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Reforming the French Legal Profession

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PERSPECTIVE

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Reforming the French Legal Profession**

In the last twenty years the French legal profession has undergone two major reforms. The first, in 1971,[1] created the profession of *conseil juridique* or legal counsellor; the second, of December 31, 1992,[2] abolished the profession of *conseil juridique* and purported to create a "new profession" of *avocat*.

What have these reforms attempted to accomplish? How have they affected American lawyers? How likely are they to succeed? This article sketches the nature of the two reforms and suggests some answers to those questions.

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1. Law No. 71-1130 of Dec. 31, 1971, Journal Officiel des Communautés Européennes [J.O.], Jan. 5, 1972 [hereinafter Law of 1971]. *See generally* Walston S. Brown, *The Foreign Lawyer in France*, 59 A.B.A. J. 365 (1973); Wayne M. White, Comment, *The Reform of the French Legal Profession: A Comment on the Changed Status of Foreign Lawyers*, 11 COLUM. J. TRANSNAT'L L. 435 (1972).

2. Law No. 90-1259 of Dec. 31, 1990, J.O. Jan. 5, 1991. This law only partially repeals the provisions of the 1971 law but substantially modifies it such that one must still take the 1971 law into account.

The practice of law in France has traditionally been distributed among a number of professions:[3] *avocats,* who have a legal monopoly on oral argument in courts of general jurisdiction;[4] *avoués,* who have a legal monopoly on written procedure in the courts of appeal; *notaires,* who have a legal monopoly on real estate conveyancing, estate work,[5] and the execution of formal documents; and *huissiers,* who have a legal monopoly on the service of process, on delivering judgments, and on providing official proof of facts.[6] Historically, giving legal advice and drafting legal documents outside the scope of the above monopolies has been unregulated in France. Individuals, even those with no legal training whatsoever, could legally engage in such an activity and call themselves a legal counsellor, consultant, jurist, or whatever other title they wished to take.[7] The 1971 reform modified this historical position.

3. Legal work is also performed regularly by certified accountants (*experts-comptables*) and *experts judiciaires. See generally* H.P. DE VRIES, CIVIL LAW AND THE ANGLO-AMERICAN LAWYER 54-57 (1976); F.H. LAWSON ET AL., AMOS & WALTON'S INTRODUCTION TO FRENCH LAW 22-23 (3d ed. 1967). Tang Thi Thanh Trai Le, *The French Legal Profession: A Prisoner of Its Glorious Past?,* 15 CORNELL INT'L L.J. 63, 84-87 (1982); Pierre G. Lepaulle, *Law Practice in France,* 50 COLUM. L. REV. 945 (1950). In 1984, the official estimate of the members of the various legal professions was 15,000 *avocats,* 4,500 *conseils juridiques,* 7,000 *notaires,* 2,800 *huissiers,* 270 *avoués,* and 11,000 *experts-judiciaires. See generally* GUIDE PRATIQUE DE LA JUSTICE 44-58 (Ministère de la Justice 1984). In 1991, there appeared to be 18,100 *avocats,* 4,000 *conseils juridiques,* 7,000 *notaires,* and 3,000 *huissiers. See L'Europe juridique en ordres dispersés,* LE MONDE, INITIATIVES, Dec. 11, 1991, at II. "There is an undetermined number, sometimes estimated at between 4,000 and 5,000 salaried employees, who act as in-house counsel (*juristes d'entreprises*). They do not belong to any of the legal professions. There are also around 8,500 certified public accountants or *experts-comptables* who also give legal counsel and draft legal documents. Approximately half of the 17,000 *avocats* practice in Paris." *La robe des affaires,* LE MONDE, INITIATIVES, Dec. 11, 1991, at II. All of the legal professions in France, combined, are estimated to comprise about 27,000 people. *Du contentieux aux fusions,* LE MONDE, INITIATIVES, Dec. 11, 1991, at III.

4. The *avocats* also have a monopoly on what is known as "postulation." When an *avocat* has a case in a French court of general jurisdiction that is outside of the territorial jurisdiction of the court to which he or she is admitted, he or she is required to be represented by an *avocat* of that court, who is known as a "*postulant.*" The *postulant*'s function is to receive mail, obtain continuances, and to perform minor tasks. The requirement is similar to the requirement in the United States that out-of-state counsel be represented by local in-state counsel. However, as there are 183 different jurisdictions in a country that can be traversed by plane in less than two hours, the monopoly on *postulation* is significant. Mention should also be made of the *avocats* who have a monopoly on practice before the two highest French courts, the Cour de Cassation and the Conseil d'Etat. They constitute a special order. Currently, about 90 such *avocats* exist. They handle about 25,000 cases per year before the two courts. *See* LA VIE JUDICIAIRE, Dec. 23-29, 1991, at 11 (interview with Jacques Boré).

5. While the *notaires* do not have a legal monopoly on estate work, they do have a de facto monopoly on it.

6. The importance of the *huissier* as an official witness is enhanced by the fact that civil court procedure does not provide for oral testimony with direct and cross-examination. *See generally* the insightful article of James Beardsley, *Proof of Fact in French Civil Procedure,* 34 AM. J. COMP. L. 459 (1986).

7. While this may seem odd to a contemporary American lawyer, there are parallels to this in our own legal history. "From 1851 to 1933 the Indiana constitution declared that 'Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice.' " JAMES W. HURST, THE GROWTH OF AMERICAN LAW: THE LAW MAKERS 250 (1950).

I. The 1971 Reform of the Legal Professions

In 1971 the French Legislature adopted Law No. 71-1130 dealing with the reform of the legal professions (Law of 1971).[8] It was followed by an implementing Decree No. 72-670 handed down on July 13, 1972 (Decree of 1972)[9] and on October 16, 1972, by a *Circulaire* of the Ministry of Justice interpreting the law and decree (Circular).[10]

The 1971 reform did not fundamentally modify the unregulated aspect of law practice in France but simply formalized the title of *conseil juridique* and regulated its use. Thus, between 1971 when the profession of *conseil juridique* was first given legal recognition and 1991 when the profession was legally abolished, it was forbidden to use the title *conseil juridique,* or any similar title, unless one first fulfilled certain conditions and registered with the government. It remained perfectly legal, though, for a totally unqualified person to give legal advice and draft legal documents as long as that person did not use the protected title.[11]

The 1971 reform of the legal professions did regulate for the first time the practice of law by non-EEC nationals by (1) requiring them to become *conseils juridiques* and (2) limiting their practice "principally to foreign and international law."[12] Additionally, transitional rules applied to non-EEC lawyers who were already practicing in France at the time of the 1971 reform.

The 1971 reform put the newly recognized profession of *conseil juridique* under the control of the Ministry of Justice. Each person desiring to become a *conseil juridique* made an application with the Federal Prosecutor (Procureur de la République) attached to the Court of General Jurisdiction (Tribunal de Grande Instance) in which the applicant was domiciled.[13] If the applicant fulfilled the conditions set forth in the Law of 1971 and the Decree of 1972, then his or her name was added to the Federal Prosecutor's list.

Aside from the transitional provisions, the Law of 1971 stated that in order to be put on the Federal Prosecutor's list, one had first to practice law for three years under a *conseil juridique* who was already on the list or under an *avocat.*[14] The three-year period was an apprenticeship (known in French as a *stage*) and already in use for the *avocats.*

8. Law of 1971, *supra* note 1.

9. Decree No. 72-670 of July 13, 1972, J.O. July 18, 1972 [hereinafter Decree of 1972].

10. Circular of Oct. 16, 1972, J.O. Oct. 25, 1972 [hereinafter Circular of Oct. 16, 1972].

11. While the Law of 1971 did not introduce a de jure regulation of the practice of law, it did begin the process of a de facto regulation. As a practical matter, after 1971 legal advice was given largely by registered *conseils juridiques, avocats,* and *notaires.*

12. Law of 1971, *supra* note 1, art. 55 1º; Circular of Oct. 16, 1972, *supra* note 10, Introduction 1º A & ch. III, § 1, 1º.

13. Law of 1971, *supra* note 1, art. 54; Decree of 1972, *supra* note 9, art. 19. The domicile referred to is the "professional domicile." Neither the Law of 1971 nor the Law of 1990 imposes any residency requirement on the applicant.

14. Law of 1971, *supra* note 1, art. 3.

Up to eighteen months of the apprenticeship could be accomplished outside France as a member of a regulated legal profession.[15] Consequently, an American lawyer who had been admitted to the bar in the United States for more than eighteen months could thereafter spend eighteen months in France apprenticed under a *conseil juridique* or *avocat* and thereby meet the three-year requirement. The American lawyer did not have to take an examination or demonstrate proficiency in French.

The Law of 1971 failed to regulate or formalize the apprenticeship period. It simply provided that when one applied to the Federal Prosecutor to be put on the list as a registered *conseil juridique*, one had to prove that the apprenticeship had been completed under the conditions specified in the law. This lack of formalization was quite unlike the regulated apprenticeship of the *avocats*.[16]

The 1971 reform already envisaged the merger of the newly created profession of *conseil juridique* and the existing profession of *avocat*. The reform provided that the necessary measures would be taken to permit the merger. Additionally, a specially constituted commission would advise the Ministry of Justice so that within five years a law providing for such a merger could be adopted.[17]

However, at the end of the five-year period in 1977 nothing happened. The envisaged merger did not take place because neither the *conseils juridiques*, who were by and large thriving, nor the *avocats*, who were not thriving but were fragmented by the multiplicity of bars and weakened by the weight of the historical tradition bearing upon them, wanted the merger.[18]

A full twenty years passed before the French Legislature acted to merge the professions. The impetus for the new legislation was not the desire of the two professions to merge. Rather, it was a sudden realization on the part of the French Government of the economic importance of the market for legal services within a more integrated Europe. Inspired by the fear that this market would be irretrievably dominated by American and English law firms at the expense of French firms, the government began to seek ways to modernize the French legal professions and to assist them in becoming more competitive.

That such modernization was needed could hardly be open to doubt. Myriad archaic rules hindered about 17,000 *avocats* belonging to 183 different, autonomous bars in a country of 55 million people occupying a territory smaller than Arizona and New Mexico.[19] Prior to 1971, *avocats* were forbidden to associate in a partnership with other *avocats*. Even after 1971, meeting with a client in any

15. *Id.*

16. This weakness was partially remedied in 1988 by the adoption of Decree No. 88-771 of June 22, 1988, J.O. June 24, 1988, which requires 200 hours of courses to be taken at an approved center during the course of the *stage*.

17. Law of 1971, *supra* note 1, art. 78.

18. *See generally* Tang Thi Thanh Trai Le, *supra* note 3.

19. *See* JACQUES HAMMELIN & ANDRÉ DAMIEN, LES RÉGLES DE LA NOUVELLE PROFESSION D'AVOCAT passim (4th ed). *See also* Tang Thi Thanh Trai Le, *supra* note 3, 94.

place other than the *avocat*'s office, associating with other *avocats* who were not a member of their own bar, being salaried employees, belonging to more than one bar, and having an office outside of the jurisdiction of their own bar were forbidden to *avocats*.

The *avocats* had been unable to shed their archaic rules and modernize their profession. Since the 1971 reform, the more recent profession of *conseils juridiques*, unhampered by such rules, had garnered a significant portion of the legal services market in France and become the more dynamic of the two professions.

II. The 1990 Reform of the Legal Professions

On December 31, 1990, the French Legislature adopted two laws, once again reforming the legal profession.[20] Law No. 1258 sets out the legal forms in which *avocats* can associate. They can practice in partnership or in corporate form as long as more than 50 percent of the shares are owned by *avocats* practicing within the corporation and the remaining shares are also owned by members of the legal profession or, under limited circumstances, the heirs of a deceased shareholder.[21]

Law No. 1259 (Law of 1990) creates a "new profession" of *avocats*, which replaces the old professions of *avocat* and *conseil juridique*.[22] All members of those two professions automatically became members of the new profession on January 1, 1992.[23] As of that date *conseils juridiques* no longer existed.

Foreign attorneys registered as *conseils juridiques* on January 1, 1992, automatically became members of the French bar, regardless of their nationality.[24] Since that date, for the first time in French history, U.S. citizens not having French nationality are members of the French bar. Some of them do not even speak French.

The 1990 reform also changed more radically than the 1971 reform the historical French position of leaving the practice of law partially unregulated. The 1990 reform prevents anyone from giving legal advice or drafting legal documents on a regular and remunerative basis unless the person meets certain conditions.[25] Those conditions include having a formal academic education in the law and a diploma.[26]

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20. Law No. 90-1258 of Dec. 31, 1990, J.O. Jan. 5, 1991 [hereinafter Law No. 1258]; Law No. 90-1259 of Dec. 31, 1990, J.O. Jan. 5, 1991 [hereinafter Law No. 1259]. The implementing Decree No. 91-1197 [hereinafter Decree of 1991] was issued on Nov. 27, 1991. J.O. Nov. 28, 1991, at 15,502.

21. Law No. 1258, *supra* note 20, tit. I, arts. 1, 5.

22. Law No. 1259, *supra* note 20, tit. I, art. 1. The Law of 1971 also purported to create a "new profession" of *avocat*, Law of 1971, *supra* note 1, art. 1.

23. *Id.*

24. It is estimated that there are about 200 American lawyers practicing in Paris, Robert Lever, *Is Paris Spurning?* LEGAL TIMES, Aug. 12, 1991, at 15. Outside of Paris are only two resident American lawyers, the author in Aix-en-Provence and one in Nice.

25. Law No. 1259, *supra* note 20, tit. I, art. 26.

26. *Id.*

While exceptions to the new rule are numerous,[27] the days when an astrologer could dispense legal advice and draft legal documents seem to have disappeared. The law does not, however, restrict the giving of legal advice or the drafting of legal documents to the new profession of *avocat*. The "practice of law," as it is understood in American terms, is still subdivided among *avocats, notaires, avoués, huissiers,* and others, in addition to the exceptions created by the new law.

While the exceptions include such obvious examples as law professors,[28] they also include less obvious ones such as in-house counsel.[29] The new law contains no impediments of any kind for an American lawyer who wishes to practice law in France for a company. As long as the lawyer has an employment agreement and is rendering services to that company or its affiliates, the requirements set forth in the 1990 reform do not apply. The French do not consider an in-house counsel a member of the bar, but simply an employee.

Another exception applies to persons who are members of a regulated profession. They are permitted to give legal advice and draft legal documents arising out of their principal activity as long as such advice or documents are directly related to that activity.[30] This exception permits real estate agents to draft an agreement for the sale of a house, for example.

The Law of 1990 makes other major changes in the traditional structure of the profession. The new law permits *avocats,* for the first time, to be salaried employees,[31] by allowing them to see clients outside of their offices,[32] and to practice in corporate form.[33]

The Law of 1990 also contains major changes concerning the practice of law by foreign lawyers. An initial qualifying condition is that the applicant either have French nationality, or failing such nationality, that the applicant should belong to a "territorial unit" that grants to French persons the right to exercise the same activity under the same conditions that the applicant proposes to exercise in France.[34] This reciprocity provision is designed to meet the problems of American applicants in that it refers to "territorial units."[35] Thus, it recognizes that American lawyers belong to a bar in an individual state. The provision raises the serious issue, though, of whether the state in which an American applicant is admitted to the bar affords adequate reciprocity.

27. Law No. 1259, *supra* note 20, tit. II, art. 26, modifying tit. II of the Law of 1971, arts. 57, 58, 59, 60, 61, 63, 64, and 65.
28. Law No. 1259, *supra* note 20, art. 57.
29. *Id.* art. 58.
30. *Id.* art. 59.
31. *Id.* tit. I, art. 6.
32. *Id.* art. 3.
33. *Id.* art. 6.
34. *Id.* art. 9, modifying art. 11 1º of the Law of 1971.
35. *Id.*

What in fact is meant by the phrase: "grants to French persons the right to exercise the same activity under the same conditions that the applicant proposes to exercise in France"? If it simply means that French nationals have the right to become a member of the bar of the state of the applicant, this right has been constitutionally protected since 1973.[36] If it means that French nationals have the right to become a member of the bar in the state of the applicant without taking the normal state bar examination, then reciprocity presently does not exist anywhere in the United States.

If it means that French nationals have the right to practice law in the state of the applicant under special legislation, then applicants from states such as New York[37] and California,[38] which have special legislation dealing with the practice of law by foreign lawyers, will no doubt qualify. But what about an applicant from a state with no legislation on the subject? Under the above interpretation, the reciprocity provision would be an obstacle to such persons. Such an interpretation could raise troubling issues under the 1959 Treaty of Establishment between France and the United States,[39] for it could be construed as discrimination against certain American nationals solely on the basis of their geographical location within the United States.

Once the reciprocity hurdle has been surmounted, the Law of 1990 provides two major routes through which a foreign, non-EEC lawyer can be admitted to the bar as an *avocat:* (1) The same path as a French person would follow.[40] The basic requirements under this path are: (a) an entry examination; (b) one year in a special center leading to a Certificate of Aptitude for the Profession of *Avocat* (CAPA); (c) an apprenticeship of two years under an *avocat.* (2) An alternative path, which consists of a special examination in French law for foreign, non-EEC lawyers.[41]

According to the Law of 1990, the nature of this examination will be set forth in a decree that will be issued by the *Conseil d'Etat.*[42] The implementing Decree of November 27, 1991, states that the content of this exam will be set by the Ministry of Justice, which shall first request the opinion of the newly created National Bar Council.[43] As of the date of this writing (January 1992), the nature of the exam had not been determined. While the exam is expected to be easier than the normal examination for a CAPA, it will nonetheless constitute a signif-

36. *In re* Griffiths, 413 U.S. 717 (1973). *See generally* Godfrey Schutzer, *An Alien's Right to Practice Law,* 38 ALB. L. REV. 888 (1974); Volker Knoppek-Wetzel, *Employment Restrictions and the Practice of Law by Aliens in the United States and Abroad,* 1974 DUKE L.J. 871 (1974).

37. N.Y. JUD. LAW § 90 (McKinney 1983 & Supp. 1992).

38. CAL. BUS. & PROF. CODE § 6062 (West 1990).

39. Convention of Establishment and Protocol, Paris, Nov. 25, 1959, J.O. Dec. 15, 1960, at 11,220, R.T.A.F. 1960 nº 81. See particularly articles I, II, IV, and Protocol 2(a) and (b).

40. Law No. 1259, *supra* note 20, tit. I, art. 9, modifying art. 11 of the Law of 1971.

41. *Id.* art. 11 6º.

42. *Id.*

43. Decree of 1991, *supra* note 20, art. 100.

icant hurdle for American lawyers who wish to be admitted as *avocat*. Obviously, it will be in French, and this fact alone will be a more than negligible barrier to foreign applicants whose native language is not French. Moreover, the 1990 law states that it is designed to test a knowledge of French law.[44]

The Ministry of Justice and the National Bar Council may well envision this examination as a kind of safety valve that can be used to expand or contract the number of American lawyers allowed into France simply by increasing or decreasing its difficulty. If so, the vision could prove faulty. Faced with this hurdle, American law firms may choose to set up their foreign operations in a less hostile environment.

An EEC lawyer who seeks admission to the French bar will not face the same obstacles. The Decree of November 27, 1991, provides that a lawyer admitted to practice law in a Common Market country that regulates the admission to practice need not fulfill the requirements of a French diploma, the apprenticeship, or the exam for foreign lawyers.[45]

The impact of the 1971 reform on foreign lawyers was not significant. Those American lawyers practicing in France at the time simply registered as *conseils juridiques* under the transitional provisions,[46] and subsequent American lawyers then performed their eighteen months of apprenticeship under the tutelage of their fellow American lawyers who were already registered. When they had completed their apprenticeships they were able to register themselves as *conseils juridiques*. The 1971 reform was thus not a serious obstacle to establishing a branch office in France or to sending American lawyers to an established office on a rotating basis.

The 1990 reform may well have a dramatically different effect. For an American firm to send a lawyer to France, who will be entitled to perform normal legal services, the lawyer will have to be fluent in French and pass an examination on French law. Those two requirements are likely to decrease significantly the pool of potential candidates.

The implementing Decree of November 27, 1991, does attempt to cushion the full impact of this sudden swing of the legal pendulum. It provides that an *avocat*, upon obtaining prior authorization from the Bar Council, can take on a foreign lawyer for a one-year apprenticeship.[47] This one-year period can be renewed twice for a total of three years.[48] During the apprenticeship period, an American attorney could thus legally operate in France under the tutelage of an *avocat* who might be American. But, such attorneys cannot substitute for their

44. *See supra* note 40.

45. Decree of 1990, *supra* note 20, art. 99.

46. Comment: *International Legal Practice Restrictions on the Migrant Attorney*, 15 HARV. INT'L L.J. 298 (1974); AMERICAN BAR ASSOCIATION, REPORT ON THE REGULATION OF FOREIGN LAWYERS (1977).

47. Decree of 1991, *supra* note 20, art. 84.

48. *Id.*

legal tutors and are not mentioned on the official list of apprentices.[49] Whether these attorneys can sign opinion letters, receive clients on their own, give legal advice in their own names, or visit clients by themselves is unclear.

Yet, while the scope of the restriction is by no means apparent, clearly American attorneys can legally operate, to some extent, for a period of three years without being admitted as *avocats*. At the expiration of that period they must either return to the United States or else take the special examination for foreigners.[50]

If an American attorney decides to stay, three years in France will no doubt have improved his or her French and knowledge of French law. The exam will nonetheless remain a significant hurdle, partly because of the language obstacle, partly because French legal thinking differs from American legal thinking, and partly because French exam-taking techniques vary from American ones.

The principal effect of the latest reform on American lawyers is thus likely to be a significant increase in the difficulty of establishing a new law office in France or in expanding an existing one. As the American lawyers currently practicing in France who are grandfathered into the new profession under the transitional provisions retire, their offices will either disappear or lose their character as predominantly American law offices. In the interim, those American firms already established will occupy a privileged role. They will in effect have a monopoly and will join the array of other privileged groups and monopolies that abound in France.[51]

Will the 1990 reform attain its desired objective of increasing the market share of the legal services industry for French law firms? The answer is probably not. Several considerations lead to this conclusion.

Traditionally, in France the brightest students do not go into law. The best students coming out of the *lycées* spend two to three years preparing to enter special, prestigious schools known as the *grandes écoles*.[52] Entry into these special schools is by competitive examination. The quality of education at the schools is at a very high level. The students who succeed in entering a *grande école* represent the élite of the young generation; as they finish these schools and move into professional life, they become the nucleus of the French Establishment.

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49. *Id.*

50. A foreign lawyer illegally practicing in France after Jan. 1, 1992, is subject to a penalty of 3,600 to 18,000 French francs (approximately $700 to $3,500). If the offense is repeated, the penalty increases to 18,000 to 36,000 francs ($700 to $1,400) or imprisonment for a maximum of six months, or both. Law No. 1259, *supra* note 20, tit. II, art. 26 (modifying the Law of 1971, art. 66-2).

51. RAPPORT SUR LES OBSTACLES A L'EXPANSION ECONOMIQUE (Imprimerie Nationale, 1960) (publication of the Committee created by the Decree of 13 Nov. 1959, known as the "Rapport Rueff & Armand"); FRANCOIS DE CLOSETS, TOUJOURS PLUS (Grasset 1982); VALERY GISCARD D'ESTAING, DÉMOCRATIE FRANCAISE 60-62 (1976).

52. *See generally* JOHN ARDAGH, FRANCE IN THE 1980'S, at 82-92, 510-14 (1982); JOHN ARDAGH, THE NEW FRANCE: A SOCIETY IN TRANSITION 1945-1973, at 487-95 (1973).

Grande écoles exist for government service,[53] engineering,[54] business,[55] telecommunications,[56] history,[57] philosophy,[58] music,[59] and a few other subjects. Significantly, no such *grande école* for law has ever existed in France. The past ten years has seen tentative efforts to create a more highly trained group of law students, but the efforts have been too limited to have a national impact.[60]

The absence of a *grande école* for law no doubt reflects the fact that the legal profession and the judiciary have historically occupied a far more limited role in France than they have in the United States. The legal profession in the United States has always been one of the main paths, if not the main path, into the Establishment. The profession attracts some of the best students in America, not only because of the comparatively high compensation offered, but also because of the vital role it plays in American life. Both state and federal judges are regularly called upon to make decisions that affect current issues of the greatest political, social, and economic magnitude. As their decisions are shaped and influenced by lawyers, the latter play a significant role in American life. This is simply not true in France. In contemporary French life, neither the French *avocat* nor the French judge plays a critical role in shaping or deciding the major issues of the day.

This historical difference between the two countries has had at least the following consequences: (1) the best French students do not study law because it does not provide a path into the Establishment;[61] (2) the prestige associated with attending a *grande école* does not exist; (3) the education of those who go into a French university to study law does not attain the high level that is customary in the *grandes écoles;* (4) the intellectual and moral leadership of the French legal professions is poorly defined.

To the extent that there is leadership at all, it is more apt to come from the Minister of Justice who typically—and revealing—is not of the legal professions. The leadership, moreover, is more in the nature of taking the initiative for certain legislation than a genuine moral and intellectual leadership of the legal profession. The 1990 reform is probably a good example of such an initiative. From the

53. Ecole Nationale d'Administration.
54. Ecole Polytechnique, Ecole Centrale, Ecole des Ponts et Chaussées, Ecole des Mines.
55. Ecole des Hautes Etudes Commerciales.
56. Ecole des Télécommunications.
57. Ecole des Hautes Etudes.
58. Ecole Normale Supérieure.
59. Conservatoire National Supérieur in Paris and in Lyon.
60. The government has created a special program for one or two students per university in their fourth and fifth year of university study (*magister*). The government has also created a diploma for in-house counsel (*Diplome de Juriste-Conseil d'Entreprise*) known as the "DJCE" at seven different universities (Lyon, Montpellier, Nancy, Poitiers, Rennes, Strasbourg, and Toulouse). This program is limited to about thirty students at each university and only concerns corporate law. The total number of students affected by these programs is 200 per year.
61. While the practice of law as an *avocat* does not lead into the French Establishment, many members of the Establishment have in fact studied law at a university and obtained a diploma in law, but they do not thereafter enter the legal profession.

government's perspective, the reform's purpose was economic. Little of the discussion generated prior to the adoption of the law, either by the government or by the various professions concerned, seemed to relate to the protection of the ultimate consumer of legal services.[62]

Legal education in France occurs within the university system,[63] which, contrary to the American educational system, is not at the top of the educational pyramid. Moreover, it consists of an undergraduate curriculum rather than a graduate professional education. Studying law in France is more like majoring in political science than studying at an American law school. In contrast to the case method of study used by the vast majority of American law schools, French law students are typically not given an intensive dose of actual and hypothetical cases to analyze, although they do get a limited exposure to judicial opinions. They are basically taught general rules by teachers who are usually not *avocats* or members of an organized legal profession and who generally lack practical experience.[64] The enriching lateral movement from private practice to government practice to teaching found in the United States barely exists in France. The legal professions in France are essentially hermetic. Moreover, this limitation is in stark contrast to the methods at the *grandes écoles* where an interchange of government officials, academics, and business leaders provides students with exposure to high-level decision-makers.

Both the apprenticeship and the program leading to the CAPA are attempts to provide a professional education, but they are inadequate substitutes for the training that is given in an American law school. The principal consequence of the current structure of legal education in France is that most *avocats, conseils*

62. An *avocat,* for example, is not ethically prohibited from accepting and litigating a case he knows to be totally frivolous. While this could be charitably described as an expanded view of the notion that everyone is entitled to his day in court, it could perhaps more realistically also be attributed to the economic self-interest of the lawyer at the expense of the client. The fragile economic base of most French law practices, coupled with a traditional absence of national leadership of the bar, no doubt accounts for the absence of any ethical restraint on frivolous litigation. This author's impression of the discussion that occurred in professional circles prior to the adoption of the 1990 reform was that the provisions limiting the practice of law by unqualified laymen was not conceived as a benefit to the general public but rather to confer on the "new profession" of *avocat* additional economic benefits. A speech of the Minister of Justice, Henri Nallet, in September 1991 confirmed that the government conceived the problem as one of protecting French economic interests against the dominance of the "Anglo-Saxon Tradition." *See Allocution of Henri Nallet, Minister of Justice, 8th Congress of Conseils Juridiques, Sept. 26-28, 1991,* LA REVUE DU CONSEIL JURIDIQUE, No. 37, Dec. 1991, at 21.

63. There are approximately thirty universities in France that teach law. The usual title of a French law school is something like "Law and Economics Faculty" (Faculté de Droit et de Sciences Economiques), but the title varies from university to university. Law courses are also taught at other institutions such as the Instituts d'Etudes Politiques.

64. The director of the National Judges School has remarked that "university legal studies appear relatively incoherent." Hubert Dalle, *Le Recrutement et la Formation des Magistrats: Une Question de Légistimité,* L'ADMINISTRATION DE LA JUSTICE, REVUE FRANCAISE D'ADMINISTRATION PUBLIQUE, No. 57, Jan.-Mar. 1991, at 58 (author's translation). This same director has also concluded that there is a shortage of qualified jurists in France today. *Id.* at 59.

juridiques, and *notaires* are not equipped to handle complex legal problems. Until such time as French students are offered professional legal education in a prestigious *grande école* and the brightest students begin to gravitate to the practice of law, it seems unlikely that French law firms will fulfill the hopes of the government by capturing a larger segment of the developing European market for legal services. Legal business, like money, tends to move from weak to strong hands. The governmental remedy is not apt to be efficacious until the hands are strengthened.[65]

65. The lack of importance attributed to the legal system by the French Government is dramatically reflected in a comparison of the per inhabitant expense for the legal system of the following European countries: France, 7 francs; Germany, 30 francs; Holland, 60 francs; Great Britain, 98 francs. The comparison is set forth in Guy Danet, *Une Institution Délabrée*, L'ADMINISTRATION DE LA JUSTICE, *supra* note 64, at 16.