Thus With a Rueful Epitaph:

Church and State Relations During the Holy Wars in 19th Century Quebec

by

Colin Borgal
B.A. Hons, M.A. (Political Studies)

A thesis submitted to the Faculty of Graduate Studies

in partial fulfillment of the requirements for

the degree of Master of Arts

Carleton University

Ottawa, Ontario, Canada

15 January, 2009

Your file Votre référence
ISBN: 978-0-494-51999-8
Our file Notre référence
ISBN: 978-0-494-51999-8

Abstract

The thesis concerns the 'Holy Wars' in mid-19th century Quebec – a crucial period not studied in English academic literatures in just proportion to its importance. The thesis asks how, during the 'Holy Wars,' the ultramontanes could lose every judicial decision to which they were party, see the more extreme articulations of their position fall out of favour even at the Vatican, and nonetheless remain a force of profound importance in Quebec well into the 20th century. The answer conceives of the 'Holy Wars' in terms of two competing and incommensurable legal idioms: the understanding of the law according to the ecclesiastical authority; and the understanding of the law according to the civil authority. The thesis posits that the ecclesiastical understanding enjoyed a structural advantage whereby it alone maintained profound influence within the private sphere, giving ultramontanism a basis from which to survive the defeats it suffered during the 'Holy Wars.'

Acknowledgements

The long process of completing this thesis would not have reached the desired conclusion without the aid of numerous persons whom I now gratefully acknowledge. First, my partner, Judit Fabian, and my parents, George and Shirley Borgal, whose loving support allowed me to continue. Second, my supervisor, Professor Barry Wright, who has displayed the patience of Job and whose excellent comments and criticisms were essential to defining the task and evaluating progress. Third, Laszlo and Julianna Fabian, whose generous hospitality, blackberries and raspberries were essential to the completion of the third and fourth chapters. Fourth, Lieutenant Commander Robert Peck and Major Arthur Henry, who provided continual encouragement and very generously gave me the time away from work necessary to the completion of the thesis.

Table of Contents

Introduction

"There reposes a rebel who has been buried by force of arms."[1] Thus with a rueful epitaph closed what was probably the most famous of the battles that came to constitute what has become known to history as Quebec's "Holy Wars." Indeed, the Guibord Affair was one of the most famous *causes célèbres* of the second half of the 19th century. The burial of Joseph Guibord in consecrated ground, by order of the Judicial Committee of the Privy Council, assisted and protected by 1,235 soldiers, against the wishes of the Catholic Church, 5 years after his death, was probably the archetypal example of the passions and stakes of the 'Holy Wars' in Quebec.

At a more general level, Bishop LaFlèche of Trois-Rivières wrote in 1882 in "The Religious Troubles in Canada" that the 'Holy Wars' could be categorized under three heads. The first was the political question, which was essentially the conflict and confusion between Catholic liberalism, political liberalism and ultramontanism. The second was the question of undue influence, which concerned the extent to which clerical interference in elections was justified. The third was the universities question, which concerned whether the province of Quebec ought to have more than one Catholic university.[2] The thesis focuses upon the first two categories, since these most directly concern the intersection between the political, the religious and the legal.

In these two categories are found two incommensurable legal idioms fundamentally opposed each to the other. The first is the understanding of the law according to the ecclesiastical authority, which is, in essence, a totalizing application of Catholic doctrine and dogma. This was the idiom of the ultramontanes; it recognized no

---

1 Mason Wade, The French Canadians 1760-1945, (Toronto: MacMillan, 1955) 349.

2 *Ibid.* 375.

distinction between public and private in terms of its application, and arrogated to itself the right to determine its proper application. The separation of Church and State was anathema to this understanding, and while it admitted of a distinction between ecclesiastical and political authority, it maintained that in cases of conflict the political authority was subordinate.

The second idiom is the understanding of the law according to the civil authority. By this term is meant the understanding of the law held by those authorities that were not ecclesiastical. 'Secular' would not be an ideal appellation in this context, since it has come to imply an irreligiousness that is entirely inappropriate to many of the leading figures who found themselves in opposition to the ultramontanes, such as Wilfrid Laurier and Henri-Elzéar Taschereau.

In the same way, the term 'liberal' is insufficient to describe this idiom, since the liberals of the 1837 rebellions had greatly moderated their opinions by the time of the Holy Wars. Moreover, many of the leading business figures, who supported codification and the dissolution of seigneurial tenure, were classically liberal in economic matters only, and quite conservative in most other respects. Finally, to refer to this idiom simply as the 'civil understanding' is to invite confusion with 'civil law,' 'civil rights,' 'civil society,' 'civility,' and other uses of the word 'civil.'

Nevertheless, the term 'civil' was the most frequently used in period documents to describe those who found themselves in opposition to the ultramontanes, and captures best the totality of the non-ecclesiastical authorities.[3] For this reason, the term 'understanding of the civil authority' is used throughout the thesis to refer to this second

---

[3] The term appears with great frequency in the encyclicals of Pius IX, for example.

of two incommensurable legal idioms. This idiom, the understanding of the law according to the civil authority, held strictly to the separation of public from private, Church from State, and political from ecclesiastical authority. Like the ecclesiastical understanding, however, the understanding of the civil authority arrogated to itself the definition of the proper division between the authority of the Church and that of the State. By necessity, then, the understanding of the civil authority comprised the decision concerning exactly where the exercise of clerical influence became undue. This question of which legal idiom was to determine the point where the other's influence became undue was the fundamental point of conflict in Quebec's Holy Wars.

In light of this conflict over influence, the following question directs the thesis and derives from the above reflections: why it is that the viability of ultramontanism, whether as a social, political or religious movement, was not diminished significantly between the 1860s and the 1890s, despite an almost unbroken series of judicial decisions, both secular and ecclesiastical, during the same period, that ran counter to the ultramontane interest. The response constitutes the development of the following statement: that 'the law,' with reference to the undue influence cases and the Guibord Affair, must be understood as the full complexity of the conflict between Church and State during the period of Quebec's 'Holy Wars.'

The thesis proposed in response to the question above is that the Holy Wars were, at an irreducible level, a conflict between two incommensurable legal idioms, the ecclesiastical understanding of the law and that of the civil authority, and that the former enjoyed a structural advantage over the latter that allowed it to withstand setbacks that the latter would likely have been unable to overcome. In short, the advantage is that while the

understanding of the civil authority limits its application to the 'public' side of the division between public and private, the ecclesiastical understanding admits of no such limitation. This allows the ecclesiastical understanding a base of support in the private sphere, particularly through its influence upon gender relations within the family and the gendered nature of the introduction of children to the discourse of nation and nationalism. The ecclesiastical authority tied itself continually to national identity, and this tie was inculcated in the earliest education of children within the family. There is no similar base of support, of similar strength, available to the understanding of the civil authority.

The development of the thesis, as a response to the above question, proceeds according to the outline here described. The chapter following this introduction describes the most important 'undue influence' cases, such as *Brassard v. Langevin, 1877*, as well as the cases that arose out of the Guibord Affair, in order to establish the nature and substance of the 'Holy Wars' at the most basic and most obviously 'legal' level. The chapter therefore states in outline what the rest of the thesis elaborates.

The subsequent three chapters further develop the thesis statement. The second chapter, concerning the ecclesiastical understanding of the law, addresses the theocratic project of the ultramontanes and delineates the parameters of Catholic dogma and doctrine in Quebec during the 'Holy Wars.' To accomplish this purpose, the chapter primarily makes use of the papal encyclicals of Gregory XVI, Leo XIII and Pius IX, the proceedings of the first Vatican Council, the pastoral letters of Bishop Bourget and other prominent clergy in Quebec, and an important manifesto of the period entitled the "Catholic Programme." The chapter is structured such that it describes in sequence the authority, substance, scope and application of the ecclesiastical understanding of the law.

This allows a coherent and logical presentation of the structural consistency and strength of the ecclesiastical understanding.

The third chapter, concerning the understanding of the law according to the civil authority, essentially presents the side of the civil authority in the conflict between Church and State during the 'Holy Wars.' The chapter makes use of the legislation and regulations of the period, as well as dominant constitutional understandings and the development of the Canadian Constitution between 1774 and 1867. The chapter also analyzes the decisions of the Superior Court of Quebec, the Supreme Court of Canada and the JCPC. Finally, the chapter incorporates readings of Charles Lindsey's 1877 history of ultramontanism in Quebec, Brian Young's The Politics of Codification, and G. Blaine Baker's study of the Montreal law firm Torrance and Morris during the period of codification.

This third chapter, like the second, opens by discussing the derivation of authority within the understanding of the civil authority. It then adapts the structure of the second chapter in order to consider the substance, scope and application of the understanding of the civil authority in terms of four techniques, or paths, by which the civil authority could meet the challenges posed by ultramontanism: appeal to the civil courts for redress from ecclesiastical actions; the definition of membership within the civil authority; the definition of the point where clerical influence becomes undue; and codification of Quebec's civil law, by which the purview of the civil authority is distinguished with still greater clarity from that of the ecclesiastical authority. This approach allows the chapter to compare the structure of the understanding of the civil

authority with that of the ecclesiastical authority, while at the same time describing how the former can counter the totalizing nature of the latter.

The fourth chapter engages in a more detailed analysis of the conflict between the ecclesiastical understanding and that of the civil authority. It does so in three sections. The first examines the political spirituality of the ecclesiastical understanding. The second considers the limits of the liberalism of the civil understanding. The third describes the connection of gender to nation and focuses particularly upon the gendered nature of the hyphen that connects nation to state. These three sections make particular use of Jeremy R. Carrette's Foucault and Religion, Jill Vickers' work concerning gender and nation, Micheline Dumont's Quebec Women: A History, and the classical liberal theories of Mill and Kant. In this manner, the fourth chapter shows how the cession of the private sphere to the ecclesiastical understanding presents a coherent and plausible, although by no means necessarily correct, explanation concerning why the judicial decisions that ran counter to the interests of the ultramontanes between the 1860s and the 1880s seemed to have so much less profound an impact than might have been expected upon the viability and persistence of ultramontanism as a socio-politico-religious movement in Quebec. A short concluding chapter then summarizes the preceding chapters, notes the conclusions of the thesis, and addresses matters that require, or invite, further consideration and research.

A number of methodological considerations helped to frame the analysis of the question that motivates the thesis and the development of the thesis statement itself. First and foremost, the thesis must fall under the rubric of legal studies; it must above all concern law. This is why the thesis begins with a consideration of the undue influence

cases and the several judicial decisions of the Guibord Affair. This is also why the thesis focuses upon the structural advantages accorded the ultramontane cause by the conflict of two incommensurable legal idioms – a fundamentally legal answer to the fundamentally legal problem of why the judicial defeats suffered by the ultramontanes failed to impede the movement more than they did. This is not to suggest that the thesis constitutes an overarching or fully satisfying explanation of the career of the Holy Wars, or even that it provides a definition of the fundamental causes, in their entirety, that spurred the Holy Wars. Rather, the thesis shows that fundamentally, that is, not exclusively but at an irreducible level, the Holy Wars are a legal phenomenon. The thesis then posits an equally fundamental and plausible explanation of this phenomenon as in part the result of the structural advantages of one legal idiom over its incommensurable competitor.

A second methodological consideration was brought about by the paucity of literature addressing the Holy Wars from a legal perspective. Indeed, taken as a whole, and in comparison to other eras and episodes, the Holy Wars are a surprisingly little-studied episode in Canadian history. As an examination in English of the nature and consequences of the Holy Wars, Charles Lindsey's 1889 essay, Rome in Canada, has not been matched.[4] Mason Wade and Fernand Ouellet discuss ultramontanism in some detail, but Wade only touches upon the legal aspects of the Holy Wars, and Ouellet's history ends 20 years prior to the most intense period of the conflict.[5] The revisionist historians of the 1970s and 1980s in Quebec advanced an historical model in which the importance

---

[4] Charles Lindsey, Rome in Canada: The Ultramontane Struggle For Supremacy Over the Civil Power (Toronto: Williamson, 1889).

[5] Wade, 331-392. Fernand Ouellet, Histoire économique et sociale du Québec: 1760-1850 (Montreal: Éditions Fides, 1971).

of nationalism and Catholicism was purposefully diminished. In response, historians such as René Hardy discussed Catholicism and its techniques for social control at great length, but largely neglected to consider the Holy Wars as a legal conflict and tended to diminish unduly the importance of genuine and rationally considered faith in the political culture.[6] Finally, Rainer Knopff in 1979 discusses the Guibord Affair and the decision of the JCPC in detail, but as a means to show, correctly to a point, that the Holy Wars constituted a regime conflict between liberals and ultramontanes.[7] Knopff, however, discusses in far greater detail the legal dicta of the civil authority and largely neglects to consider the ecclesiastical or ultramontane position as a coherent legal perspective.[8]

As a result of this relative dearth of historical literature that addresses in detail the legal aspects of the Holy Wars, the thesis uses primary sources and contemporary literature to a very significant degree. This is particularly important for comprehending the ecclesiastical understanding of the law, since the Papal encyclicals of the 19th century and the decisions of the First Vatican Council allow for a coherent representation of the doctrinal structures that bounded the conduct and positions of the ultramontanes. The

---

6 See for example René Hardy, Les Zouaves: une stratégie du clergé Québécois au XIXe siècle (Montreal: Boréal Express, 1980) and René Hardy, "À propos du réveil religieux dans le Québec du XIXe siècle: le recours aux tribunaux dans les rapports entre le clergé et les fideles (district de Trois-Rivières), Revue d'histoire de l'Amérique Française, vol 48, no. 2 (automne 1994), 187-212.

7 Rainer Knopff, "Quebec's 'Holy War' as 'Regime' Politics: Reflections on the Guibord Case," Canadian Journal of Political Science, XII: 2 (June, 1979), 315-331.

8 It might be objected that the ecclesiastical understanding does not constitute law, particularly with reference to the tenets of legal positivism. To this, one could respond that the dicta of the Catholic hierarchy were binding in effect, were approved by duly constituted authority, were promulgated according to an approved procedure in an approved forum, and were supported by a recognized sovereign. The difference between a legal positivist conception and the ecclesiastical understanding, in terms of whether one or the other qualifies as law, could well be reduced to a dispute concerning the proper identity of the sovereign.

same may be said of the Catholic Encyclopedia, which is cited frequently.[9] Although it was published in fifteen volumes beginning in 1907, it predates Vatican II, received approval (*nihil obstat*) from the official Vatican censor, and received the imprimatur of the Archbishop of New York. The composition of the Encyclopedia overlapped the final years of the papacy of Leo XIII; it constitutes, therefore, a very useful representation of the perspective of the Catholic Church upon a multitude of subjects during the period of the Holy Wars. For methodological consistency, the nature of the understanding of the law according to the civil authority is constructed to a far greater degree from Canadian constitutional documents dating from 1759 to 1867 than from historical analyses written during a later period.

The secondary and theoretical literatures are used primarily for two purposes. First, works such as those of Brian Young and G. Blaine Baker are used to supply deficiencies in the narrative concerning the structure of the two legal idioms, especially concerning codification.[10] Second, works by Jill Vickers concerning gender and nation or by Jeremy R. Carrette concerning political spirituality are used to define the theoretical significance of the conflict between the ecclesiastical understanding and that of the civil

---

[9] Charles Hebermann *et al*, The Catholic Encyclopedia: An International Work of Reference on the Constitution, Doctrine, Discipline and History of the Catholic Church (New York: The Encyclopedia Press, 1907-1922). The censor at the time was Remy LaForest; his approval took the form of a statement of 'Nihil Obstat,' or 'Nothing Hinders.'

[10] Brian Young, The Politics of Codification: The Lower Canadian Civil Code of 1866 (Montreal: McGill-Queen's University Press, 1994) and G. Blaine Baker, "Law Practice and Satecraft in Mid-Nineteenth-Century Montreal: The Torrance-Morris Firm, 1848 to 1968," in Carol Wilton, ed, Essays in the History of Canadian Law / Beyond the Law: Lawyers and Business in Canada 1830 to 1930, vol. 4 (Toronto: Butterworths for the Osgoode Society, 1990), 45-91.

authority. They are also used to consider how the conflict between the two incommensurable legal idioms affected the persistence of ultramontanism.[11]

The final important methodological question that ought to be clarified before moving to the body of the thesis concerns the names chosen to represent the two competing legal idioms. The difficulty of arriving at 'understanding of the civil authority' to describe the non-ecclesiastical understanding of the law has been noted already. The decision of what to call the ecclesiastical understanding, however, also required a degree of consideration. 'Religion' or 'religious' would not suffice because they fail to capture with sufficient clarity the idea of the Catholic hierarchy or the power relations contained therein. Following Derrida's etymology, 'religious' implies an elegant restraint of oneself according to fundamental principles.[12] Similarly, to refer to a 'Catholic' understanding is in fact to state a 'universal' understanding, which is too presumptuous, and again to fail to imply clearly enough the power structures and hierarchy of the Catholic Church in Quebec during the Holy Wars. To use "ecclesiastical understanding," conversely, is to refer to the Church explicitly, but also to the doctrine and the hierarchy of Catholicism. Thus, "understanding of the law according to the ecclesiastical authority," or "ecclesiastical understanding," was settled upon as the most appropriate term.

This discussion of the rationale for using 'ecclesiastical understanding,' must also consider the proper manner of distinguishing between the more moderate and the more ultramontane factions within the Catholic Church in Quebec. Certainly, this distinction

---

11 Jeremy R. Carrette, Foucault and Religion: Spiritual Corporality and Political Spirituality (London: Routledge, 2000).

12 Jacques Derrida, "Faith and Knowledge: Two Sources of "Religion" At the Limits of Reason Alone," Acts of Religion, ed. Gil Anidjar, trans. Weber, (London: Routledge, 2002) 42-101.

existed to an extent. Upon occasion it caused the clergy in Quebec to align upon particular questions with either Archbishop (later Cardinal) Taschereau in Quebec City and Bishop Bourget of Montreal.[13] Nonetheless, there was no meaningful doctrinal difference between the ultramontanes and the more moderate ecclesiastics in Quebec during the Holy Wars. The difference was far more a question of the extent to which political exigency ought to guide or temper the application of the ecclesiastical understanding of the law.

For example, there was no question of countenancing the separation of Church and State; the idea had been condemned in the Syllabus of Errors of Pius IX.[14] Similarly, both Gregory XVI and Pius IX were clear in their denunciations of all kinds of liberalism, including both political and Catholic.[15] Leo XIII was perhaps less vociferous in his denunciations of political liberalism, but nowhere did he suggest that it was acceptable.[16] Moreover, each of Gregory XVI, Pius IX and Leo XIII, stated that clergy had not only a right but a duty to involve themselves in political questions.[17] Instead, concerning the Guibord Affair, the questions on the ecclesiastical side concerned the extent to which the Church could deny the demand of the civil authority for Guibord's burial in consecrated ground, not whether the Church had the right to make the denial. Concerning the undue influence cases, the questions was the extent to which it was advisable for ecclesiastics to

---

[13] As with the universities question, the pastorals of 1875 and 1876 (discussed in chapter 2), and the different reactions of the moderate and ultramontanes parties to the decisions of the three Papal legatees between 1877 and 1885. See Wade, 368-381 (Bishop Conroy favoured the moderate clergy in 1877, Dom Smeulders favoured the ultramontanes in 1883, and Bishop Cameron was sent to oversee the division of the ultramontane Bishop LaFlèche's diocese in 1885).

[14] Pius IX, The Syllabus of Errors Condemned, 1864, Article 55.

[15] Gregory XVI, Mirari Vos, 15 August 1832. Pius IX, Quanta Cura, 8 December 1864.

[16] Leo XIII, Libertas, 20 June 1888.

[17] The Syllabus of Errors Condemned by Pius IX is particularly clear upon this question.

involve themselves in political questions, not whether they had a right to do so. For this reason, the thesis considers the 'ecclesiastical understanding' only, rather than the 'ultramontane' and the 'moderate' understandings.

Having by means of considerations such as those above mapped the conflict between the ecclesiastical understanding and that of the civil authority, the thesis provides an explanation of the conflict by means of three theoretical perspectives. Each of these is discussed in detail in the fourth chapter, but each also requires introduction here.

The first perspective, and that which requires the least introduction, is labeled 'classical liberalism.' 'Classical liberalism' is used to refer to the philosophical perspective underlying to a significant extent the positions taken by those who adhered to the understanding of the law according to the civil authority. 'Liberal' in the context of this thesis implies a philosophical perspective that finds its epistemological and ontological centre in the individual, both in the sense of one who is in possession of particular rights, as Mill envisions, and in the sense of a rational being possessed of the ability determine what is right in a given situation, as Kant envisions.[18] This 'classical liberalism' traces its modern roots at least to the empiricism of John Locke, and follows a philosophical thread through the works of David Hume, Adam Smith, James Mill, Jeremy Bentham, William Godwin, and David Ricardo, along with Kant and John Stuart Mill. As chapter 4 explains, this perspective requires that the understanding of the civil

---

[18] Micheal Sandel, Liberalism and the Limits of Justice, 2nd. Ed. (Cambridge: Cambridge University Press, 1998), 2-11. Also Immanuel Kant, Critique of Practical Reason, trans. T.K. Abbott, (Amherst, New York: Prometheus Books, 1996) 191.

authority adhere to a division between public and private, and limit its application to what is public.

The second perspective is what Jeremy Carrette calls 'political spirituality.'[19] The term is used in order to conceptualise why the ecclesiastical understanding of the law was possessed of such ability to influence and to persist. As stated in chapter 4, within 'political spirituality' are "fused the ethical, the political and the spiritual, by means of the governmental and the panoptic." Foucault himself defines 'political spirituality' as "the will to discover a different way of governing oneself through a different way of dividing up true and false."[20]

This is not the place to discuss in full measure the meaning and import of 'political spirituality'; however, Foucault's place within the thesis should briefly be addressed. The thesis is concerned with Foucault's Discipline and Punish and his final works concerning governmentality. Conversely, the thesis is not especially concerned with Foucault's historical genealogies, but with how his concepts and ideas can serve as helpful analogies to explain the nature of the conflict between the ecclesiastical understanding and that of the civil authority. This is particularly the case with Foucault's writings concerning the Panopticon.[21] Finally, the thesis uses Foucault's idea of panopticism, rather than his description of the Panopticon, as an analogy for a perfect system of surveillance, rather than as a temporally-specific technology. Thus, God, the

---

19 Carrette, 129-141.

20 *Ibid.* 137.

21 It is, of course, correct to note that the Panopticon is a specifically modern conception of a prison, most famously associated with Jeremy Bentham, and that it does not necessarily fit well with the distinctly pre-modern, perhaps even classical, form of religious surveillance perfected by the Catholic Church over the course of millennia.

origin of all authority in the ecclesiastical understanding of the law, is conceptualized as the perfect example of panopticism.

The third perspective concerns the importance of the connection between gender and nation to the influence and persistence of ultramontanism.[22] The connection between gender and nation is established in the work of Jill Vickers, whose SSHRC-funded project of the same name studied the interaction of gender scripts with nationalist movements and ideas of nation in 30 countries over 3 time periods.[23] What Vickers found was that an intimate connection existed between the nearly universal gender script wherein women were responsible for the earliest raising and education of children, and the inculcation of children from their earliest years in the defining myths and traits of the national identity. This in turn was a determining factor in both the persistence and the nature of the national identity. Vickers' findings in this respect were corroborated by her own specific case studies, particularly concerning Poland, and by the work of Micheline Dumont concerning Quebec.[24] Vickers' and Dumont's analyses support the assertion that the mutual reinforcement of gender scripts and the ecclesiastical understanding within the private sphere is crucial to the persistence of ultramontanism.

---

22 There is a massive and profound literature concerning both gender and nations and nationalism. This thesis can do no more than hint at this literature

23 Jill Vickers, "Bringing nations in: Some Methodological and Conceptual Issues in Connecting Feminisms with Nationhood and Nationalisms," International Feminist Journal of Politics, vol. 8, no. 1 (March, 1996) 84-109.

24 In the former case, women's education of children in the national mythos was particularly credited with preserving the Polish national identity through periods in Polish history when the Polish state did not exist. See Micheline Dumont, Michèle Jean, Marie Lavigne and Jennifer Stoddart, Quebec Women: A History, trans. Roger Gannon and Rosalin Gill (Toronto: The Women's Press, 1987). See also Jill Vickers, "Gendering the Hyphen: Gender Scripts and Women's Agency in the Making and Re-Making of Nation-States," Presented at the annual conference of the Canadian Political Science Association, http://74.125.95.104/search?q=cache:4fr1_1NxiosJ:www.cpsa-acsp.ca/papers-2004/Vickers.pdf+Jill+Vickers+Gendering+the+Hyphen&hl=en&ct=clnk&cd=1&gl=ca, 13-15.

Finally, the place of the thesis within contemporary academic literature should be addressed. First and foremost, the thesis was not written with the intention to participate in any particular academic debate or even to contribute to any particular subset of literature. Rather, the impetus for the thesis came from Rainer Knopff's 1981 article concerning the Guibord Affair. While a particularly interesting account in its own right, Knopff's article contained a note that remarked upon the importance of the undue influence cases of the 1870s and lamented their relative obscurity to students of Canadian government.[25] Certainly, the thesis is an attempt to rectify the oversight that caused Knopff such concern.

That said, it must be noted that the thesis is capable of making a contribution to three particular debates. The first concerns the tendency of Anglophone Canadian historians to suggest that the Holy Wars were over sooner than they were, and that the ultramontanes were less influential than they were. For example, according to Mason Wade in The French Canadians, the outcome of the Holy Wars was essentially determined by the election of Pope Leo XIII in 1878.[26] This assertion can only be maintained in the widest sense, that the establishment of a theocracy in Quebec was significantly more difficult after 1878. To make an assertion more specific than this is significantly to oversimplify the nature of the conflict.[27]

---

25 Knopff, 315.

26 Wade, 370.

27 The Holy Wars were fought over the health of the soul, control over souls, and the definition of 'the good.' They were also fought over the democratic nature of the Canadian polity, the ability of the judiciary to review the validity of elections, and the primacy in Canada of federal and provincial courts over ecclesiastical courts. Moreover, the Holy Wars constitute one of the most crucial periods in the development of modern Québécois nationalism, from which is derived such ideas as the 'colonisation' of uninhabited parts of Quebec in order to create new Catholic lands, the agricultural vocation of the Québécois, and the indissociability of Catholicism, the French language and the French-Canadian or

The second debate concerns the tendency of Anglophone historians to minimize the influence of the ultramontanes. To give only one example, in both his study of codification in Quebec and his biography of George-Etienne Cartier, Brian Young divides the ecclesiastics in Quebec into Gallicans and ultramontanes, and asserts that the Gallicans were the dominant party.[28] This, again, is to oversimplify the case. The principles of Gallicanism had been denounced in the Syllabus of Errors of Pius IX in 1864, and condemned by the First Vatican Council in 1871. There were, therefore, no Catholic Gallicans in Quebec during the Holy Wars. Moreover, the ultramontanes were sufficiently powerful that the joint pastoral of the Bishops of Quebec, circulated in 1875, supported the ultramontane position of the role of the clergy in politics.

The third debate concerns the revisionist school of Quebec historiography that flourished in the 1970s and 1980s, and continued through the 1990s. Essentially, the thesis charts a *media aurea* between the revisionist emphasis upon material and economic factors, and the emphasis of such scholars as René Hardy upon national and religious identity as techniques of social control.[29] The thesis accords in many respects with the

---

Québécois nation. The outcome of so complex a contest cannot be reduced to a single point, even the election of a Pope.

That the outcome of the Holy Wars was not determined in 1878 is shown by subsequent events. These events may be outlined briefly: the *Institut Canadien* failed to recover in membership after the resolution of the Guibord Affair; the controverted elections studies in this thesis took place after the election of Leo XIII; the Conservative Party in Quebec dominated federal and provincial elections until 1896; Henri Bourassa, one of the dominant figures of Quebec politics during the early 20th century, was inextricably linked to ultramontanism; as Everett Charrington Hughes shows, ecclesiastical officials were apt to extend to themselves the doctrine of Papal infallibility even until the Second World War; and as *Roncarelli v. Duplessis* and the Mormon pamphlets case show, the actions of Maurice Duplessis were often what the most ardent ultramontanes would have desired.

[28] Brian Young, George-Etienne Cartier: Montreal Bourgeois (Montreal: McGill-Queen's University Press, 1981), 120 and Young, The Politics of Codification, 119.

[29] See for example René Hardy, Les Zouaves: Une Stratégie du Clergé Québécois au XIXe Siècle (Montreal: Boreal Express, 1980) and René Hardy, "A Propos du Réveil Religieus dans le Quebec du XIXe Siècle: Le Recours aux Tribunaux dans les Rapports Entre le Clergé et les Fideles (district de Trois-Rivières), Revue Historique de l'Amerique Francaise, vol 48, no. 2 (automne 1994), 187-212.

revisionist emphasis upon material and economic influences, particularly concerning the codification of the civil law of Quebec during the 1860s. At the same time, the thesis cannot support the revisionists' tendency to diminish the importance of the Catholic Church. Equally, though, the thesis does not share the tendency to over-emphasise social control, and to discount Catholicism as a rational system grounded in sincere faith, that leads Hardy and other critics of the revisionists to fail to address themselves as ardently as they might have to the rigorous, well-constructed and comprehensive legal idiom that the ecclesiastical understanding of the law constituted in Quebec, from the middle decades of the 19th century through the middle decades of the 20th.

Fundamentally, what guides the thesis is this endeavour to determine what is strongest and most influential, and what is weakest and least influential, about each of the two incommensurable legal idioms of Quebec's Holy Wars. This endeavour leads the thesis to explore why it is that ultramontanism in Quebec persisted despite its several judicial defeats, and to posit the answer that it was the structural advantages enjoyed by the ecclesiastical understanding of the law, particularly with respect to the division between public and private, that allowed ultramontanism so to persist.

Chapter 1

The Holy Wars in Cases at Law

Often, in judicial decisions of the 1870s and 1880s, 'undue influence' is considered under the guise of the legal fiction that its existence and definition are uncontroversial. The only matter of controversy is whether particular actions meet the definition. This may be witnessed by the sobriety of Justice Taschereau's manner in *Brassard et al v. Langevin, 1877*, when he states that "the chief grievances of the Appellants are comprised in the exercise of undue influence by certain curés." To justify their grievance, the Appellants must show "the agency of those members of the clergy" accused of exercising undue influence, and that "threats, amounting to undue influence, promises, or other corrupt practices," were made by members of the clergy, or their representatives, on behalf of the Respondent, Hector Langevin.[30]

Conversely, for ultramontane Catholics in Quebec during the 'Holy 'Wars,' the assertion that the Catholic Church could exercise 'undue influence,' was not simply illegitimate but absurd. This was especially the case in matters such as politics, which were intimately concerned with mores. For example, in one of his earliest encyclicals, entitled "Mirari Vos," Pope Gregory XVI stated that:

> the discipline sanctioned by the Church must never be rejected or be branded as contrary to certain principles of natural law. It must never be called crippled, or imperfect or subject to civilian authority. In this discipline the administration of sacred rites, standards of morality, and the reckoning of the rights of the Church and her ministers are embraced.[31]

In the same way, Père Braun, in a sermon at Montreal for Bishop Bourget in 1876, stated the ultramontane position as follows:

---

30 *Osée Brassard et al v. Hon L.H. Langevin,* (1877) 1 S.C.R. 189-190.

31 Pope Gregory XVI, Mirari Vos, 15 August 1832, para. 9.

> The Church can request the government to grant civil sanction to its laws, but this sanction adds nothing to the right of the law, but merely facilitates it. The Church does not submit bills, projected laws, to the government; but a law which is already an obligation of conscience. It is not for the government to revise these laws, to discuss them, or to change them; it has no jurisdiction.[32]

Finally, the same idea was expressed succinctly by the counsel for the respondents in *Brassard v. Langevin, 1877*, as follows: "The Church being free, the civil law cannot fetter its action."[33] This fundamentally conservative position is indissociable from the profound reaction amongst the Quebec clergy against the French Revolution. Indeed, the French Revolution precipitated in Quebec a clerical reaction against all new ideas and individual liberties, and toward "the defence of the *Ancien régime* in all its forms."[34] As Ouellet states,

> The presence of an assembly elected by citizens comported, according to [the clergy], all the risks of abuse that are engendered inevitably by the exercise of liberty. This is because, in the eyes of the clergy, 'liberty' and 'license' were synonymous. Only a House of Assembly defined as a purely consultative organism would have satisfied them. It is not shocking that the ecclesiastical hierarchy did not cease, above all at the beginning of the 19th century, to deplore the nefarious consequences of the parliamentary system. It is again not shocking that, within the colleges and in the pulpit, they continued to support the doctrine of the divine right of kings. The successive generations between 1791 and 1840 were instructed entirely in opposition to the political values in existence during that era. Fear of the Revolution was the origin of this attitude."[35]

To this position, which may be summarised as the supremacy of the Church over the state, was opposed, during the 'Holy Wars,' a burgeoning liberal sensibility that had been present in French Canada since at least the late 18th century. This liberalism

---

32 Père Braun, 1876, quoted in Mason Wade, The French Canadians 1760-1945, (Toronto: MacMillan, 1955) 357.

33 *Brassard v. Langevin*, 180.

34 Fernand Ouellet, Histoire économique et sociale du Québec: 1760-1850 (Montreal: Editions Fides, 1971) 589.

35 *Ibid.* 588.

supported the cause of the *Patriotes* in the rebellions of 1837-38, found a patron and a source of new ideas in Papineau after his return from France in 1845, and was further radicalized by the Revolutions of 1848 in Europe.[36] These radical liberals became known as the *Rouges*; they expressed their views in the newspapers *L'Avenir* and *Le Pays*, and their numbers included Louis-Antoine Dessaules, Joseph Doutre, Charles Laberge, a young Wilfrid Laurier, and Eric and Antoine-Aimé Dorion.[37] The *Rouges* came to be dominant in the *Institut Canadien* of Montreal, which, as Wade states, "in the absence of universities had been founded in 1844 to provide an intellectual centre for French-Canadian graduates of the classical colleges."[38] The *Institut* provided a forum for free intellectual discussion and a wide-ranging library to facilitate the discussion.

Contemporary to the early years of the *Institut* was a movement within the legal elite, including amongst Francophone lawyers, toward the codification of the civil law in Quebec. This was coupled by the increasingly pro-business perspective of the emerging Francophone professional classes, including lawyers such as Georges-Etienne Cartier and Henri-Elzéar Taschereau. The culmination of pro-business professional classes moving toward codification was the production of a civil code that was fundamentally more liberal than the centuries-old agglomeration of laws it replaced, in that its fulcrum was the law of obligations, or contracts between individuals, defined by the Codification

---

36 That said, it is certainly the case that the French Revolution, the 1837-38 rebellions and the 1848 Revolutions in Europe were as much a burden as a boon to liberals in Quebec. Each convulsion produced a strongly contrary reaction in Quebec political culture outside of liberal circles, and proponents of liberalism had to struggle against these reactions throughout the 19th century. Indeed, even by the late 1840s, and certainly by the early 1850s, many ardent liberals of the 1830s had moderated their opinions considerably.

37 Wade, 343.

38 *Ibid.* 343.

Commission secretary as "the basis of the greater portion of the whole Code."[39] Indeed, in many ways, the Civil Code can be understood as a sedate coda to the liberal radicalism of the late 1830s in Lower Canada.[40] The liberalism of the Civil Code, the manner in which it came to be, and the place of Codification within the Holy Wars are discussed in greater detail in chapters 3 and 4.

Further, during the mid 19th century, the Catholic liberalism of Lammenais was gaining currency and causing alarm amongst both conservative and relatively moderate clergy. Essentially, Catholic liberalism derived from Jansenism, Gallicanism and Josephinism, supported the subordination of the Church to the State in political matters, and advocated latitude in interpreting dogma, oversight of the decrees of the Roman Congregations, and a general sympathy with the governing authority of the State.

At the same time, the revolutions of 1848, and the prolonged assault upon the Papal States that culminated in their loss in 1867, caused a sharp reaction in the Catholic hierarchy towards conservatism and against all things modern, including liberalism. Finally, in Quebec, the reaction against all things modern, and the affirmation of the sanctity of all things traditional, became allied with the idea that modern development, liberalism and industrialization threatened the existence of French-Canadian nationality. The battle against liberalism and modernism became a battle fought by the clergy of Quebec for the preservation of the French-Canadian nation.

---

39 Brian Young, The Politics of Codification: The Lower Canadian Civil Code of 1866 (Montreal: McGill-Queen's University Press, 1994) 157.

40 In short, by 'sedate coda' the analysis means to identify how the individualism of the radical liberals of the 1830s was translated into the individualism of the law of obligations in the Civil Code of 1866.

The condemnation of Catholic liberalism by the hierarchy of the Catholic Church began at least as early as 1832, in the above-quoted "Mirari Vos" of Gregory XVI. Catholic liberalism was also condemned in Pius IX's encyclical "Quanta Cura," in the Syllabus of Errors of 1864, in the proceedings and conclusions of Vatican I, and by Leo XIII's encyclical of 1878 entitled "Libertas."[41]

In Quebec, amidst the dislocation caused by industrialization, the discontent caused by the assault upon the Papal States, the constant threat of the Union government instituted under the aegis of Lord Durham's report, and the tension between *Rouges* and ultramontanes, no effort was made by the Catholic hierarchy to distinguish between Catholic and political liberalism; the two were subsumed under the name of 'liberalism' and condemned as a single, overarching threat to social order and the French-Canadian nation. The focus of this condemnation during the early years of the 'Holy Wars' was the aforementioned *Institut Canadien*.

In 1858, Bishop Bourget circulated a pastoral letter in which he noted the presence of "bad books, lying publications and irreligious discourses" in libraries across the province and warned literary societies against "books contrary to faith and morals."[42] On March 30th of the same year, after the majority of the members of the *Institut* had decided they were in fact capable of deciding upon the morality of their books, Bishop Bourget issued a second pastoral in which he invoked the authority of the Council of Trent in defence of his right to censor. He also stated that books included in the *Institut*

---

41 The condemnation of liberalism was the central message of each of the three encyclicals mentioned here.

42 Wade, 344.

catalogue of 1852 had been condemned by the *Index*.[43] Finally, in May, Bishop Bourget circulated a third pastoral in which he denounced 'bad newspapers'; this was widely interpreted to be an attack upon *Le Pays*.[44]

In 1864, the *Institut* declared itself devoid of doctrine and made charges to Rome about Bishop Bourget's conduct. The Bishop defended himself by sending to Rome a collection of pamphlets published at the behest of the *Institut*. In 1866, Grand Vicar LaFlèche, soon to be Bishop, published what was essentially an ultramontane manifesto, entitled "*Quelques considérations sur les rapports de la société civile avec la religion et la famille*." The pamphlet argued that the mission of the French-Canadian nation was "to constitute a centre of Catholicism in the New world," that "authority derives from God," that "liberalism commits the fundamental error of seeking to build society on other than religious principles," and that "it is an error condemned by reason, by history, and by Revelation to say that politics is a field in which religion has no right to enter, and in which the Church has no concern."[45] The conflict between ultramontanes and liberals escalated further in December of 1867, when Papineau gave a lecture for the benefit of the *Institut* in which he argued that "solid convictions could only be arrived at by a free examination of the facts."[46]

Finally, in the midst of Vatican I, and at the behest of Bishop Bourget, the *Institut's* yearbook for 1868 was placed upon the Church's *Index Librorum Prohibitorum*. Bishop Bourget announced this decision in a pastoral circulated in August of 1869. He

---

43 *Ibid.*

44 *Ibid.*

45 *Ibid.* 346.

46 *Ibid.* 345.

further declared that any who remained a member of the *Institut* while it taught such perverse doctrines as liberalism and freedom of conscience would be deprived of the sacraments.[47]

In this environment, the death of Joseph Guibord was a matter ideally suited to controversy, and the Guibord Affair was to become the most well-known of the battles that constituted the 'Holy Wars.' Guibord was printer to the *Institut* and had served as its vice president. The Affair began when, in accordance with Bishop Bourget's dictum, Curé Rousselot of Notre-Dame de Montréal refused to bury Guibord with Catholic ceremony or in the consecrated section of the Church's cemetery. The caretaker of the Catholic cemetery of *Côte-des-Neiges* then refused to bury Guibord without permission from his curé. As a result, Guibord was buried in a protestant cemetery.[48]

The battle began in earnest when counsel for Henriette Brown, Guibord's widow, petitioned for a writ of *mandamus* from the Superior Court of Quebec, requesting a proper Catholic burial for Guibord, according to "the usages and the laws."[49] This inaugurated the series of suits and appeals that culminated in the eventual appeal to the JCPC, *Brown v. Les Curés et Marguilliers de la Paroisse de Montreal.* The question at hand was whether Church officials in the diocese of Montreal could deny ecclesiastical burial to Joseph Guibord simply because upon his death he was an unrepentant member of the liberal organisation known as the *Institut Canadien*, membership having been

---

47 *Ibid.*

48 *Ibid.* 347.

49 *Dame Henriette Brown v. Les Cures et Marguilliers de l'Oeuvre et Fabrique de Notre Dame de Montréal, 1874*, 6 L.R.. 169.

forbidden by Bishop Bourget "*même à l'article de la mort.*"[50] In the event, the writ was granted by Justice Mondelet on the 18th of November, 1869, and Guibord's body was delivered to the parish church in Montreal for burial.

Instructed by Bishop Bourget, the Catholic authorities refused, arguing that Justice Mondelet had not the jurisdiction to issue the writ, since as a civil judge he could not overrule ecclesiastical authorities on matters of liturgy. On the 21st of November, the Diocese of Montreal filed a counter-petition to Mme Brown's with the Superior Court of Quebec. Not surprisingly, on the 17th of March 1870, Justice Mondelet of the Superior Court found the writ he had earlier issued to be entirely proper, and ordered the Catholic burial of Joseph Guibord. The Catholic authorities having continued in their refusal, Henriette Brown then made appeal on the 23rd of June, 1870 to the Court of Queen's Bench, which outlined the decision of the Court of Review. On the 12th of June, 1872, a petition of appeal was filed with the Queen in Council, and Mme Brown died on the 24th of March, 1873, leaving all her rights and possessions to the *Institut Canadien.* The Institut continued the appeal on her behalf, and the case was finally decided in their favour on the 21st of November, 1874, by the Judicial Committee of the Privy Council.[51]

The reasons given by the JCPC were many, complex, and slightly contradictory. Much of the controversy over the appeals was procedural, because the original writ of *mandamus* was vague and had been written in the form of a writ of summons. However, the substance of the case plainly turned on the question of whether a civil court could review ecclesiastical decisions. Central to the question was the concept of the "*appel*

---

50 *Ibid.* 196.

51 *Ibid.* 171.

comme d'abus," which constituted an appeal to the civil authority for both civil and ecclesiastical actions and decisions. The issue first came to the fore during Mme Brown's appeal to the Court of Review, when she petitioned that four of the judges be recused. She argued that because the Papacy had banned the use of the '*appel comme d'abus*' under pain of excommunication, the four judges who were practising Roman Catholics could not fairly judge the merits of the case.[52] The four judges each demurred, arguing that they were competent enough to separate themselves as Roman Catholics from their duty to interpret and apply the law as written.

The '*appel comme d'abus*' had a long tradition among the liberties of Gallican Catholicism. Thus, it was included in the practice of Catholicism in New France until 1763. Paradoxically, the JCPC argued that the Guibord case did not meet the procedural requirements of the '*appel comme d'abus*' because, among other reasons, the officials of the Catholic Church had never been called to testify. Nevertheless, their Lordships felt they were "duty-bound" to consider whether the Catholic Church of Quebec had followed its own rules and procedures in their refusal of the sacraments to Guibord.[53] Clearly, the JCPC set itself up in the position of the '*appel comme d'abus*' – a civil court reviewing ecclesiastical decisions. Essentially, the JCPC found that the Gallican Liberties had continued to apply to the Catholic Church in Quebec after the conquest to the extent that it was established.[54] Implicitly, therefore, the privilege of '*appel comme d'abus*' was determined to have passed to the various British courts, including the JCPC. This line of

---

52 *Ibid.* 170.

53 *Ibid.* 207.

54 *Ibid.* 202-207.

reasoning allowed the JCPC to conclude that they did, in fact, have the jurisdiction to hear arguments as to whether Joseph Guibord should receive the rites of ecclesiastical burial.

The other side of the argument, of course, concerned the substance with which the 'appel comme d'abus' was intended to deal. The Church authorities argued variously that Guibord's body was to be denied the sacraments either because he had been excommunicated or he was recognised as "*un pêcheur public.*"[55] The corollary was that if it could be shown that Guibord had not been excommunicated and was not a public sinner, the Church would have no grounds to deny him proper rites. Here the JCPC cited the Quebec Ritual and determined seven possible grounds for the refusal of "*la sépulture ecclésiastique.*" Of these, only two could apply to Guibord: the third, which required that the individual be excommunicated by name; and the eighth, which required the individual to have been a public sinner and not to have been given absolution or made signs of penitence before death.[56] Their lordships found no evidence of the third ever having occurred, meaning that Guibord simply had not been excommunicated. Of the eighth, they found that the unchecked discretion of the Bishop to determine the content of the category 'public sinner' could not be justified. As was stated in the decision, such discretion could plausibly have led to the banning of any person who had come into contact with an Indexed book, or visited a place where such books were sold. As their Lordships stated, "moreover, the Index, which already forbids Grotius, Pascal, Pothier, Thuanus, and Sismondi, might be made to include all the writings of jurists and all legal

---

55 *Ibid.* 210-211.

56 *Ibid.* 210-211.

reports of judgements supposed to be hostile to the Church of Rome; and the Roman Catholic lawyer might find it difficult to pursue the studies of his profession."[57]

It was also found that the ecclesiastical law of France required a personal sentence in order to constitute a person a public sinner. Again, no evidence was found of such a sentence; accordingly, their Lordships reversed the decisions of the Court of Queen's Bench and the Court of Review.[58] In their stead, the JCPC ordered that a new writ of *mandamus* be issued, commanding the burial of Guibord in the section of the cemetery normally reserved for ecclesiastical burials. Yet their Lordships continued to tread lightly. In their conclusion, they expressed regret that any dispute should have arisen between the *Institut* and the Catholic Church; but they also suggested that any difficulties that might arise concerning the accompaniment of the burial with ecclesiastic ceremonial should occasion a reconsideration by ecclesiastical authorities of their position, thereby avoiding future litigation.[59] In substance, the JCPC had ordered a civil burial upon ecclesiastical ground.

The undue influence cases later in the 1870s were the occasion for further conflict between the ultramontanes and the civil authority. A summation of the case of *Brassard v. Langevin* will suffice for the present discussion and, therefore, will serve to represent the several other cases of like nature and similar time. The substance of the case was the contestation of the election to Parliament of Hector L. Langevin for Charlevoix on the grounds of bribery, treating and undue influence. On appeal, the central charge became

---

57 *Ibid.* 214-215.

58 *Ibid.* 219.

59 *Ibid.* 219.

that of undue influence, exercised by several priests in the County of Charlevoix both in and out of the pulpit.[60] That Church officials had influenced the outcome of the election was not in doubt; however, they argued that not only did they work towards the election of Langevin by any means at their disposal, but they had a right and duty to do so, and that officials of the Catholic Church were in any case immune from review by a civil tribunal.[61]

Plainly, such a position was essential to the ultramontane goal of dissolving the barriers between Church and State. The development of this position ought briefly to be reviewed. On the 23rd of August, 1875, the election of a M. Tremblay to the House of Commons was declared void, and five days later the Speaker of the House issued his warrant for a new election. After an appeal of the avoidance of the election had been dismissed, the new election was held in January of 1876 and the victory of Hector Langevin was published in the *Canada Gazette* of the 5th of February, 1876.[62] It had always been apparent that Langevin had the support of the clergy, and that this support would sway a great number of voters; indeed, as the subsequent suit made clear, his victory was due in largest part to the support of the clergy. On the 22nd of September, 1875, the archbishop and bishops of Quebec issued a pastoral letter to the clergy, part V of which was entitled, "the part of the clergy in politics." *Inter alia*, the pastoral declared that "there are political questions in which the clergy may, and should, interfere in the name of religion"; that the clergy may show why the act of voting for a particular

---

60 *Brassard v. Langevin* 146.

61 *Ibid.* 153, 196.

62 *Ibid.* 189.

candidate may be considered dangerous, insofar as the candidate espouses policies that are contrary to the doctrine or the interests of the Church; that the clergy may declare that to vote for such a candidate is a sin and "makes one liable to the censures of the Church"; and that any priest charged with exercising undue influence after having made such a pronouncement should challenge the competency of the Civil Court, and plead an appeal to an Ecclesiastical Court.[63]

This last was the essence of the ultramontane position. It stemmed from the freedoms granted the Catholic religion and the practice thereof at the capitulations of Quebec and Montreal, and from the Treaty of Paris of 1763. From these agreements, the attorney for Langevin concluded that the Catholic Church was 'perfectly free' in Canada; however, he further deduced that the freedom of the Church precludes the restriction of its action in any way by the civil power.[64] In support of this deduction was alleged the basic incompetence of any civil court to appreciate evidence produced with respect to the sermonizing of the clergy. This was because the Catholic Church constituted a perfect society, stemming as it did from the infallible Papacy; because Catholic doctrine admitted no right of judgement to external tribunals, but established ecclesiastical tribunals for the purpose; because the priest was responsible only to his superior in the Catholic hierarchy and could testify before *any* tribunal only with the permission of that superior; and because to allow a civil tribunal the competence to appreciate and adjudge the content of sermons would be to deny the perfection of Catholic society, the freedom of the Church,

---

63 *Ibid.* 224.

64 *Ibid.* 196.

and the distinction of civil society from religious society.[65] It seemed not to occur to Langevin's attorney, nor would he have made mention had it occurred, that by closing off the entirety of a priest's sermon to the review of a civil tribunal, Catholic doctrine effectively eliminated the distinction between religious and civil society by making all society religious.

The nature of the speeches at issue may be shown by the following excerpts. The Reverend M. Langlais remarked in his sermons: "you are to be called, this week, to choose a man to represent your interests in Parliament. I will tell you to vote according to your conscience, enlightened by your superiors. Do not forget that the bishops of the Province assure you that Liberalism is 'like the serpent which crept into the terrestrial paradise to tempt and lead the human race to fall.'"[66]

He went on to say:

> According to our bishops, the Liberals are deceitful men; then you must not follow them if you do not wish to be deceived. Liberalism is condemned by our Holy Father, the Pope. The Church condemns only what is evil; now Liberalism is condemned, then Liberalism is bad, and, therefore, you ought not to give your vote to a Liberal, your bishops declare it openly. Moreover, your first pastors tell you that 'the priest and the bishop can justly and most conscientiously lift up their voice to point-out the danger, and declare authoritatively that to vote in a certain way is sin.'[67]

Justice Taschereau, in his decision, also cites the Curé Sirois of Bay St. Paul as likening Liberals to "false Christs and false prophets"; the Reverend M. Langlois of St. Hilarion as saying that all those who had voted for the Liberal party would regret it at the hour of their death; and the Reverend M. Tremblay as stating that "he who should vote

---

65 *Ibid.* 179-181.

66 *Ibid.* 163.

67 *Ibid.* 163.

for M. Tremblay would be guilty of grave sin, and if he died after so voting, he would not be entitled to the services of a priest."[68] Throughout sermons and pastorals, Catholic Liberalism was identified with political liberalism and with the Liberal Party, and the act of voting for the Liberal Party with the gravest sin and the harshest punishment. Plainly, the words of the clergy terrorized the parishioners of Charlevoix. As Justice Taschereau noted, the majority of the parishioners were well disposed to believe the words of the clergy and to follow their instructions, being themselves little educated and mostly illiterate.[69]

One ought to note as well the significant difficulty the Catholic justices had in arriving at opinions critical of the Catholic Church. Indeed, not all of them did. The case was actually on appeal from the decision of a M. Justice Routhier of the district court for Saguenay, who had ruled in favour of M. Langevin and the ultramontanes, and had enunciated the doctrine of clerical immunity. As well, Justice Taschereau[70] stated in opening his great misgivings and regret in finding himself compelled to pronounce a decision as a Judge in such a contestation.[71]

---

68 *Ibid.* 193.

69 *Ibid.* 194.

70 Taschereau's biography suggests a number of reasons why he would take this position. First, he was the nephew of Cardinal Taschereau, who was generally considered to be amongst the least ultramontane of the clergy. Cardinal Taschereau was frequently at odds with Bishops Bourget and LaFlèche, whose policies Justice Routhier supported fully. Second, although Taschereau was at one point a member of Parliament for the Conservative Party, he was appointed to the Supreme Court of Canada by a Liberal Prime Minister. Third, Taschereau's written opinions show him to have been an ardent centralist, and it stands to reason that he would have been every bit as disapproving of devolution of power toward the Church as he was toward the provinces. Fourth and finally, Taschereau, like Cartier, was a member of the francophone legal elite with significant business interests; he was the seigneur of Ste. Marie de Beauce. Within the context of the Holy Wars, this tended to lead him toward the codifiers' position in favour of the primacy of contract, greater freedom to contract and the simplification of hypothecs. Any such move away from tradition, in this case the tradition of Roman law and the Custom of Paris, was necessarily contrary to the conservatism of the Church.

71 *Brassard v. Langevin,* 188.

By way of example, he noted the severe recriminations faced by the judges in *Hamilton v. Beauschesne*, from "an eminent member of the Catholic Episcopate," for having annulled the election of Hamilton on account of the undue influence exercised by several members of the clergy.[72] One is reminded of Laurier's comment upon his prospective elevation to the federal cabinet in 1875: "from that moment my quietness and happiness will be gone. It will be war with the clergy, a war every day, every moment ... I shall be denounced as anti-Christ. You may laugh at that, but it is no laughing matter to me."[73]

Aside, though, from the anomaly of Justice Routhier's decision, the legal arguments were uniformly decided against ultramontane interests. Agency was easily established; Langevin had made the explicit support of the clergy a precondition for his candidacy.[74] The nature of the influence exercised and its effects could easily be ascertained by the circulars and pastoral letters issued, by transcripts of various sermons, and by the testimony of several individuals who claimed to have voted for Langevin because of clerical influence.[75] The doctrine of clerical immunity was also disproved. The freedoms claimed under the acts of capitulation and the Treaty of Paris were never the absolute freedoms of a perfect society; rather, they had only ever been freedoms that did not contravene existing British law.[76]

---

72 *Ibid.* 189.

73 Wilfrid Laurier, 1875, quoted in Mason Wade, The French Canadians: 1760-1945, (Toronto: MacMillan, 1955) 361.

74 *Brown*, 223-225.

75 *Ibid.* 190-195.

76 *Ibid.* 198-199, 220-221.

Moreover, there simply was no standing ecclesiastical tribunal established in Canada competent to judge the actions of the clergy and certainly none could have been created, other than by civil authority, that would have been entitled to call witnesses, annul an election or to constitute a binding precedent upon which to ground future elections[77]. The idea of clerical immunity had been successfully negated, under the law at any rate, by the successful and not unusual prosecution of Catholic priests for defamation.[78] Finally, to follow the argument to its absurd conclusion, were a Catholic priest in Quebec permitted immunity while sermonizing, and were the priest able to influence an election in any way he thought proper, it would almost certainly become a mortal sin for Catholics to support the election of any candidate who did not profess the Catholic religion. As Justice Taschereau states, "the good sense of the ecclesiastical authorities and of the people has hitherto condemned such a doctrine, and the present composition of the representation in Parliament shows that, if such a doctrine existed, it has happily ceased to be countenanced."[79]

The ultramontane response to these cases, both in terms of their legal strategy and their understanding of the requirements of Catholic doctrine, was aptly stated as follows in the joint circular to the Catholics of Quebec, issued on the 22nd of September, 1875: "A priest, accused of having exercised an undue influence in an election, for having fulfilled some priestly office, or having given advice as preacher, confessor or pastor, and being

---

77 *Ibid.* 197.

78 *Ibid.* 196.

79 *Ibid.* 196.

summoned before a court, should respectfully but firmly challenge the competency of the civil court, and plead an appeal to an ecclesiastical court."[80]

In general, ultramontane clergy and candidates declined the jurisdiction of the civil court trying them by two methods. The first may be called the doctrinal argument, and was essentially that a civil court lacks the authority to try a member of the clergy upon a matter of ecclesiastical practice. The second may be called the jurisdictional argument, and was that the Dominion Controverted Elections Act of 1874 was *ultra vires* the BNA Act of 1867 insofar as it extended the jurisdiction of provincial superior courts to comprehend the trial of controverted elections.

Given its time and context, the doctrinal argument was not entirely implausible. Justice Routhier, after all, based his opinion upon the argument that civil courts cannot try ecclesiastical matters, and that elections are legitimate ecclesiastical matters.[81] Justice Taschereau, as discussed above, was profoundly uneasy about the implications of trying ecclesiastical actions according to the standards of the civil law. Finally, Justice McCord, in *Hamilton v. Beauschesne*, while finding that the actions of Curé Gagné constituted undue influence, stated very plainly that "as all Roman Catholics do, I fully acknowledge the superiority of the Church over the State, to as great a degree as divine are superior to human institutions. Also that whilst the priest acts as such in the discharge of the duties of his ministry, he is not amenable to the civil tribunals, for he violates no law."[82]

---

80 *Brassard v. Langevin*, 158.

81 *Ibid.* 197-199.

82 *Hamilton v. Beauchesne*, 3 Q.L.R. (1877), 78.

There is a degree of legal pluralism here; there is an implication that different systems of law can coexist, if uneasily and only to a certain extent. This implication is valid, but it ought not to be pressed too far. Justice Routhier, for example, clearly supposes that the ecclesiastical circumscribes the civil; that there is a point to which the civil law can be suffered to make articulations (as statutes) in accordance with the ecclesiastical law, and a point beyond which the ecclesiastical law only can make pronouncements. Conversely, Justice McCord's sophistic argument seems to admit of clerical immunity, which would entail a subset of citizens subject only to ecclesiastical law. In fact he states only that the priest is not amenable to civil tribunals as long as he violates no civil law.

The doctrinal argument itself is stated most effectively in *Brassard v. Langevin.* Beginning from the position that it is the duty of the Catholic clergy to guide their parishioners in matters relating to mores, and that their authority to do so derives from the infallibility of the Pope on such matters, the ultramontanes argued that the terms of the Treaty of Paris of 1763 guaranteed the freedom of the Catholic religion in Québec.[83] It followed that clergy were protected by the Treaty in their proclamations of the sinfulness of voting for the Liberal Party. Moreover, the ultramontanes contended that the Treaty reaffirmed that a civil tribunal was incompetent to try ecclesiastical officials, actions or doctrine, that an ecclesiastic could not be summoned before a civil tribunal without the permission of his ecclesiastical superior, and that a Catholic tribunal was the only legitimate venue for the trial of an ecclesiastic.[84]

---

83 *Brassard v. Langevin*, 177.

84 *Ibid.* 169-170.

This approach, which has already been addressed in the account of *Brassard v. Langevin* above, was convincingly rebutted by Justice Taschereau in the same case. Justice Taschereau stated, simply, that the Treaty of 1763 allowed the freedom of the Catholic religion within the limits of English law, and that clerical intervention, by threats, in the process of elections to Parliament is directly contrary to five centuries of the English common law and tradition.[85] Beyond this, he argued, a judge is bound to execute his oath of office and an ecclesiastic who influences a political election by means of threats abandons his ecclesiastical role while making the threats.[86] Not too surprisingly, then, the doctrinal argument did not advance far before the civil tribunal.

The jurisdictional argument, on the other hand, was found to be quite powerful. In its fundamentals, the argument was that the Dominion Parliament had no power to extend to the Superior Courts of the provinces the jurisdiction to try controverted elections to the House of Commons.

The impugned section of the Dominion Controverted Elections Act, 1874, reads as follows:

> In this act and for the purposes thereof, the expression "The Court" as respects elections in the several provinces hereinafter mentioned respectively shall mean the courts hereinafter mentioned, viz.
>
> 1. In the province of Québec, the Superior Court for that province ...
>
> And each of the said courts, respectively shall, subject to the provisions of this act, have the same powers, jurisdiction and authority with reference to an election petition, and the proceeding thereon as if such petition were an ordinary cause within its jurisdiction, and in the province of Québec, the cause of action shall be held to have arisen at the places where the election was held, and the election petition shall be presented to the court in the judicial district in which such place lies.[87]

---

85 *Ibid. 216-218*

86 *Ibid.* 199.

87 Dominion Controverted Elections Act, 1874, 37 Victoria c. 10, s. 3.

In essence, then, the section grants to the Superior Court of Québec or to its judges the power of trying controverted elections to the House of Commons of Canada within the province of Québec.

Opposed to this section were paragraphs 13 and 14 of section 92 of the BNA Act of 1867, which assigned powers to the provincial legislatures as follows:

> 13. Property and civil rights in the province
> 14. The administration of justice in the provinces, including the constitution, maintenance and organisation of provincial courts both of civil and criminal jurisdiction, and including procedure in civil matters in those courts.[88]

The argument against the Dominion Controverted Elections Act, 1874, (Controverted Elections Act) was that the BNA Act, 1867, granted sole jurisdiction concerning provincial courts to the provincial legislatures, that the judicial purview of the provinces was necessarily the same as their legislative purview, and that the Conroverted Elections Act extended the jurisdiction of the Superior Courts without warrant. Four justices in four separate decisions in Québec agreed with this argumentation: Chief Justice Meredith in the first trial of *Valin v. Langlois* in 1879; Justice Stuart in *Belanger v. Caron, 1879*; Justice Casault in *Guay v. Blanchot, 1879*; and Justice McCord in his decision concerning the controverted election at Bellechasse in 1879. Chief Justice Meredith stated plainly that he did not "question the proposition, that under the Act of Confederation, the Dominion Parliament cannot enlarge the jurisdiction of the Provincial

---

88 British North America Act, 1867, 30 & 31 Victoria c. 3, s. 13-14.

Courts."[89] Justice Stuart was more emphatic and expansive: he stated that "there can be no doubt that the Dominion Parliament is prohibited from making laws in relation to any Court of this Province, and in relation to the administration of justice by it."[90]

Plainly, these decisions benefited the ultramontanes. If the Act by which Dominion undue influence cases were tried was itself unconstitutional, then the influence exercised by clergy upon Dominion elections could not be examined judicially unless new legislation was passed. Provincial control over provincial courts also coincided with the nationalist and insular standpoint of the ultramontanes. For example, among the reasons he gave for finding the Elections Act unconstitutional, Justice Stuart argued that "it is a matter of the gravest import to this province [Québec] in particular, with its peculiar laws, customs, language and interests, that the judicial power of each government in the confederation, should be co-extensive with the legislative power bestowed on it, and no more."[91] Unquestionably, in 1879, Catholic laws, customs and interests were paramount among those peculiar to Québec, and the ultramontanes especially were already coming to see the Catholic religion and the French language in Québec as indissociable.

Nevertheless, for convincing reasons, the Supreme Court of Canada found the Elections Act to be *intra vires* the Dominion Parliament and therefore constitutional. Three distinct arguments supported this decision. First, Chief Justice Meredith, of the Superior Court of Québec, argued that the Elections Act did not affect the provincial

---

89 *Valin v. Langlois*, 3 S.C.R. (1879), 3.

90 *Ibid.*

91 *Belanger v. Caron*, 5 Q.L.R. (1879), 21.

courts of Québec, but simply assigned a Dominion function to judges who also sat upon the Superior Court.[92] Second, Justice Taschereau, in the Supreme Court's decision in *Valin v. Langlois, 1879*, argued that because the controverted elections to be tried were solely within the Dominion's jurisdiction, because the Courts would be composed only of one or three justices taken from the Superior Court of Québec, and because the one or three justices were designated by the Act as a "Court of Record," the Dominion Controverted Elections Act of 1874 did in fact create a Dominion Court.[93] This allowed the Act to be constitutional under s. 101 of the BNA Act, 1867, which granted the Dominion the power to establish Dominion courts from time to time for the better administration of its laws. Third, and most convincingly, Justice Taschereau argued that it did not matter whether the Elections Act created a Dominion Court or extended the jurisdiction of the Superior Court of Québec, because the Dominion Parliament was perfectly able to extend the jurisdiction of the provincial courts as long as it did so by the addition of a function that was within its legislative purview.[94] This was because the BNA Act prohibited only encroachment upon the legislative powers of the provinces, and the augmentation of the jurisdiction of a provincial court does nothing to affect the legislative powers of a province. Further, if the Dominion Parliament truly had been prohibited from assigning to provincial courts jurisdiction pursuant to any of its legislative powers, then every Act of the Dominion Parliament prior to 1876 would have been a dead letter for want of a Dominion Court in which to try cases arising under Dominion legislation.

---

92 *Langlois et al v. Valin*, 5 Q.L.R. (1879), 11.

93 *Valin v. Langlois*, 1-2.

94 *Ibid.* 1.

It is of crucial importance that the litigation most favourable to ultramontane interests was that which challenged the legitimacy of charges of undue influence according to the language and rules – the idiom – in which and by which the restrictions upon undue clerical influence were made. The ultramontane cause could achieve a certain degree of success in this forum because what was adjudicated was not the validity or even the legality of clerical actions to influence elections, but the constitutionality of particular provisions intended to establish a means to try controverted elections. As soon as the ultramontane cause was phrased as an alternate idiom challenging the civil authority, it was no longer credible as an argument within the judicial idiom of that authority. Hence the language of the decisions for and against clerical undue influence as such. Those against wrote as though the very ability of the civil power to govern were at stake, which it was; those for, such as Justice Routhier, wrote in defence of Catholicism itself, as a religion that accedes to no boundary between Church and State.

It is not surprising, therefore, the ultramontane project would run afoul of British and Canadian law; the one is a movement for the identity of Church and State, while the other is based in large part upon their separation. It is equally evident from either side that the laws of one side preclude the existence of the other side. The ultramontane clergy wished to grant themselves immunity from civil prosecution and to establish themselves as a perfect society, entirely separate from and superior to civil society, yet with the right and duty to comment upon and affect civil society according to the dictates of Catholic doctrine. Such a project would utterly subordinate civil to religious society, and the civil authority to religious authority, so it stands to reason that the laws established by the civil authority would forbid clerical immunity, and would establish instead the doctrine that

the persons of the clergy are composed of civil and religious aspects, the one subordinate to the civil authority, the other to the ecclesiastical. The existence and viability of the ecclesiastical authority on one hand, and the civil authority on the other, depended upon their respective schemes for the distribution of legal and executive authority.

Thus, while the Guibord Affair may have admitted of greater uncertainty about its outcome, there could have been no such uncertainty concerning the question of whether the Catholic clergy of Quebec exercised undue influence under the Dominion Controverted Elections Act of 1874. That is to say, while the contest was framed in legal terms, it was in fact a contest over which authority – civil or ecclesiastical – would be dominant in Quebec. The uncertainty in a given case concerned the authority with which the presiding judge felt aligned, much more than it did the interpretation the given judge would give to particular articles. Rainer Knopff was therefore quite correct to have described Quebec's 'Holy Wars' as a contest between regimes; it was indeed a conflict of the first order between the ultramontane Church and the civil authority.[95]

---

[95] Rainer Knopff, "Quebec's 'Holy War' as 'Regime' Politics: Reflections on the Guibord Case," Canadian Journal of Political Science, XII: 2 (June, 1979), 315-331.

Chapter 2

The Ecclesiastical Understanding of the Law

The understanding of law articulated and employed by the Catholic Church in mid-19th century Quebec derived from two complementary imperatives: that the primary mission of the Catholic Church is the salvation of souls and that all authority is derived from God. Taken together, these give an understanding of the authority, substance and scope of the concept of 'law' as it was employed by members of the ultramontane clergy in mid-19th century Quebec. The purpose of this chapter, then, is to articulate the doctrinal Catholic understanding of the authority, substance and scope of the law, to show how these understandings constitute 'the law' for the ultramontane clergy in 19th century Quebec, and to understand how this conception of the law is employed by the ultramontane clergy in the context of the Holy Wars. Thus, the chapter maps the ultramontane position in the Holy Wars, and is to be taken in tandem with the subsequent chapter, which maps the understanding of the law employed by the civil authority.

To map the ultramontane position, the chapter begins by examining the pertinent encyclicals of Popes Gregory XVI, Pius IX, and Leo XIII. The chapter thereby defines and explains the authority, substance and scope of the law within the context of 19th century Catholic doctrine, showing how these required a particular political philosophy, especially concerning liberalism, the freedoms typical to a liberal-democracy, and relations between Church and State. Second, the chapter describes how the ecclesiastical understanding of the law was employed by the ultramontane clergy in Quebec as a political philosophy. The chapter examines the Bishops' joint pastoral letter of 1875, Bishop LaFlèche's pastoral of 1871 concerning "the duties of the faithful during elections," and the ultramontane manifesto entitled "The Catholic Programme." Finally, the chapter describes how the application of this understanding of 'the law' extended

beyond electoral politics even to the life of the family, and the particular importance of its effects upon women, as these are shown in the work of Micheline Dumont. This in turn serves as a preparation for the theoretical analysis of the final chapter, particularly concerning the importance of the struggle between liberals and ultramontanes to the generation of a national identity in Quebec.

Authority

To quote from Paul's Epistle to the Romans,

> Let everyone be subject to higher authorities, for there exists no authority except from God, and those who exist have been appointed by God. Therefore, he who resists the authority resists the ordination of God ... wherefore you must needs be subject not only because of the wrath, but also for conscience sake.[96]

It is difficult to conceive of a more succinct, complete or authoritative statement of 19th century Catholic doctrine concerning authority. Simply put, all authority derives from God, and it is a Catholic's duty to follow authority, even as it is to follow God.

Yet it is also of the first importance to this thesis that this quote from Romans is in fact taken from the encyclical "Cum Primum" of Pope Gregory XVI, concerning obedience to the civil authority.[97] Over the course of the 19th century, encyclicals became the primary means for Popes to communicate with their Bishops and the faithful. Although technically encyclicals did not partake of the automatic binding force of Papal Bulls, for example, they were held to partake of the infallible authority of an ex-cathedra pronouncement according to their language, context and subject. Encyclicals had,

---

96 Bible, King James Version, Romans 13.1, 2, 5.

97 Pope Gregory XVI, Cum Primum, Encyclical of 9 June 1832, para. 3.

essentially, the force and effect of law within the Catholic hierarchy.[98] Moreover, encyclicals were the locus of such doctrinally fundamental statements as the "Syllabus of Errors" of Pope Pius IX, the definition of the Immaculate Conception, and the definitive statement of a Catholic's relationship to unions and duties to the working class. As such, this chapter analyzes the encyclicals of Gregory XVI, Pius IX and Leo XIII, together with the proceedings of the First Vatican Council, in order to define the political philosophy that constituted the substance of the ecclesiastical law during the period of the Holy Wars, as well as the authority by which this law governed the conduct of Catholics in Quebec with respect to the controversies of the Holy Wars.

The derivation of all authority from God, and the consequent duty to obey all authority consistent with the teachings of the Church, is a unifying theme of the Encyclicals circulated during the reigns of Gregory XVI, Pius IX and Leo XIII. In "Mirari Vos," circulated in 1852, Gregory XVI again cites the above quotation from Romans. In "Commissum Divinitus" of 1835, he cites approvingly Bishop Ossius of Cordoba, writing thus to the Emperor Constantius: "learn this from us: God gives you the empire; he entrusts ecclesiastical power to us. Whoever secretly tries to snatch the empire away from you opposes God."[99]

Appropriately, the opposite principle is included in the "Syllabus of Errors" condemned by Pius IX. The offending principle reads as follows: "Kings and princes are not only exempt from the jurisdiction of the Church, but are superior to the Church in

---

98 Herbert Thurston, "Encyclical," The Catholic Encyclopedia, Vol. 5 (New York: Robert Appleton Company, 1909).

99 Pope Gregory XVI, Commissum Divinitus, Encyclical of 17 May 1835, para. 6.

deciding questions of jurisdiction."[100] In "Quanta Cura," circulated in 1864, concerning relations between the civil and ecclesiastical powers, Pius IX quotes approvingly St Celestine's dictum that "kingdoms rest on the foundation of the Catholic faith." He also quotes St. Leo's statement that "the royal power was given not only for the governance of the world, but most of all for the protection of the Church."[101] In "Ubi Nos" of 1871, Pius IX states that "divine providence has willed this civil rule to be protection and strength for the Apostolic See."[102]

Finally, in "Etsi Multa" of 1873, concerning the Catholic Church in Italy, Germany and Switzerland, Pius IX articulates fully Paul's doctrine from Romans, that all authority is given by God. He begins by stating that if no laws other than those "of the civil authority existed, and if they were of the highest order, it would be wrong to transgress them."[103] Then, when speaking of Church and State, and of distinguishing the things of Caesar from those of God, he remarks that even Caesar "belongs to Him to whom heaven and all creatures belong."[104] Most importantly, he states that the Church has never failed to give to the civil authority its due, and continues as follows:

> It always and everywhere attempts to inculcate in the faithful an inviolable obedience towards their supreme rulers and their rights, insofar as they are secular, and it has taught, with the Apostle, that they are rulers not for fear of good works but of evil, teaching the faithful to be subject not only because of fear, because the prince bears the sword to carry out his ire against him who has done evil, but also because of conscience, because in his office he is a minister of God.[105]

---

100 Pope Pius IX, The Syllabus of Errors Condemned, Encyclical of 8 December 1864, art. 54.

101 Pope Pius IX, Quanta Cura, Encyclical of 8 December 1864, para. 8.

102 Pope Pius IX, Ubi Nos, Encyclical of 15 May 1871, para. 7.

103 Pope Pius IX, Etsi Multa, Encyclical of 21 November 1873, para. 16.

104 *Ibid.* para 16.

105 *Ibid.* para 17.

Thus the doctrine of the divine right of Kings: the prince is a minister and representative of God. This is a significant factor in explaining the deference shown by ecclesiastical authorities toward British authorities during the period immediately following the conquest of 1759.[106] More to the point, it establishes God as the single point of origin for all authority. It follows that in the context of a deeply religious political culture, which Quebec was during the Holy Wars, the borders between civil and ecclesiastical will blur, and conflict between civil and ecclesiastical authorities will be more likely to arise, as it certainly did in Quebec during the Holy Wars.

Still more than those of Pius IX, the encyclicals of Leo XIII support the derivation of all authority from God. As he states in the encyclical "Diuturnum" of 1881, the different kinds of authority have as their unique origin the power of God, and only the power of God is of sufficient authority to constrain the free will of individuals.[107] Further, concerning theories of the social contract, he articulates the following fascinating critique:

> Those who believe civil society to have risen from the free consent of men, looking for the origin of its authority from the same source, say that each individual has given up something of his right, and that voluntarily every person has put himself into the power of the one man in whose person the whole of those rights has been centered. But it is a great error not to see, what is manifest, that men, as they are not a nomad race, have been created, without their own free will, for a natural community of life. It is plain, moreover, that the pact which they allege is openly a falsehood and a fiction, and that it has no authority to confer on political power such great force, dignity, and firmness as the safety of the State and the common good of the citizens require. Then only will the government have all those ornaments and guarantees, when it is understood to emanate from God as its august and most sacred source.[108]

---

106 This alliance between British and ecclesiastical authorities was of course further reinforced by their similar reactions against the French Revolution of 1789.

107 Pope Leo XIII, Diuturnum, Encyclical of 29 June 1881, para. 11.

108 *Ibid.* para. 12.

Further in the same encyclical, Leo XIII equates resistance toward State authority to resistance to the divine will.[109] Finally, in "Immortale Dei," on the Christian constitution of states, Leo XIII states that "every body politic must have a ruling authority, and this authority, no less than society itself, has its source in nature, and has, consequently, God for its author. Hence, it follows that all public power must proceed from God."[110] Plainly, Paul's doctrine holding God to be the origin and source of all authority, ecclesiastical, civil and familial, was preeminent in the Catholic Church throughout the Holy Wars. As such, it may be considered established that during the period of the Holy Wars in 19th century Quebec, from the perspective of the Catholic Church, the authority of all law derived from God.

Upon this derivation is founded the clear statement by Justice McGuire in *Hamilton v. Beauchesne* that the Catholic Church is superior to the state, inasmuch as divine institutions are superior to human.[111] The derivation of all authority from God is also the foundational principle that allows for the rigid distinction between Ecclesiastical and political authority, which distinction founds the arguments of the ultramontane respondents in both *Hamilton v. Beauchesne* and *Brassard v. Langevin*. In particular, the derivation of all ecclesiastical authority directly from God to Pope to Bishop to Curé supported the argument that the Roman Catholic Church was a 'perfect' society, whose

---

109 *Ibid.* para. 13.

110 Pope Leo XIII, Immortale Dei, Encyclical of 1 November 1885, para. 3.

111 *Hamilton v. Beauchesne*, 3 Q.L.R. (1877), 78.

officials, in the performance of their ecclesiastical duties, could be tried only by superior ecclesiastical officials.[112]

Indeed, this is an excellent example of the incommensurability of the two legal idioms at odds in this thesis. On one hand, the ultramontane understanding held that ecclesiastics were subject to the laws of the civil authority on matters that did not concern doctrine, discipline or mores, on the condition that the ecclesiastical authority framed the definitions of doctrine, discipline and mores. On the other hand, the civil authority accepted that as long as the ecclesiastic did no more than discharge the duties of his ministry, he was not liable to the civil tribunals, having broken no law. Again, though, the condition was that the civil authority, including the civil tribunals, was solely responsible for the promulgation and definition of its laws. The corollary was that while each side was nominally willing to leave the other its space, each side's understanding of its authority and purpose required that it be the sole authority for the definition of its proper jurisdiction and application.

Substance

The question must then immediately arise concerning the substance of the law from the perspective of the Catholic Church during the Holy Wars in Quebec. Again, by examining the encyclicals of Gregory XVI, Pius IX and Leo XIII, a sufficient representation of the substance of the law may be given. Essentially, the substance of the

---

[112] It is worth noting that 'perfect,' in the context of the Catholic Church in Quebec, meant an entirely self-contained society, sufficient of itself for its needs and governance. It is also worth recounting the four principles of the ultramontane side in the undue influence cases: first, that charges of undue influence tended to incriminate ecclesiastics for discharging ecclesiastical duties; second, an ecclesiastic is responsible only to an ecclesiastical superior; third, the undue influence cases essentially pretend to bring ecclesiastical officials before civil tribunals without ecclesiastical permission; and fourth, that a civil tribunal is incompetent to judge ecclesiastical questions.

law was a particular understanding of 'natural law' that was derived from sacred Scripture including the Mosaic law, the decrees and statements of Pontiffs and Councils, and the doctors and philosophers of the Catholic Church, and applied to actions, speech and conscience in public, in private and in the family.

As Leo XIII writes in "Libertas," concerning the nature of human liberty, the occasion for natural law arises from the freedom of human will. In turn, the freedom of the will is the ability to choose concerning the desirability of given ends and actions. This freedom, however, must be guided: "first of all," as Leo XIII writes, "there must be law."[113] Law, in this sense, is defined initially as "a fixed rule of teaching what is to be done and what is to be left undone."[114] Without law, "the freedom of our will would be our ruin."[115] Reason, as judgment, constitutes this law and guide. However, reason and judgment, as law, must not be confused with choice; they precede it. Reason and judgment, in guiding the free will, prescribe not only what things are good and bad in themselves, but what is conducive and not conducive to salvation, "for the sake of which all ... actions ought to be performed."[116] In Catholic doctrine at the time of the Holy Wars, this prescription from reason to will, granted by divine grace, was called law. In free will, therefore, "or in the moral necessity of our voluntary acts being in accordance with reason," because reason is granted by God for salvation and precedes action, "lies the very root of the necessity of law."[117]

---

113 Pope Leo XIII, Libertas, Encyclical of 20 June 1888, para. 7.

114 *Ibid.*

115 *Ibid.*

116 *Ibid.*

117 *Ibid.*

In the context of Catholic theology during the Holy Wars, this argumentation is consistent because the natural law, as described above, is engraved upon every mind, and derives its authority from outside of humanity, that is, from God. Leo XIII makes this argument eloquently as follows:

> The law of nature is the same thing as the eternal law, implemented in rational creatures, and inclining them to their right action and end, and can be nothing else but the eternal reason of God, the Creator and Ruler of all the world. To this rule of action and restraint of evil, God has vouchsafed to give special and most suitable aids for strengthening and ordering the human will. The first and most excellent of these is the power of His divine grace, whereby the mind can be enlightened and the will wholesomely invigorated and moved to the constant pursuit of moral good, so that the use of our inborn liberty becomes at once less difficult and less dangerous.[118]

It must also be noted that this identification made by Leo XIII of the substance of the law with the natural law is in accordance with doctrine articulated by Gregory XVI and Pius IX. For example, in "Mirari Vos," Gregory XVI states unequivocally that "the discipline sanctioned by the Church must never be rejected or branded as contrary to certain principles of natural law."[119] Similarly, Pius IX allows that even those who are honestly ignorant of Christianity may attain salvation by "sincerely observing the natural law and its precepts inscribed on all hearts."[120]

Freedom, then, is willing according to the natural law; this, during the period of the Holy Wars, is the substance of 'the law,' whose authority derives from God.[121] Given that these are the authority and substance of the law that came under the purview of the

---

118 *Ibid.* para. 8.

119 Pope Gregory XVI, Mirari Vos, Encyclical of 15 August 1832, para. 9.

120 Pope Pius IX, Quanto Conficiamur Moerore, Encyclical of 10 August 1863, para. 7.

121 From the 1830s and before, through the end of the 19th century and later, this perspective had a direct and profound impact upon such burgeoning concepts as the freedoms of speech, conscience and the press.

ultramontane clergy in Quebec during the Holy Wars, it becomes necessary to address the scope of the application of this conception of law.

Scope

To this end, the Catholic Church, during the 19th century, applied its understanding of the law, according to its understanding of its mission, which is, simply, the salvation of souls. That is to say, anything that bore upon the salvation of souls constituted a legitimate application of the authority of the Catholic Church, in the attempt to bring or retain a given organization or individual within the Catholic understanding of the natural and eternal law. The application of this principle is evinced by the opinion of Justice Casault in *Hamilton v. Beauchesne*, where he distinguished between the words of two priests in their sermons, and what would have been permissible:

> There is a difference too marked not to be felt between the teaching given by the priest to his charges concerning the obligations their religion imposes upon them in the exercise of their political rights, concerning the character, degree and appreciation of the faults they [on one hand] could commit and the consequences attached to those faults by their religion and [on the other hand] a threat to refuse to them because of those faults the pardon that their faith teaches them is necessary for the salvation of their souls from eternal damnation. In one case the priest indicates the fault and the penalty attached to it by God's justice; in the other, the priest tells them that in order to absolve yourselves of the penalties merited by your sins, you shall have need of my intercession, and I shall refuse it if you vote for this political party.[122]

The primacy of the salvation of souls as the mission of the Catholic Church is reflected at numerous points in the encyclicals of the three Popes who reigned immediately before, during and immediately after the Holy Wars. First and foremost, in Catholic doctrine, the salvation of souls is the direct result of the sacrifice made by Christ upon the Cross. It follows that the preservation of the result of this sacrifice would be the

---

122 *Hamilton v. Beauchesne*, 85 (author's translation).

primary mission of the Catholic Church. As such, in "Mirari Vos," Gregory XVI quotes Saint Jerome asserting that "an accounting for the souls of the people will be demanded from the bishop."[123] Similarly, in "Quo Graviora," Gregory XVI argues that the Church should never yield to those things that tend toward the destruction of souls. He then declares that nothing should deter Bishops from 'throwing themselves' into every conflict for the salvation of souls entrusted to their care.[124] Further, in "Commissum Divinitus," he asserts plainly that the Catholic Church has the power "to make laws concerning all things which pertain to the salvation of souls."[125]

Pius IX is equally clear, if not clearer, concerning the centrality of the salvation of souls to the purpose of the Catholic Church. In "Quanta Cura," circulated in 1864, for example, he specifically identifies "the cause of the Catholic Church" with "the salvation and peace of souls."[126] Leo XIII, in his "Diuturnum" of 1881, refers to priests and bishops as "the pastors of souls."[127] Then, in his "Immortale Dei" of 1883, he states forcefully the following doctrine: that whatever "in things human is of a sacred character, whatever belongs either of its own nature or by reason of the end to which it is referred, to the salvation of souls, or to the worship of God, is subject to the power and judgment of the Church."[128] It is, then, quite defensible to assert that the salvation of souls is the primary mission of the Catholic Church in the world.

---

123 Pope Gregory XVI, Cum Primum, Encyclical of 9 June 1832, para. 8.

124 Pope Gregory XVI, Quo Graviora, Encyclical of 4 October 1833, para. 10.

125 Pope Gregory XVI, Commissum Divinitus, Encyclical of 17 May 1835, para. 4.

126 Pope Pius IX, Quanta Cura, Encyclical of 8 December 1864, para. 3.

127 Pope Leo XIII, Diuturnum, Encyclical of 29 June 1881, para. 18.

128 Pope Leo XIII, Immortale Dei, Encyclical of 1 November 1885, para. 14.

To summarize, from the perspective of the Catholic Church during the period of the Holy Wars in Quebec, the authority of the Church to articulate, interpret and enforce the law derived from God. The substance of the law was identified with the content of the Natural Law. The scope of the Church's enforcement was bounded to include all that bore upon the salvation of souls. This understanding of law produced a particular political philosophy that had a direct impact upon such developing concepts as the freedoms of speech, conscience and the press.

Simply stated, the modern, liberal-democratic freedoms of speech, conscience, the press, assembly and others were held to be incommensurable with Catholic doctrine, especially given their nascent state during the middle of the 19th century. This is still another symptom of the incommensurability between the two legal idioms, the ecclesiastical understanding of the law and that of the civil authority, which grounds the fundamental argument of this thesis that the ecclesiastical understanding enjoyed a structural advantage over the understanding of the civil authority. The logic supporting this incommensurability is clear: when law and truth are given from an external, omnipotent and omniscient God, such doctrines as Mill's that truth and best practices are best discovered by the freest and most inclusive discussion, or the contractarian principle that authority and power are granted by the ruled to the ruling, are rendered novelties, nonsensical and destructive of tradition. For the ultramontane clergy in 19th century Quebec, truth and power derive from God, not from discussion or contract.

This perspective was perhaps the fundamental cause of ultramontane concern with respect to the proposed Civil Code of Quebec in the mid-1860s, and particularly with respect to the Code's emphasis upon the law of obligations (i.e. contract). Fundamentally,

the concern was not with obligations as such, but with the idea that the agreement of the contracting parties was the foundation upon which the validity of the contract would be based, rather than the universal moral principles of Catholic doctrine. The further concern of the ultramontane clergy was that the liberal emphasis upon contracting individuals would be extended to areas to which they attached greater importance, such as marriage.[129] As Young notes, Bishop Bourget saw "codification as the occasion to apply Catholic principles across the Civil law."[130] As discussed in greater detail in chapters 3 and 4, it became clear that Bourget's desire would not come to pass, and codification did in fact become in part a moderately (and classically) liberal response by the civil authority to the challenges posed by ultramontanism.

The encyclical "Mirari Vos," written in 1832, is amongst the fundamental statements of Catholic doctrine concerning liberalism and religious indifferentism, the doctrine that salvation may be obtained by the progression of any religion, "as long as morality is maintained."[131] Plainly, this doctrine, with its presumption that the external forms of worship may be separated from the internal substance of worship, is inimical to Catholicism. More important, though, are the liberties denounced by Gregory XVI in this encyclical. Liberty of conscience is denounced for spreading "ruin in sacred and civil affairs" and for the removal of all restraints "by which men are kept on the narrow path of truth."[132] Gregory XVI also claims that "experience shows, even from the earliest

---

129 Brian Young, The Politics of Codification: The Lower Canadian Civil Code of 1866 (Montreal: McGill-Queen's University Press, 1994) 114.

130 *Ibid.* 119.

131 Pope Gregory XVI, Mirari Vos, Encyclical of 15 August 1832, para. 13.

132 *Ibid.* 14.

times, that cities renowned for wealth, dominion and glory perished as a result of this single evil, namely immoderate freedom of opinion, license of free speech, and desire for novelty."[133] The freedom of the press is equally vilified as something that "every law condemns" and that never may be sufficiently denounced.[134] Those who resist the power of the Church to forbid books are held to do great harm to the Catholic faith. This is of crucial importance to the Holy Wars in Quebec, since the content of the library of the *Institut Canadien* was amongst the primary catalysts of the Guibord Affair and of the dispute between liberals and ultramontanes.[135]

In the "Syllabus of Errors" of Pius IX, composed in 1862, amongst the errors specifically enumerated are the following assertions: that human reason is law unto itself and suffices for the welfare of people and nations; that all are free to profess the religion they consider true; that human laws need not be made conformable to the laws of nature; and that the Roman pontiff ought to "reconcile himself, and come to terms with progress, liberalism and modern civilization."[136] The "Syllabus" also specifically condemns communist, socialist, biblical, clerico-liberal and Masonic societies. The latter two were particularly relevant to the cause of the *Institut*, given the tendency of ultramontane

---

133 *Ibid.*

134 *Ibid.* 15.

135 To review from the previous chapter, the initial complaint of the ultramontane clergy toward the *Institut* concerned the content of the *Institut*'s library. It was alleged that the library contained books of an immoral character, including some that appeared on the Index. The members of the *Institut* responded by sending a delegation to Bishop Bourget inviting him to name the immoral works the library contained. The Bishop returned the book after six months and without comment. Nonetheless, Bourget continued to base his refusal of the sacraments to members of the *Institut* upon the books in their library, even *in articulo mortis*. This, then, was the immediate cause of the refusal to bury Guibord in consecrated ground, which refusal was the fundamental question of the Guibord Affair.

136 Pope Pius IX, The Syllabus of Errors Condemned, Encyclical of 8 December 1864, art. 80.

clergy and supporters to equate non-Catholic but francophone societies with secret societies, and secret societies with Masons.[137]

In "Immortale Dei," Leo XIII specifically reaffirms the strictures of Gregory XVI and Pius IX concerning liberties that were made in "Mirari Vos" and the "Syllabus of Errors." He further states that the liberties or printing and publishing, without hindrances, constitute "the fountain-head and origin of many evils" and that a State that allows license of opinion acts against the laws and dictates of nature.[138] In "Libertas," he accuses those who "style themselves liberals" of confusing liberty with license. He then asserts that "followers of liberalism deny the existence of any divine authority to which obedience is due, and proclaim that every man is the law unto himself."[139] It would follow that the unity of civil society derived from individuals, that authority derived only from civil society, and therefore that morality, law and liberty derived from civil society, without reference to the Church. Thus, Leo XIII condemns liberty of worship without qualification, and, in their turn, the liberties of speech, the press, opinion, assembly and teaching, insofar as they impinge upon the Catholic Church's concern for the salvation of souls.

Freedom of conscience he interprets, ingeniously, to mean the freedom always to believe and obey the commandments of God, regardless of circumstance and difficulty. He concludes that "it is quite unlawful to demand, to defend, or to grant unconditional liberty of thought, of speech, or writing, or of worship, as if these were so many rights

---

137 *Ibid.*

138 Pope Leo XIII, Immortale Dei, Encyclical of 1 November 1885, para. 32.

139 Pope Leo XIII, Libertas, Encyclical of 20 June 1888, para. 15.

given by nature to man. For, if nature had really granted them, it would be lawful to refuse obedience to God, and there would be no restraint upon human liberty."[140]

The foregoing makes plain that there can be no separation of Church and State consistent with Catholic doctrine and dogma in the context of the Holy Wars. This assertion is supported by three decisions reached at the First Vatican Council. First, the Council declared that divine law has ordained the Papacy.[141] Second, the Council declared that no civil sanction[142] was necessary for communication between the Pope and his flock, nor was this communication liable to be impeded by any person, organization or authority.[143] Further, it was declared that the sanction of the civil authority was unnecessary for Papal decrees to have force and effect. Third and finally, it was declared that none may lawfully pass judgment upon the Pope in ecclesiastical matters.[144] This entrenched Pius IX's inclusion in the "Syllabus" of the following assertion: that "the civil government ... has a right to an indirect negative power over religious affairs. It therefore possesses not only the right called that of 'exsequatur,' but also that of appeal, called 'appellatio ab abusu [appel comme d'abus]."[145]

These latter declarations, together with Pius IX's condemnation of the 'appel comme d'abus,' are of immense importance to the Guibord Affair and to the undue influence cases during the Holy Wars. It was, after all, the question of interference by the

---

140 *Ibid.* 42.

141 Joseph Kirch, "Vatican Council." The Catholic Encyclopedia, Vol. 15 (New York: Robert Appleton Company, 1912).

142 *Ibid.* In the sense of the approval of the civil authority.

143 *Ibid.*

144 *Ibid.*

145 Pope Pius IX, The Syllabus of Errors Condemned, Encyclical of 8 December 1864, art. 41.

civil authority in ecclesiastical affairs that prompted the Guibord Affair, and the nature and validity of the '*appel comme d'abus*' was crucial to the decision reached by the JCPC.[146] Moreover, the undue influence cases concerned interference by the clergy in elections to the civil authority. The clergy, however, were communicating the dicta of Gregory XVI, Pius IX and Leo XIII to the Catholic flock in Quebec, and the relevant decrees of Vatican I stated that no civil authority could interfere with this communication.

It must also be noted that the decisions of Vatican I, which were published in 1870, were generally interpreted to be a victory for ultramontanism and significantly buttressed the position of the ultramontanes in Quebec. To state this is not to conflate the ultramontanism of 19th century Europe, which advocated the primacy of the Papal See, with the ultramontanism of 19th century Quebec, which advocated a general theocracy. Instead, it is to recognize that the affirmation of Papal primacy and infallibility, which resulted from Vatican I, reinforced the assertion by ultramontanes in Quebec of the Church's sovereignty in matters concerning the salvation of souls. Equally, Vatican I supported the irreducible nature of the right of the Québécois clergy to communicate the wisdom of the Church and the dicta of the Pope to the Catholic flock in Quebec, even and especially during elections.

Essentially, then, not only was the separation of Church and State contrary to 'the natural law,' but the Church, as sole interpreter of the natural law, decided where the

---

146 Again, the '*appel comme d'abus*' derived from the Gallican Liberties of the Catholic Church in France; essentially, it allowed for the appeal of ecclesiastical actions to civil courts, in order to determine whether the legitimate bounds of ecclesiastical conduct had been transgressed. Popes Gregory XVI and Pius IX, along with the ultramontanes in Quebec, were particularly aggressive in their denunciations of the Gallican liberties and the '*appel comme d'abus*.' This became a matter of great importance in the Guibord Affair, since one of the fundamental points of controversy was whether the JCPC could take upon itself the functions of the '*appel comme d'abus*.'

boundary lay between Church and State, based upon the bounds of what bore upon the 'salvation of souls.' Moreover, in matters that concerned the salvation of souls, the Church held itself to be absolutely superior. The point is that while the clergy in Quebec during the Holy Wars may indeed have rendered unto Caesar what was Caesar's, as they claimed, the same clergy decided what was Caesar's.

This understanding of relations between Church and State was confirmed numerous times in the encyclicals of the three Popes who reigned during the period of the Holy Wars. For example, amongst the errors enumerated in the "Syllabus" may be found the following: "The State, as being the origin and source of all rights, is endowed with a certain right not circumscribed by any limits"; "In the case of conflicting laws enacted by the two powers [i.e. the civil and ecclesiastical], the civil law prevails"; "Kings and princes are not only exempt from the jurisdiction of the Church, but are superior to the Church in deciding questions of jurisdiction"; and "The Church ought to be separated from the State, and the State from the Church."[147] In sum, from the above it may be concluded that the power of the State is to be circumscribed, that in case of conflict ecclesiastical law should prevail, that Kings and Princes are to be subject to the jurisdiction of the Church, that the Church is to be superior in deciding questions of jurisdiction, and that there ought not to be a separation of Church from State. This perspective is fully corroborated by Pius IX's immediate predecessor, in "Mirari Vos" and elsewhere, and by his successor in "Libertas" and elsewhere.

To this point, the authority, substance and scope of the law according to the ecclesiastical understanding have been defined in this chapter. It remains to examine how

---

147 Pope Pius IX, The Syllabus of Errors Condemned, Encyclical of 8 December 1864, art. 39, 42, 54, 55.

the ultramontane clergy in Quebec applied and enforced their conception of the law upon their parishioners, and the effects this had upon the political and familial behaviour of Catholics in Quebec during the Holy Wars.

As Fernand Ouellet explains toward the end of his *Histoire économique et sociale du Québec, 1760 – 1850*, the context of ultramontanism in Quebec was established in the late 18th and early 19th centuries in response to the overthrow of the *ancien régime* as a result of the French Revolution.[148] As the quotation from Ouellet attested in the first chapter, clerical revulsion toward the French Revolution was the primary cause of successive generations in Quebec between 1791 and 1840 being instructed in the doctrine of the divine right of monarchs and other such ideas that justified the *ancien régime*.[149] First and foremost amongst the manifestations of this fear was a strong antipathy toward the introduction of Parliamentary Government in Lower Canada. Indeed, this antipathy extended to all reforms leading to popular government, and to anything resembling liberalism, all of which were held to be the results of the Revolution, or its causes, or both.

Together with the rise of popular government and liberalism, the clergy in Quebec were disquieted by two important developments, neither of which falls within the scope of this thesis: first, the passage in 1829 of the *'Loi des écoles de l'Assemblée,'* which signified to the clergy an impending substitution of clerical for lay authority in education; and second, the massive emigration of French Canadians to the northern United States

---

148 Fernand Ouellet, Histoire Economique et Sociale du Quebec: 1760-1850 (Montreal: Editions Fides, 1971) 589.

149 *Ibid.*

during the early decades of the 19th century.[150] Added to these were a growing Anglican Church, and growing pressure, especially from the burgeoning capitalist class, to do away with the seigneurial system. As Ouellet explains, the result was a clergy that felt under siege and, consequently, a militant Church. Thus, "the influence of the French school of ultramontanism, even while it did not seriously touch the elder priests or the Sulpicians of Montreal, penetrated very quickly amongst the younger elements of the French-Canadian clergy. Gallicanism, while it did not disappear, recoiled progressively."[151]

It was also at about this time, during the 1820s and 1830s, that the ultramontane clergy in particular began to view themselves as guardians of a French-Canadian nation. They defined the vocation of French-Canadians as the bastion of Catholicism in North America, and identified the Church's interest in its survival with the propagation of an insular, agrarian and traditional French-Canadian society.[152] Thus, ultramontanism in Quebec came to take on both its original and its later meaning. The term signified first the insularity comprised in 'beyond the mountains,' which is the meaning of the Italian from which 'ultramontane' derives. It also signified the supremacy of the Pope and, in what was a natural extension for the ultramontane clergy in Quebec, the theocratic impulse to assert the primacy of the Church wherever and whenever the Church decided that the salvation of souls was at stake.[153]

---

150 *Ibid.* 590.

151 *Ibid.* 589 (author's translation).

152 Mason Wade, The French Canadians 1760-1945, (Toronto: MacMillan, 1955) 345-6.

153 Umberto Benigni, "Ultramontanism," The Catholic Encyclopedia, vol. 15 (New York: Robert Appleton Company, 1912).

This, then, was the milieu in which the most influential ultramontanes in Quebec, Bishops Bourget and LaFlèche were formed as priests and ecclesiastical officials. It accords perfectly with the authority, substance and scope of the Ecclesiastical law as defined by and represented in the encyclicals of Gregory XVI, Pius IX and Leo XIII.

Application

As stated above, the application of the law remains to be discussed. For the purposes of this chapter, in particular, 'application' concerns how the authority, scope and substance of the ultramontane understanding of the law directed the behaviour of the clergy and lay Catholics in Quebec during the Guibord Affair, during elections in the 1870s and in the course of family life.

A joint pastoral letter was published on the 22nd of September 1875, having been signed by all the Bishops of he province of Quebec, and circulated throughout the province. The letter names its subject as liberalism, and its eighth section is entitled "Ecclesiastical Burial," in obvious reference to the recent burial of Joseph Guibord. The letter is cited at numerous points in the undue-influence cases, and particularly in Justice Taschereau's decision in *Brassard v. Langevin,* where he cites it as evidence of a generalized intention amongst the ultramontane clergy to publicly identify and support candidates whose opinions and political programmes accorded with their own. The opening section, entitled "Powers of the Church," accords in numerous points with the authority, scope and substance of the Ecclesiastical law as defined in this chapter. For example, the divine origin of authority is affirmed where the Bishops write the following:

> No society whatever can exist without law, and consequently, without law-givers, judges and a power to make the laws respected; the Church has, therefore, necessarily received

> from its founder authority over its children to maintain order and unity. To deny this authority would be to deny the wisdom of the Son of God.[154]

Elsewhere the bishops state that "the aim of the Church is the eternal happiness of souls." They also claim the superiority of the Church to civil society and that the State is circumscribed by the Church.[155] Finally, the bishops claim that "the moment a question touches on faith, morals or the divine constitution of the Church, on its independence or on what it needs to fulfill its spiritual mission, it is for the Church alone to judge."[156] It is of the greatest importance that these statements be recounted, since they show the immediacy of the connection between the encyclicals of Gregory XVI, Pius IX and Leo XIII, and the actions and doctrine of the ultramontane clergy in Quebec during the Holy Wars.[157]

In the section specifically concerned with the Guibord Affair, the bishops call the decision of the JCPC illegitimate because, they declare, no temporal power has the authority to require the Church to consecrate the burial of one judged unworthy. Further, the bishops state that the Guibord Affair threatens the liberty and the "most precious rights" of the Catholic Church in Quebec.[158] The bishops also argue that to allow appeals

---

154 Pastoral Letter of the Bishops of the Ecclesiastical Province of Quebec on the Subject of Liberalism, 22 September 1875, section I, http://faculty.marianopolis.edu/c.belanger/quebechistory/docs/1875/letter.htm.

155 *Ibid.*

156 *Ibid.*

157 To include Leo XIII in this list is not to make an error in chronology, but to show the philosophical and doctrinal continuity between the two earlier Popes and the later, as well as the continuity of Catholic doctrine from the earliest years of ultramontanism in Quebec, during the early 19th century, through to the first decades of the 20th century.

158 Pastoral Letter of the Bishops of the Ecclesiastical Province of Quebec on the Subject of Liberalism, 22 September 1875, section VIII, http://faculty.marianopolis.edu/c.belanger/quebechistory/docs/1875/letter.htm.

concerning their ecclesiastical judgments based upon the Gallican liberties, or upon any other liberty, is to render Catholic unity and the authority of Jesus Christ "a vain and empty title."[159] Finally, they identify the authority they derive from God as the foundation of the Catholic Church, and express incredulity that any could deny their authority concerning Guibord and still call themselves Catholic.[160] Plainly, with respect to the authority of the law, the Bishops of Quebec expressed in their encyclicals what the Popes during the period of the Holy Wars had established in their encyclicals.

This line of reasoning was further corroborated in a fascinating letter written by V. Rousselot, the curé responsible for burials at the cemetery of Notre-Dame, and who had initially refused to bury Guibord with ecclesiastical rites. The letter contains the following important passage:

> Nevertheless the Fabrique, condemned by means of the false allegations made by Mr. J. Doutre to the Privy Council, has resigned itself out of respect for Her Majesty the Queen of England, our Gracious Sovereign, to paying the costs of the trial; and on its side, the Ecclesiastical Authority, in order to prevent still greater wrongs, resigns itself to taking a purely passive attitude.[161]

Again, the JCPC mandated that Guibord be buried in the portion of the cemetery reserved for ecclesiastical burials, but left the question of the performance of rites to the Parish of Notre-Dame. The most important point in the above quotation is that the Church takes a 'purely passive' attitude to the decision of the JCPC out of respect for Queen Victoria; this follows the doctrine of obedience to high authority, since all authority derives from

---

159 *Ibid.*

160 *Ibid.*

161 Unpublished manuscript letter from V. Rousselot, Cure of Notre-Dame de Montreal, to Messieurs Soutre, Doutre and Hutchison, 16 November 1875, 4 pp in 4to, in the papers of the Diocese of Montreal at the National Archives of Canada (author's translation).

God. Thus, again, the encyclicals of Gregory XVI, Pius IX and Leo XIII are reflected in practice.

The undue influence cases and the political actions of Catholics are the subjects of three documents of great importance as testaments of Ecclesiastical policy during the Holy Wars. The first document is the joint pastoral letter already mentioned. The second is a pastoral letter written by Bishop LaFlèche of Trois-Rivières concerning "the duties of the faithful during elections," dated March of 1871. The third is a manifesto entitled "The Catholic Programme" and subtitled "The Next Elections."

In the joint pastoral letter on liberalism, the fifth section addresses itself explicitly to the role of the clergy in politics. This section takes its point of departure from the understanding that the Divine law, of which religion is the "expression and guardian," ought to guide the actions of political representatives and that, therefore, religion cannot be separated from politics.[162] As such, what is called during elections the undue influence of the priest, "is in fact the priest exercising his divine duty" to guide the voters toward electing the candidate whose views and policies are in accordance with the Divine law as expressed in the Catholic religion. The views of this candidate would therefore be conducive to the salvation of souls.[163]

Further, the section asserts the following:

> the priest and bishop may in all justice, and must in all conscience, raise their voices, point out the danger, declare authoritatively that to vote in a particular way is a sin, and that to do such a thing makes one liable to the censure of the Church. ... It is not,

---

162 Pastoral Letter of the Bishops of the Ecclesiastical Province of Quebec on the Subject of Liberalism, 22 September 1875, section V, http://faculty.marianopolis.edu/c.belanger/quebechistory/docs/1875/letter.htm.

163 *Ibid.*

> therefore, converting the pulpit into a political platform when the clergy enlighten the conscience of the faithful on all those questions in which salvation is involved.[164]

The letter also makes it plain that only the Church may censure those priests who exceed their proper role, that the Church certainly does have the means and doctrine so to censure, and that the Church alone can determine the boundary between the proper and the undue influence of a priest, because only the Church can interpret divine law.[165]

In this pastoral letter of 1875, then, may be observed the reflection in practice of the derivation of the law's authority from God, of the identification of the substance of the law with the divine or natural law, and of the definition of the scope of the law as the salvation of souls. The letter also shows the application of the law in the bishops' claim that the Church is the sole authority concerning the boundary between Church and State, as well as their claim that clergy are well within their authority to direct the votes of their parishioners.

The second and third documents, Bishop LaFlèche's Pastoral and the "Catholic Programme," must be taken together. The first is a general statement of principles the Catholic voter should follow, while the second is the application of these principles to the specific parties and candidates contesting the elections of 1871. Taking its impetus in part from the fourth Council of Quebec, Bishop LaFlèche's Pastoral letter instructs the faithful upon several points: to take the greatest care to give their suffrage as much for the benefit of religion as of state or homeland; that when the circumstances of a contest are unusual or extraordinary, the priest should not give guidance to his parishioners without first having consulted with his Bishop; that the duties of Catholics during elections are of

---

164 *Ibid.*

165 *Ibid.*

equal concern to Church and State; that God does not punish less the sins committed during an election than other kinds of sin; and that the Fathers of the Council of Quebec were particularly insistent that pastors teach the faithful the duties imposed upon them as electors by divine law.[166] Finally, Bishop LaFlèche addressed himself to the current of thought that held that the clergy had no role to play, beyond voting, in elections. Speaking to the faithful, he made the following admonition:

> What, therefore, will you think now of those who have told you, and who tell you still, that elections do not concern priests, and that priests have no right to speak of elections from the pulpit, while you listen to the Fathers of a Council approved by Our Most Holy Father the Pope, give to the priests such a great duty [i.e., to instruct parishioners during elections]?[167]

Plainly, the point made by Bishop LaFlèche was that not only is it permissible for clergy to instruct parishioners concerning their votes in a given election, but that it is their duty to do so, and they are required to do so both by the hierarchy of the Catholic Church and by divine and natural law.

This perspective was also advanced in the joint pastoral letter of 1875, which was in turn cited by the respondents in *Brassard v. Langevin*. Indeed, when the respondents argued that "it is the duty of every Catholic priest to preach in accordance with his Bishops' instructions," they were reflecting Bishop LaFlèche's argument that it was the duty of the clergy to involve itself in election.[168] A further quotation from the respondents in *Brassard v. Langevin* defends specifically the right of ecclesiastics to comment upon

---

166 "Letter pastorale de Monseigneur l'Éveque des Trois-Rivières sur les devoirs des fidèles dans les elections," 10 March 1871, the manuscript original in French held at Library and Archives Canada.

167 *Ibid.* Author's translation.

168 *Brassard v. Langevin*, 177.

election, but also gives further demonstration of the incommensurability between the legal idioms of the ecclesiastical and the civil authority:

> The liberty of preaching exists in election times as well as in any other time. The priest, in this circumstance, as ever, is responsible for his conduct only to his ecclesiastical superior. In elections, civil tribunals have not, more than in any other time, the right of judging the teachings of the priest, of the minister of the Catholic Church. The Church alone has the right of judging within what limits, in what circumstances, and under what forms, the right of preaching should be used, *otherwise, civil society would encroach on religious society.*[169]

Thus, again, the ecclesiastical idiom and that of the civil authority cannot coexist. Each one must define the boundaries of the other but cannot be so defined itself, because it cannot admit of encroachment.

Such a doctrine is sufficiently striking, and leaves little enough room for a separation of Church and State; however, it was also explicitly cited as the guiding doctrine of the "Catholic Programme," a plan for the participation of the faithful in elections that is generally thought to have been drafted by Adolphe-Basil Routhier. This is the same individual who would later become Justice Routhier and find in favour of Hector Langevin in the initial trial of his election against charges that he benefited from the undue influence of the clergy.[170] The "Catholic Programme" was published with the approval of Bishops Bourget and LaFlèche on the 20th of April, 1871; in its text, three paragraphs of Bishop LaFlèche's Pastoral are quoted in full.

The "Catholic Programme" opens by posing the following question: "What ought to be the actions of Catholic electors in the battle that prepares itself, and what ought to

---

169 *Ibid.* 182. Author's italics.

170 A manuscript of "The Catholic Programme" was found amongst Bishop Bourget's papers after his death, raising the possibility that the Bishop had a role in drafting the document. The manuscript is held at present by the National Archives of Canada.

be their line of conduct in the choice between the candidates who solicit their votes?"[171] Understandably, the importance of this question is considered to rest in the power wielded by those elected. For this reason, electors must ensure that the candidate for whom they vote shares Catholic, and preferably ultramontane principles. With this in mind, Catholics are expressly enjoined to attach themselves to the Conservative Party, "a group of men professing sincerely the same principles of religion and nationality," who profess an "inviolable attachment to Catholic doctrine and ... an absolute devotion to the national interests of Lower Canada."[172] This identification of national with Catholic interests was to shape profoundly politics and identity in Quebec for almost the subsequent century. Of equal importance, the document engages representatives who subscribe to the Catholic Programme to seek to amend legislation and fill gaps in legislation that could prove damaging to the Catholic Church. Further, and more alarmingly, representatives also engaged to seek to draft, amend, pass or kill legislation according to guidance from their bishop.[173]

The actual scheme to guide the votes of Catholic electors made it virtually impossible for a faithful Catholic to cast his vote for a candidate belonging to the Liberal Party. The four rules that comprised the scheme read as follows:

1. If the contest takes place between two Conservatives, it goes without saying that we shall support he who accepts the programme we have just outlined;

---

171 Author's translation of a draft held in manuscript of "The Catholic Programme" of 1871 at the National Archives of Canada. A slightly different translation, conveying the same sense, may be found at http://faculty.marianopolis.edu/c.belanger/quebechistory/docs/catholic/text-e.htm. See also Wade, 353-354.

172 "The Catholic Programme," 1871, http://faculty.marianopolis.edu/c.belanger/quebechistory/docs/catholic/text-e.htm.

173 *Ibid.*

2. If, conversely, the contest takes place between a Conservative of any quality whatever, and an adept of the liberal school, our active sympathies will be given to the former;

3. If the only candidates in a constituency who offer themselves for our suffrage are all of them Liberal or oppositionists, we must choose he who will sign to our conditions;

4. Finally, in the case where the contest be engaged between a Conservative who rejects our programme and an oppositionist who nevertheless accepts it, the position would be more delicate.

   To vote for the first would place us in contradiction with the doctrine we intend to promote. To vote for the second would imperil the very Conservative Party that we would like to see powerful. Which party to take between these two dangers? We would counsel in this case the abstention of the Catholic electors.[174]

Given that this programme was published with the approbation of Bishops Bourget and LaFlèche, one can only conclude that, from the ultramontane perspective, for a Catholic to vote in any other manner would be to act sinfully. Indeed, for a Catholic to vote for a Liberal would be to deny the authority of God and to contradict the law of nature, as applied by the Pope, through the bishop and the curé. In the event, during the elections of 1871 and 1875 it was communicated quite forcefully to Catholic electors that to vote for the Liberal candidate was to commit a mortal sin.

Thus may be seen the effect in practice of Bishop Bourget's dictum: "Let each say in his heart, 'I hear my curé, my curé hears the bishop, the bishop hears the Pope, and the Pope hear Our Lord Jesus Christ."[175] Yet to stop at this point is to miss a great deal of the power of the ultramontane position, since the communication of the natural law does not end with the curé, but continues to the father as the divinely constituted authority of the family.

---

174 *Ibid.* Wade quotes the same passage with a different translation at 353-354.

175 Wade, 360.

The father's position is confirmed by Leo XIII's "Quod Apostolici Muneris," written in 1878 in opposition to the growing appeal of socialism. In this encyclical, Leo XIII asserts that society rests upon marriage "according to the necessity of natural law." He further asserts that the authority of God is "imparted to parents and masters," and that as Christ is the head of the Church and the Church subject to Christ, so the man is the head of the woman and the wife subject to the husband.[176] Bishop LaFlèche, in an article entitled "Several Considerations Upon the Relations of Civil Society with Religion and the Family," had already expressed his support of this position in 1866 as follows: "Authority derives from God. The best form of government is a moderate monarchy (the Church and the family are examples of it); the most imperfect is democracy."[177] Thus, the authority of the husband and father within the family is a microcosm of the authority of the Pope within the Church.

This has in turn been confirmed by Micheline Dumont *et al* in their work, Quebec Women: A History, which studies of the position and treatment of women of all classes and occupations in Quebec between the 17th and the 20th centuries. Dumont *et al* find that "whether noble or peasant, a woman worked within the context of family activities defined by her husband."[178] The authors also quote a fascinating and representative letter composed by the Patriote leader Louis-Joseph Papineau to his wife in 1830, in which he suggests that his wife shows "a little too much independence in the face of the legitimate and absolute authority of [her] husband" and that she forgets St. Paul's admonition:

---

176 Pope Leo XIII, Quod Apostolici Muneris, Encyclical of 28 December 1888, para. 8.

177 Wade, 346.

178 Micheline Dumont, Michele Jean, Marie Lavigne and Jennifer Stoddart, Quebec Women: A History, trans. Roger Gannon and Rosalin Gill (Toronto: The Women's Press, 1987) 92.

"Wives, be subject to your husbands."[179] Finally, Dumont *et al* note that as the 19th century progressed and as economic activity in Quebec became increasingly industrial, the role of women in public economic activity declined, women were increasingly restricted to the domestic sphere, women were increasingly dependent upon their husbands for their social and economic status, and "political and economic life became resolutely male."[180]

Thus, one can see clearly the panoptic nature of the application of the 'natural law' by the ultramontane clergy. Not only was the public statement of one's political affiliation subject to ecclesiastical approval or censure, even beyond the grave, but every aspect of domestic life was subject to the same application of the law. This banishment of liberalism even from the bedroom (for Papineau condemns Rousseau as the immediate cause of his wife's excessive independence[181]), amongst a deeply faithful Catholic population, could not and did not fail to produce a political culture sympathetic to the ultramontane understanding of relations between Church and State, and significantly hostile toward, or at least suspicious of, liberalism, gallicanism, socialism, freemasonry, and other phenomena contrary to the natural law.

This in turn signifies a structural advantage for ultramontanism that must account somewhat for its persistence, as is discussed in greater detail in Chapter 4. The ecclesiastical understanding of the law could penetrate to and be propagated at the most fundamental and intimate levels of human interaction. The same could not be said for the

---

179 *Ibid.* 122.

180 *Ibid.* 148-149.

181 *Ibid.* 122.

understanding of the law employed by the civil authority. Insofar as it partakes of classical liberal thought, which the following two chapters show it does, the understanding of the civil authority must posit a distinction between public and private. It must then assign to itself a purview limited to what is public. This is not to suggest that the understanding of the law employed by the civil authority cannot be discussed, shared or believed within the private sphere of the family. Instead, this is to recognize that it belongs to the ecclesiastical understanding to extend itself forcefully into the most private context and that the same cannot be said of the understanding of the civil authority. This precipitates what is perhaps the most important aspect of the incommensurability of the two legal idioms. Given the impossibility of achieving fundamental compromise between the understandings of the law employed by the ecclesiastical and civil authorities, the understanding that establishes itself most profoundly within the private sphere of the family will be significantly advantaged in its ability to persist against adversity, such as the series of legal defeats suffered by the ultramontanes during the 1860s and 1870s.

Even here, though, there remains a further and crucial ingress to be made by ultramontanism. The ultramontanes in Quebec considered Catholicism fundamental to French-Canadian national identity. Bishop LaFlèche articulated this perspective definitively in his "Considerations" as follows:

> A nation is constituted by unity of speech, unity of faith, uniformity of morals, customs, and institutions. The French-Canadians possess all these, and constitute a true nation. Each nation has received from Providence a mission to fulfill. The mission of the French-Canadian people is to constitute a centre of Catholicism in the New World.[182]

As Jill Vickers urges in "Gendering the Hyphen," the space between nation and state is the particular domain of women because of the fundamental role played by

---

182 Wade, 346.

women in the earliest education of children.[183] This logically extends to the assertion that in Quebec during the Holy Wars the space between the Church and the nation is particularly amenable to the propagation of the natural law as expressed in the Catholic religion, by women, during the course of the earliest education of children. Thus, even in an 1828 petition drafted by Lower-Canadian women asserting their right to vote, one finds the following passage: "It is [the mother] who breathes into man with eloquent tenderness his earliest lessons of religion and morals."[184]

In this way, because of its association with French-Canadian national identity, the tenets of the ultramontane position could be incorporated almost from birth into the education of children. The same cannot be said for the tenets of liberalism, since they did not share the same intimate relation with the national identity. This constitutes a significant explanation of the tenacity of the ultramontane position, and of its recurrence even through the 1920s, despite the series of defeats suffered by the ultramontane cause and described in the previous chapter.[185]

In conclusion, the ultramontane position during the Holy Wars defined and applied a particular conception of law with significant consequences for Quebec's political culture and sense of national identity. The derivation of all authority from God, the identification of the substance of the law with the natural law, and the application of

---

183 Jill Vickers, "Gendering the Hyphen: Gender Scripts and Women's Agency in the Making and Re-Making of Nation-States," Presented at the annual conference of the Canadian Political Science Association, http://74.125.95.104/search?q=cache:4fr1_1NxiosJ:www.cpsa-acsp.ca/papers-2004/Vickers.pdf+Jill+Vickers+Gendering+the+Hyphen&hl=en&ct=clnk&cd=1&gl=ca.

184 Dumont *et al*, 104-105.

185 This is not to suggest either the fact or the aspiration of ultramontane monopoly over Catholic Québécois national identity, although the fact may have been the case, and the aspiration certainly was. Rather, the suggestion here is that the ultramontane understanding, to the extent that it was adopted by individuals and families in Quebec, contained a structural advantage that was not available to the understanding of the law employed by the civil authority. This is a significant and plausible explanation of the persistence of ultramontanism.

the law to all matters that bore upon the salvation of souls, produced a political philosophy that gave primacy to Church over State. This philosophy was incommensurable with liberal-democratic freedoms and bound equally elected representatives and judges of the Catholic faith, Catholic voters in their choice of representatives, and the domestic activities of Catholic families. This extreme depth of application could not be matched by those who adhered to tenets of liberalism and accounts for the ability of ultramontanism to withstand successive defeats in the judicial, political and even ecclesiastical spheres; it also mandated that ultramontanism be reckoned with in any construction of a French-Canadian or Québécois national identity. How the adherents of liberal philosophical principles advanced their understandings of the authority, scope, substance and application of law, and how they addressed the challenges posed by ultramontanism, is the subject of the next chapter.

Chapter 3

The Understanding of the Law According to the Civil Authority

The ultramontane understanding of the law took its point of departure first from the derivation of all authority from God, and second from the primacy of the salvation of souls as the mission of the Catholic Church. The understanding of the law employed by the civil authority, and shared by the liberals of the *Institut*, differed in its derivation of authority, its scope, its substance, its application and its impact. In brief, per the understanding of the civil authority, the authority of the law derived ultimately from the British Crown, which was later augmented by duly constituted legislative and judicial institutions. The scope of the law was limited to what was articulated by Parliament and legislature, as applied by the courts, approved by governor-general or lieutenant-governor, and bounded by the Constitution. This was sufficient to incorporate the definition of undue influence within the understanding of the civil authority.

In this chapter, the substance, application and impact of the law are discussed in concert, and only to the extent that they bear upon the response of the civil authority to the challenges posed by the ultramontanes. The substance of the law, according to the understanding of the civil authority, comprised four paths: appeal to the civil courts; the limitation of membership within the civil authority; the definition of undue influence; and the movement toward and fact of codification. The application of the law concerns the manner in which the law is implemented in practice. Aside from Parliamentary debates and other records of the processes of legislating and governing,[186] and the obvious role of the courts, the application of the law is found in the informal negotiation practices of

[186] This point requires further clarification. It is well understood that the formal sources of the law are the executive, the legislature and the judiciary, in executive orders, legislation and the common law (and jurisprudence in general) respectively. What is suggested here is only that, in addition to being a source of law, by means of its debates and its oversight of the executive, the legislature is a site of the application of the law. Unfortunately, as noted in the introduction, the records of the debates in the House of Commons and the Legislature of Quebec do not mention the clerical undue influence cases or the Guibord Affair in anything like significant detail.

prominent law firms such as Torrance and Morris. Per the example of the Guibord Affair, the application of the law is also seen in a single instance of the extension of the executive power through the use of armed force. The impact of the law is found not only in the extent to which members of the populace were able to exercise particular freedoms, but more profoundly in the following areas: gender relations; the prescribed roles of family members; the division between public and private; the relation between individual and community; the ascendancy of express contractual obligation over customary forms of obligation; and the sharper distinction between the domains of the civil and ecclesiastical understandings of the law.

Authority

The greatest significance must be attached to the difference between the origin of the authority of the law in the understanding of the civil authority, and the origin of the same in the ecclesiastical understanding. Implications of the first importance follow from this difference. In the understanding of the civil authority, all lawful authority derived from the British Crown, while for the ultramontanes it derived from God.

The derivation of authority from the British Crown during the period of the Holy Wars is widely accepted, and it is easily shown by reference to a few well-known points. First, every 'constitutional' Act between the conquest and Confederation was in fact an Act of the British Parliament or an action of the British Crown. This includes the Royal Proclamation of 1763 and the Treaty of Paris of the same year, the Quebec Act of 1774, the Constitutional Act of 1791, the Act of Union of 1840 and the British North America Act of 1867. Second, every Act of the Union legislature and of the Canadian Parliament required royal assent before it could partake of the force and effect of law. Third, section

9 of the British North America Act, 1867, states the following: "The Executive Government and Authority of and over the Dominion of Canada is hereby declared to continue and be vested in the Queen."[187] Fourth, the titular head-of-state was the governor-general, and the heads of the provinces were the lieutenants-governors. This was no symbolic power during the years of the Holy Wars; the governors-general and lieutenants-governors could and did disallow legislation.[188]

The implications of the derivation of authority in the Canadian Constitution from the British Crown, relative the derivation of authority from God, are quite important. First, it means that particular areas of activity do not fall within the purview of the Catholic Church, regardless of how the hierarchy and the clergy define 'mores.' This relieves the Church of the right to determine the extent of its proper influence and creates the possibility that the Church can exercise 'undue' influence in civil affairs. Second, it raises the possibility that the actions of the clergy, such as their decisions concerning burial in sanctified ground, can be overridden by the secular authority. Third, it allows for legitimate delegation of the authority to decide the proper extent of the Church's influence to Cabinet through executive actions and orders in council, to Parliament through legislation, and ultimately to the judiciary. Thus, at least in a formal and legal sense, the derivation of authority from the British Crown renders legitimate the decisions

---

187 Canada, British North America Act, 1867, 30 & 31 V c. 3, s. 9.

188 Indeed, as late as 1926, Governor-General Byng refused Prime Minister MacKenzie-King's request to dissolve Parliament. See Robert MaGregor Dawson, Constitutional Issues In Canada: 1900-1931 (Oxford: Oxford University Press, 1933), 72.

of the Supreme Court of Canada and the JCPC in the undue influence cases and the Guibord Affair.[189]

It must be noted, however, that formal and legal legitimacy do not equate to legitimacy in popular or political discourse. For example, almost the entirety of the Catholic hierarchy in Quebec, and a very significant number of the population at large, considered the decision of the JCPC in Guibord illegitimate, as witness the demonstrations that thwarted the initial attempt to bury Guibord's body. This distinction between competing legitimacies is important to bear in mind because it was the direct result of the incommensurability between the two legal idioms under discussion in this thesis: the ecclesiastical understanding of the law and that of the civil authority. Moreover, the denial of the legitimacy of the judicial review of ecclesiastics was an important means by which the structural advantage of the ecclesiastical understanding was realized. Essentially, in the understanding of the civil authority, the formal and legal authority of the judiciary was supported by the derivation of all authority from the British Crown, but this was an insufficient support for legitimacy within the ecclesiastical understanding, wherein all authority derived from God. In sum, the derivation of authority on one side from God, and on the other from the British Crown, was one of the most significant causes of the conflict between Church and State that was so fundamental to the emergence of a sense of nationhood in Quebec.[190]

---

189 This refers to the distinction that must be made between legal, constitutional or formal legitimacy, and the kind of legitimacy that derives from cultural or sociological acceptance.

190 One might object that the ultramontanes allow the legitimacy of the authority of the British Crown. Indeed, this would be the ultramontanes' objection, as evinced at several points in the previous chapter. The point, however, is that the ultramontanes considered the Crown's authority to have been granted by God, and this would have given them the authority to decide the point to which their proper authority extended.

Scope

The scope of the law is its legitimate purview. The present discussion is concerned with the extent to which the legitimate purview of the understanding of the civil authority bound the actions of Church and State, and bounded their relationship. While a number of Acts of the responsible legislative bodies between 1774 and 1867 bore upon relations between Church and State, the legitimate purview, and therefore the scope, of Canadian legislative bodies relative the Catholic Church was established by four Acts of the British Parliament: the Quebec Act of 1774; the Constitutional Act of 1791; the Act of Union of 1840; and the British North America Act of 1867. Before these, however, the Articles of the capitulations of Quebec and Montreal, as well as the Treaty of Paris of 1763, must briefly be addressed, owing to the significance that would be attached to their provisions a century later.

The Articles of Capitulation of 1759 and 1760 provided for the free exercise of the "Catholic, Apostolic, and Roman religion," the latter specifying "in such manner that all the states and the people of the Towns and countries, places and distant posts, shall continue to assemble in the churches, and to frequent sacraments as heretofore, without being molested in any manner, directly or indirectly."[191] The Treaty of Paris of 1763 added the following significant provision: "His Britannick Majesty, on his side, agrees to grant the liberty of the Catholick religion to the inhabitants of Canada: he will, in consequence, give the most precise and most effectual orders, that his new Roman

---

191 Articles of the Capitulation of Quebec, 1759, Article IX, http://www.canadiana.org/view/42695/0006; Articles of the Capitulation of Montreal, 1760, Article XXVII, http://www.canadiana.org/view/42695/0010.

Catholic subjects may profess the worship of their religion according to the rites of the Romish Church, *as far as the laws of Great Britain permit.*"[192]

Now, if ever there was passage fraught, it was "as far as the laws of Great Britain permit" when the laws referred to Catholics and the year was 1763. From the first Act of the reign of Queen Elizabeth in 1557, until the reign of King George I, the laws of Great Britain had progressively disabled Catholics in England and British territories from professing their faith, attending mass, holding public office, and owning real property. Catholics were also required to pay double taxes upon their property under Queen Anne and King George I. Charles Butler, the first Catholic admitted to the Bar in England after the Catholic Relief Act of 1791, divided the anti-Catholic penal laws into 5 categories: those that punished Catholics for practicing Catholic modes of worship; those that punished Catholics for nonconformity to the Anglican Church (i.e. 'recusancy'); those that punished Catholics for refusal to take the Oath of Supremacy, the Declaration against Transubstantiation, and the declaration against 'Popery'; the particular Act that concerned the Catholic Eucharist; and the various penalties against Catholic-owned real property.[193]

A few of the most important penal laws may be noted here. The 1557 Act of Supremacy made maintaining the authority of a foreign prelate punishable as high treason on the third offence.[194] The 1605 "Act to Prevent and Avoid Dangers which may Grow by Popish Recusants" restricted the movement of Catholics to within 5 miles of their

---

192 Treaty of Paris, 1763, Article IV, http://www.solon.org/Constitutions/Canada/English/PreConfederation/Treaty_of_Paris_1763.html.

193 Edwin Burton, Edward D'Alton, and Jarvis Kelley, "Penal Laws," The Catholic Encyclopedia, vol. 11, (New York: Robert Appleton Company, 1911).

194 *Ibid.*

place of residence, and prohibited Catholics from holding any state office, any commission, or any office in a court or corporation. The Act also prohibited Catholics from practicing as lawyers, doctors and apothecaries.[195] The notorious Test Act of 1673, passed during the reign of Charles II, required all officers, civil and military, to take the Oaths of Allegiance and Supremacy, as well as the declaration against transubstantiation.[196] Amongst other penalties, the "Act for Further Preventing the Growth of Popery," of 1699, prohibited Catholics over 18 from inheriting or purchasing lands, unless the individual made the Oaths required by the Test Act.[197] Finally, along with double taxation, an Act of 1715 ordered the assessment of all Catholic-held real property, with a view to confiscating two-thirds.[198]

In England, at least, relief from these penalties and disabilities would not begin to arrive until the first Relief Act of 1778, and would not be entirely instituted until the Catholic Emancipation Act of 1829.[199] In Quebec, numerous of the penal laws remained in force after the Treaty of Paris. These included the requirement for state and civil officers to take the Oaths prescribed by the Test Act, the prohibition upon Catholics practicing as lawyers, and the prohibition upon Catholics holding a commission. The Treaty of Paris established only the toleration of Catholicism. The above penalties would remain in force until the Quebec Act of 1774 allowed Catholics to hold offices and commissions.

---

195 *Ibid.*

196 *Ibid.*

197 *Ibid.*

198 *Ibid.*

199 *Ibid.*

Nevertheless, the articles in the Treaty of Paris established the freedom of Catholics in Quebec to practice their religion under the sovereignty of the British Crown.[200] This freedom has never since been gainsaid by an Act of the Parliament of Great Britain or by that of Canada. With the Quebec Act and the BNA Act, it represents the most significant limitation relative the Catholic Church upon the legislative scope of the Assembly of the United Canadas and upon the Canadian Parliament.

At this point, however, there arise differences of interpretation that serve to frame the conflicts between the civil and ecclesiastical understandings of the law. For their part, the ultramontanes considered that both the fact of the Conquest and the phrase "as far as the laws of England permit," signified the end of the influence of French Ecclesiastical law upon the Catholics of Quebec.[201] The corollary, they deduced, was that the Roman Canon Law had come into effect at the signing of the Treaty of Paris in 1763, bringing with it the Index and technically, though not in fact, the Inquisition. More importantly, the supposed ascendancy of the Roman Canon Law gave the ultramontanes what they considered to be a conclusive authority granting the supremacy of Church over State.

On the side of the civil authority, the phrase, "as far as the laws of England permit" came to hold a double meaning. First, as Justice Casault stated in the controverted election at Bonaventure, the words "restrict, in a very formal manner, what the defendant pretends to be one of the freedoms of the exèrcise of the Catholic religion: that of being able, in preaching, to practice intimidation, and thus to limit, if not to

---

200 Treaty of Paris, 1763, Article IV, http://www.solon.org/Constitutions/Canada/English/PreConfederation/Treaty_of_Paris_1763.html.

201 Charles Lindsey, Rome in Canada: The Ultramontane Struggle For Supremacy Over the Civil Power (Toronto: Williamson, 1889), 118-152.

destroy, the electoral franchise."[202] Thus, it was established that under the laws of England the State was superior to the Church and even priests in their sermons could be held accountable for their words and the effects thereof. Second, "as far as the laws of England permit" signified a transfer of sovereignty from the French Crown to the British. The corollary for those who adhered to the understanding of the civil authority was also that the French Ecclesiastical law ceased to be operative after 1763; however, from this they deduced that the law governing the Catholic clergy was not the Roman Canon Law, but the French Ecclesiastical Law as it stood in 1759, including the Gallican Liberties and the '*appel comme d'abus.*'[203] Thus, again, the scope of the law according to the understanding of the civil authority was further defined to include a means for Ecclesiastical persons to be tried before civil courts, and for parishioners to appeal to civil courts for redress against the Ecclesiastical power, even when the alleged offence took place during the exercise of Ecclesiastical duties.

The Quebec Act of 1774 revoked the Royal Proclamation of 1763, insofar as the latter represented an attempt to govern Quebec as though it were a typical British colony. The Act reinstituted French Civil Law and the Custom of Paris, and returned to Catholics in Quebec their civil rights, the right to hold public office, and the right to practice law.[204] The Quebec Act also affirmed the right of Catholics in Quebec to exercise their religion, this time subject to "the King's Supremacy," and reinstated the right of the Clergy to tithe.

---

202 *Hamilton v. Beauchesne*, 3 Q.L.R. (1877), 82 (author's translation).

203 Lindsey, 118.

204 An Act for Making More Effectual Provision for the Government of the Province of Quebec in North America (The Quebec Act), 1774, 14 George III, c. 83, ss. IV-V.

Catholics were also permitted to take a modified Oath of Allegiance.[205] This was no small matter, since it essentially excepted Catholics in Quebec from the Test Act of 1673. The new Oath required only that Catholics swear allegiance to the British Monarch and protect the monarch from treasons and stratagems.[206] Essentially, Catholics in Quebec were required to swear to half of what the Act of Supremacy required: allegiance to the British monarch as head of their state, but not as head of their Church. This establishment of a parallel allegiance must be considered as one of the foundational moments in the development of the two incommensurable legal idioms, whose conflict would frame the Holy Wars.

Finally, the Quebec Act established that criminal matter would be judged under British criminal law, and provided that "no Ordinance touching Religion ... shall be of any Force or Effect, until the same shall have received his Majesty's approbation."[207] The latter, then, provided against legislative enterprises intent upon increasing the difficulties of Catholics or of practicing Catholicism. At the same time, it provided against the same kind of enterprise intent upon improving the place of Catholicism or of Catholics. The former provided that the definitions of libel, blasphemy and other such crimes, would be taken from the English criminal law. However, in the context of the Holy Wars, the most important aspect of the adoption of the English criminal law was that it included no immunities for priests from charges of libel, or indeed from any other charge. In the event, this omission was given greater weight than the ultramontane construction of the

---

205 *Ibid.* s. VII.

206 *Ibid.*

207 *Ibid.* s. XV

'ancient dues and rights' protected by the Quebec Act, which would have entailed clerical immunity from prosecution in the courts of the civil authority.

The Constitutional Act of 1791 provided that no ecclesiastical official, whether Church of England or Church of Rome, would be permitted to serve in the Legislative Council of Lower or Upper Canada. Famously the Constitutional Act established the Anglican religion in Lower Canada; however, it also restated a provision in Lord Dorchester's instructions of 1775 stipulating that Protestant landholders were not to be subject to tithes exacted by Catholic ecclesiastics.[208] Finally, the Constitutional Act provided that any Act respecting religion must be subject not only to the approval of the Crown, but also to the express approval of the British Parliament.[209]

Thus, the combined import of the Quebec Act and the Constitutional Act was significantly to hinder the legislative bodies of the Canadas from legislating concerning religious matters, and to establish the primacy of English criminal law in Lower Canada, while restoring French civil law for private disputes. Under the Acts, appeal could be had to the courts of the civil authority in at least three important areas: against offences and wrongs committed by ecclesiastical persons; to ensure the freedom of Catholics to practice their religion; and to ensure ecclesiastical officials their 'Rights and dues,' including their right to tithe. In this manner was the scope of the understanding of the law according to the civil authority defined and limited.

---

208 An Act to Repeal Certain Parts of an Act, Passed in the Fourteenth Year of His majesty's Reign, intituled, An Act for making more effectual Provision for the Government of the Province of Quebec, in North America; and to make further Provision for the Government of he said Province (The Constitutional Act), 1791, 31 George III, c. 31, s. XXXV

209 *Ibid.* XLII

Had it been successfully fulfilled, the purpose of the Act of Union of 1840 would have had a great effect indeed upon the scope of the law, according to the understanding of the civil authority. Following from the recommendations of Lord Durham, and aside from the introduction of responsible government, the purpose of the Act of Union was gradually to assimilate French Canadians to the English language, the British culture and the Anglican religion. The failure of this purpose has become a canonical episode in Canadian political history. In fact, the decade following the Act of Union has become famous for the speed with which agreement to divide authority was reached between the parties of Canadas East and West. Under this agreement, each province would have authority over matters exclusively concerning itself, and a double-majority would be necessary for the passage of bills affecting both Canadas. This effectively precluded assimilation. Moreover, while the Act of Union stipulated that the official records of the Legislative Assembly of the United Canadas would be kept only in English, legislative debates were nonetheless recorded in French for the newspapers, and in January of 1849 Lord Elgin read the Speech From the Throne in both French and English.[210]

And yet the Act of Union had been passed by the British Parliament. Its stated provisions, as opposed to the unstated intent of its framers, constituted part of the fundamental law of the United Canadas. As such, the scope of the understanding of the civil authority, as it pertained to Church and State relations, was further defined by Article 42. This article not only extends the freedoms of Catholics and the rights and dues of Catholic ecclesiastics, it further requires that all legislation pertaining to religion

---

[210] Mason Wade, The French Canadians 1760-1945, (Toronto: MacMillan, 1955) 267.

receive the approval of the British Parliament before it be considered of any force or effect.[211]

To all of the provisions in the Acts heretofore considered, the British North America Act, 1867, added the following, each of which continues the trend toward defining with greater clarity the distinction between Church and State. Section 31(2) disqualifies a person from being a Senator if the person has declared allegiance to or is a citizen of a foreign power, which of course includes the Vatican. Section 93(1) prohibits the provincial governments from prejudicially affecting the denominational school system. Section 93(3) provides for an appeal to the Governor General in Council from any Act or decision of any provincial authority affecting the educational rights of Catholics. Section 94 does not include Quebec amongst the provinces for which the Parliament of Canada may legislate the uniformity of laws relative property and civil rights. Finally, section 133 reverses the Act of Union by stipulating that English and French will be allowed in the Parliament of Canada and the legislature of Quebec, that official records of the aforesaid Houses will be kept in both languages, and that all proceedings in the Courts of Canada and Quebec may be in either language.[212]

In sum, it may be concluded that the scope of the law, according to the understanding of the civil authority, was severely restricted between 1840 and 1867 in its ability to meet the challenges posed by ultramontanism. This was essentially because of the explicit protection given by the fundamental law of the period to the freedoms of Catholics and the rights and dues of the Catholic hierarchy, as well as the overarching

---

211 An Act to Reunite the Provinces of Upper and Lower Canada, and for the Government of Canada, (The Act of Union), 1840, 3 & 4 Victoria, c. 35, s. XLII.

212 British North America Act, 1867, 30 & 31 Victoria c. 3, ss. 31(2), 93(1), 93(3), 94, 133.

requirement that any legislation affecting religion receive the approval of the British Parliament and the Royal assent prior to attaining force and effect. Therefore, it was extremely unlikely that during the period of the Guibord Affair the Assembly of the United Canadas could have legislated to address specifically the actions of the Catholic hierarchy of Quebec, even concerning the repression of the *Institut Canadien.* In fact, the ultramontane clergy were, throughout the Guibord Affair, exercising only ecclesiastical means, and exacting only ecclesiastical penalties, in their endeavours to suppress the *Institut Canadian* and liberalism in general. Had Guibord been declared a '*pecheur public,*' and had he been excommunicated according to correct procedure, it is quite likely that the JCPC, even given the *appel comme d'abus*, would have been obliged to decide Henriette Brown's suit in favour of the ultramontanes.

This difficulty faced by the civil authority only became more pronounced with the advent of the BNA Act, with its protection of denominational schools and of the official equality of French and English in Parliament and in federal courts. Nonetheless, options for meeting the challenge posed by the ultramontanes remained within the scope of the law according to the understanding of the civil authority. First, throughout the period under discussion, the English criminal law remained operative in Canada East and Quebec, and neither it nor the Custom of Paris nor the civil law nor the Civil Code of Quebec granted the clergy immunity from such crimes as libel. Indeed, given the understanding of the civil authority that the Ecclesiastical Law of France, as it stood in 1759, remained operative, the function of the '*appel comme d'abus*' remained legitimate. Clearly then, within the scope of the law according to the understanding of the civil

authority, citizens of Quebec who considered that they had been wronged by the Catholic clergy had the right to appeal for redress to the civil authority.

Second, the civil authority was able to control its membership, requiring oaths of office from judges, requiring representatives to declare allegiance to the British Crown, and prohibiting them from declaring allegiance to any other power. This proved to be of particular importance symbolically and practically in dividing the civil authority, and its understanding of the law, from the Ecclesiastical hierarchy and its understanding of the law. Differentiation in this manner, establishing the separateness of the two spheres, was necessarily contrary to the designs and philosophy of ultramontanism, which required that in cases of conflict the civil power must give way to the ecclesiastical.

Third, the Constitutional Act established explicitly the Legislative Assemblies as the sole authority for determining when an election could be controverted and the authority that would try controverted elections. The Act of Union did the same for the Assembly of the United Canadas. The BNA Act did the same for the Canadian Parliament. This, of course, resulted in the civil courts having exclusive jurisdiction to determine whether undue influence had been exercised in a given election. This definitional power constituted the most effective counter to the doctrinal position of the Catholic Church, which held all things concerning mores to be within its purview.

In effect, the ability to define 'undue influence,' combined with the ability to appeal the actions of ecclesiastics to the civil authority, incorporated within the scope of the law, according to the understanding of the civil authority, the definition of the proper extent of the influence of the Catholic Church in political debate, together with the means to enforce the definition.

In sum, then, the scope of the law according to the understanding of the civil authority comprises three paths by which the civil authority could meet the challenge posed by the ultramontanes during the Holy Wars. The first is the ability to appeal to the civil courts for redress from ecclesiastical actions. The second is the ability to define the terms of membership within the civil authority. The third is the ability to define the point where the influence of the Catholic Church becomes undue. To these must be added a fourth, codification, by which the civil authority distinguished its purview with still greater clarity. Taken together, these four paths define the most fundamental and most important trend in the conflict between the ultramontanes and the civil authority: that the former seek to blur to disappearing the distinction between the proper roles of civil and ecclesiastical authority, while the latter seeks to make the distinction ever more stark. What remains, then, is to articulate the substance and application of the law pertinent to this chapter's central question, which is how the understanding of the law according to the civil authority facilitated a response to the challenges posed by the ultramontanes. To this end, the following section articulates the substance and application of the three broad paths defined above, plus a fourth: appeal, membership, undue influence and codification.

a) Appeal

The substance of the law relating to the civil appeal of ecclesiastical acts is essentially a question of clerical immunities and the '*appel comme d'abus*'; it therefore begins with the question of whether the French or the Roman Ecclesiastical Law was in force in Quebec after 1763. At the time of the Holy Wars, this question was decisive. Had they been able to show that the Roman law was operative, the ultramontanes would have

had significant grounds for their assertions of ecclesiastical superiority. Conversely, agreement that the French Ecclesiastical Law was operative after 1763 would have legitimized for all parties the appeal of ecclesiastical actions to the civil authority.

The ecclesiastical law of France is primarily of interest to this discussion because it incorporated what were known as the Gallican liberties. These liberties had developed over the centuries of interrelations between the French Crown, the French Church and the Papacy; however, they are well enough articulated for the present discussion in the four articles framed by the General Assembly of the Gallican Church in 1682, and assented to by Louis XIV. These articles essentially state the following: first, that the Catholic Church received from God power over spiritual but not temporal things, that therefore kings and governments are not subject to any ecclesiastical power,[213] and subjects do not owe allegiance more to the Catholic Church than to King or government; second, that the decrees of the Holy Ecumenical Council of Constance "remain in their full force and virtue";[214] third, that the Papacy should be regulated by the Canons of the Church, as well as that the "rules, practices and constitutions" of the Gallican Church ought not to be overstepped;[215] and fourth, "that the Sovereign Pontiff has the principal part in the decision of questions of faith," but that "his judgment is not irreformable if the consent of the Church has not been given."[216]

Plainly, the statements in the above articles, if in force, would constitute one of the most formidable arguments on behalf of the understanding of the law according to the

---

213 Lindsey, 67.

214 *Ibid.*

215 *Ibid.*

216 *Ibid.*

civil authority. That the Gallican Liberties were operative in New France until the English Conquest was not greatly disputed at the time of the Holy Wars. The only point of contention was that they had not been registered at the Superior Council. This, however, was accommodated in the understanding of the civil authority by the assertion that they were considered part of the Common Ecclesiastical Law of France, which in turn predated the Council and did not require registration.[217] The point was not granted by the ultramontanes. They contended that the cessation of the Bishops' Court and the dissolution of the Superior Council, from and to which '*appels comme d'abus*' were made, constituted the end of the dominion of the French Ecclesiastical Law.[218]

The most significant point of dispute was therefore whether the Common Ecclesiastical Law of France had ceased to operate in Quebec upon the Conquest. The argument on behalf of the understanding of the civil authority begins with the specific text of Article 27 of the Cession of Quebec, and Article 8 of the Quebec Act. The former grants the free exercise of the Catholic religion and the freedom of Catholics "to continue to assemble in their churches and to frequent the sacraments as heretofore."[219] The latter, more substantially, states the following:

> That all His Majesty's Canadian subjects within the Province of Quebec, the religious orders and communities only excepted, may also hold and enjoy their property and possessions, together with all customs and usages relative thereto, and all other their civil rights, in as large, amply and beneficial manner as if the said Proclamation, Commissions, Ordinances and other Acts and Instruments had not been made, and as may consist with their allegiance to His Majesty, and subjection to the Crown and Parliament of Great Britain; and that in all matters of controversy, relative to property

---

217 *Ibid.* 118-119.

218 *Dame Henriette Brown v. Les Cures et Marguilliers de l'Ouevre et Fabrique de Notre Dame de Montreal, 1874*, 6 L.R., 185

219 Articles of the Capitulation of Quebec, 1759, Article XXVII, http://www.canadiana.org/view/42695/0006.

> and civil rights, resort shall be had to the laws of Canada as the rule for the decision of the same.[220]

Certainly, the continuation of the French Ecclesiastical Law may be deduced from the foregoing, particularly from "all customs and usages relative thereto," "all other their civil rights," and "resort shall be had to the laws of Canada." Indeed, mandatory resort to the laws of Canada can be understood as an injunction to continue to enforce the French Ecclesiastical Law, as long as the former is understood to constitute part of the Laws of Canada. However, as noted in the judgment of the JCPC in the Guibord case, the Cessions, the Treaty of Paris, and subsequent legislation are not sufficient to remove all doubt that the Gallican Liberties and the French Ecclesiastical Law remained in effect post-Conquest, much less during the Holy Wars. This is particularly the case because ecclesiastical tribunals such as the Superior Council ceased to exist upon the Conquest, aside from the role of the Bishop as '*judex ordinarius*.'[221]

Regardless, the argument to be made per the understanding of the civil authority is clear. First, the French Ecclesiastical Law retained its force in Quebec after the Conquest, as therefore did the Gallican Liberties. Second, the application of the law showed that the Gallican Liberties had been retained in practice well past 1763, and preferably far into the 19th century.

There is significant but not conclusive evidence that this second point was in fact the case. As Charles Lindsey wrote in 1877, an ultramontane wishing to refute the assertion that the Ecclesiastical Law of France had continued in force after the Conquest

---

220 An Act for Making More Effectual Provision for the Government of the Province of Quebec in North America (The Quebec Act), 1774, 14 George III, c. 83, s. VIII.

221 *Brown*, 185.

would have to "be prepared to show that the tribunals have systematically taken a mistaken view of their obligations, their functions, and their duties ... [and that] dignitaries of the Church as well as judges have been in error on this point."[222] Similarly, Mgr. Destautels, secret honourary chaplain to Pius IX, in his *Manuel des Curés* of 1864, states that "we cannot doubt that the common ecclesiastical law, which was that of France before the cession of Canada to England, is the special ecclesiastical law of Canada."[223]

A number of incidents and episodes may be adduced in support of these assertions. In 1774, for example, Lord North stated in the British House of Commons that no Bishop would hold office in Quebec under Papal authority, since the exercise of papal authority in British territory was expressly forbidden under the Act of Supremacy.[224] Similarly, in 1789, then Prime Minister William Pitt enquired of six leading Universities in Catholic countries whether the Pope had temporal authority over a foreign power, and in each case the reply was negative.[225]

An advocate for the understanding of the civil authority would then note that the right of the clergy in Quebec to tithe was not granted at the Conquest, as was claimed by Bishop Bourget in his Pastoral of 31 May 1858. Rather, the right was reserved until 1774, when it was granted by Act of the British Parliament.[226] Plainly, these points tend toward

---

222 Lindsey, 119.

223 *Ibid.*

224 *Ibid.* 120-121.

225 *Ibid.*

226 *Ibid.* 121.

the Gallican position that any authority held by the Papacy in the temporal sphere is subject to the authority of the Crown.

The instructions of both Governor Murray and Governor Prevost "forbade the exercise of the ecclesiastical jurisdiction of Rome" within Lower Canada.[227] Prevost's instructions, in particular, asserted the supremacy of the Crown in all matters, ecclesiastical as well as civil. They also stipulated that holy orders could only be granted with a license from the Governor, and that no Episcopal power would be exercised in Lower Canada except by permission from the Governor.[228]

Similarly, the manner of the installation of the first post-Conquest Bishop of Quebec in 1806 can be said to support the understanding of the civil authority concerning the Gallican Liberties. First, both Montgolfier, the original candidate, and Briand, the subsequent and successful candidate, were chosen by the 'chapter' of Lower Canada, composed of the collected clergy and the ecclesiastical figures of the colony. Moreover, the election of Montgolfier was effectively vetoed by then Governor-General Murray; Murray's choice was Briand, and Briand became Bishop.[229] Plainly, this episode unfolded in accordance with Gallican principles, because the chapter, rather than the Pope, elected the Bishop, and because election required the approval of both Crown and Papacy.

Later in 1806, Robert Peel, then Under Secretary of State, "referred to the Law Officers of the Crown the question whether, under the Quebec Act, the King had a legal

---

227 *Ibid.* 127

228 *Ibid.*

229 *Ibid.* 122-123.

right to assume and exercise the patronage of the Roman Catholic Church in Lower Canada."[230] The answer returned to Peel was that "so much of the patronage of Roman Catholic benefices as was exercised by the Bishop under the French Government, is now vested in His Majesty."[231] Adherents to the understanding of the civil authority could therefore cite the authority of the legal advisors to the Crown in support of their assertion of the continuation of the Gallican Liberties.

The installation of the first Bishop of the district of Telmesse, in 1821, could also be cited as evidence that the Gallican Liberties continued widely to be credited well into the 19th century. It is true, of course, that Bishop Plessis consecrated Bishop Lartigue under the authority of the Pope and no other; however, several of the clergy of a more Gallican disposition protested that the creation of the new Bishopric could not be legitimate without the consent of the Crown. In particular, the Curé Chaboillez of Longeuil, in his "*Questions sur le gouvernement ecclésiastiques du District de Montréal*," argued that unless the new bishop were recognized by the king, his legitimacy might be questioned in a civil tribunal. He also argued that a bishopric was an ecclesiastical establishment, an "*arrondissement*," to which must be assigned a territory and subjects to govern. The position could not, therefore, be considered legitimate without consent of the sovereign.[232] Of equal importance, in a proto-ultramontane response to Chaboillez's pamphlet, M.P.H. Bédard argued that the creation of the bishopric by the sole authority of the Pope was legitimate because there existed no

---

230 *Ibid.* 137. It is striking that Peel had just finished a period as Irish secretary. It seems possible that he had found the control of patronage an effective method of keeping the Catholic hierarchy, and by extension the populace, under control in Ireland.

231 *Ibid.* 138.

232 *Ibid.* 147.

evidence to prove that the King's consent had not been obtained.[233] Moreover, Bishop Plessis himself stated in a mandemant issued on 5 December 1822, that he had "done nothing except in concert with His Majesty's ministers."[234]

Finally, in support of the understanding of the civil authority, it could have been argued that the Gallican Liberties continued in effect even to the time of the Holy Wars, no matter the invective of Bishops Bourget and LaFlèche, and of Pope Pius IX, against them. This was because every curé in Quebec remained amenable to courts of superior jurisdiction in his capacity as president of the Fabrique, in which capacity he was considered a public functionary. Further, the Fabrique was in fact and law a corporation, and as Beaudry notes in his *Code des Curés*, the Superior Court of Quebec had jurisdiction over all corporations, civil and ecclesiastical.[235]

Clearly, then, as the foregoing attests, the understanding of the law according to the civil authority rested at least upon a plausibly solid foundation in its incorporation of the Ecclesiastical Law of France, and therefore of the Gallican Liberties, against the pretensions of the ultramontanes. Moreover, the idea that ecclesiastical actions may be appealed to civil authorities, which is contained in the Gallican Liberties and central to the understanding of the civil authority, rests upon an equally solid foundation.

The claim within the understanding of the civil authority to the continuation of the Gallican Liberties is concomitant with its resistance to the doctrine of clerical immunities. Essentially, the doctrine of clerical immunities held that only ecclesiastical

---

233 *Ibid.* 147-150.

234 *Ibid.* 148.

235 Note, Lindsey, 151.

tribunals could judge ecclesiastical causes. An ecclesiastical cause was one in which "the defendant is an ecclesiastic or a member of a religious order, and the object in litigation is of a spiritual character, or is connected with something possessing that character, or with the exercise of some function of the ministry."[236] An ecclesiastic called before a civil tribunal was, therefore, always to plead the incompetence of the tribunal. Moreover, an ecclesiastic who called another before a civil tribunal, even as a witness, was subject to the major excommunication.[237] This is why, in his decision concerning *Brassard v Langevin*, Justice Routhier decided that the respondent could not be brought to trial concerning a question of ecclesiastical burial, and accordingly dismissed the appeal.[238] Similarly, this is why the ecclesiastical officials brought before the civil tribunals in the controverted election cases were instructed by their superiors to deny the competency of the court to try the election on the grounds of undue clerical influence.

As Lindsey states, "there is no doubt whatever about the law."[239] Unequivocally, the substance of the law according to the civil authority included no provision for clerical immunity such as those described above. Rather, the principle was clear that no person of whatever station within the Province of Quebec was above the law. As an illustration, Lindsey gives the example of a blacksmith, by the name of Richer, who filed suit for slander against the Reverend Renaud of Upton. The trial court ruled for the defendant; this ruling was reversed by the Court of Revision at Montreal. The Superior Court then set aside the reversal and ruled for the defendant; their reasons, however, were solely

---

236 Lindsey, 295.

237 *Ibid.* 296.

238 *Brassard*, 197.

239 Lindsey, 296

based upon a lack of evidence of the supposed slander.[240] Concerning the doctrine of clerical immunity, Justice Monk dismissed it as follows: "As to the right of the Court to accord damages if malice had been shown, [I have] no hesitation in saying that compensation would have been accorded. Any words uttered by a minister in the pulpit, having in view the suppression of vice, were permissible. The priest could make general remarks, and even allusions more or less direct; so long as he confined himself to his proper functions as spiritual guide and preceptor, he was not responsible. But if he went beyond what was permissible by his sacred mission, he becomes responsible before the tribunals for what he said."[241]

Concerning slander more particularly, Justice Sanborn wrote the following of the priest:

> [He] is permitted to warn and put on their guard his hearers, and particularly those of whom he has charge against whatever he believes to be contrary to good manners and religious life, but this must be done in general terms. His sacred mission does not authorise him, any more than any other man, individually to name and denounce a person as unworthy of confidence, or to order his hearers under severe pains not to frequent or visit his place of business.[242]

It is appropriate to restate here the words of Justice Mondelet in his decision concerning the Guibord case, where he addresses the doctrine of clerical immunities: "These principles, or rather these pretensions, are in contradiction to the jurisprudence of the country, and should no longer be a subject of discussion. Priests, bishops, and all ministers of religion must be subject and obedient to the law and respect the rights of

---

240 *Ibid.* 297.

241 *Ibid.* 298.

242 *Ibid.* 298-299.

citizens."[243] Clearly, then, when not discoursing upon matters of 'faith and doctrine,' to use the JCPC's term, the understanding of the civil authority shows an ecclesiastical official to be equally liable for his actions as any other British subject. The law concerning slander is also very important; per the understanding of the civil authority, an ecclesiastic could denounce a sin from the pulpit in general terms, but could not identify the sinner, whether directly or indirectly. This placed a definite limit upon what the ecclesiastic could and could not speak from the pulpit, and therefore contributed significantly to establishing defined ecclesiastical and temporal spheres, in exact contradiction to the doctrine of the ultramontanes.

Finally, added to all of the above, is the notion of the '*appel comme d'abus*,' which contributes to the argument in favour of establishing a stark distinction between the ecclesiastical and temporal spheres. Properly stated, it is the memory of the '*appel comme d'abus*' that contributes; the JCPC made quite clear their doubt that the institutional structure of the judiciary in Quebec could accommodate the '*appel comme d'abus.*'[244] But they certainly implied that past instances of the '*appel comme d'abus*' in Quebec served to elucidate the nature of the post-Conquest ecclesiastical law of the province.[245]

Lindsey cites three cases of the '*appel comme d'abus*' in Quebec: in 1693 against an ordinance of the Bishop of Quebec; in 1738, against the Vicar-General, concerning "the position of a pew in the Church"; and in 1750, against the chapter of Quebec.[246] The

---

243 *Ibid.* 305.

244 *Brown*, 204-207.

245 *Ibid.* 207.

246 Lindsey, 78-79.

Bishop's Court, from which '*appels comme d'abus*' were made, had of course ceased to exist in 1759. For this reason primarily, the civil courts of Quebec and Canada could not be said properly to have inherited the capacity to hear a formal '*appel comme d'abus.*' Nevertheless, the examples cited show that the '*appel comme d'abus*' was part of the French Ecclesiastical Law as it was applied in Quebec prior to the Conquest. Thus, if the French Ecclesiastical Law remained operative in Quebec post-Conquest, the functions of the '*appel comme d'abus*' remained so as well.

Moreover, the decision given by the JCPC in the Guibord case is exactly the kind of judgment that would have arisen from an '*appel comme d'abus.*' Their Lordships decided upon whether an ecclesiastical body had acted according to the rules it had prescribed for itself, and found that it had not. Finally, no less an ultramontane than Bishop Langevin declared after the conclusion of the undue influence trials and appeals of 1877, that the province had arrived at the '*appel comme d'abus.*'[247]

Clearly, then, the substance of the law according to the understanding of the civil authority during the Holy Wars incorporated appeal to the civil courts against ecclesiastical actions, by means of the post-Conquest application of the Ecclesiastical Law of France. The incorporation of this appeal was also indicated by the refusal to grant the clerical immunities presumed by the ultramontanes, by the precedents of prior '*appels comme d'abus*' in Quebec, and by the *de facto* adoption by the civil courts of the functions of the '*appel comme d'abus.*' Per the understanding of the civil authority, the above when taken together indicate the extension of the Gallican Liberties to Quebec.

---

247 *Ibid.* 290.

b) Membership

The second path followed during the Holy Wars by the understanding of the civil authority is the definition of the terms of membership within the civil authority. This and the third path, the definition of undue influence, are of somewhat lesser complexity than the first, and may therefore be treated of in a somewhat shorter space. Nevertheless, each is of significance in establishing a clearer distinction between the idioms of the civil and ecclesiastical authorities.

Membership in the civil authority begins with oaths of allegiance and of office. The Oath of Allegiance for any person holding a commission from the Crown, during the years subsequent to Confederation, reads as follows:

> I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria ... that I will defend her to the utmost against all traitorous conspiracies or attempts whatever, which shall be made against her person, Crown and Dignity, and that I will do my best to make known ... all treasons or traitorous conspiracies and attempts ... and all this I do swear without any equivocation, mental evasion or secret reservation. So help me God.[248]

A few points need to be articulated concerning this oath, in order to understand its importance to the discussion at hand. First, the Oath proscribes allegiance in the temporal sphere to any authority but the British Crown. Second, it follows that the best an ultramontane could have done with the Oath would have been to allow the derivation of authority either from God to the Pope and the Catholic hierarchy or from God to the Crown and the temporal authorities. Moreover, the ultramontane would not have been able to place the authority of the Pope above that of the Crown without violating the Oath. Third, therefore, the Oath serves the purpose of distinguishing between the civil

---

248 "An Act Respecting Commissions and Oaths of Allegiance," 1868, 31 Victoria cap. XXXVI, Revised Statutes of Canada.

and ecclesiastical domains. Fourth, the phrase prohibiting "equivocation, mental evasion or secret reservation" reinforces this logic by mitigating against the reservation to the Papacy (for example) of an authority superior to that of the Crown.[249]

The Oath of Office of a Supreme Court Justice, as stated in the "Supreme and Exchequer Courts Act" of 1875, reads as follows: "I, ... , do solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge execute the powers and trusts reposed in me as Chief Justice (or as one of the Judges) of the Supreme Court and of the Exchequer Court of Canada; so help me God."[250]

This in itself says little, but it says a great deal when understood to commit the judge to decide upon all cases lawfully brought before the Supreme Court, under the terms in the Act that gave the Court its jurisdiction. Nothing in these terms allowed for clerical immunities of any kind. In fact, the Court's appellate jurisdiction was constructed to be very wide, and to exclude only discretionary appeals and causes from Quebec valued at less than $2000.00.[251] Justice Taschereau, in his decision upon *Brassard v. Langevin, 1877*, recognizes the importance of his oath of office when he makes the following comment in repudiation of the doctrine of clerical immunity:

> As for me, my oath of office binds me to judge all matters which are brought before me according to the law and the best of my knowledge. The law expressly forbids all undue

---

249 This was not a purely theoretical consideration during the Holy Wars. For example, when the premier of Quebec reserved to the Pope final approval of the sale of the Jesuit estates, he was accused of having violated his oath of allegiance to the British Crown. The episode of the Jesuit Estates also suggests that in theory the understanding of the civil authority during the Holy Wars comprised the ability to limit the ownership of property by ecclesiastical bodies.

250 Supreme and Exchequer Court Act, SC 1875, cap 13, s. 10.

251 Supreme and Exchequer Court Act, SC 1875, cap 13,

> influence, from whatever source it may arise, and without any distinction. I must, therefore, carry out this law fully and entirely, conformably to the Act.[252]

In the same way, the judges of the civil courts of Quebec, whether Court of Queen's Bench, Superior Court or Circuit Court, were required by their oaths of office, and by the terms of the Acts establishing those Courts, to judge any cause lawfully appearing before them. This requirement was without deference to Catholic doctrine, Papal or Episcopal dicta, or any assertion of clerical immunity. As such, the oaths of office and allegiance, together with the Acts by which the institutions of civil government were established, combined to limit membership within the civil authority to those who could agree in principle to a strict separation between Church and State. At the same time, members were limited to actions and decisions in conformity with the separation of Church and State.[253]

Finally, membership in the civil authority could be limited by means of specific prohibitions against clergy serving in particular offices. For example, article 21 of the Constitutional Act prohibits from being a member of the Legislative Assembly any "Minister, Priest, Ecclesiastic or Teacher, ... according to the Rites of the Church of Rome."[254] The same prohibition is then applied to the Legislative Council. By the time of the Holy Wars, Catholic priests were permitted to serve as Members of Parliament, but they remained prohibited from acting as municipal officers.

---

252 *Brassard*, 199.

253 The example of Justice Routhier does not contravene this argument, since his decision, on grounds of clerical immunity, he had not the jurisdiction to decide the controverted election at Charlevoix, was expressly repudiated by the decision of the Supreme Court, and therefore constituted no part of the understanding of the civil authority of the law.

254 An Act to Repeal Certain Parts of an Act, Passed in the Fourteenth Year of His majesty's Reign, intituled, An Act for making more effectual Provision for the Government of the Province of Quebec, in North America; and to make further Provision for the Government of he said Province (The Constitutional Act), 1791, 31 George III, c. 31, s. XXI.

These prohibitions show that, *in potentia*, the understanding of the civil authority comprised the possibility of the prohibition of ecclesiastical officials from a greater number of offices than was the case during the period of the Holy Wars. Again, the potential serves to make clearer the distinction between the legal idioms, including the respective purviews of the civil and ecclesiastical authorities.

c) Undue Influence

The third path comprises the definition of the point at which clerical influence becomes undue. The law of undue influence relative elections has been addressed in significant detail in the second chapter; there is no need to repeat it here. Suffice it to state that the understanding of the law according to the civil authority during the Holy Wars comprised a number of clear positions with respect to undue influence. First, the franchise was amongst the most precious rights of the British subject and it was essential that its exercise remain inviolate. Second, the law comprehended no provision for clerical immunity which respect to elections. Third, undue influence began when the elector ceased to be a free agent, whether by spiritual or temporal threats or incentives. Fourth, a person exercising undue influence in favour of a candidate was an agent of that candidate, regardless of the candidate's knowledge of the actions. Fifth, that a single instance of influence unduly exercised is sufficient to void an election. Sixth, that the parish priests and curés of Charlevoix, Bellechasse and Bonaventure exercised undue influence in favour of the Conservative candidate in the course of their sermons and

private conversations. Seventh and finally, that the elections at issue in these counties were consequently avoided.[255]

Justice Ritchie, writing for the unanimous court in *Brassard v. Langevin*, 1877, was equally clear:

> A clergyman has no right, in the pulpit or out, by threatening any damage, temporal or spiritual, to restrain the liberty of a voter so as to compel him into voting or abstaining from voting otherwise than as he freely wills.[256]

The other crucial aspect in the civil authority's understanding of undue clerical influence concerns the articulation of the rights of the British subject as they stood at the time of the Holy Wars. These rights are defined most famously in the Bill of Rights of 1688. That these rights were intended to apply to persons in Quebec is clear: the Consolidated Statutes of Canada, published in 1859, begin with the statement that each citizen of Canada is entitled to all of the rights of a British Subject.[257] Passed eight years later, the British North America (BNA) Act, 1867, states in its Preamble the desire of the United Provinces of Canada to adopt a "Constitution similar in Principle to that of the United Kingdom"; moreover, the BNA Act expressly retains the British Queen as sovereign of Canada, causing all Canadian citizens to continue as British subjects.[258]

---

255 Again, section 95 of the Elections Act, 1874, made perfectly clear what actions constituted undue influence: "Every person who, directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of any force, violence or restraint, or inflicts or threatens the infliction, by himself, or by or through any other person, of any injury, damage, harm or loss, or in any manner practices intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who, by abduction, duress, or any fraudulent device or contrivance, impedes, prevents or otherwise interferes with the free exercise of the franchise of any voter, or thereby compels, induces or prevails upon any voter to give or refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence."

256 *Brassard*, 223.

257 The Consolidated Statutes of Canada, 1859, i, s.1

258 British North America Act, 1867, 30 & 31 Victoria c. 3, preamble.

With the above in mind, the advocate of the understanding of the civil authority would turn to the 1688 Bill of Rights and note that the preamble condemned the establishment of a judicial body called "The Court of Commissioners for Ecclesiastical Causes," and that later in the Bill the establishment of such a court was declared illegal.[259] The advocate would also note that the 'pretended power' of suspending or dispensing with the law by Regal Authority was also illegal, thereby limiting even the sovereign, much less the clergy, from establishing clerical immunity.[260] Further, the advocate would note that amongst the rights enumerated were the freedom of elections to Parliament and the freedom of speech in Parliament without fear of impeachment or questioning "in any Court or Place outside of Parliament."[261] These latter two rights were in direct contradiction to the Syllabus of Errors, and from the former inevitably followed the free exercise of the franchise.

To these rights could be added the right to either a Protestant or a Catholic education within the province of Quebec, as guaranteed by section 93 of the BNA Act, and the right to run for office and sit in the Canadian Parliament or a provincial legislature.[262] The advocate might even have argued that still further rights contrary to the Syllabus and the ultramontane programme existed in practice with certain limitations,

---

259 Bill of Rights, 1688 1 William and Mary, session 2, c. 2.

260 *Ibid.*

261 *Ibid.*

262 British North America Act, 1867, 30 & 31 Victoria c. 3, s. 93.

such as a generalized freedom of speech and a degree of freedom of the press.[263] In any case, the statutory rights enumerated above are quite sufficient to constitute a conception of law fundamentally in opposition to that of the ultramontanes.

Thus, the third path, whether by legislation defining undue influence, or by the articulation of the rights of the British subject, allows for a definition of the point where clerical influence becomes undue. It thereby contributes to the establishment of a clearer distinction between the purviews of the ecclesiastical and civil authorities, the establishment of which is the fundamental response of the civil authority to the challenges posed by the ultramontane understanding.

d) Codification

The fourth path comprises codification, by which is meant the process of reducing the customary and statutory law accumulated over a period of time to a succinct and accessible statement of the law in force at a given time. As Brian Young argues, codification has the dual effect of "improving the organization and accessibility of the law" and of capturing "a particular social conjuncture" – an expression of the consensus of the age concerning the substance of the law.[264]

Codification in Quebec gave expression to two fundamental points of consensus, both of which tended against the ultramontane project. The first was to distinguish plainly what was the purview of the civil law, and thereby to distinguish public from private. The

---

263 Within the understanding of the civil authority was also to be found the right to trial by a jury of one's peers, and the right of *habeas corpus*, as they had been practised for centuries, but these are less directly applicable to the discussion at hand.

264 Brian Young, The Politics of Codification: The Lower Canadian Civil Code of 1866 (Montreal: McGill-Queen's University Press, 1994) 157.

second was to render as much of obligations as possible, and therefore as much of economic transactions as possible, under the explicit and written terms of the civil code.

This consensus was to a significant extent founded upon the work of Jeremy Bentham, who was probably the foremost advocate of codification during the late 18th and early 19th centuries. Bentham strove toward the institution of what he called the 'Pannomion,' which was to be a perfectly rational, perfectly comprehensive and universally applicable code of law. It would comprise in one body the constitutional, civil, criminal and procedural codes.[265]

Bentham's Pannomion was in part the operationalisation of the instrumental rationality inherent in his utilitarian principle. Laws were to be framed so as to provide for the greatest happiness of the greatest number. The law was to be comprehensible to all and each person was to be equal before the law. Each law was to give clear expression to a single prohibition, ultimately accounting for all possible circumstances. Ideally, the perfectly rational and comprehensive Pannomion would obviate representation by lawyers. [266] In sum, then, the Pannomion constituted a radical break from custom, from social hierarchies, and from the Roman and common-law traditions. As discussed below, the rationalism and iconoclasm that Bentham advocated were reflected in codification movements throughout the 19th century. It was traits such as these that caused codification to challenge the ecclesiastical understanding, and caused the ultramontanes in Quebec to oppose codification.

---

265 Michihiro Kaino, "Bentham's Concept of Security in a Global Context: The Pannomion and the Public Opinion Tribunal as a Universal Plan," Journal of Bentham Studies 10 (2008), 4.

266 *Ibid.* 2-5.

Five reasons present themselves to explain the ultramontane opposition to the codification of the civil law in Quebec, each of which concerns the larger context of European codification in the 19th century. First, the most famous contemporary example of codification was that of the French civil law in 1804, known as the *Code Napoléon*.[267] Framed in the aftermath of the French Revolution, and embodying the Revolution's principles, the *Code Napoléon* naturally awakened in the Quebec clergy all of their horrors of revolutions in general and the French Revolution in particular.[268] For many ecclesiastics in Quebec, and not only ultramontanes, the project of the codification of Quebec's civil law was tainted by association. These ecclesiastics were suspicious that the *Code Civil du Bas-Canada* would represent the overturning of the established order.

Second, as Merryman attests, most of the civil codes enacted during the 19th century explicitly supplanted and replaced the pre-existing body of law, both in the formal sense as the authoritative text, and in the sense of a substantive reform.[269] The Prussian *Landrecht* of 1794 and the *Code Napoléon* quite explicitly supplanted the bodies of law that came before them; neither case assuaged the concerns of ultramontanes that codification was a project with revolutionary overtones.

Third, both the *Landrecht* and the *Code Napoléon* were couched explicitly in terms of secular rationalism. As Merryman states concerning the framing of the *Code Napoléon*, "the assumption was that reasoning from basics premises established by the thinkers of the secular natural law school, one could derive a legal system that would

---

267 John Henry Merryman, The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America (Stanford: Stanford University Press, 1969), 28-29.

268 Merryman, 28-29; see also Young, Politics of Codification, 119.

269 Merryman, 28.

meet the needs of the new society and the new government."[270] Broadly speaking, in the utopian aspirations of its framers, the impetus of the *Code Napoléon* was to make history irrelevant to the interpretation and application of the law. The idea was, essentially, that a new legal system could be devised from abstract principles, could incorporate the most desirable features of the outmoded legal system, and could be instituted wholesale, relatively instantly, by statute. To quote Merryman again, "only an exaggerated rationalism can explain the belief that history could be abolished by repealing statute."[271] This kind of rationalism was denounced in the encyclicals of Popes Gregory XVI, Pius IX and Leo XIII as one of the foundational causes of Catholic liberalism, indifferentism and, ultimately, atheism.

Fourth, the 18th and 19th century codification movement was an attempt to institute a supposedly scientific 'accuracy' and 'certainty' within a legal system. The objective was to devise a code that was as complete and clear as possible.[272] This 'scientific' perspective was a significant factor in the extension of the Prussian *Landrecht* to 17,000 provisions.[273] The same perspective also resulted in a legal ideology in France, lasting about half a century, that minimized the need for interpretation of the *Code*, and desired to eliminate entirely interpretation based upon historical precedent and jurisprudence.[274] This 'scientisation' of the law further applied the principles of rationalism condemned by the Catholic hierarchy. It also supported the framing of legal

---

270 *Ibid.* 29.

271 *Ibid.*

272 *Ibid.* 29-30

273 *Ibid.* 30.

274 *Ibid.* 29.

texts without reference to religious doctrine, and appropriated a significantly wider area of human activity within the purview of the civil law. In all cases, the rationalistic and 'scientific' standpoint of the early 19th century codification movements was amongst the most important reasons for their tendency to constitute a limitation upon the Church's purview.

Fifth and finally, then, as Merryman notes, the tendency of codification movements to limit the Church's purview was not accidental, since codification was generally intended as a statist innovation. Certainly, this was the case with the *Code Napoléon*: Merryman gives 'statism' as the reason why the *Code* limited as much as possible the use of law from periods prior to the advent of the revolutionary state, as well as law from jurisdictions outside the state.[275]

In sum, each of these five areas – revolution, supplanting the traditional body of law, rationalism, 'scientisation,' and statism – tended to serve as a reason for the Catholic hierarchy in Europe and Quebec to look warily at the prospect of codification. Equally, each of these areas serves as a reason why codification can be understood as one of the most effective of the possible responses of the civil authority in Quebec to the challenges posed by the ultramontanes.

The codification of Quebec's civil law during the 1850s and 1860s shared the above-enumerated traits to a significant extent, although not to such an extreme extent as the rationalism of the *Landrecht* and the revolutionary nature of the *Code Napoléon*. Following Brian Young's account, the members of the Codification Commission and the supporters of codification in the Legislature sought to minimize the extent to which

---

275 *Ibid.* 28.

codification would appear to be a revolutionary break from Quebec's traditional civil law.[276] For example, it was continually stressed that the new civil code would be largely a restatement of the body of civil law already in force in Quebec. Nevertheless, there was no equivocation concerning whether the new code would supplant the old agglomeration of laws as the fundamental and authoritative statement of the body of the civil law in Quebec.

Moreover, there was little doubt that the new Code entailed a rationalization at several points. For example, the burgeoning capitalism and commercialism of mid-19th century Quebec, exemplified by Cartier's patronage of Grand Trunk railways, his role in dismantling the seigneurial system, and firms such as Torrance and Morris that combined capital investment with legal representation, was reflected in the modernization of laws governing economic transactions, as is discussed in greater detail below. These modernizing changes included a greater freedom given to the presumed rationality of contracting parties within the law of obligations, measures concerning hypothecs that rendered clearer and more logical the system of real property transactions, and removal of the requirement that physical delivery be made in all cases for a transaction to be considered complete.[277] Further, Young frequently cites the scientific potential of the civil law, expressed in a new civil code, as one of the most important arguments that convinced members of the legal profession, including even Charles Dewey Day, of the desirability of codification.[278] Finally, Quebec's civil code was a statist document, even if

---

276 Young, The Politics of Codification, 35.

277 Young, The Politics of Codification, 116, 170-172, 179.

278 Dewey Day was known for his anti-French views early in his career, but came to admire Quebec's civil law and served as one of the codification commissioners and the chief author of the new code.

its statism was not as extreme as the *Landrecht* or the *Code Napoléon.* This is shown most particularly by the greater adoption within the purview of the state of the governance of obligations between contracting parties.[279] Again, therefore, codification in Quebec constituted a means by which the civil authority could meet the challenges of ultramontanism by limiting or diminishing the extent of the application of the ecclesiastical understanding of the law.

Young, for his part, identifies five motives for codification in the period between 1837 and 1857, when the statute mandating codification was passed by the Quebec legislature. First, he emphasizes the expanding dominance of capitalist relations in Quebec society, an assertion supported by the passage in 1854 of the Act signifying the end of seigneurial tenure in Quebec.[280] Second, Young emphasizes the growing centrality in Quebec legal practice of the law of Obligations.[281] Third, he stresses the growing centrality in matters of contract law of the legal equality of persons contracting.[282] Fourth, Young notes a growing "emphasis on civic bilingualism and [the] international qualities of a legal system with roots in Roman as well as customary law".[283] Fifth and finally, he notes that the process of codification could be "controlled by elite jurists and formally approved by the legislature."[284] This last allowed for the more certain incorporation in the new Civil Code of the first four motivations.

---

279 Young, The Politics of Codification, 157-172.

280 *Ibid.* 56-68.

281 *Ibid.* 157-172.

282 *Ibid.* 45

283 *Ibid.*

284 *Ibid.*

In the event, the Codification Commission wrote the Civil Code of Quebec over the course of eight reports delivered between 1861 and 1864. The first report concerned obligations, the second persons and the third property and ownership, and prescription. The fourth report concerned sale, exchange and lease and hire; the fifth successions, gifts *inter vivos* and by will, and marriage covenants. The sixth report concerned mandate, loan, deposit, partnership, life-rents, transaction, gaming contracts and bets, suretyship, pledge, privileges and hypothecs, registration, and imprisonment in civil cases. The seventh report concerned bills of exchange, merchant shipping, affreightment, and carriage of passengers, insurance and bottomry. The eighth and final was a supplementary report containing corrections and changes.[285] In looking over this list, it is important to emphasise the number of articles that address economic transactions. This predominance evinces the extent of the shift in the legal management of obligations and economic activities toward the centrality of contract and the individual responsibility of contractees. At the same time, this signified a shift away from oversight under the Custom of Paris and the more traditional civil law in Quebec, which tended to a greater extent toward enforcing fairness in contractual dealings.

The Civil Code itself was passed into law in 1865. The Code as enacted comprised four books: the first concerned persons, the second and third property and ownership, and the fourth commercial law.[286] As might be expected, the Code occasioned significant concern amongst members of the clergy, and the greater the ultramontanism, the greater the concern. Even the more moderate ecclesiastics were disquieted by the

---

285 *Ibid.* 129.

286 *Ibid.*

provisions that addressed the family and marriage.[287] This is telling; it was when the Code threatened to touch upon the family, and therefore upon matters of the private sphere intimately concerned with mores, that more moderate members of the Roman Catholic clergy became concerned.

As accords with their philosophy, the ultramontanes were critical of the Code in general. As Young states, Bishop Bourget considered "codification as the occasion to apply Catholic principles across the Civil law."[288] When it became clear that the Code was not to accede to such an occasion, Bourget, as was his character, "denounced the Code to papal authorities and proposed that articles affecting the Church or religious life be submitted to the episcopacy for approval."[289] In this episode, perhaps, the ultramontanes overstated their case somewhat, for although the Provincial Council heard their criticisms in 1868, the criticisms were not adopted. Also, in 1870, the papal delegate sent to examine the controversies in Quebec concluded that, given that Quebec comprised both Catholics and Protestants in significant numbers, it was "a good Code for a Catholic nation."[290] This was certainly motivated to a significant extent by the Code's recognition that marriage was "a religious and sacramental act and a civil contract," and that "the Church alone has jurisdiction over the marriage tie and the impediments to its validity [while the] state alone has authority over its civil aspects."[291] This, then, gives a second

---

287 *Ibid.* 119.

288 *Ibid.* 119.

289 *Ibid.*

290 *Ibid.* 120.

291 *Ibid.*

indication concerning how the understanding of the civil authority could coexist with the Catholic hierarchy by dividing public from private.

The importance of Codification to the understanding of the civil authority is best articulated in Brian Young's chapters "The Law of Obligations" and "The Persistence of Customary Law" in his study The Politics of Codification. The Law of Obligations comprised "the fundamental principles upon which a large proportion of civil rights and liabilities depend[ed]" and constituted "the basis for the greater portion of the whole Code."[292] Young describes how the manner in which the Code addresses 'obligations' consolidated the 19th century process of bringing 'exchange relationships' increasingly under the purview of express written contracts enforced by the state.

"Until the late 18th century," Young begins,

> ...credit relationships between merchant, seigneur and peasant were usually noted in the form of book debt, which was interest free; in disputes that went to court, statements under oath were given precedence over a merchant's ledger. Although seigneurs might prefer to be paid in cash, many debts were paid in kind or in services.[293]

During the period between the Conquest and the Rebellions, formal contracts, imposing fixed times and conditions of repayment, came to be used with greater frequency, thereby concerning the Law of Obligations fully in relationships between creditor and debtor.

Over the course of the 19th century, "contract was also given superiority over traditional procedural rights such as the right to interrogate the opposing party in a civil suit."[294] As an example, Young notes a suit between a Kennedy and a Smith wherein the two parties agreed that all changes to their contract would be written only. In the course

---

292 *Ibid.* 157-158.

293 *Ibid.* 162.

294 *Ibid.* 165.

of events, the builder sued the owner for the cost of extra work assigned orally. The owner "refused to answer interrogatories," arguing that the binding nature of the contract precluded the usual right of enquiry to determine whether work had been assigned.[295] Justice Day, who would later write the portion of the Code concerning Obligations, ruled for the defendant because "their contract had established an inflexible rule which justified the refusal to answer interrogatories."[296]

The same shift of underlying principles is evident in the continuing effort of law firms during the middle of the 19th century to limit the effects and discontinue the use of secret hypothecs in the sale of real property. 'Secret hypothec' was the term used to refer to an unpublicized and unrecorded sale of real property. The effect of 'secret hypothecs' was to discourage land speculation and encourage stability, because unless one lived in the immediate vicinity of the land being purchased, or was strongly connected with the community, one could never be certain that one was, in fact, purchasing the land from the legal owner.[297] Torrance and Morris, amongst other firms, endeavoured continually to bring within the purview of specific and explicit contractual agreements the use and exchange of lands and natural resources traditionally governed by the Custom of Paris and other such conventions. As Young states, "this had the effect of permitting contracts between individuals to override customary practices."[298]

Torrance and Morris also were amongst those who sought to change the law concerning delivery of property sold. Prior to codification, purchase and delivery, and

---

295 *Ibid.*

296 *Ibid.*

297 *Ibid.* 45, 167.

298 *Ibid.* 167.

therefore sale and title, were understood as separate phenomena under the law. 'Sale' was the agreement or transfer of funds; the transaction was only considered complete upon delivery, or when the item or land purchased was placed in the physical possession of the new owner. This followed the principle of '*traditio*' under Roman law.[299] Thus, Young gives the example of Levey's 14,000 feet of birch timber, which had been paid for and had been burned in a fire upon Lowndes' wharf in 1844. In this case, the court decided that Lowndes remained at risk for the timber because physical delivery had not been made.[300] This, of course, discouraged land speculation further and privileged stability, tradition, community and local knowledge, all of which supported the conservatism of ultramontanism.

Under the new Civil Code, the law concerning sale, or 'alienation,' was notably revised as follows: "A contract for the alienation of a thing certain and determinate makes the purchaser owner of the thing by consent alone of the parties, although no delivery be made."[301] This change privileged the equality and expression of individual human will over the Roman Law, the Custom of Paris, indeed the customs and traditions of centuries, and any sense of propriety, status or morality in the contract itself or in the contractees themselves. This focus upon the individual was, it might be said, an apotheosis of liberal ideology. Thus, again, codification served as a counter to the challenges of ultramontanism.

---

299 *Ibid.* 170.

300 *Ibid.* 171.

301 *Ibid.* 170.

The rationalism of the 19th-century codification movements is particularly evident in the sections of the reports and the Code concerning obligations, written by Charles Dewey Day. Throughout his writings, Day insisted upon the integrity of contract and a strict application of the expressed will of the contracting parties: "contract was to dominate over considerations of property or the particular status of merchant, artisan or seigneur."[302] The key to the validity of a contract was that the individual retained his or, occasionally, her free will when entering into the contract. The Civil Code also provided new definition to commercial law and, wherever possible, subordinated it to the law of obligations. As Day wrote the first report, "There seems really to be no sound reason why the sale by a merchant of his goods to any amount may be proved verbally, while a sale by a farmer of his goods of the value of twenty-six dollars must be proved in writing."[303] Finally, Day disavowed the customary practice, approved even by Pothier, that allowed judges to alter the terms of a contract, even to reduce damages: "the doctrine of judicial interference," wrote Day, "with the plain meaning of contracts is regarded with disfavour by modern jurists."[304] Thus, the universal, modernizing rationality of codification was victorious over custom and tradition. This was exactly the rationalism condemned by each of the 19th century Popes in their encyclicals as leading to indifferentism, atheism and the dissolution of moral order.

This evolution in sensibility may be seen in application in G. Blaine Baker's study of the firm of Torrance and Morris. Frederick Torrance, and Alexander and John Morris,

---

302 *Ibid.* 168.

303 *Ibid.* 169

304 *Ibid.* 170.

founded and operated the leading law firm in Montreal during the period of codification. They understood their practice as lawyers to be an extension of the practice of statecraft, and a crucial part of this practice to be a continual advocacy of evolution away from customary and toward explicit, contractual obligations.[305] Torrance and Morris continually emphasised clarity in their contractual dealings and regarded contracts as 'transaction-specific constitutions.'[306] The firm also advocated legislation to implement freedom of contract and security of ownership, in order to secure their clients' property-related debt against "customary laws of negotiable instruments and workmen's privileges."[307] Finally, Torrance and Morris contributed to the dismantling of seigneurial tenure by attempting through litigation to obtain narrow judicial interpretations of seigneurial entitlements, and by advocating the "speedy commutation of [their] clients' landed property held *en censive* into freeholdings."[308] In sum, Torrance and Morris considered it their role to facilitate the institution of such classically liberal ideas as, to use Baker's list, "freedom of contract, security of ownership and credit, and freedom of labour."[309]

What had come about here, with respect to the law of obligations, was even a sharper and more expansive definition of the understanding of the law according to the civil authority. Not only were the founding spirits of the Code Domat and Pothier, both of

---

305 G. Blaine Baker, "Law Practice and Satecraft in Mid-Nineteenth-Century Montreal: The Torrance-Morris Firm, 1848 to 1968," in Carol Wilton, ed, Essays in the History of Canadian Law / Beyond the Law: Lawyers and Business in Canada 1830 to 1930, vol. 4 (Toronto: Butterworths for the Osgoode Society, 1990), 75.

306 *Ibid.* 59.

307 *Ibid.* 60

308 *Ibid.* 62.

309 *Ibid.* 74-75.

whose works were listed on the *Index*, but the fundamental imperative of the most important section of the Code, where the most new law was created, and which served as "the basis of the greater portion of the whole Code," was the primacy of the free will of the individual expressed in the form of a contract.[310] This is profoundly opposed to the ecclesiastical understanding, wherein the freedom of the will is perfected in the expression of the truths of Catholic doctrine.[311]

The Code therefore consolidated an evolution that had taken place over the course of much of the 19th century, whereby custom, tradition, social hierarchy, a host of power relations, and the whole sphere of economic transaction were subsumed under what appeared to be the absolute equality of the individual's free will to incur obligations. The law of obligations under the Civil Code signified one of the most fundamental points at which the understanding of the law according to the civil authority was incommensurable with the ecclesiastical understanding. Through the law of obligations, the Civil Code established a defined and solid barrier between public and private, between the authority of the Crown and that of the Church, between legitimate and mandated oversight of a contractual engagement and the censure or approbation of the Curé. In short, Quebec's Civil Code defined a barrier between public economic transactions and the domain of mores, beyond which the ecclesiastical understanding of the law was not suffered to pass.

And yet, in all of this liberality, there remained the legal incapacity of the entire constituency of "married women as a *particular* exception to what P.S. Atiyah calls the

---

310 Young, The Politics of Codification, 122, 130.

311 Leo XIII, Libertas, 20 June 1888.

generality of contract law."[312] The legal capacity of married women had diminished markedly during the same period of the 19th century wherein contractual obligation superceded custom. For example, women owning property voted in provincial elections after 1792, and in 1832 comprised 14.4 percent and 9.5 percent of the vote in Montreal West and Montreal East respectively. By 1844, women of every status had been disenfranchised.[313] In the same way, and for the same reason of legal incapacity, after 1849 it became illegal for women to be imprisoned for "reason of any debt or by reason of any civil action"[314]

The incidents and modes of the incapacity of married women under the Civil Code were numerous and varied. Women could not enter into contract, even for the administration of their property, without the authorization of their husbands or the court. Every deed executed by a wife had to be authorized by her husband or a court. A wife needed her husband's authority even to give her husband power of attorney. Women could not witness notarized wills. Divorce was a concept 'foreign' to Canada East and "a wife could have no other legal domicile than that of her husband," unless she had obtained from the courts a separation from bed and board.[315]

The three codifiers were in express agreement with the principle of the legal incapacity of married women. Indeed, Day quoted with approval the following passage from Pothier's Treatise of Obligations:

---

312 *Ibid.* 146.

313 *Ibid.* 143-144

314 *Ibid.* 144.

315 *Ibid.* 151.

> For it is a consequence of marital power, that the wife be incapable of doing anything except it be dependently on the husband and by his authority. Hence it follows that, without his authority, she is incapable of making any agreement, and she can neither bind herself to others, nor bind others to her.[316]

Bishop Bourget could not have said it better. The understanding of the civil authority ceded the answers to questions of the family, mores, the role of women, and the private sphere, to the ecclesiastical authority.

The dispute was as much a question of the extent of the application of the ecclesiastical understanding of the law, as it was about the content of that understanding. The ecclesiastical understanding of the law, and that of the civil authority, were largely in agreement about the content of the domain of mores. There is little difference in the status of a married woman between Day's citation of Pothier above and the ultramontane paper *Le Nouveau Monde* extolling the fundamental right of fathers to control and mould the education and morality of their children.[317] The same may be said of Bishop Bourget's description of the father as the 'supreme arbiter.'[318] The cumulative effect is to create a space of noncontroversy, where the ecclesiastical understanding of the law is acknowledged by all to apply, and a space of controversy, where the ecclesiastical understanding and that of the civil authority contest the appropriate extent of each other's purview. As is discussed in the next chapter, the effect of this division is to allow the ecclesiastical understanding of the law to partake of the constitution and the perpetuity of the French-Canadian nation.

---

316 *Ibid.* 151

317 Young, The Politics of Codification, 149. The right is one thing, but in the event, as Jill Vickers' work and that of Micheline de Seve attest, most of the work of 'moulding' and educating was done in the home by mothers. See Micheline Dumont, Michele Jean, Marie Lavigne and Jennifer Stoddart, Quebec Women: A History, trans. Roger Gannon and Rosalin Gill (Toronto: The Women's Press, 1987)140-144.

318 Young, The Politics of Codification, 149.

To review and conclude, then, the derivation of the authority of the law from the Crown, according to the understanding of the civil authority, allowed for the possibility of the exercise of undue influence of the ecclesiastical understanding. The scope of the law, per the civil authority, was found to comprehend the authority to determine where undue influence of the ecclesiastical understanding begins. The substance of the law consisted of four paths: appeal to the civil courts for redress of ecclesiastical actions; the ability to define the terms of membership within the civil authority; the ability to define the point where the influence of the ecclesiastical understanding becomes undue; and codification. With codification, the understanding of the civil authority distinguished its purview with greater clarity, but also ceded to the ecclesiastical understanding the domain of the family, of upbringing, in short of the private sphere and the propagation of the nation. This granted the ecclesiastical understanding a purlieu in perpetuity and, together with the overarching imperative of the understanding of the civil authority to seek an ever-clearer distinction between the civil and ecclesiastical spheres, and the overarching imperative of the ecclesiastical understanding continually to obscure and trespass across the same distinction, shaped the conflict to come and the chapter to follow.

Chapter 4

The Structural Advantage of the Ecclesiastical Understanding

The Holy Wars in Quebec were an internecine national conflict. That the Holy Wars evoked the question of nation cannot really be gainsaid; both sides employed the rhetoric of nation. Each side was equally concerned about the place of the French-Canadian nation in Confederation. For the ultramontanes, the colonization of distant parts of the province was a national project, intended to spread a French-speaking and Catholic nation to the hinterland.[319] For the civil authority, codification was similarly a national project, giving monumental form to the laws of the French-Canadian nation. In this vein, G. Blaine Baker refers to "a rising tide of francophone nationalism that took the Civil Code, administered by the bench, as a cultural icon."[320] The evocation of the question of nation was sufficiently clear to Sir John A. MacDonald that he referred to the Holy Wars as a "French-Canadian family quarrel."[321]

It has been the task of the three chapters preceding this one to describe and define that quarrel and outline its significance. The present chapter further develops the significance of the contest between the civil and ecclesiastical understandings of the law, and provides an answer to the fundamental question that motivates the thesis: why it is that despite an unbroken string of judicial losses, the essence of ultramontanism remained prevalent in Quebec not just past the reigns of Pius IX and Bishop Bourget, but well into

---

319 Mason Wade, The French Canadians 1760-1945, (Toronto: MacMillan, 1955) 609-610. See also http://faculty.marianopolis.edu/c.belanger/quebechistory/events/natpart3.htm.

320 G. Blaine Baker, "Law Practice and Satecraft in Mid-Nineteenth-Century Montreal: The Torrance-Morris Firm, 1848 to 1968," in Carol Wilton, ed, Essays in the History of Canadian Law / Beyond the Law: Lawyers and Business in Canada 1830 to 1930, vol. 4 (Toronto: Butterworths for the Osgoode Society, 1990), 71.

321 Wade, 361.

the 20th century and perhaps even until the dawn of the Quiet Revolution.[322] The chapter addresses this question and its significance in three parts. First, it examines the 'political spirituality' of the ecclesiastical understanding of the law. Second, it considers the limits of the liberalism of the civil understanding. Finally, the chapter returns to the importance of gender and nation, and specifically the hyphen connecting nation and state, in order to show in theory how the cession of the private sphere to the ecclesiastical understanding preserved a certain ultramontanism, which by its nature had to spill over into the public sphere, even until the Quiet Revolution.

It is necessary first to make a distinction between the ecclesiastical understanding of the law and the particular application of that understanding that is ultramontanism. The difference between the two is one of degree rather than kind. Essentially, ultramontanism is the ecclesiastical understanding taken to an extreme and applied without qualification or reservation. As explained in previous chapters, the advent of the Civil Code and the question of clerical involvement in politics serve as illustrative examples. In the first case, the ultramontanes took the position that the Code ought to be the occasion of the application of Catholic principles across the civil law. This was in perfect accord with doctrine concerning the superiority of the Church over the State, as implied in the Syllabus and stated in the collective Pastoral of the Quebec Episcopate.[323]

---

322 The assertion is made in conscious contradiction of Sir John A. MacDonald's statement that "ultramontanism rests upon the lives of two old men: Pius the Ninth and Bishop Bourget." (Wade, 361) The assertion also contradicts Mason Wade's dismissal of ultramontanism post-1878 as the 'occasional resurgence.'

323 Pastoral Letter of the Bishops of the Ecclesiastical Province of Quebec on the Subject of Liberalism, 22 September 1875, http://faculty.marianopolis.edu/c.belanger/quebechistory/docs/1875/letter.htm.

Conversely, the official position of the Episcopacy and the Papacy was that the civil Code was the best that could be achieved given the political, economic and commercial importance of the Protestant minority, and was therefore "a good code for a Catholic nation."[324] In the second case, by the 1890s it had become the policy of the Papacy and the Episcopacy in Quebec officially to discourage explicit clerical involvement in politics of the kind that precipitated the undue influence trials.[325] Justifiably, the ultramontanes noted that this constituted an error explicitly included in the Syllabus and numerous encyclicals of three Popes and the Episcopacy of Quebec. Essentially, then, ultramontanism may be distinguished by a refusal to entertain a pragmatic compromise concerning principles of Catholic doctrine, particularly as they concern the relationship between Church and State.

As Mason Wade notes, ultramontanism of this kind continued in diminishing vigor for about 20 years following the accession of Pope Leo XIII in 1878, or roughly until the end of the 19th century.[326] For example, the resolution in 1888 of the question of the Jesuit Estates clearly acceded to the tenets of ultramontanism when the decision of the Premier and the Legislature to compensate the Jesuits was referred to the Pope for final approval.[327] This action gave expression to the ultramontane doctrine that any matter involving on one side an ecclesiastic was necessarily a clerical question, and therefore subject ultimately to the jurisdiction of the Pope.

---

324 Brian Young, The Politics of Codification: The Lower Canadian Civil Code of 1866 (Montreal: McGill-Queen's University Press, 1994) 120.

325 Wade, 373-382.

326 Wade, 370.

327 Charles Lindsey, Rome in Canada: The Ultramontane Struggle For Supremacy Over the Civil Power (Toronto: Williamson, 1889), xxxvi.

Similarly, in the particular ultramontanism of Bourassa and Tardivel during the final years of the 19th century and the first years of the 20th, one sees the indissociability of Church and State that constitutes one of the defining features of the ecclesiastical understanding of the law. Tardivel was a separatist, the preeminent French-Canadian nationalist, and an advocate of a rural and Catholic nationalism.[328] Bourassa, conversely, was the leading French-Canadian advocate of pan-Canadian nationalism from the 1890s through to the Second World War, while always respecting the unique position and culture of the French-Canadians and the compact theory of Confederation.[329] Bourassa held a seat in Parliament during most of this time and, as Michael McMillan notes, he combined a sort of Whig liberalism and a distaste for state intervention with Catholic social positions and an ultramontane advocacy of the absolute jurisdiction of the Church in matters of faith, discipline and mores.[330] Of Bourassa, Laurier states that "[he] was an ultramontane and carried his religious feelings into politics."[331]

In June of 1904, both Bourassa and Tardivel supported the advent of the *Association Catholique de la Jeunesse Canadienne-française* (ACJC), an organization of actively Catholic youth whose programme, as follows, was decidedly political: "the study of the political and social problems whose solution is demanded by the interest of the French-Canadian race: education, agriculture, colonization, trade and industry, the

---

328 Wade, 524-526

329 *Ibid.* 524-527.

330 Michael C. MacMillan, "The Character of Henri Bourassa's Political Philosophy" American Review of Canadian Studies, 1982b 12(1): 10-29..

331 Barbara Robertson, Wilfrid Laurier: The Great Conciliator (Oxford: Oxford University Press, 1971), 126.

relations of capital and labour."[332] Bourassa himself gave voice to the ecclesiastical understanding of the law when he lamented in 1906 concerning the 'Sunday Bill' of the Lord's Day Alliance that the government had placed a premium upon "hypocrisy, drunkenness, idleness, and the vices that develop in any country where the attempt is made to make people virtuous by law, instead of relying on the individual conscience and the moral quality of the Church."[333] This, then, was a fair characterization of the application in practice of the ecclesiastical understanding of the law during the early 20th century. Absent is the effort to extend the dominion of the Church into all facets of political life; nevertheless, the authority of the Church in the private sphere, concerning mores, is asserted absolutely.

Even so, there were times during the early decades of the 20th century when the application of the ecclesiastical understanding of the law blurred the distinction between public and private and hinted at a resurgence of ultramontanism. Everett Charrington Hughes' study, French Canada in Transition, is illuminating in this respect, as it depicts life in the industrial town of Cantonville. For example, the author describes how the Catholic workers' syndicates, taken directly from the policy of the *Rerum Novarum*, are intended to progress toward the ability to dictate who obtains employment.[334] Hughes quotes a priest from the town of Allouette speaking to this purpose: "The syndicates in Allouette now have 1200 members; one must be in the syndicate to work in Allouette. The Catholic workers should be in a union with Catholics. The Canadiens should be in a

---

332 Wade, 525.

333 Wade, 527.

334 Everett Cherrington Hughes, French Canada In Transition (Chicago: University of Chicago Press, 1943), 136.

union with Canadiens only."[335] The same priest then defined three stages in the achievement of this purpose: "1. The employer allows syndicate members to work for him. 2. The employer recognized the syndicate, and the workers must belong, but the employer chooses the workers. 3. Syndicate chooses the workers."[336] Hughes also notes instances of the priests in Cantonville devoting their sermons to disquisitions upon the evils of communism and the advantages of capitalism – in part an application to politics of the condemnation of secret societies articulated more forcefully in the Syllabus of Errors and the encyclicals of Pius IX.[337]

Most famous in this vein are the incidents of interference and arrest of Mormons by Quebec Premier Maurice Duplessis during the 1950s.[338] To use the best-known examples, Duplessis made a practice of persecuting Mormon pamphleteers and those who supported or aided them. Thus, the restauranteur Frank Roncarelli successfully sued Duplessis for having had his liquor license suspended in retaliation for having posted bail for a group of Mormons arrested for distributing pamphlets.[339] Thus, also, the famous Mormon pamphlets case in which it was decided that the pamphleteers possessed the right to distribute literature in advocacy of their religion, but only after they had been

---

335 *Ibid.*

336 *Ibid.*

337 *Ibid.* 101.

338 This discussion of Catholic workers' syndicates and Duplessis is not intended to do more than suggest the possibility of the persistence of a certain ultramontanism, or a certain application of the ecclesiastical understanding, well into the 20th century. The Catholic workers' syndicates and the Duplessis governments are matters that have been copiously addressed in academic literature in French. These matters contain numerous points of controversy and nuance; the discussion here is only anecdotal. The fundamental point is that the actions of Hughes' priest and of Duplessis against the Mormons appear to be very much in line with what the leading ultramontanes of the 1870s would have desired.

339 *Roncarelli v. Duplessis*, (1959) S.C.R. 121.

imprisoned for having done so. In each of these cases, the actions of the legislative and executive branches of government in Quebec were exactly what the most ultramontane ecclesiastic of the 1870s could have wished. How this could be so, over half a century after the period of the Holy Wars, is central to the thesis and must be considered in detail, in terms of political spirituality, the limits of liberalism, and the connection between gender and nation.

Political Spirituality

The idea of 'political spirituality' captures well what makes the ecclesiastical understanding of the law so lasting and so powerful; within it is fused the ethical, the political and the spiritual, by means of the governmental and the panoptic.[340] The term was coined first by Michel Foucault, in an interview in 1978, as follows:

> How can one analyze the connection between ways of distinguishing true and false, and ways of governing oneself and others? The search for a new foundation for each of these practices, in itself and relative to the other, the will to discover a different way of governing oneself through a different way of dividing up true and false – this is what I would call '*political spiritualitie*.'[341]

---

340 Two points of clarification must be made here. First, the focus in this section is upon the panoptic, or what might be called 'panopticism,' rather than upon the physical prison that Bentham defined and Foucault described. In this sense, the section uses the idea of the panoptic as an analogy, or even as an accurate description of the nature of surveillance constituted by the idea of the omnipotent and omniscient God in Catholic theology (cf. St. Anselm's Proslogion), and the extension of this idea through the Pope, the Bishop, and Curé and the Priest, to use the formulation that was so often given in Quebec during the period of the Holy Wars. The second point clarification, then, is that given the use of the idea of the panoptic to describe the idea of omnipotent and omniscient surveillance, it matters not whether the discussions of the Panopticon in Bentham and Foucault are best labelled as pre-modern, modern or post-modern. Regardless of the historical period or philosophical perspective one considers best suited to encapsulate Bentham or Foucault, the idea of the panoptic, in itself, remains an effective visual metaphor of perfect surveillance, and therefore an effective image of the immediate effect of the ecclesiastical understanding of the law upon Catholics in Quebec during the period of the Holy Wars.

341 Jeremy R. Carrette, Foucault and Religion: Spiritual Corporality and Political Spirituality (London: Routledge, 2000) 137.

The mobilization of the Catholic religion is the mobilization of a foundational logic for dividing truth from falsehood in order to achieve the governance of a people. This is the strategy and the cause of the success of the ecclesiastical understanding of the law in Quebec during the period of the Holy Wars. To state this is not to suggest that these mobilizations were intentional, although they may have been; nor were these mobilizations more applicable to the ultramontane Catholicism of the Holy Wars than to the less radically and overtly political Catholicism of the first half of the 20th century.[342] Rather, to paraphrase Carrette, it is to suggest that political spirituality, as the mobilization of truth and falsehood in the service of governance, constitutes the entire field of religion an immanent process of governmentality.

Foucault's original published conception of governmentality focused too exclusively upon what can best be understood as a governmentality of political economy; however, even in this definition, the essence of governmentality is understood to be the development of a complex of '*savoirs*' and its application by means of institutions, procedures and tactics of power.[343] By 1982, Foucault had revised his conception of governmentality to include a generalized apparatus of '*dispositifs*,' or specific technologies of power, and the multidirectionality of power, which necessitated a subject active in its own governance and its own becoming governable.[344] To place this

---

342 This is not a controversial distinction to make; for example, after the 1880s, the clergy very rarely appropriated a role in determining the votes of their parishioners, which they had claimed as a right and duty during the period of the Holy Wars.

343 Michel Foucault, "Governmentality," trans. Pasquale Pasquino, in Michel Foucault, Graham Burchell, Colin Gordon, Peter Miller, The Foucault Effect: Studies in Governmentality (Chicago: University of Chicago Press, 1999), 87.

344 David Garland, "Governmenality' and the Problem of Crime: Foucault, Criminology, Sociology," in Theoretical Criminology (London: SAGE, 1997) vol. 1 (2), 175.

discussion of Foucault in the context of the thesis, then, 'political spirituality,' during the Holy Wars in Quebec, involves the application of and participation in the ecclesiastical understanding of the law, as a means of achieving the governance of the Catholic and francophone self in Quebec. This entails not just subjugation to the ecclesiastical understanding, and not only acquiescence, but also the active involvement and molding of the quotidian rhythms of the self in and by the dispositions of power proper to the ecclesiastical understanding. It is appropriate, then, that the soul is the object of both Foucault's 'governmentalities,' and of the mission of salvation undertaken according to the ecclesiastical understanding.

The institution of the panoptic gaze is amongst the most effective techniques Foucault analyzes for the government of souls, and fits very well to Catholic doctrine and discipline, and therefore to the ecclesiastical understanding. The classic figure of the Panopticon, taken from Bentham by Foucault, consists of a tower at the centre of a circular periphery of cells. The tower is 'pierced' by windows that make it possible to view each cell at any time, and each cell contains a window at the front and at the back; in this way, each prisoner is 'backlit' and may always be observed from the tower.[345] The cells "are like so many cages, so many small theatres, in which each actor is alone, perfectly individual and constantly visible."[346]

The major effect of the Panopticon, then, is "to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."[347]

---

345 Michel Foucault, Discipline and Punish: The Birth of the Prison trans. Alan Sheridan (New York: Penguin, 1979), 200.

346 *Ibid.*

347 *Ibid.* 201.

Thus the tower, or other surveilling mechanism, achieves its effect continually, even during the time when no person is actively surveilling. This constant, individualized and internalized surveillance is the essence of panopticism.

The intuitive connection of panopticism with Catholicism, and therefore with the ecclesiastical understanding, is sufficiently strong. The omnipotence and omniscience of the Christian God constitute the ideal panoptic technology. Each pious Catholic during the period of the Holy Wars would have been intimately conscious of continual surveillance. Each also would have participated actively and internalized surveillance by means of confession, there being no need to conceal what must already be known to God. Further, lest the parishioner's connection with God be thought too remote for effective surveillance, the parishioner was reminded with sufficient frequency that the priest heard the Curé, the Curé the Bishop, the Bishop the Pope, and that the Pope was God's chosen minister on Earth.

These remain, however, intuitive connections; no matter how strong they seem, they must be supported by reference to the events and documents of the Holy Wars. First, then, consider the Syllabus of Errors. The document does not admit of limitation in the scope of the application of the ecclesiastical understanding of the law. There is to be no separation of Church and State; the mores of Catholic dogma are applicable equally to both, at all places and all times, whether observed or not.[348] Further, it is the unique purview of the Catholic hierarchy to determine, define, interpret and apply these mores. The Syllabus therefore recognizes mores as a '*dispositif*' of the Catholic hierarchy.[349] The

---

348 Pope Pius IX, The Syllabus of Errors Condemned, Encyclical of 8 December 1864, arts. 39-55.

349 *Ibid.* article 44, for example. The article makes clear that religion, morality and spiritual government, the guidance of consciences, and the administration of the sacraments are areas of knowledge

document also condemns as errors the idea that clergy ought not to involve themselves in politics, that salvation can be achieved by any means other than the Catholic religion, and that the Catholic hierarchy ought to acquiesce in progress, where progress conflicts with doctrine.[350] These strictures establish the unlimited scope of the panoptic gaze; there is no realm wherein the dicta of the ecclesiastical understanding do not apply, nor wherein ecclesiastical censure may not apply.[351]

Second, the dwindling membership of the *Institut Canadien* affords an example of the internalization of the ecclesiastical understanding as a governed-mentality, and therefore as an example of 'political spirituality.' Despite its members' early insistence upon their ability to select the works for the *Institut's* library and to judge their morality, and despite the JCPC's vindication of the *Institut*, the number of French-Canadian members had dwindled to only a few dozen from a few hundred by the 1880s, as former members found the clergy's continued censure too arduous a hindrance to their pursuit of personal or professional success.[352] At the same time, the number of similar Institutes in Quebec diminished from at least one in each prominent town to only that of Montreal.[353]

---

and expertise (*technes*, perhaps) that fall entirely within the Church's purview. In short, all authoritative statements concerning mores must come from the Church.

350 *Ibid.* 39-55.

351 This is not to suggest that ecclesiastical censure was equally heeded in all spheres, or that it produced everywhere the same physical effects.

352 History of the Guibord Case. Ultramontanism Versus Law and Human Rights. (Montreal: "Witness" Printing House, 1875), 10-11.

353 The specific details required for this paragraph are given in a book entitled The Guibord Case, and published at Montreal in about 1880. Being in Hungary as I write this, I cannot produce them, since the book remains in Ottawa. I shall, however, amend the section to include the correct statistics as soon as I have returned home.

The same internalization of the ecclesiastical understanding may be asserted in three further instances. First, in no case where the clergy expressed preference for a candidate during an election campaign did the candidate fail to be elected. The compulsion felt by Catholic electors not to vote for the Liberal candidate was attested to by several of the witnesses in the Charlevoix election case. Most considered that a vote for Tremblay, the Liberal candidate, meant damnation, several changed their votes, and several more abstained who would not have. As an example, one elector testified concerning his vote that "my religious belief, as a Catholic, is that those who act in opposition to religion and their pastors go to hell when they die. Of myself, I knew nothing, and I relied on the instructions of one worthy of confidence."[354] Indeed, electors were told not only to vote in accordance with their conscience, but "according to their conscience, enlightened by the mandement of the bishops of Quebec."[355] Thus, a significant number and probably a majority of electors took it upon themselves to vote as their consciences had imbibed the doctrines articulated by their priests, however obliquely or directly stated, and however much the electors' original inclinations may have been toward the politics of M. Tremblay.

Second, during the same Charlevoix election contest, Hector Langevin, the Conservative candidate, considered that he had been libeled by two priests in private letters, which had been publicly read.[356] The Archbishop then requested the original of Tremblay, by whom the letter had been read. Upon Tremblay's declaration that neither

---

354 Lindsey, 27.

355 *Ibid.*

356 *Ibid.* 246.

the original nor a copy remained, the Archbishop decided that for lack of evidence he could come to no decision concerning the purported libel. Mr. Tremblay, for his part, feeling himself the victim of misconduct by several of the cures during the same election, declared in a letter to the Archbishop his own intention to appeal the conduct of the curés to Rome. It was only when his appeal received no answer that M. Tremblay brought his complaints before the civil tribunals, as discussed in the first chapter.[357] Third and finally, the previously-mentioned resolution to the question of the Jesuit Estates may be joined to the above examples, in that the Premier deferred to Rome for final approval of the resolution that the duly elected government of Quebec, with jurisdiction, had made with the Jesuits.

Thus, so far had these most-prominent individuals made themselves party to the governmentality of the political spirituality of the Catholic Church in Quebec, so far had they imbibed the '*dispositif*' that was the ecclesiastical understanding of the law, that they deferred to Rome concerning a question of the constitution of the only federal elected body of the state, which body comprised Protestants and Catholics, and which body, in its Acts, had provided extensively for the resolution of controverted elections of its own members. Also deferred to Rome was a question of the highest importance that had already been settled by the Quebec Legislature, the several individual and private questions concerning one's preferred candidate during an election, and the question of the private or quasi-public social institutions to which one could belong.[358] In each of these cases, deference was given to Rome voluntarily, despite the existence of civil institutions

---

357 *Ibid. 246.*

358 Referring, of course, to the undue influence cases and the Guibord Affair.

to decide the same questions, and despite the express protection by legislation of the actions concerned.

Plainly, then, the ecclesiastical understanding of the law served as an effective '*dispositif*,' and the 'political spirituality' it supported served as an effective governmentality. On its own terms, this governmentality of political spirituality admitted of no limitation, save that which it defined for itself and imposed upon itself. The combined effect of the civil understanding of the law, the decision of the JCPC concerning Guibord, and the decisions of the Supreme Court of Canada in the undue influence cases was to restrict forcibly the application of the ecclesiastical understanding to the private sphere. Nevertheless, it is in the very nature – panoptic, governmental, illimitable – of the ecclesiastical understanding that it should escape its limitation periodically to greater and lesser extents, as it did from the question of the Jesuit Estates in the 1880s through to the politico-spiritual abuses of the Duplessis government in the 1950s.

The Understanding of the Civil Authority and the Limits of Liberalism

How the civil understanding came to impose this limitation upon the ecclesiastical understanding has been discussed extensively in the first and third chapters. How and why the ecclesiastical understanding escaped this limitation periodically has been discussed in the first, second and present chapters. Why the civil understanding concedes the private sphere to the ecclesiastical understanding remains to be discussed. In brief, then, the civil understanding makes this cession because its fundamental tenets conform to the tenets of classical liberalism, and its adherents act in conformity with those tenets.

By 'classical liberalism' in this context is meant the liberalism of the 19th century, which advances and supports the epistemological primacy of the individual, and therefore is concerned most extensively with the rights and liberties of the individual, and with their protection against encroachment by community or state. It is not important to this thesis whether the liberalism of the civil understanding presumed a particular concept of the self. Suffice it to state that the liberalism of the civil understanding accords most closely with three fundamental positions. First, it accords with John Start Mill's dictum that a right is "something that society ought defend me in the possession of."[359] Second, it accords with the increasingly laissez-faire economic policies of the 19th century. Third and finally, it is in still greater accord with the Kantian position that rights, and duties, ought to be acceded to even when they conflict with the cause of human happiness.[360]

First, the gradual shift during the late 18th and early 19th centuries in Quebec from mercantilism to increasingly laissez-faire economic policies, coupled with a gradual shift toward industrialization and capitalization of economic activity, created a climate that was receptive to classical liberalism in economic policy across normal political and partisan divisions. In many respects, George-Etienne Cartier typified this kind of economic liberalism, as well as its appeal across political and partisan divisions.

---

359 John Stuart Mill, On Liberty and Other Essays, (Oxford: Oxford University Press, 1998) 189. Mill is used here only as an example of classical 19th century liberalism. It is understood that Mill is closely bound to a longer tradition of liberal utilitarianism, incorporating the works of his father, James Mill, and Jeremy Bentham in the late 18th and early 19th centuries, and traceable at least as far back as the "Essays, Moral and Political" of David Hume in the 1740s. Nor can Mill be entirely distinguished from the economic liberalism of Adam Smith and David Ricardo, from the liberal radicalism of Godwin and Wilberforce, or from the longer tradition of British liberalism that traces its origins at least to the works of John Locke and the early Whigs in the 1680s and 1690s.

360 Sandel, 2-11.

Cartier, of course, is one of the pre-eminent figures of Canadian political history. His advocacy of Confederation, for example, was essential to the success of the initiative. Cartier was the leading member of the Conservative Party from the early 1850s through the early 1870s. He was closely allied with the ecclesiastical hierarchy, including Bishops Bourget and LaFlèche, on most questions that bore upon the French-Canadian national identity. Cartier was also a close associate of Hector Langevin, whose election was overturned in *Brassard v. Langevin* because of undue clerical influence, as discussed in the first chapter.

Cartier was moreover an advocate of military discipline. He revived the St.-Jean Baptiste festival after the Rebellions as an orderly expression of the Catholic faith and French-Canadian national identity.[361] Finally, much like Papineau, Cartier upheld strictly traditional gender roles within his family, even through his own conduct was often censured by Bishop Bourget.[362]

Despite these strongly conservative tendencies, Cartier's role as lawyer for the Sulpicians, for the Grand Trunk Railway, and for numerous other corporate and private economic interests suggest an economically liberal perspective. It is too much to assert that these legal interests caused him to support a number of economically liberal initiatives – the assertion is potentially an instance of the biographical fallacy. Nonetheless, Cartier supported the most important initiatives that modernized the legal regime that governed and regulated economic activity in Quebec.

---

361 Brian Young, George-Etienne Cartier: Montreal Bourgeois (Montreal: McGill-Queen's University Press, 1981), 46.

362 *Ibid.* 31-52.

In particular, Cartier advocated for the dismantling of seigneurial tenure outside of Montreal and for the codification of the civil law, including the revisions to the law of obligations that were discussed in detail in the previous chapter. Especially in this latter instance, Cartier's support was instrumental to the passage of the new civil code through the Legislature.[363] Moreover, Cartier was one of the individuals most responsible for convincing the Sulpicians to dismantle their seigneurial tenure upon the island of Montreal.[364] Each of these instances shows the importance of economically liberal initiatives as means to allow the civil authority to place limits upon the totalizing nature of the ecclesiastical understanding of the law. This is true of Cartier's actions despite his overarching conservatism and his general alliance for political purposes with ecclesiastical authorities in Quebec.

Besides Cartier, a number of other episodes serve to show the liberalism of the understanding of the civil authority. For example, the members of the *Institut Canadien* defended themselves by means of the classically liberal position that the *Institut*, treated as a private individual, ought to be able to choose the books for its library without outside influence. Certainly Knopff, in his important article upon the Guibord Affair, considered the members of the *Institut* to be adherents to a philosophy of liberalism.[365] Also, it was against liberalism that the Catholic hierarchy directed much of its invective; the encyclicals of the episcopacy and the Papacy were equally disapproving of Catholic and

---

363 *Ibid.* 95-97.

364 *Ibid.* 8.

365 Rainer Knopff, "Quebec's 'Holy War' as 'Regime' Politics: Reflections on the Guibord Case," Canadian Journal of Political Science, XII: 2 (June, 1979), 315-331.

political liberalism, and the common practice during the Holy Wars was to attribute both to adherents of the federal or provincial Liberal Party.[366]

Further, in the midst of the most agitated period of the Holy Wars, Wilfrid Laurier, in his great speech of 1877 concerning liberalism, distinguished Catholic liberalism from political liberalism. While he declared himself no ally of the former, he affirmed his adherence to the latter, which he defined as the liberty, or right, of each Canadian individual, whether clergy or lay, to express 'his' opinion of whatever nature concerning politics, as long as this expression of opinion did not constitute intimidation and thereby limit the rights of others.[367]

Finally, amongst the clearest statements of the Kantian strain of the liberalism of the time are to be found in the decisions of Justice Day. Preeminent in numerous of his decisions concerning obligations is Justice Day's literal interpretation of contract law, his universal protection of the right of every adult male to enter freely into contracts, and his absolutist application of the integrity of written contractual obligations freely entered into. Reference has already been made, in the previous chapter, to the case of Kennedy and Smith, where Justice Day declared 'inflexible' the binding nature of the contract that allowed the defendant to refuse to answer questions concerning whether work had been assigned orally, because the written contract had stipulated that all additions to the work were to be written.

To this may be added Day's removal, in the section of the Civil Code entitled "Damages resulting from the inexecution of obligations" of judges' discretionary power

---

366 Lindsey, 187-209.

367 Wade, 362-367.

to reduce damages agreed to freely by contract, regardless of the circumstances of the contract, the size of the damages, or the ability of a given party to remit the damages required.[368] Finally, one must bear in mind the centrality of the law of obligations, written entirely by Day, to the Civil Code as a whole. As Thomas McCord stated, "the title of Obligations, which because of its importance, as being the basis of the greater portion of the whole Code, it had been decided to commence with. For the same reason, this title was, even more than any of the others, the subject of long and careful examination and discussion."[369] Thus, the individual right to enter freely into contracts, and to have those contracts maintained and enforced by the state, regardless of their relevance to human happiness or their intrinsic moral worth, was made the fundamental principle of the most extensive body of law in Quebec during the period of the Holy Wars.

In sum, the combination of the understanding of the civil authority with that of the ecclesiastical authority was the combination of a liberal philosophy with a totalizing philosophy. The liberal understanding required individual freedoms, and therefore freedom within a private sphere. This was the case whether the freedoms in question were the freedom to join societies or to read what one chose, to vote as one was inclined, to enter into contracts and stipulate terms as one saw fit (as an adult male), and indeed to practice the religion one chose, or the religion of one's forebears. In short, the understanding of the law according to the civil authority pretended to no influence or jurisdiction over the private sphere. Certainly, this 'private sphere' is ill-defined at its edges – the distinction between public and private is always fuzzy. Equally certainly,

---

368 Young, The Politics of Codification, 170.

369 *Ibid.* 157.

however, in addition to the freedoms enumerated above and others like them, 'private' in Quebec included most of family life and the fundamental definitions of gender relations. The ecclesiastical understanding admitted of no such limitation; it arrogated to itself equally absolute control over the private and public actions and thoughts of individuals.

The Gendered Hyphen

The effect of the coexistence of the ecclesiastical and civil understandings, the former totalizing and the latter liberal, was the creation of a contested public sphere and an uncontested private sphere.[370] In the public sphere, the contested question was the extent of the application of the ecclesiastical understanding. The private sphere, however, was a domain upon which a liberal understanding could not apply itself and remain liberal. Therefore, in the private sphere the ecclesiastical understanding went largely uncontested. The place of women and the family in Quebec serves as a powerful example. Indeed, there was little or no conflict between adherents of the civil and ecclesiastical understandings concerning the role of women and the structure of the family. As discussed in the previous chapter, every opportunity was taken, under the civil law, to reinforce the patriarchal family and women's lack of legal autonomy.

This space of agreement, though, seems likely to have produced in its turn the correlative effect of buttressing the connection between the ecclesiastical understanding and the sense of French-Canadian nationhood, and therefore posits one plausible explanation of the persistence of the ecclesiastical understanding well into the 20th

---

370 In this thesis, the family is particularly closely associated with the 'private sphere.' It is well understood, however, that 'private sphere' can signify a great deal more than family. The intention here is only to emphasise the family as a particularly important aspect of the private sphere in the context of this thesis.

century.[371] The manner of this reinforcement may be explained by the work of Jill Vickers.

In "Gendering the Hyphen," Vickers seeks to counter the general antagonism of modern, 'Western,' feminist movements toward nationalism. To do so, Vickers shifts focus from nationalism to nation and nationhood, and considers the gendered manner in which nation connects with state.[372] The larger question of the relationship between feminism and nationalism is not pertinent to this thesis, but the question of the gendered connection between nation and state certainly is.

To this end, Vickers agrees with Margaret Canovan's assertion that "nationhood is based on a 'central mediation between state and community,' but critiques Canovan for failing to distinguish between the roles of men and women in the nation.[373] To supply this deficiency, Vickers theorizes "that the mediation the nation performs depends significantly on women."[374] To this she adds the following:

In anti-colonial contexts, women link modern and traditional in their persons and behaviour. But nationhood distinguishes successful modern polities from those which struggle long, and often violently, to impose nationhood in a territory. To mediate between modern and traditional values and loyalties, therefore, required stable nationhood, which in the original Euro-American model was performed by 'citizen-mothers' in the domestic sphere. Women created the 'fusion between

---

371 Undoubtedly, this is one plausible explanation among many; no exclusive causal relationship is asserted here.

372 Jill Vickers, "Gendering the Hyphen: Gender Scripts and Women's Agency in the Making and Re-Making of Nation-States," Presented at the annual conference of the Canadian Political Science Association, http://74.125.95.104/search?q=cache:4fr1_1NxiosJ:www.cpsa-acsp.ca/papers-2004/Vickers.pdf+Jill+Vickers+Gendering+the+Hyphen&hl=en&ct=clnk&cd=1&gl=ca. 1-2

373 *Ibid.* 17.

374 *Ibid.*

the familial and the political'; this is the work of mediation which 'gendering the hyphen' involved.[375]

In other words, by means of their role as mediators, between private and public, tradition and progress, secular and spiritual, and so on, "women form the hyphen which joins nation to state."[376]

Following Vickers' analysis, two of her six aspects of the gendered hyphen, or the gendered mediation between nation and state, are of particular importance to the present discussion: first, that women frequently play an important role in the creation and reproduction of nationhood; and second, that the locus of nation-making is frequently the private and domestic sphere of the family, where the gender scripts assigned to women and men are particularly crucial.[377]

The importance of these aspects of the gendered hyphen may in turn be addressed in the context of defensive nationalism. The burgeoning sense of nationhood in mid-19th century Quebec may be considered defensive, by which it is meant that the sense of French-Canadian nationhood during the period of the Holy Wars was intensely concerned with its own survival. This follows from the relative proximity of the Conquest, the 1837-38 Rebellions and the Act of Union of 1840, all of which resulted in overt programmes intent upon the assimilation of the 'French fact' in British North America. This

---

375 *Ibid.*

376 *Ibid.* 2.

377 It is important to consider the place of gender in this analysis. On one hand, it might be understood to have a narrowing effect, in that the focus upon gender would detract from a fuller analysis of a more general ecclesiastical project to establish and maintain influence within the private sphere. On the other hand, one could assert that the division between public and private, and therefore the constitution of the private and public spheres, is at the most fundamental, most originary, and most primordial level a gendered division. From this perspective, the analysis must begin with a consideration of the gender scripts at play, since these constitute the widest and most fundamental beginning points, and give bounds to the Church's project of maintaining influence within the private sphere.

defensiveness in the sense of nation also follows from the relatively unknown consequences of Confederation. Indeed, part of the rationale for codification and the passage of the Civil Code was that it provided a bulwark for the traditions of the French-Canadian nation against its impending incorporation within the Canadian federation.[378]

The same defensive concern is evident in the sections of the British North America Act, 1867, that provided for denominational schools, bilingualism in federal courts, the drafting and equality of bilingual texts of Acts of Parliament, and the institution of a minimum number of seats that could constitute Quebec's representation in Parliament.[379] One might also cite the following points as anecdotal evidence: first, Bishop Langevin's expression of satisfaction when he would meet a French-Canadian who spoke English only poorly;[380] second, the various efforts of colonization, whose object was the establishment of Catholic and French-speaking towns that would help to preserve and propagate the nation;[381] third and finally, the generalized imagery of a rural, anti-modern, traditional and religious nation.[382]

This identification of French-Canadian nationalism as defensive during the Holy Wars is important because, as Vickers finds with reference to nations without states, defensive nationalisms "generally make family the main site of national politics," along

---

378 Young, The Politics of Codification, 113.

379 British North America Act, 1867, 30 & 31 Victoria c. 3, ss. 93(1), 133.

380 Wade, 346.

381 *Ibid.* 331-340, 609-610.

382 *Ibid.*

with autonomous faith-based institutions such as the Catholic Church.[383] Vickers gives the example of Poland, wherein the constructs of the 'Polish Mother' and the 'Mother Hero' were credited with the preservation of Polish language and culture after the 1772 partition.[384] These constructs have persisted past the victory of Solidarity in the late 1980s, and women were throughout charged with the preservation and propagation of the nation in the private and domestic sphere: "chaplains of the national fire," as Rousseau termed it, preserving religious belief, use of the mother tongue, and traditional customs.[385]

Admittedly, Vickers' concern with respect to Poland is with the connection between defensive nationalism and the loss or absence of state institutions; however, in "Bringing Nations In," Vickers found that women in minority nations within dominant nations, as was the case of French-Canada within English-Canada throughout the 19th and 20th centuries, "experience a greater sense of responsibility for reproducing their national identity."[386] This is opposed to women of the dominant nation, who were able to rely

---

383 This is not to suggest that French-Canada during the Holy Wars ought to be considered as a 'nation without a state," since Canada East partook of its share in the government of the United Canadas, and particularly since Quebec constituted a province with autonomous jurisdiction under Confederation. Vickers' analysis does not suggest that only nations without states may partake of defensive nationalism; rather, she advances the example of Poland as a type, only, of defensive nationalism.

384 Jill Vickers, "Gendering the Hyphen: Gender Scripts and Women's Agency in the Making and Re-Making of Nation-States," Presented at the annual conference of the Canadian Political Science Association, http://74.125.95.104/search?q=cache:4fr1_1NxiosJ:www.cpsa-acsp.ca/papers-2004/Vickers.pdf+Jill+Vickers+Gendering+the+Hyphen&hl=en&ct=clnk&cd=1&gl=ca. 13-15.

385 This account is necessarily short in the context of this thesis. For a much fuller and, indeed, a convincing account of the role of women in the preservation of Polish national identity, see Judit Fabian's paper entitled "Understanding Democratization, Gender and Nation/alism in Poland," presented at the 2005 annual conference of the Canadian Political Science Association.

386 Jill Vickers, "Bringing nations in: Some Methodological and Conceptual Issues in Connecting Feminisms with Nationhood and Nationalisms," International Feminist Journal of Politics, vol. 8, no. 1 (March, 1996) 92.

upon state institutions for the reproduction of their national identity.[387] In Quebec, during the Holy Wars and thereafter, French-Canadians manifestly considered themselves unable to rely upon state institutions for the preservation of their national identity, and this produced the defensiveness outlined above.

That women in fact considered themselves responsible for the reproduction of the nation is shown in the work of Micheline Dumont *et al.* As noted in chapter 2, French-Canadian women justified their assertion of their right to vote in an 1828 petition in part because "it is [the mother] who breathes into man with eloquent tenderness the earliest lessons of religion and morals."[388]

At the same time, the patriarchal nature of the family and the domestication of women were reinforced by both the civil and the ecclesiastical understandings. With respect to the former, as Young notes, "throughout the [Civil] Code – registry, customary dower, succession, marriage, and separation from bed and board – patriarchy and marital authority were regularly confirmed."[389] With respect to the latter, Bishop Bourget placed the father in the position of 'supreme arbiter' and declared the mother "responsible for the transmission of religious values."[390]

Therefore, the patriarchal authority of the father, together with the agreement of the ecclesiastical and civil understanding concerning morality, authority, and gender roles in the private and domestic sphere, combined with the role of women in reproducing the nation to create a continual reproduction of the ecclesiastical understanding within

---

387 *Ibid.*

388 Micheline Dumont, Michele Jean, Marie Lavigne and Jennifer Stoddart, Quebec Women: A History, trans. Roger Gannon and Rosalin Gill (Toronto: The Women's Press, 1987) 104-105.

389 Young, The Politics of Codification, 151.

390 *Ibid.*

domestic life. That is to say, in every act of reproducing the nation by raising a family in accordance with traditional customs, the French language and the Catholic religion, the ecclesiastical understanding was also reproduced. In this way, the ecclesiastical understanding, and therefore the political spirituality of the Catholic Church in Quebec, was provided with a support that could not be reached or affected by events of the public sphere and doctrines of the civil understanding, including the Guibord Affair and the undue influence cases. To the extent that this was the case, it provides a plausible explanation of how the ecclesiastical understanding of the law could have persevered in Quebec well into the 20th century, despite the unbroken series of legal defeats suffered by the ultramontane cause, and despite the retreat of the Catholic hierarchy from direct political influence, such as that exercised upon parishioners at times of election during the Holy Wars.

In sum and in conclusion, then, one may posit an explanation of sufficiently wide scope for the persistence of the ecclesiastical understanding and its significant political influence in Quebec well past the end of the 19th century, and perhaps even until the period of the 20th century most commonly associated with the dawn of the Quiet Revolution. The ecclesiastical understanding of the law constituted a '*dispositif*' that supported the totalizing and panoptic nature of the governmentality exercised by the Catholic Church during the period of the Holy Wars. This governmentality may be conceptualized under the rubric of 'political spirituality.' At the same time, the adherence of the understanding of the civil authority to the tenets of classical 19th century liberalism required that its application be limited only to the public sphere. This in turn limited the contest between the two incommensurable legal idioms to the domain of the public

sphere, which gave the ecclesiastical understanding uncontested authority within the private and domestic sphere. Within the domestic sphere, however, the defensive nationalism of the time required that the gender role of women include the reproduction of the nation by means of the propagation of traditional customs, the Catholic religion and the French language. At once, then, the ecclesiastical understanding was continually reinforced and reproduced from within the domestic sphere, while its totalizing nature required that it make itself felt within the public sphere. Therefore, the ecclesiastical understanding was at once immune to the dicta of the civil tribunals and required to make itself felt in political life. Thus the continued influence and strength of ultramontane ideals even after the legal defeats of the Holy Wars, and thus an answer posited to the fundamental question of the thesis.

Conclusion

The thesis addresses a particular question and derives a particular answer. The question was precisely why it was and how it came to pass that the ultramontanes in Quebec in the 19th century, during a period known as the Holy Wars, could lose every judicial decision to which they were party, could see the more extreme articulations of their position fall out of favour even at the Vatican, and could nonetheless remain a force of profound influence and importance in Quebec, arguably until the Quiet Revolution of the 1960s. The answer posited was essentially to conceive of the Holy Wars in terms of two competing and incommensurable legal idioms: the understanding of the law according to the ecclesiastical authority and the understanding of the law according to the civil authority.

The introduction defined both of these terms, framed the fundamental question stated above, gave the thesis statement, and explored briefly the most important methodological and theoretical concerns that bore upon the thesis. The first chapter described and analysed the events of the Guibord Affair and the undue influence cases, including the content and import of the judicial decisions that arose from Guibord's burial and the controverted elections. The second chapter then defined and analysed the ecclesiastical understanding of the law according to its conception of the origin of the law's authority, the scope of the law, its substance and its application. The third chapter did the same with respect to the understanding of the law according to the civil authority. That said, while the third chapter treated separately of the origin of the law's authority, it addressed the scope, substance and application of the law in terms of the four general paths by which the understanding of the civil authority could meet the challenges posed by the ultramontanes: appeal to the civil courts for redress from ecclesiastical actions; the

definition of membership within the civil authority; the definition of the point where clerical influence becomes undue; and codification.

The thesis having thus mapped the conflict and its two sides, the fourth chapter explored the significance of the Holy Wars by examining three reasons why the ecclesiastical understanding possessed a structural advantage over the understanding of the civil authority. First, the chapter asserted that the ecclesiastical understanding of the law constituted a *dispositif* that supported the totalising and panoptic nature of the governmentality exercised by the Catholic Church during the Holy Wars and thereafter. This governmentality was conceptualised as 'political spirituality'; its overarching imperative was continually to blur the boundaries between the legitimate purview of the ecclesiastical understanding of the law and that of the civil authority. Second, the chapter asserted that the adherence of the understanding of the civil authority to the tenets of classical 19th century liberalism required that its application be limited only to the public sphere. This ensured the private and domestic sphere was the purview of the ecclesiastical understanding alone. Third, the chapter asserted that within the domestic sphere, the defensive nationalism of the period of the Holy Wars required that the gender role of women include the reproduction of the nation by means of the propagation of traditional customs, the Catholic religion and the French language.

The chapter then made the argument that the combination of the three factors immediately above resulted in the continual reinforcement and reproduction of the ecclesiastical understanding from within the private and domestic sphere, at the same time that the totalizing nature of the ecclesiastical understanding required that it make itself felt within the public sphere. This granted the ecclesiastical understanding an

immunity from the dicta of the tribunals of the civil authority, and imposed upon the same ecclesiastical understanding a requirement to make itself felt in political life. In short, the family was the bastion of the ecclesiastical understanding, which allowed it to maintain its political influence.

What the thesis posits as a result of this analysis is that the understanding of the law according to the civil authority was limited in its application to the public sphere, while the ecclesiastical understanding admitted of no such limitation. Effectively, this ceded the private sphere to the ecclesiastical understanding and granted the ecclesiastical understanding a profound structural advantage as a persisting social, cultural and political artefact that shaped outlooks, identity and self-regulation. This significantly benefited the ultramontanes for three reasons: first, because the gender scripts operative within the private sphere accorded to women almost the entire responsibility for the earliest education of children; second, because gender scripts within the private sphere were essentially in accordance with Catholic doctrine; and third, because the earliest education of children inculcated within them their sense of national identity. The result was that the ecclesiastical understanding of the law was the only one of the two legal idioms to maintain profound influence within the private sphere. Therefore, the earliest education of children tied national identity with the Catholic religion and made the ultramontane perspective a much easier fit than the understanding of the civil authority. This structural advantage gave ultramontanism a basis from which to survive the defeats it suffered during the 1870s.

Having posited this answer to the fundamental question of the thesis, there remain four areas where future research could improve the analysis and extrapolate the

significance of the Holy Wars to a greater extent. First, there is a great deal of research that remains to be done concerning primary sources from the 1850s through the 1880s that would aid significantly in determining the extent to which ultramontanism was prevalent within the clergy, within the family, within the political classes and even within the judiciary. This would, essentially, be a significant aid to testing the plausibility of the answer posited above.

Second, it would be very valuable to ascertain in greater detail the existence, manner and extent of ultramontane persistence through the decades to the Quiet Revolution. It seems that the ultramontane perspective persisted to a far greater degree than is generally asserted by historians such as Mason Wade and Brian Young. Certainly, the actions of Maurice Duplessis in the Mormon pamphlets and Roncarelli cases were exactly as an ultramontane of the 1870s would have desired. These, however, are indications only. A proper examination of how ultramontanism persisted could also provide insight concerning how the Quiet Revolution and modern Québécois nationalism came to be, their development being indissociable from the end of the Duplessis era.

Third, it could be fruitful to examine whether the ecclesiastical understanding exerted influence from the Quiet Revolution to the present. In this respect, one could examine declarations from prominent members of the Catholic clergy and hierarchy in Quebec, in the first decade of the 21st century, that elected officials who supported the provision of access to abortions or the marriage of homosexuals would be ineligible to receive communion. Tensions concerning the Bouchard-Taylor report have also suggested that a connection continues to exist between Québécois and Catholic identity, as evidenced by the report's controversial recommendation to remove the crucifix from

the National Assembly, as well as the Premier of Quebec's insistence that the crucifix would remain.

Finally, the Holy Wars provided an example of judicial deliberation concerning incommensurable legal idioms. The judicial decisions concerning the Guibord Affair and the undue influence cases during the period of the Holy Wars were essentially decisions between legal idioms. Even if the decisions against the ultramontanes did not quite grant predominance to the understanding of the civil authority, they did at least constitute one of the most significant buttresses against the further encroachment of the ecclesiastical understanding within the instititutions of the civil authority.

This ability of the judiciary to decide between legal idioms, or to change over a period of time the nature of a legal idiom, has parallels in Canadian history and jurisprudence. One may look to the following four examples in support of this assertion. The first example is the changing definition of 'person' with respect to the appointment of women to the Senate.[391] The second is the changing understanding of the division of power between the federal and provincial governments during the late 19th and early 20th centuries.[392] The third example is the redefinition of section 7 of the Charter of Rights and Freedoms to include a woman's control over her own body as part of 'security of the person,' thus rendering unconstitutional laws that banned abortion.[393] The fourth and final example is the redefinition of the relationship between the prerogative of the Crown and aboriginal rights between *Calder* in 1973 and *Marshall* in 1999, during which time,

---

391 Edwards v. Canada (Attorney General), 1928, S.C.R. 276.

392 L-P Pigeon, "The Meaning of Provincial Autonomy," in W.R. Lederman, The Courts and the Canadian Constitution (Toronto: McClelland and Stewart, 1964), 35-46; see also Alan C. Cairns, "The Judicial Committee and its Critics," Canadian Journal of Political Science, vol. 4 (1971), 301-345.

393 R. v. Morgentaler, 1988, 1 S.C.R. 30.

not only because of their enshrinement in the Constitution, aboriginal and treaty rights became part of Canada's fundamental law.[394]

This ability to decide between legal idioms, or to cause them fundamentally to change over time, is a trait that connects numerous examples of the judicial review of executive actions, legislation, and previous decisions, often with profound effects upon the democratic nature of the polity. The decisions in the Guibord Affair and the undue influence cases certainly constitute instances of judicial review. They consider the constitutional legitimacy of a decision ordering Guibord's burial, of legislation that binds the actions of the clergy, and of federal legislation that employs judges of a provincial court in deciding controverted elections. These decisions can all be said to have had democratising effects upon the Canadian polity, to varying degrees. Whether a democratising trend can be extrapolated from judicial decisions concerning the ecclesiastical understanding of the law, as well as that of the civil authority, when these are taken as incommensurable legal idioms, is a question whose answer would connect the research in this thesis to research concerning numerous topics and periods of time, demonstrating how the judiciary changes legal idioms and decides between them, and providing insight into how polities democratise.

---

394 Calder v Attorney General of British Columbia, 1973 S.C.R. 313; and R. v. Marshall, 1999 3 S.C.R. 533.

Bibliography

Acts of the Canadian and British Parliaments

An Act for Making More Effectual Provision for the Government of the Province of Quebec in North America (The Quebec Act). 1774. 14 George III, c. 83.

An Act to Repeal Certain Parts of an Act, Passed in the Fourteenth Year of His majesty's Reign, intituled, An Act for making more effectual Provision for the Government of the Province of Quebec, in North America; and to make further Provision for the Government of he said Province (The Constitutional Act). 1791. 31 George III, c. 31

An Act to Reunite the Provinces of Upper and Lower Canada, and for the Government of Canada, (The Act of Union). 1840. 3 & 4 Victoria, c. 35.

Bill of Rights. 1688 1 William and Mary. Session 2, c. 2.

Canada. British North America Act. 1867. 30 & 31 Victoria c. 3, s. 13-14.

Canada. An Act Respecting Commissions and Oaths of Allegiance. 1868. 31 Victoria cap. XXXVI. In Revised Statutes of Canada.

Canada. Dominion Controverted Elections Act. 1874, 37 Victoria c. 10.

Canada. Supreme and Exchequer Court Act. SC 1875, cap 13.v

Judicial Decisions

Belanger v. Caron. 5 Q.L.R. (1879), 21.

Calder v Attorney General of British Columbia. 1973 S.C.R. 313.

Dame Henriette Brown v. Les Curés et Marguilliers de l'Ouevre et Fabrique de Notre Dame de Montreal. 1874. 6 L.R.. 169.

Edwards v. Canada (Attorney General). 1928, S.C.R. 276.

Hamilton v. Beauchesne. 1877. 3 Q.L.R. 78.

Langlois et al v. Valin. 5 Q.L.R. 1879. 11.

Osée Brassard et al v. Hon L.H. Langevin. 1877. 1 S.C.R. 189.

R. v. Morgentaler. 1988. 1 S.C.R. 30.

R. v. Marshall. 1999 3 S.C.R. 533.

Roncarelli v. Duplessis. 1959. S.C.R. 121.

Valin v. Langlois. 3 S.C.R. 1879. 3.

Papal Encyclicals

Gregory XVI, Pope. Cum Primum. Encyclical of 9 June 1832.

Gregory XVI, Pope. Mirari Vos. Encyclical of 15 August 1832.

Gregory XVI, Pope. Quo Graviora. Encyclical of 4 October 1833.

Gregory XVI, Pope. Singulari Nos. Encyclical of 25 June 1834.

Gregory XVI, Pope. Commissum Divinitus. Encyclical of 17 May 1835.

Gregory XVI, Pope. In Supremo Apostolatus. Encyclical of 3 December 1839.

Gregory XVI, Pope. Inter Praecipuas. Encyclical of 8 May 1844.

Leo XIII, Pope. Inscrutabili Dei Consilio. Encyclical of 21 April 1878.

Leo XIII, Pope. Quod Apostolici Muneris. Encyclical of 28 December 1878.

Leo XIII, Pope. Aeterni Patris. Encyclical of 4 August 1879.

Leo XIII, Pope. Diuturnum. Encyclical of 29 June 1881.

Leo XIII, Pope. Humanum Genus. Encyclical of 20 April 1884.

Leo XIII, Pope. Immortale Dei. Encyclical of 1 November 1885.

Leo XIII, Pope. Libertas. Encyclical of 20 June 1888.

Leo XIII, Pope. Quod Apostolici Muneris. Encyclical of 28 December 1888.

Leo XIII, Pope. Sapientiae Christianae. Encyclical of 10 January 1890.

Leo XIII, Pope. Rerum Novarum. Encyclical of 15 May 1891.

Pius IX, Pope. Praedecessores Nostros. Encyclical of 25 March 1847.

Pius IX, Pope. Ineffabilis Deus. Encyclical of 8 December 1854.

Pius IX, Pope. Qui Nuper. Encyclical of 18 June 1859.

Pius IX, Pope. Nullis Certe Verbis. Encyclical of 19 January 1860.

Pius IX, Pope. Quanto Conficiamur Moerore. Encyclical of 10 August 1863.

Pius IX, Pope. The Syllabus of Errors Condemned. 8 December 1864.

Pius IX, Pope. Quanta Cura. Encyclical of 8 December 1864.

Pius IX, Pope. Ubi Nos. Encyclical of 15 May 1871.

Pius IX, Pope. Etsi Multa. Encyclical of 21 November 1873.

Further Primary and Secondary Sources

Articles of the Capitulation of Quebec. 1759. Article IX, http://www.canadiana.org/view/42695/0006.

Articles of the Capitulation of Montreal. 1760. Article XXVII, http://www.canadiana.org/view/42695/0010.

Benigni, Umberto. "Ultramontanism." The Catholic Encyclopedia. Vol. 15. New York: Robert Appleton Company, 1912.

Bible, King James Version.

Baker, G. Blaine. "Law Practice and Statecraft in Mid-Nineteenth-Century Montreal: The Torrance-Morris Firm, 1848 to 1968." In Carol Wilton, ed, Essays in the History of Canadian Law / Beyond the Law: Lawyers and Business in Canada 1830 to 1930. Vol. 4. Toronto: Butterworths for the Osgoode Society, 1990. 45-91.

Burton, Edwin, Edward D'Alton, and Jarvis Kelley. "Penal Laws." The Catholic Encyclopedia. Vol. 11. New York: Robert Appleton Company, 1911.

Cairns, Alan C. "The Judicial Committee and its Critics." Canadian Journal of Political Science. vol. 4 (1971). 301-345.

"Catholic Programme, The." 1871. Author's translation of a draft held in manuscript at the National Archives of Canada. A slightly different translation, conveying the same sense, may be found at http://faculty.marianopolis.edu/c.belanger/quebechistory/docs/catholic/text-e.htm. See also Mason Wade, The French Canadians, 353-354.

Carrette, Jeremy R. Foucault and Religion: Spiritual Corporality and Political Spirituality. London: Routledge, 2000.

Cherrington Hughes, Everett. French Canada In Transition. Chicago: University of Chicago Press, 1943.

Consolidated Statutes of Canada, The. 1859.

Dafoe, J.W. Laurier: A Study in Canadian Politics. Toronto: McClelland and Stewart, 1963.

Dawson, Robert MaGregor. Constitutional Issues In Canada: 1900-1931. Oxford: Oxford University Press, 1933.

Dégert, Antoine. "Gallicanism." The Catholic Encyclopedia. Vol. 6. New York: Robert Appleton Company, 1909.

Derrida, Jacques. "Faith and Knowledge: Two Sources of "Religion" At the Limits of Reason Alone." In Acts of Religion. Ed. Gil Anidjar. Trans. Weber. 42-101.

Dumont, Micheline, Michele Jean, Marie Lavigne and Jennifer Stoddart. Quebec Women: A History. Trans. Roger Gannon and Rosalin Gill. Toronto: The Women's Press, 1987.

Foucault, Michel. Discipline and Punish: The Birth of the Prison. Trans. Alan Sheridan. New York: Penguin, 1979.

Foucault, Michel. "Governmentality." Trans. Pasquale Pasquino. In Michel Foucault, Graham Burchell, Colin Gordon, and Peter Miller. The Foucault Effect: Studies in Governmentality. Chicago: University of Chicago Press, 1999.

Gagnon, Serge. Quebec and its Historians: The Twentieth Century. Montreal: Harvest House, 1985.

Garland, David. "Governmenality' and the Problem of Crime: Foucault, Criminology, Sociology." In Theoretical Criminology. London: SAGE, 1997. Vol. 1 (2). 175.

Hardy, René. Les Zouaves: Une Stratégie du Clergé Québécois au XIXe Siècle. Montreal: Boreal Express, 1980.

Hardy, René. "A Propos du Réveil Religieus dans le Quebec du XIXe Siècle: Le Recours aux Tribunaux dans les Rapports Entre le Clergé et les Fideles (district de Trois-Rivières)." Revue Historique de l'Amerique Francaise. Vol 48, no. 2. Automne 1994. 187-212.

Hebermann Charles *et al.* The Catholic Encyclopedia: An International Work of Reference on the Constitution, Doctrine, Discipline and History of the Catholic Church. New York: The Encyclopedia Press, 1907-1922.

History of the Guibord Case. Ultramontanism Versus Law and Human Rights. Montreal: "Witness" Printing House, 1875.

Kaino, Michihiro. "Bentham's Concept of Security in a Global Context: The Pannomion and the Public Opinion Tribunal as a Universal Plan." Journal of Bentham Studies, 10 (2008).

Kant, Immanuel. Critique of Practical Reason. Trans. T.K. Abbott. Amherst, New York: Prometheus Books, 1996.

Kirch, Joseph. "Vatican Council." The Catholic Encyclopedia. Vol. 15. New York: Robert Appleton Company, 1912.

Knopff, Rainer. "Quebec's 'Holy War' as 'Regime' Politics: Reflections on the Guibord Case." Canadian Journal of Political Science. XII: 2. June, 1979. 315-331.

Lederman, W.R. The Courts and the Canadian Constitution. Toronto: McClelland and Stewart, 1964.

Lindsey, Charles. Rome in Canada: The Ultramontane Struggle For Supremacy Over the Civil Power. Toronto: Williamson, 1889.

MacMillan, Michael C. "The Character of Henri Bourassa's Political Philosophy." American Review of Canadian Studies. 1982. 12(1). 10-29.

Merryman, John Henry. The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America. Stanford: Stanford University Press, 1969.

Mill, John Stuart. On Liberty and Other Essays. Ed. John Gray. Oxford: Oxford University Press, 1998.

Moir, John S. ed. Church and State in Canada 1627 – 1867: Basic Documents. Toronto: McClelland and Stewart, 1967.

Neatby, Blair. Laurier and a Liberal Quebec: A Study in Political Management. Ed. Richard T. Clippingdale. Toronto: McClelland and Stewart, 1973.

Ouellet, Fernand. Histoire Économique et Sociale du Québec: 1760-1850. Montreal: Editions Fides, 1971.

Quebec, Pastoral Letter of the Bishops of the Ecclesiastical Province of. On the Subject of Liberalism. 22 September 1875. http://faculty.marianopolis.edu/c.belanger/quebechistory/docs/1875/letter.htm.

Rioux, Marcel and Yves Martin, eds. French-Canadian Society. Toronto: McClelland and Stewart, 1968.

Robertson, Barbara. Wilfrid Laurier The Great Conciliator. Oxford: Oxford University Press.

Rousselot, V. Cure of Notre-Dame de Montreal. Unpublished manuscript letter to Messieurs Soutre, Doutre and Hutchison, 16 November 1875. 4 pp in 4to. In the papers of the Diocese of Montreal at the National Archives of Canada (author's translation).

Rudin, Ronald. "Revisionism and the Search for a Normal Society: A Critique of Recent Quebec Historical Writing." In Canadian Historical Review. LXXIII 1 1992. 31.

Russell, Peter H. ed. Leading Constitutional Decisions: Cases on the British North America Act. Toronto: McClelland and Stewart, 1965.

Sandel, Michael J. Liberalism and the Limits of Justice. 2nd ed. Cambridge: Cambridge University Press, 1998.

Skelton, Oscar Douglas. Life and Letters of Sir Wilfrid Laurier. Ed. David M.L. Farr. Toronto: McClelland and Stewart, 1965.

Smith, Jennifer. Federalism. Vancouver: UBC Press, 2004.

Thurston, Herbert. "Encyclical." The Catholic Encyclopedia. Vol. 5. New York: Robert Appleton Company, 1909.

Treaty of Paris. 1763. Article IV. http://www.solon.org/Constitutions/Canada/English/PreConfederation/Treaty_of_Paris_1763.html.

Vickers, Jill. "Bringing nations in: Some Methodological and Conceptual Issues in Connecting Feminisms with Nationhood and Nationalisms." International Feminist Journal of Politics. Vol. 8. No. 1. March, 1996. 84-109.

Vickers, Jill. "Gendering the Hyphen: Gender Scripts and Women's Agency in the Making and Re-Making of Nation-States." Presented at the annual conference of the Canadian Political Science Association. 2004. http://74.125.95.104/search?q=cache:4fr1_1NxiosJ:www.cpsa-acsp.ca/papers-2004/Vickers.pdf+Jill+Vickers+Gendering+the+Hyphen&hl=en&ct=clnk&cd=1&gl=ca.

Wade, Mason. The French Canadians 1760-1945. Toronto: MacMillan, 1955.

www.duhaime.org/LegalResources/CanadianLegalHistory/LawArticle-163/The-Jesuits-Estates-1889.aspx.

Young, Brian. George-Etienne Cartier: Montreal Bourgeois. Montreal: McGill-Queen's University Press, 1981.

Young, Brian. The Politics of Codification: The Lower Canadian Civil Code of 1866. Montreal: McGill-Queen's University Press, 1994.