

EXSILIUM TACUITACITUM:

THE

UTOPIA

AND

ISOLATION

OF

MAXIMILIEN BIBAUD

BY

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~ **Épître ou Præmium** ~

TO ALL THOSE INTERESTED IN THE HISTORY OF LAW IN CANADA

Messieurs; Mesdames;

I have set myself the arduous task, albeit in an unofficial capacity, of recounting an enigmatic figure in Canadian legal history. A veritable Don Quixote of letters rather than lovers, Maximilien Bibaud devotedly pursued with exquisite tenacity both the development of jurisprudence in pre-Confederation Lower Canada and his own self-aggrandisement before his peers. At once a pioneer of legal education and equally a promulgator of vain self-promotion, these twin passions of Maximilien Bibaud formed an inextricable nexus; at times synergistic, at others self-defeating. It is rather fitting, I assure you o reader, that this *homme illustre de notre histoire* left an indelible footprint in the history of this country but without the notoriety or, dare we say it, prestige that usually accompanies contributions of his sort.

It has been well over a century since the passing of Maximilien Bibaud in 1887, ample time for his life and writings to be visited by many commentators. While surely the complexity of Bibaud's life and writing provide considerable sustenance to the inquisitive *raconteur*, that which has already been written about the man has uncovered the facts of his life, the achievements of his endeavours, and intricacies of his writing. This essay attempts not to retell that which has already been written by scholars more competent than myself. Rather, it is a reflection on the man who was unwittingly ahead of his time by adamantly focusing on the lessons of the past. It is an inquiry into the man that was to some a pioneer, to others a troublesome vestige, but to all a formidable advocate and intellectual presence.



~ Prolegomena: l'homme et l'intellecte ~

Born in Côte-des-neiges, Montréal on October 23, 1823, François-Maximilien Bibaud entered life in what was emerging as the epicentre of Canadian industrial and commercial development. He lived during a time of great social unrest and reform in Lower Canada, for French custom was increasingly subject to British rule and the gradual transition between sovereigns caused incessant friction. It was a transformative era of remarkable institutional change. Indeed, the political changes witnessed by Bibaud are still guiding this country today. In many ways, the tumult, grandeur, controversy and accomplishment of Bibaud's Montréal mirrored well the internal dynamics of our protagonist's life itself.

Though there are many questions and contradictions surrounding Bibaud's life, what is clear is that he was a man of great erudition and intellect, an academic *tour-de-force*. We need look no further than Bibaud's entrance examination for admission to the bar, for which he had prepared an abridged version of Blackstone's *Commentaries of the Law of England*, a clarification of the custom of Paris with his own commentaries, a translation of Justinian's *Institutes*, as well as a weighty volume entitled "Traité de Droit" on agreements and contracts. According to *Mélanges Religieux*, a periodical of general religious news, *M. Bibaud a été dernièrement gradué avocat après un examen qui, nous assure-t-on, lui a fait la plus grand honneur.*ⁱ As Bibaud further recounted himself, "it was an outstanding examination in which I made my scholarship manifest."ⁱⁱ This self-congratulatory tone was his flamboyant signature.

Like many of his peers, Bibaud underwent classical schooling at collège de Montréal and later entered the Grand Séminaire in 1843 to undertake theological studies. Despite this rather common academic path, Bibaud managed to distinguish himself in large part thanks to the influence of his father, Michel Bibaud, who set the boy's academic inertia in motion at a very young age. Michel Bibaud was a high-standing intellectual in French Canadian society. A journalist and publicist, historian, magistrate, and teacher, Michel was a veritable presence in the Montréal of his day, educating to name but two of his students Louis-Hippolyte Lafontaine and Auguste-Norbert Morin.ⁱⁱⁱ As all good fathers try to do, Michel Bibaud assured that his son was not denied the very opportunity that he had been forced to abandon; for despite his ardent desire to attend school, poverty had dictated that Michel stay at home and work on his family's farm until he turned 18 years of age.^{iv} Bibaud père took personal responsibility for his son's education from a very young age assuring that he missed not a beat in his academic formation.

Maximilien Bibaud's early studies and submersion in his father's voluminous library were influential in the formation of his encyclopaedic knowledge. He was widely read, fluent in French, Latin and English (though not German as some have surmised),^v and had unscrupulously devotional working habits. His intellect was certainly the ability in which Bibaud felt most confident and for which he was subject to the praise of others. We need not guess that Bibaud's outrageous self-confidence was due largely to his capacity as intellectual. The impressiveness of his performance at his bar examination, the culmination of a four-year tutelage under Toussaint

Peltier, the first Batônnier of the Bar of Lower Canada, was surpassed by the fact that Bibaud began the full time teaching of law at his newly established École de Droit less than a month later! As a young man of 28 years, Bibaud demonstrated great intellectual confidence in opening the first law school in Canada.

Bibaud's works, ranging from law to philosophy and, in the latter years of his life, history are considered landmarks in the history of intellectual development in French Canada.^{vi} His *Commentaires sur les lois du Bas-Canada*, published in two tomes in 1859 and 1861 at the behest of his students in order to complement Bibaud's exclusively oral teaching method, is the only systematic exposition of the law of Lower Canada before its codification in 1866. It is well worth comparing the eight years of work, albeit part-time, of the three eminent drafters of the *Civil Code of Lower Canada* to the few years it took Bibaud to write his *Commentaires* while teaching full-time.

The École de Droit at Collège Sainte-Marie was Bibaud's crowning achievement, a source of pride and a labour of devotion. The founding of the school in 1851 with the support of prominent individuals such as George-Étienne Cartier, Auguste-Norbert Morin and Côme Séraphin Cherrier,^{vii} was both a reaction to counter developments at the English and protestant McGill College as well as to advance Catholic teaching at the university level. The Jesuits had already begun construction of the Collège Sainte-Marie for such a purpose and Bishop Bourget was swayed to allow Bibaud to house his law school in their new institution.^{viii} Changes to the structure of the Bar of Lower Canada upon its incorporation in 1849 that allowed students at an accredited college to examine for the bar two years earlier than if they had not attended aligned with the interests of the Catholic elite in maintaining its numbers in an increasingly English Montréal. This translated into significant support for the founding of Bibaud's institution.

Though a different set of converging factors would prompt the closing of Bibaud's École de Droit sixteen years later, his tenure at the helm of the school provides us rich material with which to gain some insight into this mysterious man of letters. The success of his institution^{ix} was the personal triumph of Bibaud, and its demise likewise his personal failure, for the École de Droit and its founding teacher were inextricably one and the same. Bibaud was a one-man-show and, with the exception of two practitioners brought in to teach procedure and preparation for the Chamber of Notaries, did all the teaching at his school. Indeed, Bibaud did not just teach the law but rather passed on his vision of the law, something that no one else could do in his place - at least not to his satisfaction.

Bibaud took to heart the interests of the École de Droit and knew how to defend them with persistent resolve. He would often write letters to the Bar or Chamber of Notaries in response to internal changes that he deemed opposed to his acquired privileges. His letters took the form of complicated dissertations on the interpretation of proposed texts of the law, and *le tout basé sur un principe émis par Merlin, et sur des adage de droit romain, avec citations des juriconsultes Gaius et Paulus!*^x Bibaud equally defended his students with great loyalty. As Macdonald notes:

For example, on May 9, 1862, he writes to *Le Colonisateur* about the Bar's refusal to allow one of his students to write the examinations because he was a few days short of the required twenty-one years. Bibaud raises the question of whether the Bar Committee was a judicial body and he threatens it with a writ of mandamus. The following year, on February 6, 1863, he writes a blistering attack on the Examiners' Committee for refusing to admit to practice one of his students on benefit of the doubt where the committee was split three to three and only three signatures were required.^{xi}

Bibaud's pride extended well beyond the realm of his personal achievements. For a remarkably apolitical person, he did not hesitate to sound the bell of national pride and expound the eminence of Canadian society. In commenting on the impressiveness of Chief Justice Sewell's pamphlet on the Origin and Progress of French Law, he insists *puissions-nous, dans le cours de nos conférences, trouver parfois l'occasion de réveiller des gloires muettes de notre pays! Le Canada a eu des hommes transcendans comme les autres pays.*^{xii} During his full-time tenure as *professeur-en-chef*, Bibaud published a 400-page work devoted to such transcendental men, the *Dictionnaire historique des hommes illustres du Canada et de l'Amérique*,^{xiii} the pages of which he no doubt believed his legacy would grace in later editions.

But in order to truly understand Maximilien Bibaud it is critical to understand who he was not, for it is against the backdrop of his contemporaries that his personal qualities jump to life. In mid-nineteenth century Québec, the élite of the French Canadian legal profession were entrepreneurial and pragmatic. Individuals such as Chief Justice Lafontaine, Attorney General Cartier, or civil law codifiers René-Édouard Caron and Auguste-Norbert Morin were powerful figures in politics at the bar and on the bench. They were willing to strike compromise between traditional French customary law and capitalist principles, particularly freedom of contract and English property law.^{xiv} Bibaud's contemporaries were capitalists active in many of the great infrastructure projects of the day. They were landowners, speculators and, ultimately, sensitive to the demands of the Anglophone minority.^{xv}

Bibaud, on the other hand, was uncompromising and unapologetically so. He derided the intrusion of English law into seigniorial land tenure and customary usages.^{xvi} While his peers endeavoured in the fields of politics and commerce, Bibaud worked diligently on the theoretical development and reform of the law in Lower Canadian with an emphasis on its historical continuity. The other bar élite, meanwhile, had recognised in the aftermath of the 1837 Patriote revolts that compromise with the British rule was the road best taken and sought to further the interests of French Canadian society under this paradigmatic approach.

Bibaud, on the other hand, was a man of unflinching principle. This quality contributed to his success as a fierce advocate, but it was at the same time a glaring Achilles' heel in a time of social change and political turmoil in Québec.^{xvii} Bibaud did not venture often into the political debates of his time, remaining noticeably quiet for an outspoken man. His lack of political engagement may have owed to the influence of his father, who had maintained a neutral and independent spirit during the tumultuous days before Union.^{xviii} It is equally possible that the

uncompromising Bibaud abhorred the developments around him to such a degree that he dared not enter the fray. Bibaud was hostile to Confederation and to many other political developments, but he saved his intellectual capital mainly for the sphere of law.

~ **Modus Totus: une approche intégrée** ~

But what truly set Maximilien Bibaud apart from his contemporaries was his approach as legal theoretician and teacher of law. Bibaud's understanding of law, as expressed through his writing and teaching style, was one of fluid dynamism, a narrative of sources linked through fundamental underlying principles. He sought not to reduce and relegate different subjects of law to their discrete compartments but rather to discover the unifying elements between them, the general principles of universal application. His was a dialogical approach, one focused on oral rather than written engagement. It flowed from the pages of history and philosophy but was not relegated to antiquated sentimentalism. Bibaud's approach to law inextricably wed pragmatism with principle.^{xix}

The significance of Bibaud's approach must be understood from the viewpoint of the legal practitioner of mid-nineteenth century Québec. The state of the law in Québec before its codification in 1866 could only be described as chaotic. As St. John Macdonald illustrates for us:

The student of law, and indeed the practitioner as well, was obliged to consult innumerable time-honoured authorities from metropolitan France, together with commentaries, as well as the prescriptions of Roman Law, English common law, commercial law, and criminal law, the statutes and case law of Lower Canada, and a little later, the Napoleonic Code.^{xx}

Bibaud subjected this veritable “Babel légale”^{xxi} to a holistic, or what we would call today multi-disciplinary, methodology. The study of law at the École de Droit was not concerned with mastering the piecemeal authorities that the practitioner would have needed to know in court. According to Bibaud, *le droit moderne, sous le double rapport de sa théorie et de son administration, étant devenue un art autant qu'une science, son enseignement doit être à la fois historique, méthodique, philosophique, et pratique.*^{xxii} The art of law was what students needed to master in order to navigate the shifting sands of the jurisprudential landscape of Lower Canada, and it was this that Bibaud attempted to empower his students with.

To this end, Bibaud fashioned his school to be a great debating society, *une véritable société de discussion.*^{xxiii} Following the examples of the German universities in Bonn and Leipzig, the École de Droit promoted academic openness and discourse, an environment where students could pose any and all questions to challenge the prevailing wisdom. Bibaud's lectures were a dialogic rather than didactic affair, closer akin to a winding narrative than a bullet point checklist. This was the way in which Bibaud conceptualised the law, and it was how he forced his students to engage in their studies. The goal of the German model was not the simple

transmission of a definite body of accepted truths, but rather the independent acquisition and augmentation of knowledge.^{xxiv} The approach was not without its shortcomings. His students, for example, campaigned Bibaud to put his lecture material into written form to help them understand the material better.^{xxv}

Further following the German model, Bibaud's students were not required to sit written exams but were obliged instead to participate in weekly, and later monthly, *repititorium*, in which students had to discuss legal topics and respond to questions from the professor or visiting legal professionals.^{xxvi} This interactive forum was important for learning the art of law as it turned the focus of the student away from the written word and towards the fluidity of oration. Though this method of revision had practical benefits for students when doing their oral, entrance examinations to the Bar,^{xxvii} the underlying logic of the practice was far from results-oriented.

Written exams would have been incongruent with the manner in which Bibaud presented and taught the law as he understood it. He had created a theory of how best to train lawyers for their profession. In addressing his students, he asserts that *quand vous aurez assez obtenu les études théoriques le degré de préparation suffisant, il sera de vous préparer à la vie réelle.*^{xxviii} The École de Droit trained legal theoreticians because they were, according to their *professeur-en-chef*, the individuals best suited for practice in a polyjural Québec.

One might hazard a guess that given the disorderly state of the law in Lower Canada, that the dialogic approach espoused at the École de Droit was a necessity and that Bibaud's methodology reflected the demands of the legal community. However, the École de Droit stands out from other law schools of its time as a unique model of professional formation. At McGill University, students wrote written exams in classes *plutôt calqués sur Blackstone que sur les lois françaises en force en Canada*. The teaching at McGill was in the magisterial style, a didactic lesson to be remembered, studied, and catalogued for future recitation, much like many classroom approaches today. Bibaud's course was comparative in nature, dialogic in style and oral in delivery.

This holistic perspective becomes evident when one reads in his criticism of Laval University's curriculum that offered both a course in civil law as well as a course in Roman law. He criticised what he saw as an arbitrary distinction between the two subjects which he believed was wholly artificial, and worse, uselessly repetitive!^{xxix} *Les obligations sont enseignées par le professeur de droit civil, puis par le professeur de droit romain, sans trop de concordance dit-on; or, les obligations et les contracts sont purement de droit romain et non de droit coutumier, par lequel on doit entendre notre droit civil.*^{xxx} Bibaud saw the historical continuity linking the two subjects, choosing instead an integrative approach that taught the fundamental cornerstones of Roman law as they support the edifice of current civil law.

The most distinguishing characteristic of Bibaud's approach was his enormous love affair with Roman law. From his translation of Justinian's *Institutes* during his tutelage to his curriculum based on a firm foundational understanding of Roman jurisprudence, Bibaud's philosophy and approach to law exhibited the high esteem in which he held Roman law. Indeed, Bibaud was *bien*

prêt à dire avec d'éminens juriconsultes, que le droit romain est le chef-d'œuvre de la prudence humaine.^{xxx1} The Roman *juriconsultes* were the pre-eminent jurists because they were first and foremost philosophers.

But the emphasis on Roman law was not a freestanding obsession, an isolated fetish that satisfied its desirer. Roman law was critically important to Maximilien Bibaud because it provided the continuity and coherence to his holistic understanding of the law as well as facilitated the amalgamation of different legal doctrines and sources over time and across disciplinary space. Bibaud's devotion to the principles of Roman law allowed him to see through the morass of mid-nineteenth century Québec law to convey logical coherence to his students and readers. Justinian's *Institutes* provided him the gold standard from which all other legal propositions were to be evaluated.

To Bibaud, less was more. At a time of a dizzying array of legal sources, he endeavoured to simplify as much as possible. He believed that it was precisely because law could be simplified to a great degree that it stood as one of the most important human sciences.^{xxxii} Meanwhile, he disdained the needlessly complicated state of the law in Québec and criticised the legislators who obfuscated the scene with a prolific number of new statutes each year. *Dans les pays soi-disant libres, le législateur ne suit aucuns principes et ne s'impose aucune borne.* How could one teach the black-letter law when each year the legislator passes three hundred new statutes?^{xxxiii} Bibaud's unique approach solved this byzantine task.

It was in Roman law that Bibaud searched for the general principles of law, because as he put it, *la législation romaine, presque toujours si conforme au droit naturel, ayant acquis une autorité plus ou moins étendue chez tous les nations civilisées de l'Europe et de l'Amérique, il s'en est suivi une ressemblance prononcée dans leur législation.*^{xxxiv} Yet at the same time, Bibaud did not purport to teach Roman law as positive law, recognising that there was much in Roman law that was appropriate only to antiquity and that could have no application in contemporary society.

The curriculum of the École de Droit gives one an understanding of how Bibaud integrated an obsession with the principles of the past into a pragmatically functional modern approach. His two-year program was divided into four units, beginning with the history of law and covering Roman law, Anglo-Norman law, French law, and Canadian law. Bibaud would then teach his students general principles of law under five subsections: terminology, methodology, legislation, obligations and contracts. Next, students would be exposed to the common laws of Canada, *telles qu'amendées par les Ordonnances des rois de France enregistrées dans le pays, et par leurs statuts impériaux ou provinciaux, avec leur comparaison avec les lois commune d'Angleterre.* Finally, the last unit of instruction dealt with the most contemporary of subjects, procedure.^{xxxv} His curriculum moved from the past to the present, from the underlying universal principles of law to the specifics of Québec law. It was a natural progression that allowed horizontal and vertical integration of the heterogeneous system with an emphasis on the history and philosophy of its progression.

Bibaud's approach to teaching law differed from the other law schools. The dialogical form in which he taught was very much the way mid-nineteenth century Québec jurists conceptualised the subject of their profession. As David Howes argues, the legal culture of Québec before codification of the civil law was predominantly oral. The Code was at once the expression of this oral culture and the means with which it was transformed into a written culture.^{xxxvi} The *Civil Code* could thus be understood as a transcript of the legal dialogue of the time, a snapshot of the dynamic jurisprudential landscape. Teaching in the dialogical form was a natural extension of the legal culture of the time.

To give an example of the legal culture's logic, in 1872, Edouard Beaudry published *Le Questionnaire Annoté du Code Civil du Bas-Canada*, in which he transcribed the articles of the Code into a question and answer format, with each answer roughly paraphrasing the text of the article. As he explained, *j'ai préféré cette reproduction textuelle a fin de ne pas courir le risque de dénaturer le sens de la loi.*^{xxxvii} In other words, Beaudry was paraphrasing the text of the Code so that it wouldn't lose its meaning! As Howes points out, this appears to be a perfectly nonsensical exercise to the modern jurist, yet the strategy makes sense when one accepts that the audience of the time was most familiar with the dialogical presentation of legal discourse.^{xxxviii} The transformation of Québec's legal culture into a textually focused one didn't occur with codification, but some forty years later.^{xxxix} This may help to explain why so few lawyers, judges and law professors chose to comment on the draft versions of the Code at the time of its codification;^{xl} to them, codification was not a project of grand reform, rather one of cataloguing and organising the existing law.

In adhering to an understanding that was coherent and ensured continuity with the prevailing legal paradigm, Bibaud's school was a considerable success. It also facilitated an aspect of Bibaud's work that has until now gone undetected by legal historians; namely, Bibaud's inclination to the utopian form.

~ Jus Gentium: l'utopie, l'universel ~

Maximilien Bibaud is celebrated as the first full-time teacher of international law in Canada.^{xli} Under the title "*Des contracts entre Nations, ou Traités*", a finale to his materials on contract law, Bibaud explores the similarities between treaties and the civil law contract. He comments on the duration and validity of treaties, the powers of agents of sovereigns, and the division of treaties into those that affirm the natural rights of states from those that create positive rights *inter se*. With regard to the latter class of treaties, Bibaud further divides them into equal and unequal treaties, discussing the legal positions of two sovereigns exchanging asymmetrical promises, such as conceding a province in vassalage. His materials on international treaties refer to classical writers such as Grotius, Vattel, Mendelson, de Martens, and Moser.^{xlii} Bibaud's

exposition on treaties reads more like a hodgepodge of secondary sources than a well-developed theory on the law of nations.

It was the mere fact of its inclusion, and not the innovation of the analysis, that distinguished Bibaud's teaching of international law. As St. John Macdonald points out, the great wonder is that anyone in the Canada of 1851 was thinking about the technical aspects of treaties. What kindled Bibaud's commitment to public international law?^{xliii}

To be fair, one would be hard pressed to call Bibaud's treatment of international law a commitment. The materials devoted to the law of treaties occupy a piddling six pages in a double tome of some six hundred pages in length. Bibaud certainly did not dedicate much of his time to the problems of international law. Nor did he write extensively on the major incidents of his time. He makes no reference to the *Caroline* incident, the War of 1812, the French interventions in Mexico on behalf of the papacy in the 1860s, or the declaration of independence issued by Robert Nelson in 1838, declaring that Lower Canada had seceded British rule and become a republic.^{xliv}

What Bibaud did write on international affairs seemed less concerned with the law and more with the competency of public officials. Bibaud's *L'Affair St. Albans*, on the handling of Confederate agents harboured in Canada suspected of sacking the northern city, reads more like a condemnation of the politicised judiciary and police forces than an analysis on the legality of extraditing the wanted men. Though his argument centres much on the status of the men as agents of a warring state and not as common robbers, the venomous tone of the *œuvre* condemns what in his view was the incompetence of a politically motivated justice Smith.^{xlv} The international legal argument was but his *modus operandi* for condemning the judge.

The question remains, then, as to what motivated Bibaud to teach his students public international law. The most likely explanation is that the subject was simply pertinent to life as a lawyer and *savant*; all educated men ought to have at least a basic understanding of international law. *Cette matière n'est point aussi étrangère au Canada, qu'on pourrait se l'imaginer*, as he put it in introducing the subject.^{xlvi} Beyond this, Bibaud's intentions will remain the subject of speculation. His preoccupation with treaty law was tangential at best, an extension of contract law into the realm of sovereigns.

Irrespective of these empirical facts, Bibaud had more in common with public international law than what his writings on the subject would suggest. It is in his universalist approach and dialogical form that Bibaud's legal scholarship aligns himself with the likes of some international lawyers. It was the manner in which he crafted his legal universe that lends resemblance to the spirit of a modern international legal discourse. Specifically, it was Bibaud's inclination to crafting a utopian legal world and to rely on the utopian form that qualifies him as a fledgling member of the international legal community.

The utopian form is not characteristic of all panoply of international legal voices, but it does reflect a distinctive hue in the broad spectrum of approaches to international law. Far from the realist apologetics of consent-bent scholars, the utopian form has been used by some to promote the emergence of an international legal community unified by more than the mere consent of states.^{xlvii} It is a progressive and imaginative form of argument, one that relieves the interlocutors from the confines of the traditional consent-based paradigm to open the door of previously unavailable possibilities.

Bibaud was no overt utopian. He did not intend to invoke the literary style that suggests the satire of Sir Thomas More or revolutionary zeal of Karl Marx. Nevertheless, Bibaud's obsession with Roman law, his deference to the philosophical Roman *jurisconsultes*, the manner in which he measured the adequacy of modern law from the gold standard of Justinian's *Institutes* were all hallmarks of a unique utopianism that Bibaud unwittingly and unremittingly disseminated. Bibaud created an ideal archetype of the just society, a place where rationality and logic prevail, where simplicity not complexity were the order of the day, and he used this archetypical society as a heuristic device in order to promote change along these idealised lines in mid-nineteenth century Québec. Bibaud's penchant for the utopian brings him within the *esprit* of an international legal dialogue that he never knew in his lifetime but is present in the scholarship of today.

Utopias try to represent the “ought” that never “is”; utopia is nowhere, not only geographically but also historically, existing neither in the past nor in the future.^{xlviii} Though Bibaud focused on the legislation of the Roman Empire, it would be erroneous to say that his legal vision was an historically accurate portrayal or even a desire to return to the pages of Roman history. His was a modified Roman legal order, adapted to the exigencies of post-Union Canada. Bibaud's utopian archetype was in many ways a pragmatic affair, shedding the aspects of Roman law that no longer applied to modern life, such as the doctrines on slavery or *manumission*.^{xlix} He was interested in Roman law as a potential source for living law, not for its old juridic institutions. Bibaud's utopian paradigm was a classically possessed creation unto itself.

Given Bibaud's early and thorough classical education under the watchful minding of his father, it is understandable that he identified deeply with Roman times. In nineteenth century Lower Canada, nothing separated the educated class from all the others more definitely than the possession of a laboriously gained classical education. Inasmuch as his utopia was built on classical lines, it expressed the values and concerns of his intellectual identity.^l Bibaud's identification with the *jurisconsultes* of Rome was both a source of principled legal thought as well as a fundamental statement of personal belonging; for he felt the most solidarity with his brethren of a different era, an era based on historical fact but largely a product of his own fiction.

Beyond the substance of his utopian model, Bibaud's dialogical style mirrors well many facets of the utopian form. Utopia is a mode of narrative, a “speaking picture.”^{li} This “speaking picture” may resurrect a good historical society that has been in ages past and should be again.^{lii} Bibaud's oral teaching style and focus on debate rather than text facilitated such historical-legal narratives

in his classroom, as well as in his written work. It was a form that fostered critical comparative studies and forced his students to contemplate different “speaking pictures” of the ideal world. In so doing, Bibaud prevented a monopoly on imagination that a static, comprehensive picture of an authoritative legal order might otherwise produce.^{liii}

The purpose of the classical utopia, such as Bibaud’s, was not a radical change in society but rather its coalescence towards a more rational archetype. As Frye argues,

[f]or More, or for Plato, Utopia is the kind of model of justice and common sense which, once established in the mind, clarifies its standards and values. It does not lead to a desire to abolish sixteenth-century Europe and replace it with Utopia, but it enables one to see Europe and work within it, more clearly.^{liv}

Bibaud used his modified Roman utopia as a heuristic device to promote what he deemed to be progressive change within Canadian society. He criticised the work of the codification commission for failing to adhere to the principles of Roman law. His journalistic writings promoted law reform along the same lines.^{lv} Bibaud did not teach the law as it existed in Lower Canada (though he certainly included it), but taught the law as it *ought* to be in Lower Canada. *[Nous ne sommes pas prêt à dire], avec Edmond Burke, que le masse des lois modernes est, malgré ses défauts, ses redondances et ses erreurs, la gloire de l’esprit humaine: on sent trop que le grand Burke était membre de la profession!*^{lvi} Bibaud was a reformer, cutting across the complex comparative legal landscape with a sword of universal principles. It was a way to simplify the law of Lower Canada and it was the method to his madness.

~ Incomitatus: l’insolent et l’isolé ~

Despite Bibaud’s achievements in the realms of teaching law and its doctrinal development, his achievements were shadowed by his personality. Bibaud was exceedingly vain, a relentless self-promoter who was covetous of others’ success. He was incapable of recognising his own fallibilities yet mercilessly cut down others for their shortcomings or for holding contrary opinions to his own. Much of Bibaud’s intellect and gift for oration was used up in his venomous attacks on enemies. He was flamboyant and authoritarian, the *professeur en chef* and defender of the École de Droit. Bibaud’s inability to compromise or adopt a conciliatory tone contributed significantly to his eventual ruin.

To get an understanding of Bibaud’s uncompromisingly uncouth style, consider the following warning that precedes his ‘critical’ review of M. Garneau’s book, *L’Histoire du Canada*:

Nous livrons au publique le présent opuscule, dans lequel nous avançons et nous prouvons qu’il ne peut être assigné aucun rang à l’œuvre de ce monsieur dans la république des Lettres.
1. Parce qu’elle décèle l’ignorance de plusieurs choses qu’il n’est pas permis à celui qui écrit l’histoire de son pays d’ignorer.

2. *Parce qu'on n'y découvre aucune des dispositions demandées à l'historien.*
3. *Parce que les infidélités y sont aussi nombreuses que les erreurs.*
4. *Parce que la grammaire n'y est pas respectée.*^{lvii}

Bibaud then goes on, under the subtitle “*Le Charlatanisme dans l’Histoire: M. Garneau et son incompétence comme écrivain*”, to tear apart the author with chapters on such subjects as mistakes of fact, unproven points, etc., using references to the impugned text to elaborate painstakingly detailed analyses. It is a representative work of how Bibaud used his intellect to shoot down others. Nothing short of slaughter would do. Bibaud was not afraid to lash out at others from the secure refuge of his mind, such exercises reaffirming his stature standing high above the rest, *le roi du château*.

Though quick to see the faults of others, Bibaud was blind to his own failings. To suggest that he had *any* would surely have been met by surprised indignation from the man. As the journal *le Nouveau-Monde* commented, *il est bien persuadé de sa science et l’infailibilité qu’il refuse aux Conciles et au Pape, il ne se fait aucun scrupule de se l’attribuer à lui-même.*^{lviii} Léon Lortie has suggested that Bibaud was his own credo,^{lix} and certainly he was. Bibaud compared his École de Droit to the law schools at Oxford, Cambridge and Temple Inn in that they too limited the number of professors to one or two per college. This, compared to the seven professors at Laval University or the many part-time professor/practitioners at McGill, seemed to him a clear explanation for the lack of success of these latter institutions!^{lx}

Bibaud was a hopeless self-promoter. He loved the spotlight and ensured that events at his law school were well documented by the press. The periodic *Repetitoria solonnel* held at the École de Droit helped satisfy this appetite for praise. The events featured distinguished guests as examiners and were open to the public. The *Repetitoria solonnel* came to be society events with members of the legal community, the clergy, and the public attending to witness what was often a debate on contentious issues of the day. The event was Bibaud’s opportunity to demonstrate the abilities of his students and the success of his teaching style and allowed him to bask in the fruits of his labour. Take, for example, the following quote from the *Montreal Herald*:

On Tuesday night the students at Law attending Professor Bibaud’s course of Lectures, underwent examination in the St. Mary’s College, before a numerous, and we may add, highly pleased audience. Amongst the number present were several members of the legal profession who seemed to take a warm interest in the proceedings. The knowledge evinced by the students of the higher branches of the profession, showed that they had not failed to profit by the Lectures of their learned Professor.^{lxi}

Above all, Bibaud jealously guarded the reputation and esteem of his École de Droit, for the man and the school were virtually inseparable entities. He would not tolerate being second best to the law schools at Laval and McGill universities, and would do whatever it took to maintain his institution’s standing in every regard. For example, in September 1854, Québec City celebrated the official inauguration of Laval University and to mark the occasion, the professors of the

founding faculties of medicine and law were bestowed with honorary doctorate degrees. This roused Bibaud's ire, enough to campaign the Jesuits to similarly honour the founding supporters of the *École de Droit*. Father Martin from Collège Ste-Marie convinced the Rector of Fordham University to offer honorary doctorates to Bibaud and his colleagues.^{lxii} A little over four months after the ceremonies at Laval University, the founders of the *École de Droit* at Collège Ste-Marie were bestowed with an honorary LL.D. Not surprisingly, in Québec *cette collation de diplômes fut interprétée plutôt comme un défi que comme un hommage*.^{lxiii} Indeed, such displays of petty jealousy were characteristic of the man's obsession and his base competitive nature.

Bibaud's animosity towards McGill and Laval universities cost him dearly. In 1861 the legislation governing the Bar of Lower Canada was amended, requiring students to have followed a course of study at an incorporated college or university where chairs in law had been established and to have attained a degree in law. When Mgr Bourget made unsuccessful attempts to affiliate the faculties at Collège Ste-Marie with Laval University, Bibaud flatly rejected any participation in the project, maintaining that a law degree was not necessary to be called to the bar.^{lxiv} Interestingly, shortly thereafter, Bibaud published his *Notice historique sur l'enseignement du droit en Canada* in which he writes solely of the history of his *École de Droit*, a work strategically excluding his rivals. With its publication, Bibaud's reputation in the legal community was quickly coming to its demise.^{lxv}

The closing of Bibaud's school in 1867 and his withdrawal from society were the product of many factors, but can generally be attributed to the enemies he made and his refusal to bend to anyone else's will. Bibaud was adamantly opposed to Mgr Bourget's plans to affiliate the *École de Droit* with Laval University or any other university. Amendments to the Bar Act and reforms to the bar's admission procedure in 1867 also had their deleterious effects on Bibaud. The amendments gave the Bar of Lower Canada the mandate to approve the curricula of law schools in order to qualify those schools to prepare students for the bar. It was almost certain that such powers would be exercised to coerce change in Bibaud's unique teaching approach and he was loathe to give anyone the satisfaction of compromising the integrity of his methods. Further, the reforms made the bar exams more seldom and much more difficult, reflecting a generalised complaint that there were too many lawyers crowding the profession. This change denied Bibaud of one of his pragmatic teaching methods, that of having his students watch others examine in order to prepare themselves for the experience.^{lxvi} Finally, the fact that Bibaud, who was indisputably the most experienced teacher of law in the province at the time, was not consulted on the reform of legal education in the province was an insult to his pride and a clear signal as to where he stood in the legal community.

But of all the factors that played a role in the undoing of Bibaud's teaching career, the most significant was that of a young and ambitious lawyer that had set his sights on the flamboyant and arrogant professor. Gonzalve Doutre, a brilliant protégé from McGill University, had to wait two years after graduating from the faculty of law before he could meet the mandatory twenty-one years required to be called to the bar. Doutre had single-handedly founded a young bar association,^{lxvii} called the *Institut des Lois*, which promoted the interests of his student peers. The

Institut organised public debates on contentious issues that mimicked a courtroom process in order to help aspiring lawyers train for their future at the bar.^{lxviii} Initially, Bibaud was highly supportive of the *Institut*, seeing his own spirit mirrored in the organisation's endeavours. In an address to the society in 1862, he comments:

...c'est la forme de vos exercices, et sur le point, je ne puis qu'applaudir, puisque moi-même, à l'École de Droit, j'ai pris l'initiative du genre de séances que nous avons vu ce soir... Vous me trouvez peut-être assez sincère dans mes aveux de pour me concéder le droit de vous suggérer de patroner aussi des rapports de causes intéressantes plus détaillés et plus soigneusement analysés que ceux que le Gouvernement publie à si grand frais.^{lxix}

Though Bibaud clearly saw his own genius in the works of the *Institut* and its leader Doutré, he would be certain to regret the praise with which he heaped upon the organisation. For the *Institut des Lois* did indeed act on Bibaud's words and published reports campaigning the bar for reform. The *Institut* demanded a more difficult entrance exam in order to limit the burgeoning number of lawyers in the province. This also put the organisation into direct conflict with Bibaud's institutional interests. It was quite apparent that though Bibaud may have seen a flicker of himself in the young protégé, Doutré saw Bibaud with nothing but contempt and indignation.

Thus began a very public and very personal war of words between the two that played out in the pages of *l'Ordre* and *le Pays* that supported the position of the *Institut*. Both men had the capacity to be outright offensive and used this gift with remarkable alacrity. Bibaud writes in a letter to *l'Ordre* in the fall of 1863, *Vous nous dites que le Barreau est rempli: ne l'était-il pas quand vous êtes fait admettre? Il y a sept à huit mois que votre feuille publie articles remplis d'impertinence, et cependant, n'y a-t-il pas un de vos écrivains (de l'Institut) qui veut plus tard se faire admettre avocat sans avoir réellement fait de cléricature?*^{lxx}

The personal attacks would continue between the two as Doutré, having entered practice, made his way onto the Bar Committee. Doutré was no political ingénue. While Bibaud continued to fire arrows from his *École de Droit*, Doutré was positioning himself within the bar's apparatus to push through the reforms that he championed. Of course, with his ascendance to power within the bar, Doutré used his position with acrimony and assiduity against Bibaud. In what was his final volley, Doutré writes in the name of the bar Examiners' Committee:

Depuis 1858 vous n'avez pas cessé, monsieur, de vanter votre système d'instruction légale, de le déclarer supérieur aux autres...Moi-même, malgré que vous ne fussiez pas présent à l'examen que j'ai subi, j'ai été l'objet de vos invectives et de vos insultes, pour avoir préféré une autre faculté à la votre... faculté dirigée par des professeurs qui occupaient alors et qui occupent encore les premiers rangs dans la profession, tandis que vous n'en occupez aucun, n'ayant jamais pratiqué.^{lxxi}

By this time, Bibaud had become completely isolated thanks to his voracious appetite for criticising others. Having been marginalised within the legal community, he received little

support from those who had originally lent their goodwill to his school. With the passing of the legislation to amend the Bar Act in 1867, Bibaud admitted defeat. In a final letter to Doutre, he claims *c'est ma première et ma dernière. S'il vous plaît d'écrire encore et que je ne réponde pas, ayez mon cher, l'indulgence de ne pas prendre mon silence pour un manque d'égards pour votre notable personne...*^{lxxii} Bibaud then announced in la *Minerve* his intention to quit teaching, a decision he claims to have made two years prior, in order to devote himself to 'special studies.'^{lxxiii} He alludes to 'other reasons' for his decision, but they remain unnamed. He remarks that an understanding of the complexity of his decision *pourra faire partie plus tard, d'une histoire spéciale de haut enseignement dans ce pays.*^{lxxiv} Though such histories have since been written, few have taken up Bibaud's final teaching days except in passing speculation; the mystery surrounding this enigmatic figure leaves much too much for conjecture. And so it will be, that his legacy will continue with an incomplete ending...

~ Consulo ~

Maximilien Bibaud was classically possessed yet remarkably progressive in many ways. An infallible arbiter to himself and a vain egomaniac to others, Bibaud was a *tour-de-force* in the development of law in mid-nineteenth century Québec. The sheer magnetism of his mysterious personality alone is enough to ensnare the curious reader of history. Yet his achievements are no less impressive than his flamboyant style, his writing on law, history and philosophy considered landmarks in the history of intellectual development in French Canada. Whether or not one agrees with St. John Macdonald, who argued that Bibaud "set the level for what could be done as full-time teacher, writer, scholar, commentator, and active reformer of the law,"^{lxxv} his influence in the realms of teaching law and jurisprudence was manifest.

The holism with which Bibaud approached the study and teaching of law helped bring order from the chaos of pre-codification Québécois jurisprudence. His was a historical and philosophical approach that sought to unify a comparative legal landscape through the fundamental principles that provide continuity across time and juridical space. His obsession with Roman law separated Bibaud from the rest of the legal community. The holistic comparativism expressed by Bibaud's methods was a throwback to a classical utopia, yet at the same time it blazed a trail well into the future. The founding of McGill's integrated curriculum in 1968 was seen by most as a modern anomaly in the teaching of law in Canada when in fact the program is more aptly described as an anachronism,^{lxxvi} the resuscitation of a teaching model championed over a century earlier.

Bibaud was indisputably the first full-time teacher of public international law in Canada. Yet it was his implicit use of the utopian form as the guiding vessel for his scholarship that brings him closest within the purview of Canada's international legal community. What he taught of international law was neither revolutionary nor reflected an original analysis of the subject; he

mainly recited what were likely secondary sources on the law of nations. But Bibaud's unmistakable Utopia, his modified Roman society, was a powerful device that international legal scholars today have harnessed for its fundamental quality of allowing imaginative openings in an otherwise stagnant discourse. Bibaud's utopian form made him a suitable pioneer for the teaching of international law in Canada.

In the end, Bibaud's independence cost him everything.^{lxxvii} He resisted any attempts by the Jesuits to affiliate his school with Laval University, even though this meant losing much of his school's relevance in a changing post-secondary educational environment. He loathed his rivals and missed no opportunity to expose their inferiority.^{lxxviii} It is fitting that for a man who conceitedly and indiscriminately criticised others, that he was ultimately undone by a protégé of his own image.

As his biographers André Morel and Yvan Lamonde say, "these few defects [in his personality] have to be disregarded in order to appreciate the value of an otherwise remarkable work, the only original, systematic exposition of the law in Canada East to be published before the codification of the civil law in the 1860s."^{lxxix} I would argue, however, that the influence of his work pales in comparison to the influence Bibaud had as the teacher of many prominent lawyers, politicians, professors and journalists who would themselves go on to contribute to Canadian society; four Lieutenants-Governors, a number of judges, provincial and federal ministers, senators, and members of parliament.^{lxxx} As Bibaud himself offered in his final adieux to the École de Droit,

Quand je vous retrouve dans les rangs de la Législature et de la Municipalité, dans les plus hauts grades de la Milice, dans les charges de Shérif et de Coronaire... Ainsi je vois tout en beau; cependant si, entre près de trois cents élèves, il en était qui n'eussent pas fait honneur dans la société à leur Alma Mater, que leur dirais-je, si ce n'est que c'est au jeune âge que fut départie la force d'âme, et qu'il est pour eux encore temps de frayer dans les voies du parfait honneur!^{lxxx1}



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- ⁱ Maximilien Bibaud, *Notice historique sur l'enseignement du droit au Canada* (Montréal: Perrault, 1862) at ix.
- ⁱⁱ André Morel and Yvan Lamonde, *Dictionary of Canadian Biography*, “Bibaud, François-Maximilien”, Library and Archives Canada, <<http://www.biographi.ca/EN/ShowBioPrintable.asp?BioID=39492>> (accessed March 20, 2006).
- ⁱⁱⁱ André Morel, “Maximilien Bibaud, fondateur de l'École de Droit” *Thémis: Revue Juridique* 1(1) (1951): 10.
- ^{iv} *Ibid.* at 9.
- ^v “Je tâcherai bien de me procurer et de lire les traductions de livres allemand, pour en savourer l'érudition” [emphasis added] see Maximilien Bibaud, *Commentaires sur les lois du Bas-Canada, Tome I* (Montréal: Cérat & Bourguignon, 1859) at 28. See also M. Dumais and S. Normand, *Le droit romain dans le droit coutumier du Bas-Canada selon François-Maximilien Bibaud* in Hermon, E. (ed). *La Question Agraire à Rome: Droit Romain et Société; Perceptions historiques et historiographiques* (Como, Italy: Edizioni New Press, 1999) who refutes such claims by R. St. J. Macdonald, “Maximilien Bibaud, 1823-1887: The Pioneer Teacher of International Law in Canada” *Dalhousie Law Journal* 11 (1988): 721.
- ^{vi} *Supra*, note ii.
- ^{vii} *Supra*, note i.
- ^{viii} George Lahaise, “Centenaire de la Première École de Droit établie au Canada” *Thémis: Revue Juridique* 1(1) (1951): 18.
- ^{ix} R. St. J. Macdonald, “Maximilien Bibaud, 1823-1887: The Pioneer Teacher of International Law in Canada” *Dalhousie Law Journal* 11 (1988): 727. By the school's closing, nearly 300 students had acquired some of their legal education at the École de Droit, many of them leading personalities in the profession and public life of Québec.
- ^x Paul Desjardins, *Le Collège Sainte-Marie de Montréal – La Fondation – Le Fondateur, Vol. I* (Montréal: Collège Sainte-Marie, 1940) at 86.
- ^{xi} *Supra*, note ix at 739-40.
- ^{xii} Maximilien Bibaud, *Commentaires sur les lois du Bas-Canada Tome I* (Montréal: Cérat & Bourguignon, 1859) at 11.
- ^{xiii} Maximilien Bibaud, *Dictionnaire historique des hommes illustres du Canada et de l'Amérique* (Montréal: Sénécal & Daniel, 1857).
- ^{xiv} Brian Young, *The Politics of Codification: The Lower Canadian Civil Code of 1866* (Montréal & Kingston: Osgoode Society for Canadian Legal History and McGill-Queen's University Press, 1994) at 81.
- ^{xv} *Ibid.*
- ^{xvi} *Ibid.* at 82.
- ^{xvii} Interestingly, it may not in fact have been Achilles' heel that made the Greek mythological character vulnerable. According to Homer in the *Ilyad*, it was Achilles' pride, an even more fitting analogy for M. Bibaud!
- ^{xviii} *Supra*, note x at 66.
- ^{xix} I owe much of my inspiration in this section of the paper to sociology of law professor David Howes's work, *infra*, note HOWES.
- ^{xx} *Supra*, note ix at 725.
- ^{xxi} David Howes, “The Origin and Demise of Legal Education in Quebec” *Revue de Droit de l'université de Nouveau Brunswick* 38 (1989): 131.
- ^{xxii} *Supra*, note xii at 4.
- ^{xxiii} *Supra*, note i at ix.
- ^{xxiv} Friedrich Paulsen, *The German Universities and University Study*, Trans. By Frank Thilly (New York: Charles Scribner's Sons, 1906) at 63, in R. St. J. Macdonald, *supra* note MACDONALD at 729.
- ^{xxv} This prompted Bibaud to write his treatise on the laws of Lower Canada for the benefit of his students, essentially summarising the three-year course of the École de Droit; *Commentaires sur les lois du Bas-Canada Tome I, supra* note CLBC and *Tome II* (Montréal: Cérat & Bourguignon, 1861).
- ^{xxvi} Léon Lortie, “The Early Teaching of Law in French Canada” *Dalhousie Law Journal* 2 (1975): 529.
- ^{xxvii} *Supra*, note xxi at 135, describing why he thinks it is that Bibaud's students did “so much better” than McGill students on the bar exam. The form of evaluation was one of the factors he sites.

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- xxviii *Supra*, note xii at 14.
- xxix M. Dumais and S. Normand, *Le droit romain dans le droit coutumier du Bas-Canada selon François- Maximilien Bibaud* in Hermon, E. (ed). *La Question Agraire à Rome: Droit Romain et Société; Perceptions historiques et historiographiques* (Como, Italy: Edizioni New Press, 1999) at 168.
- xxx *Supra*, note i at lvii.
- xxxi *Supra*, note xii at 4.
- xxxii *Ibid.*
- xxxiii *Ibid.* at 15.
- xxxiv *Ibid.* at 9.
- xxxv As announced in the *Mélanges Religieux* of April 22, 1851; in *ibid.*
- xxxvi *Supra*, note xxi at 137.
- xxxvii Edouard Beaudry, *Le Questionnaire Annoté du Code Civil du Bas-Canada* (Montréal: Beauchemin & Valois, 1872) in D. Howes, *suora*, note xxi at 138.
- xxxviii *Supra*, note xxi at 138.
- xxxix R.A. Macdonald, “Understanding Civil Law Scholarship” *Osgoode Hall L.J.* 23 (1985): 579. “The remarkably varied and erudite pre-codification tradition of legal scholarship continued unchecked down to the publication of F.P. Walton’s *Scope and Interpretation of the Civil Code of Lower Canada* in 1907” in Howes, *ibid.*, at 139.
- xl *Supra*, note xiv at 109.
- xli *Supra*, note ix at 532.
- xlii *Supra*, note xii at 214-220. Of course, Bibaud calls de Martens by his German name, referring to him varyingly as von Martens or Martens de Göttingen.
- xliiii *Supra*, note ix at 733.
- xliv *Ibid.* at 736.
- lv Maximilien Bibaud, *L’affaire St. Albans* [microforme] (Ottawa: Institut canadien de microproduction historique, 1981) at 11.
- xlvi *Supra*, note xii at 214.
- xlvii Karen Knop, “Utopia without Apology: Form and Imagination in the Work of Ronald St. John Macdonald” *Canadian Yearbook of International Law* 40 (2002): 287.
- xlviii Judith Shklar, “The Political Theory of Utopia: From Melancholy to Nostalgia” in Frank E. Manual, ed., *Utopias and Utopian Thought* (Boston: Houghton Mifflin, 1966) at 106 and 104.
- xliv *Supra*, note xxix at 167.
- l *Supra*, note xlviii at 105.
- li *Supra*, note xlvii at 288.
- lii Frank E. Manual, ed., *Utopias and Utopian Thought* (Boston: Houghton Mifflin, 1966) at viii.
- liii *Supra*, note xlvii at 305.
- liv Northrop Frye, “Varieties of Literary Utopias” in Frank E. Manual, ed., *Utopias and Utopian Thought* (Boston: Houghton Mifflin, 1966) at 36.
- lv See, for instance, his “Quelques considérations sur les rapports de la société civile avec la religion et la famille” in *Revue Critique*, St-Pie-de-Guire, 1870.
- lvi *Supra*, note xii at 4.
- lvii Bibaud, Jeune (Maximilien’s nom-de-plûme), *Revue Critique de l’Histoire du Canada par M. Garneau* (Montréal: Senécal & Daniel, 1855) at 4. Bibaud introduces himself on the cover as: Avocat-Consultant, Professeur de Législation de Collège Ste. Marie, et Docteur Honnoraire en Droit Civil et Droit Canon de l’Université de St. Jean, près New York.
- lviii *Supra*, note iii at 15.
- lix *Supra*, note ix at 740.
- lx *Supra*, note i at v.
- lxi *Ibid.*, at xxviii; indeed, Bibaud was so pleased that he included it and other quotes like it from various journals and newspapers in his work on the history of legal education in Canada.
- lxii *Supra*, note x at 77.

lxxiii *Ibid.* at 80.

lxxiv *Supra*, note xxvi at 530.

lxxv *Ibid.*

lxxvi *Ibid.*

lxxvii *Supra*, note x at 90; “le jeune Barreau est fils de ses œuvre” according to Edmond Lareau in *Histoire de la Littérature canadienne*. Admittedly, Lareau was a great admirer of Doutre and collaborator in a publication *Histoire de Droit*, but the statement is nonetheless quite accurate.

lxxviii *Ibid.*

lxxix *Supra*, note i at LXIX to LXX.

lxxx *Supra*, note x at 91.

lxxxi *Ibid.*

lxxxii *Ibid.*, at 98.

lxxxiii Bibaud did devote himself to writing after he finished his teaching position, producing many works on the history of Canada. See Arthur Perrault, “Bibliographie des oeuvre de Maximilien Bibaud” *Thémis: Revue Juridique* 1(1) (1951): 31.

lxxxiv *Supra*, note x at 98.

lxxxv *Supra*, note ix at 721.

lxxxvi *Supra*, note xxi at 147.

lxxxvii *Supra*, note ix at 740.

lxxxviii Amusingly, the Jesuits finally succeeded in affiliating Collège Sainte-Marie with Université Laval in the late 1880s, later becoming the Université de Montréal in 1920. Though the latter institution claims to be heir of the Bibaud legacy, I believe if he were alive today he would find such an association offensive.

lxxxix *Supra*, note ii.

lxxx *Supra*, note x at 100.

lxxxii *Ibid.*