*Public Service and Law-School Training Series*

# LAW TRAINING IN CONTINENTAL EUROPE

## Its Principles and Public Function

*by*

ERIC F. SCHWEINBURG

RUSSELL SAGE FOUNDATION

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# PREFACE

FROM TIME to time articles have appeared which describe legal education in some European country. Generally they have been under the authorship of a professor of law and published in one of the many law-school reviews. Such articles have been few in number, have rarely been seen by the American public outside of the law-school world, and have often not been widely known even to professors of law. Moreover, these articles have tended to confine themselves to aspects of European training that are most clearly analogous in nature and function to American law schools. Thus, they have usually been concerned with the university "law faculties" of a particular country and with the preparation that such faculties give for the bar and the bench.

As the result of a long historical process, however, most European law training is composed of two equally important parts: that offered within the university by the law faculty; and that provided for in courts, law offices, and administrative agencies by an elaborately defined system of apprenticeship or in-service preparation. To overlook the existence and the significance of the second part of this training is a serious omission. Without it the prospective lawyer would be in a situation comparable to that of the young physician who had completed his study in the scientific, theoretical subjects on which rests the practice of medicine but who had had no opportunity for clinical preparation.

Much of the literature relating to European legal education fails in a second respect. It does not emphasize the fact that the law faculty has often been created quite as much to serve the needs of the higher civil service as of the bar. In the United States the law school has not only focused its attention almost exclusively upon preparation for the private practice of law, but society has come to think of that function as alone appropriate to the law school. Only in recent years has American legal education envisaged the additional function of providing some training for practice as solicitor or counsel to public agencies; even now it does not know how to cope with the problem of making law-trained administrators, executives, and legislators better prepared for the tasks with which they are confronted.

In Continental Europe the function of legal education has long been conceived of in broad, generic terms. Government has given the law faculty its blessing as a source of recruitment for important administra-

tive, legislative, and judicial posts. Society has conceived of the law faculty as that part of the university toward which those persons, who did not wish to become clergymen, physicians, or engineers, gravitated in their search for a higher education and subsequent admission to favored positions in government service, in intellectual pursuits, and in business, finance, and industry. Because the law faculty has been *the* "graduate school" par excellence of most of Europe, it could not conceive of its function as exclusively or even primarily that of training for the practice of law. It had to fashion a broader and more inclusive course of study; it had to rely upon apprenticeship after the university years for the professional preparation of various categories of specialists.

In the United States the period between the two great wars saw legal education struggling with the question of enlargement and enrichment of the curriculum, of attempted definition of its responsibility for preparing men and women for public service. A few states tentatively considered the desirability of apprenticeship training. Once American law schools are again fully active these essential but complicated questions are likely to receive even more consideration. In European philosophy and experience lie, we believe, suggestive answers. We hold no brief for the excellence of European training. The author of this monograph has sharply criticized the inadequacy of much of the teaching in Continental Europe, the excessive reliance upon formal examinations, the lack of integration of legal and social science materials, the failure to view contemporary law in its creative, living aspects. The countries themselves have shown their awareness of the number and magnitude of the problems of legal education confronting them. In the light of such a situation, nothing would be more unfortunate than to assume that large portions of existing Continental systems could be incorporated into the American system with little alteration.

But equally, nothing would be more unfortunate than to assume that countries which have had several centuries of experience in grappling with a philosophy and methodology of legal education have nothing constructive to contribute in helping America to make its law school a more effective social instrumentality than it is today. Anyone who has been reared to consider comparative studies an indispensable basic tool for the building of a social structure or an educational institution is convinced that such studies almost always yield important results, if only in pointing to pitfalls that should be avoided.

No country has a premium on creative ideas. A private consultant to transportation companies in the United States was accustomed, before 1939, to make frequent trips to Europe. In one country he would discover some way of fostering use of transportation facilities that was new to us; in a second country, another way. He would note these new ways, adapt the most promising to American psychology and institutional patterns, and then sell them—at a handsome profit to himself—to corporations interested in promoting greater use of buses, trolley lines, or railroads. The ideas acquired "made money" both for him and for the corporations he served; they frequently made that money not at the expense of society but through increased service to society. If Europe could provide suggestions in fields such as public relations, promotion, and advertising in which we have long considered ourselves pre-eminent, there must be ideas new to us that would have great potential usefulness for the re-evaluation of our educational system.



In connection with the question of preparation for public administration, the experience of legal education on the Continent is especially provocative. Significant in itself is the lack of success of nineteenth century efforts in France to break the monopoly that legal education had long enjoyed in training for the higher civil service, while similar later tendencies in Austria and Germany failed to develop sufficiently to be designated even as attempts to break that monopoly. Particularly fruitful in their suggestiveness are the apprenticeship programs evolved in Austria and Germany for offering students extensive clinical preparation. Even if these programs, through over-formalization, failed to produce truly creative administrators, they achieved the supplying of a level of administrative efficiency that is still much to be desired by many countries.

That some comparative record of Continental law training might be available to teachers concerned with the refashioning of legal education in the postwar period and to those other persons who are broadly interested in professional education and in the process of preparation for public service, the Russell Sage Foundation asked Dr. Eric F. Schweinburg to undertake an examination of the subject. Dr. Schweinburg holds a doctorate in law from the University of Vienna and was an attorney for more than a decade in that city. During the years of his becoming an American citizen, he found ample opportunity to observe comparatively the judicial and educational systems of the United States.

Since law training in the civil law countries of Western and Central Europe follows more or less closely the design of Austria, France, and Germany, it was concluded that an analysis of the systems of those nations would supply the reader with knowledge of the most germinative thinking on the Continent in the field of legal education. Only the

Soviet Union has made radical departures in its concept of the function and organizational structure of law training. So profound has been the change in that country in the last quarter of a century that a description of its system seemed imperative.

Wartime limitations in the publishing field sharply restricted the amount and form of the data that could be set down in this monograph. Information was also limited by other problems arising from the war. Recent source materials from the Continent have not been obtainable; those in this country have sometimes been unavailable because of disorganization in libraries. Hence, only one highly evolved pattern of law training, the Austrian, has been described in detail. It has been made the pivotal point around which much of the remainder of the text revolves. Deviations from that pattern in France and Germany have been recorded, and significant contributions to the philosophy of legal education in those countries have been emphasized. England was omitted from consideration on the assumption that Americans have long been better acquainted with its institutions than with those of Continental Europe, and because a common language and legal heritage make its literature more readily available.

While the study was being made, Europe moved toward greater and greater chaos. The slow and painful building of centuries in education was interrupted, in some instances perhaps destroyed. The curse of militarism, national socialism, and fascism, moreover, tended to make us forgetful or disdainful of the former excellence of many Central European institutions. Under such circumstances, it has often seemed ironical to write of a Continental law training that was fast becoming nonexistent or little remembered. But it is the record of the past of that training—whatever may be its future—that is of primary concern for us. If legal education in this country is to move into the future in the postwar world, the past is indispensable as a foundation on which modern superstructure may be raised.

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# LAW TRAINING IN CONTINENTAL EUROPE

## THE EDUCATIONAL AIMS, THE FUNDAMENTAL ORGANIZATION

LAW TRAINING on the Continent is expressly and consistently organized as a compound of two parts: (1) a nonprofessional course of study in the law department of a university, called law faculty; (2) a professional apprenticeship training in courts, administrative departments, law and notary offices. Both parts are of equal importance; neither does nor can yield complete results without the other. Together they form an integral whole. This dual nature is one of the most significant characteristics of legal education in Continental Europe and a key to understanding it.

Especial note must be made, however, of the second or apprenticeship portion of the training. Publications in the English language on Continental law training—generally dealing with only one or two countries—focus attention on the theoretical, preparatory foundation afforded by the university. Thus it appears as if theoretical study exhausted the range of the training, or as if the unmentioned second part were of subordinate importance. The failure responsible for this misconception is particularly unfortunate, since anything comparable to Continental apprenticeship training is practically unknown in the United States.

Prior to World War II a few jurisdictions in this country had ruled that candidates for the bar must fulfill six to twelve months of apprenticeship in addition to law-school attendance. Such requirements, however, were only beginning to appear and plans for making apprenticeship a significant educational process remained undeveloped. What employment with law firms young attorneys in the United States are in the habit of taking aside from these innovations, either before or after the bar examination, does not constitute education proper; it is not mandatory, and is completely fortuitous in its content. The practical work, which on the Continent follows the university section of the training, represents not only *planned* and *required education*, but in fact, the *first* professional education the Continental lawyer gets, and the chief source of his professional knowledge. Its duration is prescribed and its course specifically directed. Additional theoretical, hence postgraduate, work has to be taken in some training programs. In others

which do not expressly require such work, it is a practical necessity, since the apprentice would otherwise not be able to qualify for the professional examination in which the practical training culminates.

We have referred to the nonprofessional character of the first, that is, the theoretical part of this "two-pronged" law training. In contrast to the American law school the Continental law faculty does not attempt to equip young men with knowledge or a mental aptitude for immediate application in the practice of their profession. Declining any attempt to rear lawyers, it strives for a systematic, genetic, and thus scientific presentation of the totality of legal science, *with no other proximate objective*. Emphasis is placed on the word "proximate." Objectives exist, of course, but they remain in the background and do not immediately influence instruction. The student is especially not expected to accumulate knowledge of "what the law is." He is imparted such knowledge neither in concrete, individual cases nor in an abstract and systematic manner applicable to entire groups of potential cases. He is expected to derive from his study a firm grasp of the aggregate of concepts, ideas, theories, and principles which pervade the legal system or a branch thereof, and which either combated or supported one another in the evolutionary process. Such insight into the mental foundations of law as a whole and of various branches, it is assumed, will later promote his understanding and the correct application of any concrete law with which he will be confronted. Hence, the student is given vision generative of further and later clarity. He is guided toward developing the standards of a scientific approach to any problem arising from the clash of individual interests with one another, or with the interests of groups, or with that of society as a whole. Accordingly, much emphasis is placed on the history of the legal system in general and on the history of each legal institution. Older systems of law which were momentous in the development of the law in force, or which more clearly illustrate basic principles than does the current law itself, are dwelt upon extensively. Contemporary law is, of course, presented too, but the student's attention is *not* directed to individual provisions for their own sake, nor to court decisions which have interpreted and possibly modified such provisions.

All this, expressing the nonprofessional nature of the first half of Continental law training, indicates that the law faculty does not aim at releasing its students as trained lawyers, neither as attorneys in particular nor as lawyers in the wider sense of the term. University instruction represents rather the laying of conceptual foundations for later professional training. If the student is fashioned into anything



definite and practical at all, it is into a "jurist." The term, as used here, designates a person having at his disposal a specific turn of mind: the turn of mind which, on the Continent, is regarded as a prerequisite for any training and work connected with law. It might be described as the result of the following combination of accomplishments, which generally is achieved by any one person only in part: (1) a broad, general education as background; (2) a specific yet conceptual education concerning the political, economic, administrative, and social aspects of public and private life; (3) a systematic approach to problems of any kind, particularly to those of directing social-economic action; (4) trained acumen and incisiveness of thought.

## GRADUATION FROM THE LAW FACULTY—A BROAD ROAD

The broadness and generality of the educational purpose outlined above tallies with the peculiar significance commonly attached by Continental public opinion to the mere study of law. If a man studies law in the United States he has primarily embarked upon a career as an attorney and acquires the knowledge and technique for this profession. Whether he will some day become instead judge, public prosecutor, or law teacher is more a matter of chance than of planning. Only as a prerequisite for one of these four activities do young men generally strive for graduation from a law school. Apart from that purpose such graduation is without practical significance. In itself it does not constitute an important asset or a requirement for almost any kind of public and private career. Law-school graduates will not be singled out because of their law degree for a category of jobs in commerce, banking, railroad administration, industry, from which they can work up to leading positions; nor will they be *exclusively* selected for training and advancement to higher positions in any branch or type of public administration.

Graduation from the law, or combined law and political science,[1] faculties on the Continent signifies all these advantages. A degree in law grants membership in a distinct intellectual elite. Only those who have gained this membership are admitted to the extended part of the training—which from here on is professional and *specialized*. Members who do not propose to complete their training for one of the sharply outlined categories of the legal profession or for the higher public service, stand an improved chance of being employed in private administrative work such as that mentioned above. Only where training of a specific kind, like civil and mechanical engineering, outweighs the advantage of a qualified administrative aptitude will preference be given, in private administration and in a few highly specialized fields of public administration, to the technician. This situation is based on the belief that the specific formation of the mind, derived from the study of law in the university, is a decisive component of administrative ability. Not the broad education in general, nor the widened outlook counts; it is the mind trained in and *through* law which is favored. To use a somewhat paradoxical definition: the yet unspecialized specialist in social and administrative "trouble shooting" is looked for.

The men who propose to practice law or to teach it, accordingly are but a fraction of those who attend a law faculty and for whom such a

[1] This distinction will be dealt with later. See p. 32.





faculty is deemed the appropriate training ground. We therefore understand why the course of study given in a law faculty cannot be fashioned in conformity to the needs of the legal profession alone. It would, however, be difficult to decide whether the multitude of professional activities to which the only gateway is opened by a law faculty is to a larger extent the cause or the result of its strikingly wide and general scope. Whatever the answer, the fact stands out that this scope, embracing public law in a measure utterly unheard of in American law schools, serves a considerable number of socially important vocations.

## HISTORICAL SKETCH OF THE LAW FACULTY AND THE LAW SCHOOL

Both the broadness of Continental law training and its practical significance are tied up with the history of the law faculty, which is all but identical with that of the Continental university. A comparative glance at this history and that of the American law school will, moreover, disclose why great differences in goal and system between these two institutions were bound to develop. Finally, when acquainted with the rise of the law faculty, the reader will understand why the earlier statement that the university section of Continental law training lacks any proximate goal except that of scientific presentation for its own sake, would not have been correct without the modifying word "proximate," and even thus modified, needs some restrictive explanation.

American law schools are known to have arisen within the legal profession and outside of the university. The incentive was plainly the need for better trained men at the bar. In order to meet this end, schools, set up on private initiative and with private means, looked toward the requirements of private litigation and counseling. Method of instruction and courses offered were adapted to this immediate purpose.

Continental universities and—integrated with them from the very beginning—the law faculties were founded by the sovereign of their country. What motivated the founders was, besides the desire to increase their own and their country's fame, the promotion of erudition, scholastic meditation, art, and science. In some instances, however, the assigned task of the new university embraced from the outset the procurement of qualified officials for the service of the founding sovereign. Because of the feudal and paternalistic pattern of government in the countries and times in question, such service was all but identical with the country's public administration. Many universities thus reared from their very beginnings prospective public officials and civil servants. In the period of "enlightened despotism," that is, the eighteenth and the early nineteenth century, paternalistic state encroachment upon most concerns of life reached a peak of accentuation. Even those universities which had of old been founded as autonomous seats of pure scholarly learning were resolutely transformed by their sovereigns into institutions for the training of public administrators.[1] They were at the

[1] Continental universities enjoyed, throughout the Middle Ages and part of modern times, complete immunity from the administration of the state. They were states within the state, autonomous bodies with respected privileges and an administrative position not without similarity





same time increasingly subjected to government control. New universities, when founded, were given the task of training public officials as their dominant if not exclusive purpose.

An evolution, which even might be called a struggle between the inherently liberal universities and the just as inherently reactionary and bureaucratic governments, followed. Its result, achieved by way of mutual concessions, is the peculiar entanglement of objectives which still today is characteristic of the Continental university. It is this entanglement that makes Continental universities appear simultaneously as seats of free science and as state institutions for the procurement of civil servants, attorneys, physicians, teachers, and the clergy.[1]

Prospective attorneys, as has been mentioned already, form a comparatively small group among those for whom instruction is provided in the law faculties. A somewhat closer observation of the attitude of some Continental governments toward the law faculties reveals, however, that this numerical factor is not the only one in reducing the influence that the needs of the attorneyship exert upon the organization of studies. The bar has received, for a very short period only, approximately as much interest and painstaking care on the part of the governments as have prospective civil servants of all types and shades, including the judiciary. This fact augments the reasons why specialized training of advocates for private litigation never formed nor could form so consistently a center of gravity in the curriculum of the law faculties, as it has in the curriculum of American law schools. The interest of European governments rather demanded and actually obtained the creation of broad, theoretical foundations which permit and promote later specialization in a diversity of possible directions. Because of their scientific aspirations, the law faculties subscribed gladly to such breadth of program. In the comparatively slow and far-flung manner of proceeding which was the outcome of these joint tendencies, they have been allowed to rely on the supplement of the added, practical-professional training.

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to that of a manor lord. In Austria, for example, their full jurisdiction over all persons living within the boundaries of the university district was abolished as late as the middle of the eighteenth century by the Emperor Joseph II. A certain measure of self-administration survived even his radical reforms. As a reminiscence thereof, local police forces remained barred from setting foot on academic soil, even in pursuit of criminals, until recently. The outrages of Nazi students in 1932 in the University of Vienna forced the government to disregard the privilege for the first time.

[1] Characteristic of this entanglement is the fact that admission to the various kinds of apprenticeship training can be obtained after mere graduation from a law faculty with the taking of the state examinations, but that additional work and examinations almost identical with the state examinations are required for the award of the academic degree, the doctorate. In France this complex situation has been openly shaped into a duality of degrees, the *license* and the doctorate, as will be shown later. See pp. 39, 69, 70.

## CONTINENTAL LAW TRAINING GOVERNMENT CONTROLLED

For centuries all education has been regarded on the Continent as strongly affecting the interest of the government, and thus calling for its interference. The vast majority of all schools are run either directly by the central government, or by other public bodies under government supervision, operating through various kinds of boards. Private schools are equally subject to government control.

The wariness displayed by the government toward all types of schools applies, of course, also to the universities. The reasons for maintaining control over these are particularly compelling, since scarcely any Continental institution throughout the nineteenth century reflected political movements more vividly than did the universities. They came to be looked upon as political "seismographs," and as nuclei of liberal fermentation. Thus it has largely to be credited, or debited, to this halo of political implications that the state has bestowed so much "loving" attention upon the universities.[1]

In keeping with the traditions and the dignity of these seats of higher learning, supervision over them is exercised directly by the ministry in charge of education, without intermediate boards or agencies. It stretches into all details of organization. The appointment of faculty members, the curricula, the courses required, their size and distribution, the elective courses that must be offered, the schedule according to which examinations may be taken, by whom they are to be given—every detail is regulated by law. The principles and general questions are laid down by formally enacted statutes, the details filled in by administrative ordinances and decrees.

Through these channels of legislation in the broader sense and other more subtle means, government interference has also been extended to aspects of the teaching itself. The measure and kind of interference has varied from country to country, and within the same country from era to era. In liberal countries or eras the universities maintained, by and large, a reasonable measure of teaching freedom and yielded only some measure thereof, rather imperceptibly, to the interests of the state. In totalitarian countries the government dictated bluntly the kind of philosophy which was to saturate teachers and students, in order to make them reliable supporters of the system in power. To understand

[1] The law faculties of two French universities, Clermont and Besançon, are so-called independent faculties. A few European universities are founded and run by the church. Yet even these comparatively private institutions are not nearly as independent from the educational pattern devised by their governments as American private universities are.





fully the nature of Continental state control of universities, it has to be borne in mind that the faculty members are civil servants, paid and appointed by the government.[1] As such they are deeply ingrained with that peculiar Continental mentality of public servants, which is so strongly prone to obey the commands of abstract authority rather than to stand on civil liberties and respect for the individual. The allegiance of the faculty members is thus, at best, divided. Much of it belongs to the government, the rest to the profession.

If we disregard the extraordinary conditions in totalitarian countries, the Continental system of state-controlled universities has, surprisingly, been responsible for less difference between the Continental and the Anglo-Saxon patterns of law training than might be expected. Regulative factors determining the standards and trends in American universities do not present themselves, to any considerable degree, in the shape of legislation and official compulsion. Rather do they present themselves as legally unregulated forces, such as competition between the different institutions, public opinion, professional conscientiousness, and so on. Where they come nearest to formal compulsion they appear as minimum standards, established by the self-government of professional associations. The molding power of all these factors, however, is hardly less effective than that of statutes. Since the liberalistic achievements of the nineteenth century, and up to the immediate prewar era, moreover, Continental governments have made allowance for much leeway in the actual content and spirit of the teaching within the prescribed curricula.

Nevertheless, important differences between our law schools and the Continental law faculties spring from the independence of the former and the government control of the latter. Owing partly to their public control, Continental law faculties, for instance, display among themselves a far greater uniformity of curriculum and educational standards than American law schools do. This fact applies primarily to the law faculties of the same country, but to some extent also to law faculties of different countries. Whether a lawyer has studied in Leipzig or Heidelberg, Grenoble or Paris, Vienna or Innsbruck will make little difference as to subjects taken, method of teaching experienced, learning attained. He will have little difficulty in continuing his study at another Continental university, or in taking his examinations at some university in his country other than the one at which he attended most of his courses.

[1] Even if the qualifications of applicants are examined by the teaching faculty and its suggestions generally prove decisive, the formal appointment is by the government.

Not only the uniformity of the curricula and standards, but also their stability is to some extent a result of state control. The groping for improvement by individual institutions or professors which one can observe in the United States, is all but nonexistent on the Continent. Changes of curriculum or method are introduced reluctantly and seldom, but if decided upon by the legislature or the administration, they are generally fundamental and embrace all universities of the country. The situation in this respect is analogous to that resulting from the difference of legal system in civil and common law countries. The rigidity of legislated law in civil law countries causes the evolution of law to disclose itself in basic re-enactments, which often cover an entire field of law. Evolution moves in "cataclysmic" jerks, after an invisible preparation and adjustment to changed concepts or conditions. In Anglo-Saxon countries the law is continuously in the making and remaking; at least in principle.

Continental uniformity and stability of instruction, like American diversity and flexibility, have their advantages and drawbacks, those of the American situation being the converse of those of the European. The main advantage of the settled system is the homogeneity of qualification among the men who emerge from the training. Its most serious disadvantage is the danger of staleness because of which Continental law training has been significantly prone to lose contact with the realities of life. This drawback is all the more serious because but little general feeling of law as an ever-developing, living phenomenon prevails among Continental law teachers and students. Even where or when legislative bodies have shown themselves very prolific over a number of years, this fact has not seemed to produce in the legal profession of the particular country any awareness of law as a reflection and product of life as keen as we may find it expressed in the writings of some American legal scholars. One reason for this phenomenon can be seen in the fact that legislation, which is the only manifest source of the law on the Continent, comes from impersonal, technical sources from "above," and not immediately from the needs and convictions of the people. It is the great privilege of judge-made law, which ascertains these needs and convictions directly through the courts, to give to every person involved in the administration of justice the feeling of law as "growing" through him in accordance with the commands of living forces. Consequently, less stimulation and a less vivid sense of performing an important task can be observed in the law faculties and the Continental legal profession than among lawyers in the United States. So vital a deficiency, which has kept shadowing the civil law system



with unsolicited persistence, is bound to be accentuated by minutely prescribed, rigid curricula allowing for hardly any changes in their main stock, and by methods which are slow in adapting themselves to progressive developments. Studying as well as lecturing and the all-important examinations in the law faculties show a peculiar tendency to fall into a rut.

## *UNIVERSITAS RERUM* VERSUS SCHOOL

Whoever compares Continental law faculties and American law schools can hardly fail to be arrested by that distinctive but nevertheless evasive character of Continental universities as a whole, which is by no means designated but occasionally hinted at with the catchword "academic freedom." Because this term does not cover but only suggests the situation which is to be described, the following statements do not attempt to enter upon an exhaustive discussion of academic freedom as such. They consider it only as far as it affects or expresses the mental image of Continental universities to which attention is directed.

In examining the European version of academic freedom, which is so near to the heart of Continental university men and so often on their lips, we may be puzzled at the discovery that the grand concept corresponds to but meager facts, incapable of justifying the emphatic, boastful importance generally attached to the term. These facts are: a few extra-educational trivialities of student life, too unimportant to be discussed here; the alleged freedom of teachers to express the findings suggested by the subject matter of their fields—a freedom which represents a minimum standard of civilization and therefore no object of pride and particular emphasis; finally, the privilege of students not to attend lectures but to acquire the knowledge needed for their examinations wherever they please—except where they mostly do, namely in coaching courses.[1]

The significance attributed by generations of teachers and students to the vaunted concept can thus be understood only on emotional grounds and in the light of history. This light shows us that something which we are inclined to see in part as a matter of course and in part as a technicality, was maintained with tenacity, lost, regained, cherished—cherished even in factual emptiness, because of concomitant political implications. At times academic freedom accompanied political liberties; at other times it was a harmless toy fondled as a substitute for significant liberties that remained denied. Yet whatever the political aspect of the period, the concept drew some of its strength from the peculiar origin of Continental universities as autonomous seats of free search and learning, and from the stubborn survival of that early ideal.

[1] Legally students are free to turn to these institutions for instruction and guidance. They can neither be punished for doing so, nor be excluded from the university. But they will incur the wrath of their professors and take their examinations against unfavorable odds, such as bias and ill-will.





Of the three components of academic freedom enumerated above, only the last, the so-called freedom of learning, interests us here. It is peculiar to the law faculty as contrasted with the law school. And because of the educational pattern which this freedom characterizes, the word "university" has so different a connotation when applied to its Continental or to its American object. The pattern may be sketched as follows:

The Continental student who has moved on from his secondary school to a university is bound to experience a more incisive change of station than the American student who moves on from one of the colleges of a university, or from a college outside of the university, to one of its graduate schools. The American student leaves one school and enters another school. The Continental student, however, particularly the law student, finds himself confronted with a new kind of vast, anonymous institution which dignifies him with unlimited personal freedom, but which also expects him to take complete care of himself and to see how he himself can develop into a person learned in his field of science. Almost the only contribution to that goal which the university makes is the recurrent, impersonal outpourings of great scholars, called lectures, and a magnificent library—magnificent as to contents but poor as to service and space.

Nobody cares when he comes and goes, whether he comes at all or how he uses his time. Having become an academic citizen titled "student" and entitled to move in the shade of heroes of science, he must study as best he can what *he* believes is necessary for his passing a few severe examinations given mainly by these heroes. The result is a characteristic mixture of a free, impersonal, unfriendly university atmosphere and of harsh realities, which together exert a strong selective influence on the student body, have a strong emotional appeal to youngsters, and in a peculiar manner tend to mature them into men.

All these features are absent in American universities modeled in considerable part after the English aggregate of semi-autonomous colleges within one university. Absent too are the historical facts that contributed to the development of the Continental "university" pattern. American law schools, in particular, do not look back upon a past which saw them as part of a *universitas rerum* with preponderant emphasis on research and the scientific imparting of the results of research without any other immediate purpose. They have not developed convictions about the merits of a training which rests professional instruction upon broad theoretical foundations that seem purposeless, and actually are only remotely connected with the craftsmanship

needed by the profession. Nor do they cherish traditions of such an educational approach because of political implications, because these traditions are "territory" stoutly defended against government encroachment. They always were and are *schools*, with all that the term encompasses.

The absence of these features—together with that of the European brand of freedom of learning—is stated, as should have become clear, without any disparagement. The school-like pattern of American law schools is, to this writer's mind, among its assets. It contributes to the success which the law schools are achieving within their self-imposed professional limits. There can be no denying, of course, that the dignity of higher learning suggests other methods of obtaining attendance than that by roll call or "attendance taking." A system based on the ambition and good sense of the students can serve as incentive just as effectively. Yet, this distinction is not too important. Of much greater consequence is the fact that the school-like features of the American law school, and particularly its emphasis on the *function* of teaching, make it possible for the student to glean from his class work reasonable benefit with regard to the practical purpose of being graduated. He is given guidance in his study by being presented material identical with that which he is expected to know for the tests and which, moreover, can some day be useful in the practice of his profession. He is thus supported by the simple harmony between goal and means in the organization of which he is a part.

The Continental student, in contrast, is confronted with lectures that contain an overwhelming mass of material of which he neither can, nor is expected to gain full command. Nobody tells him where to draw the line between the material he should merely have heard and the material he must thoroughly master. The professor, remote from the student's sphere, does not teach. He gives his lecture without any pedagogical effort, and disappears into privacy as soon as his hour is over.

Classes in the American law school are generally not too large to make intercourse by question and answer between teacher and student impossible. The American law student enjoys, in and out of class, a real contact with his professors which his Continental fellow completely lacks. Such contact creates stimulation; it results in orientation for teacher and student as to the latter's progress, and in satisfaction for both. The American student can thereby always remain assured that he is the center of the institution that surrounds him, and the primary object of his teacher's interest.

The Continental law student, on the other hand, can scarcely avoid



feeling that he is an outsider to the truly vital sphere of his university and almost a nuisance to his professors. He will more than once realize that some of the professors would much rather attend to their own writing than expound apathetically subjects which they have been expounding for many years. And he will occasionally have reason to suspect that some of them make examinations unduly severe in order to exclude or deter a goodly percentage of candidates from access to the professions, or that they give these examinations with indifference, resigned to the fact that the student will pass anyway, sooner or later. All these shortcomings are, of course, not unavoidably concomitant to the university type of higher learning—nor necessarily barred from the school type. Their connection with university-type Continental law study, however, is close enough to justify the manner in which they are here linked to it.

In order to avoid misconceptions it must be added that the Continental freedom from compulsory attendance described above rests, particularly in Austria and Germany, on tacit toleration and not on a formal right. It is only a factual freedom which formally consists of not more than the omission of adequate methods of checking attendance at lectures. The student must prove his having attended them, but he can do so by supplying at the end of the semester the signature of the professor, attesting his attendance. This signature can be obtained, whether real attendance had taken place or not, since the professor is not able to tell whether the particular student has or has not been among the great number of persons in the auditorium. He, moreover, never attempts to find out.

Certain main courses forming the actual program of studies are required and students have to register for them, even if some countries, as for instance Germany, give full freedom with regard to the order in which the program is taken. In the years after World War I a trend toward methods of teaching closely connected with the "school-pattern" could be observed on the Continent, and showed itself clearly in both Austria and Germany. Exercise classes with required and effectively checked attendance were introduced in the law faculties; seminars and proseminars more widely established and attended. A closer and more personal contact between the professors (as teachers) and students on the one hand, and between the university (as a teaching and learning institution) and the students on the other, became a recognized objective.

Owing to its school-like character, as contrasted with the university character of Continental law faculties, the American law school is

spared the slightly ridiculous struggle with proprietary law schools and coaching courses, which—as a major problem—has been haunting Continental law faculties for many decades. While matriculated with the law faculty, the majority of European law students acquire the knowledge needed for examinations in these clandestine schools within a comparatively short period, thus saving their time for other interests. These schools cover the essence of the required university courses in a condensed but systematic, thorough manner. They supply the student with printed condensations of the material needed and thereby, unlike the law faculty, with definite ideas as to what he is expected to know for his examination, and what he need not impress upon his memory. Because of the ample contact between instructor and student, both are able to gauge the latter's proficiency. Those who attend such a school stand a good chance of passing the university examinations, provided they succeed in concealing from their examiners where they derived their knowledge. Of course, they forego, to a large extent, the scientific character of Continental law training of which European professors make such a point.

The blame for this obviously undesirable situation can only partly be laid upon the students. Functional deficiencies of the Continental law faculty invite, if not force upon them their unruly tendency. In his monograph, The Case Method in American Law Schools, Josef Redlich has treated this question in the embittered, yet not very deep-furrowing manner which is typical of a Continental law professor's attitude on the point.[1] The contribution of the faculties to creating the calamity fails to stand out in his mind with sufficient clarity. Moaning or sympathetic concern about the phenomenon recurs in the writings and speeches of nearly all German authorities who have dealt with the improvement of Continental law training. One is at times almost inclined to think that combating the "wicked" preparatory courses is the only problem with which the Continental law faculties have found themselves confronted.

[1] Carnegie Foundation for the Advancement of Teaching, Bulletin Number 8, New York, 1917, pp. 67–74.

## GYMNASIUM—COLLEGE

The inherent disparity of American and Continental law training cannot be fully understood if one fails to envisage the basic spirit of the two continents which molds every one of their social and cultural phenomena. For the purpose of this study it will be sufficient to realize that the spirit of Europe is theoretical, comparatively slow moving, imbued with a tendency toward completeness, exactitude, and universality. The spirit of the United States may, in contrast, be described as highly practical, closely purpose-minded, youthfully fast-moving, and as a result, necessarily restricted in range. This difference in basic philosophy pervades also the universities of the two worlds, and is most strikingly reflected in the preparatory education that precedes the university. The characteristics of the first portion of Continental law training, namely its being theoretical, systematic, and unbridled by practical purpose, are intrinsically linked to the specific kind of education offered by the *Gymnasium*, the *lycée*, or the *liceo*. Without the kind of instruction given in these secondary schools the above-mentioned features of the university study are hardly possible and, with them, can hardly fail to be absent.

The statement is frequently made that the educational training provided by the Continental *Gymnasium* or equivalent schools is roughly comparable to that of the American secondary school plus the first two years of college. To handle the situation in this manner may, or may not, form a practical necessity when European exchange students have to be fitted into our schools or American students into European schools. As an attempted evaluation of educational standards it is superficial and beside the point. Continental secondary education lays mental foundations which differ more strikingly in nature than in size or matter from those offered by American preparatory schools or colleges. Continental secondary education proffers primarily a specific conditioning of the mind and not an aggregate of knowledge. This statement should not be read as indicating that knowledge is not conveyed too, but only that particular emphasis is placed on solidly interconnecting and balancing such knowledge so that it forms an organic entity, a piece of completeness, even if this completeness be elementary and only a stepping-stone to later self-accomplishment.

To venture an opinion that the amount of knowledge which the graduate from *Gymnasium* or *lycée* possesses does not fall short even of that of American graduates from standard colleges—as some indica-

tions tend to suggest to this writer—would presuppose a much broader and closer observation than can be had outside of a careful study of the question. The sum of factual knowledge may in some respects be larger in the college graduate, and his general outlook will most probably prove to be wider and better connected with the realities of life. However, the formation of the mind for a scientific approach to problems requiring intellectual incisiveness, the fitness to distinguish universals from particulars, to sense and apply principles, will presumably have reached a higher degree in the graduate from *Gymnasium* or *lycée*. He will, thereby, have acquired mental equipment which will be most valuable particularly in studying law.

It is evidently this realization that causes Robert Valeur to defend the predominant use of the lecture method in French law faculties by pointing to the secondary education preceding the university study.[1] He contends that the theoretical, synthetic instruction in law by means of lectures is better adapted to the mind of the French students than it would be to that of their American fellows. The former have been trained from childhood in the severe and forbidding discipline of thought by which young Frenchmen acquire that classic spirit of precision, clarity, and logic, so characteristic of the entire French nation. The substance of the statement concerning the applicability of the lecture method holds good for Continental students in general, particularly if thoroughness, comprehensiveness, and exactitude are substituted for the national characteristics of clarity and precision that are more the result of inheritance than of training. It is thus true for the entire Continent that the education which imbues and molds the students in their secondary schools is essentially interconnected with the methods and ideas that control their university study. Without the specific kind of secondary education afforded, university teachers would not be able to apply their systematic, conceptual approach as successfully as they generally do.

In this connection the question might be raised whether the group that attends *Gymnasium* or *lycée* forms a more highly selected sector of youth than the applicants for admission to an American law school of high standing. The answer must be given in the negative. Tuition fees of the *Gymnasium* or *lycée* are not so high as to be prohibitive for the majority of the population.[2] Reductions are easily obtainable. The pre-

[1] L'Enseignement du Droit en France et aux Etats-Unis. Bibliothéque de l'Institute de Droit Comparé de Lyon, Paris, 1928, vol. 23, p. 66.

[2] According to Walter R. Sharp, all fees in the French *lycées* were abolished in 1929. ("Public Personnel Management in France," in Civil Service Abroad, McGraw-Hill Book Co., New York, 1935, p. 104.)



requisite for such reductions is not the outstanding or better than average ability of the student, but simply the financial status of his parents. Accordingly one can hardly speak of any considerable selection, be it economic, social, or intellectual, in the stage of admission. A fairly effective intellectual sifting occurs, however, during the school years through the demands of the instruction.

Conditions are different for those who, after finishing secondary school, seek admission to the university faculties. Here, the lack of scholarships or fee reductions, the scarceness of stipends, and particularly the greater difficulty in "working one's way through" than in the United States result in an economic barrier of considerable size. Among those who are not favored by parental resources, none but the very ambitious or talented will attempt to surmount this hurdle. Almost the only means at their disposition for overcoming it consists in tutoring, in addition to suffering severe privation.

In the Continental universities themselves the selective process is much stronger than in American universities. Sifting factors are allowed to work out more freely; nobody attempts to mitigate their effect. It is in keeping with this fact that Francis Déak ascribes the lack of required attendance in French law faculties to the selective conception dominating French higher education, in contrast to the American democratic conception that fosters the success of those who have been admitted to a school.[1]

[1] "French Legal Education and Some Reflections on Legal Education in the United States," in Wisconsin Law Review, 1939, p. 48.

## PREVIEW OF CONTINENTAL APPRENTICESHIP TRAINING

At the beginning of this monograph reference was made to the fundamental division of Continental legal education into theoretical study and practical training accompanied in its later stages by further theoretical study. Although details of the two aspects of legal education will appear in the analysis of law training in representative countries, a few broad generalizations about the practical training through apprenticeship should direct the reader's attention in advance to its significant role in preparing personnel for the public service.

It may be helpful to recall that Continental literature on legal education published about the beginning of this century contained recurrent suggestions for interrupting the course of the theoretical studies and interpolating a brief period of practical observation and experience. Such practical experience, it was maintained, would increase the student's interest in his subsequently continued theoretical studies. He would be able to derive more insight from them after he had observed justice "in action," and if possible, participated in its administration. Interpolation was declared preferable to initial experience, because the student could not benefit by practical work before he had acquired some knowledge of the function, the principles, and concepts of law for his guidance. It is commonly known that one does not see except what has been already "in one's eyes."

These suggestions were not acted upon directly. Prussia, it is true, introduced about 1930 an interpolated observation period without placing much emphasis on it, and the National Socialists retained or rather expanded the feature for the entire Reich. The Soviet Union resorted to interpolated brief periods of practical experience for supplementing its law training, which is professional from the outset and seems to require less practical amplification than do other Continental systems.

Confronted with the question why the suggestions outlined above were, in spite of their apparent usefulness, not more readily and emphatically acted upon, we cannot fail to see that their practical validity in the countries for which they were made was sapped from the beginning by one very important factor. The basic idea underlying these suggestions, which is that of a practical training following theoretical study and itself followed by further theoretical study, had been carried out by those countries long ago, and on a much larger scale than was implicit in the suggestions.





It has been carried out in the shape of the Continental apprenticeship training, as we shall find it most fully developed in Germany and Austria. Admission to this training can be obtained only after graduation from a law faculty. Therefore, the apprentice has at his disposal an adequate foundation in theory to derive full benefit from the activities in which he participates with responsibilities of his own. Law and the administration of justice, or the government service for which he prepares, move for him from the pallid realm of theory into a reality to which he is linked by personal interests and social urges. Yet matters are not left here. When the candidate's practical experience has become as ample as his theoretical background had been at the beginning of the apprenticeship—three to seven years of apprenticeship are a considerable time and involve the application of legal knowledge or administrative acumen in a great number of actual situations—he must resume the study of theory, and pass a theoretical examination. Because of his long practical experience, these continued theoretical studies are likely to progress with intelligence and mature awareness of their living implications. The material covered, in close connection with the candidate's daily work and its requirements, will be remembered easily.[1]

The organization of the training for lawyers and public servants in most countries on the Continent thus amounts to a boldly outlined, large-scale inclusion of practical experience within a frame of theoretical studies. It should not be overlooked, of course, that the suggestions for interpolation of a brief span of observation and experience into the university portion of the training aim specifically at an early stimulation of the student, and an early connecting of his studies with the practical realities of law. Nevertheless, it is easy to understand that reliance upon the broadly established pattern of interspersing theoretical study with practical training contributed to neglecting the addition of another observation period during the course of university study.

Munroe Smith, in dealing with the *Referendar* system, which is the German variety of apprenticeship for prospective lawyers and for higher civil servants in the judiciary and public administration, emphasizes that German attorneys gain their first view of applied law through government service before going into private practice. He adds, "as far as training can determine the result, it would surely seem that a lawyer so trained would be less likely to forget, in serving his clients, his higher duty to justice and the common good."[2]

[1] It is under these auspicious circumstances that the Continental prospective lawyer does what the American law student is supposed to do as a freshman in law school, namely to analyze and discuss judicial opinions.

[2] Legal Education in Europe. Callaghan and Co., Chicago, not dated, presumably 1928, p. 7.

This pertinent statement can and must be considerably broadened. In consequence of the principles embodied in Continental apprenticeship, attorneys are by no means the only ones who serve part of their practical training "on the other side of the fence," which means in the case of attorneys, in courts and with governmental agencies. Apprentice magistrates in Austria and Germany are required to serve parts of their apprenticeship in administrative departments of the government and in private law offices, and thereby come to see the province of their future activity from an angle alien to their own branch of the profession. Prospective administrators in Germany are required to serve part of their apprenticeship in the courts and in law offices; in Austria they are encouraged to do so. In recent years some attempt has been made to have even a short period of practice in private business management recognized as part of the professional training of judges, attorneys, and public servants. This tendency has not yet become a requirement. If carried out properly it would greatly reinforce the principle of seeing one's field from the "other side," and hence would contribute to achieving in lawyers and public servants increased awareness of social implications and of their responsibility with regard to such implications.

Munroe Smith's comment is unduly limited to attorneys. Yet beyond that, merely envisaging that attorneys gain their first view of applied law in government service before entering upon private practice, it fails to make its point as fully as it could. In most Continental countries, even in those where it is not expressly prescribed that the apprentice begin his practical training with the court section, he will find it advisable to do so, before he enters the part consisting of work in a law office. The first view of applied law acquired by the attorney through his work in the courts thus precedes not only his private practice but even that part of his apprenticeship which is formative of the specific mental attitude of the attorney.

In this connection it is pertinent to point to the legal-aid work done by Continental judge and attorney apprentices in the court phase of their training. In a number of European countries the lower courts are required to meet the public demand for legal assistance by setting aside one or two mornings each week for the purpose of giving legal advice and actual aid.[1] Not only the indigent, but everyone who so desires, is entitled to avail himself of this service. Apprentice attorneys and apprentice judges, if necessary under supervision of a judge, are charged

[1] Legal assistance is given, besides, in a number of other ways; for example, by bureaus for legal counseling, which are maintained by municipalities, bar associations, and some vocational organizations.



with hearing and counseling the applicants. In certain cases they are appointed as court counsels for the filing of appeals against the judgment of lower courts. When they perform such work for their assigned clients, they act in the dual capacity of public officer and guardian of private interests.

Special courts, such as juvenile or bankruptcy courts, or those that handle disputes arising from employment, offer to the ambitious apprentice an even broader contact with a variety of social groups and with the full range of their grievances. All this can hardly fail to broaden the horizon of the young lawyer. Knowing from immediate experience the interests, needs, and troubles of the people, he is likely to develop the desirable synthesis of responsibility toward individual clients and toward the public good upon which the ethics of the legal profession rightly insist. Experiences had in the court work are often a decisive factor in causing young Continental lawyers to choose a socially significant field of specialization.

# INDIVIDUAL SYSTEMS

## Austria

Among the Continental systems of law training the Austrian could justly advance the claim of being the most clearly and consistently outlined. It reached early some points of evolution which were arrived at by the systems of other countries later and with less decisiveness. Political science, economics, and finance, for example, were introduced in Austrian law faculties as required courses in 1780, hence earlier than in Germany and far earlier than in France. From that time on the faculties have been combined law and political science faculties, and could, by statute, be set up only with the broadened curriculum suggested by the name *Rechts- und Staatswissenschaftliche Fakultät.* Since the predominant role of legal training on the Continent in the recruitment of public administrators is closely connected with the integration of the training with public law and economics, that predominance was established in Austria earlier than anywhere else.

In other respects also legal education in Austria displayed a very direct and at times swift stride toward stable solutions. It moved with comparatively few but decisive changes, after having in each case refrained long from fumbling progressiveness. Reforms, when finally adopted, gave due regard to trends inside and outside the country, which had proved their merits. The demands which Austrian law training made upon its students were in substance always more exacting than those of Germany. This is accounted for only in part by the early and ample adoption of social sciences. The great emphasis placed upon historical courses was a contributing factor. So too were Austria's liberal principles and legislation in the second half of the nineteenth century. Because of these the Austrian attorney was not forced into the semi-official position held by his German counterpart. The Austrian bar represented a free, individualistic profession that was concerned particularly with the preservation of civil liberties and individual rights against official encroachment. The very fact, however, that attorneys exercised such prerogatives made requisite an especially broad training. The liberal concept of the judiciary as an independent and strong power for counterbalancing the executive and keeping it in its constitutional place, called equally for a broad law training. Only learned, accomplished judges could be expected to maintain the influence of the judiciary. In application to public administrators, finally, the liberal policy welcomed extensive training on the assumption that





it would enable administrators to heed the limits of their jurisdiction, and would provide them with the means for achieving legitimate purposes without overstepping jurisdictional boundaries.

At the same time that Austria introduced the social sciences in the law faculty, it made the course of theoretical study four years in length. No formal change has been instituted in this requirement in one hundred and sixty-five years. The amount of material covered in the requisite portion of the curriculum is, however, so large that the majority of students are not able to complete it in less than four and a half or five years. With this wide program of prescribed studies and an apprenticeship training of extreme length—seven years for attorneys, three to four years for judges—the system surpasses in severity of requirements that of every other Continental country.

Austrian law training has been little dealt with in American and English monographs on foreign legal education. In accounts of a general kind one finds it intermingled with, or neglected in favor of the German system. This fact has resulted, not from identity or from the respective merits of the two systems, but from the greater political importance of Germany, and the German propensity to industrious self-promotion. The common tendency to overestimate the influence upon institutional patterns exerted by identical or rather similar languages, also has its place among the reasons.

### *The Law Faculty*

*Admission Requirements*

The requirements for admission to all four faculties that form an Austrian university—law, medicine, philosophy, and theology—are now identical. Until 1889 a distinction was made in Austrian universities between lower and higher faculties, law being one of the latter. Between secondary education and law as a higher faculty existed an intermediate link of two years in the philosophy faculty. This situation was not without analogy to that current in the United States, where the intermediate link between high and law or medical schools is formed by the college. The curriculum of the *Gymnasium* covered in that stage of evolution six years. Simultaneously with the abolishment of the distinction between lower and higher faculties, it was expanded into an eight-year curriculum, and the intermediate link between the thus broadened secondary education and the higher faculties was dropped. The adding of two more years to the *Gymnasium* permitted the shifting to it of some of the material that had previously been studied by prospective law students in the philosophy faculty. This material,

designated *Philosophische Propädeutik*, comprises classes in logic and introductory psychology.

Requirements for admission to any Austrian university faculty now consist of: completion of a four-year grade school, graduation from *Gymnasium*, and taking the *Matura*.[1] Since compulsory education begins at the age of six, applicants for enrollment in the university are normally eighteen or nineteen years of age. Students who have taken their secondary education not in the *Gymnasium*, but in certain types of schools with a preponderant emphasis on science such as the so-called *Realschule*, must meet additional requirements. These consisted in recent years of attending two-term courses in Latin, Greek, and *Philosophische Propädeutik* at the university and of passing an examination in these subjects.

*The Curriculum*

Almost the entire program of studies which leads to mere graduation from the law faculty, and to the doctorate, is required.[2] It is prescribed with regard both to its content and order, leaving the student alternatives concerning a few minor courses only. Each of the major, and hence strictly required courses, is covered in one of the three state examinations.

Only outside of the prescribed program, an abundance of elective courses is offered, part of which must be given as a requirement of law. Subjects chosen from this elective section are not evaluated in the prescribed course of studies, nor included in the examinations. Mention has been made already of the somewhat puzzling, contradictory situation of required courses without compulsory attendance. Students are, of course, expected to attend the lectures, but attendance has never been enforced nor effectively checked.

A characteristic feature of Austrian law study is the intermediate examination, *Zwischenexamen*, which students have to take approximately in the middle of the four-year curriculum.[3] It works out as a hurdle for the elimination of students who are not able to meet the standards expected of a jurist, and is actually intended to serve this purpose. Those who fail to pass are generally rejected for a whole year,

[1] *Matura* designates as well the comprehensive examination given by a commission upon the student's completion of the *Gymnasium* as the degree attained. The degree is equivalent to the French *baccalauréat* granted on completion of the *lycée*.

[2] Remodeled for the last time in 1893 by the law of April 20, 1893, and the ministerial decree of December 24, 1893, which form the main bibliographical source of the material contained in this section.

[3] At the earliest in the beginning of the fourth semester, at the latest in the beginning of the fifth semester.



and more often than not omit a repeated attempt. Other examinations cannot be taken before this one is passed.[1]

The subjects, identical with the major required courses of the first three semesters, are:

*Roman Law*, twenty hours of class lectures a week spread over two semesters.[2] History of Roman law and systematic presentation of the provisions may be combined. The initial reading must be on the Institutions of Roman law.

*Canon Law*, seven hours a week for one semester or spread over two semesters. The course covers those parts of the canon law which have either been absorbed by the Austrian civil code, or are significant for a fuller understanding of the spirit and of certain provisions of the Austrian civil code. This applies particularly to domestic relations. The organization and administration of the Catholic Church, its political and dogmatic history, the organization and history of its different religious orders are presented.

*Germanic Law*, ten hours weekly spread over two semesters. This course deals with those legal and social institutions among the ancient Germanic tribes and in the old "Holy Roman Empire of the German Nation" which went into the making of more recent European and particularly Austrian law. The course also covers, in connection with the early political history of Germany, both Germanic public law and the system of Germanic private law.

*Austrian Political History* (*Reichsgeschichte*), five hours weekly for one semester. The course is concerned with that sector of general European history which traces the growth and political development of the Austrian Empire and of the political entity which has been its main successor. Emphasis rests on those historical facts and evolutions which broaden the student's understanding of the constitution, the administrative and political organization of the country, and particularly of its public law.

All these subjects deal with the historical background of the current system of private and public law, as indicated by their titles and by the name of the examination which covers this section of the curriculum: *Rechtshistorische Staatsprüfung*. This is the same examination which was, with view to its practical import, called above *Zwischenexamen*. The approach to current law, as we see, is a very slow one in the Austrian system, taking its course through a careful scrutiny of all the legal and social institutions of the past which have contributed to the growth of the public and private law. The law in force is not even

[1] Bavaria offered a similar kind of examination for the same purpose. A *Zwischenexamen* was repeatedly the subject of reform suggestions in some other German states, but was not introduced.

[2] According to the computation here used and customary also in the United States, this amounts to ten hours each week for two semesters—even distribution provided. The same computation applies to the other figures given for number of lecture hours.

touched upon in the first three semesters. Its treatment is left entirely to the second portion of the curriculum and to the second state examination.

Because this second section and its examination are mainly given over to the law (substantive and procedural) administered in the ordinary civil and criminal courts, this examination is called *Judicielle Staatsprüfung*. It can be taken, at the earliest, after the completion of the entire four-year curriculum. At that time the student is awarded the so-called *Absolutorium*, a document certifying the fact that he has taken all required courses. The subjects of the section are:

*Austrian Civil Law*,[1] eighteen hours weekly spread over two semesters. The course follows the systematically ordered titles of the Austrian civil code of 1811[2] with its later additions and changes. All those different subjects which are generally taught in the United States in separate courses, such as contracts, torts, property, wills and administration, future interests, domestic relations, agency, conveyance, are covered here in one single course.

*Commercial Law*, seven hours weekly for one semester or spread over two semesters. Content and organization of this course are determined by the Austrian commercial code (*Allgemeines Handelsgesetzbuch*) of 1862, and by the statutes concerning the law of negotiable instruments which on the Continent is in general treated together with commercial law.

*Civil Procedure*, twelve hours weekly spread over two semesters. This course follows another classic of Continental codification, the model for several other modern procedural codes.[3]

*Criminal Law and Criminal Procedure*, ten hours weekly spread over two semesters. This course, too, follows the respective codes: the *Strafgesetzbuch* of 1892 with its later amendments and amplifying statutes for the substantive, and the *Strafprozessordnung* of 1873 for the procedural part. The part dealing with the substantive law divides its subject matter, like most Continental criminal codes, into a general section and a section defining individually the different offenses and their penalties. The general section, which contains principles and ideas concerning criminal acts of all grades, the circumstances

[1] The term "civil law" is here not used in contrast to common law, but applies to that body of law which is not public or criminal law.

[2] *Allgemeines Bürgerliches Gesetzbuch.* In view of the date of its enactment (1811) this work of Baron Zeiller is a remarkable achievement with some surprisingly social points of view. It is a classic of simplicity and vigor in diction. Because of its merits and vitality, it was retained after the downfall of the Austrian Empire by various successor states.

[3] This code (*Zivilprocessordnung und Jurisdictionsnorm*), enacted in 1898, is the work of the great Austrian jurist Franz Klein. It is noted for being the pioneer in replacing the old civil suit, in which emphasis was on written briefs and rigid evidence rules similar to those of the common law, by a basically and emphatically oral procedure that allows the judge the use of every kind of evidence and its evaluation to the best of his knowledge without any handcuffs of formality and obsolete tradition.



restricting or excluding responsibility, the rights of judges with regard to the commutation and mitigation of penalties, and similar questions, can be conceived of almost as a textbook on criminal law, needed for the correct application of the specific section as well as for supplementing it. The scope and method of the course are naturally determined by the code.

The third portion of the curriculum that may be studied immediately after the *Zwischenexamen* but is generally covered during the last two semesters, is reserved exclusively for the subjects of public law and for those of political and economic science. Accordingly, it leads up to an examination covering these subjects, called *Staatswissenschaftliche Staatsprüfung*. This examination may be taken at any time after the award of the *Absolutorium*, theoretically even immediately after the second state examination. Practically this is not possible because even the best student must have a minimum of six weeks for hard work, if he is to recall and assimilate the material presented in the courses taken before the second state examination.

The subjects of this portion of the curriculum are:

*Political Law* (*Staatsrecht*), which might be translated by the designation of *public law;* five hours weekly for one semester. The course deals with *Allgemeines Staatsrecht*, and *Besonderes Staatsrecht*. The former is the theory of government and public law in general, the development of the various concepts and patterns of government and the philosophies underlying them. *Besonderes Staatsrecht* is the law pertaining to the actual political organization of a particular country, in this case Austria. The history of the Austrian constitution, the organization of the entire government, the distribution of powers, their competence and task, the courts for the safeguard of the constitution and for deciding conflicts between the administrative and judicial branches of the government, the different kinds of legislation, their formal prerequisites, their validity and review—these are topics comprised under the latter section of the course.

*Administrative Law and Theory of Public Administration*, six hours weekly for one semester. In contrast to the course in political law outlined above, this course is limited to dealing with the executive branch of government, hence to those acts of government that do not show in the shape of enactments of the legislatures nor issue from the courts. The presentation is descriptive and systematic. The portion of the course treating administrative law proper is divided into two parts. The general part is concerned with the organization of the federal and state departments and agencies assigned the task of administration, with the rights and duties of their officials, and with their procedural principles. Attention is given to the special court (also its procedure and jurisdictional limits) which provides judicial review of administrative acts after exhaustion of administrative possibilities for redress. The specific part de-

scribes and delineates the substance of administrative control, and co-operation with the other branches of government in behalf of the public interest in fields such as: marriage, census, migration and passports, religion, public health; security of body and property, policing of the press and of building construction, surveillance of dangerous objects and activities; protection of natural resources; direction of business and industry, markets, stock exchange, banking and insurance, transportation and public utilities; copyright, commercial trade-marks and patents; youth protection, child labor, workman's protection and labor conditions, care of the indigent, social insurance, care of invalids, housing and rent control; organization and maintenance of armed forces. Concrete legal provisions are not made the object of detailed legal-scientific examination; they are surveyed only as to principles and extent of government interference.

As far as the course is devoted to the theory of public administration, it reveals itself openly as a branch of political science. It inquires into what the administrative tasks are which a modern government ought to assume, what amount of interference with the private sphere is justified, and what are the appropriate means for fulfilling the legitimate administrative tasks.

*Economics*, ten hours weekly spread over two semesters. The course embraces economic theory and economic politics (*Volkswirtschaftslehre und Volkswirtschaftspolitik*). History and theories underlying the different economic systems, laws and theories governing value and price, influence of population density, labor and capital, policies concerning export and import of goods, regulation of production and commerce through customs and embargoes, are among the topics covered.

*Finance*, five hours weekly for one semester. This course deals with theories concerning monetary systems; theories and implications of the different sources and forms of state income as, for instance, direct and indirect taxation, fees, court fees, custom duties and excises. It presents the advantages and disadvantages of the different systems of revenue, their social and economic justification, and methods for controlling the stability of the currency. Special attention is given to the question, which of these theories were realized in Austrian financial legislation, and what was the effect of the applied methods and policies.

In addition to this clearly tripartite curriculum, the Austrian law student is required to take a course in the history of the philosophy of law (*Geschichte der Rechtsphilosophie*) of four hours weekly for one semester and a course of equal length in general and Austrian statistics. Finally, the curriculum requires that he select two courses in philosophy proper, offered by the department of philosophy, each of which must occupy at least three hours weekly for a semester. The purpose of these two courses is to widen the student's general education; he is expected



to receive concepts and ideas which will help him to place his legal learning within the framework of a comprehensive philosophy.

Although the additional "broadening" subjects are required, they are not covered by examinations, and because of this fact fail to be as fruitful and significant as the underlying purpose suggests. The students, under neither a formal nor a factual obligation to attend, register for these courses, but more often than not do not attend one single lecture.

The elective courses which must be offered by legal requirement are the following: encyclopaedia of legal and political science, international law,[1] mining law, court medicine, cameral science (public finance),[2] comparative law, agrarian legislation and evolution, Austrian taxation. Elective courses offered on the free initiative of the faculty include, among others: bankruptcy law, patent law, unfair competition, national and international labor protection, workman's insurance, interrelation of state and church, copyright law, insurance law, banking law, history of Germanic criminal law, criminology.

If the Austrian law student wants to obtain the academic degree, which is the combined doctorate of law and political science, he must, as mentioned earlier, take two parallel sets of examinations.[3] The doctorate does not, however, signify the only manner in which he can be graduated from the law faculty. The taking of all required courses plus the passing of the three state examinations is a legally recognized completion of law study, and must be accepted by all authorities as the satisfactory educational background for every type of higher civil service, including that of the judiciary. The only careers which cannot be entered upon without the doctorate are those of attorney and of university professor.

The three state examinations take place before a commission constituted of high-ranking officials from government departments, eminent members of the judiciary, and university professors serving as deputies of the state. The second set of examinations forming the additional requirement for the doctorate, the so-called *Rigorosa*, is given exclusively by faculty members, who represent the university as an autonomous body. These examinations have a purely scholarly character. At the state examinations four or five students are questioned

[1] International law is an examination subject. See footnote on p. 40.

[2] In "The Continental Tradition of Training Administrators in Law and Jurisprudence" (Journal of Modern History, June, 1939, p. 130), Carl J. Friedrich characterizes this field of science as centering upon "public finance and governmental expenditures, as well as practical principles of administrative management."

[3] See footnote on p. 15.

simultaneously and in unrestricted publicity. The *Rigorosa* are not public and only one student is examined at a time. Mainly these outer circumstances and greater severity distinguish the *Rigorosa* from the state examinations. The subjects are identical, with one small exception.[1]

The two *Rigorosa*, which correspond respectively to the second and the third state examination, can be taken in fairly quick succession to their counterparts. The third, squaring in material with the historical, the first state examination, may only be taken after the second and third state examinations are passed, hence at least two years after its corresponding state examination. This is a momentous requirement, betraying the extent to which historical subjects are emphasized or rather overemphasized by the Austrian system. The student has generally forgotten most of the historical material when, after the second and third parts of the curriculum and their respective examinations, he is admitted to the *Rigorosum* covering the historical material. He has forgotten this material all the more because of its remoteness from the realities of the profession he has chosen, and because the judicial and political subjects studied in the meantime have, for the converse reason, a much stronger claim upon his mind. Hence he is forced to restudy the historical material from scratch, and this time more elaborately than before. His study ends where it began, namely in retrospection, and that at a moment when, to be turned toward the future and the living potentialities of law, would be the reasonable and natural attitude. Time and mental energy wasted in restudying the historical subjects could be directed to a more useful purpose by engaging the student in subjects that widen his horizon and give him a fuller comprehension of his task.

Inquiry into the reasons for the weakness thus defined first settles upon the lingering struggle between the government and law faculties concerning the goal of the latter. While the government's demand for practically trained civil servants stands on one side and the desire of the autonomous universities to stick to their doctrinaire standards and scholarly aims on the other, the universities seem to have prevailed in the last phase of the order of studies. They seem to have been free to shape the requirements for the doctorate, which always was a purely academic degree, and in enjoyment of this freedom, to stress the scholarly significance of the doctorate. In doing so they passed by the opportunity of providing the student with some, however theoretical, professional enlightenment.

[1] International law, although not a required subject and not covered in the state examinations, is included in one of the *Rigorosa*. Thus only those working for the doctorate have to take it.



This view, however, fails to stand up if Austrian history of the nineteenth century is consulted. Existent data indicate that the influence of the government won out over the university even in the discipline for the doctorate, and we find ourselves confronted with a striking example of the detrimental influence of politics on problems which should be solved as the subject matter alone suggests. When the revolution of 1848 removed the reactionary *Vormärz* absolutism, the significant change in public life showed also in a new organization of the universities and their programs. In the law curriculum all historical subjects were dropped and replaced by courses in jurisprudence and philosophy of law. In 1855, when the reactionary "backwash" of the early reign of Francis Joseph hit the universities, a complete reversal of the liberal changes was enacted. Friedrich Kübl reports these facts as follows: "Although they [the persons who instituted the reversal] did not dare to undo the principles of academic freedom, they yet tried to banish the revolutionary spirit radiated from the law faculties by deflecting attention of the students from the future, and placing the center of gravity in the legal achievement of the past."[1] This measure, according to Kübl, was little noticed because of the brilliance of the men who were given the historical chairs, and was silently retained when in 1893 the curriculum was reshaped for the last time. The detrimental effects of the political interference in abolishing the courses in jurisprudence and legal philosophy showed, Kübl asserts, in the legislation of the ensuing years.

So much space has been devoted both here and subsequently to the subject of examinations, that a few comments should be made about the extent to which Continental law training rests on the device of the examination and the merits of that system.

There can be little doubt that examinations, as an integral part of an educational system, represent an evil. There can be, however, just as little doubt that this evil is almost inevitable since the level of maturity which would make dispensable the compulsion exercised by examinations has so far not been reached by the average group of any student body, and probably never will be reached. Abolishment would presuppose the reorganization of our entire educational system in a manner which could hardly be made to accord with the tempo and mental trend of industrialized society.

The main objection which can be raised against the predominance of examinations in Continental law training is the resulting distortion of two important relations. One of these is that between the student and

[1] Geschichte der österreichischen Advokatur, Graz, 1925.

his professors, the other the relation between the student and legal science, as the object of his studies. The threat of coming examinations transforms the first of these two relations, which ought to be one of common striving, into a struggle between opponents. Obviously the existence of such mutual antagonism is detrimental to the spirit and the results of legal education.

As far as the second relation is concerned any voluntary aspect of the study, and any real, expansive interest in it, are likely to be killed. The student quickly begins to distinguish between the material he *must* know and that which he *need not* know. He soon looks at the latter with the same dislike and the same tendency to reduce his work on it that he has developed in regard to the former. It is psychologically almost impossible for him to be keenly interested in a field of science which is connected with drudgery, and with hurdles which, if not taken, may frustrate a year's work or even shatter a chosen career. Examinations are intended to test the knowledge or insight of students, and to secure their serious efforts toward achieving high standards. The first of these two purposes is not achieved or, to say the least, not in a reliable manner. The results must be unreliable by inherent necessity, for instance, because of limitations of time. They are unreliable, further, because of fortuitous factors that cannot be entirely excluded.

Many of these fortuitous factors, it is true, apply only to oral examinations. Examinations in writing, on the other hand, make particularly high demands on the intelligence, and resourcefulness of the examiner, as well with regard to the drafting of the assignments as to the evaluation of the outcome. We shall meet, in the sections on Austrian and German apprenticeship and in-service training, examinations which afford reasonably fair tests. They represent a combined oral and written investigation with emphasis on the part in writing, in which the candidate is mainly expected to act upon given facts in the same manner that he will have to act, over and again, in the practice of his profession. It must be noted, however, that these examinations take place so near the end of his particular training that they can hardly be deemed educational examinations, in which the development of the student should be promoted. They are rather vocational selective procedures.

The second purpose connected with examination, the enforcement of serious study, is achieved by them to a considerable degree. Reduction or abolition of examinations has occasionally been advocated on the assumption that their elimination would free the energy of students for other than "bread and butter" subjects. The complete neglect of the



cultural courses in the Austrian curriculum, reported above, is however not very encouraging. It shows that some kind of strong incentive is necessary for most of the students. Even if we may assume that a whole-hearted breaking with the examination system might yield results entirely different from those of partial elimination, the example indicates that any reform would have to cope with the indifference of the average student.

A mere perusal of this curriculum reveals that the political and social sciences which constitute the third and last portion of the course of study, are strikingly disconnected from the purely legal subjects of the two earlier sections. How can the presentation of the political structure and economy of the country be generative of insight into legal phenomena and promote a more mature study of law, if the presentation is given only after the study of law has been concluded? It is true that the law student who is able to keep the pace laid out by the curriculum will have heard the political science material before he prepares for and takes his *Judicielle Staatsprüfung*, but things are hardly improved by that fact. It must be impressed upon the American reader, who might expect otherwise, that actually no attempt whatsoever is made by law faculties to integrate the political science material with the legal. The two bodies of science are treated side by side, as complementary parts to a full, theoretical picture of the nation's legal and economic life. They are not shown as explaining, molding, and penetrating one another.

We must remember that Continental governments envisage their law faculties largely as a training ground for administrative civil servants. Comprehensive information about the political and economic structure of the country is, therefore, conveyed for no other reason than for its own sake. The fuller picture of the administration of justice and of the function of law that nevertheless results from such information does not go deep. And nobody should think that this information really aims to enlighten the study of law by integrating this study with political science. In summary, we find that the combined law and political science curriculum of Austrian (and all other Continental) universities is based on a mere adjacency of the two science groups, and by no means on their close union which would create jurisprudential links between law and the social sciences. If occasionally an enlivenment of the student's legal philosophy and social awareness springs

from the third portion of the curriculum, this is a more or less fortuitous occurrence deriving from the individuality of the student. The first or historical part of the curriculum, it is true, contributes greatly to a better understanding and assimilation of the courses in private and later public law. Except for this one interconnection, however, the three sections of the curriculum do not presuppose or complement one another. Students might as well begin their study with the third section.

In order to shed some light on the background of this loose coexistence of law and political science in the Continental law faculties, it will be helpful to describe a situation, knowledge of which will also be requisite to the discussion of the teaching method: The traditional thinking about law on the Continent is predominantly rooted in legal *positivism*. Following this philosophy law is what the lawmaker, vested with power to enforce his will, wanted the law to be and, in a constitutional manner, has declared to be the law. Nothing else.

Continental judges have, in theory, rarely opportunity to apply law flowing from other sources than the statutes themselves.[1] Practically they are, of course, instrumental in the creation of judicial law, but their participation in this process is not as manifest and direct as that of judges in common law countries. Emphasis in their function rests on interpreting the pronouncements of the legislature and not on ascertaining the law. The ordinary courts in most Continental jurisdictions are not entitled to disregard or override statutes because they conflict with the constitution or with other statutes. All that the judges are empowered to do is to examine whether a legislative law has been properly promulgated or not. If properly promulgated it is absolutely binding for the judge. Not even decrees or ordinances that conflict with the constitution or with other statutes can he disregard or void. He can only transmit them for examination to a special court, which actually is no court proper but a mixture of a court and a political body. Accordingly, the activity of Continental judges consists—at least consciously—of interpreting the utterances of the lawmaker in the broadest sense, and of applying his will without modifying it or promoting its gradual change. Law teachers, in keeping with this dominant concept of law, are equally bent upon disclosing and expounding what the intention of the lawmaker has been, and how the expression chosen by him can be reconciled with what his will is known or believed to be. No criticism is applied to that will itself. All inquiry into what the intention of the

[1] "Statutes" is used in this paragraph in its broad sense, designating all abstract written provisions by which a people is governed, in contrast to unwritten sources of law such as the common law. Hence, besides legislative laws, abstract government rulings, decrees, ordinances and so on are embraced by the term.



lawmaker ought to have been in order to meet more satisfactorily the demands of human progress or the standards of justice as derived from the dominant morality, is cast aside with emphasis. Attempts by students to bring such questions within the scope of law courses are scorned and barred by the majority of professors.

### *Method of Teaching*

The teaching in Austrian law faculties—like Continental training in general—is dominated by the lecture method. But like most Continental law faculties the Austrian embarked in the second half of the nineteenth century upon devices for counterbalancing too extensive use of that method. Seminars and later proseminars were created, and increasingly conceived of as an integral part of the university and its function. The purpose of the seminars and proseminars was seen as a closer collaboration of zealous or scholarly inclined students with their professors and among themselves. By dealing with the subject matter of a corresponding lecture course in selective detail and from the viewpoint of research, these new forms of instruction were to imbue the students with the spirit of legal science.

It would be, however, entirely wrong to assume that the operation of seminars and proseminars affected, or at present affects, legal education on an extensive scale. Owing to the very nature of a seminar which presupposes a small number of participants and to the difficulties in providing the facilities for many seminars, admittance is necessarily restricted. Yet this restriction is actually of no consequence since it is equaled by a limitation of interest on the part of the students. With the possible exception of those held by particularly brilliant professors, legal seminars are rarely filled even to their limited capacity. Although students desirous of enrolling in proseminars hardly ever encounter serious admission difficulties, participants are nevertheless comparatively few.[1]

As a further step toward offsetting the ills which were vaguely felt to arise from the "university pattern" and from the hitherto dominant methods of teaching, Austrian law faculties introduced exercise classes with *required* attendance. These classes, called *Uebungen*,[2] that made

[1] Most Continental universities, unlike the Anglo-Saxon, are located in large cities, without facilities for living on campus. They are, moreover, few in number. For both reasons they have very large enrollments, particularly in their law faculties. Prior to World War I, Austria with approximately 42 million inhabitants had 12 universities; postwar Austria with approximately seven million inhabitants had three universities.

[2] Similar classes with emphasis on problem cases had already been introduced at the University of Vienna decades earlier by the famous jurist Rudolf von Ihering. They failed to take root in Austria at that time, but were later widely adopted by German universities.

their appearance after World War I, attempted to create a closer link between a greater number of students and the university as an institution of higher learning. They made lesser demands on the participants than the proseminars, let alone the seminars, and placed emphasis on expounding the material of a corresponding lecture course and on implanting its essence more firmly in the student's mind. The expectation was nourished by the faculties that attendance at these classes would make it easy for students to keep away from cram courses, which would no longer hold the monopoly of dispensing guidance and orientation. This expectation proved futile with regard to the rank and file of students. Although the innovation made it easier to do without the preparatory courses, it failed to provide an adequate substitute.

The work that is done in university exercise classes, as well as that of most proseminars, comes fairly near to the kind of teaching and learning that takes place in American law classes in which the case method is not applied in its purest pattern. An essential difference, however, is the fact that the cases analyzed and discussed are not real cases, encumbered by the insignificant or bewildering detail that generally besets even selected cases. Rather are they problem cases which clearly lay bare the underlying principle. Like the proseminars, exercise classes are generally not conducted by the professor of the corresponding lecture course himself but by an assistant.

An important characteristic of the teaching method has been anticipated in the preceding section when we discussed the lack of integration of social science and legal subjects proper. The teaching in Austrian law faculties was described there as dominated and molded by legal positivism. To enlarge on these comments, instruction in law in all Continental universities might aptly be characterized as proceeding by a descriptive, "two-dimensional" method. Inquiry moves continually within the realm of legal prescriptions and concepts, without reaching down into the soil of living facts upon which these prescriptions and concepts rest. It moves as if roaming the legal province were an ultimate purpose, and law an end in itself. The student's attention is hardly ever, and certainly not nearly enough, turned upon the social function of law and upon its merits or demerits in molding life or even in keeping abreast of it.

Does the legal provision at hand conform to the pervading principle of the system to which it belongs? Does it fit in with other legal provisions? Does it plainly bear out the underlying principle or modify it? Has the principle been used before? Is the principle gaining or losing



ground? Such are, at best, the questions that occupy the legal student when he studies a body of law such as labor law or unfair competition. Never is he guided toward questions like the following: From what historical, political, social, or ideological ground do the relations arise whose direction is attempted by that mass of concepts, orders, provisions, abstract model contracts, that we are accustomed to call *law?* Or more generally: What are in every province of social life the facts, ills, and needs that call for law or have found their reflection in law? What are the specific problems the lawmaker wants to meet or should have wanted to meet? With what success, with what undesired results has he attempted to solve them? In what respect and how could he have done better?

To repeat the important point, the Continental jurist is dealing with law in an abstract manner; he is practicing and exploring a kind of legal mathematics, with principles, concepts, and rendered decisions as its elements in the place of figures and symbols. He does not study social phenomena, or their repercussion upon the mental machinery which purportedly directs them.

Without any considerable countercurrents, the concept of legal science described above dominates the teaching of law in the Austrian as much as in other Continental law faculties. Because of its influence the term "scientific" can be applied to the method of presentation and to the approach fostered in the student in a limited, superficial sense only.

These comments do not suggest that the training of jurists which Continental law faculties, and for that matter all law schools, have set before themselves as their goal could be attained more effectively if the study of law were considerably more integrated with the study of sociological phenomena or based on methods of investigation established in sciences such as anthropology, economics, or constitutional history. They question, however, whether it is really as important as we are prone to take for granted that jurists of the kind that we have come to know as such be engendered. They question, at least, whether such jurists should remain the only type of law-trained and law-concerned men whose services society needs.

### *The Teaching Faculty*

Because the composition of a teaching faculty is most expressive of the spirit of instruction afforded, a look at the recruitment of Austrian law teachers will prove illuminating. What are the qualifications which an Austrian, and hence Continental, university professor is expected to have, and how are they tested?

A perusal of the statutes, which as a matter of course also regulate the selection of the teaching faculty, discloses that Austrian universities apply the selective principle that predominates in all German-speaking and most other Continental universities: Outstanding personality and scholarly achievement are rated as the best qualifications—and not brilliance as a teacher, speaker, or lecturer. Even if German university men pride themselves that their great scholars have been primarily teachers and only secondarily writers, the pedagogically excellent teacher—the man passionately devoted to imparting knowledge—ranks in principle far below the man who has advanced science with his discoveries or theories. The optimum that a student can derive from his years at a university is believed to lie in the allegedly lifelong influence emanating from the towering personality of a great scholar. Accordingly, permission to lecture at a university (known as *venia docendi*), which is the indispensable prerequisite for later appointment as a professor, has always been made more dependent on the candidate's scholarly work than on pedagogic ability, or on achievements in practical legal provinces.

This situation and the subsequent details of the selective procedure[1] corroborate the fact that the Continental university conceives of itself—as far as it escapes from succumbing to the purposes of the state—as a place for the cultivation and promotion of science above all; far more than as a school of any kind. While spotlighting the measure of government control of universities, the procedure equally manifests the co-administration and sway retained by the universities themselves.

The first step to be taken by the man who wants to enter upon a career as a university teacher, is the acquiring of the *venia docendi*. This significant approbation—not quite without similarity to the ordination of a priest—can be obtained only for a field of science of considerable dimensions (as for instance private or commercial law) and not for parts thereof (such as domestic relations or corporation law). Prerequisites for the application are:

1. The doctorate from a university of recognized standing, acquired at least two years prior to the date of application. It must be a doctorate in the branch of science to be taught.
2. Demonstrated ability to deal by scientific methods with problems on which the applicant desires to lecture. Proof must have been afforded by independent research, mainly in published writings.

[1] Regulated by the law of April 24, 1873, Reichsgesetzblatt, 63 and Vollzugsanweisung des Staatsamtes für Inneres und Unterricht of September 2, 1920.



3. A published work containing "momentous scientific results and methodological merits of high order" (*Habilitationsschrift*), presented for the purpose of forming the basis of the university's decision. The requirement of publication can be waived only if technical factors, such as forbidding costs, have been the obstacle.
4. A detailed program of how the applicant intends to organize his "activity" as a lecturer.

The decision rests with the faculty of the university department. Rejection because of reasons of personality can be appealed to the Academic Senate. Against rejection based upon inadequacy of the *Habilitationsschrift*, recourse is available to the ministry in charge of education. In either event the faculty can sustain its earlier decision against a dissenting stand by the superior authority.

In case the faculty feels inclined to decide favorably, the applicant is summoned to undergo an oral discussion of his work (*Kolloquium*), and after that to give a test lecture before the faculty and selected guests. If either the discussion or the test lecture fails to satisfy the faculty, the application is generally turned down. If the deficiency applies only to the lecture, the applicant may, however, be permitted another chance. A candidate whose application has been rejected cannot apply again before two years have elapsed, and not without filing a new (!) *Habilitationsschrift*. In case the *venia docendi* is granted, ratification by the ministry in charge of education is needed. The grant is effective only for the university for which it was obtained, but its repeated acquirement can be waived by other universities.

The person who obtains the *venia docendi* does *not* become a member of the teaching faculty and receives no salary. He is merely entitled to lecture under the title of *Privatdozent* and to receive the payments that students have to make for attending his lectures, if they choose to attend them. Certain stipends and benefits can be awarded to the *Privatdozent* on recommendation of the faculty. The grounds for such awards are that it has become desirable that he do research or travel, or in exceptional instances that his maintenance can otherwise not be secured.

When a professorship becomes vacant at the university, the *Privatdozent* who has been lecturing in that field of science may apply for appointment to the faculty. The actual decision, in the shape of a recommendation, is made by the faculty; the formal appointment by the ministry. The *Privatdozent* may be appointed honorary (*ausserordentlicher*) professor. If this occurs, he remains, however, just as

much without an actual professorship and a salary as before, but stands a better chance of being given both when a vacancy occurs.

The *venia docendi* expires if the *Privatdozent* gives up his residence in the university town, fails to lecture for four consecutive terms without adequate justification, or resigns. It can be canceled by a disciplinary decision of the university authorities.

One can readily understand that this tellingly precise, bureaucratic method of selection, indicative both of the degree to which universities are state controlled and of the measure of their remaining self-administration, results in great stability of standards within the teaching faculties. It suggests the high scholarly achievements of those who, after many years of lecturing and research as *Privatdozent*, finally get appointed (*ordentlicher*) professor. At the same time the procedure reveals one reason for that specific remoteness from the realities of life which is so often found in the Continental scholar. One either has to have traces of oddity from the outset, or one acquires them, if one embarks for sheer scientific passion on a career in which appointment and payment may or may not come—after many years of waiting and working.

It would be, however, most venturesome to make any generalization about the merits of the lecturing of Austrian law teachers. Differences in individuality outweigh the unifying influences of common background, method, and mentality. Side by side with men who convey to their students their own zeal and enlightenment with great incisiveness, are others whose lecturing moves in a rut, boring to themselves and to the students. They simply continue to read, year after year, the same old lectures which they have compiled long ago and read ever since. Thanks to the industriousness of earlier classes, students can buy these lectures in mimeographed sheets and study them by themselves without having to take the same words down as notes from a lifeless and stale reading. The interest of these utterly uninspiring lecturers generally centers on their own research and writing, occasionally on the drafting of bills or the preparation of expert memoranda for the government. Their teaching, but a secondary function, is to be performed with the least possible disturbance to their real work.

And what about the unappointed lecturers (*Privatdozenten*), who rely for an income on attracting students by the quality of their offerings? Do they—as a group—make more of an effort in the preparation and delivery of their lectures than appointed professors? The answer is in the negative. Individual circumstances and characteristics prove stronger than the financial consideration. There are instances also in



which a *Privatdozent* has sought connection with the university only because such connection gives him better standing in his profession as a lawyer, judge, or civil servant. He views his lecturing as an "activity" for the enhancement of his professional success and is willing to invest in that promotion only a limited measure of time and interest. Many unappointed lecturers, finally, are men of private means or have an income from other sources. Like the appointed professors, they can afford to devote their main interest to their scientific work.

A general statement for comparing the achievements of the two groups can, at best, be based on the fact that men in the *Privatdozenten* group are by and large much younger than appointed professors. The chances of finding progressive ideas, drive, and alertness among younger men are, of course, greater than among old or elderly professors.

## *Apprenticeship Training*

### *General Outline*

The supervision of the practical portion of Austrian law training lies with the ministry of justice and the higher appellate courts (*Oberlandesgerichte*). Some co-operation is afforded by professional associations, for instance, the bar associations or the associations of notaries. In the case of prospective civil servants, the supervision is exercised by the respective ministry or administrative department. In no event is the supervision vested in the ministry for education, which was in control during the university period. This is an outer but significant change, indicative of the spirit that pervades the second half of law training. This half is professional, just as emphatically and exclusively as the first half was unprofessional.

Austrian apprenticeship training cannot be described without subdivision, since the training itself is not uniform but differs for each of the various groups for whom a legal apprenticeship is required. Different statutes underlie the several disciplines, and different final examinations have to be taken. The following names of such examinations illustrate the variety of specific disciplines:

*Rechtsanwaltsprüfung*, bar examination for attorneys.
*Notariatsprüfung*, examination for notaries.
*Konzeptsdienstprüfungen*. This collective term encompasses several examinations which form the final selective test for the various groups of higher civil servants. The more important of these examinations are:

a. *Richteramtsprüfung* for members of the judiciary (judges and public prosecutors) and for higher officials of the ministry of justice.

b. *Politisch praktische Prüfung* for civil servants within the so-called *political administration*. It is not possible to choose from Anglo-Saxon government institutions a ready equivalent for the concept of *political administration* as understood by Continental public law. The term refers to a definite, broad section of the country's administration. Other branches (such as finance, foreign affairs, and several special fields) are conceptually separated from it. Roughly speaking, its domain is that of interior administration, and all authorities or agencies belonging to the *political administration* are in the last instance controlled by the ministry for the interior. Their chief activity is policing, in some form or other. It has to be remembered, however, that the Continental police function is exercised with a much wider range of jurisdiction than has ever been true of Anglo-Saxon countries. It is concerned with aspects of almost every area of human life.

c. *Finanzprokuratursprüfung*, also called *Fiskalprüfung*, for those who serve with the *Finanzprokuratur*. This is an agency within the framework and under the control of the ministry of finance (treasury department). It carries on all the activities of a private law office, if the sued or suing party is the state (treasury) or a public fund. Legal counseling for the state and public funds or their representation in court are among its manifold duties.

d. *Gefällsobergerichtsprüfung* for the higher staff of certain agencies within the framework of the ministry of finance, particularly of one which acts as a court in charge of quasi-judicial cases of administrative law arising from customs and excises.

In a few government agencies provisions are made for the taking of special examinations in addition to the respective general examination. As an example may be mentioned the *Diplomatenprüfung*, which is required of civil servants in the ministry of foreign affairs who wish to be eligible for certain posts.

The above enumeration not only demonstrates how many types of professional training rest on the foundation of law study in the university,[1] but discloses in what a specialized manner the Austrian system provides for the continued training of its public servants. The brevity of this study does not allow presenting at length each of the different disciplines. Attention, therefore, will be centered upon apprenticeship for the bar and for the judiciary, since these two forms of training are the most elaborately planned and clearly outlined. In addition, a summary of the various disciplines for the training of higher civil servants will attempt to record the main features as completely as the disparity in these disciplines permits. Later description of different approaches

[1] The great number of examinations for certain special fields of government and public administration, *not* based on legal university education, such as those for railroad officials, taxation officials, and lower police officers, have, of course, been omitted here.



in other countries to the training and recruitment of civil servants will afford further clarification. What seems primarily important is to point out to the American reader the educational character of the prominent types of apprenticeship, which we have designated as an integral part of Continental law training. He should realize how greatly Continental apprenticeship differs from mere employment with a court or government agency. And particularly he should not confuse the "reading of law" in an attorney's office, which once constituted the recognized path to the bar in the United States, with that section of Continental apprenticeship which attorneys, members of the judiciary, and sometimes notaries serve in a law office.

### *Apprenticeship for Attorneys*[1]

Admission to this training presupposes only completion of the law curriculum and the taking of the three state examinations, in short, graduation from a university law faculty. The last three of the prescribed seven years, however, and the bar examination cannot be taken without the doctor's degree. Thus in Austria, unlike Germany, the doctorate forms a legal prerequisite for the advocacy.[2]

Of the required seven years, six must be served in private law offices or in the state's law office, the *Finanzprokuratur;* one must be served in different courts. As stated earlier, these two parts of the practical training do not have to be taken in any fixed order. But admission to the bar examination, not to the bar itself, can be obtained after the first four years of training, provided the year in the courts is among them. This advantage, besides others, generally induces candidates to begin their training with the year in court. Most important among the additional advantages is the fact that the candidate emerges from his work in the courts with a sound notion of its technicalities and of many tasks with which he will be confronted in a law office. He will, therefore, find his start in such an office easier after having had his court experience, and his work will prove more fruitful for the employing attorney.

While serving in court the apprentice generally seeks to obtain as diversified an experience as possible.[3] Much depends on his own initiative. If he makes an attempt to be employed in a number of different

[1] Law of July 6, 1936, Reichsgesetzblatt 96, and law of February 6, 1919, Staatsgesetzblatt 95.

[2] This requirement does not exist for civil servants, among whom judges and district attorneys are included on the Continent.

[3] The apprentice is called *Rechtspraktikant* during his employment in court; while serving a law office, he is designated as *Rechtsanwalts Anwärter.*

courts, he usually succeeds without great difficulty. If he does not make such an effort, he will be employed, according to the required plan of training, only in a lower and higher civil and in a criminal court. The first assignment attaches him generally to a low civil court (*Bezirksgericht*), the second to a higher civil court (*Gerichtshof*). Among the possibilities of further employment by which he can add considerable impetus to his future work, are: a court of appeals; special courts, such as a commercial court (*Handelsgericht*), particularly its bankruptcy department; a court for litigation arising from the execution of judgments (*Executionsgericht*); a juvenile court (*Jugendgerichtshof*); or a court for wage claims in business and industry (*Gewerbegericht*).

The work of the apprentice in the civil courts consists in taking the minutes of the hearing (*Protokoll*), generally dictated by the judge; in assisting the judge in his judicial work, particularly when judgments are rendered in writing; in taking preparatory hearings or testimony requested by another court; in assuming considerable responsibility for the legal-aid work that has already been described.[1] In the criminal courts the apprentice is generally assigned as an assistant to an examining magistrate (*Untersuchungsrichter*). His work consists in questioning defendants and witnesses according to orders which the examiner's office receives from the district attorneys, taking the records of these preparatory hearings, and thereby preparing the file for the trial judges.

Statutes concerning the training instruct the judges to keep in mind its educational purpose. The apprentice must not be assigned to work that only relieves the judges or the court clerks without adding to his experience. In spite of the fact that emphasis rests upon education and not upon service rendered, the apprentice is generally paid a small salary.[2] His performance is supervised and evaluated in writing by each of the judges with whom he serves.

While in a law office, the apprentice gradually comes to perform the whole range of activities that constitute the business of the office, and we must remember that specialization among practitioners on the Continent is not nearly so frequent as in the United States. Most attorneys do court work of every kind, including criminal defense as well as counseling in domestic relations, in business and financial matters. The same men are entrusted with the preparation of contracts, particularly for the founding or dissolving of corporations and partnerships, and for the conveyance of real estate. The experience accorded

[1] See pp. 30, 31.

[2] The practice regarding payment of salaries was not stable. For some years prior to 1938 the Austrian *Rechtspraktikant* was no longer paid, but under certain conditions could apply for a subsidy for his support.



the apprentice, therefore, is a very broad one. On the strength of certain minimum requirements, he can be empowered by the attorney in whose office he works to intervene and plead in all courts, except the very highest, which is comparable to the Supreme Court of the United States. Even without such authorization, the apprentice is entitled to act in court for his chief in all matters for which the intervention of a full-fledged attorney is not expressly prescribed. After taking his bar examination, he can be given by his principal the unlimited right of substitution and appear in all courts including the highest. After taking the examination he can also have his name placed on the list of defenders in criminal cases, and intervene in such cases upon his own responsibility, independent of his law firm. All other professional actions of the apprentice lawyer are carried out upon the responsibility of the principal.

Before taking the bar examination, the apprentice must again study theory for at least a year, if he wants to stand a fair chance of passing the examination. He does so in addition to his practical training, generally going to one of the evening schools that cater to preparing men for the bar examination. These schools must not be confused with the coaching courses which prepare university students for their examinations, although they too are occasionally tagged with the deprecatory label, "cram courses." Whoever insists upon designating them thus would, however, have to admit that their "cramming" is done in a very sound and broad manner.

Their merits justify some attention in this survey. The teaching faculty consists mostly of outstanding practitioners such as high ranking judges, district attorneys, attorneys, and civil servants. Each of them teaches that branch of law which is the special object of his professional activity. A justice of the commercial court, for example, may read on the law of bills and notes; an attorney general, on criminal procedure. In addition to lectures, problem-cases and discussion-review of court decisions are extensively used. Since classes generally do not exceed 25 to 30 participants, ample contact between teacher and students can be maintained by questions from both sides. The requirements of the examination understandably form the selective principle determining the material presented. Instruction remains, however, comprehensive and methodical, and follows like university courses, the order of the respective codes or statutes. Emphasis lies clearly on the acquiring of knowledge of what the current law is, what tendencies courts have shown, what interpretations have been successfully or unsuccessfully attempted by lawyers, which trends, what legislation may

or may not be expected in specific problems. Particular attention is given to the actual application of the law by the courts, thus to the "judge-made" law by which, even in civil law countries, codes and statutes are perpetually modified. Instruction includes the technicalities of some difficult forms of briefing and preparation of appeals. Special attention is given to sharpening the professional acumen of the candidates, to encouraging their resourcefulness and flexibility.

*The Bar Examination*

The bar examination is given at a number of appellate courts (*Oberlandesgerichte*) by commissions of five, constituted of judges, members of the attorney general's office, university professors, and lawyers. The examination is both written and oral. The written section is divided into a civil and a criminal part. For each part between five and eight hours in supervised seclusion are allowed, with the bare (uncommented) code as the only material which the candidate may consult.

In the civil portion the candidate is given a case history, such as an attorney receives from his client for the starting of a lawsuit. The case chosen is as free as possible of factual detail and of questions of evidence. It contains, however, a series of intricate legal issues, the handling of which calls for acumen, knowledge, experience, resourcefulness, and expedition. The task of the candidate consists of preparing the usual motions and briefs of both parties to the lawsuit, beginning with the complaint. In addition, it includes whatever the judge would have to contribute in the lawsuit, such as drafting the trial record and rendering judgment. The candidate must appeal for the party that loses the case, answer the appeal for the opposing party, and render the decision of the appellate court. In some cases he must render the final decision of the court of last resort.

Instead of a lawsuit the test may consist of the drafting of a contract. The candidate is given a statement of the factual and legal aims which a hypothetical client, as one party to an agreement, and the other party to that agreement want to achieve. The contract must meet an intricate, highly individualized, legal situation. Its drafting will tax the candidate's knowledge of all legal implications, disclose his resourcefulness in achieving effectively the desired ends and in guarding against possible legal dangers, including those of legally avoidable taxation.

In the section on criminal law, his task generally consists of drafting an appeal from the judgment of a trial court to the court of last resort



(*Kassationshof*). For this purpose the courts of the country are requested to send files of actually adjudicated cases to the commission of examiners. After elimination of the documents containing the appeal and the decision of the appellate court, the file is given to the candidate, and he is expected to act upon the judgment as if he were the lawyer of the convicted defendant.

The oral examination lasts two hours for each candidate. The members of the commission are practically unlimited in the range of their questions. Anything within the frame of the nation's legal life, whether concerning private or public law, may be taken up. The amount of factual information expected from the candidate, in addition to juridical grasp and incisiveness, surpasses that of any other professional examination. It is probably because of this fact that the Austrian bar examination is a substitute for the professional examinations for judges and notaries, whereas the examinations for judges and notaries are not a substitute for the bar examination.

Unlike German attorneys, the Austrian are not appointed by the minister of justice but their names are simply inscribed on the list of attorneys after successful passing of the examination and the taking of the professional oath. This inscription is performed by the autonomous bar association, and it can be denied only for those reasons connected with professional ethics which the law recognizes. The fact that Austrian attorneys are not appointed but only placed on the list of attorneys is not a mere question of form; it was fought over bitterly by government and bar. Before the bar won out definitely in 1868, the government was in a position to keep down the political importance of the bar by refusing appointment of unwelcome liberal elements. Favoritism flourished; prospective attorneys without connections had to wait up to twenty years in the humble position of *Concipient* for their appointment.[1]

From the requirements for admission to the bar, only one exception is provided. A judge who has reached the position of a full-fledged member of a collegiate court[2] (*Gerichtshof*) and has served in this capacity for five years can demand admission without meeting further requirements. This case arises if a judge is desirous of shifting to the bar; either for improving his earnings or after he has been retired as a judge.

[1] See Geschichte der österreichischen Advokatur by Friedrich Kübl, Graz, 1925.

[2] A collegiate court is one that is composed of from three to nine judges sitting collectively. It may have either original and appellate jurisdiction or appellate jurisdiction only.

*Apprenticeship and Examination of Judges*[1]

Admission to the practical training of judges and to its concluding examination presupposes graduation from a law faculty and the taking of the three state examinations which govern the curriculum. The training, identical for judges and public prosecutors (*Staatsanwälte*), stretches over a period of three years, of which two must be served in court. The third may at the apprentice's option be devoted to work in two or more of the following places: the office of a district attorney, a private law office, the *Finanzprokuratur*, or an administrative department of the government. Not more than six months, however, may be spent in any one of these offices. The period of apprenticeship training can be extended for one year by special permission.

As to the order in which the various services were to be taken, an ordinance of March 4, 1902, provided that the first six months had to be spent with a lower court (*Bezirksgericht*), the next twelve months with a higher trial court (*Gerichtshof*), the following six months in one of the extra-magisterial activities enumerated above or with an appellate court. During the third year the judge apprentice[2] had to serve another period of nine months with the lower type of court and the last three months in the office of a district attorney. This order ceased later to be a prescribed one, but has been retained as a useful pattern.

Although the judge apprentice is already in the service of the government and draws a salary, his appointment aims primarily at educational purposes. The law of December 5, 1896, and ordinance of August 15, 1897, are very explicit on this point. The work of the aspirant judge shall not only acquaint him with the special routine of his profession, but also give him opportunity for a widening and deepening of the scientific foundations of his knowledge of substantive and procedural law. He is not to be assigned to courts with too few or too uniform cases, nor to judges who lack the qualities of a good and arduous instructor. His duties shall not be too heavy to deprive him of daily time for private study or research. He is not only to be supervised and guided in his activities but also to be given opportunity for independent judicial work. Finally, the judges, attorneys, and heads of the extra-judiciary agencies under whom he serves are charged with evaluating his achievements in writing and with sending their certificates to the president of the appellate court as the supervisor of the entire training.

[1] Regulated by the law of October 10, 1854, Reichsgesetzblatt 262, the ordinance in Reichsgesetzblatt 186 ex 1900, the law of December 5, 1896, Reichsgesetzblatt 217, and the ordinance of August 15, 1897, Reichsgesetzblatt 192.

[2] In distinction from the prospective attorney in court service, who is called *Rechtspraktikant*, the future judge while in training is designated as *Richteramts Anwärter*.



A noteworthy feature of this discipline is represented by "problem-case" courses which the court must provide. Aspirant judges are required to attend, whereas prospective attorneys, while serving their apprenticeship year in court, are only encouraged to do so. The instruction is given by especially chosen judges, who are freed for the purpose from some of their judicial work. Two hours a week at the minimum *must* be set aside for these classes. The chief objective is to develop in the apprentice legal grasp and power of adjudication, in the face of contradictory presentation and evidence. His insight into law and its significance in the social community is to be deepened, his forensic abilities are to be enhanced. Emphasis is placed on oral reporting of cases and their legal issues, and upon reviewing decisions of the highest court. The papers delivered by the aspirant judges are filed with the president of the supervising court, who in turn furnishes an annual report to the minister of justice on the accomplishments in these courses. The report names those aspirants who have excelled through independent research or otherwise displayed outstanding abilities.

The professional examination (*Richteramtsprüfung*), which can be taken after two years of apprenticeship if these have been spent in court, consists of three parts: a home-written paper; an examination in writing on two subsequent days, one devoted to civil the other to criminal law; and an oral examination, admission to which is granted only after the applicant has successfully passed the preceding parts.

The civil law portion of the written examination generally consists in the adjudication of a case involving intricate legal issues, or in the drafting of a so-called *Meistbotsverteilungs Beschluss*. This is the complicated and highly technical court decision by which the proceeds from an enforced auction of real estate are distributed among the different classes and priority groups of creditors by a court for the execution of judgments (*Executionsgericht*). Occasionally the assignment consists in drafting a similar court decision after the auctioning of chattels. In the criminal law section the candidate customarily has to furnish a writ of indictment, or the decision of the court rendered upon a defendant's appeal against such an indictment. He may, instead, be given the task of appealing from a conviction to the court of last resort, or of rendering a court decision by which a criminal procedure, after final adjudication, is ordered reopened because of new evidence or for other reasons provided for by law.

At the oral examination of two hours for each candidate any question from the total legislation in force in civil and criminal law may be taken up. The candidate must, in addition, be prepared to prove himself

informed about all legislation in the field of constitutional law, international law, taxation, and administrative law which may have any bearing on his later judicial activity. The examiners, like those in the other professional examinations, are advised not to demand or to evaluate mere memory achievements. Instead, they are expected to probe the candidate's acumen, mental flexibility, enlightened approach, incisiveness of presentation, all of which cannot be tested by memory questions or those of mere knowledge.

The examination is given by a commission of five, selected from a permanent board of examiners. The chairman of the commission and another member must be high-ranking judges. One member has to be an attorney. The remaining two may be either judges, attorneys, university professors, or high civil servants from the ministry of justice. In case of failure, the examination, like that for the bar, can be repeated only once.

After successful passing of the examination the apprentice is promoted to assistant judge (*Hilfsrichter*) by the minister of justice, and in this capacity, may be assigned to any kind of independent judicial work. He is not a full-fledged judge, however, not even on the lowest level of the judicial hierarchy. He has not the constitutional privilege of a definite place of service (*Dienstort*), from which he cannot be transferred against his will, except for a very specific reason, such as a disciplinary sentence.

When the vacancy of a judge's post of lowest rank is published, the assistant judge may on application be appointed by the minister of justice. Promotion takes place strictly in accordance with the duration of service *and* with achievement. High judicial posts can therefore generally be reached by men of advanced years only, even if their achievements have been remarkable.

*Notaries*

The Continental profession of notary has almost nothing in common with what is known in the United States as a notary public. To understand the Continental concept of a notary, we have to know that in civil law countries certain legal transactions, designated by statute, must be entered into by a special instrument executed in the presence of a person enjoying public confidence. They remain void if this legal form is not observed. The requirement applies, for example, to all conveyance of real estate, transfer of partnership rights in certain corporations, gifts between spouses or gifts without delivery, prenuptial marriage contracts, transactions with parties who enjoy special legal protection, such as minors and the blind. A variety of reasons accounts for the placing of these different transactions under the requirement. By and large, however, the decisive factor can be seen in an accentuated public interest in truthfulness and absence of fraud in these transactions, even if they are private; in the protection of contracting parties who are not fully able to take care of themselves; in the avoidance or simplification of potential litigation. Other transactions, for example, certain *assignments of claims* or certain *powers of attorney*, need not be actually accomplished in a notarial deed (*Notariatsakt*) but presuppose that the signatures in the private deed be verified by a notary. Certificates that the payment of bills or notes of exchange have been duly demanded and not obtained can only be executed by notaries —a function which coincides with that of notaries public in the United States. In the estate clearance of deceased persons, a notary intervenes in the procedure as a deputy of the court.



The Continental notary thus combines the double character of being a semi-official agent of the administration of justice and a person in whom public confidence is vested. He is a professional of high standing, and needs a legal education as thorough, even if less comprehensive, as that of an attorney or judge. In keeping with the trust reposed in him, the Continental notary acts under severe civil and criminal liability for the truth of the deeds executed in his office. The task of the Austrian notary, unlike that of the attorney, is not geared to the defense of the rights and civil liberties of private clients against encroachment from private or public sources. He is, on the contrary, charged with giving heed to the public interest in preference, if necessary, to that of the parties requiring his services.

His is not a free profession. Appointed by the minister of justice to a particular notarial district, he is permitted to practice only in this allotted district. Rigid limitation of the number of such districts—75 for Vienna, 336 for all Austria—provides notaries with large and secure incomes, enabling them to maintain their high ethical standards. Economic security, together with strict ethical supervision by the autonomous association of notaries explains, in turn, the great esteem commonly enjoyed by notaries. The intention of the legislature to set up notaries as professionals who are removed from too close connection with interests they handle, and therefore less susceptible to influence from whatever source, shows in the fact that their profession is compatible neither with any kind of civil service nor with the attorneyship. In some parts of Germany, by contrast, both notary and attorney are often combined in one office or occasionally even (with some limitations

of notarial jurisdiction) in one person, whereas, in other parts notaries are downright civil servants and cannot be attorneys simultaneously.

Admittance to apprenticeship training of the notary[1] presupposes graduation from a law faculty with three state examinations. Of the four years required, two have to be served in a notary's office, whereas the other two can be served in a law office, in court, or in both. The commission giving the final examination is set up in a manner similar to that for the bar and for the judges' examination. One member of the commission, however, must be a notary. The division of the examination into a written part and an oral part follows the example of the professional examinations already described. The written part generally consists of the drafting of a *Notariatsakt* concerning a contract or a will, whereby not only experience in the highly formal requirements but also thorough knowledge of the legal substance is tested. A notarial protest of a bill of exchange must generally be executed besides.

Owing to the limited number of districts and the requirements of appointment, the completion of the practical training and the passing of the final examination are not equivalent to the attaining of a notaryship. Most prospective notaries have to wait for many years until a vacancy occurs or until they are able to "buy" a district. They spend the period of waiting as assistants of a notary, and many never see the day of their appointment.

*In-service Training for Public Administrators*

The training disciplines for attorneys, judges, and notaries form procedures in which emphasis is unquestionably placed upon the educational purpose, and in which the trainee is still markedly in a transitional stage. They have therefore been designated as apprenticeship training. In the preparatory service for public administration the trainee is more closely integrated in the personnel of the particular department or agency, and his preparation is almost completely merged with the service for the service's sake. To say the very least, the center of gravity of this educational phase rests in participation in the daily tasks of the service. Even where attempts are made to broaden the training beyond this daily experience, the attempts merely aim at enhancing the ability of the trainee to meet his departmental duties. Hence, this training is better termed in-service training or probationary service.

With modifications dependent on the nature of the particular minis-

[1] Regulated by the laws Reichsgesetzblatt 3 ex 1876, Staatsgesetzblatt 94 ex 1919, Bundesgesetzblatt 375 ex 1921, and Bundesgesetzblatt 257 ex 1929.



try or agency, the various disciplines follow the pattern which we have encountered in its purest expression in the training for judges. Graduation from a law faculty and three state examinations form the basic, indispensable prerequisite. Admission to the probationary service constitutes provisional employment within the executive branch of government, with some characteristics of permanent employment, such as subjection to the disciplinary code.

Statutes and ordinances provide that the apprentice be given opportunity to become versed in the work of the entire department or agency, and not only in one or more of its sections. They also give orders about how this goal is to be reached by transferrals from one section to another. They finally provide that the apprentice be allowed time for amplifying his education, *as far as it has a bearing on the work of the government branch*, and that he be given theoretical instruction within the frame thus defined. Most of these gratifying principles constitute, however, to a larger or lesser degree, wishful thinking on the part of the authors of the rules for the training. In practice they are either completely neglected or inconsistently and inadequately carried out. The reader should not assume, moreover, that these educational measures rest on a truly broad concept of the training requirements. Goals, like the attainment of social perspective or of that background of general culture from which such perspective mostly arises, are left to develop fortuitously in the individual apprentice. Conscious, planned promotion of such important qualities by a combination of theory and practical experience is completely missing.

Accordingly, the general education of the prospective civil servant is neither appreciably enlarged nor deepened by the specialized or even over-all information he may be given during his in-service training. His education remains on the level which has been reached in the *Gymnasium* and later only slightly elevated by the university courses in history and political science.

Nothing is gained, of course, in this respect by the fact that some of the training programs permit the apprentice to spend a limited period of his probation in work at a court.[1] The expectation may be correct that the combination of experience in administrative and court work

[1] In 1913 plans were discussed to make the combination of administrative and court work for prospective administrators compulsory, and simultaneously to require that attorney and judge apprentices serve part of their apprenticeship with administrative bodies. The plans have not been adopted. Austrian training of public administrators rests on the conviction that the uniformity of education for all who professionally direct human behavior by application of law is carried far enough by the common study of law and political science in the university, and that thereafter strict specialization promises the best results. This too is an indication of the small degree to which a broad training for public administrators has been recognized as a legitimate goal.

could give the prospective administrator a more rounded picture of public administration and of the links between public and private law. Yet, even if use were made to any extent worth mentioning, of the opportunity, such practice alone could achieve little. It would particularly never remove the narrow, departmental, legalistic spirit with which we find the training of public administrators imbued. It is this spirit which unfortunately has, with only minor shades of difference, always lingered above the public services of most countries. It has allowed vast numbers of officials to acquire great efficiency in their specific routine, but it has molded them into persons who are primarily members of their own vocational guild, instead of internationally informed, broad-minded members of society as a whole. Although the Continent has, at times, been comparatively rich in good administrators, it must be said that officials with truly high standards owed these to individual endowment—which was not supported, but rather hampered by the spirit of the service and its preparatory training.

It must also be remembered that much of the administrative ability found in such men can more often than not be traced to the social background of the personnel employed on the Continent in the higher civil service. Owing to long-established custom, it has been a comparatively rare occurrence for a man to embark on the career of public administrator, unless his father and perhaps one or two earlier generations had already spent their lives either as officials of executive or judiciary branches or as army officers, thus creating a family tradition of public service. In Austria and Germany prior to World War I, a large proportion of the ministerial staffs were supplied by the lower aristocracy or the middle classes, hence by groups in fairly secure circumstances. The social and economic advantages which such officials enjoyed, somewhat counteracted the inadequacy of payment which exerted its detrimental influence freely upon the outlook and the human standards of those officials who had nothing to depend on but their salaries. Family background, *esprit de corps*, economic security thus accounted for much natural aptitude in Continental administrators and for some of the breadth of vision which their in-service training failed to give them. They accounted, however, also for a tendency toward bureaucratic officialdom, social segregation, arrogance, favoritism, indifference.

The influence of such circumstances could be evidenced particularly clearly in Austria, during the dictatorial era which followed the Republic. Besides a comparatively large number of higher administrators from the old monarchy, whom the succeeding government had to take over, a smaller body of younger officials came into office. This group



had been brought up under the same system of training and the same educational principles as the older group, but it belonged to a different ideological era, and was constituted of persons representing a different political organization. Yet even more consequentially, it was recruited almost exclusively from the rural stock favored by the regime and lacking in the background of family tradition which its older colleagues had had. The result was: whereas the older group consisted of comparatively broad-minded, well-seasoned men with much genuine administrative ability and some vision, the younger officials were deficient in all these points. Their work and spirit were marked by the smallness, political weakness and penury of the country, as well as by the absence of that mental heritage which had nurtured the administrative ability of their predecessors.

For a fuller understanding of public administration on the Continent, the reader's attention should be directed toward two factors, which besides having other consequences, greatly influence training and education of the Continental public official. They make on the one hand the smooth functioning of the administrative services less dependent on the initiative, outlook, talent, and training of their personnel; but on the other hand contribute to fostering the narrow and bureaucratic spirit pointed out above.

First, executive decrees and instructions, amplified by what can be termed a body of administrative common law, cover almost every conceivable situation with which the administrator may be confronted. With this aggregate of directions for his guidance, any official stands a fair chance of taking correct measures or of issuing appropriate decisions in concrete cases, *particularly if he is trained in law*. The activity of the Continental administrator thus consists largely of applying and interpreting public law in no essentially different manner from that in which judges on the Continent apply and interpret mainly private or criminal law. The importance of a legal education for the Continental public administrator should be self-explanatory from this one point of view. Second, closely regulated administrative procedure directs the formal steps of the administrator in every detail. It provides multiple administrative review and, after exhaustion of the administrative remedies, judicial review in a special court. The safeguards against arbitrariness and incompetence are thus ample and effective.

In view of these facts one is almost inclined to say that a better than average mind and more enlightenment than their present training affords them has not been needed by Continental public administrators. A considerable "plus" of both might even be seen as harmful, because

experience shows that mere routine work, whether on a lower or on a higher level, is not carried out best by men whose minds it cannot satisfy. They tend to do such work with less exactitude, zeal, and thoroughness than people with lower intelligence and poorer imagination.

These comments do not apply to those top ministerial officials who, by planning administrative ordinances and decrees and by preparing bills for submission to the legislature, actually perform the activity of legislators. Even if the men who are most responsible for policies pursued, namely the members of the government cabinets, are brought into office by political currents without having moved up through the departmental service, considerable influence still rests with the permanent officials under them, charged mainly with the technical execution of their plans. For such officials the schooling afforded by the law faculties and the subsequent probationary service in its present form have been badly wanting. Educational measures, such as planned acquainting of prospective administrators with the social, economic, ethnic problems of the population by practical experience, such as professional travels, or specialized study and practice in foreign countries under an exchange system, have not even come near to being considered.

In all types of preparatory training referred to in this section, a minimum and a maximum period of required service are set, at the end of which a professional examination is taken. Generally the minimum is one year, the maximum three years. If the apprentice has failed to pass his examination by the time the maximum period has elapsed, he can be discharged from his probationary service. The examinations represent the only, but rather effective, enforcement of additional theoretical study. The apprentice who wants to stand a fair chance of passing must not only work in as many sections of his department or agency as possible, but also undergo extensive theoretical preparation of several months. Coaching courses offer guidance and help. Some of the examinations, for instance the *Finanzprokuraturspräfung* and the *Gefällsobergerichtsprüfung*, have been rated as very difficult and known to form a considerable hurdle for candidates.

The examinations are both written and oral. They are given by commissions consisting mainly of high-ranking administrators, generally with the head of the agency acting as chairman. They test primarily the candidate's comprehensive knowledge of the laws and regulations that



concern the particular administrative branch. The great disparity of subject matter with which the various examinations deal, together with limitations of space observed by this study, excludes description in detail. It should be noted, however, that the provisions which regulate the scope of these examinations consistently demand that they not only test the adequacy of the candidate's legal information, but also his awareness of economic, political, and social implications bearing on the particular branch of service. They exact ascertainment of his ability for dealing independently and authoritatively with exceptional situations in the service with which he may be confronted. In what manner these more subtle examination goals are to be reached is not defined, as can well be understood, but left to the individual commissions.

In some agencies such as the *Finanzprokuratur* and the customs office within the ministry of finance two examinations are provided for. Those of the permanently appointed officials of the *Finanzprokuratur*, for instance, who want promotion to higher ranks must become doctors of law, and if they aspire to eligibility for further promotion must take the bar examination.

Making a second examination mandatory in all administrative branches has been considered, the purpose being that of preventing staleness in men whose positions are protected by life tenure, and of forcing them to sustain efforts at self-education. Promotion to the highest ranks was to be restricted to those who had kept abreast of developments and had been able to counteract the blunting influences of many years of routine work. These suggestions were made as early as 1904.

In that year the Austrian government published, in a memorandum entitled *Studien über die Reform der inneren Verwaltung*, the result of studies which it had instituted for the sake of improving its inner administration. With regard to the training of public administrators the document advocated: thorough reorganization of the course of studies in the law faculties; more specifically planned in-service training; the second professional examination mentioned above, to be taken after ten years of permanent appointment; and a legal claim to appointment without delay for those who had passed the first professional examination. Action was not taken on these constructive suggestions, which would have contributed much to raising the qualifications of public administrators. However, improvement of their training, as well as the enactment of a unified civil service act with statutory formulation of the duties and rights of civil servants of all categories (*Dienstpragmatik*), remained a keenly felt concern. Were it not for the mutilation of Austria

that followed World War I and the ensuing developments of the recent past, at least some of these problems would probably have been solved.

In connection with the last point of the memorandum, it should be said that the provisional status between the successful taking of the professional examination and permanent appointment often continued for many years, and almost in every case continued for some time—thus greatly lengthening the nominal duration of preparatory service. How large were the periods that used to occur can be seen from a provision concerning the *Finanzprokuratur*. If an apprentice in this agency had served five years after taking the examination without obtaining permanent appointment, he could be given the honorary title and the salary of permanent officials on the lowest rung of the promotional ladder. If no vacancy and thus permanent appointment had occurred after eight years of service, he could be given the title and salary of the officials on the next rung.

For achieving some of the results at which a second professional examination aimed, Bavaria resorted to a different, useful method that is pertinent to cite. Government officials who, by the process of promotion and transferral, had achieved positions in the central ministries were not promoted to the highest ranks unless they consented to be transferred for a specified length of time to the lower, decentralized sections or agencies subordinated to their particular ministry. This measure subjected officials who approached eligibility for high ministerial positions once more to the experience of the "out-stations," thus bringing them again into close contact with the people governed. Thereby was simultaneously made possible the transfer of other men from the decentralized agencies to the centralized ministries. One can easily understand that this exchange of officials tended to increase the flexibility and social awareness of the individuals in question.

The taking of one of the probationary trainings referred to in this section has been described as the only path on which access to positions in the higher civil service is obtainable in Austria. Exempt, of course, are cabinet ministers who are shoved into their positions by the pressure of political parties or by other accidents of political life. Even they, however, have generally a background of law training that would make them eligible for public administration. The practical distinction obtained by graduation from a law faculty, plus the completion of the respective in-service training and the taking of the professional examination, thus can be likened to a commission in our armed forces. Only those civil servants who have achieved such a distinctive character, are ever assigned to the making of decisions, the determining of policies,



or are given any discretionary power worth mentioning. Only they can expect to enter the hierarchy of the higher civil service. The lower, "non-commissioned" civil servants perform routine clerical work. Whatever their merits and length of service may be, they remain excluded from transferral into the higher civil service by law and principle.

## France

### *The Law Faculty*[1]

Admission to a French law faculty presupposes six years of grade school and seven years of secondary education in the *lycée*, the French equivalent of the *Gymnasium*.[2] Thus law students generally enroll at the age of eighteen or nineteen. They may work for one of three law degrees: the so-called *capacité en droit*, acquired by completion of a two-year curriculum; the *licence en droit*, acquired by a three-year curriculum distinguished from that of the *capacité* by greater thoroughness and scope; and the *doctorat en droit*, acquired by a two-year curriculum in addition to the prerequisite of the *licence*. The two lower degrees correspond to the duality in the French attorneyship, which duality roughly coincides with the English division of lawyership into the branches of solicitor and barrister. The degree of *capacité* forms with certain exceptions to be talked about later the theoretical foundation for becoming an *avoué* or for appointment as a civil servant of the lower brackets; the *licence* indicates the theoretical background for the career of *avocat* and for the higher civil service. The degree of *docteur en droit*, although having only scholarly significance, is sought by a large number of attorneys, judges, and civil servants—just as the doctorate in Austria and Germany is taken by many judges and civil servants, above and beyond legal requirements.

In contrast to Austrian and German law faculties, however, the French cover in their discipline for the doctorate much material which is hardly tapped in that for the *licence*. The French doctorate is therefore separated by a wider gap from the grade which has the broad practical significance than are the Austrian and German doctorates

[1] The fundamental likeness in the Continental systems of law training and the detailed presentation of the Austrian permit restricting this section, and those on other national systems, mainly to the statement of deviations. The categories used in the examination of the Austrian pattern will not be consistently maintained in view of the vastness of the field that this short study is expected to cover. The free order applied instead makes it possible to tackle our problem from a greater number of approaches than would be available otherwise.

[2] The degree of *baccalauréat* which is obtained upon graduation from the *lycée* corresponds to the *Matura* in German-speaking countries.

from mere graduation. As the main educational background for the judgeship and the higher civil service (in Germany also for the bar)[1] this stage is the true counterpart of the *licence*. The wider separation shows also in the requisite number of years. Three years are required for the *licence* and five for the French doctorate, against four for the doctorate as well as for mere graduation in Austrian and German law faculties.

French law students are required to take examinations at the end of each year. In this point France is particularly at variance with Germany, which provides a single examination at the end of the entire curriculum. In the nature of the examination, however, the French system differs more widely from the Austrian. Unlike the latter with its exclusively oral examinations, the French requires, in addition to oral examinations, written papers in any one of the disciplines for the three degrees.

As in Austrian law faculties, we encounter the contradictory feature of required courses without compulsory attendance. The lack of compulsion applies even to the exercise classes, which, like the seminars, are entirely optional. It actually surpasses that of the Austrian or German universities, because it not only survives on tacit toleration but is openly recognized as a right of the student. Apparently the annual examinations counteract so effectively shortcomings that could spring from an excessive use of "academic freedom" that any other kind of compulsion can be dispensed with.

The curriculum for the *capacité* consists exclusively of required courses, with civil law as its backbone.[2] Two-semester courses in both years are devoted to the study of the *Code Napoléon*. Public and criminal law must be taken in addition during the first year, commercial law and civil procedure during the second. Historical courses are lacking; the instruction aims directly at supplying the comparatively subordinate, professional equipment needed by the *avoué* in small towns or by civil servants in minor positions.

The discipline leading to the *licence* provides in the first year four full-year courses covering Roman law, civil law, history of French public and private law, and political economy, and a half-year course in constitutional law with special emphasis on those provisions which are designed to insure the freedom of the individual. All these courses are mandatory. In the second year again four full-year courses and one

[1] See pp. 53, 86.

[2] It is recalled that the term "civil law" is not used as designating the contrast to common law, but to public and to criminal law. See footnote [1] on p. 36.



half-year course are required: the former in civil law, criminal law, administrative law, political economy, the latter in Roman law.[1] In the third year the number of full-year courses, covering civil and commercial law, shrinks to two, and is augmented by three required half-year courses dealing with civil procedure, international private law, and financial legislation. Optional courses appear for the first time. Students must select two or more, each at least one semester in length, from the following: international law, comparative law, public law, admiralty, industrial, or agrarian, or colonial legislation.

As already indicated the courses forming the discipline for the degree of *docteur en droit* can be attended in two years after receiving the *licence*. They are grouped in four *études supérieures* and cover subjects from the following major fields: private law, Roman law and legal history, public law, political economy. Only two of these four *études supérieures* and thus two *diplômes d'études supérieures* must be taken by the candidate for the degree, and the choice rests with him. The main subject in each group is covered intensively in required courses, in addition to optional courses on related subjects. In order to be awarded any one of the *diplômes d'études supérieures*, the student must pass four oral examinations. In the groups, private law and Roman law, two of the examinations are in the main subject; whereas in the groups, public law and political economy, three of the four examinations are in the main subject. In addition to the obtaining of two *diplômes d'études supérieures*, a thesis is required, the topic of which must be taken from the domain of one of the two chosen "études." Its findings and opinions must be defended at a public discussion conducted by the faculty.[2]

We may be surprised to find that the French three-year discipline for the *licence* contains 25 semester courses, while the Austrian four-year curriculum contains only 20. The latter devotes to historical subjects—on which it places such exceptional emphasis—only two semesters more than the French plan. To civil law, which in France as in Austria includes all those subjects of private law that are treated separately in the United States, the curriculum for the *licence* devotes three years of year-round courses, as compared to merely two semesters in the Austrian curriculum.

The explanation for this seeming enigma lies in the number of weekly

[1] In his monograph, Qu'est-ce qu'une Faculté de Droit? (Recueil Sirey, Paris, 1929, p. 171) J. Bonnecasse does not enumerate this course as reintroduced by the decree of August 2, 1922, modifying the discipline for *licence*.

[2] For presentations in greater detail see: French Legal Education and Some Reflections on Legal Education in the U. S. by Francis Deák, in Wisconsin Law Review, July, 1939, pp. 473–495; and L'Enseignement du Droit en France et aux Etats-Unis by Robert Valeur, Bibliothèque de l'Institute de Droit Comparé de Lyon, M. Giard, Paris, 1928, vol. 23, particularly pp. 59–61.

hours which are devoted in France and in Austria respectively to a major course. French civil law courses, for example, occupy only three hours weekly; this number holds good for most of the other major courses, while some are only two-hour courses. The two semesters devoted by the Austrian curriculum to civil law provide for eighteen weekly lecture hours, and thus contain the same number of actual hours which the French curriculum offers in its six semesters. The same ratio applies to most other subjects, indicating that the Austrian curriculum tends to press into a comparatively short period very intensive work on a subject or a group of subjects, whereas these same subjects are spread over the French curriculum in a larger number of less intensive courses. As far as the number of required lecture hours is concerned, the Austrian law student when receiving his *Absolutorium* has covered roughly as much material as the French student has after taking both his *licence* and his doctorate.

Comparative scrutiny also discloses the following significant fact. Whereas the first non-historical courses are given in Austria only after the fourth semester, current civil law and political science are read in France from the very beginning. This sequence of studies, which has greater importance than a mere technicality or a matter of practical expediency, is one of the strong points of the French system. If a student is acquainted at the earliest possible moment with subjects close to his interests both in time and in content, he is likely to derive sufficient stimulation to undergo the rigors of an arid and forbidding discipline. That is what the French order of courses achieves. It shows the student immediately the problems of his future vocation, even if in a bird's-eye view or in narrow close-ups. It does not expect him to display a scholarly interest in legal institutions of the past, whether he has such an interest or not.

To be sure, the Austrian curriculum, with its historical courses and the jurisprudential material which they inevitably contain, lays deeper and broader foundations. Considerable insight into the growth and social significance of law, arising from these foundations, will be at the disposal of the Austrian student when he finally comes to the study of current law. The sharply outlined tripartition of the curriculum also makes for clarity in the order of his study and for concentration on the section at hand. These advantages are outweighed, however, by the immediateness and naturalness of the French curriculum, which banish from the outset the danger of mistaking the groundwork of the historical subjects for a purpose in itself. A first-year course, reintroduced by the French law faculties in 1922 and designed to familiarize



the student with legal methodology, general philosophical principles, and the fundamentals in the development of his legal system, is a partial substitute, moreover, for the advantages of the Austrian approach.

The point of superiority here acknowledged is largely the result of a long-standing deficiency in French legal education, which has a rather exceptional past among the Continental systems. The spirit of the Napoleonic era converted the French law faculties that had barely survived the impact of the great revolution into professional schools. Because of this imposed character, they were narrowly bent upon expounding the civil and criminal codes then in force. For decades these schools remained devoid of any historical, jurisprudential, or philosophical approach to law worth speaking of, and included neither public law nor political science in their curricula. Only gradually did the efforts of outstanding individuals, partly scholars and partly officials of the ministry of education, prevail in the introduction of new methods worthy to some extent of the designation "scientific," and in the establishment of a few historical courses. These changes and the amplification of the curriculum by public law and social science took place along with the foundation of Boutmy's autonomous *Ecole Libre des Sciences Politiques*, which will be discussed later.[1] The innovations represented, however, only inroads into the old dominant concern with the body of current law and thus were not able to break the preponderance of that concern. Yet whatever be the historical background of the proportion between current and ancient law and of their distribution in the French law curriculum, it cannot diminish the merits of the system as it stands at present.[2]

### *Post-University Training*

Owing to the division of the French lawyership into two separate grades, namely, that of the *avocat* and that of the *avoué*, we cannot expect to find a uniform professional training for attorneys, such as the Austrian pattern has shown.

The *avocat* is a member of a free vocation, comparable in this respect to the American lawyer or the advocates of some Continental countries. Within the bounds of rigid professional ethics he may practice his vocation at any place or in any court of the country. The *avoué*, on the other hand, is an *officier ministériel*, an appointed official within the framework of the judiciary. He is attached to a certain judicial district,

[1] See pp. 117–121.

[2] For detail see Qu'est-ce qu'une Faculté de Droit? by J. Bonnecasse, pp. 114–170.

in which he must reside, and is permitted to intervene in the courts of that one district only. His function consists of the preparation and the expert conduct of lawsuits in civil cases, with exclusion of the oral pleading, unless it is on incidental matters specified by law. From this basic rule exceptions partly of a permanent and partly of an accidental nature are in force. The entire situation is too complex to permit here a detailed delineation. It will be sufficient to say that the *avoué* represents his client in all phases of a civil lawsuit on the strength of an appointment as agent, whereas the *avocat* gives the services of a specialist for pleading in court and performs this "art" without being the representative of his party. The whole distinction between the two types of lawyers applies only, it must be stressed, to the realm of civil cases in the courts of original jurisdiction and the *cours d'appel*.[1] The services of the *avoué* are obligatory where he intervenes as such. They are thus not obligatory, for instance, in the low tribunals of the justices of the peace, in certain special courts and in the criminal courts. Unless excused for certain specific reasons the *avoué* cannot refuse or discontinue assistance in cases where the intervention of an *avoué* is required by law. His practice can be sold by him or by his heirs, subject to the control of the minister of justice.

Unlike the *avoué*, the *avocat*, whose professional limitations have much in common with those of the English barrister, however, without making him by any means the exact counterpart of the barrister, cannot be a general agent for clients, nor a liquidator or trustee. He cannot undertake commercial transactions, or the management of funds; he cannot contract or accept deposits for clients; and he cannot be an administrator, founder, or manager of a corporation; or be connected with a corporation on a retainership basis. His activity in the sphere of civil litigation is exclusively that of counseling, issuing orally or in writing juristic opinions, and of pleading in court. His services in court are not obligatory and his fees are not regulated by any tariff. A series of restrictions barring him, while he practices law, from any public office and many other occupations attempts to keep him as independent as possible from the influence of the government, or individual officials, or of business interests. It is characteristic of the self-respect and the

[1] The distinction must be viewed as a gradually vanishing survival from a more leisurely, emotional, and less "matter-of-fact" past in which courts were often more swayed by oratory than convinced by evidence. Parts of southern France and the Alsace have lawyers with all of the advocatorial functions. Outside of France the separation of functions can be found, on the Continent, only in Belgium and in principle yet without much practical significance in Italy. The countries outside of the Continent which still adhere to separation are: England, parts of Australia, and Tunisia.



professional standards of his group that it does not allow its members to sue clients for fees.[1]

Much as the practical training of the *avocat* and that of the *avoué* differ, they are alike in that neither includes a professional examination. After completion of an apprenticeship, called *stage*, and the fulfillment of other legal requirements, the name of the candidate for *avocat* is simply put on the list of *avocats* by the Council of the Order,[2] whereas the candidate for *avoué* is appointed by the president of the French Republic on recommendation of the minister of justice. Neither the *avoué* nor the *avocat* serves a part of his *stage* as a court official.

Admission to the *stage* of the *avocat* presupposes, as suggested earlier, the degree of *licence en droit* as a minimum. This degree is, however, often replaced by the doctorate, or supplemented by a *licence ès lettres* (liberal arts degree). Applicants have, moreover, generally completed two or three years of *stage* in the office of an *avoué* or an *agréé* (a lawyer practicing exclusively in the special tribunals for commercial cases). They have done so frequently by carrying on their course of studies simultaneously with the work in one of the aforementioned offices. The applicant must be a French subject[3] of good moral standing and, upon the granting of his request, take an oath as *avocat stagiaire* at a public session in court. The duration of the *stage* is three years. In his character as *avocat stagiaire* the apprentice is permitted to appear and plead in court. Although he may, on principle, gain the experience he needs by handling only his own cases, he generally attempts to be appointed secretary of a noted *avocat*, the so-called *patron*, thereby promoting his career favorably. His work then mainly consists of defenses in criminal cases to which he is assigned by the *bureau de l'assistance judiciaire* (which signifies the French, public version of legal aid), of the so-called *consultations gratuites* (free legal counseling) which he is expected to give in court to indigent clients on two or three days in the week, and of the legal work for his *patron*. A certain amount of continued theoretical training is offered by the so-called *conférences*, organized by the bar. Attendance is compulsory and the apprentices are themselves expected to take turns in giving lectures. The candidates compete in an annual procedure of evaluation (*concours*) for the appointment as

[1] Until recently violation of this rule resulted in disciplinary disbarment. The practice has lost rigidity, however, and at present a few *barreaux* (local bars) permit their members to sue for fees.

[2] An executive committee of the French bar association (*ordre des avocats*), headed by the so-called *bâtonnier*.

[3] This requirement is not, as one might believe, an upshot of postwar nationalism. Oddly it was introduced, against opposition, in the era of nineteenth century liberalism. A corresponding requirement applies to other Continental countries, among them Austria, Germany, and Czechoslovakia.

*secrétaire de la conférence*, an honor much desired because of the high recommendation which it implies. Participation in the *concours* is of course likely to enhance knowledge and qualification. Another educational device, designed to offer the apprentice advocate some professional theory in addition to his practical experience, is the so-called *colonne*. In these meetings members of the bar induct the maturing generation of advocates into the traditions and practices of the profession.

Admission to the training of the *avoué* presupposes the degree of *capacité* as the minimum of educational background. Yet in major cities the *chambres de discipline*, which is the name for the professional organizations of the *avoué*, usually make admission to the *stage* dependent on higher law degrees. Where the application is still possible on the strength of the *capacité*, the *stage* demanded for holders of the *capacité*, will be five years; for holders of the *licence* or the doctorate only two years. The *chambre de discipline* of Paris insists in every case on a *stage* of five years. The prospective *avoué*—like the *avocat*—must be a French subject. An age limit bars applicants who are too young. As pointed out earlier, a professional examination need not be taken. The guarantees implied by such an examination are replaced, however, to some extent by the requirement of a certificate without which the candidate cannot be appointed. This certificate, issued by a committee of the *chambre de discipline* of *avoués*, must not only attest the candidate's good moral standing, but also his ability to meet the duties of the profession. Moreover, the candidate has to supply a favorable report about himself, a kind of recommendation, from the tribunal or court in whose jurisdiction he proposes to practice. Continued theoretical training of any consequence is not provided for in this apprenticeship.

For the sake of completeness, mention is made of a third kind of attorneyship existing in France, which is the *avocat à la cour de cassation*. This term designates a limited number of advocates who appear before one court only, the court of final appeals, called *cour de cassation*. Because this court does not deal with questions of evidence, but only with issues of law, its procedure is very simple. The admission of a type of lawyer that combines the functions of the *avocat* and the *avoué* in one person has therefore been deemed appropriate.[1] The training, consequently, is a combination of features from the disciplines for both kinds of attorneys, together with others from the discipline for prospective magistrates. The required three-year *stage*, for instance, has to be served in a court of appeals, like the *stage* of prospective magistrates. A professional examination must be taken. The educational basis of this group, which forms a special bar, is the *licence*. Like the office of the *avoué* or the notary, the office of an *avocat à la cour de cassation* is generally purchased by a qualified successor from a retiring predecessor or his heirs.

[1] It may be added that this type of attorney is also entitled to appear before the extremely important French administrative court called *Conseil d'Etat*.



The French magistracy is usually spoken of as divided into two groups, one of them called the *parquet* or *magistrature debout*, the other the *magistrature assise*. The former group, comprising the different ranks and types of public accusers, corresponds roughly to our district attorneys and attorney generals. The *magistrature assise* consists of the judges of the regular tribunals and courts, in short, of the judges proper.

Appointment to a position with either group presupposes the degree of *licence*, and a two-year *stage* in a court of appeals terminated by the successful taking of a professional examination. After the aspirant magistrate has taken the examination, he has to serve another two years as unpaid *juge suppléant*, or as *attaché titulaire* in the department of justice. Not until this additional "in-practice training" has been completed, will he be promoted to the position of a paid *juge suppléant* or *substitut*. In the case of an outstanding examination, however, the commission of examiners may recommend an aspirant for immediate appointment as *substitut*. The requirements of the training and appointment for candidates to the *magistrature assise* and to the *parquet* are at variance only in minor details. The appointment itself is made in both cases by the president of the republic: that to the *parquet* on recommendation of the minister of justice, that to the *magistrature assise* on recommendation of the *garde de sceaux*, a special official in the department of justice.

Since French magistrates of both varieties must take professional examinations and serve a *stage* in court or in the department of justice, a wider gap exists between their training and that of French advocates than between the training of Austrian or German magistrates and attorneys. Nevertheless, a transfer from the French magistracy to the attorneyship and vice versa is possible and the requirements for such a transfer are formulated by law. We must keep in mind, however, that the French magistracy (like the Continental in general and in contrast to the Anglo-Saxon) is a career magistracy. Only in rare cases will magistrates be appointed to a high position without having worked up from the lowest ranks according to a schedule of promotions. The system

of career magistracy causes shifts within the different branches of the legal profession to be far more infrequent than in the United States or in England.

The concept of the French notary corresponds to the general Continental pattern with the modification that the French notary is simultaneously a civil servant and an *officier ministériel.* Candidates for the *notariat* must be French citizens, at least twenty-five years of age, and are required to take a *stage* of six years. If they are holders of the *licence*, the *doctorat en droit*, or of the diploma of a recognized school for notaries, the duration of the *stage* is reduced to four years. Two years of the six-year apprenticeship or one year of the four-year apprenticeship must be served in the capacity of *premier clerc.*[1] A professional examination is mandatory, no matter whether the applicant serves the longer *stage* or, because of a degree or diploma, is entitled to the shorter. Judges, *avocats*, *avoués*, and other *officiers ministériels* with specified durations of previous service can be appointed notary on the strength of a one-year *stage* plus professional examination.

The short outline of French post-university law training which the limitations of this study have permitted to give, will, it is hoped, disclose sufficiently, that the training, expressive of the French reliance on individual talent and effort, and based almost entirely on practice, fails to contain those arresting features that give to Austrian and German apprenticeship their pronounced character and usefulness. Post-university law training for the preparation and selection of civil servants is practically nonexistent. Young civil servants naturally acquire some of the knowledge, experience, and administrative skill needed in the course of their employment. This fact, however, is not the result of planned training, let alone of continued *law* training.

The reasons for the retarded condition of French apprenticeship and the continuing lack of any organized system for the education of public servants according to the standards of a complex and highly industrialized society, are deep-rooted. We restrict ourselves here to pointing to two facts which obviously are themselves only an expression of deeper influences. They are: the traditional French reliance on individual alertness and sagacity as the main sources of administrative ability, and the tendency to overrate the contribution of the French law faculty, excellent as it is. As a result, the concept of law training as a

[1] Promotion to this rank can be only awarded after the apprentice has taken an oral and written examination, given by the professional organization of notaries.



compound of preparatory study and apprenticeship has failed to take root in France as deeply as in other Continental countries.

Even the relatively most developed part of French post-university law training, namely, that for the *avoué*, for magistrates, and notaries, lacks, when compared to the German or the Austrian system:

1. *Thoroughness.* The training, except that of notaries, is not only shorter in time but also less balanced and carefully detailed in program.

2. *Continuation of theoretical studies.* In the preparation of attorneys this omission results from, and tallies with, the lack of a professional examination. The *conférences* of prospective *avocats* are insufficient to counterbalance this deficiency or to constitute real post-graduate training.

3. *Training on "both sides of the fence."* Prospective attorneys do not have to serve as assistants of a judge in court, or even less with an administrative department, as German attorneys must. Nor do French judges and the members of the *parquet* have to serve in private law offices and general administrative bodies.

### *Recruitment of Civil Servants*

Although not so dominantly as in Austria and Germany, the study of law in a university represents also in France a highly recognized educational background for men in the higher civil service. The *Ecole Libre des Sciences Politiques*, which will be spoken of later,[1] in addition to a number of more specialized schools, all of them approximating university rank,[2] sends, it is true, a considerable percentage of prospective administrators into the public service, particularly into the diplomatic corps, the department of finance, and administrative bodies of a specialized or technical character. Except for the competition afforded by these schools, however, the law graduate is still the favored candidate for public administration. The mental aptitude and educational background expressed by the degree of *licence* are still regarded as the standard for meeting the diversified and changing demands of this service and for developing administrative talent. Since France has no general statutory regulation concerning the requirements for appointment of higher public servants, legal education is demanded or favored by the employing departments as a matter of actual observance and not as a legal prerequisite.

[1] See pp. 117–121.

[2] For example, the *Ecole des Hautes Etudes Sociales*, *Ecole des Hautes Etudes Commerciales* *Ecole Polytechnique.*

French administrative departments and agencies, in contrast to those of most other Continental countries, determine their own entrance requirements and procedures individually. The procedures are called *concours* and in all of them a large role is assigned to competitive examinations. In the field of general administration these examinations, usually given in a deplorably mechanical manner, amount to tests of intelligence, culture, and, in part, information. Candidates are able to prepare for them adequately in short cram courses. Once the appointment of those who successfully emerge from the *concours* has taken place, no further organized training is provided for. Continued training in applied law, be it only in the administrative law of the specific department—let alone a comprehensive professional examination or theoretical post-graduate and post-appointment education such as have increasingly been introduced in Austria and Germany—are entirely unknown in the recruitment of French civil servants. Promotions, it is true, are often made dependent upon the results of renewed competitive examinations. This requirement, however, fails to contain the element of continued professional training so characteristically used by other Continental systems as a basis for the selection of civil servants and the improvement of their services.[1]

## Germany

### *The Agreement of 1930*

Any presentation of German law training is complicated by the political decentralization of imperial and republican Germany which caused German law faculties, until 1930, to differ widely from one another, and by the frequency of reforms introduced subsequent to World War I. To make things worse, a wealth of suggestions for change must be dealt with. Although not carried out, they are essential to an understanding of German law training and its development. The frequency of reforms is only in part accounted for by the political unsteadiness of Germany's last decades. To some extent it has sprung from the industrious co-operation of government officials in charge of supervising and improving the training with members of the law faculties.

It will be helpful to distinguish three periods. The first is the time

[1] For a detailed presentation and evaluation of the French public service and its selection of personnel, see "Public Personnel Management in France" by Walter R. Sharp, in Civil Service Abroad, McGraw-Hill Book Co., New York, 1935, pp. 81–157.



from 1878[1] to 1930, when a limited unification of training was agreed upon. The second era is the time between 1930 and 1934, marked by the results of the agreement of 1930. The third, since 1934, is stigmatized by the changes introduced by the National Socialist regime. The innovations of this third period are interesting inasmuch as they reveal with rare bluntness the ills of the connection between politics and education, and as they have carried into effect a few constructive ideas of the preceding republican era.

Prior to 1930 it was hardly possible to speak in general terms of a German law training. There was only Bavarian, Prussian, Saxon law training, and so on. As mentioned, the curricula and requirements of these various states were at variance in more than mere detail. In fact only a few basic features were regulated by federal statute.[2] These provided that the passing of the two juristic state examinations formed the required qualification of a judge, and that nobody could become an advocate unless he had the qualification to be a judge. Admission to the first juristic examination was made dependent on completion of a university course of law studies of six semesters, at least three of which had to be spent in German universities. Between the first and second juristic examination three or more years had to be spent in preparatory service with the courts, or in a lawyer's office. Decision was left to the state governments whether in their territories a portion of this time, up to one year, should be devoted to work in administrative departments. Everything else concerning the training remained unregulated and thus a concern of the states.

On September 20, 1930, following negotiations and consultations which had begun in 1928, an agreement between the governments of all German states except Braunschweig provided some uniformity. The agreement, published by the German federal government under the designation *Richtlinien*,[3] contained the following provisions and principles:

1. The length of curriculum of those law faculties which previously had been six semesters is increased to seven. In suitable instances, however, permission can be obtained for dropping the seventh semester.[4]

2. Presentation of the fundamental ideas and the essential principles of law, with constant emphasis on historical, economic, and systematic

[1] As marking the enactment of federal legislation which engendered some unification.
[2] Gerichtsverfassungsgesetz, May 20, 1898, Reichsgesetzblatt pp. 371 ff. and Rechtsanwaltsordnung, July 1, 1878.
[3] Reichsministerialblatt 547, September 20, 1930, digested in "Juristische Ausbildung" by Fritz-Somlo, in Handwörterbuch der Rechtswissenschaft, vol. 7, 1931, pp. 203–229.
[4] Some states had introduced seven semesters long ago; others even eight.

implications, is acknowledged as the task of university instruction. Historical studies are to be made subservient to the understanding of the law in force. Data and detail, which are a burden to the memory, are to be banished as much as possible from all subjects.

Why was the function of university instruction thus formulated? Had this very concept not been dominant in Continental Europe, and hence in Germany, before? These questions may be slightly less puzzling when we learn of the existence of trends which pointed toward an opposite concept. While the discussions which led to the agreement were still going on, the Prussian *Kultus Ministerium* pursued an incisive reform of law training in Prussia and, as a result of conferences with faculty representatives, issued a *Denkschrift* (memorandum) which later will be given in full.[1] The universities outside Prussia, realizing that the plan indirectly affected vital interests of all German universities, examined the move of the Prussian ministry and voiced their opposition in several blunt declarations. The intended reforms were said to amount to a simplification and professionalization of legal education, which, if carried out, would debase legal education to the level of preparing legal technicians, instead of jurists equipped with a preparatory scientific background for a subsequent professional training. The high rank and esteem enjoyed by German jurists in past decades had rested, it was asserted, exclusively upon the "*geistigen*"[2] character of the foundations of their training. These foundations had succeeded in deepening and amplifying the subsequent practical training, and thus had extended the scientific approach into the actual application of the law. Wilhelm Dibelius, well-known professor of English literature of the university of Berlin, was quoted as saying that the basic idea of a university was becoming less and less understood. A university was not a professional school in which lawyers, physicians, and teachers were to be acquainted with the subject matter of their future professions. If that were the goal of a university, the lecture method certainly would be a clumsy means! What the university strove to convey was not knowledge but a mental attitude, leading to a quick, unbiased penetration of problems.

The existence of trends toward simplification and professionalization was naturally known to the men who convened for the drafting of the agreement, even before the *Denkschrift* could be denounced for having given these trends the status of an officially advocated program. Thus it appears understandable that the parties to the agreement deemed it

[1] See pp. 89–97.

[2] The vagueness in which "*geistigen*" is used here makes it impossible to decide whether the word should be translated by terms like "spiritual," "intellectual" or by the more modest terms, "theoretical," "systematic."



necessary to combat such trends and to restate a principle of university training which should not be abolished.

3. Because of the constitutionally guaranteed freedom of teaching in universities, the agreement refrains from issuing any definite rules concerning method. It maintains, however, that a closer contact between teachers and students should be promoted by using conversational methods of teaching, instead of lecturing, wherever feasible, and by reducing the size of the exercise classes. In order to achieve as close a contact as possible between the pursuit of legal science and the practice of the legal professions, the teaching staffs are to be opened to practitioners after consultation with the faculties.[1] In the selection of university teachers, exclusive emphasis on scientific achievements—so long prevalent in Continental universities—is to be counterbalanced by making teaching ability an important consideration.

4. In recognition of their increased importance, public law and the economic sciences, including *Privatwirtschaftslehre* (business management), are to be stressed in the curriculum. *Particular emphasis must be placed upon illuminating the interrelation between economic processes and the legal order.*

5. Instruction in criminal law should include introductions to the auxiliary sciences such as criminology and criminal procedure.

6. Attention is to be paid to a widening of the general educational background of students. For this purpose they should attend lectures of their own choice in subjects such as philosophy, history, physical and technical sciences; not as a kind of entertainment but as a serious occupation.

### *The Curriculum*

In spite of the common elements introduced into German legal education by the agreement of 1930, one must still resort to synthesizing what might be called the basic pattern, if more detailed information about the curriculum up to 1934 is to be given. The basic program of studies, so derived, contains almost the same courses that were described in the Austrian curriculum, except for the fact that emphasis is naturally centered on German instead of Austrian institutions and forms of organization. Repeated enumeration of these courses can therefore be omitted, as the limitations of space suggest. The corresponding subjects, however, are offered in a conspicuously different

[1] The text available to the author makes it impossible to decide whether these consultations were to take place in every individual case of appointment or more generally; or what should happen if the faculties disagreed.

order. In contrast to his Austrian counterpart, the German law student is given much leeway in deciding upon an individual plan for organizing his study. The faculties generally recommend a reasonable plan and certain major courses are required in the sense that they have to be taken before admission to the only examination can be obtained. Aside from this implicit compulsion, students are not directed by any set prescriptions in the order of their study. Attendance at lectures is not effectively controlled. Exercise classes, however, must be attended. Without certificates of such attendance in at least five subjects, one of which is public law, the student would not be admitted to his final examination. Because exercise classes have offered—previous to the introduction of discussion groups and coaching classes—to average students and to teachers alike, the only opportunity before the final examination for judging the student's progress and choice of material, they have been and still are particularly important in Germany.[1] It is probably because of this importance that the cherished principle of academic freedom of learning has here been breached.

Although study plans recommended by the faculties vary from university to university, students, by and large, devote the first semester exclusively to historical and introductory courses. These generally include the history of Roman and of German law, the institutions of Roman law, and a brief survey of present-day law. Occasionally these courses are amplified by others on the general theory of the state and on basic theories of economics. To the long-established among the first-year courses, four class hours a week are devoted; those of "lesser importance" are covered in two hours a week. In the second semester students usually begin with the study of current law by taking a course on the general part of the civil code (*Bürgerliches Gesetzbuch*), in addition to a course in one specific division of that code, such as contracts or torts. Criminal law too is taken up in the second semester and an advanced course in economics is often added. In the second and third years civil law and civil procedure, criminal law and criminal procedure, commercial law, the law of bills and notes, administrative law, philosophy of law, constitutional law (*Allgemeines Staatsrecht*), and canon law are selected in various orders and combinations.

The weekly number of class hours of the German student averages twenty-four. Of these approximately eighteen are devoted to lecture classes, the remainder to exercises and seminars in two or three sub-

[1] Prior to the reforms of the Nazi regime, Bavaria had a *Zwischenexamen* similar to the Austrian. Passing it was a prerequisite for admission to the final examination, called as in other German states, *Kleine Juristische Prüfung*. The *Grosse Juristische Prüfung* had to be taken at the end of the apprenticeship training.



jects. The kind of work done in the exercise classes and the seminars is basically the same, consisting of discussion of problem cases and the preparing of six to nine papers during the semester. Since the seminars are attended by selected groups of particularly zealous or gifted participants, work centers upon more complex or broader problems[1] and emphasis rests more strongly on research.

The sole examination is both written and oral. The agreement of 1930 states the purpose of this examination as testing "whether the candidate has devoted in his academic study successful efforts to amalgamating the principles of a scientific attitude and of scientific thinking, and whether he has acquired in the field of the legal sciences, as well as in the economic sciences, that measure of systematic knowledge and insight concerning the problems of his future profession which makes it possible to *admit*[2] him with a fair chance of success to the preparatory service" in which the candidate's designation is *Referendar*.

Because of this scope the examination is commonly designated as *Verständnisprüfung* (test of understanding as contrasted with test of knowledge) "with particular emphasis on systematic and comprehensive theory, characteristic of all science." It is given by boards or commissions sitting in some states at the seats of the appellate courts (*Oberlandesgerichte*), in other states at the universities. The written part consists of a home paper which the candidate has to prepare within six weeks, and of four papers to be written under supervision on four separate days within a period of two weeks, with five hours allowed for each paper. For the home-written paper the use of all materials available is permitted; for the papers which are written under supervision (*Klausur*) only the text of the codes without annotation is allowed. The task which the candidate is expected to accomplish in his home paper generally consists of rendering the decision of a case involving difficult problems from several branches of law. The topics of the papers written under supervision are taken from civil law, legal history,[3] criminal law, administrative or constitutional law. The oral part has to be taken immediately after the writing of the four papers. It is given on two successive days by a commission of four members on the first day and three members on the second day. The commission of the first day must include at least two university professors, that of the second day at least one, while the other members may be high-ranking

[1] For a detailed presentation of the problem-case method in German exercise classes in comparison with the American case method, see: "Law Faculties and Law Schools: A Comparison of Law Education in the United States and Germany" by Max Rheinstein, in Wisconsin Law Review, January, 1938, p. 1.

[2] Italics added.

[3] Made compulsory in 1934.

civil servants such as judges, public prosecutors, or practicing attorneys.[1] In case of failure the examination can be repeated once, in exceptional instances, twice.

Passing the examination forms the main prerequisite for admittance to the practical training as *Referendar*, and thus is an obligatory stepping stone to all branches of the legal profession including that of civil servant in a higher administrative capacity. Success in the examination plus graduation from the law faculty do not result in the award of the doctorate. The taking of this degree is a practical necessity only for a small fraction of the graduates, since in Germany not only the career of judge and government administrator is open to a graduate who has passed the final examination but also the practice of law as attorney. Graduates who want to take the doctorate as a basis for an academic career or for reasons of prestige must fulfill additional requirements varying from university to university. Generally they consist of filing and defending a doctor's thesis and the passing of an oral examination corresponding to the *Rigorosa* of the Austrian universities.

### *Training as Referendar and Assessor*

Prior to the changes introduced by the agreement of 1930 apprenticeship in several German states had been divided into a discipline for prospective attorneys, notaries, and members of the judiciary on the one hand, and into a discipline for prospective administrators on the other. This situation persisted at least legally, even if it was more and more discarded practically. Apprentices of the first-mentioned kind were called *Gerichtsreferendare*, those of the second *Regierungsreferendare*. The duration of the disciplines had generally been three years in either group, and in either the aspirants had had to work in the courts as well as the administrative departments; only the work had been apportioned differently in the two types of apprenticeship.

The unified apprenticeship, introduced in 1930, increased the training period to three and a half years and provided that even this extended period could be ordered prolonged in individual cases, if the supervisors of the training believed that parts of it had not been completed with satisfactory success. Of these three and a half years, at least two must be served in courts, at least six months in the offices of a lawyer or notary, and at least another six months with an administrative department or agency of public character.[2] Within the frame of the two-year

[1] In 1934 both commissions were increased to five members. The chairman among these had to be a judge or public prosecutor. One member had to be a practicing attorney.

[2] In keeping with the purpose of conveying the large aspects of public government and of testing the candidate's aptitude for administrative work in general, apprentices were not employed with agencies serving highly specialized needs nor with those enterprises and institutes which were run by government departments but could as well have been operated by private corporations.



period devoted to court work, the apprentice can, for a limited stretch of time, be employed in the offices of a public prosecutor or in the administration of a prison. The previous specification of the courts in which service had to be given was dropped. Besides his practical work the apprentice must attend theoretical classes, and is expected to derive from this post-graduate work a more specific insight into the theoretical foundations of his activity. The apprentice, now called *Referendar* without further distinction, becomes by his admission to the practical training, an employe of the government and subject to civil service discipline. He does not, however, draw any salary and can be awarded financial help only if the continuation of his training would otherwise be impossible. After satisfactory termination of the service the *Referendar* can apply for admission to the second, final juristic examination.

The reader who is particularly interested in the German recruitment of administrators may be surprised at the shortness of the period which this unified training program allots to service with the executive branch of government. Six months are obviously not sufficient to give the wealth of experience which is requisite even on the lowest rung of public administration. The minimum of two and a half years which a prospective administrator has to serve with the judiciary and in the law office, on the other hand, seems comparatively too long for his needs and purposes.

It must be kept in mind, however, that the passing of the second juristic examination which terminates the training as *Referendar* affords the candidate no claim to being appointed on a permanent basis, but only eligibility for such an appointment. Before granting permanent positions most German states, as a matter of custom, have long demanded a period of additional probationary service.

This additional probation is taken in that branch of government work which the prospective official has chosen as his career. It thus amplifies adequately the limited practical experience in *general* administrative service which the training as *Referendar* has offered every fully trained jurist, no matter whether he is going to be judge, public prosecutor, attorney, or administrator. Whereas the Austrian system relies exclusively on specialized apprenticeship for the preparation of its administrators, the German employs a unified apprenticeship of general character supplemented by specialized probation.

The agreement of 1930 did not specify the manner in which the

examination that follows the apprenticeship as *Referendar* is to be given, nor its purpose. But by contrast to the purpose of the first examination, that of the second can be described as testing whether the trainee has definitely acquired an adequate measure of those abilities which he is expected to have as a judge, attorney, notary, or officer in the higher civil service. In spite of this basic difference of emphasis, the second examination consists formally of the same three parts that we have encountered in the first juristic examination, namely, a home-prepared paper, a part in writing, and an oral part. Of the five papers which generally must be written under supervision, four call for elaborately argued decisions in cases which involve intricate issues of private (substantive or procedural) law. Most of these assignments represent cases which have been decided at some earlier time by the courts. The last of the four papers involves questions of public (constitutional or administrative) law. The commission giving the oral examination consists primarily of judicial and administrative civil servants, but attorneys and professors of law are also eligible.

Success in the second, the "great" juristic examination, ends the provisional appointment of the apprentice without replacing it automatically by permanent appointment. The *Assessor*, as the former *Referendar* is called after the taking of the second examination, must apply for definitive appointment either with the judiciary or with an administrative department. If he has chosen the career of an attorney, he may, however, have himself appointed as such by the minister of justice. In the discussions which led to the agreement of 1930, the suggestion was made that the additional training upon which definitive appointment customarily depended be converted into a legal requirement. The first year and a half of employment subsequent to the second examination would, according to this suggestion, have formed a period of probationary service with roughly the same program as that of the *Referendar* training. The agreement failed to adopt the plan, but expressly confirmed the right of the states to introduce the additional service as a legal requirement of permanent employment. Most states, however, used this right only to the extent of empowering their executive and judicial departments to introduce the additional training period in their individual jurisdictions. Prussia alone made the added probationary service a formal requirement, until finally the National Socialist regime introduced it throughout the Reich.

Among the capitalistic countries which are representative of Continental law training, Germany is the only one which has realized efforts for offering to its civil servants continued education after permanent



appointment in a sizable and firmly organized manner. This continued education is not compulsory and owes its existence to the initiative of the civil servants themselves. It affords them, however, a substantial chance for broadening their education and interests far beyond the orbit of departmental demands and routine, and of keeping both education and interests thus extended.

The *Vereinigung für Staatswissenschaftliche Fortbildung* has importance for the higher civil service. It provides for the delivery of lecture courses by scholars and outstanding practical authorities in the political sciences. The courses have met with much interest and are eagerly attended by ambitious and progressive members of the departmental staffs. Leaves of absence for the purpose of attending these courses are readily granted to men living at long distance from the seat of the *Vereinigung* or its branches. Other institutions for continued education of civil servants either apply to the middle and lower ranks of the civil service or aim at improving technical aspects of the administrative work, such as office management.

### *The Denkschrift of the Prussian Ministry for Education*

The year 1930 marked a peak of endeavor for the improvement of German law training. In addition to the agreement between the German states, Prussia energetically pursued on its own a reform of legal education. The ministry charged with the supervision and improvement of education invited a number of teachers from law faculties for consultation and discussion in order to determine the aims which the reform should meet and the lines along which it should be effected. The essence of the discussions was published in the form of an official pre-announcement of the reforms, but represents in fact a platform for further discussion.

The 16 points listed by this *Denkschrift*, as well as the reaction to the plan from universities outside Prussia and from individual authorities, should be of great interest to anyone concerned with the improvement of legal education. For reasons of space this study can give the 16 points only very much condensed and can merely touch upon the reception they met. No attempt has been made to iron out the inconsistencies in the document and its somewhat confused order, because they reflect the complexity of the problems encountered and the divergence in thought.

1. This point contains an enumeration of poorly related postulates and grievances declared to be basic. The scientific (research) aims of

the law faculties are sufficiently taken care of in the present organization. Reform must in the main be a reform of the *teaching*. The ratio of teachers to students in German universities has deteriorated since 1913. In that year there was an average of one teacher for every 27 students. In 1928 there was only one teacher for 46 students. Deterioration in the law faculties, however, has been much more pronounced. In 1913 there was an average of 51 students to each teacher; in 1928, an average of 111 students. Facilities and libraries for seminars are inadequate in view of the great number of students. A large proportion of those who enroll in the law faculties lack aptitude or a genuine urge for scholarship. It is because of this and the ensuing migration of students to coaching courses that the teaching at the law faculties cannot be fully effective. These defects are aggravated by the shortcomings of the educational background of entering students. The growth of the totality of law and the swelling of the individual fields result in badly overtaxing the capacity of students. They cannot be expected to master the materials in the number of semesters prescribed at present. Law students must be brought back to the universities by creating the facilities which are truly needed, and by placing emphasis to a larger degree than previously on the function of teaching. Although more emphasis must be placed on giving theoretical preparation for the practice of law in the various branches of the legal profession, deepened scientific education for particularly qualified students must simultaneously be procured to a larger extent than before.

2. Points of view which bear on the length of the course of studies are discussed. All Prussian law faculties are found to be in favor of an increase of curriculum semesters. Since, however, a substantial part of public opinion opposes any lengthening of law training, the present seven semesters (which the agreement between the German states provides) should be retained. Yet (in contrast to the agreement) the reform should give liberty to *any* student to crowd his studies into six semesters.

3. One of the basic aims of the reform must be the "unburdening" of students but the "deepening" of their learning. Attention is therefore focused on what materials studied at present can be eliminated or condensed. Courses in the historical subjects need to be curtailed. The interest of contemporary youth in historical lectures can be kept alive only if the amount of these lectures is brought into proportion with the number of those on other subjects. Curtailment is, however, not applicable to Roman law, which is viewed as important for penetrating into other European legal systems, and moreover, has been already



sufficiently reduced during the decade prior to 1930. Germanic historical law should equally not be reduced. The reason given is that Germanic law forms an important international expedient in the intercourse with Anglo-Saxon countries. If the subject, principles of Germanic law, is broadened, following an existing trend, to cover general comparative law, potential opposition to the course will be diminished. Both historical subjects (Roman and Germanic) must be viewed from the angle of broadening the student's general education, which is a fundamental concern of the reform. Thus any considerable restriction must be refused.

4. Other potential restrictions of materials are considered. The well-established basic fields which roughly correspond to those strictly legal fields which are split up in this country into the courses called "bread and butter courses" cannot be reduced appreciably. Newly developed fields of law, however, deserve even more protection from curtailment. It is, for instance, out of the question to diminish the teaching of labor law, which generally interests students particularly because of the vitality of its issues. The same is true for that new and not yet clearly defined area of economic law called *Wirtschaftsrecht*. International law and international private law have hitherto been taught in Germany much too little and demand more attention in the future. With regard to these new materials it is not sufficient if the student learns in the well-established courses to think as a jurist; these materials must be taught specifically. The reason why this is necessary consists not only in the fact that law training must acquaint students with the fundamental legal thinking of the present day. Even from the viewpoint of method it would be unjustifiable to exclude those very subjects in which, for immediate financial or political reasons, the practical-minded student is particularly interested.

5. The question is discussed whether the curriculum ought to be amplified by courses in sociology and economics. Some believe that the study of economics represents a means to protect the young jurist from an insufficient sense of reality. On the other hand, concurrent opinion denies that the simultaneous training of a man as a jurist and a full-fledged economist is possible because of the overtaxed capacity of students and the basically different method and philosophy which dominate these two branches of science. Hence an increase of courses in economic subjects is not desirable, except for business management which is of such great importance for jurists. In addition, more emphasis should be placed upon the pointing out of economic implications

in the legal courses themselves. Where possible, joint seminars for law students and students of the economic sciences should be created and conducted by teachers from both departments.

6. In view of what has been stated in the preceding points, the "unburdening" of students can be achieved only by reduction of the number of hours devoted to the different courses. If the drafting of model schedules is not to remain a futile exercise, resulting in "fictitious" rather than in useful plans, the allotment of hours must be more closely determined by the capacity of students. Decrease in hours should apply mainly to the great systematic lectures. Some authorities believe that these lectures have become obsolete and ought to be supplanted entirely by private study in some combination with readings, discussion groups, and talks.[1] Others, however, still view the systematic lecture as the very core of instruction in law. Hence only a restriction of systematic lectures can be contemplated, in favor of exercises, discussion groups, and the planned talks, from which a "loosening up" of the teaching method may be expected. The fields of law to which reduced attention could be paid with least damage are procedure, private law, general theory of government and of public law, and taxation. The curtailment of procedure appears permissible because it cannot be easily understood without practical experience. The model plan later given by the *Denkschrift* is pointed to, for details concerning the distribution of hours.

7. The general courses, which should merely furnish introductions into their particular fields and thus be reduced to a minimum, are to be supplemented by specific "deepening" courses on an elective basis. One of the discussed plans was designed to create interconnected sets of deepening courses, grouped around a specific branch of law according to the needs of the individual student, with some of the courses forming "*Vorzugsfächer*" (subjects of special importance). In spite of the obvious usefulness of this plan, which would provide a broad outlook over the total province of juristic science and simultaneously intensified knowledge in limited districts of specialization, adoption has not been deemed possible. Careful examination has proved that instead of "unburdening" only an added burden would result. Hence, the choice of deepening courses must be left to the individual student, and he should only be admonished to beware of a dispersal of his interests.

Of the examples of deepening courses which the *Denkschrift* enumerates, the following will suffice to show that they include, without

[1] For definition of "talks" see p. 94.



any grouping, several and very different categories of courses. What they have in common is merely the fact that they are additional courses which are intended to convey intensified knowledge, on specific fields, which have in a general and systematic manner been covered already in the large, comprehensive courses:

History of legal science, law of securities, unfair competition, insurance law, copyright and patent law, banking and stock exchange law, law of trusts and cartels, law of transportation including that of maritime transportation and aviation, law and economics of the mortgage, criminology, criminological policies, theory of penitentiaries, juvenile law, law concerning social welfare, psychology of the testimony in court, court medicine, psychiatry, auxiliary fields of penology, the law concerning the legislative bodies in various countries, theory of the political party, history of political theories, the law of the civil servant, the law of schools, police law, traffic law, mining law, the League of Nations, international jurisdictions, constitutional finance law, social security law, law of tariff contracts, history of canon law, the constitution of the Protestant Church, canon and civil marriage law, foreign laws, comparative law concerning selected legal problems, industrial policy, agrarian policy, social policy, social work.

How many of such courses the individual student should take is closely related to the number of semesters he devotes to his law study. If a student decides upon a four-year curriculum, he should be able to attend thirty hours of deepening lectures.[1] If he abides by the seven-semester plan, he still should be able to attend twelve hours of deepening lectures, whereas the six-semester curriculum hardly allows for any.

8. It has been commonly recognized that exercise classes which include the writing of papers (*Praktika*) are exceedingly popular with students. The majority participate in a larger number of exercise classes than the required five. Attention had to be given, nevertheless, to whether a reduction of the required exercise classes is advisable, since these burden the student and tend to detain him from attending lectures. He is likely to use the hours allotted to lectures for preparation of papers in the seminar libraries. The exercise classes are, however, considered to constitute that category of educational measures which is most in keeping with modern methods of instruction and, moreover, most in demand by students. Hence, no reduction in these classes would be justifiable in view of the spirit of the reform. It should rather be realized that a need for increasing them exists, because they constitute the best known expedient for "activating" instruction.

[1] Hence an average of slightly less than four lecture hours each week during eight semesters.

9. The problem of the proprietary law schools must be tackled by acknowledging and meeting the need that these schools satisfy. Under prevailing conditions even zealous and able students cannot be advised to give up the additional use of coaching courses. But these courses are a financial burden to the student that is not in keeping with social responsibility. Moreover, they alienate many students from studying in the university. Either the states or the universities themselves must create institutions to meet this student need. Prevailing opinion favors the second alternative. Details are given as to how coaching classes (*Repetitorien*) should be operated by the faculties, and what their schedule ought to be like.

10. Attention is devoted to the problem whether, in addition to discussion classes and coaching classes, talks (*Konversatorien*) should be given. The nature of these talks is defined as "scientific chatting" about certain detached problems, in contrast to systematic penetration of entire subjects for the sake of the pending examinations. Because they otherwise would tax too much teachers and students alike, talks can only be offered on an optional basis.

11. The proposed reform could not fully achieve its aims if it failed to place more emphasis on research and on the promotion of scholarly achievements, in addition to stressing the teaching function. It is, therefore, desirable that the number of seminars, with their emphasis on research, be increased for limited groups of participants. As a supplementary measure, closer co-operation should be effected between jurists and economists in these seminars.

12. The increased number of seminars, exercise classes, and deepening courses, as well as the introduction of coaching courses and discussion classes, will overburden the faculty teachers to an even larger degree than already exists. On the other hand, teachers will be somewhat relieved by the decrease in systematic lectures. The ministry intends, however, to increase the number of professors of law and to enlarge the teaching staff with practitioners. The reform of legal education will not be allowed to result in curtailment of the private research done by law teachers. They will, therefore, be given vacations at regular intervals for the purpose of pursuing their scientific investigations without loss of income.

13. It has been unanimously demanded that the measure of general education (liberal arts education) in students should be made a point of evaluation more than previously. In the first three semesters, moreover, students should be given as much opportunity as possible to attend



lectures in other departments of the university. During this period two hours weekly which otherwise would be scheduled for lectures, are to be left free. The other departments of the university are to be notified of the fact for the purpose of adjusting their schedules. It is expected that every beginning student will use the leisure thus obtained to attend at least eight lecture hours within the three semesters[1] on subjects such as general history, philosophy, natural science, medicine, engineering. Entering students are, in addition, expected to bring with them a better background in political (civic) education.

14. Differences of opinion exist concerning the introduction of an interpolated eight-weeks' period of practical training (*Zwischenpraxis*) between the first and the second semester. It would be sufficient if the student were required to bring a certificate attesting the fact that he has served for these eight weeks with a court, government department, municipality, law office, or in business or industry. A detailed program of the work would be dispensable, since the import of the measure would only be to give the student an opportunity for watching the practical activities of jurists. Decision on the point is reserved for a later time.

15. A tentative and admittedly not completely satisfactory model plan is presented for the distribution of lectures, seminars, discussion classes, exercise classes, and coaching courses. Its reproduction is not warranted by the scope of this study, particularly in view of the tentative nature of the plan.[2]

16. Expressing the conviction that a reform of legal education could not succeed without improvement and enrichment of teaching methods, the *Denkschrift* turns here to giving direction as to how discussion classes, exercise classes, and coaching courses should be conducted. Among the considerable number of statements made, the following deserve mention: Discussion classes, as well as exercise classes, should pursue the goal of "enlivening" the teaching and of creating contact between students and teachers. Only restricted numbers of students should, therefore, be admitted to exercise classes. One hundred participants are considered the maximum for smaller law faculties, 200 for large. If more applicants have to be provided for, two sections should be offered. Admission to exercise classes, with the exception of those for beginners and those in economics, is not to be granted to students who

[1] Hence, slightly less than an average of three hours a week.

[2] For details on this point, as well as on the entire *Denkschrift* and criticisms of it, see "Juristische Ausbildung" by Fritz Stier-Somlo, in Handwörterbuch der Rechtswissenschaft, vol. 7, 1931, p. 226.

have not acquired an admission certificate by taking a kind of examination, which the *Denkschrift* is anxious not to have called examination. Inconsistently, however, it is added that this new requirement would furnish an opportunity to discover those students who lack aptitude for law study. If the number of available professors and *Privatdocenten* is not sufficient for staffing all exercise classes, practitioners may be appointed, but only for the conduct of such classes. Regular members of the teaching faculty are to be given more opportunity for practical law work than they have formerly had. Particularly judicial office and public administration are envisaged, whereas practice in a law office or in private industry and business is not deemed desirable, unless confined to short periods determined in advance. The necessary increase in teaching faculty will be achieved not only through the creation of new professorships but also by the appointment of new assistants and by temporary teaching assignments. To the extent that such assignments and honorary professorships are awarded to practitioners, only those should be considered who are able to meet the scholarly requirements exacted by the universities, and who show a particular aptitude for university teaching.

Legislation shall be created which vests the minister in charge of education with power to confer upon individual honorary professors with consent of the faculty the right to participate and vote in the faculty meetings. The power applies only to those honorary professors who cannot devote their full time to teaching because they are primarily engaged in practice. It should be used only if necessary to stimulate the interest of honorary professors in the university and to give the faculties to a greater extent the benefit of their abilities. Single lectures by outstanding practitioners or by distinguished foreign scholars should be increasingly promoted. In connection with the distribution of subjects among the various full professorships it is stated that the present delineation of subjects has become problematic, and that any other combination of subjects is, from scientific points of view, just as little warranted.

Mention has been made earlier of the fierce opposition with which the *Denkschrift* met. Prominent in voicing criticism were the universities outside Prussia, professional organizations of lawyers, and individual authorities on law training. Their attitude was based, primarily, on reasons having no immediate connection with the merits or demerits of the plan. Among these considerations stood out the encroachment by



an administrative agency upon the traditional and essential right of universities to organize their academic functions as they see fit; the violation of freedom of teaching through prescription of instructional methods; and the constitutional issue which both infringements involved. Within the frame of the question at issue opposition focused on the "*schulartigen Lehrplan*" (school-type curriculum) by which the plan was seen to fetter the teaching in German universities, thus endangering their scholarly level. Even if the reform intended only to intensify the teaching function, such intensification could not be welcomed at the expense of independent research, because research was the indispensable basis of all truly academic teaching. *Entlastung* and *Vertiefung* (unburdening and deepening), it was contended, could not be achieved in the manner suggested. The innovations would only further swell the curriculum, and thus not only frustrate the "unburdening" but also the desired "deepening" of the study. Prussia was berated also because of its uncoordinated action which was apt to disrupt the uniformity of German legal education, as far as it had been achieved, and to hamstring the easy migration of students from one university to another. The German Association of Attorneys (*Deutscher Anwaltsverein*) and the German Criminal Law Society opposed the reduction of courses in procedural law, the former focusing its attention on procedure in civil cases and on court organization, the latter on criminal procedure.[1]

Stier-Somlo, the author of the article in which the plan is set forth, joins the opponents of the reform in a carefully reasoned, scathing review. He analyzes and rejects, one by one, the main innovations of the plan on the strength of his long experience as teacher of law in a German university. In his conclusion he deplores the "sloping level" of scientific training threatened by the plan, but forecasts that it will probably be carried out in spite of all opposition. A deep ravine of "bad 'Americanization' will have to be plodded through." The only consolation he can see lies in the fact that, as a consequence, even the most recalcitrant observer will realize that the suggested reforms are leading to a dead end, and that the *Nivellierung* and *Verflachung* (the condition of becoming insignificant and shallow) which the reforms announce, will be necessarily followed by a converse movement. This consolation is, however, bitter. The evil is sure to affect at least one generation of jurists.

[1] One of the countersuggestions proposed that the final examination cover fewer required subjects. The eliminated subjects should be replaced by others which the student would be free to choose.

### *Law Training under the National Socialists*

No propensity to intellectual advancement nor particular zeal for educational and cultural aims has been indicated by the fact that National Socialism threw itself with zest and much legislation into a reform of German legal education. By depriving the indivdual states of their political significance, Nazism had done away with the federal structure of the Reich. All administration of justice including law training became a concern of the centralized government, and the training had to be unified.[1] New governments, moreover—particularly totalitarian—attempt to secure and perpetuate their position by creating the impression that with their advent to power a total rebirth of the national life has taken place. More tangibly, they occupy all key positions of public and private life. These tendencies were, of course, bound to be particularly drastic and crude in the Germany of 1934.

Among its first legislative steps, the National Socialist regime undertook to reshape the training of its administrators, judges, and all those professionally concerned with law, so as to warrant the thorough indoctrination of these men with the creed of National Socialism. Of the reforms introduced one can easily distinguish those which are connected with the unification of the training, and those which are Fascist in origin and character. The former realize, by and large, ideas which already had been recognized as the dominant trend before Nazism came to power. Most of the innovations in this group were foreshadowed by the *Denkschrift* of 1930, and quite obviously carry the mark of those men who supported it against the opposition of others.

To this category belongs the reduction of semesters to six, with the provision that up to four more may be added in individual cases. It is hard to understand what this provision actually means, since it always has been a matter of course that an individual student could and actually did add semesters to the prescribed minimum. Along with this reduction in time, a number of changes were introduced which decreased the thoroughness of the study and brought the German law faculty closer to the pattern of a professional law school. Lectures in other than specific fields of law were eliminated as much as possible; methodology and systematic presentation were decreased. Courses for acquainting students at the beginning of their study with legal concepts were abolished as faulty, with the contention that the student had no use for concepts until he had been given enough substance to which he could apply them. Likewise, a general survey of the whole realm of law was considered to be helpful only in an advanced stage of the study.

[1] Gesetz über den Neuaufbau des Reichs, January 30, 1934, Reichsgesetzblatt I.



Exercise classes, discussion groups, and seminars were strongly favored, at the expense of lectures.

The so-called academic freedom, wiped out in all other aspects, particularly in that of the teaching, was maintained to the same degree as before in the attendance requirements. Admission to the final examination was permitted only when the student had registered for specified courses and had actually attended the corresponding exercise classes.[1] Having attended one seminar at least was declared desirable. The candidate was furthermore expected to have devoted six to eight vacation weeks after his third semester to practical work in a lower court, in order to acquaint himself with the demands of his later profession.[2]

An innovation concerning the two juristic examinations required the chairman of the examining commission to interview the candidate on the day before the oral examination in order to get acquainted with him and to obtain some idea of his personality. This potentially excellent device, capable of offsetting the lack of contact between examiners and candidates, of removing the shyness of the latter, and of helping the former to evaluate the achievements shown at the examination, was, however, not introduced to serve these ends. It was intended as a means for ascertaining whether the candidate was sufficiently drenched with National Socialism, and for rechecking whether he was a man to the liking of the party.

The subjects of the first juristic examination, identical with the main courses in the curriculum, were: German constitutional and administrative law, law of the German family and its inheritance law, law of spiritual and artistic creation,[3] law of property, contracts, law of the German peasant, law of the German worker and German economy, criminal law, civil and criminal procedure.

Both juristic examinations were now placed under the charge of centralized boards seated in Berlin, with branches in a number of large cities.[4] The procedural details and contents of these examinations were meticulously readjusted. In the composition of the examining commis-

[1] For details and annotations characteristic of the attitude of National Socialism toward law training see Die Justizausbildungsordnung, by Otto Palandt and Heinrich Richter, (F. Vahlen), Berlin, 1934.

[2] This is one instance of realizing the suggestion of an interpolated period of practical observation and experience (*Zwischenpraxis*) dealt with on p. 28.

[3] The well-known, unpretentious subjects behind this typical garb of words are copyright, patent law, and related statutes.

[4] The first juristic examination under the charge of the so-called *Justizprüfungsämter* at the seat of most courts of appeals;the second juristic examination under that of the *Reichsprüfungsamt* in Berlin with branches in a few cities.

sion, men from the administration of justice were given chairmanship and numerical superiority. From the second juristic examination university professors were almost completely excluded.

The training as *Referendar* was likewise remodeled by reinstatement of the previously abolished feature of specifically prescribing the work to be done. The initial employment of the *Assessor* after the taking of the second state examination, was converted into an extended probationary service,[1] as had been advocated and exercised by Prussia since 1931. Passing of the second state examination now automatically terminated the employment as *Referendar*. Application for continued service could not be filed later than three months after the examination had been taken. It was granted only if demand for new officials existed and if the personality of the applicant showed, besides the required achievements, a particular administrative or judicial talent. Resulting employment was not permanent, but, as told above, probationary service of one to two years, with the emphasis still on training. Because of this educational character, the candidate had to distribute his time and work. An aspirant to employment with the judiciary, for instance, had to spend three months in a district attorney's office, four months with a *Landgericht*, or collegiate court of full jurisdiction within its district, and five months with an *Amtsgericht*, or lower court for smaller civil cases or minor offenses. Again his work was evaluated by every official with whom he served, and at the end of the trial service the minister of justice decided whether he was to be taken over into service that was no longer probationary nor educational. In the affirmative case he was appointed *Gerichtsassessor*.

Attorneys could no longer be appointed *Rechtsanwalt* immediately after passing their second state examination. According to an ordinance of December 2, 1935, the minister of justice decided upon application whether the candidate was to be admitted to trial service in the office of a lawyer for a period of one to two years. Such trial service represented training for the benefit of the candidate and not employment for the benefit of the employing lawyer. The lawyer, nevertheless, had to pay the apprentice. If he was unable to afford this payment, the bar association of the Reich assumed the responsibility. The training was supervised by the president of the court of appeals. If the training ended satisfactorily, in the opinion of the minister of justice, the aspirant received the title *Anwaltsassessor* and was admitted to—further trial employment for three years! Work done during this period was not considered as training, but might appropriately be termed conditional

[1] See pp. 87–88.



employment. Only after its termination could application be filed for admission to the bar. The decision and the formal appointment lay with the minister of justice.

Among the changes which were introduced as an expression of National Socialist ideology the following suffice for a graphic picture: As a prerequisite for admission to the first juristic examination, the student had to prove participation in at least one *Arbeitsgemeinschaft*, a work camp imbued with party spirit. A new series of main courses was introduced in the curriculum, such as "the German family," and "the German peasant." The student was "advised" to use the first two semesters to acquire the "*Völkischen Grundlagen der Wissenschaft*"[1] and to develop his notions concerning "*Rasse und Sippe*" (race and clan), "*Volkskunde*" (science of the people), and the political development of the German people. Only after having built up this foundation was he to turn to the *Fachstudium*.[2] The distinction between public and private law was abolished. The law of the German family, the law of the soil, labor and peasant law, and the law of the German economy did, it was contended, no longer admit of the obsolete distinction between private and public law. Beyond his initiation into the notions of race and clan and of German cultural superiority, during the first two semesters, the student was expected to make an earnest study of National Socialism and its basic principles. He was particularly urged to focus his attention on the association of blood and soil, race and people, and to be familiar with the common life of the German people. For this purpose he had to extend his work at a labor camp up to at least six months, and thus to acquire a so-called labor passport. These activities were deemed part and parcel of legal education. Finally, admission to the first juristic examination was granted only if the applicant could furnish documentary evidence that both he and his wife were of "Aryan descent" as defined by the Nürnberg laws.

Candidates for the second juristic examinations had to live in a camp (*Gemeinschaftslager*) from the time they began to prepare their home-written paper until the oral portion of the examination was completed. This was considered an important part of the examination because it formed the best means to test whether the candidate had a personality suitable for a judge, lawyer, or administrator in the

[1] The word "*Völkischen*" defies translation, its concept being a most vague and emotional one. The word "racial" or "ethnic" might render it most nearly. Hence, the "racial" foundations of science.

[2] The expression designates those subjects which provide the immediate "tools" needed by the legal professional, hence those strictly legal courses which in this country are tagged "bread and butter" courses.

Third Reich. The requirement was in line with the idea, stressed over and again by the *Justizausbildungsordnung*, that to be a good National Socialist and capable of leadership was more important than scientific achievements or profound knowledge. An additional advantage of the *Gemeinschaftslager* was seen in the fact that its activities prevented the candidate from amassing knowledge insufficiently integrated by "last-minute" cramming. To do such cramming, he was told, was entirely unnecessary, since knowledge so amassed was not decisive for the outcome of the examination; what *was* important was the candidate's personality and general aptitude. The chairman of the commission decided by himself, according to the leader principle, whether or not he found the candidate qualified.

## The Soviet Union

### *The Marxian Influence*

During the Revolution and the immediate post-Revolution years, the Soviet Union got along with a frequently modified, insignificant law training, marked by the absence of accomplished teachers and good students, and tenable only because of the great simplification of legal relations. This simplification in turn resulted from the social changes and the ideological principles of the new body politic, and formed one facet of the simplification of public life as a whole. Although primarily the result of the great socio-economic upheaval, the all-embracing process was accentuated by conscious efforts: The ways of accomplishing public ends were to be rendered more natural, more accessible to all strata of the people, to be freed from the fetters of rigid patterns and privileges, even of those of formal education and membership in professional guilds.

Gradually, this radical attitude yielded ground to some return to the old ways and solutions. While maintaining the basic principles of Marxian philosophy, the Soviets have for instance recognized the necessity for a legal profession in the broader sense and for attorneys in particular. The bar was reintroduced after prior abolishment, with some adaptation to the spirit of the new state. The stabilization and improvement of legal education, with balanced emphasis on its teaching and research function, became a goal and even a keen ambition. The training is still marked by comparatively frequent changes and a consciously maintained flexibility. Its basic organization and methodological nature, however, have crystallized sufficiently to outline it as a



new system at variance in many points with those of other Continental systems.

The main departures spring, as suggested, from the ideological and economic principles underlying the Soviet Union and from the fact that these principles have resulted in a complete rebuilding of the house of society. The training reveals in various points that the Soviet Union is a young country, a pioneer country, even if no territorial "migration" has taken place. Most striking are the practical, constructive spirit, and the close connection between the training and its practical use, accounted for by the Soviets' urgent need for men who are able and willing to do their part in the rebuilding of the state. The training, however, reveals also that it is fitted into the centralized planning of the Soviet Union and that, conscious of previous native and foreign experience, it inevitably builds upon the ground of this experience.

What are the features in which these basic facts manifest themselves?

1. The subservience of the law, and thereby law training, to the dominant purposes and the philosophy of the state—true for every country and form of society—is particularly manifest. Thorough indoctrination with Marxism and Leninism pervades the training. The institutions offering legal education are plant-schools for the training of government servants, whether these be public prosecutors, notaries, judges, teachers of law, administrative officials, or attorneys. Even with regard to this last group, the law schools are engaged in training men to serve the government. Soviet attorneys, like other lawyers, are, of course, charged with taking care of the interests of individual clients. However, if they perform this duty they yet are truly officers of the law, who consciously serve the interest of the state. This interest demands that justice be done, that the people have confidence in their government. The evidence in favor of individual claimants or defendants must be put forward as fully as the evidence against them. The advocate who does this conscientiously yet refrains from lending his support to socially unjustifiable pleadings therefore serves, it is held, the common interest as much as that of his client.

2. The training is professional from the outset. The "two-pronged" character of legal education encountered elsewhere on the Continent is absent, or as good as absent. Because of this the Soviet system is closer to the American pattern—equally the creation of a pioneer society—than to that of West Continental countries, even if the roots and the significance of their common professionalism are entirely different from one another. As a partial compensation for the lack of

the compact post-graduation apprenticeship characteristic of the "two-pronged" systems of legal education, Soviet law institutes offer some opportunity for practical experience *within* the course of theoretical study.

3. Admission to a law school of whatever type represents a desirable chance offered to the individual by the state. The total enrollment in all institutions offering legal education and the number of admissions in each school are rigidly limited. Their determination is made, as hardly needs be said, in conformity with the demands of the government. The figures have been changing annually. J. N. Hazard reports that in the year 1935 the permitted maximum was 1,490 for the eight Juridical Institutes and the three university law faculties of the entire Union.[1] Even if this maximum is likely to have greatly increased in the meantime, it is—in view of the vast territory and population of the country—strikingly small. This fact is not much altered if we consider the 31 rural law schools, which in 1935 were permitted an enrollment of 3,050 students in the two types of courses offered.

4. Admission is won by competitive examination. Persons who wish to matriculate in a Juridical Institute must be between seventeen and thirty-five years of age. They must have completed ten years of schooling, including the secondary school which is the equivalent of the *Gymnasium*, and was even designated by that name under the Czarist regime. Unless they have consistently achieved in their secondary school prescribed high grades, applicants have to take the competitive entrance examination. Definite standards of general and political education must be met in these, mainly oral, tests. To those meeting them, admission will be granted, however, only in the order of the ratings achieved. This principle is breached to some extent where political and social points of view so demand. For instance, in the Moscow Institute applicants from comparatively backward republics are given a certain preference. Test results as good as those of Moscow applicants cannot reasonably be expected of them. By taking this fact into account, the spreading of higher legal standards throughout the Union is insured and full representation of all national groups in the Institute fostered. The sifting of applicants by aptitude tests is by no means entirely unknown in American law schools. The implications and spirit of the procedure in the Juridical Institutes, however, are different.

5. Admission to one of the Institutes is, on application, as much as identical with the granting of a stipend for the maintenance and tuition

[1] "Legal Education in the Soviet Union," in Wisconsin Law Review, July, 1938, pp. 562–579.



of the student. The stipend is supplied by the government. The progress of the student expressed by his marks in the frequent examinations of the Institute determines, in addition to other factors, the amount of the stipend or in cases of complete failure its suspension.

Progress, expressed by the marks achieved in these examinations and finally by the grade of diploma awarded, determines even more importantly the further career of the candidate and the type of job that he will be assigned upon graduation. Holders of the better-grade diplomas are entitled to be given preference over holders of the lesser, as a requirement of law. This has practical significance particularly when continuation in graduate work is in question, when positions in educational or research institutes are to be filled, or persons are to be sent abroad for research purposes or for the attainment of specialized education.

6. Owing to the sharp curtailment of student bodies and the particular economic and social facts of the Soviet Union, graduates have no trouble in finding positions which, from the outset, provide adequately for their livelihood. Because of this situation, a specific procedure has developed for ascertaining the wishes of graduates and for assigning positions to them in accordance with these wishes, with personal factors worthy of consideration, and with the needs of the government. In their last two terms students fill in questionnaires concerning personal status, achievements, special abilities, place and manner in which they want to serve the common welfare. Interviews are held with them by commissions created for this purpose in the Commissariat of Justice.

Only those with exceptionally good ratings and with a higher-grade diploma are permitted to carry on graduate work and to enter upon the teaching career, with a professorship as the goal. Students with a slightly lower rating can, if they wish, be assigned positions as teachers, occasionally directors, of the 31 rural law schools. The tendency prevails to send all applicants except the most promising ones away from the large and well-provided-for cities to rural sections and more remote parts of the country. The return to the great cities must be earned by merits that suggest that the person can be put to work with greater benefit to the common cause in a different position or capacity. Assigned posts must, except for such transferrals on merit, be held for five years at least. Failure to do so can be treated as a criminal offense and prosecuted. In practice, this does not occur, and reasonable demands for transferral are generally complied with.

7. The recruitment of the teaching personnel contrasts strikingly,

and it may be added favorably, with that in most other Continental universities. It is marked by a more direct and realistic approach, and by equal emphasis on the teaching function and on scientific merits. After three years of graduate work, to which, as mentioned, only excellent students are admitted, the aspirant to an academic career has to file and after approval defend a thesis in order to be awarded the degree of Candidate of Science. Upon receipt of this degree the holder is entitled without further requirements to a position as assistant at one of the Juridical Institutes. After some time and in accordance with arising needs, he is promoted to the status of *Dotsent*, and finally to a professorship. This stage is generally reached only after the candidate has been awarded the doctorate of law, which in the Soviet Union is called Doctorate of Science. The degree can either be conferred upon a person because of his well-established reputation as a scholar or be acquired by a doctor's thesis, following that for the Candidate of Science. This thesis—in keeping with the requirements for the *Habilitationsschrift* or its equivalents in West Continental universities—must represent a scientific formulation of new legal problems, or the systematic illumination or solution of existent problems. The degree is awarded only by the All-Union Institute of Juridical Science, which in this respect acts as an agency of the University of Moscow, and needs approval by the Committee of Higher Schools of the Council of People's Commissars.

8. Access to the judiciary and advocacy does not follow the Continental pattern. *The monopolistic significance of legal education in the recruitment of public administrators is nonexistent.* These differences hardly influence the course of theoretical studies, yet belong within the scope of this study and are expressive of the spirit that underlies Soviet law training.

The Soviet judiciary is not a career judiciary but an elected body, as is for the most part the American. As in the United States, candidates for judgeship are not required by law to have a formal legal education. They are not even required to attain legal education after election. A high proportion of professional judges, however, are technically qualified and have had some legal education; if in no other manner, then at least by practical experience. The term of office for professional judges is three years in the so-called People's Courts; in the higher courts, for example, Supreme Courts of the individual Soviet Republics or the Supreme Court of the Soviet Union, five years. Since there are no limitations on re-election the tenure may be sufficiently long for a judge



to develop matured experience. Nevertheless, it can easily be understood that theoretical knowledge of the law not based on elaborate formal training will but exceptionally amount to much, when compared with the erudition and life-time experience of other Continental judges. Absence of scholarship and legalistic accomplishments, however, seems almost to be the goal for which the system strives. The belief that more valuable qualities of a judge may be lost than won in the process of attaining a high level of abstract learning conforms with the general tendency to pay more attention to the moral and political stature of a man than to his learning, and to preserve his informal, living connection with the people as a whole.

With rigid educational requirements nonexistent for professional judges, it is obvious that such requirements exist even less for lay judges. The two types of judge form—together and with equal powers—mixed benches in all courts. Panels of lay judges are elected in the same manner as are professional judges in the particular court. From these panels the lay judges are summoned for office in alphabetic order generally for no longer than ten days in the year. Both professional and lay judges of the People's Courts are elected by the residents of the district over which the court has jurisdiction, by direct and equal suffrage and secret ballot. Judges of the higher courts are elected by the highest Soviet of the district for which the particular court has jurisdiction. In the case of the Supreme Court of a Soviet Republic, for instance, by the highest Soviet of that Republic and in the case of the Supreme Court of the Soviet Union by both chambers of the Supreme Soviet of the Union in joint session. The election of higher judges, hence, is indirect. In neither type of judgeship is the reputation of being a jurist the main, let alone a necessary, basis for being elected. Any other accomplishment may to an equal degree supply those who nominate or elect a judge with the confidence that he will perform his duty competently. Since nominations must be made by public organizations such as trade unions, collectives, party organizations, cultural societies, or by general meetings of workers, employes, peasants, or soldiers, men are generally nominated who have somehow shown devotion to the common cause, integrity, or abilities as spokesmen, arbitrators, or organizers.

In order to become an attorney and be admitted to practice, one must become a member of the local or regional organization of lawyers called *Collegium*. These corporate bodies correspond to the integrated bar associations of other Continental countries and function in a similar manner. Membership presupposes one of three requirements:

First, graduation from a Juridical Institute or a law faculty with award of the diploma or degree. Second, completion of one of the lower commercial or technical schools in law plus one year of practice as a judge, public prosecutor, or examining magistrate. This path is open only to very young applicants within a prescribed age limit. Third, three years of practical experience as a judge, public prosecutor, or examining magistrate in place of formal legal education. In spite of the fact that the two last-mentioned gateways to the advocacy are still open, most applicants acquire diplomas of Juridical Institutes, particularly in the large cities. Moscow, for instance, had in 1939 among its attorneys 84 per cent who had been graduated from a Juridical Institute, and this ratio may since then have gone up rather than decreased. However in theory, informal admission to the advocacy, surviving as a reflection of the post-revolution era, gives a chance to anyone who is able to do the work competently, whether he has a formal education or not.

Characteristic of the legal profession in the Soviet Union, is the lawyer's collective. It consists in principle in the working together of two or more lawyers in combined offices, such as we find in the United States and other countries in the various types of partnership between lawyers. This similarity, however, applies only to the outer facts and not to the inner nature, and accordingly not to the results.

Because of his unqualified membership, each attorney admitted to a collective earns a decent livelihood, but can increase his earnings in accordance with the amount and kind of work assigned to him. The collective is headed by an "attorney-in-chief," who distributes the work according to the needs of the case or to the specialization of the member lawyer. Clients can demand the services of a specific lawyer who has their confidence. All fees are paid to the treasurer of the collective according to tariffs that cover most occasions, so that the lawyer himself is entirely free from the painful financial dealings with clients and the dangers to the client's relation to him resulting from such dealings. This form of organizing legal service deserves being evaluated as progressive and fortunate. It is likely to promote the social awareness of its members and thereby the esteem that the profession enjoys. It diminishes the dependency of the attorney on individual clients, thus adding likewise to his prestige. At the same time, it tends to improve the quality of the professional performance. A good commentary on the merits of the lawyer's collective is supplied by the fact that but few Soviet attorneys choose to make use of the existent possibility to practice independently in exactly the same manner as do attorneys in other countries.



"In exactly the same manner" needs some modification by pointing to the fact that the Soviet lawyer is imbued with a keen sense of obligation toward society as a whole and thus, also when practicing on his own, devotes much of his time to social purposes, thereby widening the concept of attorneyship as existent in capitalistic countries. By law and the ethical demands of his professional association he is required to serve certain types of clients and cases without charge. He must accept the representation of clients who are unable to pay the fees of an attorney, and who are assigned to him by the executive committee of the *Collegium* according to a schedule. On this last point no departure from the system customary on the Continent can be stated.

Origin and youthfulness of the Soviet Union show also in its recruitment of public administrators. The privileges that legal education so characteristically affords in the old Continental countries are almost nonexistent in the Soviet Union. Except for officials in the Commissariat of Justice, public prosecutors, and notaries (who in the U.S.S.R. are salaried civil servants), a legal education is neither requisite for appointment in administrative agencies, nor does it entail preferential treatment of law-trained applicants. Statutes prescribing uniform requirements and procedure for the recruitment of government officials do not exist. Individual departments and agencies are free to determine in what manner and by what standards they will test the qualification of applicants for vacant positions. In general it can be said that, in keeping with the fact that the Soviet social structure rests primarily on the class of industrial workers and peasants, achievements in technical fields such as engineering and science, are likely to be evaluated more highly than the training of the mind which results from legal education.

### *Organization*

That education in general, and thus legal training, in the Soviet Union are government controlled to the last detail will hardly surprise readers who have been acquainted by previous sections with the Continental tradition of state control of schools. It will surprise them even less if they consider the dominant position of the Soviet government in every aspect of public life. Owing to the range and intensity of this influence the distinction between private and public life is bound to lose ground, as is the sphere of private initiative.

In the province of legal education, two agencies share the control in a significant division of labor. The People's Commissariat of Justice of the U.S.S.R.— the equivalent of the ministries or departments of justice

in capitalistic countries—is charged with providing legal education in general. It determines the broad policies which aim to correlate the training with the requirements of the positions to be filled. This agency also outlines broadly the programs of study and makes recommendations of persons to be appointed as directors of the Juridical Institutes. Under the jurisdiction of the second agency, which is the Committee of Higher Schools of the Council of People's Commissars, are the technical details of the training, as for example determination of specific courses, their distribution throughout the curriculum, determination of teaching methods, number of schools, and the size of the annual enrollment. It decides on the recommendations made by the Commissariat of Justice concerning prospective directors, and approves or rejects the proposals made by directors for the promotion of members of the teaching faculties.

The main and basic type of schools affording full legal education is the recurrently mentioned Juridical Institute. These schools are located in large cities.[1] Their number is supplemented by the university law faculties in Baku, Tiflis, and Erivan, which unlike the Moscow Juridical Institute, have not developed from university law faculties into independent institutes. The 31 rural law schools mentioned earlier provide legal training that can satisfy the simple needs of law administration in small places. They offer such training in two short curricula. One is a six-months' course for persons who have been already employed in the administration of justice without theoretical foundations. Its students expect to improve their ability, standing, and chances of advancement. A second course, covering one year, serves persons who have had no legal experience, and wish to do government work connected with law within a limited range of positions.

To complete the picture of law training in the Soviet Union, mention must be made of a number of institutes, that in part directly offer legal education and in part make an important contribution to its improvement.

The All-Union Law Academy represents an interesting development because it offers graduate instruction to men who have already achieved employment as higher civil servants in the Commissariat of Justice. We will be reminded of the German *Vereinigung für Staatswissenchaftliche Fortbildung*, although the latter is designed to assist administrators and thus offers social science subjects and not strictly legal material. Also, the German organization does not represent an actual school for higher learning, but offers only regularly recurring lecture courses. The All-

[1] Moscow, Leningrad, Kazan, Saratov, Kharkov, Minsk, Sverdlovsk, Tashkent.



Union Law Academy, in contrast, provides a two-year course of study for 250 high-ranking officers of the Commissariat of Justice, and a one-year course for 100 officers with somewhat lesser qualifications from that department. The Academy is divided into four faculties, namely a court-prosecution faculty, military-juridical faculty, economic-legal faculty, and a higher-academic-course faculty.[1] The last-mentioned gives the one-year course of study. Both curricula envisage the goal of raising the standards of law-trained students, who have shown great ability in practice. The courses, accordingly, are said to be intensive and to offer material on a very high level.

Various research institutes, enumerated below, indirectly influence legal education by their work and findings. Textbooks for the Juridical Institutes and other law schools are compiled in these research institutes. Teaching methods and educational policies are molded by them. They envisage and explore law, of course, as one of the fields of sociology in the broader sense of the term, and not as a practical expedient for directing human conduct. The institutes are: All-Union Institute of Juridical Science, Institute of Public Law of the Academy of Sciences of the U.S.S.R., State Institute of Penal and Rehabilitation Policies in Leningrad and in Kiev, Institute of Criminology and Expert Evidence in Minsk, a similarly named institute in Odessa, and the Serbsky Institute of Court Psychiatry. Particularly important is the All-Union Institute of Juridical Science. Besides co-operating in the training and selection of law professors by awarding the doctorate, it provides a meeting ground for professors and directors of Juridical Institutes and high officials of those government departments which are directly concerned with problems of law. Discussion of national developments from the viewpoint of law and the drafting of proposals to the government for the enactment of new laws, or introduction of new administrative policies form often the agenda for such meetings.

### *Curriculum and Method*

The curriculum of the Juridical Institute—which is the most important of all courses of study and the only one about which information has been available—is at present four years in length. Following frequent suggestions it may be soon extended to include a fifth year. In modification of the Continental custom of ushering in the study of law with historical and general subjects, the Juridical Institutes have divided their material into two distinctly separate sections, of which

[1] Until recently the Juridical Institutes too were divided into two faculties: one for civil law and one for court prosecution. This feature has been dropped.

the first is deemed to afford partly an appropriate foundation and partly a necessary supplement to legal education proper. This section which is covered in the first three semesters consists of material common to all schools of higher learning, and hence is required of students in all branches of knowledge. The courses are: political economy, history of the Communist party, Leninism, philosophy, Latin, a modern foreign language, elementary accounting, military science, and gymnastics.

Beginning with the fourth semester the student embarks on his specific law and social science study. The courses comprise: evolution of the state and of law in general; development of the Soviet state and Soviet law; public law of the Soviet Union, theory of state and law; public law of capitalist states; civil law, which—after the Continental pattern—includes in one comprehensive course all those fields which in the United States form separate subjects, such as agency, torts, and others. Further courses are: criminal law, civil procedure, criminal procedure, labor law, agricultural law with special attention to that concerning the agricultural land and agricultural collectives, finance law, legal institutions, international law, criminology, forensic medicine, court psychiatry, statistics. Latin and public (administrative) law have recently been reintroduced following their prior abolishment.[1]

The number of weekly class hours decreases toward the end of the course of study. It averages thirty weekly hours during the first four semesters, twenty-four hours in the fifth and sixth semesters, and eighteen hours in the seventh and eighth. These figures, relating to the Soviet five-day week, show that the Juridical Institutes adhere to the compressed schedules which we have met in German-speaking law faculties, and which are strikingly in contrast to those of law schools in the United States. The device of diminishing the weekly class hours toward the end of the course of studies is intended to give advanced students more time for private study. Particularly students in their last two semesters are thereby given leisure for preparation for the final state examinations and for independent research. As a requirement of law, students in these two semesters must have two days weekly free of classes. As another legal requirement, any single work-day may not contain more than six hours of class.

Since the legal system of all Soviet Republics is identical in the one point that it is based on codified law, even where the codes otherwise

[1] For a plan of the distribution of these courses over the eight semesters, for the number of hours devoted to the individual subjects, and finally for detail on the whole presentation see the article of J. N. Hazard referred to in footnote p. 104.



differ, we can expect to find that the systematic lecture forms the backbone of the teaching method. However, during the years following the Revolution this basic instructional device lost ground, partly owing to the shortcomings of teaching personnel and student bodies and to the hurriedness of the entire training. It lost this ground to the exercise classes and later seminars as they were carried on in the Soviet Union. A recurring movement has, however, gradually taken place and increasing emphasis is put on the great systematic lectures as the main educational device. Although the law schools in the United States have not reintroduced lectures nor placed preponderant emphasis on systematization, definite attempts can be observed to get away from exclusive attention to judicial opinions and from the exclusive use of the case method. The trend favors introduction of more statutory and administrative materials, and their systematic penetration. Thus, while the law faculties of Western and Central Europe, after having relied for centuries on systematization and lectures, now are eager to stress the function of teaching and to invite active participation of students in the educational process, both the Soviet Union and the United States are headed in the opposite direction.

But even if legal education in the Soviet Union has of late been more strongly marked by the great lecture, this tendency has not gone so far as to deflect interest from the exercise classes or to hamper their rise to a much higher level than that maintained previously. While they represented until a few years ago a device comparable to the German *Repetitorien* in which the material of lecture classes was repeated, explained, and made the subject of questions and answers, these classes have gradually developed into proseminars and seminars in the Continental sense. Students are now expected to prepare papers and to follow these up with discussions. Specific problems which the professor has not been able to deal with in the lecture are treated, and problem-cases, supplied by textbooks, are analyzed. Much depends on the initiative and ability of the individual teaching faculty and particularly of the instructor conducting the exercise class. The whole range of possibilities from highly theoretical work to even moot courts can be observed. The fluid condition of the entire training thus applies also to method.

It may be noted that the small enrollment in Soviet law schools makes it—in contrast to German exercise classes—possible to keep the numbers of attendants in the individual classes very low. While the attempted reduction of participants in German exercise classes to 100 for small law faculties and to 200 for larger ones, was considered a bold

experiment of the Prussian ministry of education and criticized as going too far, the number of participants even in large Soviet Institutes does not exceed 25.

Attendance in the lecture courses is not compulsory, a fact which in view of frequent examinations and the particular significance of the grades achieved does not endanger the educational result. Since each one of the subjects in the curriculum is examined separately and immediately upon termination of the particular course the faculty derives at short intervals a picture of a student's progress, and is able, if need be, to invite his greater efforts in time. The system of probing frequently and in limited fields the student's progress represents in the opinion of this writer an excellent mitigation of the evil of examinations. The student, while still in the process of learning, is not forced to have various subjects simultaneously at his command and thus to bear a terrific strain of memory. The taking of the examinations is thereby made much easier for him without diminishing their efficiency as tests and as incentives. As another humane and natural feature, it may be noted that the examiner is the same individual who has presented the material at hand. Previously an informal commission consisting of the lecturing professor, of the instructor in the exercise class, and of a graduate student used to join in the task. Why this practice has been discontinued is not known to this writer. The examinations are oral, but the student is given the questions in writing and allowed some time to clarify his thinking and to prepare his answers. This obvious improvement over oral questioning is unfortunately coupled with questions of a somewhat obsolete nature. They are reported to be general and abstract and never to take the shape of outlined situations or hypothetical cases to which the student is expected to apply the principles and provisions studied. Thus they appear not to be suited best to afford searching tests of the student's knowledge and insight.

In addition to these examinations given by the Institute and strung out over the eight semesters of the curriculum, the candidate for one of the diplomas must pass a state examination in five basic legal subjects at the end of the fourth year. The subjects are: public law, civil law, criminal law, civil procedure, and criminal procedure. He is admitted to these, likewise oral, state examinations only after having successfully passed all the tests offered by the Institute. The commission giving the state examination consists of officials of the Commissariat of Justice and of reputed professors of other Juridical Institutes.

As far as the guidance of students, the promotion of their success—once they have been admitted—and the contact between them and



their professors are concerned, the American pattern is once more invoked rather than the Continental. Provision is made for weekly conferences in which the Soviet student of law may discuss his special problems with his professor. Beginning students can attend lectures on how to study and how to organize their efforts to the best advantage. In accordance with the principle of the Soviet Constitution to provide education for everybody, and with the emphatic public tendency so characteristic of the Soviet Union, to open access to higher education and to the professions to the labor class, juridical correspondence schools are attached to the Juridical Institutes. Through them employed persons who cannot matriculate in the ordinary courses may obtain legal education. They receive reading programs, test papers, and corrections of their work by mail. In addition they may attend evening lectures, if this is possible for them.

Mention has been made earlier of the fact that Soviet Juridical Institutes offer some opportunity for practical experience *within* the course of the theoretical study. During the first two years of the main four-year curriculum, students are expected to attend, on a few days left free of classes, court trials, which will be used by their professors as a basis for discussion and lecture, particularly on procedural problems. The cases are selected for their legal and political significance. The trial judge may be charged with discussing after the trial the case and his judicial performance with the attending student group. During the third curriculum year students undergo a short but otherwise full-fledged practical training, such as that of the prospective attorney or judge in Austria and Germany, by spending thirty-five days in practical work in a court, a prosecutor's office, an arbitration tribunal, a lawyer's collective, a notary's office, or even in an economic enterprise of the government. In the fourth year the interpolated practical training extends over twenty-five days, in which the student is given opportunity to take a responsible part in the work of the office to which he has been assigned.

The outlined method of interspersing theoretical study with practice is, of course, nothing basically new. Readers will remember the recurring suggestions for a *Zwischenpraxis* in Austria and Germany and the fact that the Nazi regime made such an interpolated period of practice a legal requirement. Nevertheless, the manner in which the underlying idea has been put into effect in the Soviet Union and the purpose of replacing post-graduate apprenticeship are new and create a refreshing feature of the system, well in keeping with its generally practical and natural spirit.

Very little in the English language has been published on legal education in the Soviet Union and upon the transition from it to the different forms of the legal profession. In addition to J. N. Hazard's article in the Wisconsin Law Review, which has already been mentioned, some added information is available through: Ralph Millner's pamphlet Soviet Justice, recently published for the Haldane Society by Allen & Co., Ltd., London, 1943, and Harold J. Laski's pamphlet, Law and Justice in Soviet Russia, Hogarth Press, London, 1935.

## PROBLEMS—COMMON TO LEGAL EDUCATION AND PUBLIC ADMINISTRATION

To give a fairly rounded picture of legal education on the Continent and to delve somewhat deeper into basic problems with which law training all over the world remains confronted in spite of temporary solutions, involves consideration of: the intellectual struggle in France in the second half of the nineteenth century over the scope of the law faculties, which resulted in the broadening of the curriculum through adoption of social sciences and historical courses; the foundation and significance of the *Ecole Libre des Sciences Politiques;* the rise and scope of separate departments of political science and economics in German and Austrian universities.

The discussion of these three developments and the vistas into the future which they open should furnish approaches to the pivotal question whether the dominant role played by legal education as professional preparation for Continental public administrators is justified or not, and to the further question whether public administrators should continue to be trained in law faculties or in institutions especially devoted to the purpose.

In his comparative study of French and American legal education, Robert Valeur portrays the conditions which prevailed in French law faculties up to the last decade of the nineteenth century.[1] The faculties of those days were purely professional institutions for the rearing of lawyers, magistrates, and notaries. They emphasized the needs of private litigation approximately as much as many American law schools still do and, like these schools, rested that emphasis on a narrowly technical base. The training failed not only in scientific character and method but also in scope. It had not yet adopted the study of the political and other social sciences that had arisen in other countries around the instruction in that specific application of social wisdom which we call the law. Public law had been introduced to a negligible degree only. Because of this tardiness, the faculties failed to provide even that inadequate contribution to a truly broad-minded administration of justice and public affairs which the present instruction in the fields of social science offers.

It was under these circumstances that Boutmy founded in 1872 the *Ecole Libre des Sciences Politiques* as a private enterprise, which he deliberately kept independent from the state. More than thirty years

[1] L'Enseignement du Droit en France et aux Etats-Unis. Bibliothèque de l'Institute de Droit Comparé de Lyon, Paris, 1928, vol. 23, pp. 23–61.

earlier, the French Minister of Education Salvandy had made it an important point of his far-reaching plans for the reformation of French law training to create one or several independent faculties of public law and administrative sciences, in addition to a limited introduction of public law in the law faculties. The revolutionary government of 1848 revived Salvandy's idea of offering public law and administrative sciences independently from law by founding the short-lived *Ecole d'Administration*. This school too was meant to be part of a plan for the complete overhauling of French law training. Although the school in its original scope was suppressed as early as 1849, because of accidental defects and the political changes occasioned by the impending Second Empire, the concept of an institution exclusively devoted to the administrative sciences and the training of administrators was kept smoldering in recurring suggestions.

In 1869, under the ministry of Duruy, the establishment of a university faculty or faculty-section exclusively devoted to the political (social) sciences and to the training of prospective administrators, politicians, industrialists, and business men was under consideration. This department was intended to exist in addition to a faculty, or faculty-section for the training of attorneys, judges, and notaries. Owing to the retirement of Duruy, the project failed to become law. Private initiative, in the impressive person of Boutmy, brought into existence the specific training of administrators which the government had not achieved. The foundation of the *Ecole Libre des Sciences Politiques*, however, did not deter the government from independently holding on to the pursuit of the same plan and a last suggestion for the creation of a public *Ecole d'Administration*, detached from law training, was made in 1876. It suffered the fate of its forerunners by never becoming reality.

Because the curriculum of the *Ecole Libre des Sciences Politiques* offered definitely broader and also more specific training for prospective administrators than the still unreformed law faculties, the school quickly had great success, part of which it has continued to enjoy even after the subsequent thorough reorganization of the French law faculties.[1] Ever since its foundation, it has continued to send a considerable number of graduates into the higher civil service, and its diplomas are accepted by French government departments as proof of adequate training for positions in public administration. Likewise, they rate high when administrative positions in industry and commerce are filled. In some government departments, such as the diplomatic service and the ministry of finance, graduates of the *Ecole Libre* are even given preference over holders of the *licence*. If the contribution and reputation of the school have been decreasing for some time, this fact springs not so much from the rebirth of the law faculties as from the regrettable circumstance that the school has lost standards in the wake of becoming the exclusive playground of students with a background of family wealth or aristocratic privilege.

[1] For details concerning its curriculum see "L'Enseignement à l'Ecole Libre des Sciences Politiques," in Revue Internationale de l'Enseignement, vol. 4, 1882, pp. 494–495.



It would be erroneous to assume that the reorganization of the French law faculties, and particularly the adoption of political science and public law, was an indirect result of the rise of the *Ecole Libre*, or was strongly influenced by the desire to catch up with the achievements of this private institution. Such an assumption is disproved by the entire development of the reforms, which shows them to be the outcome of a genuine and forceful clash of ideas concerning the scope of the law faculties that lasted for almost seventy years. This battle of thought took its course, neither promoted nor seriously hampered by the foundation of the *Ecole Libre*. It is, however, interesting to learn that the founder of this school, Boutmy, did not restrict himself to his own constructive work, which created some competition for law training in the field of administration. Assailing directly the aspirations of the law faculties to a broadened scope and importance, he combated in his writings the adoption of social sciences by them, denying their ability to teach these subjects to the extent needed and in the right manner. His incisive arguments shed much light on the underlying problem and on the nature of Continental law training, such as he found it and such as it—after all—still is; in French law faculties and elsewhere. His comments contain valuable ideas on how the curriculum of an institution for the preparation of future administrators ought to look, but they finally fail to be convincing on the question of why a law faculty too could not—potentially—meet the requirements and methods which he points out.

He denounces legal science and the customary manner of teaching law as mere exploration of a static aggregate of positive law, disconnected from the social realities which law is intended to serve, however systematic and intensive this exploration may be. He blames legal science for being self-sufficient, self-adulatory, and hence prone (in case the law faculties should adopt the teaching of social sciences), either to see in these nothing but the legal relations or to let them just run along beside the "really important" legal subjects. Even if the French law faculties, which Boutmy envisages, have undoubtedly done much better

in their adoption of the social sciences than he expected, it need hardly be said to what degree some of his apprehensions have come true for France, and are justified by conditions existing in other Continental law faculties.[1] Neither the French nor any other Continental law faculties have so far truly adapted themselves to supplying prospective administrators with a training which rests on an effective integration of law and social sciences.

Boutmy's ideas and those of his opponents in the "camp" of the law-faculties thus add up to a keen criticism of the performance of Continental legal education, and particularly to an inquiry into the question whether law faculties have been presenting social sciences in a truly fruitful manner. The discussion also deals with the fundamental but unresolved problem of whether it is actually desirable that the study of law should draw more heavily upon materials and methods belonging to the social sciences, hence, whether the present approach to legal science, which has been designated in this study as mainly analytical and "two-dimensional," should be abolished.

A challenge similar to that which was made by the *Ecole Libre* to law training and to government-controlled education did not take place in Austria or Germany and could not have taken place there. The law faculty of these countries has of old been fairly well adapted to the needs of public administration and the rearing of public servants. The well-developed apprenticeship training contributes further to meeting these needs, even if not in the best and broadest possible manner. No political revolution, comparable to the French, came to destroy the standards of the legal profession and of public administrators, or to disrupt by inorganic measures, such as Napoleon's orders to the law faculties, the steady evolution of law training. Hence, there arose in this evolution no lacuna that had to be filled. Austrian and German law faculties, and public education in general, have, moreover, always been strongly entrenched in the position of forming the only road to the higher public service. Statutes, insisting on university law training as a prerequisite for such employment, would prevent any private institution from breaking into that monopoly. This would be particularly true if private institutions not founded primarily on instruction in law but on the study of public law and the social sciences were in question.

[1] For detailed information about his most pertinent views see: "Observations sur l'Enseignement des Sciences Politiques et Administratives," by E. Boutmy, in Revue Internationale de l'Enseignement, vol. 1, 1881, pp. 237–279; "Boutmy et l'Ecole" by Emile Levasseur, in Annales des Sciences Politiques, vol. 21, 1906, pp. 121–189; and Qu'est-ce qu'une Faculté de Droit, by J. Bonnecasse, who, while opposing Boutmy, gives him a chance to speak for himself in various excerpts.



In spite of the enumerated factors which bar any real competition like that suggested by the *Ecole Libre*, groping developments have taken place even in Germany and Austria which might be viewed as an expression of tendencies similar to those at the base of the changes in and around French law training in the nineteenth century. Reference is made primarily to those new university faculties or faculty-sections whose curricula and methods concentrate upon social sciences and particularly economics, and deal with private and criminal law in a kind of bird's-eye view only. Instead of the combined doctorate in law and political science, these faculties or faculty-sections generally award a doctorate of political science only (*doctor rerum politicarum*). Outside the universities, business schools, open to graduates from the *Gymnasium* and equivalent institutions, have acquired the character and legal recognition of schools on the university level.[1] In Germany some of these schools have even succeeded in attaining the right to award a doctor's degree in order to have their graduates accepted in positions of private administration, with recommendation comparable to that of law graduates.

Both the specific political science faculties and the business schools on the graduate level must be termed failures, as far as they might have been intended as inroads into the monopoly of law training in the recruitment of public and private administrators. What changes the future will bring, of course, none can tell. It does not seem entirely impossible that, by incisive reforms of their curricula and standards, faculties for political science, as well as graduate business schools, may gain increased public acknowledgment, and thereby indirectly force the university law faculties to absorb the progressive features on which the success of competitive institutions may be based. Developments within the faculties for political science may as well move in another direction. These departments may truly become what some of their spiritual fathers wanted them to be: scholarly faculties for a comprehensive study of sociology as an independent science.[2] The degrees conferred by them would not aspire to any practical importance, except perhaps for positions with close sociological implications. So far, however, recognition of sociology as an independent science, worthy of a faculty of its own, has not been reached on the Continent. The present political science faculties, not favored by the law faculties of which

[1] Schools such as the *Handels-Hochschule* in Berlin and other large German cities and the *Hochschule für Welthandel* in Vienna.

[2] Sociology is here used in its broad, all-inclusive connotation, rather than in the more customary American usage of designating one of the social sciences.

they form a mere limb, unrecognized as training ground for administrators, protract a somewhat blurred, inane existence.

A brief examination of their curricula is nonetheless pertinent. As a representative example of a comparatively new faculty of the social sciences, the *Staatswissenschaftliche Fakultät* of the University of Vienna,[1] has been chosen. The ordinance of August 25, 1926, which was responsible for the reorganization of the faculty, provides an eight-semester curriculum formed of required courses, some of which are given jointly for students of the law faculty and for those of the political science section, whereas other courses are given for the latter group only. In order to obtain the degree, candidates must take two oral examinations and submit a satisfactory doctor's thesis.

The courses given jointly for law and political science students are: history of Germanic law, history of Austrian political development and public law, international law, economics and economic policies, finance, administrative science and Austrian administrative law, history of the philosophy of law. The courses given separately to students of political science are: Austrian private (civil) law, commercial law, law of negotiable instruments; exercise class covering the above subjects; choice of principles of criminal law, *or* general theories of court procedures and administrative procedures, *or* international private law; theory of government, constitutional law, and constitutional history; economic history; social policy and labor law; theory of private economy and accounting; choice of business management, *or* a course on the processing and the technical properties of important commodities and merchandise, *or* insurance law; economic geography; sociological theory; proseminar in economic history; general statistics; proseminar in statistics; in economic policies and finance; in social policy and labor law; in theory of government, constitutional law and history; in international law; in administrative science and Austrian administrative law.

Each of the proseminars enumerated above must be—really—attended for two semesters. Two additional proseminars or seminars, one of which is in sociology, must be selected. If none is in the field of the candidate's doctoral thesis, he is obliged to add one of two semesters' duration in that field. The courses given jointly for law and political science students, except those on administrative science and law must be taken within the first four semesters, after which the first of the two oral examinations is required. The same provision applies to

[1] The faculty does not form an independent department but is a subdepartment of the old combined law and political science faculty.



several, mostly legal, courses which are offered separately to students of the political sciences. Admission to both examinations is granted only upon passing informal examinations or conferences (*Kolloquien*) and tests in reading French, English, and Italian texts. The second oral examination can be taken only after the doctor's thesis has been approved, at the earliest within the last six weeks of the eighth semester.

The ordinance which created the faculty in the outlined shape provides that the degree obtained is of a purely academic character and granted the holder no privilege whatsoever with regard to any practical career. In particular the degree is not a title for admission to any of the various types of apprenticeship training, be it that for attorneys, judges, notaries, or for public administration.

The reader will note the progressive features of the outlined study, among them, for instance, the great emphasis on proseminars and seminars; the courses in fields of knowledge particularly desirable for administrators, such as sociology, social policies, labor law, business management, economic geography; and the requirement that the candidate be able to read three foreign modern languages. It is these features that seem to foreshadow future development, either in the direction of their absorption by the law faculties, or in that of a conversion of the faculties of political science into full-fledged faculties of sociology and administrative science with the task of creating a modern, broad-minded type of administrator for public and private service.

We have thus seen that the challenges to the monopoly of Continental law training in the recruitment of public administrators have been scanty, and that even the French law faculties were able to retain their hegemony by introducing changes—not too radical ones—in their curricula. These very facts must be given consideration if we now turn our attention more closely to the merits of legal education in promoting administrative efficiency. Although we shall guard against taking its hitherto unshaken supremacy in the selection of higher civil servants on the Continent at its face value as a proof that law is the best medium for training administrators, this old supremacy cannot be passed over lightly. It suggests that serious reasons for its tenacious continuation exist. That consequential criticism of the performance of legally trained administrators has actually never been forthcoming, strengthens the suggestion.

It is true that emotional opposition to the jurist and to his position in the organization of society, whether he be attorney, judge, or execu-

tive official, is as old and common among laymen as is their concomitant belief in his superior ability for disentangling complex problems of social life and for steering through the pitfalls of law. The affirmative side of this dual attitude is partly accounted for by the common tendency to attribute an almost magic endowment to a professional education that one did not happen to have, and thereby to relieve oneself of decisions and responsibilities. These rest nicely on the shoulders of the professional man.

The reproaches which one hears most often raised against the jurist are that he tends to be too legalistic, indirect, incapable of quick and practical decisions. He is seen to lose touch with reality, which, in part, he actually does, owing to his perpetual dealing with abstractions, and which, in part, is only the expression of his seeing more implications and guarding against more dangers than the layman knows of. Yet again and again he is resorted to by those who hold him in contempt. If businessmen or lay-administrators ask for his services, he is, however, expected to stick to the purely legal aspects of the transactions or administrative acts at hand, and is believed to be out of his depth when it comes to issues of matter as opposed to form. But here too attitudes are not consistent. We can observe how often the layman relies in handling the substance of his problems upon the trained perspicacity of the lawyer, who is thus accorded more sway than the client might be willing to admit. Law-trained administrators, on the other hand, have been heard to express surprise and annoyance at the difficulties which non-law-trained administrators (generally men educated in science or some technical field) encounter in dealing with problems of a somewhat complex nature. Negotiations with such men, even if their personal standards are high, are said to move in a cumbersome fashion, with waste of time and energy, while the drafts or rulings resulting from such meetings sorely lack lucidity, consistency, and integration.

Those on the Continent charged with the selection of personnel for public and private administration have always acted upon the conviction that the advantages resulting from a mind trained in and through law formed an essential ingredient of the equipment needed for effective, reviewable administration. They favored men who had wended their way through the study of law, even if these men were wanting in that not readily definable "plus" that is so distinctly felt to be present in individually great persons, and even though the absence of that "plus" was apparently not fortuitous but in some way linked with inadequacies of the training. They believed that it was better to have men with the jurist's specific turn of mind than men with considerable



knowledge, breadth of vision, human warmth—of which that "plus" largely consists, yet without the incisiveness, mental order, and drive that can be acquired by a sound legal education.

Should the harvest of new developments in legal education, as outlined in this study, and more specifically that of new curricula and methods for the training of administrators appear somewhat meager, it must be remembered that all normal evolution in most of Europe has been at a standstill for more than a decade. The vivid endeavors for the improvement of law training in republican Germany seem in retrospect to have harbored some promise that strides might have been made, had it not been for the downfall of civilization on the Continent.

We must also recall that law faculties and the training of legal professionals represent an old, slowly grown, balanced phenomenon which has proved useful to a fair degree. Such institutions are hardly susceptible of fast and revolutionary changes—without a general renewal or, rather, upheaval of social life. We must recognize, finally, the great tenacity with which once established patterns and ways of meeting social needs are in the habit of preserving themselves beyond the stage of utter obsolescence—supported as they are at every moment by the personal interests of a great number of individuals, and by an almost universal abhorrence of change. There is no area in social life to which this abhorrence seems to apply more than to legal systems, and to all that is connected with law.

## CONCLUSION

Law training on the Continent must be rated a fairly successful procedure for conditioning suitable candidates for a wide range of professional occupations that require systematic tackling of social problems by application or creation of law, on the basis of some knowledge of political, economic, and human realities of modern society. It must, in other words, be rated a fairly successful system for training lawyers and administrators—as both are commonly conceived of.

Even with this significant reservation, however, it is not a flawless solution. The aforegoing monograph, it is hoped, has by implication pointed out some of the improvements of curriculum and method that are possible and, in instances, imperative. Particularly, the best of the university study—that part in which a scientific approach to law and the social sciences is most nearly realized by fostering active participation of students and near-to-laboratory conditions in seminars and similar small classes—needs to be brought within the reach of the average student. It must form the natural, inevitable course of his study instead of a premium which only the exceptionally earnest student is able to secure for himself.

What are the strong points that account for the success of Continental law training, as far as it goes?

1. The pre-university education. One can scarcely overemphasize the advantage with which Continental legal education begins, because of the merits of the secondary schools. They equip the prospective law student with a sound general education and a fair ability to think in systematic concepts.

2. The nonprofessional character of the university education. Because law faculties have no immediate practical aims to restrict their scope, they are able to devote themselves to a comprehensive, conceptual presentation of law. The process that they initiate is similar to that of laying the foundation for a house, or to the growth of a plant. It does not reach out in a hurried, inorganic manner to achieve quick results; it is not based on the misconception that a profession as pivotal as law is just another trade, even if the practice of that profession presupposes also an extensive set of skills and much small information.

3. The extensive treatment of public law and of some field of the social sciences. The treatment, as has been shown, is neither intensive enough to do these subjects justice in their own right, nor does it use





them for deepening the insight into strictly legal subjects. But even inadequate as the presentation of public law and the social sciences is, it cannot fail to broaden immensely the outlook of the law graduate.

4. The historical courses. It is impossible to deal with the evolution of a legal system and of individual legal institutions without paying at least some attention to the interrelation between law and phenomena of a social, political, or economic kind. Dealing with such evolutions is certain to reveal the inevitable, though limping, adaptation of law to the changes of life. The student's general education is thus increased, and he achieves a broadness of approach to law which the lawyer trained under less elaborate systems apparently never attains. It is in the historical courses mainly that the law student begins to develop into something different from a mere legal technician, who at best knows "what the law is" in a given situation, and employs skill to make a court affirm it once more.

5. The apprenticeship training. It not only liberates the law faculties for concentration on a science-minded presentation of law and political subjects, but supplements this study by a type of professional training that, as far as its pattern and basic features go, can hardly be excelled. Because of its ample theoretical foundations and its added professional preparation, Continental law training requires from seven to eleven years. This impressive investment of time and effort is not wasted. We can easily understand that it is likely, if not bound, to make a tremendous difference in the outcome.

How do these merits fit in with the poor account that Continental law training seems to have given of itself in the light of contemporary history? Or *has* it proved generative of a desirable degree of public spirit, social vision, political wisdom, and civic courage in the administrators, judges, attorneys trained under its aegis? Certainly not. The failure, however, cannot with justice be laid primarily at the door of the training itself. It is more than questionable whether any training, be it the best conceivable, could have stood the test of history any better. The shortcomings that the groups in question have exhibited are the result of a variety of factors which in turn have grown out of the political, economic, and civilizational history of the respective countries. Prominent among these factors are the general *moral* education of the population, its established patterns of thinking and acting, in short, all the imponderables that mold a people's peculiar mentality.

The affirmative evaluation of Continental law training expressed here is subject, as has been suggested earlier, to the reservation that it successfully prepares lawyers and administrators as both are commonly conceived of. What the import of this reservation is, or what else can and must be expected from a training that could be acclaimed without reserve, requires some explanation: Even though Continental legal education can be acknowledged to rear men for an *almost* scientific application and further exploration (teaching) of positive law, we would be definitely wrong in believing that it fosters in its students a specific ability or desire to inquire into the causes of economic-social ills, into the success or failure of law to improve the economic, social or moral standards of groups and of society as a whole. It does not prompt its students to strive for the removal of harmful or obsolete laws, or for the establishment of more progressive ones. That such a function will be assumed by the lawyer—because of his being a lawyer—is expected even less on the Continent than in the United States.

If a law-trained administrator or legislator happens to grow in his position and thereby rises to a level on which he instigates improvements of economic-social conditions by application or creation of law, he does so not *because* he is a lawyer, nor is he generally entrusted with such work *because* anyone believes that it is the proper concern of a broadly conceived legal profession. He will rather deal with such problems in his capacity as an official of the administration, on the strength of experience and interest derived from his office, and because of the specific responsibility which that office places upon him. His legal background offers only the technique, the knowledge of how to put into effect what he is ordered to achieve, or wants to achieve. It does not offer a qualified incentive for his administrative or legislative activity, nor broadly founded knowledge of what his work can and ought to achieve.

*The social engineer, provided with a specific sense of responsibility for observing and constructively eradicating defects in the organization of society and in the administration of justice in its broadest sense, cannot yet be found among the various groups who seek their training in a law faculty.*

If lawyers are proud of the accomplishments of many of their brethren as politicians, legislators, administrators, statesmen, spiritual leaders, they grossly forget that the contribution that has been made to the work of those men by their law training was only technical, and hence subservient. In spite of their pride in outstanding colleagues, lawyers do nothing to liberate law training from its technical and narrow spirit, so that it will form a more vital factor in the achievements



of talented individuals and offer them a stronger incentive to strive for such than mere discipline of the mind can ever give.

Law training, as still carried on, forces students and accomplished lawyers alike to look upon law as something static and abstract. They are not guided to see it as continually created and creative, and to feel themselves called upon to direct it in both of these aspects. Thus the lawyer still fails to think of law along great, living lines. He acquires, together with a stupendous incisiveness concerning detail, an equally stupendous neglect of the large implications of his social task.

The adoption of measures and methods for the planned rearing of the highest type of lawyer suggested above thus remains the goal of law training for the future. This goal alone can lead the legal profession to the dignity that radiates from an incontestably social function. Not until the basic *shift of emphasis and change of spirit* presupposed by this goal has come to pass will lawyers—like physicians—be supported by the constant reassurance of fulfilling one of the great professional tasks. Only then will they no longer find, in their own consciousness as well as in the eyes of others, the lingering reproach that they are the beneficiaries and sometimes even the promoters of social trouble, instead of being those who are called upon to prevent, or alleviate such trouble.

Because of their technical efficiency law-trained men are likely always to be favored for positions in the public life of all countries. As the complexity of modern life continues to increase and the importance of public administration proportionately to grow, the basic aptitude of lawyers makes it particularly desirable that their equipment—so far only technical—be amplified by enlightenment; that they visualize the ends to be served more than the means.

Modern law training can no longer remain lost in self-adulation. Little does it matter whether it be the self-adulation of scientists or of professional clans. Any self-centered isolation in legal education necessarily produces guilds of either legal scholars or legal technicians, however the emphasis is otherwise shifted. The primary aim of law training must be the rearing of *men*—men who have profound knowledge of and full contact with the world around them, and a passionate desire to help their fellow-beings by means of law and social construction. The province for that help and construction is large; its confines are those of human life.