

DEPARTMENT OF LAW

UNIVERSITY OF PENNSYLVANIA
LAW REVIEW
AND AMERICAN LAW REGISTER

FOUNDED 1852

Vol. { 57 O. S. } FEBRUARY, 1909 { 48 N. S. } NUMBER 5

THE FRENCH JUDICIAL SYSTEM.¹

M. Chardon is an officer of long service in that peculiarly French organization, the Council of State. He says² that he has seen twenty-one Ministers of Justice, the nominal heads of the Council, come and go, so that his term of office must cover more than that number of years,—practically a life time spent in this branch of the Government of France. He published another book on "Public Works," a treatise on the working of the executive branch of the Government of France, so that he has thus paid the tribute of his long years of service. He aims in his last book to explain the French judicial system. Apart from a certain contentious and critical temperament, and an earnest desire to advance the power of the Council of State, of which he is a devoted officer and an ardent admirer, he gives a brief analysis of the judicial structure of France, of which an abstract may be of interest and value. He pays a tribute to the writings of his colleagues and contemporaries in the French public service, Berthelemy, Cohen, Boncur

¹ The following is an outline of the recent work on this subject by M. Henri Chardon, *Maître des Requêtes au Conseil d'Etat*, published in Paris by Perrier, in volume pp. 435.—Eds.

² Page 398.

and Demartial, men almost, if not quite, unknown to our English legal world, and joins them in a common effort to find a satisfactory solution of the ever-burning question of how the vast army of civil functionaries in France can best be organized. Apart from the thousand men who constitute the Government of France, there are 800,000 office holders really controlling the daily life of the people of France. M. Chardon's main purpose is to show the need of a better understanding, on the part of the people and of the official world of France, of the functions exercised by the judiciary, in its broadest sense, from the highest tribunal to the lowest, from the dignified Court of Cassation down to the modest yet indispensable justice of the peace. For his own special field of labor, the Council of State, he claims a larger share in the preparation of new laws, as a protection for the Legislature, the Executive, the Judiciary, and the people of France.

His arguments on matters of judicial reform do not interest the American reader so much as his account of the French judicial organization with its army of magistrates and officials. Perhaps the most strikingly characteristic feature of French legal life is the large number of offices which are still matters of bargain and sale. We can hardly understand that from the high and dignified position of lawyers practicing in the highest Court of France, that of Cassation, corresponding to the Supreme Court of the United States, down through the long list of *avoués*, *huissiers*, notaries, bailiffs, tipstiffs, there is a regular tariff of the price that must be paid to secure admission to one or another of the many offices of the legal hierarchy. The fact that the sale of such offices has the sanction of many centuries of legal history, does not make it easier to accept as a defence of this system the argument that it secures to each body not only an efficient membership, but the guaranty of a corporate fund out of which the people who must rely on these legal functionaries for the protection of their property and rights, can secure compensation for any loss incurred through dishonesty or incompetence.

France is governed by a President who is elected by the national legislature which consists of three hundred Senators, five hundred and eighty-one Deputies, and twelve Ministers, heads of that number of departments. In each of the departments of France the senators are elected for a term of nine years by an electoral college composed of the Deputies, the General Council, the Local Council and delegates from each Municipal Council, aggregating from a thousand to fifteen hundred electors for each department. The Senate is renewed one-third at a time every three years. Senators must be forty years of age. They must obtain a majority of votes on two ballots of at least one-fourth of the electors as a quorum. If, however, no candidate receives a majority upon second ballot, then on a third ballot he who polls a majority of the votes is elected. The Deputies, who must be twenty-five years of age, are elected by a direct vote of all citizens twenty-one years of age duly registered on the list of voters, from which are excluded all soldiers, all upon whom there has been pronounced a sentence forfeiting this franchise, and bankrupts. The elections occur every four years, and the candidate must have a majority of one-half of the number registered. If a vote of that magnitude is not cast, a second ballot is taken fifteen days later, and the candidate who receives a plurality vote, on that occasion, is elected. The Senate is therefore elected by a college of 70,000 citizens holding electoral offices, the Chamber of Deputies by twelve million citizens. An analysis of a vote recently polled shows that one deputy was elected by 3,442 electors and another by 30,000. In 1906 the total number of votes cast was 5,209,606, while the registration showed 11,593,458. Practically one million voters decided who should govern France. Each member of the Legislature receives \$3000 a year.

The chief executive, the President, is elected for a term of seven years by the 891 members of the Senate and the Chamber of Deputies combined. His salary is \$250,000 a year. He appoints all officers, civil and military, and negotiates and ratifies all treaties. Of course he does both through

his ministers, and often through the ministers gathered in council. The ministers, who must be members of the Legislature, are legally appointed by the President, but in point of fact and in reality they are chosen by the majority of the Chambers represented by the Premier, who is the President of the Council of all the ministers. Each minister has one or more assistants and a large trained body of old and experienced heads of departments, generally permanent and unaffected by the political fortunes of their superiors. According to the budget of 1908, France is governed by 608,540 officials receiving salaries from the central Government, and 262,078 paid by the departments and local *communes*. Many duties discharged in other countries by officials paid by the state or from local funds, are in France committed to notaries, lawyers, and officers of the courts of law.

Talleyrand urged a system of promotion as the basis of good service on the part of public officials, and by successive laws of the Consulate, the Empire, the Restoration, the reign of Louis Phillippe, the Second Empire and the Republic, admission to public service and promotion are dependent on examination. Justice is administered under the code adopted under Napoleon with revisions in 1832, 1836, and 1874, and frequent modifications by laws adopted from time to time.

The police system in France is largely a matter belonging to the Central Government; that of Paris belongs entirely to it, and the 32,000 local constables are its officers. Local mayors, 35,000 in number, manage the business of their districts, but the Prefect or Mayor of Paris, and the police and administration, though nominally controlled by a municipal Council, are really governed by the central government. A force of 21,000 constables with 600 officers appointed through the Executive, enforces order throughout France. The public prosecutors look after all criminal cases and have a large power over civil prosecutions for violations of law. Justice is administered through the Courts of Assise, Correctional Courts, Judges of the Peace, and juries

chosen by the local mayor and Judges of the Peace in formal session for both criminal and civil courts. One of the causes of dissatisfaction to-day is that the police is insufficient inasmuch as in most offences the judge of the peace is the sole judge. For some offences there is the Council of the Mayor, with appeal to the Council of State; but for nine out of ten offences there is no right of appeal; for crimes there is a Correctional Court of three judges, with an appeal to a higher court. For all cases involving members of the press the jurisdiction is in the Court of Assises, twelve jurors passing upon the question of guilt or innocence and three judges deciding on the penalty.

There are 8,615 notaries before whom marriages, acknowledgment of deeds, conveyances of land, gifts of personal property, mortgages, partnerships, organization of corporations, etc., must be acknowledged to be valid. Every notary is appointed by the President of the Republic on the recommendation of the Minister of Justice. There are 400 notaries of the first class in connection with and acting under the supervision of the Court of Appeals, 1700 of the second class whose jurisdiction is that of the local Court of the district in which they officiate, 6500 of the third class whose authority is limited to the canton in which they live and to the jurisdiction of its local court. Anyone, resident or not, can employ any notary to certify any papers. Offices of notaries have from time immemorial been bought and sold, and to ensure their responsibility, they have associations which guaranty their compulsory clients,—for all the world must use them,—against losses by their fraud or dishonesty. Their fees are fixed by the local authorities and vary in different parts of France.

Brokers are moulded into a similar organization. They have a monopoly of the purchase and sale of stocks, bonds, etc., giving the guaranty of their syndicate to protect their customers. Those of Paris do a business of three billion dollars a year in spite of the competition with banks and bankers dealing in bills of exchange, etc., and an army of outside "curb" brokers, who do twice as much business

in securities not dealt in by the licensed brokers of commercial exchanges authorized by the President. Of the 75 licensed exchanges, 35 are active, 40 inactive. Paris has only one body of regularly organized brokers; their syndicate has a capital of twelve million dollars to insure its responsibility for the acts of its members. In Lyons, where there is no such syndicate ten brokers failed in 1882 and their clients were ruined for want of a guaranty. Brokers' seats in Paris sell for \$60,000, and when the number was increased from sixty to seventy, each new broker had to pay \$60,000, which was distributed among the old members of the Board.

There are eighty public appraisers in Paris and 279 distributed throughout the rest of France. They are alone authorized to act as appraisers and as auctioneers but in the rural districts their functions are shared by the sheriffs, notaries, and constables. Their appointments are made and their fees regulated by the Minister of Justice. Their offices are bought and sold and their acts are guaranteed by a syndicate of all their number similar to the other classes of public servants. Their receipts are paid into a common treasury which retains half for the guaranty fund and distributes the other half equally to all members. Brokers in insurance and merchandise, etc., are similarly organized.

In France there are three judicial organizations and three corresponding procedures,—Civil, Commercial, and Administrative—exhibiting radical differences in the courts and in the essential principles that control them. All litigation between persons other than those engaged in commerce is regulated by the Civil Code, which governs the vast majority of cases. All questions between merchants and touching mercantile matters are settled by the Commercial Code. All disputes between employer and laborer involving contracts, etc., are settled by the Councils of Experts. In all cases there is the right of appeal to a higher court.

In every county seat there are judges of the peace, 2863 throughout France, deciding as many as 325,000 suits annually. Their decisions are final in matters involving less

than sixty dollars in value; but in purely personal questions such as disputes with travellers, hotel keepers and carriers, and between landlord and tenant, master and servant, employer and workmen, there is an appeal to the Council of Experts. In cases involving over \$300, as well as in litigation over damages to fields, water courses, support of families, etc., there is an appeal from the judge of the peace. Special laws have extended the power of justices of the peace to decide without a jury, accidents to workmen, damages to water courses, etc. The tendency toward such extension is growing, for the judge of the peace is always at hand and sits twice a week in the country towns, and can hear cases in his own house if he opens it to the public during the hearing. After notice, a request to try conciliation and a citation by a tipstaff, the case is ready for a hearing. Whether the parties appear in person or by an agent or attorney, and whether the case is heard verbally or submitted in writing, the decision must be rendered at once or at the next session in order to avoid delay.

For a matter involving \$100 the costs before a justice of the peace do not exceed five dollars, whereas to try a case of the same amount before the local court the costs are at least twenty dollars in addition to the fees of lawyers. In 1904 the judges of the peace acted as arbitrators in conciliation in 700,000 cases. Furthermore they presided in that year over 70,000 family councils, a very important factor in French domestic life controlling many questions that lead to litigation elsewhere. The President appoints the judges of the peace on the nomination of the Minister of Justice. Each must be a French citizen, twenty-seven years of age. He must have been licensed to practice law, and must have worked from two to five years in some public legal office. Failing these requisites, however, he must have had ten years' experience as a public officer, such as mayor, deputy mayor, or a member of the General Council.

In Paris there are 22 judges of the peace who receive \$1600 a year. There are four other classes classified thus: 96 who are paid \$1000 annually, 142 paid \$700 yearly, 400

paid \$500 a year, 2200 paid \$500 annually; after seven years in office the two latter classes are entitled to an increase. Much complaint is heard concerning the fact that as they generally owe their appointment to the deputies from their departments they often act as their electioneering agents. Each has two substitutes who receive no salary, and there are 2890 *greffiers* or clerks who in addition to the duty of keeping the registry, etc., have the right to make sales of personal property. The *greffiers* receive \$200 a year in Paris and \$170 in the other parts of France. Their offices, like those of notaries, are sold in accordance with a regular tariff of charges.

Napoleon, passing through Lyons in 1806, created boards of arbitration for that city to settle disputes between employers and workmen. To-day France has 157 such boards, four of them being in Paris. The qualifications of the electors of these boards are the attainment of the age of 25, five-years' experience in trade, and three-years' residence. The members' qualifications are membership in the electorate, attainment of 30 years' of age, and ability to read and write. Their duties include the adjustment of disputes between workmen and masters, the supervision of work shops, etc., and the enforcement of all laws and police regulations. The power of these boards of arbitration is final in matters involving amounts up to fifty dollars; above that there is an appeal to the Civil Court. The procedure is summary; there are no lawyers or agents employed, but parties appear in person. Out of 45,000 cases there were 2500 pertaining to wages and 10,000 concerning holidays, the remainder touching other disputes between employer and employed.

France has 359 Civil Courts (eleven of which are situated in Paris) with 1453 presiding and assistant judges and 809 deputy judges, exercising plenary control of all litigation in their respective districts not especially excepted for other courts. Each tribunal consists of a presiding judge and two associates. They decide, without appeal, cases where the amount at issue is not over \$300. They constitute appellate courts to review decisions of judges of the peace and courts

of conciliation; they have original jurisdiction in criminal causes. Three judges must concur to render the judgment binding. The president judge directs trials, has disciplinary power, supervises his associates, distributes causes among the different courts, has power over the notaries and their acts and over family councils, and attempts to reconcile married couples in avoidance of divorce or separation.

In Paris the president judges of the civil courts are paid \$4000, the other judges \$1600; throughout the rest of France the presidents are paid from \$600 to \$1000, and in these districts there are deputy judges, one hundred of whom are paid \$300 a year, the others receiving nothing, their services being given for five or six years in anticipation of a full appointment. These courts try about 150,000 cases annually, a few individually disposing of about one hundred cases. All the trials are orally conducted, counsel, of course, managing the cases. Every trial is preceded by an effort on the part of the judge to reconcile the parties, and in the rural sections two-fifths of the cases are thus settled. Citations are served by tipstiffs, or *huissiers* who fill a time-honored office, all being members of a corporation possessing power to discipline its members and a common purse to which every member contributes a fixed share of his official income, the balance of which is distributed equally among all the associates after deduction of expenditures. The office is sold like all other public incumbencies. At Paris it yields more than \$20,000; in the country the price varies from \$2000 to \$4000. The tipstiffs or *huissiers* are appointed by the President at the nomination of their predecessors, subject to the approval of their own committee of discipline. The appointee must be twenty-five years old and must have served two years in the office of an attorney or with a tipstaff, and three with a bailiff. If there is no reconciliation between contending parties the *huissier* or tipstaff thereupon serves notice, and the names of the attorneys are made known through him to both sides.

The attorneys are officers of the court and must assist

it to do justice. Attorneys are appointed by the President of the Republic, on the recommendation of the Minister of Justice, at the request of their predecessors, who sell their office and practice, in Paris for \$40,000 to \$60,000, in country and lesser local tribunals for from \$10,000 to \$20,000. The fees and charges of attorneys are fixed by tariffs approved by the President on the recommendation of the Minister of Justice and the advice of that peculiarly French body (to be described later), the Council of State. The 2322 attorneys of France form a close corporation which (after many years of discussion) fixed a table of charges; an idea of this may be obtained from the following suggestive fees: two to four dollars is exacted for retainer, from six to eight for filing pleas, etc., and a percentage of the amount of the verdict depending upon its recovery or loss. For a divorce \$100 is charged and this is doubled if contested, both sides paying the attorneys in charge. The ancient association of attorneys was dissolved at the outbreak of the Revolution in 1790, but Cambacères, in spite of the opposition of Napoleon, had re-established it as a body of purely governmental officials, which but slowly recovered its autonomy as an auxiliary of justice, securing it by consultation and pleading.

The distinction between attorneys and barristers, *avoués* and *avocats*, sometimes abolished, is even now a rather shadowy one, hard to define. Before the supreme court or *Cour de Cassation* and the Council of State they are of equal standing. Now 4500 *avocats* (barristers), with 2200 assistants, form a self-governing corporation largely formulating its own rules and powerful in its influence upon the courts and the judicial branches of the government. In every civil court an *avocat* or barrister sits with the judge to represent law and social order. This is the public prosecutor or *procureur* of the Republic or his deputy. In three-fifths of the cases tried he intervenes, with more or less success, to enforce the punishment of any violation of the penal law and for the maintenance of good order. The *procureurs* or public prosecutors also verify the records of

the courts, report all their statistics to their principal, the *Procureur-Général*, and to the Minister of Justice, keep registers of all suits, of all ministerial acts, of the sessions of the courts, of the judges sitting, and of the dates of the trials; they have supervision of all court officers, of prisons, insane asylums, schools, etc. The 642 *procureurs* in France receive from \$1000 to \$2000; their deputies are paid from \$560 to \$1000 to assist them in their many duties. The 359 *greffiers* or tipstiffs of the civil courts belong to a corporation in which each member buys his place from his predecessor, subject to approval by the Minister of Justice and appointment by the President. The price of the office varies from \$15,000 to \$20,000. They record, under direction of the judges, all the judgments, acts, etc., of the court, keep its minutes, and certify all copies, keep civil records, and furnish authenticated certificates. Their salary in Paris is \$1200, elsewhere from \$250 to \$600. They are paid for certified copies of records on a liberal basis, producing from \$2500 to \$3000 annually.

A third exceptional jurisdiction is that created for and exercised by the Commercial Courts, the *tribunaux de commerce*, consisting of merchants elected by their fellow merchants. As many as 1982 presidents and assistants, and 769 substitutes or deputies, all merchants elected by their fellows, judge and decide annually 180,000 cases. This system dates back to the ancient monarchy; it was renewed and strengthened during the Revolution. In Paris the Courts for each *arrondissement* or ward consist of two judges and two deputies, in all twenty-one judges and as many assistants. Since 1883 the judges have been elected by universal suffrage, the voters being all French merchants of thirty years of age and registered for five years. The judges are chosen for two years; they are eligible for only two terms and elect their own president. The elections fail to excite much interest or political partisanship; in Paris, out of 47,000 registered voters less than 2000 voted for the judges of a court of great significance to them and which decides many matters of commercial

importance. In France there are only 226 commercial courts; in 167 wards the civil court tries and disposes of commercial cases according to the code of commerce. Theoretically the commercial courts should be simple business tribunals, but in fact they are really the forum for barristers and solicitors in one, taken from a list authorized by the Tribunal of Commerce, and forming a corporation in charge of all bankruptcies and insolvencies. In Paris, Lyons, and Marseilles they put in their treasury a part of their profits, and from this fund pay all expenses and distribute the balance among the members. They are the official liquidators of corporations dissolved by law and the official arbitrators appointed annually by the Court, and to whom are referred complicated cases, the findings of these experts being usually adopted by the court. The income of these various officials may be quite lucrative; it frequently amounts to as much as \$20,000, and official assignees in bankruptcy may receive far more, for the liquidation of insolvent corporations often means a fortune to the assignee in a few years. The 226 tipstuffs of the commercial courts buy their offices, the value being based on the salaries obtainable, varying from \$160 to \$350, together with fees fixed by law netting as much more.

Above the civil courts and the commercial courts there are twenty-seven Courts of Appeal, one in Corsica, one in Algiers, the others in the old French provinces. A body of 512 judges and councillors decide the appeals taken from the lower courts, determine what criminal cases shall be tried by jury, and preside over the criminal courts. These higher courts are divided into branches, of which Paris has ten, Lyons and Algiers four, Aix, Bordeaux, Douai, Montpellier, Rennes, and Rouen each three, the other provinces one or two. Five Judges must hear each appeal. Each court consists of a First President, Presidents of Chambers or Branches, Councillors, Attorneys-General, and Deputy Attorney-Generals, distributed according to the importance of the locality. In Paris the First President and the Attorney General receive \$5000, and each Councillor \$2000;

elsewhere the presidents and Attorneys-General get \$3500, Councillors \$1400, Advocates-General \$1500 in Paris and \$850 in the provinces. The councillors purchase their offices from their predecessors. The qualifications are an attainment of the age of twenty-seven and two years of practice as advocates. As in the lower courts, there is the same prevalence of written pleadings, the same employment of bailiffs, attorneys and advocates; there is also present an additional advocate who pleads only in appeals. The endeavor to simplify the delays and to lessen the expenses of appeals has been the topic of earnest discussion in recent years, but no real change has as yet been wrought.

Above all other tribunals stands the Court of Cassation which has the power to reverse the finding of any of the lower courts and to send the case back for a new trial. It consists of three branches, the Criminal, the Civil, and *la Chambre des Requêtes*, the function of the last being to examine the appeals and to decide whether they are well founded and entitled to be heard. The judges are a First President, Three Presidents of Branches, and forty-five Councillors, fifteen for each chamber. An Attorney General and six Advocates-General are officers of the Court. Each councillor receives \$3500. An appointment to this Court is the "blue ribbon" in the race for honor in the legal profession of France. The Minister of Justice nominates them from the whole bar. The procedure of this court dates from the ordinance of Louis XV, no mention being made of it in the later codes in force. A party desiring to appeal goes to the Chamber of Requests, and if that branch approves after hearing the reasons of the petitioner alone, the other litigant is then notified that the appeal has been allowed. The sixty advocates practicing before the Court are both barristers and attorneys; they prepare the pleadings and argue them before the court. The arguments on both sides are largely contained in the printed briefs, the oral arguments being only a running commentary on them. A Reporter-Councillor examines the briefs, makes a written analysis and summary and drafts the decision.

All the cases are reported to the Minister of Justice, who publishes the final decisions. These are arrived at by a majority of the court, at least eleven judges being present; if the court is equally divided five other councillors are called into the case. The bar of this court has the exclusive privilege of practicing before the court, the Council of State, the *Conseil des prises*, and the *Tribunal des Conflits*; but it has also the right to appear before any inferior court. To become a member of this bar it is necessary to buy one of the sixty offices. The qualifications are citizenship, the age of twenty-one, the practice of law for three years, the presentation of a thesis, the passing of an oral examination, and lastly the approval by a decree of the President of the Republic on the motion of the Minister of Justice. Moreover the Court of Cassation is consulted as to these nominations. The price of admission to this bar varies with the average income of the office, from \$16,000 for one that is merely nominal, not having any substantial practice, to \$60,000 for an office with a practice worth \$20,000 a year. It is often necessary to wait ten years to obtain an opportunity to purchase. There is no tariff to regulate the fees and charges of this bar and no bill of costs is expected by clients. The *greffier* or tipstaff of this court buys and sells his post which is obtained by appointment by the President; his salary is \$8000. The tribunal, differing in this respect from those of other courts, has a staff of four clerks paid \$1000 each.

In France six thousand judges are busy dispensing justice to forty-nine million people. The President of France can remove any one of the 800 Attorneys-General and prosecuting officers, and the 2900 justices of the peace are equally subject to summary dismissal; whereas the 2000 judges and councillors are absolutely immovable except by a disciplinary measure by the Court of Cassation. The Law of 1906 fixes the method of admitting to the bench members of the Council of State, professors of law, colonial magistrates, councillors of prefectures (*i. e.*, municipal governments), lawyers, court officers, attorneys, judges of the peace, of-

ficers of the central administration, secretaries of the official heads of the Bar of Paris, to the extent of one-fourth of the vacancies for the current year; the rest are open to a competitive examination. For the post of deputy judge or a clerkship, the jury of examiners, named by the Minister of Justice, must include a Councillor of the Court of Cassation, a Director of the Department of Justice, two members of the Court of Appeals, and a member of the Court of the Seine District. The limits of age are twenty-two for a deputy judge, twenty-five for a substitute judge, twenty-seven for a president or an associate judge, thirty for a prosecuting attorney general. Even after passing a difficult examination the successful candidate may, after waiting six years, obtain at thirty a post as judge or deputy judge at a salary of \$600. The Minister of Justice has a right to fill a fourth of the vacancies in any year at his own will without examination. Promotions can be made only on the recommendation of the chiefs of each court, from a list prepared by a commission including the First President and the *Procureur-Général* (Attorney-General) of the Court of Cassation, four of its councillors, and the Directors of the Ministry of Justice. Another commission of judges and other high officials revises the list of judges and remarks upon those entitled to promotion, but even this does not prevent a constant pressure upon the Minister of Justice to transfer local judges and court officers to places and positions with better salaries and greater opportunities of winning promotion. The heads of the courts and of the bar are looked to for the protection of the profession, and bench and bar alike find them earnest in their efforts to secure their respective rights and privileges.

There are in existence two bodies whose purpose is to prevent injuries to the private citizen by the central or the local government through its officers. Historically the Council of State or *Conseil d'État* is the outgrowth of a long series of legislation. It is to-day a well-organized body of learned and experienced men, divided into groups each of

which has a well-defined jurisdiction over all administrative branches of the government and the acts of its executive officers. Each prefecture or municipal government has a council of a similar kind; in Paris there is one of eight members who receive salaries of \$2000, and in the provinces and other cities 33 are paid \$800, 92 get \$600, 129 get \$400. They rendered judgment last year on 300,000 cases, including questions of taxes, assessments, and other purely local matters, often at the request of the prefect, who is thus enabled to act advisedly upon their decision.

The Council of State is the keystone of the arch of the administrative organization of France. It is divided into judicial and administrative branches. In the former it sits as a court and renders decisions of sovereign weight; in the latter it advises, but without binding those concerned. As a court it decides appeals from the local municipal councils on questions of pensions, on elections to general departmental councils, on all appeals by citizens against officers from acts affecting their persons, property or rights. It has acquired in comparatively recent years the right to revoke acts even of officials very highly placed, on the properly authenticated complaint of an injured tax payer, or of an aggrieved officer. The number and variety of cases passed upon in a recent year included 300 cases of correction of excess of power exercised by an officer, 200 cases involving questions upon the need of public works, 3000 of taxation, 400 of pensions, 100 disputes between adjoining parishes, several hundred contested elections, aggregating from 4000 to 5000 cases. To the section having cognizance of litigated cases there are added two members from each of the four administrative sections, twenty-two being thus employed in the examination of these questions. The procedure is entirely different from that of the courts of justice. The judge is not merely a passive presiding agent as in the law courts, hearing what is presented, but is active in the fullest sense, seeking for the truth, and hearing both sides with no restrictions on the testimony. There are sixty lawyers admitted to practice before the Council of State, but

many cases are heard and decided without their assistance and their main function is thus to aid in the litigation of complicated matters of public works, etc. The procedure is written and is based on reports by expert investigators; their results are examined by the representatives of the government, whose opinions are in turn tested by impartial officers of the Council, its *Maîtres des requêtes* or standing Masters; after careful consideration the latter orally present their conclusions to the Council. It deals annually with nearly 30,000 cases comprising about 8000 pension questions, both civil and military, 6000 touching new local boundaries, new courts, appeals from tribunals of commerce, conciliation boards and chambers of commerce, municipal loans, special taxes of departments and communes, approval of corporations for public purposes, high-roads, railroads, public works, canals, mining and water rights.

The administrative function of the Council is to intervene in defence of the interests of the nation, giving its advice to the ministers on plans submitted to their departments, but this is not binding although entitled to great weight as the well-considered and well-reasoned judgment upon the respective merits of schemes for great public improvements, such as gas, water or electric works, electric or steam lines of railroad, etc. Many administrative questions are referred by the Government, often wearied by counter-claims, to the Council of State with its trained and competent experts. The Legislature can refer measures brought before it to the Council of State for an expert opinion as to their merits or defects. Every new Minister of Justice signalizes his entrance on his duties by convoking a formal meeting of the Council of State, thus recognizing its power to help him in the discharge of his high and responsible duties. It is a supreme regulator of the administrative part of the government, a permanent guide and advisor on all matters of public service. It is made up of a vice-president who receives \$5000 a year, five presidents of sections receiving \$3600, 26 councillors who are paid \$3200, 32 masters of requests salaried at \$1600, 28 auditors re-

ceiving \$800 and 22 getting \$400, 114 members in all. It has a general secretary who is given \$2500, five secretaries receiving from \$1000 to \$1200, forty clerks and twenty bailiffs. It is the possessor of a valuable library of reference and text-books. The auditors and masters present their reports; the councillors discuss and decide them; the presidents distribute the cases, direct discussion, vote when it is necessary to have a majority, and represent the body in public.

Admission to an auditorship in the Council of State is through competitive examination. Candidates must be between twenty-one and twenty-six years of age and must furnish a test of practical service for four years in the capacity of deputy judge, *sous-préfet*, secretary general or sub-chief of a bureau. Towards his thirty-seventh year the successful candidate may be made a master of requests, and at fifty a councillor of State, but a proportion of appointments is given to men who have served with credit in other government offices. The Ministers of State are represented in the Council of State by chiefs of bureaux, especially qualified to defend and support measures sent to the Council for its consideration, opinion and report. The seventy bureaux are represented by nineteen councillors of State. There is a branch having authority to settle all questions involving the right of one bureau or department, as against another, to take charge of some branch of administration. It consists of three councillors of State elected by the whole body to serve three years, three councillors of the Court of Cassation chosen in the same way for the same term, two judges and two deputy judges chosen by these six councillors and the President of the Tribunals. The members then elect their vice-president. The presidency belongs nominally to the Minister of Justice, but he is represented by two commissaries named by the President of the Republic, one chosen from the masters of requests of the Council of State, the other from the members of the Bar of the Court of Cassation. There arise perhaps a dozen cases annually of the kind that pertain to public bureaux,

and there are one or two cases where the courts declare themselves incompetent to act and in such contingency this tribunal designates the proper court.

To regulate all this judicial machinery, the Department of Justice has a permanent staff of eighty. The duties of the Minister of Justice are manifold: to transmit orders and instructions to courts and tribunals, to correspond with public prosecutors, to supervise all judges and justices of the peace, to attend to all matters of salaries, pensions and finances, to keep in touch with courts, and to look after all the members of the legal profession and all notaries and ministerial offices. The Minister of Justice fixes the rates at which all offices are sold. Four bureaux look after criminal matters, the prosecution of offenders, the execution of sentences, the granting of pardons, the collection of criminal statistics, the expenditures of administering criminal law, and the collection of various information at home and elsewhere. There are three directors, generally taken from the Judiciary, and eighty chiefs of bureaux, assisted by a great number of clerks now chosen by competitive examination open to all duly qualified.

Thus M. Chardon seeks to show the details of the judicial system of France, which exhibits in its administration of justice an amount and degree of centralisation that is entirely unknown in this country, as its methods and results are totally unlike those of the English judicial system, and that still larger and freer body of judges, lawyers, and court officers who constitute our American judicial system. Whatever the faults of our judiciary and the practice in our courts, no one here would be willing to exchange its freedom, gained in our mother country and here by years of slow growth and constant struggle, for the complicated machinery of the French judiciary. Still it must be of interest to obtain even an imperfect summary of it through M. Chardon's book as a basis for a better understanding of the radical differences between French and American courts. The French have certainly given a larger scope and development to some branches than either England or America; for

example, the Courts of Conciliation have done much to reconcile labor and capital, workmen and employers. Again the Commercial Courts give a legal sanction to the arbitration by experts upon matters that often receive scant justice in our courts owing to their hard and fast rules of evidence and their lack of appreciation of business customs. Even more striking is the extent to which the family, that sacred tie in French life, is made a living force by the Family Council, which regulates its members and exercises a control that is strengthened and supported by the law and the courts. Furthermore a striking feature of French courts is the well-recognized practice of seeking to reconcile husband and wife before they are allowed to plunge into a sea of litigation for divorce or separation. The tie of matrimony, like that of paternity, is considered in France of such binding force that Codes and Courts are sustained by public opinion in their effort to maintain them intact, in spite of breaches of morality and of lesser violations of the obligations of husband and wife and of parents and children. As a means of gaining a better insight into French judicial methods, this brief summary of the salient facts of M. Chardon's book may be of interest and value. Students may well refer to his work in preference to other books cited on its pages for a fuller study of the essential features of French judicial life and of the marked and characteristic differences from that of England and America,—differences that represent the broad and strongly contrasted principles of life in the two countries.

The French courts have received and maintained the historical inheritance of the Roman Law with its large power over its subjects. Very marked, too, is the persistence of French customs in requiring both the individual citizen and the Government alike, the Nation as well as each local subdivision, to submit its action to the courts. The revolutions in France have changed many institutions, but the courts of law have remained largely what they were in ancient times, and even the great reforms introduced by the Codes of Napoleon have left the judicial system of France much as

it was in early times, giving the sanction of law to the customs that still retain their traditional force.

Much of M. Chardon's book is occupied with historical explanations and with strong appeals for reform, but these are too purely local to interest the general reader. Special students of the comparative jurisprudence of France and other countries will find profit in a careful reading of his book, but to the ordinary legal observer this brief analysis of his volume and the short statement of facts presented in its pages may offer a fair statement of the judicial system of France and of the many points which differentiate it from that of the United States.

J. G. Rosengarten.