, ed. France Allard (Cowansville Qc.: Yvon Blais, 2003), "Civil Code of Lower Canada."

¹⁰⁷ Bibaud, *Exegèse*, 5.

¹⁰⁸ Young, 45.

block judge-made law emanating from arrogant anglophone judges, who were impervious to legislative control.”¹⁰⁹ This argument likely failed to satisfy Bibaud on two grounds: first, Bibaud did not have a lot of confidence in the legislature; and second, Bibaud was unconvinced that the codifiers were protecting the interests of French Canadians. However, it is worth noting that the judges were not exempt from Bibaud’s scrutiny and critique: his article “Observations sur quelques-unes des réponses des juges des cours du banc de la Reine et Supérieure aux questions du Procureur-Général Drummond sur la tenure seigneuriale,” criticizes several judges getting the facts wrong and misinterpreting the law.¹¹⁰

Bibaud’s criticism of the legislature, for example for introducing new laws rather than working with the existing laws,¹¹¹ suggests that he did not always agree with the decisions of the legislature. This belief is supported by his response to the issue of whether a judicial sentence is a syllogism, as other legal scholars have claimed:

Un jugement est en effet le résultat d’un syllogisme bon ou mauvais; car nous n’acceptons pas sans hésiter... la loi comme le principe certain d’où l’on part. *On a trop abusé du pouvoir de législater, pour que la loi puisse être admise sans précaution comme une vérité certaine* telle que celle qui doit faire la majeure de tout bon syllogisme. Si la loi est injuste, le jugement basé sur elle n’a d’un syllogisme que la forme.¹¹²

Bibaud directly accuses the legislative branch of abusing its power, and clearly distinguishes

¹⁰⁹ *Ibid.*, 44.

¹¹⁰ Bibaud, *Exegèse*, 1-5.

¹¹¹ Desjardins, 68.

¹¹² Maximilien Bibaud, *Essai de Logique Judiciaire: Ouvrage qui doit servir d’appréciation et sur quelques points, d’antirrhétique de la Logique Judiciaire publiée à Paris, en 1841, par M. Hortensius de St.-Albin, Juge au tribunal de la Seine, Membre de la Chambre des Députés, et Chevalier de la Légion d’Honneur et de l’Étoile Polaire* (Montreal: De Montigny & Cie, 1853), 32.

between laws which are “just and salutary”¹¹³ from laws that are not. Thus, Bibaud clearly does not see the legislature as necessarily a source of truth, fairness or protection. His own opinions about the state were likely affected by his personal experiences with the government as well, in particular the fact that they denied his *École de Droit* the ability to meet Doutre’s law reforms, effectively closing his school.

Bibaud’s personality was such that he perceived any negativity regarding his professional abilities as a personal attack, and he fought back. When the Montreal Historical Society pointed out some factual errors and questioned the accuracy of Bibaud’s claims of originality, Bibaud went on the offensive, publishing a two-part attack that insults the qualifications and merits of the members of the society and the society itself.¹¹⁴ Given his own hostility to any slight, real or imaginary, one can reason that any poor opinion he may have had of the Provincial Parliament was exacerbated by their refusal to grant his school the ability to award degrees. Bibaud petitioned the government for this privilege at least once, as indicated by the legislative council’s records for Wednesday May 9, 1854, well before Doutre’s bar admissions reforms would make the granting of this right a precondition for the operation of his school. The records read as follows:

Et aussi une pétition de Maximilien Bibaud, demandant que le droit qu’a le collège [sic] de *Ste. Marie* de conférer des degrés de bachelier, maître-ès-arts [sic] et docteur en loi, soit expressément mentionné et reconnu dans le bill intitulé: “Acte pour “encourager l’étude de la loi dans le *Bas-Canada*.”¹¹⁵

¹¹³ *Ibid.*, 32-33.

¹¹⁴ Maximilien Bibaud, *La Société Historique de Montréal vs. Maximilien Bibaud: Portraits des collitigans* (Montreal: Cérat et Bourguignon, 1859), 1-2.

¹¹⁵ *Journaux du Conseil législatif de la Province du Canada... étant la première session du cinquième parlement provincial*, (Quebec: L. Perrault, 1854), 429.

This privilege was not granted leading in large part to the school's eventual closure. All of these factors likely contributed to Bibaud's rejection of codification on the grounds that the legislature would improve on the judiciary.

Bibaud also criticizes the content of the code itself as not in fact providing protection to French Canadians. He charges the codifiers with ignoring the interests of women and those in need, who were protected under the old law, and imposing a new legal system that disadvantages those groups in the name of commercial interests.¹¹⁶ He perceives the codifiers' approach as dishonest, trying to sneak in significant changes to the law to promote security of contract without making clear what is being lost in this exchange:

Je ne m'étais pas aperçu que dans le traité des Obligations les honorables commissaires eussent suggéré l'abolition de la lésion entre majeurs! J'espère bien que la législature rejettera cette suggestions déshonnête, car c'est par le droit naturel, sinon primaire, du moins secondaire, que l'égalité est requise dans les contrats commutatifs de vente, d'échange, etc. Les commissaires veulent simplement qu'on abolisse les contrats commutatifs, comme ils ont déjà cru supprimer d'un coup de plume les contrats unilatéraux. Ils veulent que, comme aux États-Unis, on puisse acquérir d'une manière valide ce qui vaut mille louis pour un dollar!¹¹⁷

Thus, Bibaud is clearly suspicious of both the manner and content of codification, and of the codifiers themselves. He believes that the changes that the codifiers are making in the law run contrary to natural law, as expressed by the longstanding legal practices and traditions used in Lower Canada.

While there is reason to believe that Bibaud opposed codification on ideological grounds, it is possible that an element of personal interest was also motivating his stance. There is often suspicion that lawyers who oppose codification when the state of the law is confusing do so in

¹¹⁶ Bibaud, *Exegèse*, 13-14.

¹¹⁷ *Ibid.*, 16.

order to maintain their professional monopoly on legal knowledge. However, in the case of Bibaud, if there were self-interest at play, it seems clear by extrapolating from his position on Bar admissions, that he was approaching the issue as an educator looking out for his school rather than as a lawyer trying to retain his clients.

As a lawyer, a self-interested position with respect to Bar admissions would likely be to support reform and limiting the number of people admitted to the Bar. However, Bibaud came to the opposite conclusion because he did not approach that issue as a lawyer, but rather as a teacher who had an interest in admitting many students and seeing them succeed. Similarly, as a lawyer, the issue of codification is often seen in terms of making the law accessible to the public or deliberately not making the law accessible. Bibaud's concerns, however, were not about accessibility to the public. If anything, keeping the law obscure could benefit his school, as students might find self-study in law daunting, and choose to attend schools to make sense of the law. Therefore, even if self-interest was motivating Bibaud's position, considering the issue in these terms also serves to highlight where Bibaud was coming from professionally: the place of teacher rather than lawyer. This is consistent with the importance of the *École de Droit* to Bibaud, personally as well as professionally, as will be discussed later in this paper.

Bibaud's Personal Library

A further way to glean what Bibaud's interests were is by looking beyond what public controversies he engaged with, to what books he had in his personal collection. Although Bibaud's personal library has been lost, his handwritten record of his books, likely compiled

around 1878, survives.¹¹⁸

Bibaud's personal library consisted of over 380 books.¹¹⁹ To put this in perspective, note that in 1853, the *Collège de Montréal* had 2400 books in its library while the *Collège Ste. Marie* had 2000 books.¹²⁰ The books were almost all in French, although at least thirty-seven were in English, twenty-one in Latin and two in Greek. It is worth noting that although some collectors would buy books in languages that they could not read, Bibaud could definitely read both Latin and English, as evidenced by his habit of sprinkling his lectures in both languages.¹²¹ Of the books that I was able to date, the books divide almost evenly between those published in the nineteenth century and those pre-dating that, and those that pre-date that are mostly from the eighteenth century.

Bibaud divides his collection into eighteen categories, as follows:

Category	Number of titles listed
1. Philosophy	14

¹¹⁸ Reiter, footnote 50. This handwritten note forms part of the *Institut Canadien* collection formerly located in the Fraser-Hickson Institute in Montreal. However, as the Fraser-Hickson Institute has met with financial difficulties, it was being transferred to another library, and appears to have been lost in the shuffle. Fortunately, I was able to obtain a detailed transcription (transcribed in full for pages 1-31 of the collection, and transcribed in part for pages 31-48) of this list from Eric H. Reiter.

¹¹⁹ The details of Bibaud's collection are drawn from Eric H. Reiter's notes on the handwritten list. However, given the incomplete nature of the latter section of those notes, I am unable to give a complete picture of Bibaud's library.

¹²⁰ *Appendice du onzième volume des journaux de l'Assemblée législative de la Province du Canada, depuis le 19 août 1852, jusqu'au 14 juin 1853, ces deux jours inclus, et dans la seizième année du règne de notre souveraine dame la Reine Victoria, étant la première session du quatrième Parlement provincial du Canada* (Quebec: L. Perrault, 1853), JJ-398.

¹²¹ Desjardins, 73.

2. Theology, Ecclesiastical History, Controversies	30
3. Public and Private Law	15
4. Science	13
5. Fine Arts	8
6. Geography	5
7. Mythology	2
8. History	48
9. Biography	31
10. Literature and Poetry	24
11. Novels	10
12. Prose, general	17
13. Specialties, Curiosities and Rarities	32
14. Section linking the General Library with the Canadian Library	23
15. Canadian Library	93*
16. Writing, no author	7*
17. Manuscripts	1*
18. Supplement to the Library	7*

* These sections are not complete

The picture that emerges from this catalogue is of a person who has extremely wide interests, and a particular interest in history and Canadian studies. However, I will now examine his collection from the perspective of the law.

Legally speaking, scholar Eric H. Reiter deems Bibaud's collection typical of his time, describing its contents as follows:

Aside from materials relating to Quebec codification (including an autographed copy of the *Civil Code of Lower Canada* presented to Bibaud by Cartier), his collection comprised only about a dozen legal texts, surprising for a jurist (admittedly an impecunious one) who flaunted erudition to the extent Bibaud did. His library also tended toward older works, such as Heineccius and Vattel, as befitting a jurisprudential conservative like Bibaud.¹²²

Although Reiter only identifies approximately a dozen legal texts, there are legally-related materials scattered throughout his collection,¹²³ and reaching a total of thirty-four books, or less than ten percent of his entire collection.¹²⁴ When compared to American David Hoffman's suggested legal course of study from 1846,¹²⁵ it appears there is very little overlap between the collections. Bibaud's collection did have some of the books and authors listed under Hoffman's "Moral and Political Philosophy" section, such as The Bible, Xenophon, Locke and Montesquieu, but there are many that might be expected in Bibaud's collection, such as Aristotle, Grotius, Puffendorf and others, that are nowhere to be seen.¹²⁶ Similarly, almost none of Hoffman's suggestions for specific areas of substantive law are found in Bibaud's collection. Some of that can be explained by the fact that Hoffman is writing from an anglophone American perspective, but the fact remains that Bibaud's books did not really form a fully functioning legal

¹²² Reiter, 460-461.

¹²³ These materials include, for example, Plinius Secundus, *Curiae Canadenses or the Canadian Law Courts: Being a Poem describing the several Courts of Law and Equity which have been erected from time to time in the Canadas, with copious Notes explanatory and historical* (Toronto: H & W Rowsell, 1843) under "Specialities, Curiosities and Rarities," James Armstrong, *Law of Marriage* and D. Girouard, *Législation sur le Mariage en Canada* under "Canadian Library" and T.W. Ritchie, *Codification of the Laws of Canada: Some Remarks on the Title of Obligations as reported by the Commissioners* (Montreal: Lovell, 1853) under "Supplement to the Library."

¹²⁴ Although ten percent is likely an inflated number, as Reiter's transcription of later sections generally included any works with legal relevance and omitted those without.

¹²⁵ David Hoffman, *Course of Legal Study* (Philadelphia: Thomas, Cowperthwait, 1846) [HeinOnline].

¹²⁶ *Ibid.*, 59-63.

library. Two possible reasons for this are: first, a lack of availability of legal literature in Lower Canada. This is supported by Bibaud's claim that he was urged to write his *Commentaires sur les lois du Bas Canada* so that his students would have some available legal books to use.¹²⁷ Second, obtaining a complete collection of legal literature may not have been a priority for Bibaud, given his other interests and his access to these books through other means.

Fortunately, his legal sources were not limited to these thirty-four books though, as we know that he had access to the Advocates' Library in Montreal.¹²⁸ This library was organized in 1828 by Montreal lawyers as a centre for teaching law.¹²⁹ Evidence for the idea that Bibaud looked beyond his own library for his legal research and writing comes from the fact that writers that Bibaud himself cites or relies on in his writing are not always included in his own library.¹³⁰ Thus, Bibaud's legal ideas likely came from a combination of his personal books, library books, as well as public lectures and newspapers.

An examination of Bibaud's personal library confirms that while the law, his school and his reputation were guiding interests in his life, especially until his school closed in 1867, he had other significant interests, like religion and history, and glossing over these interests would give an incomplete picture of the man. This idea is confirmed by the fact that there are references to two non-legal manuscripts completed by Bibaud after his withdrawal from public life in 1867.¹³¹ Thus, even after he seemingly gave up on the law, he kept up with his other interests, making it

¹²⁷ Morel and Lamonde, 70.

¹²⁸ Reiter, 462.

¹²⁹ Lortie, 527.

¹³⁰ Reiter, 462.

¹³¹ Maximilien Bibaud, *Belle nature canadienne: tour par les deux Canadas* (manuscript, 1872) and Maximilien Bibaud, *Tableau politique et militaire de la dernière guerre d'Orient* (manuscript, 1878).

unwise to ignore those aspects of his personality. That being said, I will now turn to a closer look at one of the consuming passions of his life, his *École de Droit*.

III. Bibaud's *École de Droit*

Teaching Methods and Practices

The program at the *École de Droit* lasted two years, with classes running three mornings per week, for eleven months of the year.¹³² Bibaud was the only teacher until 1856, when he hired former students Achille Belle and J-O Héту to teach classes in procedure.¹³³ His lectures were delivered orally, and peppered with long quotations in Latin and English which Bibaud often did not translate, much to the chagrin of those among his students who were not fluent in those languages.¹³⁴ His students convinced him that their learning would be advanced if he were to write a book, which led to the publication of his *Commentaires sur les Lois du Bas-Canada* in 1859.¹³⁵ Bibaud adopted the unusual practice of eschewing regular examinations, preferring the German-modelled *repetitoria*, which consisted of weekly, and later monthly, oral presentations by students on what they had been learning.¹³⁶ These were occasionally open to the public, as Bibaud was “only too delighted to display the excellence of the training he was providing.”¹³⁷

Despite his lack of examinations, Bibaud remained conscious of the fact that he was preparing his students for their Bar admissions examination, and would regularly take them to observe these examinations in order to prepare them for their own. Bibaud credited this approach

¹³² Morel and Lamonde, 70. Classes took place during every month but August.

¹³³ Lortie, 529.

¹³⁴ Desjardins, 73.

¹³⁵ Lortie, 529.

¹³⁶ *Ibid.*

with his students' apparent unparalleled success in these examinations,¹³⁸ as well as their ability to speak loudly and confidently on legal matters.¹³⁹ However, this technique would also lead to criticism by Gonzalve Doutre that Bibaud was too focussed on this final test, only teaching his students what they needed to know to excel at that examination instead of at the profession more generally.¹⁴⁰ In any case, this technique also explains one reason for Bibaud's vehement opposition to Doutre's campaign to reduce the frequency of examinations, as they were an important teaching tool for Bibaud.

Inspiration

Maximilien Bibaud frequently referred to the disgraceful state of legal education in Lower Canada before he founded the *École de Droit*, opening his *Commentaires sur les Lois du Bas-Canada* with the following excerpt from a 1824 speech by Justice Sewell to the *Société Littéraire et Historique du Québec*:

I cannot but solicit your attention to the actual state of the study of the law in Canada. The experience of many ages and many countries seems to have shown that the elements of science are best inculcated by public lectures. Rightly conducted they awaken the attention of the student, abridge his labour, enable him to save time, guide his inquiries, relieve the tediousness of private research, and impress the principles of his pursuit more effectively upon his memory. The student of Law in Canada has no assistance of this description, he toils alone in an extensive field of abstruse science which he finds greatly neglected, and therefore too hastily deems to be despised; and discouraged from the commencement of his labours, he is left to his own exertions and is compelled to clear and prepare the path of his own instruction, almost without aid of any

¹³⁷ Morel and Lamonde, 70.

¹³⁸ Bibaud, *Notice*, VII. Although, like any of Bibaud's other claims to greatness in his *Notice*, his descriptions of unparalleled success should not necessarily be taken at face value. While the school reports do support the claim of success by many students, reports of their near-universal brilliance are likely influenced by Bibaud's unquestionable bias.

¹³⁹ *Ibid.*, IX.

¹⁴⁰ Desjardins, 96.

kind.¹⁴¹

Bibaud took it upon himself to remedy this situation by founding a school with teaching methods based on the German universities of Bonn and Leipzig.¹⁴² His knowledge of these institutions came not from any personal experience, but from a November 1845 article by Édouard Laboulaye in the influential French periodical *Revue de législation et de jurisprudence*.¹⁴³ This article was intended to contrast what Laboulaye felt was the French government's inappropriate and damaging degree of control over legal education to the liberty he saw in the German system. This article included the study plans for the universities in both Bonn and Leipzig.¹⁴⁴ Bibaud took these ideas and examples and adapted them from the German context, where a school had dozens of teachers and hundreds of students, to his own school, where he was the only teacher for years, and had far fewer students. The ideas expressed by Laboulaye influenced all aspects of Bibaud's school, from his teaching philosophy and teaching practices to his relationships with his students and with students from other schools.

Laboulaye's influence on Bibaud permeates his writing, as well as his school. For example, Laboulaye explains one axiom of the German approach to legal education as follows: "Le droit étant à la fois une *science et un art*, son enregistrement doit être *philosophique, historique et pratique*, si l'on veut que l'éducation nationale ne prenne pas une fausse

¹⁴¹ Bibaud, *Commentaires*, 3.

¹⁴² Macdonald, 728.

¹⁴³ Although the original article was published in 1845, a significant excerpt was later published on its own, and has been archived online. Édouard Laboulaye, *Quelques Reflexions sur l'enseignement du droit en France, à l'occasion des réponses faites par les facultés proposées par M. le Ministre de l'instruction publique* (Paris: Hennuyer et Turpin, 1848), <<http://www.visualiseur.bnf.fr/CadresFenetre?O=NUMM-7750&I=1&M=Gallica>> (10 April 2006).

direction.”¹⁴⁵ Similarly, Bibaud set up the proper approach to legal education as follows: “Le droit moderne ... étant devenu un *art* autant qu’un *science*, son enseignement doit être à la fois *historique, méthodique, philosophique et pratique*.”¹⁴⁶ Bibaud closely echoes Laboulaye, adding only the importance of a “methodical” approach to the characteristics already identified. Perhaps this added emphasis on methodology is one way that Bibaud adapted the German system to take into account the realities of Lower Canada; the unusually unclear state of Lower Canadian law would make a methodological approach particularly necessary, leaving it on par with an historical, philosophical and practical approach to the law.

The strong influence of Laboulaye’s work on Bibaud is also evident in the authors’ descriptions of the courses of study at Bonn and Leipzig. Laboulaye summarizes the German approach:

On a pu reconnaître dans les programmes de Bonn et de Leipzig quelques principes communs, aussi sages que féconds, et à ce titre généralement adoptés par les étudiants; c’est, par exemple, de consacrer la première année aux études spéculatives, de n’aborder les études spéciales qu’après les générales, de réserver pour la fin les exercices pratiques...¹⁴⁷

While Bibaud describes his German inspirations’ approaches to instruction:

On peut reconnaître, en jetant les yeux sur les programmes des universités de Bonn et de Leipzig [*sic*], quelques principes communs aussi sages que féconds, et à ce titre, généralement respectés par les élèves; c’est, par exemple, de consacrer les premiers terms aux études générales, et de réserver pour la suite les études spéciales et pratiques.¹⁴⁸

Clearly, the wording is nearly identical between the two texts. Though Bibaud does refer to

¹⁴⁴ *Ibid.*, 20-21 (Bonn), 23-25 (Leipzig).

¹⁴⁵ *Ibid.*, 72 [emphasis added].

¹⁴⁶ Bibaud, *Commentaires*, 4 [emphasis added].

¹⁴⁷ Laboulaye, 29.

¹⁴⁸ Bibaud, *Commentaires*, 14.

Laboulaye in his writing,¹⁴⁹ he fails to explain the extent of his debt to that author. Although it is possible that Bibaud was exposed to ideas regarding German instruction in other ways as well, his access to sources was necessarily limited by his inability to speak German.¹⁵⁰ Given the clear influence of Laboulaye on Bibaud's writing, it is safe to say that something in Laboulaye's piece resonated with Bibaud, and that it was extremely influential in all aspects of the design of his *École de Droit*. His near identical duplication of Laboulaye's descriptions and justifications seem to suggest also that Bibaud did not really engage with the German model of schooling, and simply accepted Laboulaye's analysis and discussion.

While side-by-side it appears pretty obvious that Bibaud copied entire passages out of Laboulaye's essay without crediting him, it is possible that this was not as objectionable in the context of nineteenth century Lower Canada. This position is indirectly supported by the argument between Bibaud and the Montreal Historical Society described in Bibaud's *La Société Historique de Montréal vs. Maximilien Bibaud: Portraits des collitigans* (1859), a set of articles describing a dispute between Bibaud and the Montreal Historical Society. While the exact nature of the dispute is somewhat difficult to discern, especially given Bibaud's hostile tone, the main issue seems to be that Bibaud claimed to be the first historian to talk about a particular figure, and the historical society attempted to discredit that claim. The charge put forward by the historical society reads in part:

Cette année-là même que M. Bibaud a publié les "Institutions de l'Histoire du Canada" dans lesquelles, à la page 71, se trouve rapportée *presque mot pour mot* la susdite prestation de Foi et Hommage, sans dire néanmoins que cet acte soit tiré des documens [*sic*] seigneuriaux imprimés en 1852.¹⁵¹

¹⁴⁹ *Ibid.*, 13.

¹⁵⁰ Reiter, 446.

¹⁵¹ Bibaud, *Société Historique*, 4 (emphasis added).

Again it seems that Bibaud copied a source almost word-for-word, as he did with Laboulaye. However, this is not what the historical society is focussing on – rather, their interest is in the timeline. This seems perhaps to suggest that Bibaud’s use of others’ work was not worth criticizing: if it were problematic in and of itself, it seems likely that the historical society would have focussed on that issue as well. It is possible that this sort of copying was an accepted practice at the time. However, this seems somewhat dubious, and it should be remembered that their charge is being relayed to us through Bibaud. It is certainly possible that the society did find the situation problematic, but that Bibaud chose to ignore it in his reply.

Student-Teacher Relationship

Laboulaye’s description of the German student-teacher relationship is another area of the German approach that Bibaud strove to emulate in his *École de Droit*. Although Maximilien Bibaud’s personality was frequently off-putting, his attitude toward his students was one of fierce loyalty, and they returned the sentiment. Laboulaye describes the student-teacher relationship in German universities the following terms: “ces élèves qui [écoutent le professeur], c’est sa parole qui les retient; ce ne sont point des écoliers qui tremblent sous la férule des maîtres, ce sont des disciples, des amis, presque des collaborateurs.”¹⁵² Bibaud clearly tried to develop such a close relationship with his own students. For example, when he was looking for people to teach his class in procedure, he turned to two former students. As well, while his regular newsletters describing the latest triumph of his students could be seen as just another example of his endless quest of self-promotion, in this case from his students’ reflected glory, the

¹⁵² Laboulaye, 63.

fact that they did occasionally touch on other important matters in students' lives suggests that were not purely promotional: by announcing the death of a former student,¹⁵³ for example, this suggests that members of the school community may have turned to these newsletters for news, and therefore that the congratulatory notices were not for Bibaud's benefit alone. In other words, Bibaud saw his work as professor as about community-building, and was not exclusively focussed on advancing his own reputation and career.

Bibaud was quick to come to the defence of his students, appealing to the Chamber of Notaries when a law adversely affected two students,¹⁵⁴ and to the newspapers when a student was denied his Bar exam because he was a few hours less than the requisite twenty-one years old.¹⁵⁵ Whatever his personal differences with Gonzalve Doutre, Bibaud's objections that Doutre's plan to make admission to the Bar more difficult was self-serving and not in the interests of current students, are certainly legitimate, as limiting number of practising lawyers would mean less competition for clients between those who have already been called to the Bar.¹⁵⁶ His students rewarded his loyalty with their own, making four attempts to save their school or to have it re-opened by appealing to religious authorities.¹⁵⁷

Laboulaye's call for reform in the payment method for French law professors to conform with the German system could explain some of Bibaud's hostility toward students who chose to attend McGill University or Laval University instead of his own school. Laboulaye suggests that law professors be paid based on the enrolment in their classes, in the context of a system where

¹⁵³ Bibaud, *Notice*, XXVII.

¹⁵⁴ *Ibid*, XXXIV.

¹⁵⁵ Bibaud, *Supplement*, LXI.

¹⁵⁶ Desjardins, 91.

¹⁵⁷ Audet, 152. The attempts were made once before the school closed (1866) and three

every class was taught by several different professors and students were free to choose among them.¹⁵⁸ In the *École de Droit*, where essentially all classes were taught by a single professor, this was not possible. The only way that students in Montreal could exercise their choice was by choosing to attend a different law school, that is to say, McGill or Laval. So when Gonzalve Doure tells Bibaud: “j’ai été l’objet de vos invectives et de vos insultes, pour avoir préféré une autre faculté à la vôtre,”¹⁵⁹ it is possible that Bibaud’s sense of injury was sparked by more than just pride in his own institution, but also by a sense of injury based on Laboulaye’s recognition of the significance of student choice. Electing to attend another school could have been perceived as a rejection of not only Bibaud’s school, but of Bibaud himself, thereby insulting two of Bibaud’s main interests in life.

In 1852, Bibaud founded an institution based on his understanding of German universities, emphasizing oral presentations above examinations, and striving to create close relationships with his students. He intended for this to address the issue of the lack of legal education available in Lower Canada in the mid-nineteenth century. Even after other schools opened, he remained committed to his own model of instruction, which was unlike any other school in Canada, and refused to compromise his vision. While some have claimed that this refusal to compromise was largely responsible for his school’s closure in 1867,¹⁶⁰ to do otherwise was not really an option, given Bibaud’s resistance to criticism and apparently unwavering self-assuredness. Thus, it does no good to blame the school’s failure on Bibaud’s character, as it was this same character that drove him to found such an innovative and

times afterwards (1868, 1869 and 1871).

¹⁵⁸ Laboulaye, 73-74.

¹⁵⁹ Desjardins, 96.

unconventional school in the first place.

IV. Bibaud and The Law

Bibaud's approach to the law

For Maximilien Bibaud, law was “une des branches les plus importantes des connaissances humaines”¹⁶¹ and Roman law represented the most perfect example of this area of human understanding that the world has known, both for its simplicity and for its universality. He described Roman law as almost divinely inspired.¹⁶² However, he believed that Roman law could not simply be transposed onto Lower Canada, taking the role of law of the land, given that the law develops from the circumstances in which it finds itself. This is reflected in Bibaud's approach to teaching, as he begins by teaching his students “la législation qui est à peu près la même chez tous les peuples civilisés” – that is to say, Roman law, and then turns to the specific laws of Lower Canada.¹⁶³ In this way, the student would understand the principles underlying the law before wrapping his head around the application of these principles to specific contexts.

Legal education in the *École de Droit* was always completed with a goal in mind, and Bibaud never lost sight of the fact that his students were coming to him as one step toward their eventual goal of becoming lawyers or notaries. He believed that the law could not be understood based on theory or practice alone, but required an understanding of both elements. This was reflected in his insistence that his students attend bar examinations, his recommendation that they

¹⁶⁰ Lortie, 531.

¹⁶¹ Bibaud, *Commentaires*, 4.

¹⁶² *Ibid.*, 221.

¹⁶³ Bibaud, *Notice*, xv.

visit the courts as often as possible,¹⁶⁴ and his support for the *Institut des Lois*'s mock-trials.¹⁶⁵

Thus, while Bibaud valued the contribution of the Romans, and suggested his students read them in the original Latin to truly understand them, he was also aware of the practical aspects to the law.

Bibaud and International Law

In his *Commentaires sur les Lois du Bas-Canada*, Maximilien Bibaud devotes a portion of his section on contracts – fewer than ten pages in all – to international treaties, which he characterizes as contracts between nations. Legal scholar Ronald St. John Macdonald has looked at this admittedly small contribution as remarkable in and of itself, marvelling that anyone in 1850s Lower Canada was turning their mind to issues of international treaty making and breaking.¹⁶⁶ While this is true, it does not fully encapsulate Bibaud's relation to international law.

It is important, when looking at his writing, to consider the intended audience. This book was written at the behest of his students, to help them with their studies. It was intended as an elucidation of the very confusing laws of Lower Canada, not as a treatise on international law. Given Bibaud's insistence on the practical aspects of the law, and his awareness of the constraints of having a two-year program,¹⁶⁷ it is reasonable to believe that Bibaud would restrict himself to those matters that he felt would be most relevant for his students. Bibaud believed that he was teaching the future elite of Lower Canada, and as such he would want these men to have

¹⁶⁴ Bibaud, *Commentaires*, 14.

¹⁶⁵ Bibaud, *Supplement*, LXIX.

¹⁶⁶ Macdonald, 733.

a basic understanding of treaties. While this was unusual when his school was founded in the 1850s, in 1866 the General Council included international law in the list of testable subjects for bar admission.¹⁶⁸ It is unclear whether this was because of Bibaud's influence, or if Bibaud just anticipated a trend in Canadian law.

Before going on to consider Bibaud's actual writing on international law, I will first point out that although this writing only touches on one small part of international law, that does not necessarily mean that Bibaud only considered that one small part. For example, American books on international law written during Bibaud's lifetime devote a section to maritime law.¹⁶⁹ Bibaud himself only mentions maritime law in his writing, if only to say that it is not yet developed enough in Canada to be the subject of instruction.¹⁷⁰ This suggests that Bibaud had turned to his mind to the issues at hand before reaching that conclusion, and that if he had judged maritime law to be sufficiently developed to be useful for his students, that he too would have discussed it.

International Law in *Commentaires sur les Lois du Bas-Canada*

Likely aware that his discussion of international law was unusual, Bibaud began his section on treaties by explaining Lower Canada's long history of treaty-making, despite its colonial status, as the Aboriginal people that settlers encountered were considered as legally sovereign:

¹⁶⁷ Bibaud, *Commentaires*, 13.

¹⁶⁸ Macdonald, 741.

¹⁶⁹ For example, Henry Wheaton, "Maritime territorial jurisdiction" in *International Law: With a Sketch of the History of the Science* (Philadelphia: Carey, Lea & Blanchard, 1836) and Francis Wharton, "Right to sea and river" in *Commentaries on Law, Embracing Chapters on the Nature, the Source, and the History of Law; on International Law, Public and Private; and on Constitutional and Statutory Law* (Philadelphia: Kay and Brother, 1884).

Cette matière [international law] n'est point aussi étrangère au Canada qu'on pourrait se l'imaginer. Dans les lettres patentes de Vice-Roi d'Amérique accordées en 1655 par Louis le Grand, au duc d'Amville-Ventadour, il lui est permis "de traiter et contracter telles paix, alliances et confédérations, bonne amitié, correspondance et communication avec les dits peuples, leurs princes ou autres, ayant pouvoir ou commandement sur eux, garder et soigneusement observer les traités et alliances, don't vous conviendrez avec eux, pourvu qu'ils y satisfaisent de leur part." Les peuples sauvages don't il s'agit traitaient avec les droits souverains, et y mettaient de plus nombreuses solennités que les peuples policés de l'Europe, à défaut d'écriture. Les Gouverneurs et Lieutenant-Généraux, de la Nouvelle-France, continuèrent à exercer les mêmes pouvoirs que les Vice-Rois d'Amérique, à raison de l'éloignement du foyer de l'empire.¹⁷¹

By presenting treaty-making as something that is familiar to Quebecers, and that the colony's elite have always done and will continue to do, Bibaud demonstrated its real-world practicality to his readers.

Bibaud's approach to international law was very practical, addressing potential concerns of lawyers who would deal with such contracts. While other Canadian law books addressed international law only in the vaguest of terms, for example as countries' "obligation mutually to practice towards each other honesty and humanity,"¹⁷² Bibaud tackled the concrete issues of treaties: who has the authority to make treaties,¹⁷³ what is the difference between accords and conventions and treaties,¹⁷⁴ what is the effect of an unfulfilled term on a treaty,¹⁷⁵ what is the effect of a change in government on a treaty,¹⁷⁶ etc. Considered in this light, it is clear that Bibaud's writing on international law fit into his more general goal of preparing his students to take their place as the elite of Lower Canada.

¹⁷⁰ Bibaud, *Notice*, XXI.

¹⁷¹ Bibaud, *Commentaires*, 214.

¹⁷² Doucet, 11.

¹⁷³ Bibaud, *Commentaires*, 215.

¹⁷⁴ *Ibid.*, 215.

¹⁷⁵ *Ibid.*, 219.

Bibaud chose to illustrate the rules of international law by drawing on historical, rather than contemporary, examples. For instance, he referenced a treaty between France and Russia during the time of Napoleon as an example of limited negotiation mandates;¹⁷⁷ a treaty between Hannibal and Philip of Macedonia as invoking the gods of both cultures;¹⁷⁸ a treaty between the Romans and Carthaginians as an example of an unequal treaty;¹⁷⁹ a treaty whereby Louis XIV refused to recognize William of Orange as the British monarch as a personal treaty;¹⁸⁰ and a treaty between American rebels and England as an example of a treaty made by army generals.¹⁸¹ There are several possible explanations for this choice.

It is possible that Bibaud limited himself to historical examples because that was what he was most comfortable with. After all, he identified history as one of the four fundamental elements required to understand the law.¹⁸² It is also possible that he did this because he believed that his readers would be more familiar with historical examples than they would be with current events. Another possibility is that Bibaud took these examples directly from his sources, rather than coming up with them himself, and he chose to simply copy their examples. Whatever the reason, his choice of historical examples does suggest that international law was not in fact one of Maximilien Bibaud's main interests. Rather than engaging with the material and applying it to events from his own lifetime, he used historical events to illustrate the rules that he discussed.

¹⁷⁶ *Ibid.*, 218.

¹⁷⁷ *Ibid.*, 216.

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*, 217.

¹⁸⁰ *Ibid.*, 219.

¹⁸¹ *Ibid.*, 219-220.

¹⁸² *Ibid.*, 4.

Conclusions

Maximilien Bibaud was born on 23 October 1823 in Montreal. He never attended law school, and instead learned about the law from books and from working at the law offices of Joseph Bourret and Toussaint Peltier. Immediately upon being admitted to the bar, he resolved to teach law, founding the first French language law school in Montreal between 1851-1852, at the age of twenty-eight. He then worked as the first full-time law professor in Lower Canada until legislative changes to bar admissions effectively forced him to close his school in 1867, at the age of forty-four. After having lived a very public life to that point, writing many books and articles in law, history, and other fields, Bibaud then retreated from the public eye for the last twenty years of his life. He died in Montreal on 9 July 1887 at the age of sixty-four.

His frequently off-putting defensiveness and his vanity can easily obscure his impressive accomplishments. As well, though he was a significant legal figure of his time, his public opposition to two significant legal reforms, that of bar admissions and the codification of the law in Lower Canada, put him on the losing side, historically speaking. Moreover, although his school operated for fifteen years, and boasted many satisfied graduates, when Bibaud retired from teaching the school closed, and his German-influenced model of teaching was not adopted by any other Canadian law school. Thus, it may be tempting to view Bibaud as simply a “blip” on the screen of Canadian legal history. However, to do so would deny him his rightful recognition as a significant figure, despite his many professional failures.

Maximilien Bibaud was a prolific writer at a time when there was little legal scholarship going on in Lower Canada. He demanded excellence of himself and of others, and was not afraid to let people know when they fell short of his standards. His progressive approach to teaching at

his *École de Droit*, not only in style but also in content, particularly in his inclusion of international law at such an early date, contrasts with the legal conservatism that marked his other forays into public life. In the end, Bibaud is a significant figure in Canadian legal history, and ought to be recognized as such.