

LAW SCHOOL DEVELOPMENTS

Once a year, this department will carry figures on law school registration. In addition it will provide a medium for the description of experiments in curriculum, teaching method, and administration. Like "comments," the typical law school development note will be characterized by brevity and informality; unlike them, it will be descriptive rather than argumentative and will deal primarily with devices which have been tested in actual operation.

MODERN DEVELOPMENTS IN THE PREPARATION FOR THE BAR IN FRANCE *

ANDRE TUNC†

The continuous attention paid in most countries to the proper training of lawyers induced the French Legislature to take certain measures a few years ago to make the training of the "barristers," if not of all-lawyers, more efficient.¹

Previous to these measures, the law degree conferred by a law school after three years of theoretical studies was considered proof of sufficient preparation and enabled the person receiving it to be admitted to the bar. However, the new barrister was only a "temporary barrister" (*avocat stagiaire*) for at least three years and was required to receive supplementary training under the direction of the bar itself. The question was reconsidered in 1940 and 1941, and it seemed necessary to increase the efficiency of the training prior to admission to the bar. This is one of the reasons why, besides the ancient academic courses, the seminar type of instruction was extended in the law schools and, instead of being optional, became compulsory for all students. This is also the reason why a new training program, especially planned for the future barristers, was introduced, leading to a new degree similar to admission to the bar in this country, although markedly different in certain respects. This last reform created a new step in the training of barristers, and three steps, therefore, must now be distinguished: two of them lead to the law degree and to the special bar examination which are

* The substance of this paper was given in an address before the American Foreign Law Association in New York, January 6, 1949.

† Professor in the Law School of the University of Grenoble; Counsellor in the Legal Department of the International Monetary Fund.

¹ French lawyers are divided into "*avocats*" and "*avoués*," a distinction similar to a certain extent to the English distinction between barristers and solicitors, and barristers are the more important among the lawyers. Theoretically, they are concerned only with the pleading of cases. In practice, however, the pleading is the predominant part of the presentation of a case and, moreover, solicitors very often leave to barristers the responsibility for the preparation of briefs. On French lawyers, see WILLIAM L. BURDICK, *THE BENCH AND BAR OF OTHER LANDS* 266-278 (1939); on "*avoués*," see *id.* at 276-277.

prerequisites to becoming a barrister, while the final training is given by the bar itself.

The purpose of this paper is to set forth these three steps, stressing the new and summarizing only as a necessary framework what has already been presented.²

I

Again, in the study of law, three different stages may be distinguished,³ each of them each being marked by a separate degree. Only the first degree is really necessary to become a barrister. It is called the *licence en droit* and corresponds to the LL.B. The second one is optional, not only in preparation for the bar or the bench, but for any purpose. It is obtained, however, by a great number of the students, approximately 20 per cent, and the best. It is called the *doctorat en droit* and seems to correspond to the S.J.D. The third one will be omitted from this study, since it is necessary only for the purpose of becoming a professor.

It seems fair to say, as a preliminary remark, that the freshmen admitted to the law schools already have a good background and are accustomed to thinking and studying. When they leave the *lycée* and have received the degree of *baccalauréat* (B.A.), they have studied French literature, history and geography of the world and of France, one foreign language and Latin, or one foreign language and Latin and Greek, or two foreign languages, mathematics, physics, chemistry, electricity, drawing, history of arts, psychology, logic, and metaphysics. Of course, all these subjects are sometimes too high and too difficult for young people—they are usually seventeen or eighteen years old when they leave the *lycée*. However, they arrive at law school already well prepared for intellectual work, and even actually accustomed to it.

The first stage of the legal training lasts at least three years. Practically, most of the law schools are public ones, *i.e.*, law schools organized by the State, where professors are civil servants and students have to pay only a small fee.⁴ In any event, only public law schools can confer degrees. They are all organized on the same lines, although the Law School of Paris is much larger than any other. There is very little freedom for the students in the organization of the studies for the first degree. During the first and the second years, they have no choice at all. Only during the third year, and while still taking some compulsory courses, do they have a choice among optional subjects.⁵

² See Deák, *French Legal Education and Some Reflections on Legal Education in the United States*, [1939] WIS.L.REV. 473; ROBERT VALEUR, L'ENSEIGNEMENT DU DROIT EN FRANCE ET AUX ETATS-UNIS (1928). Cf. ERIC F. SCHWEINBURG, LAW TRAINING IN CONTINENTAL EUROPE (1945) and Riesenfeld, *A Comparison of Continental and American Legal Education*, 36 MICH.L.REV. 31 (1937).

³ For the purpose of this paper, we need not consider the law studies which may be taken by undergraduate students, since they cannot lead to the *licence en droit* which is required for the admission to the bar. See, on these studies, Deák, *supra* note 2, at 477-478. Students from foreign countries may follow the normal curriculum and receive law degrees: see Deák, *supra* note 2, at 478-479 and notes 11, 12, and 13, *infra*.

⁴ Cf. Deák, *supra* note 2, at 475-476.

⁵ See the subjects of the three years of study in Deák, *supra* note 2, at 481-485.

The law school curriculum covers wide fields. It includes not only private law and public law, in the broad sense of these terms, but also Roman law, history of the old French law, and economics. Law schools, indeed, are not considered only as technical schools.⁶ They do not prepare only for the bar or the bench, but rather strive to give a broad education. Consequently, not only the future lawyers attend the law schools, but also future civil servants or staff members of international organizations and future businessmen desirous only of receiving a better education, of becoming more accustomed to intellectual work and discussion, and of acquiring those qualities of strength and order which lawyers sometimes consider to be the result of law studies.⁷

Legal education is not given in France in the same way as in the United States. The main source of law being the Codes,⁸ the professor has to give a systematic exposition of the principles of the law. Five major topics every year (Civil Law, Constitutional Law, History of the Law, etc.) are taught three hours per week. The professor uses mainly the lecture method, without discussions with the students. Except in some matters, he attributes to the cases only secondary importance and uses them as illustrative examples or as decisions clarifying a secondary point of law. He does not fail, however, to give the students references to cases with advice to read them, either in casebooks, if they want to buy one,⁹ or in the reports in the library of the law school, if they so prefer.¹⁰

A new feature, however, has been added recently to the old training, in order to make it more alive and more fruitful for the students. A statute of October 30, 1940,¹¹ instituted seminars which must be held one hour per week in every major topic of the law. The seminars themselves are not new, but they were previously optional, and taken only by the best students, whereas they are now compulsory. They are conducted by the professors themselves in the provinces. In Paris, where the students are too numerous, compulsory seminars are entrusted to members of the bench or bar and to certain doctors of law, preparing for professorship and appointed by the faculty; the professors are directly responsible only for the older, optional seminars. The organization of the seminar is left to the discretion of each professor. The seminar, however, always gives opportunities to the students to ask the professor questions, in order to clarify any difficult point of the course or reconcile any antinomy between what was taught by the professor and what they know in life. It also gives the professor

⁶ Cf. Deák, *supra* note 2, at 473-475, and VALEUR, *op. cit. supra* note 2, at 1-92.

⁷ On the importance of a certain economic background in legal education, see Fuller, *What the Law Schools Can Contribute to the Making of Lawyers*, 1 J.LEGAL ED. 189, 199-202 (1948).

⁸ A commission was appointed in 1945 to prepare a reform of the Civil Code: Cf. Julliot de la Morandière, *The Reform of the French Civil Code*, translated and annotated by Professor Nadelmann, 97 U. of P.A.L.REV. 1 (1948).

⁹ The students do not usually buy casebooks and are satisfied by using the law reports of the law school library. There are, however, casebooks on certain matters. An especially excellent one is HENRY CAPITANT, *LES GRANDS ARRÊTS DE LA JURISPRUDENCE CIVILE* (1934), reviewed by Professor Deák in 9 TULANE L.REV. 149 (1934).

¹⁰ On the method of teaching, see Deák, *supra* note 2, at 487-489; on the law libraries, see *id.* at 489.

¹¹ Jour. Off. Nov. 22, 1940; DALLOZ PERIOD, 1940. 4.376.

the opportunity to ask the students questions in order to insure that every point has been well understood and that the students have not been satisfied by merely sitting in the law school, but really studied. Moreover, the professor usually requires one of the students to present and discuss a certain case; he may even, in certain instances, require two students to express the two opposite points of view on the same case. The purposes of these exercises are the same as in this country: first, to accustom the speakers to exposing a question clearly and to showing what was the exact difficulty in it and how it was resolved; second, to give all the students a more concrete view of the law and the law problems. Finally, the professor gives marks to the students when he interrogates them; he may even, in order to check their work and to grade each student on more work, proceed to written examinations. All those marks are recorded, and if, at the end of the year, a student's final examination marks are just a little low, the board will consider whether it will not let the candidate pass on the basis of these earlier marks.

In any event, except in Paris, where the law school is too big to allow true acquaintance between professors and students individually,¹² one must take into account the personal relations between professors and students which exist in France as in this country. Before or after the courses, or at home, the professor is always available to the students and always glad to give them, as far as he can, not only advice on the study of a legal point, but also on the choice of a career or on personal problems. In fact, students come very often to request this advice. Moreover, in winter and spring, professors and students of the Law Faculty of Grenoble, for instance, meet during the weekend on the snow fields which surround the city.

Every year the students are obliged to take written and oral examinations, which have become more and more difficult. No one can advance to the higher courses if he has not passed. At the end of the three years, if the last examination is passed, the student receives a diploma which, as previously stated, is one of the conditions required for becoming a barrister, and is called *la licence en droit*. However, as previously mentioned also, a large number of the students, and the best ones, want to go into the study of law more deeply and take the doctor's degree, even when they are admitted to the bar immediately after the first degree.

In the preparation for the doctor's degree, which requires at least two years of study and often three or more, the students receive much more freedom as far as subjects are concerned. The whole law is divided into four fields: private law, public law, history of law (including Roman law), and economics;¹³ and the student has to pass examinations in two of these four fields, which he may choose freely. Even in these fields, he is not obliged to study every subject. He has to choose only a few of them, but must study them as thoroughly as possible. Even the courses given by the professors are restricted with regard to subject matter, but intensive within their narrow bounds. The private and public law courses include studies of topics from the comparative-law viewpoint. Moreover, at least in the

¹² The number of students is now above 20,000; more than 6,000 students are registered in the first year.

¹³ For details on the organization of the courses, see Deák, *supra* note 2, at 485-487.

provinces, the courses for advanced degrees become less important than they were for the first degree and the seminars with professors or the private studies take precedence. Again, the professor has entire freedom in the organization of the seminar. The idea, however, is usually to study a narrow field of law as deeply as possible, not with the view of clarifying every detail, but in order to bring to light the principles involved, to show how they conflict and how the conflict should be resolved. Often the technique is to require a student to present to his fellow students a certain problem, either theoretical (like the concept of tort, the importance of previsibility in torts, causal connection between tort and damage), or practical (like the liability of the owner of a stolen car for injury to a third person while the thief is driving, the damages for injury to a civil servant who is beneficiary of a pension). Afterwards the professor criticizes the student's lecture and leads a general discussion. The whole seminar may last two or three hours.

This is not the only training required for the second degree. When the student has passed the two examinations in the fields which he has chosen, he still has to write a thesis on a certain legal subject agreed upon by him and one of his professors. These theses are very unequal in value. Some are fairly poor, although they approximate one hundred pages in length. Most of them, however, the result of one year or more of continuous work, are reasonably good. Some are excellent and will become the leading books on the subject. Of course, the thesis has not only to be written, but also to be approved by the professor and to be publicly discussed by the student-author before a board of three professors. After the thesis has been discussed and approved by the board, the student receives the second degree and becomes *Docteur en Droit*.

Before leaving the subject of the law schools themselves, it will be advantageous to pay some attention to their spirit. They do not consider themselves technical schools; they realize they cannot teach law in all its details. Instead, they try primarily to train the students' minds to legal thinking and research. The purpose of imparting as much knowledge as possible is not forgotten, but is secondary. Their ambition is to prepare men of high intellectual standing, able to do research in statutory law, case law, and doctrine, and also to take a personal view on an issue, to discover the *ratio decidendi* of a case, or to understand the spirit and policy of a statute.¹⁴

II

Despite the practical seminars which are a part of it, the law school training remains to a certain extent academic and theoretical. Although the student has taken a course of procedure and may be well prepared for legal thinking, he is not yet specifically prepared for the bar.

It is to cope with this lack of special preparation that a statute of June 26, 1941,¹⁵ has introduced a certificate of aptitude for the profession of barrister (*certificat d'aptitude à la profession d'avocat*), obtained by students

¹⁴ Cf. Fuller, *supra* note 7.

¹⁵ Jour. Off. July 26, 1941, p. 3162; REC. AN DALLOZ 1941. L-376.

who, after one year of preparation, succeed in passing an examination.¹⁶ This year of preparation may be the last year of law studies.

The preparation is given in the law school, but the teachers are one judge from a court of appeals, practicing lawyers (barristers and solicitors), and only one law professor.

Great freedom is allowed to the persons responsible for this preparation. Most of the courses are practical exercises. The barrister and the solicitor bring to the class files of cases; they show the students or read to them the various acts of procedure; they explain to them the various steps taken, how and why they were taken, what else might have been possible and why it was neglected; they give their opinion of the psychology of the bench and indicate what it is possible to obtain from the judge and what it is inadvisable to request from him. The judge also gives his impression of the psychology of the bench; he tells what he likes and what he dislikes from the lawyers and what the lawyers should do. All of them try to give to the future barristers all the practical and psychological information that may be useful for the practice of their profession.

The only real course offered for this training relates to the functions of the barrister, the organization of the bar, and the rights and duties of the barristers. It has, therefore, three purposes. The first is to give the students a well-rounded understanding of the position of a present-day barrister in France and in foreign countries, and of a barrister in ancient Rome and in the Parliaments of ancient France. The second purpose is to explain to them the organization of the bar. France has kept, indeed, two very old institutions which developed with time: the Council of the Bar (*Conseil de l'Ordre*) and the Chancellor of the Bar (*Bâtonnier*).¹⁷ Their election, their powers, their relations with the bench, and, more generally, all the organization of the bar, as codified in a statute of June 26, 1941,¹⁸ must be explained to future barristers. However, the main purpose of this course is to teach them the ethics and the rules of the profession of barrister. The responsibilities and duties of a barrister are numerous and complicated. The French bar carefully retains many old rules, which seem sometimes very antique, but to which it is very strongly attached because they spring from

¹⁶ This is not the only special examination. An examination is required for joining the bench. Moreover, various institutes functioning in the general framework of the law schools may be attended by the students and special degrees may be obtained from them: Institut de Droit Comparé, Institut des Hautes Etudes Internationales, Institut de Criminologie, Institut de Préparation Scientifique aux Etudes Economiques, Institut des Sciences Juridiques et Financières Appliquées aux Affaires, Institut Commercial, etc. Cf. Deák, *supra* note 2, at 490-491.

¹⁷ On the history of the organization of the French bar, see BURDICK, *op. cit. supra* note 1, at 266-268. The name *Bâtonnier* is probably derived from the fact that during bar meetings, the Chancellor of the Bar was entitled to hold the pole (then called *bâton*) of the banner of Saint Yves, patron saint of barristers.

¹⁸ Jour. Off. July 28, 1941, p. 3159; REC. CRIT. DALLOZ 1941. L. 1, note of Jean Appleton. This statute is of the same date, but is not the same as the statute which introduced the preparation for the bar. Its title is: Statute of June 26, 1941, *regulating the exercise of the profession of barrister and the rules of the bar*. Its purpose is to codify, without any significant modification, the organization and ethics of the profession, which may be found in JEAN APPLETON, *TRAITÉ DE LA PROFESSION D'AVOCAT* (1928) or FERNAND PAYEN ET GASTON DUVEAU, *LES RÉGLES DE LA PROFESSION D'AVOCAT ET LES USAGES DU BARREAU DE PARIS* (1936).

the experience of the past.¹⁹ They have the purpose of protecting the barrister against any possible suspicion of dishonesty or against the dishonesty of a client toward himself or toward the other party. Those rules are strictly enforced by the Council of the Bar. However, the layman is not familiar with them. They would seem strange to him. They cannot be derived merely from common sense; practical experience has likewise dictated them. It is necessary, therefore, to stress these rules and to show future lawyers, by practical illustrations, the reasons for the rules and why they must follow them strictly, or under what exceptional circumstances and with what safeguards, such as authorization by the Chancellor, they may depart from them. The professor's concern is that one of his students might, if not properly instructed, err in the future, not dishonestly but through inexperience and lack of knowledge. Although the Council of the Bar can impose no sanction if the good faith of the transgressor is established, the professors try to prepare the future lawyers to respect the rules fully.

After one year of preparation, an examination must be passed before a board, the members of which are, again, one judge from a court of appeals, three practicing lawyers, and one professor of law. The examination is composed of five tests.

The first is a written test of general culture. The board chooses a subject of general culture and leaves the student to develop it in a five- or six-hour written examination. For example, the following subjects were proposed in the University of Grenoble: the value and the dangers of formalism, the questions whether work is a punishment, whether there is a duty to be happy, whether humanity is progressing, whether the poets are necessarily man-haters, and so forth. All these subjects may seem very strange for bar examinations, but they are subjects of general culture. A student should not fail to pass because he does not know the history of the seventeenth century very well, for instance, if he has a great deal of knowledge of painting or philosophy, or even, without great specific knowledge, is able to think, to show good sense and clearly present interesting ideas. The board, therefore, attempts to choose as broad a subject as possible; it gives it without any preconceived ideas, thus leaving to every student the responsibility of treating the subject according to his own personality. The student is asked only to reveal personality and capacity to think, to discuss and explain.

The second test is an oral one. Every student draws a legal topic and, after one hour of preparation, must present it in fifteen minutes before the board. Again, this test may seem strange, but it must not be considered as a test of legal value, the test of legal value being the degree already conferred by the law school. It is a test of clarity of thinking. The students are required to show their ability to speak clearly and interestingly on a given subject of law. The board does not mind very much if there are some mistakes, but it cares very much if the orator is boring.

The other tests are more ordinary and are just interrogations on the subject of the courses and the exercises during the year. When all the tests are over, the board discusses the case of every candidate. The candidate received grades on every test. However, the board does not always judge

¹⁹ See on this point BURDICK, *op. cit. supra* note 1, at 275.

by the average of these marks alone. It will often be generous with a candidate who does not yet know the practice well, but demonstrates ability to explain a question clearly or to discuss it usefully and to understand fully the duties of the profession. On the other hand, the board may decide to reject even a gifted student in his own interest, if he would go to the bar unaware of his professional responsibilities.

When a student has received the law degree and the certificate of aptitude for the profession of barrister, he may apply for admission to the bar. He is not, however, really entitled to become a barrister, because the aforementioned Council of the Bar has to decide on his application. It may refuse to admit an applicant if the records of his life history would impair the absolute confidence that the clients, the bench, and the bar at large must have in every barrister. This refusal, however, would not be final; a candidate may always file an appeal to the Court of Appeals to review the decision.

III

Although the law degree is proof of adequate legal ability and knowledge, and the new degree required by the statute of 1941 confirms the special aptitude for the bar, the person who receives these degrees has not yet had any real experience of the bar and cannot be allowed to practice freely. For a period of three years at least and five years at most, he will, therefore, be a "temporary barrister" (*avocat stagiaire*).²⁰ During the first year, he cannot even handle a case without special authorization from the Chancellor of the Bar.

During the remaining years of his "instruction term" (*stage*), he will necessarily obtain a certain amount of experience from the fact that he will be appointed to take care of a great number of simpler legal aid cases (*assistance judiciaire*).

Moreover, he must, for at least one year, assist a more experienced barrister, or a solicitor, or a notary. And, in fact, he will often work with a solicitor for one year, but will nearly always spend all the other years of his "instruction term," or even more, helping a more experienced barrister. It is true that the formation of law firms is prohibited by French tradition. However, the barrister is authorized to receive some help from young barristers as long as the relationship is a purely personal one. The young barrister is authorized to give his assistance to the more experienced one, to benefit in return from the latter's experience. He will, therefore, prepare briefs and pleas for him. The elder barrister will not only advise the young man, but will revise his work, and this assistance may be a very valuable part of the training of a young barrister. According to the tradition, the young barrister did not receive any fee from the elder. He was received into his family; he sometimes accompanied him to plead, in a court which was not the court to which he was attached, a case that he had prepared for him; after a certain number of years of work together, it has happened that the elder barrister has requested some of his clients to transfer to the young barrister the confidence that they used to place in himself; finally, it was not uncommon that a barrister, when retiring or dying, left his library to his best assistant or divided it among his best assistants. All this

²⁰ On the "temporary barristers," see BURDICK, *op. cit. supra* note 1, at 274.

remains true to a certain extent, although it is less and less frequent. On the other hand, the material difficulties of present life are such as to make it necessary for the elder barrister to give some monthly fee to the younger. It remains true, however, that the main purpose of this assistance, both from the theoretical point of view and from the point of view of the assistant, is to give young barristers the opportunity to request and receive advice from an elder barrister for their own cases and to participate in his experience by working under his advice and supervision, conferring with him, and observing his methods.

Finally, during the three-year period, the young barrister will have to follow some seminars organized by the bar, according to the judgment and potentialities of each bar. In the bar of Paris and in the bars of most of the courts of appeals, the members of the Council of the Bar will again explain the rules and ethics of the profession to small groups of barristers who are now practicing and have become more acquainted with the problems; they will make sure that the young barristers know every rule and can answer their questions on specific difficulties. Moreover, they will conduct some oratorical exercises and conduct a contest of eloquence and general culture, the reward of which is the coveted title of *Secrétaire de la Conférence du Stage*, which helps some young barristers to become better known.

At the end of the three years of "instruction term," or at the end of five years if the "temporary barrister" so prefers, the Council of the Bar makes a new decision regarding his status. Normally, it will admit him without difficulty to become a full barrister. However, it will refuse to admit him as a full barrister if he has made a serious mistake or was dishonest, or even if he did not follow the seminars organized by the bar to complete his training. In this last case, it might merely delay his admission as a full barrister for one year.

When Saint Yves died, at the end of the thirteenth century, the popular legend said of him: *Advocatus, sed non latro, res miranda populo* (He was a lawyer, but not a gangster, which is extraordinary). Apparently, French lawyers of that epoch had at least good will, since they chose Saint Yves as their patron saint, despite this common saying. And, apparently, Saint Yves worked efficiently for them, since they are no longer considered as being normally gangsters. It is not enough, however, to choose an efficient Saint. Another dictum says, "Help thyself and God will help thee." The new measures introduced in France to improve the training of barristers show continuous effort of the bar, the bench, and the law schools to maintain and, if possible, improve both the technical and moral standards of the profession.