

Nova Law Review

Volume 10, Issue 2

1986

Article 5

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Cogestion And Beyond: Change And Continuity In Modern French Legal Education — A Design For U.S. Law Schools*

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I. Introduction

Contemporary French legal education is largely uncharted territory for most Americans. On-going efforts to reform legal education in France are ignored almost completely in the United States. Yet, if there ever was a time when one could disregard the French system of legal training and French reform programs without suffering any significant ill effects, that day has passed. Moreover, recent French curriculum raises a series of crucial questions about American legal education.

The questions which will be raised by, through and after presentation of the French design for learning are as follows: Is French legal education, designed for a unitary code law system, applicable to America's common law federal/state system of justice? Would it be wise to establish separate career tracks for individuals who want to be judges, prosecutors or court administrators? Do we need to modify the breadth and depth of current legal education and include courses in the human sciences? Can we develop a synthetic pedagogy which provides both vertical and horizontal integration of the curriculum? Is it possible to have both a universal program of learning and, at the same time, guarantee a place for individual work and creativity? Should we provide economic stability and security for our students? Is it time to es-

* Research for this article was made possible by sabbatical leave and career development grants from Glassboro State College.

establish post-graduate learning tracks which reflect discrete and differing career patterns and a changed division of labor in the legal industry?

II. Background And Overview

After the birth of the Fifth French Republic in 1958, a new system of legal education was established in France. More than twenty African states — mostly former French colonies with a history of inclusion in the French legal system — sent students to France for their training as magistrates. More recently, African students have gone to a school in Morocco which is almost identical to the French *École Nationale de la Magistrature*. In addition, Egypt, Haiti, Syria, Vietnam, Venezuela and, most importantly, the People's Republic of China, have adopted, adapted or participated directly in the French system of legal training for magistrates. (It is the plan of training 70,000 magistrates and 3,000,000 conciliators in China, using the French model, coupled with the strategic socio-economic links between the United States and China that makes the Chinese future most important.)

Since 1958 the French design for learning has enjoyed ever-increasing use and global applications. Emulation in the United States would not be without a frame of reference for cross-national transfer of the French pedagogy. It would be the first transfer from a code law system to a common law system. However, given recent trends at the federal and state levels of government, the historical boundaries between code law and common law are not as rigid as they were in the past. For those who work with code law in this country as well as for those who anticipate the rise and spread of alternative fora for dispute resolution which are similar to the French, the need to understand French legal training has become increasingly important. At the same time, modern French legal education also offers a valuable cross-national perspective for evaluating American legal education. In particular, comparing key differences between French and American institutions and groups helps to clarify options and choices in both legal worlds.¹

1. Information about the international scope of French legal education was taken from an interview with M. Henri Desclaux, *Directeur des Études* of the *École Nationale de la Magistrature*. In addition, M. Desclaux provided copies of materials circulated in Bordeaux for faculty and students from which this author quotes extensively in this article.

There are two interrelated aspects of French legal education which will be used to develop proposals for reform in contemporary American legal education. The first is the *École Nationale de la Magistrature*, a core institution in modern French legal education. The *E.N.M.* has a monopoly on the training and placement of magistrates in France. The word "magistrates", in terms of *E.N.M.* curriculum refers to a) tenured judges, b) state prosecutors and c) civil servants in the ministry of justice.

The second aspect of research is a set of criticisms of the *E.N.M.* curriculum developed by the *Syndicat de la Magistrature* in the late 1960s. The *Syndicat* is a labor union of magistrates founded in 1968.² It combines the radical legal praxis orientation of the National Lawyers Guild with theoretical critiques of justice similar to analyses developed by the Conference Group on Critical Legal Studies. In addition, the union employs some of the humanistic social-psychological tools of the Center for Law and Human Values. The two components of French legal education are linked by correlating the union critique of 1968 with the *E.N.M.* curriculum of the 1980's. This article raises questions about American legal education and, in turn, offers some suggestions about cross-cultural applications of the French model of legal education in the United States of America.

Under the Constitution of the Fifth French Republic, the judicial power in France, one of three branches of government under the Fourth French Republic, became the judicial authority. The difference between power and authority came in the subordination of courts and magistrates within the political system. On December 22, 1958 the "*loi organique sur le statut de la Magistrature*" created the *Centre Nationale d'Études Judiciaires*.³ The moving force behind the foundation of the school was Michel Debre. He used the *École National d'Administration* as the model for the *Centre*. Unlike the other "great schools" in the galaxy of prestige institutions in France, the *Centre* was not placed in Paris, but rather in Bordeaux. A branch campus with

2. According to the union, the term magistrates is a compound term made up of two other words: "magi," derived from magician, and "strate," which is taken from castrate. SYNDICAT DE LA MAGISTRATURE, AU NOM DU PEUPLE FRANCAIS 274 (1974). "The Castrated Magician," an annotated bibliography on the French school and union prepared following the 1985 research trip, is available from this author upon request.

3. *ÉCOLE NATIONALE DE LA MAGISTRATURE, STATUT DE LA MAGISTRATURE* (undated). For references to the organic laws of 1967, 1970, 1975, 1976, 1977, 1979 and 1980, which modified the original statute, and for statutes on professional education, see *STATUT DE LA MAGISTRATURE* at 43 and 57-63 respectively.

limited facilities, however, was established in the capitol. In 1970, the name of the school was changed to *École Nationale de la Magistrature*.

The training of magistrates in France is divided into two parts. The first is *formation initiale* and refers to a period of formal education called *scolarité*. The second part is *formation permanente* and refers to the post-graduate lifelong learning which is required of all magistrates. In most cases, the decision to become a magistrate is made at around the age of 22 and separates one from those who make the decision to become *licensies en droit* through study at a university in a *Faculté de Droit*.

Following successful completion of the *E.N.M.* program, there is a post-graduate probation period lasting four years.⁴ During that time magistrates are required to develop studies in their chosen occupational specializations. They must spend at least four months in study devoted to the research work.

The educational division at the post-baccalaureate level of legal studies in France yields a division of occupations in the legal industry. (It should be noted that the baccalaureate degree in France comes at the end of *Lycée* training and is, therefore, different from the B.A. degree in the American system.) This split marks a profound difference between the Anglo-American and French development of legal occupations. It is difficult for Americans to imagine that the knowledge and skills required of one set of legal careers are discrete, separate and non-transferable to other judicial careers. It is equally difficult for the French to think that the roles of lawyer and advocate are appropriate preparation for the roles of judge and prosecutor. This is the most fundamental difference between the two systems of legal education and careers. This division also raises the most fundamental question which contemporary American legal educators can derive from study of the French system. Can or should we create separate curricula for these different legal career tracks?

III. Admissions

Admission to the *E.N.M.* is based upon competitive examinations called *concours*.⁵ The system of giving national examinations can be

4. ÉCOLE NATIONALE DE LA MAGISTRATURE, *Livret d'accueil* (1982).

5. In 1981 the Socialist government of Francois Mitterand issued a new set of ten tests designed for preparation for the *E.N.M.* entrance examination. The GUIDE

traced back to the civil service exams for judges introduced under the Third French Republic in order to avoid partisanship, graft and corruption. There is a *concours externe* which is open to French citizens. The exam is open to individuals who have a *diplome du second cycle d'études superieures* or an equivalent diploma and are less than 27 years old. The American parallel to the French *concours* would be the L.S.A.T. However, the French examination is not a short-answer machine-gradeable test. There is also a *concours interne* which does not require a diploma and is designed for civil servants, under the age of 40, with at least four years of service. Mothers as well as military draftees (as opposed to those who opt for alternative national service) can obtain exemptions from the age limits. The admissions policy on age is designed to develop a group with a lifetime dedication to a judicial career.

In special cases, called *recrutement sur titre*, it is possible to gain admission to the *E.N.M.* without taking an examination. French citizens who have law degrees, i.e. *licencies en droit* and belong to specified occupations — e.g. notaries, court clerks and bailiffs — can submit their credentials for review. Individuals accepted in these special cases spend less time in school at Bordeaux and pass directly to state office upon graduation. It is also still possible to be recruited directly into the corps of magistrates. The pattern of personal apprenticeship and direct recruitment is a hold-over from the pre-1958 system of training magistrates. In all cases of direct recruitment, either to the *E.N.M.* or to the magistracy itself, approval by an independent commission of the Ministry of Justice is required.

During the period when students are enrolled in the program at Bordeaux they are called *auditerus de justice*. They receive a salary and can also receive additional payments based upon need. There are approximately 200 places in the *E.N.M.* each year. The number of openings is correlated with the projected number of vacancies in the judicial order. The long-term risk of a “glut” of legal professionals is reduced significantly by the planning process. Moreover, French students when starting out on a life-cycle of work are not pressed by short-run debts and overwhelming financial concerns. The *auditerus* enjoy relative economic stability and security. This system of payment allows a degree of freedom in the pursuit of knowledge often beyond the reach of American law students who are pressed to find the ways and means

PRATIQUE DE LA JUSTICE 33-37 (1984) has a concise section on “How to Become a Magistrate”.

to sustain themselves at similar stages in their careers. Based upon the French experience, we must ask ourselves whether 1) the number of admissions to our pluralistic, profit-making private and non-profit public law schools should be correlated to projected expansion and contraction of the legal marketplace, and 2) whether students should receive salaries and living allowances while attending law school.

IV. Critique And Crisis

A. Structural Reform

During the 1960s and 1970s there was a "crisis of recruitment" for the *E.N.M.*⁶ In 1973, for example, there were 441 posts for 180 students graduating from the Bordeaux school; in 1974 there were 581 posts for 197 graduates. Moreover, in the period from 1970 to 1980, over half of the French magistrates retired and had to be replaced. Government proposals to return to a system of direct appointment to the magistracy were fought by the union. The student/union "bottoms-up" challenge to legal education thus coincided with a moment in history when the students had increased labor power.

In 1969 the *Syndicat de la Magistrature* issued a "White Paper" on *formation initiale*.⁷ The group within the union which issued the study focused on the need for *cogestion* (co-management) in pedagogy. The union proposal occurred in the context of the May-June uprising of 1968 and the efforts to reform higher education in general. (It is worth noting that the authoritarian and repressive pedagogy of the *E.N.M.* was common to faculty-student relationships throughout France and that the intensity of the problems was a factor in developing the thoroughness and thoughtfulness of the union response to the concerns and issues raised by *E.N.M.* students.) The concept of *cogestion* was introduced with the following thought: "It is impossible, in effect, to introduce a definitive pedagogy into any structure whatsoever. The one (pedagogy) and the other (structure) are intimately linked and interac-

6. J. F. Blet, *Le syndicat de la magistrature et la crise de l'École Nationale de la Magistrature*, JUSTICE ET POLITIQUE: ACTES DU COLLOQUE TENU A L'I.E.P. DE STRASBOURG 135 (1974). Blet reported the data on admissions and job opportunities in the general analysis of the crisis of the early 1970s.

7. SYNDICAT DE LA MAGISTRATURE, LA FORMATION DU MAGISTRAT: LIVRE BLANC SUR LE CENTRE NATIONAL D'ÉTUDES JUDICIAIRES (1969). A second white paper followed in 1970 and was devoted to critical analysis of *formation permanente*.

tive with one another.”⁸ In other words, curriculum reform based on the concept of cogestion worked in a contingent and relative fashion rather than in an indeterminate and absolute one. One did not begin with a *tabula rasa*, either for the individual or for the institution. The initial meaning as well as the ultimate success of a new pedagogy required an understanding of the history and realities of professional legal education prior to 1968. It is important to note that school structure was regarded as a significant factor because it was not a static entity in legal education. The view that structure is a process and relationship and not a thing is critical to understanding the proposals developed by the union.

At the time the union issued its white paper, students admitted to the *E.N.M.* came into a hierarchically-structured world. In some cases the hierarchically-controlled curriculum took them backwards in shaping the form and content of learning. Following the May-June uprising of 1968, students could work on independent study programs. After exercising some control in their curriculum at the second-cycle level, the student faced a loss of control upon entry to the *E.N.M.* in Bordeaux.

The situation facing the French student was analogous to the situation of a first-year law student in the United States. As a college senior, one can conduct independent research, but then must swallow a fixed menu of introductory law courses where it is impossible to exercise any individual choice or control. The denial of the possibility to critically question and modify the form or content of required courses undermines student confidence and trivializes critical thinking at the beginning stages of professional training. Can students shift gears at later stages and revive their capacities to question and challenge powerful people or powerful ideas? Can the pedagogy be changed without disrupting the subsequent incremental learning in which there is some limited opportunity to engage in individual and critical studies?

The hierarchy of the *E.N.M.* was intimately linked to the hierarchy in the world of French magistrates. For example, the school had a *conseil d'administration* made up of 16 members. They were chosen for six-year renewable terms. The council included the president of the *Cour de cassation* (the highest French appeals court), the *procureur-general* of the same court, two administrative directors from the ministry of Justice, five tenured magistrates — at least one from the *Cour de cassation*, one from the *cour d'appel de Paris* (the largest and most

8. *Id.* at 16.

powerful regional court of appeals), one from another *cour d'appel*, one from a *tribunal d'instance de Paris*, and one from another *tribunal d'instance*.

The council's powers included approval of courses as well as the appointment of faculty in Bordeaux. The council had to work in conjunction with the *directeur* of the school and had the ability to recommend the removal of the director. The power of the administrative council was comparable to the power of a board of trustees in an American public institution.

Unlike an American public university's board of trustees, however, there were on-going post-graduate and professional connections between council members and students at the *E.N.M.* Students who graduated from the *E.N.M.* would be working for a state administration in which council members exercised power. The counselors would control the ebb and flow of the student careers long after they have finished their period of training in Bordeaux. Thus, the risks and dangers of challenging the hierarchy were profound.



Student power in french legal education

The *E.N.M.* also had a *comité des études*. This curriculum committee was made up of the director of the school and six others: two chosen from among the teaching personnel, two magistrates and "two personalities who had competency." The meaning of "competency" was vague and allowed for political interpretations from Parisian-based officials. Students in each class, i.e. *promotion*, were represented by *delegués de la promotion*. Two of these individuals were elected and

one was the oldest member of the class. The role of the representatives was limited to transmitting requests and complaints made by fellow students. The school also had a *conseil de discipline* made up of one member of the *cour de cassation*, a member of the *conseil d'administration*, the *directeur* of the school, two members of the teaching staff, and two of the students elected as representatives. A student brought up for disciplinary actions had the opportunity to "provide explanations."

Critical analysis of governing structures was the starting point for the *Syndicat* in the development of an alternative pedagogy. Co-management/co-determination was a way to resolve a series of problems associated with education at the *E.N.M.* *Syndicat* members regarded the traditional pedagogical structure of 1968 as forcing a return to infancy and/or irresponsible minority status and a "sure means to turn many away from judicial careers and, therefore, aggravate recruitment problems."⁹

The first reason for adopting co-management was to increase the quality and quantity of applicants to the *E.N.M.* Secondly, co-management would provide a climate in which personal responsibility could be nurtured. Thirdly, co-management was viewed as a prerequisite for working in groups. The third reason was tied to an ideal of ending professional isolation among judges and prosecutors. The union plan called for retention of the power of the council and for changes in the selection process and representation. One third of the group (six people) was to be made up of four magistrates: Two former *E.N.M.* students in Bordeaux, the director of judicial services of the ministry of justice and a representative from the "economic and social world." (No specific rules on the other two magistrates were fixed.) Another third of the group was to be drawn from the school itself: three directors — *directeur*, *directeur adjoint*, *directeur des études* — two representatives of the full-time teaching staff and one director of an institute for judicial studies. A final third of the council was to be students who represented the cohorts in attendance at Bordeaux. The council would elect a president from among the four magistrates. There would be meetings every three months and upon request. Deliberations required that a quorum of fifteen be present in order to make valid decisions. Majority vote was required and the president was the tie-breaker. Although not mentioned in the white paper, the plan was a way for young

9. *Id.* at 19.

radicals to share power with the traditional elite of the French judiciary.

The union proposed changes in the two other governing bodies of the *E.N.M.* They linked their demands to the demands of the "*federation des grandes écoles*" (the student alliance of prestige elite institutions). In administrative matters, i.e. budget, management of the center, and recruitment of faculty, the directors of the school would exercise power. In pedagogical matters, the three directors and three students would share decision-making power. The two groups would define a unit called the "college" and under the presidency of the head of the administrative council, they would perform all disciplinary functions of the school and make recommendations to the justice department.

Under the union plan, the division of labor and power carved out a space for the retention of some administrative power, creation of a new hierarchy and a sharing of student and professional control of the training. Demands for financial power-sharing or participation in personnel decisions were notably absent from the proposals. The ability to influence the shape of course content contained in the union plan, indirectly, would be a factor in the selection of staff.

Student participation in the institutional structures of the *E.N.M.* was regarded as fundamental and necessary for other changes to take place. "The modalities of this participation will furnish the means to establish dialogues built upon indispensable and sure bases with their predecessors as well as with those who do not leave the *E.N.M.*"¹⁰ The bottom line in the argument of the union was that atomization and isolation — as reflected in the theory and practice of individualized and de-personalized decision-making on the bench or in prosecutions — was in conflict with the development of equitable and harmonious judicial decision-making. The proposed change was designed to establish a pattern of continuity for the future and, at the same time, insure that the "bottoms-up" pressure for change would always have a place in future development of the institution.

Subsequent national meetings of the union would amplify distress over personal alienation and opposition to social insularity in the day-to-day work of magistrates. The idea that the pattern of social interaction was a replication of the social relations of administrative hierarchy and classroom hierarchies in Bordeaux remained a crucial element in

10. *Id.*

the critique of “pre-cogestion” learning. The proposed cure was an alteration in the membership, powers and processes of the ruling bodies of the *E.N.M.* Structural reform was both a first, as well as a necessary step if other changes in the pedagogy were to take hold and become effective. The core of the change was built into the curriculum proposed by the union.

B. Curriculum Reform

Before the crisis of 1968, students at the *E.N.M.* followed a program divided into three discrete phases. According to the union white paper, the phases had to be understood in order to develop a plan for reform which would be both practical and meaningful.

During the first phase of work, students spent one year in Bordeaux. The curriculum was designed to give a general introduction to legal practice. In addition, beginning students engaged in clinical paralegal work with active, auxiliary legal professionals. Seminars, directed studies, conferences and “groups of reflection” were all included as methods of pre-reform teaching.

During the second stage of study, students spent fourteen months in a French appeals court (institutions with jurisdiction over several French departments [states] and the full range of courts, judicial services and activities). In this period of work, students’ activities became focused on the principal sectors of French jurisdictions; e.g. family court, probation, parole, supervised education and prisons. Students also spent two-months in Paris during the second phase of training. They were sent either to special sections of the Ministry of Justice or to special court institutions unique to the Paris jurisdiction.

Following the exit exam, each student went through a two-month *stage de preaffection*. This third and final phase of training was a transition to full-time professional work. In sum, the three stages of *formation initiale* lasted for 28 months. Under the pre-1968 system, job placement followed graduation.

Of the three phases of “traditional” education at the *E.N.M.*, the union regarded only the first phase as fundamentally flawed. The core problem in the Bordeaux curriculum was the “insidious risk of only forming good little technicians who would not individually or collectively have sufficient stature to face the problems of justice in future years.”¹¹ According to the union, transition from valued skill to min-

11. *Id.* at 33.

dless mechanistic work developed when “the possibility and habit of critical reflection on the functions and problematics of justice” were absent from the curriculum.¹² The goal of the union and its proposed task for the curriculum of cogestion was to rationally organize and *combine* the two, i.e. critical reflection with technical proficiency. The idea of making an “either/or” choice and the alternative of balancing the one (technical proficiency) with the other (critical reflection) were rejected.

According to the white paper, there would be two principal objectives of the new pedagogy of the *E.N.M.* The first objective would “intensify judicial understanding which is often poorly developed in the faculty while at the same time providing a training which includes understanding of the uses and the results of related fields necessary for the exercise of justice.”¹³ The fields mentioned were criminology, human sciences (the French combination of our social sciences and humanities), legal medicine, and related sciences. The second objective would include “acquisition of professional competency making it easy to do the work of a magistrate after leaving the center.”¹⁴

In order to develop these two goals, the white paper recommended several steps which had to be taken before the changes could take place. First, undergraduates should be encouraged to follow the curriculum of the *instituts d'études judiciaires*, which were subdivisions of *faculté des droits* at French universities. Alternatively, the union also proposed the practice of *recrutement sur titre* and direct recruitment as noted in the earlier sections on current admissions policies.

The white paper tackled the thorny question of whether or not a reverse in the sequence from classroom to clinical studies was desirable. On the basis of survey research conducted among two groups — active magistrates and students in school at Bordeaux — the decision to retain the classroom-work to clinical-work pattern was retained. The primary reason for keeping the sequence was to foster group solidarity among the students before they experienced the isolation of work in the countryside. (It should be noted that in subsequent studies the *Syndicat* was careful to reject the use of survey research and polling as the basis for making policy recommendations.) Survey research was regarded as the way to identify mentalities and perspectives, yet merely a starting point for intelligent debate and discussion.

12. *Id.*

13. *Id.* at 34.

14. *Id.*

A curriculum designed to intensify legal understanding was elaborated upon after the decision to maintain the sequence in the phases of study. The key element was individualized tutorials in which each student would be required to create a “*menu à la carte*”. Working with a *maitre des conférences* in the planning and execution of a program was part of the union proposal. This plan was linked to the development of a stable, full-time faculty. The union wanted teachers who could systematically supervise student development over a 28-month period. The plan of co-management in the learning supported by the union was not intellectual anarchy or “do your own thing”; it was a rigorous form of interpersonal dialogue in which faculty and students would engage in critical analytical work. In many ways, the plan resembled the contemporaneous American system of dissertation advisors in academic disciplines.

The faculty-student mentor plan advocated by the reformers was associated with an all-out attack upon the system of grading and ranking students. Under the old regime, bi-weekly examinations which were “objective” and allowed no space for creative critical thought were the norm. Class ranks were used as the key determinant of job placements upon completion of the exit examination. The union attacked the system as antithetical to the professional knowledge and critical thinking which were the true marks of excellence. The union also advocated the consideration of personal factors in the assignment of work.

In the final analysis, the arguments against “objective” examinations and grading succeeded. (The *Reglement interieur: Application des dispositions du decret numero 72-355 du 4 mai 1972* provides the details on the changed structure and the complex system of student evaluations employed by the *E.N.M.*). Students were regularly informed about their progress. There was an end to the examination system which contradicted the aims and objectives of critical thinking about social justice. New students were assigned in groups of fifteen which allowed them to create a humanistic climate in the classroom. The curriculum of the 1980s reflects the programs, goals and values advocated in the student/union movement of the late 1960s and early 1970s. In addition, a humanized system of placements, incorporating student participation in the process, was ultimately developed. In fact, much of the agenda set up in 1969 became reality by the 1980s. The reasons to engage in union activities and radical politics tended to decrease as the program of *cogestion* was put in place. At the unions peak in the early 1970s, more than half of the students at the *E.N.M.* were members belonging to the local chapter of the union. By the early

1980s membership fell to less than a fourth of the students.

V. Current Curriculum

A student entering the *E.N.M.* in 1982 was required to take courses in three categories. The first category was called "*études fonctionnelles*" (functional studies). These courses were the "indispensable apprenticeship of the judicial practices and techniques" and would yield "necessary reflection on the outcomes of the actions of a magistrate."¹⁵ In these courses, students would gather in small groups and receive instruction in specialized functions, e.g. *juge du Tribunal de Grande Instance*, *juge des enfants*. Several of the functional studies were "devoted to the examination and study of general problems encountered in diverse or complimentary aspects of the different functions of magistrates."¹⁶ Courses on general themes were to be team-taught and focused on key questions for multiple functions.

The second category of courses was devoted to studies designated as "*peri-judiciaires*". The subjects identified were as follows: "legal medicine, psychiatry, information on the administration of jurisdictions, judicial data and management, European law, statutes on magistrates and professional ethics, political criminality in matters of economic and financial delinquency (graft and corruption)."¹⁷

The third category of courses was a series of electives designed to deepen the students' knowledge developed in required courses. The student could work to increase knowledge of technical skills and judicial practices. Courses were listed in the following fields: "psychiatry, human sciences, the administration of jurisdictions, judicial data, European law, accountability (in relation to criminal law), criminal law, the rights of consumers and the rights of work."¹⁸

From the beginning of their stay in Bordeaux, while they were enrolled in classes, students were required to conduct independent research. Student projects continued until the time of graduation. Individual research efforts bridged learning in Bordeaux with required work at the regional courts and in Paris. Topics included the following: Justice and Consumption; Studies of Judicial Unionism, Protection of Reproductive Rights, Reflections on the Social Evolution of the Role of

15. ÉCOLE NATIONALE DE LA MAGISTRATURE, LIVRET D'ACCUEIL 19 (1982).

16. *Id.*

17. *Id.*

18. *Id.* at 20.

the Judge, Architecture, and Reform of the Law of 1838. The capstone of the student project, which was guided by a *maitre de conference*, was a written or audio-visual "document of synthesis." Independent research was designed to provide a path on an incremental sequence of learning which transcended the spatial and temporal breaks in the training program.

Students who enrolled in the class of 1982 could anticipate four days of general discussion on the following themes: Defense, Problems of Childhood, Police, and Prisons. During the period of study, students were expected to organize roundtable discussion on "essential problems related to the activities and actualities of the judiciary."¹⁹ The topics suggested in the orientation handbook for new students were Justice and the Press, and Drug Addiction.

The program of study for students enrolled during the 1984-86 period contained both open days as well as independent research. The curriculum also introduced a program called "opening toward the city."²⁰ Students were to work in four key sectors in Bordeaux: Courts (*Tribunal de Commerce, Tribunal Administratif, Conseil des Prud'hommes*); Administration (*Services prefectoraux, Conseil Regional, Conseil Général, Communauté Urbaine de Bordeaux, Mairie de Bordeaux*, etc.); Economy (*Chambre de Commerce, Secteur des Entreprises Industrielles et Commercial*); and Social (*Centrales syndicates, Association de Consommateurs, Youth and Family Services*). One goal of the program was a "true exchange with the city" in which the "interpenetration enriched the students."²¹ The program was enhanced by linking each student's community work with his/her individual research project.

The 1984-86 curriculum for all students is divided into six parts: General Education on the Economic and Social World, Human Sciences, Introduction to Information Sciences, Administration of Courts, European Law and Statutes and Judicial Deontology.

After the first phase of classroom work on the economic and social world, students had a day of meeting and exchanges with businesses in Bordeaux and the Bordeaux region. Themes for roundtable discussion included: "the management of a business, social relations within the business, businesses in trouble and the responsibilities of the head of an

19. *Id.*

20. ÉCOLE NATIONALE DE LA MAGISTRATURE, PROMOTION 1984: PROGRAMME PEDAGOGIQUE DES AUDITEURS DE JUSTICE 13 (1984-1986).

21. *Id.*

enterprise.”²² Finally, the *maitres des conferences* presented case materials highlighting certain problem areas in order to provide students with an understanding of the breadth of factors to take into consideration. The underlying goal of the broad scope of required knowledge was to stimulate the “need to deepen understanding.”²³

Work in the human sciences requires students to give a lecture. With the help of one social scientist and one legal practitioner, the individual must provide evidence about psychological and sociological factors and their interpenetration in the field of decision-making. Students also must elaborate upon the psychological and sociological impact and responses which one could anticipate from either litigants or social groups. The purpose of this work is to encourage students to pursue follow-up studies at an advanced level rather than to give an exhaustive curriculum in the fields. Two phenomena analyzed in detail by French social-psychologists which “a magistrate would confront directly” are also included in this part of general education: communication in the contemporary world and groups in the contemporary world. Specialists from other schools were called in to provide this part of the learning. (It is interesting to note that the *Syndicat de la Magistrature* employed social-psychologists to assist at sessions in the early 1970s. At meetings in Goutelas, outside Lyon, the union employed analysts to facilitate discussions and to elaborate on social-psychological perspectives and problems at the personal and professional level.)

Student work in information sciences includes “the discovery of the computer and initiation to programming.”²⁴ Practical applications of word processing are also included in the curriculum. The theoretical and practical applications of computer sciences include debates with participants invited from the *Commission Informatique du Ministere de la Justice* and a member of the *Commission Nationale de l'information et des libertés*. Finally, special study of the computerization in the Bordeaux court region is included in the work.

Administration of courts, the fourth area of required general education, focuses attention on the difficulties of day-to-day work in court regions and the orientation of judicial politics which might resolve these problems.

The subject of European Law is designed to teach about European institutions, i.e. *Cour de Justice des Communautés Europeennes de*

22. *Id.* at 14.

23. *Id.*

24. *Id.* at 16.

Luxembourg and Cour Europeenne des Droits de l'Homme de Strasbourg. The principles of the European Convention on the Rights of Man concerning individual liberties and the penetration of Common Market law in national law are included in the curriculum.

The final field of general studies is legal statutes and ethics (*deontologie*). The plan for study has three key parts: historical analysis and discovery of foreign systems, perspectives of professional organizations, and positive law and perspectives on reform.

The advanced elective studies open to the 1984 cohort are divided into three areas. The first area is the economic and social world, the second area is the human sciences, and the third area is the management and administration of jurisdictions. In cases when enough students (approximately 25) express interest, new courses can be developed and offered. There is, thus, always a place for student-generated courses to be taught for credit. Ten half-days are devoted to free elective work and they are scheduled so that a student can follow two of the three areas of upper division study. Tracks within the three areas are identified. Curriculum modifications derived from students suggestions are solicited.

Students enrolled at the *E.N.M.* also work at the *Bureau d'Information du Justiciable* in Bordeaux. In addition, 16 municipalities in the Bordeaux region provide this legal service in cooperation with the *E.N.M.* The pragmatic learning obtained by students in interchanges with citizens is organized in conjunction with the local bar. Along with humanizing the meaning of the exercise of justice, another goal of public interest legal service work is developing constructive collaboration between future magistrates and active lawyers. In 1983, more than 1,000 citizens took advantage of the *B.I.J.* option.

The program of the *E.N.M.* includes exchanges with other professional schools responsible for the formation of groups in fields connected to the administration of justice, e.g. social workers, parole officers, prison guards and police. The seeds of the inter-school connections in the 1980s were sewn in the initiatives taken by the *Syndicat de la Magistrature* during the late 1960s and early 1970s. In the first struggle with the government, the union created a coalition of labor unions representing most of the specialized occupational and educational groups linked to the *E.N.M.* in the 1980s program.

Students at the *E.N.M.* are encouraged to develop their abilities in foreign languages. Each week professors of English and German are available for a two-hour period. In addition, there is provision made for students wishing to develop knowledge of other languages.

Throughout the period of professional legal training, the representatives of the students and of their unions — by the 1980s there were two labor unions representing magistrates around the country and at the *E.N.M.* — are able to participate in shaping the development of their education.

The two ultimate goals of this formal legal training are as follows: “to favor the acquisition of technical competency” and “to develop reflexivity in each student and the capacity to adapt to the evolution of problems in the contemporary world through the exceptional openness that the school offers.”²⁵ These purposes are more than just words put on paper. They are values expressed by simple acts of welcome to the *E.N.M.* in Bordeaux and by thoughtful answers to complex questions which were posed to the *directeur* during research conducted in the Spring of 1985.

VI. Reform Proposals

With the exception of Louisiana, United States law students are seldom exposed to either the modalities or processes of a code law justice system. Research which shows the significance of case law within the French code law is still unpublished as are findings which challenge the dichotomy of case law/common law categories for professional training and critical analysis. Nevertheless, the years have revealed that there are blurred boundaries and similarities as well as differences between code law and common law systems. Attorneys who work in the military, with social security, or under state family and labor relations codes can easily attest to the arrival of code law in our justice system. In addition, studies of alternative dispute fora and the politics of informal justice have revealed multiple and overlapping legal systems, jurisdictions and codes. Thus, the first and most essential reform would be to escape from the fantasy that lawyers do not need to learn about or understand unitary or code law relations and justice. (It would be of equal benefit for the French to recognize that the codes do not eliminate key elements of the common law experience.) In other words, I

25. *Id.* at 20. I have appropriated the term “reflexivity” from a conference on “Reflexive Law and Regulatory Crisis” sponsored by the Disputes Processing Research Program of the University of Wisconsin- Madison Law School in 1983. The complex idea of reflexive law, as elaborated by Gunther Teubner, is, in my mind, linked to the French idea of *reflexion* and the early-1970s movement of educational reform. In my view, Teubner’s “codetermination” is reflexively related to the *Syndicat de la Magistrature*’s “cogestion.”

believe that the need to transfer knowledge and understanding of code law processes, methods and education to our common law system is long overdue.

The most radical shift in accomplishing the first reform would be to develop a modified form of separate learning tracks or schools (based upon the French model) for judges, prosecutors and lawyers. Core reasons for such a division would be a) documentation of the existence of different as well as unique needs for training or knowledge in discrete legal careers, b) evidence that the mixing of career groups at the initial phase of training undermines development in separate occupations, and c) proof that a division in training enhances the ability to give justice in a uniform, fair and equitable fashion.

The application of the French system to the American pluralistic system has a contingent and relative value and meaning rather than either an absolute or indeterminate value and meaning. The contingencies are a function of the complexity of multiple and overlapping jurisdictions and a function of the conflicts between different groups and individuals who wish to keep power and control in legal education. At this stage in the history of American legal education, it is doubtful that state-controlled public-interest non-profit justice — factors of crucial significance in the successful development of the French method of training magistrates — would take hold. In turn, the American adaptation of specialized learning tracks would, of necessity, be very different from the French separation. In order to test the theory that the benefits of special and separate education for magistrates outweigh the costs, it is necessary to identify the problems of obtaining justice in contemporary America. Nevertheless, we can focus our efforts on the short-run task of finding a method to determine if the French curriculum would reduce or resolve problems faced by Americans in obtaining simple justice.

The capacity of the *École Nationale de la Magistrature* pedagogy to be transferred and applied with legitimacy outside France offers proof that it is not a culturally-specific program. (M. Desclaux had just returned from Cairo when I interviewed him. He was sensitive to the needs and problems associated with the interplay among traditional, Islamic Law, Egyptian Code law and French *E.N.M.* pedagogy.) The problems experienced by the Egyptians and the Chinese will be of help in anticipating problems in the United States. There will be new and different problems given the significant differences between French and American legal cultures.

Co-management as updated and amplified through the *A.I.R.* pro-

gram offers an opportunity for the American law student to knit together otherwise fragmented pieces of legal learning. A “menu a la carte” would give the student the chance to set up horizontal as well as vertical links among core courses. The successes of undergraduate Integrated Liberal Studies at the University of Wisconsin suggests the positive value to be found in perfecting such synthetic skills.²⁶ The aim of developing the ability to think in holistic analytical ways about the judicial process and judicial products — means and ends — and their ongoing relationships would be served with the addition of shared-management learning. The idea of a personalized guide through the years of study of the law, in place of the impersonal and dehumanized pattern which seems to dominate much of contemporary law schooling, could help humanize the courts and the law as well as the experience of legal education. The tendencies of reification which are built into contemporary pedagogy could be reduced if the pattern of training was altered along these lines.

If law students are to produce a work of synthesis like a thesis, then growth of the curriculum in the human sciences — that special combination of our humanities and social sciences which has developed in France — becomes more necessary than ever. Some faculty may argue that French students are merely developing skills which American students bring with them from undergraduate training. The main goal in proposing the reform is to create non-legalistic moments in what is otherwise a frequently mechanistic professional training experience. The purpose is to have sustained reflection upon the human sciences which will lead to the kinds of probing questions and research developed by French magistrates as part of their *formation permanente*. For such work to progress, we need regular, rigorous and systematic interchanges between law faculty and human scientists. Exchanges between institutions and groups responsible for training other members of the legal industry — parole officers, police and paralegals — should also become a part of the expansion of the scope of American legal training. Training in languages — foreign and computer — must become a part of the law school curriculum as soon as possible. Failure to include both kinds of language skills training results in the

26. My first college teaching experience was in the Department of Integrated Liberal Studies and arose from my pre-college training in “core curriculum” in the New York City Public Schools. The interdisciplinary linkages which were critical in my formative years remain a source of enjoyment as does my intense work in educational politics.

inability to function at the global level. Failure to alter the breadth and depth of law school curriculum leads to professional ossification and a paralysis of justice. The legitimacy and the capacity of the American legal system will be undermined, if not thoroughly discredited.

As are French students, our students enrolled in legal training programs should be compensated for their work. It is time to regard study and scholarship as legitimate and socially-valuable uses of human labor power. Otherwise, we will continue to denigrate and devalue critical thinking in legal education. The analytical reflection required of the student must be materially compensated if post-graduate activity is to place full value upon contemplation and thought. In turn, legal educators will be able to turn their attention to the dynamics of *formation permanente* — the professional post-graduate study required of public servants in the judicial order in France. The modalities of applying for and receiving support can and should be linked to a period of required public service in research and litigation. Such a requirement will go against the current trends of disbanding fundamental legal services and making justice a function of material power. The new requirement could also be applied to the development of lifelong learning and teaching which are essential to the effort to obtain justice.

Inspired by the French program of “opening toward the city,” law students would benefit from planned interaction between school and community, executed in a way that connects a cohort of individuals to historical realities. Such work provides a structure which lends itself to synthetic thinking. More importantly, the contact allows for a clearer understanding of the interactions between institutions, people and things. Absent such a connection, the tendencies of reification will persist and continue to bias legal education. In other words, intensive exposure to current social realities in France, generates an engagement in legal studies which is worthy of emulation.

VII. Conclusion

The ideal of passionate concern for humane justice is served by the pattern of training which is open to French *auditeurs de justice*. There is no ironclad guarantee that the graduate, either French or American, will be critical, analytical or compassionate. However, the French model provides a structure (as an interactive process) which limits the number of contingent possibilities in a desirable way. The transformation of American student culture in legal education, in the final analysis, comes into conflict with the mainstream culture of the contempo-

rary legal world. In time, the value conflicts between individual and social experience will force a clarification in the purposes and associated values built into the learning process. Over time, we can hope that those trained in the traditional legal system will develop the engagement that comes with changed social relations in learning. As the classroom preparation for the courts changes, the courts can become a classroom for changed social relations.