# Gilt-Edged Legal Education: A Comparative Study

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Thoughts on the function of a law school or a faculty of law vary from one university to another. Doubts remain as to whether those institutions should mainly be regarded as "professional" schools or as "academic" bodies; in places, controversies arise over so-called "theoretical" and "practical" teaching methods, while each generation of students makes its own suggestions and faculty members ask for more independence and reduced teaching loads.

Law teaching is an old profession: courses on jurisprudence were given in medieval times, but it is mainly as a result of the modern reorganization of the legal professions that the teaching of the law has been examined with renewed interest. In the old days, one did not need a law degree to practice law and the faculty of law was more academic than professional. Today, since the legal profession now requires a law degree, closer links have been developed between those corporations or associations and the law schools. In some instances the Bar has taken charge of the law school, while in others members of the Bar have assumed full responsibility for teaching the law within universities. The development of law teaching as a full time career has, however, modified this situation, but law schools and faculties are, nevertheless, still faced with the dilemma: are we professional or academic schools or both?

This paper attempts to compare some approaches to law teaching, mainly by contrasting the results of these approaches, and this with special reference to the teaching of the civil and the common law. This study will be based on some of the most successful schools of law teaching in England, France and the United States, whose diverse instruction methods offer fertile grounds for comparison. For fear of abusive generalization, most of our examples will be drawn from those universities that rank among the best in each system (i.e. Oxford, Paris and Harvard).

Top universities in every system share an important characteristic: the large number and competence of their faculty members and, in

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most cases, the capability and large size of their student bodies; although the faculty-student ratio may vary greatly. Such a concentration of talent is necessary to the top-rated school, but, at the same time, such conditions usually lead to success and reputation.

On the other hand, the number of faculty members has little importance *per se* until it is determined what is expected from each of them and until the teaching of the traditional basic courses is assured. It is at this point that various tendencies and divergences appear: do the faculty members devote their time to giving specialized optional courses, teaching smaller sections, leading seminars or tutorials, supervising graduate students, in doing research, participating on faculty committees, overseeing a private practice, counselling government or engaging in other activities more or less related to their teaching function? An evaluation of the function of the faculty of law (professional v. academic), the ideal of the teaching profession, the standards of classroom performance and of the teacher-student relationship will help to answer the preceding question. The faculty-student ratio has a direct bearing on this; faculty pre-occupations cannot quite be the same with a 1:10 ratio (e.g. Oxford) as with a 1:30 ratio (e.g. Columbia) or a 1:400 ratio (e.g. Paris). Conversely, the admissions policy is also determined by the views on the accepted role of the law school and the function of its professors.

Consequently, although Oxbridge has traditionally insisted on 'education' before 'instruction', while remaining both rich and independent of the Bar and the Law Society, it has been able to maintain personal relations between faculty and students through tutorials and supervision. In recent years, those universities have had to depend on the government's Universities Grants Committee to supplement their funds, but the tutorial method has remained intact, and in fact is regarded as the main asset of the system. The American law schools, on the other hand, though unable to maintain such a high ratio and seemingly unwilling to devote personal attention to every student in private, have tried to limit the number of their students to a working maximum so that some form of personal relation could take place in class via the case method. At the other extreme, however, the *Université de Paris* has no inhibitions concerning education generally (116,000 students in 1968) and legal education in particular: with over 20,000 law students there is virtually no personal teacher-student relationship, while facilities are definitely inadequate. In Paris, no classroom allows more than 1,200 students at a time, and even then, they have to sit or stand everywhere, including the podium.

The very thought of having so many students facing him would probably make the average American law teacher feel quite inef-

fective, and he would perhaps be frightened upon being told that he had to deliver his course in the form of an uninterrupted lecture. Furthermore, the French professor must not even think of smoking a cigarette with his students after class or otherwise commingling with them. His entries and exits to and from the classroom must be dignified and full of protocol. An *appariteur* makes sure that order is maintained: the story goes that a student came to the door just as the professor was to enter; being polite, he held the door and respectfully said, "after you, sir", upon which the professor walked in and pulled the door behind himself, invoking the rule that bars a student from entering the classroom after the professor.

If a French professor had to face a class of American students, he would, in turn, be frightened to see a limited number of eager students and to be on the firing line at every moment, having to stimulate his audience by questions, and having to answer their queries as they arise and to discuss his personal views without the refuge of his hometown immunity.

At Oxbridge, this classroom relations problem is greatly simplified to every one's benefit: the classroom is regarded as just another educational tool. There are not very many classes altogether, thus meaning a small load to both faculty and students; dialogue is always possible during class, although the socratic method is not as widely used as in the United States. It is somehow admitted that the best students are not expected to attend classes at all times or even on a regular basis, whereas attendance is a must if the American method is to be used consistently. If the student knows a better way of getting the instructor's thought or of spending his time more usefully, he will not incur faculty disapproval. No such discretion is granted concerning tutorials, however, which form the core of the system. A brilliant freshman who was also a rowing ace spent a whole term without consulting with his tutors, and was facing an unfavourable term report; he pleaded his case to his senior tutor who, considering the man's talent, agreed to draft his report as follows: "Mr. A. B. has not submitted any bad papers during the past term."

It would be easy to draw a conclusion at this point and support the view that the traditional Oxbridge approach to legal education is the best, as far as the faculty-student ratio is concerned, and on the basis of the tutorial method, but it is also important to examine the whole structure of each system and to appreciate the most respected values in each of them.

*Selecting the faculty and the students.*

It would seem natural that the best universities of a country recruit the best professors and students: recruitment criteria vary, however, in terms of quality, quantity and homogeneity.

In a very centralized country like France, for example, the *Université de Paris* is not easily accessible to law teachers, and a lot of experience and lobbying is necessary before one can even think of being offered an appointment there. The staff includes a few assistants, but their function may be compared with that of clerks in a law firm. The young graduate who wishes to be appointed to the Paris faculty will go through the following process: he will take the *D. E. S.* degree, a one year course that is the equivalent of a master's degree (LL.M.), then write a doctoral thesis and eventually get an assistant's post in one of the provincial universities, where he will, for three or four years, teach a variety of topics. Then follows the *agrégation*, which is a sort of doctor's doctorate and a professor's professorship course, that selects the best candidates from all over the country and submits them to an intensive course in which most areas of civil and public law are covered. The candidate faces a double elimination upon taking the oral and written examinations: first, he must get a passing grade, which *in se* is an achievement, but, as this is a government competition, the number of successful candidates is determined by the number of teaching posts available according to the ministry's guidelines. Failure on the first try is almost standard, but successful candidates are well rewarded, as the best jobs go to the first-ranking candidates, as they choose. There is a built-in advantage and disadvantage to this program: all French professors *(agrégés)* have been through exactly the same pattern of education, have taken the same courses and examinations; they form an integrated community that culminates in the Paris faculty. Specialization is a matter of later concern. The *agrégé* thus takes a professorship in one of the provincial universities and starts the long wait for a Paris opening; he has to start early, though, for French faculty members do not escape the publish-or-perish syndrome. When his name has become familiar across the country, he may now start visiting Paris, take the faculty members to lunch, establish his entries in the Ministry of Education, make friends who will vote for him, demonstrate that he is a top scholar and a good colleague, and see that no competitor is out-doing him. Some people do not go to all that trouble, but the odds are that they are simply not going to make it to Paris unless they are outstanding and prove by deeds only what others have proven by both deeds and words. This is indeed a very long and slow process and there are not many young men on the Paris faculty.

Paris can thus claim that it has the best of the best on the teachers' side, and this claim is unchallenged; but to what type of students is that academic wealth being offered? Oddly enough, there is hardly any form of selection or discrimination in the admission of students. There are no tests or eliminative procedures before the student is actually admitted; at registration time in October, the student goes through the registry's formalities and discusses his program of studies, pays only a nominal registration fee and is set loose in the big machine. His other main duty is to take the examinations in due course. *Licence* students (the equivalent of the LL.B. degree) are admitted by the thousands, though not all will take and pass final examinations. Some register concurrently at two faculties, or keep a full time job, or simply live in *cafés*. In fact, though, one has to attend the *cafés*, which have become an annex to the exiguous classrooms and library halls. Publishing firms, together with faculty members and student councils, make available every day the text of the professor's course for those who could not or did not attend, or who, if they attended, did not take notes.

On the other hand, competition is quite serious in this university; the high number of students make it a varied crowd which includes the best students from all over France. Owing to the French system of grades and competition, top grades and ranks are sought by those who wish to take advantage of future scholarships and top jobs. As a result, and notwithstanding the material arrangements, there is sufficient incentive for the able student to get the greatest benefit out of the law courses, and, despite difficult housing and library facilities, the level of scholarship attained is generally the best possible.

One of the main disadvantages of this system, however, is the lack of personal relation and communication between professor and student. The instructor is the 'Master', remote from all and not easily talked to, whether in class or elsewhere. Other critics attack the passivity of students in class and the apparent need for extra memorization, combined with the meagre understanding by the student of what is being taught in class, although, on the whole, it has yet to be proved that these criteria are more prevalent in this system than in the others.

In order to understand the Parisian system of education, it must be emphasized that the faculty of law is by no means a professional school; besides, although the *baccalauréat* (the equivalent of the American B.A.) is a prerequisite to law studies, the *licence* degree is not considered a graduate degree as the American LL.B. is, for example. The law graduate may or may not become a lawyer, and

notwithstanding the very large number of law students in Paris, few of them actually end up in private practice, as opposed to the situation in the United States. There are many legal professions in France: in the first place, the graduate must decide whether he wants to teach, to practice or to be a magistrate; if he chooses practice, he may be a *notaire*, an *avoué* or a *procureur*. In many instances, he may undertake further studies, legal or otherwise, and, often, it may take a number of years before he can earn a living out of private practice or get a well-paying job with a law firm.

Just across the English Channel, the universities of Oxford and Cambridge, founded by English medieval scholars who thought they could do better than going to Paris as they were accustomed to, offer an entirely different approach to legal education, mainly through personal relations between tutor and student. Oxbridge faculty members are elected in double-barrelled elections, since those universities are federations of colleges (over thirty colleges in each case). A college is not a faculty, but an administrative unit, which includes members of most faculties. The faculty is an academic unit, and exists at the university — not the college — level. As a result of this rather complex structure, a faculty member at Oxbridge must, in most cases, hold two appointments; a college appointment, which determines his rank as a college member and the basis of his salary; and a university appointment, which determines his academic rank and salary (e.g. endowed chairs, fellowships, etc...). College appointments are voted upon by the fellows of each college, after applications, nominations and, occasionally, interviews by the fellows of the college or the appointments committee. The same pattern is followed with respect to faculty appointments, and the two committees have, of course, to co-ordinate their procedures. As a result, it happens that a full professor with an endowed chair may be a junior fellow in his college. Since the fellows of a college administer not only the college but also the university, both financially — there are no so-called university trustees — and academically, the college post has a definite value and prestige.

Since there are various college and faculty posts, the academic community is also varied. The representation of most age groups as well as men of different backgrounds and varied experience, creates a more stimulating environment for both faculty and students. Besides, a faculty post at Oxbridge, except perhaps in the case of the endowed chairs, does not mean the end of the road for the teaching community, as it does in Paris; the creation of new universities has maintained some element of competition. The election

procedure, however, added to the traditional advantages offered to faculty members, has helped to retain the very high level of competence and scholarship.

Student recruitment at Oxbridge is highly selective, though less discriminating than it used to be. Talent and high school grades form the basis for admissions, along with a special examination open to pre-university students. Admissions seem to be made on the qualities of the person instead of on pure statistical performance.

The great American law schools are famous for their tremendous wealth, both financial and intellectual. The recruitment of top-rated faculty members is rendered easy by the vast resources of all kinds that are offered prospective members. No strict rules may be derived from the recruitment procedures; those are within the dean's realm, and as a result of the great human mobility that exists in the United States and of the rapid development of the law, there the best men seem always to be willing to move to the top schools. The fact that law professors are able to "commute" from faculty to government, private practice or business and vice versa has also been a definite asset both in bringing top men into the law schools and in keeping them there.

Faculty members of American law schools have varied backgrounds but it is striking to see that in the top-rated schools, they hold diplomas, either graduate or undergraduate, of at least one of the big schools (Harvard, Columbia, Yale, Michigan, Chicago). Some of them hold doctoral degrees and others hold masters degrees only, as post-graduate studies do not seem a prerequisite to 'big time' law teaching. Most law teachers, on the other hand, have either taught in other schools, been in private practice for some years, or occupied some position with a government agency; they are members of several local bar associations and have survived the publish-or-perish rule. Most age groups are represented, younger members being appointed, in some instances, immediately upon graduation, though they are unlikely to remain with the same school for a long period of years.

Student selection in the big schools is a long and complex procedure: admissions committees, however, rely mainly on pre-university grades, the Law School Admission Test (administered by Princeton's Educational Testing Service) and other particular criteria. Although success is the main key to admission, the law schools have in recent years studied the possibility of admitting students coming from less favored groups or areas. Of course, successes and grades have traditionally been interpreted locally by the big schools, who

have devised their own ways of reading college grades and of evaluating the candidates' chances of success in law school.

Consequently, the faculty-student pattern is roughly the same in English and American universities: top faculty and highly selected students. Many differences exist, however, despite this apparent similarity.

It is not quite possible to determine the exact ratio of admissions and registrations to applications in the United States universities, because the typical American student normally applies to several schools at a time. Let us suppose that, after so applying, a student is admitted by Harvard, Yale and his local school: owing to his own personal or family situation, he may choose to go to the local school and wait until he is at the post-graduate level to attend a big school. Or he may choose to go to Harvard, thus rejecting Yale's admission, and therefore disturbing the statistical pattern. Perhaps Yale will offer him a better scholarship because he is rated as a top student, thus "bribing" him out of his choice.

The Oxbridge pattern is more reliable: students apply to Oxford and Cambridge and, in the end, it is the university which picks the candidates it wants, with very little competition between universities. As far as it is possible to ascertain, the applications/registrations ratio at Oxbridge is 6:1. It must be remembered, first, that the law degree in England is generally a first degree, whereas the American LL.B. is a graduate degree, and, second, that mobility is a less important factor in England than in the United States.[1]

*The law*

As a result, whether direct or indirect, of national idiosyncrasies, legal systems vary from one country to another, and consequently,

[1] In Canada, legal education on a full-time basis is a comparatively recent phenomenon; the bi-cultural element of Canadian life has had its effects on legal education. Whereas most so-called common law provinces tend to organize their law schools on the lines of the American ones, Quebec faculties of law have been set up following French precendents; McGill's Faculty of Law now offers a dual program, composed of both civil and common law curricula and degrees (B.C.L. and LL.B.). Such differences appear most in the methods of teaching the law, which indeed, it must be remembered, result at least in part from the nature of the law itself. But to an increasing extent, the intermingling of Canadian professors and deans, and the influx of younger faculty members who go abroad to further graduate studies, added to the imperative of a federal political structure and a dual legislative jurisdiction, have led Canadian scholars to consider the development of truly Canadian institutions, where the best of many other systems could be found. Surely, Canada is a paradise for comparative law, and with students of both linguistic backgrounds going to study in American, English and French universities, the oncoming years will provide occasions for new developments as a result of such a mixture of influences.

teaching methods follow the legal system they purport to study. It would seem natural that in France, where private law has long been codified, the methods used in the classroom would be different from those used in the United States, where judge-made law predominates, regardless of the number of students in the classroom or of the instructor's personal background or preferences. Gone are the days when English and American law were quite identical; following the national character and tendencies, the American law differs increasingly from the English law and it is to be expected that teaching methods will, therefore, have to be locally adjusted.

But what is the law? This is a debated question among the scholars of jurisprudence, and one which has yet to be answered, though lawyers and judges have had to deal with legal problems and to find the best solutions possible. But whether the law takes the form of a code, a statute, or of regulatory provisions, rules or customs, the methods of teaching it may, nevertheless, vary. The American lawyers now distinguish between the common law as developed in England and the precedents established by their own courts. The vast number of reported cases in the United States — vast indeed when compared to the English reports, which carry only the relevant or useful cases — and the heavy continuing flow of judicial decisions have had a definite impact on the American concept of law and on the actual rules of law. This rapid evolution cannot be ignored in the process of American legal education.

On the other hand, so-called national law schools in the United States are not committed to teaching local law (i.e. State law), but they try to teach what we may call "average" or "median" legal principles in an effort to reach all state laws and cover the main problems arising in a given field. The law teacher thus faces a situation where, on the one hand, he is obliged to get at the core of the problems and, therefore, is tempted to look for the principles and fundamental rules, but where, on the other hand, those very rules and principles are under the constant revision of, and interpretation by, fifty State courts and necessarily require some form of judicial context in order to be analysed. Hence the use of the case method, which was at first used as a supplement to lectures, but which has since overpowered the older approach to law teaching. The American law student does not always learn the rules of law, but he is constantly faced with real situations and judicial precedents, and is forced to evaluate the soundness of the present trend or the actual judgment, to appraise the acceptability of the result and to suggest suitable alternatives. Common law principles and other basic rules maintain some of their influence, but the student, through the socratic

method, is led to consider the law as a consumer commodity that is subject to the law of supply and demand and thus lacks permanent value. The trend in American law is also one of specialization; more and more legislation is in the regulatory form, whereas the broad principles that used to form the core of the system tend to disappear. Tax laws and business regulation, for example, illustrate this new legislation where arbitrary rule and administrative rulings have invaded the field of rational legislation.

The English legal community has maintained a profound respect for the common law and equity and, although the *stare decisis* rule has been relaxed in recent years, precedents still keep their intrinsic value and the courts have not entered into any judicial law-making spree. One of the main reasons for this attitude is that the legislative process is very sensitive and effective in England: legal reforms are being carried through Parliament with reasonable diligence and the courts have not presumed to replace the legislature as has happened in the United States. The teaching of the law has, therefore, remained in line with the traditional approach to legal concepts; the rule of law will be examined, not as the temporary result of the latest judicial analysis, but as a more permanent phenomenon, susceptible of being changed, but which can and must be relied upon as a social value.

Since the English B.A. in jurisprudence is not a graduate degree, the approach to the teaching of the law can be much broader than in the United States; greater emphasis is devoted to institutions, jurisprudence, Roman law and historical precedents, although the basic 'first year courses', that is to say, contracts, torts, criminal and constitutional law and property, are a part of the curriculum. The story goes that a young lecturer, having announced a course on 'thirteenth century law of property' found himself without students; being told to try and find something more modern, he announced, the next term, a course on 'fifteenth century law of property'! It is occasionally said that it is not the subject matter of a course which bears on the educational value, but the method used and the amount of personal work done by the student. Nonetheless, the differences in English and American law explain many of the differences that exist in both the educational and also the judicial processes.

Where the law is codified, as in France, teaching methods might also be different: the law does not follow from precedents and rulings, but is stated in relatively plain words, following decades of continuous evolution. One of the inconveniences of codified law is that the student may think that all the law is in the code and that he only has to cope with that document. But as judicial law-making is virtually non-existent in France, although the courts have had to go

to great lengths in some instances to clarify the written law, lawyers and scholars expect to find the law in the codes and in the statute books, and not in the law reports. Obviously, although most of the private law is codified, there are, nonetheless, scores of special statutes, regulations and decrees that are included in the law. Law reports have a more limited use than in the Anglo-American systems, mainly in view of the absence of a *stare decisis* rule.

Codes and statutes have afforded such a feeling of security to scholars and practicing lawyers that, at one time, the interpretation of the law was very much a matter of personal view. The great treatises that were written before 1940 were works of talent and deep insight but they were the product of a highly individualistic notion of legal scholarship. One has indeed to compare the various interpretations of a single rule of the *Civil Code* by Baudry-Lacantinerie, Planiol or Aubry and Rau, for example, to see how much freedom was claimed by those writers, although their thoughts are still leading the way in many areas where contemporary legislators and writers have found no better alternative.

The system led to abuses, however, and, for a period of years, the law that was taught in the universities was not always the same as that which was enforced in the courts, due to individualistic tendencies and to an almost total absence of communication. The university was an impregnable Ivory Tower. Law teachers, in spite of judicial decisions, would sometimes defend their own theories as the prevailing solutions; in turn, though, practicing lawyers would often ignore the writings.

Although there remains a good deal of self-pride and isolationism among the legal communities, faculty members have increased their participation in the legislative and judicial areas by acting as government counsel and attorneys. The revision of the *Code civil* is another good example of such co-operation.

*Teaching methods*

Programs of legal instruction are generally composed of courses (in the classroom), seminars, legal writings, tutorials and field work, a more recent innovation. The dosage of each and any of those ingredients may change the whole face of a system. It may be said that the French legal instruction program is almost exclusively based on courses given to large audiences in the form of lectures or *conférences*, during and after which the verbal dialogue between professor and student is non-existent, and it has been criticized for that very reason.

At Oxbridge, on the other hand, the main tool of legal education is the tutorial, a weekly meeting between professor and student to discuss a paper written by the student on an assigned topic. Each student may have to attend up to four such tutorials per week. Consequently, great use is being made of the student's verbal talents, research ability and writing capacity along with a moderate use of lecture-type courses.

In the national American law schools, the lecture course still is the main medium of communication between teacher and student, but great emphasis is placed on the case-problem method working in a socratic question-and-answer manner. The system requires that students attend all or most classes if they are to participate actively and take their turn when personally addressed. Seminars also are widely used in the second and third years, following which students must submit a term paper; the number of students participating in seminars is usually limited to 15 or 20, thus affording a possibility for more and deeper discussion and analysis. There are, however, hints that some students might try to 'seminar out' by taking as many seminars as possible (regulation limits the total credits thus available) and evading term examinations attached to lecture-type courses. Seminars are marked upon term papers and classroom participation.

American universities offer no tutorials as a rule, although a few law schools do include a few tutorials in their curriculum and students may sometimes earn credits by doing research for a professor which would normally involve exchanges in the form of a tutorial. Legal writing is encouraged and usually required through seminars and law review editorship: the big schools have now organized several specialized law reviews, the membership of which is determined by the students' grade performance; the members in turn can earn credits for their law review research and writings.

Field work is a relatively new idea as a part of legal instruction although students have for many years felt the need for closer contacts with practice. Legal aid services will provide the students with opportunities of getting closer to real life problems, as have the few legal clinics in the field of domestic relations and other family and estate law areas. Most of these clinics are on the experimental level but the field work concept is one of probable expansion in the near future. Professors supply guidance through these sessions along with other specialists: judges, psychiatrists and sociologists, for example.

As far as programs and curricula are concerned, the question of equilibrium is not a major issue; the overall achievement is the real

area of pre-occupation. Does a given system produce as good lawyers as any other, or not, and why?

Before going further, and in order to have a full picture of the legal education programs, a few notes on post-graduate studies may be useful. In France, the master's degree (*D.E.S.*) is a one year course, entirely different and separate from the *licence* degree (*LL.L*). In Paris, the masters candidates are offered about twenty-five advanced courses, of which they must select seven; each course consists mainly of lectures, with some seminars and legal writing as well as examinations, both oral and written. If successful, the doctoral candidate may then register his title for a doctoral thesis and write under the informal supervision of a faculty member. It is worth remembering the variety of doctoral degrees in France; at least three doctorates are recognized by the Ministry of Education (*Doctorat d'Etat, Doctorat d'Université, Doctorat de troisième cycle*), and there are others, granted by private institutions, but not acknowledged by the State.

At Oxford, the B.C.L. degree is a graduate degree, and is a two year course, separate from the B.A. course and program. It consists of lectures, seminars and tutorials on advanced topics; the number of candidates is limited and the successful candidates generally attain an impressive level of scholarship. It is the usual gate-way to a teaching career. Research and thesis degrees at Oxford and Cambridge (e.g. Diploma in Law, B.Litt., D.Phil.) require a period of residence of three to six terms, during which the candidate establishes his own program with the help of his supervisor and of the chairman of the law board; he may attend B.C.L. or other lectures and seminars and work more closely with some other faculty members, on a tutorial basis, in the course of his research and writings. The B.C.L. degree is not a prerequisite to those degrees, nor is it a short-cut to them. Admissions are generally made on a personal basis, and the number of candidates is limited to assure the efficiency of the supervision arrangements. One must also keep in mind that, in those universities, the student also has to seek admission from both a college and the university (administrative and academic authorities).

In the American schools, the masters degree is a prerequisite to the doctorate; LL. M. candidates are selected on their merit and have to follow a program of instruction that is composed of lectures, seminars and legal writings; nonetheless, there is no total separation between LL. B. and graduate students, who may happen to take the same courses and seminars in the form of a fourth year of law school. Only a few schools offer specialized programs, although some schools offer special degrees or programs for those who do not have American degrees or their equivalent. A further selection takes place

upon completion of the master's degree, as not all candidates are admitted to write their doctoral thesis. The Columbia Law School also offers a special doctoral program to law teachers with some experience, leading to the J.S.D. degree.

What conclusion is there to be drawn after such a description of these legal education systems? What, after all, is a good lawyer or a good law school graduate and what is the best way of producing one? Would a good way of finding out be to query what is expected from a fresh graduate? What function does he have in society? Can it be said that the law faculties produce the lawyers that are in demand now and that their methods and programs are set, consciously or not, in order to supply the demand? This remains to be proved, as the universities have remained quite independent from the practising communities. One yardstick is often suggested in order to measure the quality of a law school's curriculum: can a fresh graduate set up an office on the main street right upon graduation and start his practice? But is this desirable? Whatever the quality of a school's education and training, unless the student has actually been practising with a firm or in a clinic, he will need some experience. Legal education has not yet worked like medical education where the student spends most of his later years in a laboratory or an hospital. In fact, though, many law graduates actually practise on their own right out of law school, as they have been doing for many years, and their performance does not seem to vary with the kind of legal education they have received. It may be said that a good lawyer is always a good one, although he may lack some experience. On the other hand, experience has also shown that it takes less than a year for a fresh lawyer to make up for his lack of practical background — mainly red tape type of procedures — if he joins an established law firm.

On the whole, all forms of law teaching should lead to legal practice; all laws exist as a result of real problems, and it should be the goal of the teacher to point out the possible circumstances which can give rise to the application of a rule of law. The law graduate should be able to repeat this process in real life. Being a good drafter or conveyancer or negotiator is quite an asset to a lawyer but it is not his basic function: those are accessories, essential in many cases, which he will develop in the course of his own experience. Becoming a lawyer is an intellectual game: a lot of exercise is necessary and it appears that teaching the student to master legal concepts, principles and rules, to appreciate the political, social and economic context of the legal system, to value the role of the legislative and judicial process is even more of a necessity than to make him a good bargainer or deed drafter or trial lawyer. If he can get both

from the law school, so much the better, but the latter aspect is much easier to acquire privately. The so-called third year slump may well be a result of the method used more than of the curriculum or the study of the law *per se*. However good a method may be, it is obvious that too much of a good thing can lead to deterioration; if the student is made to believe that he can learn all about the law through the case method, it seems obvious that as soon that he masters that method, he normally needs a new incentive to keep his interest at a high level. This is why methodology should always lead to deeper analysis of the substance of the law, where problems get more and more subtle and difficult, thus maintaining the student's interest and curiosity. Methods for the sake of methods will result in student boredom, whatever the method and whatever the legal system.

*Teacher and student relationship*

The main center of interest in legal education, as indeed in all forms of education, is the amount and the quality of communications between teacher and student. Whatever the topic taught, it may be a bore or a marvel as a result of a good or a bad relationship. If the French feel they can communicate effectively through the use of the conference, let them use it! There may be more talk between the American professor and his student through the socratic method, but this system is not foolproof: if the student is careful enough to recite the very terms of the statute, or of the case, or of the text book, he may have talked more, but he is not going any further, and while he talks, the instructor and the whole class have to listen to him; if his comments rate no better than average, which seems to be quite common, the whole group has to suffer. The conscientious student who has done his homework would thus find very little benefit in the classroom session. In the lecture-type class, though the student may often be passive, he may have much to learn from what the professor has to say, especially if he has done his homework and is allowed to interrupt with relevant questions.

The big value of the tutorial and, in many instances, of the seminar is that it affords a more direct and personal dialogue whereby the student can really get at the thoughts, experience and personality of the instructor. This is one of the most rewarding experiments. The French generally see the *conférence* as an ideal tool with which the teacher is allowed to treat a topic as he personally thinks best, according to his own experience and personality; he must go uninterrupted, because it is thought that he must be able to discuss all the basic elements of a problem before going into the particular aspects and also because it is regarded as a scholarly achievement

to master both a topic and a class with the traditional rhetoric. The high number of students justifies the use of this method but, on the other hand, the high number of students is allowed because it is thought that the method is suitable for that purpose; in the smaller provincial law faculties, the very same methods are used with small classes. Here again, one might question whether the method is not praised for its own sake.

One is led to the conclusion that it is not the nature of the courses taken by a student, nor the amount of time spent in class, that will make a good lawyer but indeed the amount of personal work done under proper supervision, combined with opportunities for exchanging views with instructors and fellow students. No system can claim perfection but let us here make a comparison of two possible situations.

A, a Harvard student, is taking a course on property law; he reads the assignment for the next class, looks further into taxation materials, looks up a conveyancer's manual, and walks into class. The instructor will raise the problems and ask for contributions from students B, C, and D, who, though aware of the problems, have only average comments to submit. A intervenes a few times, but for lack of time available, he cannot get clarification of the points that were bothering him. When the class ends, the instructor has not given a definite answer to some of the problems for various reasons though it will be assumed, in the future, that this area has been covered. A is left with his own good homework, but he will have to see the instructor to get the clarification he needs. He may consult with his fellow classmates, who may be in an even worse position, but he may still remain unsatisfied. Moreover, although he knows that he may always knock at the instructor's door, he will often abstain from doing so for fear of being a nuisance or out of sheer inertia.

On the other hand, F, a Paris law student taking a course in property law, reads the relevant Code sections and a few text-book pages before he goes into class; there, the instructor will elaborate the substance of a problem, propose a few illustrations of actual difficulties, expose many opinions held by authors on this topic, and sum up by giving his own view — the best — according to strict reasoning and along with a string of authorities, judicial and others. The student has not been able to interject any comments or raise any questions, and he knows that he is not likely to meet the instructor to discuss the matter. But, on the other hand, he is likely to drop in to the nearest café or at a friend's apartment after class, and then have a thorough discussion, on the basis not only of his

own readings but also of the teacher's own expressed opinion and of the supporting authorities. In the end, although the American and French classroom sessions have been quite different, the French student might still be ahead in his knowledge of the law because the sum of additional information he gets beyond his own homework is greater. Of course, this comparison supposes that talents and methods are equal and does not allow any adjustment for any differences in the law itself.

But the best of all would still be the Oxbridge tutorial system, which enables the student to do his homework, to attend those lectures he wishes most to attend, to participate in seminars and still be able to rely on the tutorial sessions to get through with particular problems and difficulties. In fact, this situation allows the student to spend much less time on certain problems where he would have had to work longer if he did not have a tutor or where he would have had to waste time in class because of a larger group. Besides, he knows that almost any day he can have lunch, tea or sherry with one of the instructors and thereby enjoy further opportunities to discuss academic and non-academic matters.

Economic reasons would compel most universities to reject the tutorial method based on a very high faculty/student ratio, although many of them would benefit from the idea that 'education', legal or otherwise, comes before 'instruction'; on the whole, though, it would seem desirable to multiply and encourage the opportunities for real dialogue between instructor and student, to a larger and deeper extent than the recital of facts and cases in class. This, however, is a matter of policy, and the whole concept of law teaching is at stake. Should a law teacher be more of a lecturer or an educator, administrator or research specialist? Policy and personal taste will provide the answer.

The North American law teacher, accustomed as he is to a certain comfort, will perhaps be surprised to learn that in many European countries, including France, law faculties hardly enjoy any physical facilities other than classrooms and a few administrative offices; in the majority of cases, faculty members do not have offices of their own or other facilities like secretarial help. The faculty of law at Poitiers was one of the first to allocate offices to its faculty some years ago, after the dean had spent some time in Canada and brought new ideas back with him. But this is just a way of living; while the Oxford don spends most of his life in college, the French faculty member spends his at home, where he sets up a library, office and study. He goes to the faculty for lectures, meetings and the use of the library. Many professors are known to commute from over two hundred miles away to lecture (e.g. Paris - Poitiers, Lyon - Mar-

seilles). This provides another good reason for their reluctance to meet with the students. But there is also the perennial master-pupil concept of education, coupled with social customs concerning hierarchy and protocol, which prevents closer relationships.

In the American universities, one perhaps takes for granted the effectiveness of the socratic method, notwithstanding the occasional surge for improvement. However, one must distinguish between talk, communication and dialogue; it seems quite possible to be as passive during a socratic-type class as during a conference. In other words, the method must not be taken for granted, as it is only an educational instrument; as examinations are imperfect ways of testing the knowledge of students and as students can get comparable grades and success under either method, it is only in the long run that educational results will become evident.

It is not because the professor sits there in his office that the student will come to seek advice; quite the contrary, and every one knows it. Basically, one must revert to the question — what do both faculty and students think of their own function, what do they think is expected from them, and at what cost? There is a tendency today to think that there is great virtue in having to cram through tests before entering universities and to exhaust oneself by going through examinations. Experience, however, has not shown that the L.S.A.T. is a much more reliable criterion than a four year college grades sheet though it may have been able to provide a better indication of aptitude in some cases when combined with the grades. Reasonably able students generally get good marks if they undertake a reasonable amount of work, whatever the system, provided they can adjust to the system; but if the system allows the good student to neglect his duty, his grades may suffer; conversely, if the system puts pressure on him, his grades might go further up, provided, however, that the system supports and acknowledges his efforts. Long term efforts will always be more fruitful than intensive examination periods. Intellectual training is not very much different from physical training: mile records might not be lowered without both coaches and runners, without strict programs and testing, without improvement of basic know-how and techniques, better research facilities and, finally, without competition. Human beings are naturally competitive and the educational systems must respect this tendency: promotions, ranks, grades and prizes, however humiliating for those who do not earn them, are necessary to satisfy the competitive instincts of both faculty and students.

One of the immediate goals of legal education is the demand for lawyers from society: In North America, for example, there is a

demand — though not necessarily a great need — for lawyers who are to start practising right after graduation: a practising lawyer has his way paved, in a sense, into financial and political communities which do not expect further education or training on his part. In most European countries, on the other hand, a young graduate has still to go through further training before there is a real demand for his services. This may be compared with the training of law teachers in North America; not all law schools are anxious to appoint a fresh graduate: they would rather have him go through post-graduate studies and get some experience in practice.

The English Bar is a good example of this type of post-graduate training. In the first place, the number of barristers, as opposed to solicitors, is limited (about two thousand, of whom only four to five hundred are engaged in active practice) and concentrated in London. Owing to the very efficient court administration and to self-discipline, there is no real backlog of cases in the courts, where cases are being tried within a few months instead of the usual two to six years in North America, yet there is no pressure or need for many more barristers. The future barrister will usually take a B.A. degree (often at Oxford or Cambridge) and then register for his 'dining terms', a period during which he is registered with a barrister and dines, at intervals, at one of the Inns of court; he may also take the courses given by the Bar that normally lead to the Bar examination or take any other course or degree that will provide the equivalent. Since many candidates from outside the country — mainly from Commonwealth countries — take the Bar examination, the failure rate is very high but the successful candidate is finally called to the Bar, though he is not allowed to practice by himself until one year later, while he remains for that twelvemonth a 'pupil' in a barrister's chambers. Thereafter, he is allowed to practice but unless he is well off or has some connections with a solicitor, he will not be able to maintain his own chambers right from beginning. A barrister deals only with solicitors, who bring him briefs, and hardly meets with the clients at all.

Reputation is the only way of getting the solicitors' trust and confidence. If the young barrister comes from a well-known family or has become famous in another way, he may thus have a good start but, otherwise, he has to earn his own reputation by working in the shadow of his master until he breaks into the open with a brilliant performance on a case that was considered lost. Up to that time, he will have to supplement his meagre income by writing law reports or by taking various assignments connected with his profession. When he gets through as a barrister, and is frequently briefed by solicitors, he still faces another quite formidable obstacle: if he

wants to be a top barrister, he must become a 'silk', or Queen's Counsel. This honor is earned as a result of a particularly brilliant performance in the courtroom, where it becomes obvious that he actually is, or at least has shown that he has all the qualities for becoming, a master. This honour will be granted upon recommendation by a fellow Q.C. From then on he is a top man who must always have a pupil or another barrister as an assistant with him; but at that stage it has been quite some time since he graduated. And yet, there is no backlog on the court's roll; judges are appointed from the fine Q.C. crowd, which also forms the backbone of the political parties.

To the American lawyer, the English legal system may appear to lack action and creativity, but if the American legislative and judicial organizations have changed so rapidly, it is because the local circumstances have made it clear that the traditional procedure was not efficient any more. A different situation has called for different methods and solutions. Many State statute books contain a host of laws that have been rejected by the courts; on the other hand, when the legislature will not adopt new laws, the judiciary will take over and redirect the interpretation of legal principles in such a way as to innovate or to satisfy new needs. The English Parliament has been more vigilant and concerned about its duties and the courts have not had to intervene to such an extent. So many differences now exist in the two systems, as indeed the geographical, political and social structures of the countries would indicate, that it would be naive to compare their judicial and legislative processes without proper distinctions.

It may not be wrong to think that, in the present conditions, English law and English legal education have more in common with the continental systems than with the American institutions. The law school as a professional school is an American invention, in a country with younger traditions in which the legal community is big and influential. It is worth remembering, however, that in many other countries, a law degree is an asset to economists, political scientists, historians and others, so that a law degree that would insist too much on the 'practice' aspect would often miss its point. In Europe, the civil service has retained much of its power and competence and is looking for graduates with a solid humanities training, coupled with a wide range of scientific notions, and not for the high-geared professional man who often lacks a proper social science or humanities background. There is no doubt that a well-trained American lawyer has an outstanding command of legal science and legal or judicial

techniques; on the other hand, top men in any system can compete together, whatever their actual methods.

In setting up the methods of legal education, we have to worry about what the average graduate will be like. The outcome of this comparison confirms an earlier statement: education and legal systems follow local idiosyncrasies and obey the laws of supply and demand. On the other hand, comparisons and improvements can be made: one does not like to think of a law school as a 'factory' of lawyers, though it may be untrue that any school has reached that point. In fact, the American law schools ought to be cited for their research in the field of legal education and the *rapprochements* that have been effected with both government agencies and private business and practice. However, this also is a result of the system, where the law schools were called upon to fill the gaps of a less efficient civil service. On the other hand, English and French faculty members are increasingly entering into co-operation with both private and public agencies. Big universities remain conservative, though, and many of their so-called innovations are only further manifestations of their conservatism.

Law teaching may vary from one faculty to another, but the task is always the same: a law is a law is a law! The teacher is trying to convey to his student his own curiosity and appreciation of facts and rules, but the student has to do the work by himself: making the students work is one of the big preoccupations of law faculties. Experience has to be gained; it cannot be taught, but it can perhaps be felt by a student or a class. Since not all students have the same needs, the teacher's task is to find the best method to suit the majority; this also implies that many will be left unsatisfied. After a number of years, when statutes will have been repealed and modified, the law school will be remembered for so and so's approach to legal problems, his method and philosophy but not for much else! This factor should always be in the teacher's mind.

We may best conclude by re-iterating the theme of this paper: there still appears to be a case for more 'education' than 'instruction' in the law faculties, despite graduate schools. 'Lawyering' is as much of an art as of a science, and it takes a good deal of humanistic sense to grasp the full implications of a law. Law and legal education are for all three branches of social organization — legislative, executive and judicial — and not only for the latter. No great harm would result from a young barrister needing help — and getting it — to deal with his first cases, but great benefit would result if lawyers were 'lawyers' before being traders in law. It might make the law, legislative or judicial, more equitable and human.

A POSTSCRIPT, following the recent events that have taken place at Columbia University and the *Université de Paris*.

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At Columbia University, where most University activities were brought to a standstill during the month of May 1968, the professional schools, and in particular the Law School, continued to operate as usual except for those few days when the University buildings were altogether closed by the administration. Out of solidarity with the student community, law students staged a one day strike on the re-opening of the buildings. Spring examinations were taken on a pass or incomplete basis by students, as grades and prizes were suspended by the Faculty.

The issues now at stake as a result of the student unrest are numerous and complex. If the students of Paris were fighting for a university that was less dependent on political or ministerial influence, for better library facilities, for classrooms where everyone could get a seat, for the availability of professors for personal discussion or for the accessibility of the working class student to higher education, they were then fighting for what students at Berkeley or Columbia already had. Then why did those at Berkeley and Columbia revolt?

Universities are a favorite target of those youthful and sometimes flamboyant illustrations of contemporary problems, because it is a natural forum for younger people to be at, because some pretend that universities represent the ultimate product of a corrupted society which feeds itself through the graduation of still more mass-produced students, because, of course, it is much more fun to be out on the campus demonstrating than sitting in and listening to a (dull) lecture. As prisoners seize their jail, as ghetto dwellers burn slums, so students paralyse their universities, lock themselves in the buildings, hold "liberated classes" in the gardens or in the adjoining pubs, and make noise in those areas where silence is normally required. Mass demonstration (*e.g.* confrontation politics) is the key instrument in this new approach to the process of evolution, albeit the ultimate recourse of desperadoes, who are now taking over the somewhat similar techniques of European communists in the pre-World War II era. Extremism and repeated demonstrations for the sake of demonstrating had then little impact but the alienation of those who might otherwise have supported the cause and (as Trotsky put it) succeeded only in irritating all classes without winning over any.

Strange results are nevertheless obtained: at Columbia, for example, the main clash between students and policemen did not directly involve the Students for a Democratic Society. It did involve a large group of student and faculty members who were opposed to the occupation of University buildings by S.D.S. students, but who were also opposed to police intervention into student and university affairs taking place on the campus. It was interesting to observe that at this point, most of the legal aspects involved in this matter, the respect of property rights, violation of regulations, breach of the peace, danger to public security, were generally disregarded.

The problem took the form of an insoluble dilemma. On the one hand, a minority (although in other places it may have been a majority: in Paris, for example) of persons seize university or other public (or semi-public) buildings and occupy them by force, while, on the other hand, their attitude is in fact adapted to the very structure of the society they are attacking. Their action has the character of a semi-revolutionary process, but if they acted in the true spirit of a revolution, they would hardly complain that society (acting through university authorities) calls the police against them. However, the goal of making the universities the forum of intellectual activity implies a policy of liberalism whereby all schools and theories must be accepted as a common pool of ideas. This very principle is self-defeating when applied to any extremist theory.

The right to dissent has taken new proportions, especially as a result of the interpretation of the American constitution by the Supreme Court of the United States. It may now be difficult to determine the notions of dissent, peaceful demonstration, passive resistance as opposed to aggression, rebellion or revolution. It would seem, however, that the fact of a group's occupying a public building and sitting in, however "peacefully", thus blocking entrance or use by others, cannot rightly be called an act of passive resistance, let alone the fact of resisting arrest on charges of trespassing. It may be called passive in that the person is not offering resistance, but active aggression has already taken place where forcible occupation has been made. There would be more hope for the reformation of society if efforts were combined in a positive way and if students, for example, would care to carry with them the vision of a better society when they emerge from the universities into real life, instead of taking their place in the shrine of the bourgeoisie which their diploma gives them the "right" to do.

The recent events and the present trend in both the universities and the other institutions of education tend to demonstrate that education is no longer to be regarded as a one-sided affair. The more our political agencies have put forward the idea of a "right to education", the more the subjects of such rights have realized that they might also have some right, or at least some say, in the modalities of exercise of such a right. When education is dealt with on the level of human and intellectual relations, there is much more success to be expected from it than when it is dealt with behind the shield of bureaucracy and of distant *magister*-ship.

The degree of maturity that is generally recognized in law students is an asset which should be re-evaluated by those concerned with legal education. The methods which have been described with respect to three leading types of universities show that a variety of factors, local, geographical, political or other will influence the choice of teaching and educational approaches, whereas the quality of the finished product will also vary according to such methods. Today, at a time when Paris is talking of democratizing its university and when the leading American universities are having some doubts about the efficiency of the case method as so widely used, there may be a lesson for us, an opportunity to critically analyse our teaching methods and our basic approach to legal education, in view of the fact that no teacher can transfer more than he has and that any method, however good, can become boring if used in excessive quantities or diverted from its primary use and function.