The Judiciary in Contemporary Society: France

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The organizers of the IALS international colloquium in Tokyo are to be congratulated for having chosen so interesting and topical a subject. Questions are now being raised about the role of law, and hence of justice and lawyers, in contemporary societies world-wide.

At the risk of oversimplifying the state of the question in comparative law, the United States and Japan stand at two opposing ends of a spectrum. In the former country the lawyer is king, with all the positive and negative effects entailed by this supremacy in terms of social organization or everyday life; the latter country by tradition holds a low opinion of the lawyer and what he represents (a potential source of pettifoggery and social disturbance). France is in a position somewhere between the two, but no more comfortable.

As a country of Romano-Germanic legal tradition, France was marked by major codifications of the early 19th century. French law is essentially written law, with the courts simply interpreting the law and, where necessary, supplementing it. Based on abstract, general, pre-established rules, this law is relatively accessible and its proper application does not systematically call for the services of lawyers.

At the same time, and for a variety of historical and political reasons, since the French Revolution of 1789, the supremacy of the law has prevented development of a genuine “judicial power,” while the perogatives of the executive have been preserved and increased.

The result has been that neither judges nor lawyers play the full social role that might be expected of them in what is commonly regarded as a “State subject to the rule of law.”

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1 For a straightforward, comprehensive description of the organization and operation of the judiciary in France, see R. Perrot, Institutions Judiciaires (3rd ed. 1989).
I. CONTEMPORARY PROBLEMS OF THE MAGISTRATURE

Contemporary problems of the judiciary in France concern the status and functions of judges in present-day society, treated here as a national report theme.

First, two clearly distinct judicial branches exist in France:
- the judicial branch proper, with the Court of Cassation presiding;
- the administrative branch, with the Conseil d'État presiding, specially responsible for settling disputes between the administration and ordinary individuals.

The origin of this twofold nature of the branches of justice lies in history and the separation of powers theory. It is scarcely justified today, but remains a source of continuing uncertainty in respect to the distribution of disputes between the two branches of justice.

Mention should also be made of the Constitutional Court (Conseil constitutionnel) whose role has been steadily growing over the past twenty years. Despite the limited powers assigned to it in the 1958 Constitution and the political appointment of its members, this court has acquired considerable prestige and, without becoming a true “Supreme Court,” plays an essential part in safeguarding freedoms and asserting the fundamental principles of the Republic.

The “magistrature” denotes all the members of the judiciary. Therefore recruitment and training of magistrates of administrative courts

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2 Translator’s note: The French terms “magistrat” and “magistrature” have no English equivalent. They comprise, on one hand, all members of the Bench and, on the other, lawyers employed by the State as public prosecutors and counsel for the government in civil cases. For the sake of brevity, they have been rendered here as “magistrates” and “magistrature,” not to be confused with the meaning of these terms in Anglo-American legal systems.


5 When the question of jurisdiction cannot be settled in the same way by the two branches of justice, it is decided by the Court of Conflicts (which comprises an equal number of Counselors of State and Judges of the Court of Cassation, together with the Minister of Justice who holds a casting vote).

6 Of the nine members of the Constitutional Court, three are appointed by the President of the Republic, three by the President of the National Assembly, and three by the President of the Senate, all for nine years.

7 Magistrates in the administrative branch (Conseil d’État), Administrative Appeal Courts (CAA) and Administrative Courts (TA) are recruited mainly by competitive examination set by the National School of Administration (ENA), as well as the supplementary examination for jud-
The contemporary problems of the magistrature considered here relate only to professional magistrates. Alongside these regular judges, who form part of the civil service, occasional judges are called on to exercise judicial functions for limited periods. A wide variety of occasional judges exists:

- First, jurors are chosen by drawing lots. They are required to decide on issues of fact; they constitute the jury, which in France exists only in the Assize Court, which has jurisdiction for felonies;
- Occasional judges are often elected by their peers; they preside over commercial courts, labor courts, and joint rural tenancies courts;
- Some occasional judges are appointed by the public authority: Social Security Court judges are designated by the Senior President of the Court of Appeal while Juvenile Court judges are designated by the Minister of Justice.

Particular problems concern ability, availability, and independence. However, occasional judges also bring citizens into closer contact with the courts and save public funds. A theoretically harmonious solution brings together one or more regular magistrates (who provide it with certain moral and legal guarantees) along with occasional judges (who give it the benefit of experience and practical sense) to serve in the same court. This is the system of échevinage in force in several specialized courts.

A. Recruitment of Magistrates

The main modes of recruitment for magistrates at the present time were laid down by an order of December 22, 1958. The legislature was seeking to upgrade judicial functions. However, the system today is not wholly satisfactory.
1. Modes of Recruitment

Magistrates are normally recruited through the National College of Magistrates (ENM). Admission is based on a national competitive examination, open each year to holders of a first degree in law (corresponding to a three-year course in law). In practice, however, students (who must be over twenty-seven years old) wait until they have obtained a master’s degree in law (four years) before applying. In the past fifteen years the number of applicants has fluctuated between 1,500 and 2,000 while the number of those admitted has on average been about 200 a year. Another national competitive examination, reserved for civil servants, also gives access to the ENM, to which applicants can also be admitted (in smaller proportions) on the basis of qualifications (e.g. by virtue of legal or judicial experience, as a trial lawyer, appeals attorney (avoué), bailiff (huissier), registrar or clerk of the court, or a lecturer in a faculty of law).

The ENM is based in Bordeaux, and future magistrates admitted to it are Auditeurs de Justice (junior magistrates) who receive paid vocational training, partly at the college and partly in a court.

However, it is possible to become a magistrate without going through the EMN. This temporary or permanent lateral recruitment is intended to offset personnel shortages and concerns only certain persons, court officers, civil servants, and teachers who already possess considerable professional experience in law and who are already incorporated into the magistrature at a particular level of the hierarchy. Although quantitatively limited by law, this mode of recruitment produces more than fifty new magistrates every year. Further competitive examinations were held in 1991.

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10 Admitees reached a “peak” of 271 in 1982, when two examinations were held in the same year, and the lowest number of admissions occurred in 1979 and 1985, with 128 and 160 respectively.

11 The number of students admitted ranges between 30 and 50 annually, and the number of applicants, who must have at least four years of service, varies between 200 and 400 a year.

12 The number of applicants admitted to the ENM on the basis of qualifications varies appreciably, with a maximum of 25 in 1979 and a minimum of seven in 1987. The upper limit may not exceed one-third of the number of applicants admitted on the basis of one of the competitive examinations in the same year.

2. Difficulties and Commentary

The French magistrature is in a state of crisis for a variety of reasons.\textsuperscript{14} Hence it no longer attracts the best law students, who prefer to seek more interesting and better paid business law careers. The upper echelons of civil service or the posts of company lawyers are also more attractive. As a result, ENM admission standards are rather low. Moreover, the number of applicants has decreased slightly in recent years, and for the past three years the board of examiners has not awarded all the places available.\textsuperscript{15} This explains the many parallel recruitment efforts to "fill the gaps." These efforts remain inadequate, owing to the rather poor image\textsuperscript{16} and corporatism\textsuperscript{17} of the French magistrature.

Judicial recruitment remains in line with French tradition: since judicial legitimacy derives not so much from experience and social status as from the law (which only requires interpretation) and the State, it was quite natural to be selected on the basis of democratic competition, followed by specialized training.\textsuperscript{18} However, the system remains closed, and it would be necessary today to introduce into the judiciary "outstanding individuals, having proved their worth in the outside world, recruited at a high level and assigned to posts for which the number of technically competent magistrates is insufficient."\textsuperscript{19} Taking a more radical stand, some commentators propose that access to the bar and to the magistrature be unified by means of a common national competitive examination, making it possible subsequently to choose between the two professions, or to move more easily from one to the other.

Recruitment through national competitive examination has gradually changed the sociology of the magistrature. The social and geographical background of young magistrates has diversified; it is in any case more egalitarian than in the past. The majority no longer originates from the

\textsuperscript{14} See infra text accompanying notes 31-37.
\textsuperscript{15} Apparently, in the opinion of the board of examiners, in the past few years, 15 percent of the junior magistrates graduating from the EMN "did not possess either the qualities or the competence required for their duties." See G. Danet, Une Institution Délabrée, Rev. Franc. d'Admin. Pub., 57 L'ADMINISTRATION DE LA JUSTICE 18 (1991).
\textsuperscript{16} In this respect, the situation in France is different from England, where the prestige of the senior bench is such that only the most distinguished barristers are admitted to it.
\textsuperscript{17} Young magistrates, recruited through the EMN and characterized by a high proportion of trade union membership, are rather hostile to these lateral forms of recruitment, especially regarding top-flight professionals who are likely to be ranked over them in the judicial hierarchy.
\textsuperscript{18} See H. Dalle (present director of the EMN), Le Recrutement et la Formation des Magistrats: Une Question de Légitimité, REV. FRANC. D'ADMIN. PUB. (justifying the French system).
\textsuperscript{19} A. Potocki, La Formation des Magistrats, in ÉTUDES OFFERTES À PIERRE BÉLLET (1991).
south of France and their parents belong to all socio-occupational classes.\textsuperscript{20}

Most importantly, a large proportion of women have now joined the magistrature: at the end of 1988 there were two-and-one-half times more women than in 1978 (2,488 as against 1,092, forty-one percent of the total figure,\textsuperscript{21} which had not significantly increased in the meantime). Over the past ten years, women have accounted for more than half of the passes in the EMN entrance examination and in 1985 they represented over sixty-three percent of successful applicants. There will soon be as many women as men in the magistrature. This is sometimes perceived as a disconcerting trend, as some claim that a growing proportion of women in the magistrature would be detrimental to its authority or prestige, which explains a tendency to give precedence to men in competitive examinations and lateral recruitment. There is something ridiculous about this view which scorns a large-scale social phenomenon reflected in the fact that female students already outnumber male students in French law faculties, and indeed outclass them. In other words, the fact that a large number of women are being admitted to the magistrature does not signify a lowering of standards.

B. Training of Magistrates

The criticisms levelled at the magistrature are based partly on the way its members are trained.

1. Pre- and In-service Training

The National College of Magistrates in Bordeaux admits future magistrates as auditeurs de justice (junior magistrates) who receive, with pay, a course of vocational training whose length has gradually been increased. In 1989 it was twenty-four months; in 1991 it was increased to thirty-one months. A general twenty-two-month course consists of alternating periods of college attendance, in Bordeaux and Paris, and periods of practical training in a court and outside the judicial institution. This is followed by a period of more specialized training in preparation for initial appointment.\textsuperscript{22}

This training is concerned primarily with technical qualifications: judicial methodology, practice, and deontology; but it also covers non-legal matters, such as psychology and psychiatry, forensic medicine, and

\textsuperscript{20} J.L. BODIGUEL, LES MAGISTRATS, UN CORPS SANS ÂME? 125 (1991).
\textsuperscript{21} Id. at 171.
\textsuperscript{22} Dalle, supra note 18, at 59.
accountancy. The ENM is also anxious to make future magistrates receptive to contemporary society, to provide them with some social experience, and help them see beyond exclusively judicial concerns. For example, junior magistrates receive three months of practical training in industry, local government or abroad, and later in the police department, prison services, or other related position.

Since 1974, magistrates are required to undergo specialized additional training (in fifteen-day sessions) during the first years of their professional careers; this marks the beginning of a substantial amount of in-service training.23

2. Difficulties and Commentary

The ENM is regularly criticized, both for its excessive ambitions and shortcomings. On one hand, it cannot adequately train future magistrates in such diverse fields as economics, management and accountancy, or sociology, psychology, criminology, or medicine and biology, which will be useful later. On the other hand, it encourages a certain corporate spirit, which tends to make magistrates rather inward-looking and, later, somewhat morose.

In addition, while legal skills are clearly necessary for such a profession, it would be good to select and train magistrates in terms of their characters and personalities. For they are not only required to “lay down the law”; they must also act as conciliators and decision-makers. Moreover, magistrates are increasingly called on to manage interests and situations, and indeed to administer property.

It is therefore desirable to open the training of magistrates to the outside world, to encourage internships and secondments in other fields of activity, marked by other ways of thinking, and to facilitate mobility and the acquisition of additional training at every stage in their careers.

C. Function of Magistrates

1. The Two Types of Magistrates

Although the magistrature forms but a single body, a distinction should be drawn between:

- the *magistrature assise* or the *magistrature de siège*, which comprises magistrates who hand down judgments24 (i.e. judges *stricto

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23 "In 1990 more than 20,000 intern-days were organized, i.e. an average of three days per magistrate per year," H. Dalle, *supra* note 18, at 16.

24 "Seated magistrates" exercise their duties while remaining seated.
sensu) and
- the magistrature debout or magistrature du parquet or public prosecutor’s office, composed of magistrates responsible for prosecuting crimes in the name of the State, or rather for defending the general interests of society by ensuring the maintenance of public order and proper application of the law.25

The magistrats du siège (numbering approximately 4,000) are irremovable, and their independence is guaranteed. The magistrats du parquet (approximately 2,000), on the other hand, are placed under the authority of their hierarchical superiors and of the Minister of Justice.

2. Increased Responsibilities

The number of cases brought before the courts is constantly increasing, as is the number of appeals. Nothing less than a judicial explosion has occurred in the past twenty years: an annual increase of five percent growing to ten percent, for civil cases alone.

The total number of new cases referred to the public prosecutor’s office and the courts rose from over ten million in 1972 to over eighteen million in 1983. The number of civil cases alone has more than doubled, and sometimes has tripled since 1972.27

25 The “standing magistrates” or “magistrates of the floor” originally stood on the floor of the courtroom; today they still stand when addressing the court.
26 CONST. art. 26. The rule signifies that the magistrats du siège cannot be exposed to an individual measure (transfer, suspension, etc.) by the government except in such cases and conditions specified by law.
27 G. Danet, supra note 15, at 17.
The Court of Cassation received 9,186 new cases in 1972; it received 27,279 in 1990. Even though its "output" is improving all the time, the Court is not able to deal with as many cases as it receives each year, and the backlog is increasing: as of December 31, 1990, 33,858 cases had not yet been heard. Moreover, the judicial backlog is about 450,000 cases before the courts of major jurisdiction and 150,000 before the appellate courts.

The causes are many; the adoption of new laws increases the number of cases brought before judges. Here are two significant examples: the Divorce Act of July 1975 led to a twofold increase in the number of judgments handed down in this area in eight years; the Individual Over-Indebtedness Liability Act of December 31, 1989 was responsible for tens of thousands of new cases brought before courts of limited jurisdiction.

Furthermore, judges no longer simply hand down judgments, or penalize certain types of behavior: "they engage in dialogue, provide assistance and protection, supervise, and administer." The juvenile magistrate, the guardianship magistrate, the matrimonial causes judge, and the visiting magistrate are magistrates who, at the base of the judicial structure, are besieged by the population's many day-to-day problems, with which they cope to the best of their limited means. Greater tension in economic and social life, citizens' growing awareness of rights and the higher requirements resulting from the advance of the "rule of law" are socio-political factors increasing litigation.

However, it is not possible to proportionately increase the number of judges. Budget is only one of the reasons. The standard of the recruitment examination is already marginally satisfactory. Although judicial productivity has increased substantially, it will not be possible to increase it further unless judges have at their disposal the additional resources that the State at last seems to be willing to grant them: computer hardware and assistance, as well as secretariat. Furthermore, regis-

- old cases 47,796 210,468
- cases closed 200,988 480,624

Labor Courts:
- new cases 54,000 161,151

(Numbers as 00s are estimates.)

29 BODIGUEL, supra note 20, at 23.
trans and clerks must gradually assume the role of assistants for drafting judgments.

In the meantime, it may be considered unreasonable that the highest French court (Supreme Court) must render more than 10,000 judgments a year: such is the present score of the Court of Cassation, which should be compared with the activity of its foreign counterparts. Whatever the value of our magistrature, the excessive quantity of its judgments can only have an adverse effect on quality.

3. Standing of the Magistrature

It is not one of the least paradoxical aspects of the present situation that the French have always had a rather negative opinion of justice and judges, but yet they turn to them increasingly often.

Solemnity, legal jargon, slowness and, on occasion, the apparent inhumanity of the judicial machine is somewhat repulsive. However, it is also true that the media contribute largely to disseminating "disinformation" to the public by taking an interest only in a small number of spectacular or sensitive cases which become distorted.

The judiciary is in a state of crisis, in France as in other countries. This crisis has several facets.

First, the uneasiness derives from the status of the magistrature. The French Constitution, in declaring that "the President of the Republic shall guarantee the independence of the judiciary," reveals a deep contradiction: if the judge is to be independent, he must also be independent of the executive, and how can this occur if he needs the "protection" of its head? Thus, an unsatisfactory situation exists in which the membership of the Conseil Supérieur de la Magistrature, the supreme authority responsible for preserving judicial independence, depends almost completely on the President of the Republic. A reform is in or-

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30 Three centuries ago La Bruyère wrote: "It is the duty of judges to administer justice; their function is to delay it."

31 But it is also criticized for being too lenient in criminal cases.

32 See LA CRISE DU JUGE (J. Lenoble ed., 1991) (Proceedings of a symposium organized in December 1989 by the Centre de Philosophie du Droit of the Université Catholique de Louvain.)


34 CONST. art. 64.

35 CONST. art. 65. The head of the executive appoints the six magistrates, but he selects
der here, which has been in a state of preparation for a long time. The system of promotion for magistrates also requires review; a clear distinction should be drawn between grade and function. Most magistrates guard their independence, and their intellectual and moral integrity is imperative. Moreover, they are largely competent and dedicated to their work. Unfortunately, the public remains unconvinced as a result of the poor impression given by a small number of sensational and exceptional cases. Furthermore, as well put by the English maxim, “Justice must not only be done; it must also be seen to be done.” In other words, this also involves a crisis of confidence.

Aware of these difficulties, magistrates have formed professional associations functioning as trade unions; at the same time, they have become politicized, hence the existence and rivalry of three national unions. While it is good that judges consider their function and express their opinion about the place of justice in society, certain excesses sometimes result.

It is first necessary to “take the judicial institution out of the watertight compartment in which it has sealed itself.” It should be brought into close contact with the business world, from which, for matters of limited jurisdiction, it has been cut off, for instance through the development of judicial arbitration. Next, public authorities should give due precedence to justice at the financial level. Lastly (but this is a more fundamental aspect of developments in French law and its sources), it should be recognized that the judge is no longer simply the faithful servant of the law, but is expected to perform a creative, mediating function which places him at the center of the social system, which has itself been invested by the law.

II. PROBLEMS OF LAWYER DEMOGRAPHY

Under this mysterious title, this second theme actually concerns the increase in the number of lawyers and attorneys and barristers in particular. In this respect the situation in France is perhaps different from other Western countries, for, although this phenomenon is occurring, the lack of legal facilities is more pressing, which the excessive dispersal of the legal profession partly conceals but does not remedy.

A. The Growth Mechanism

from a list drawn up by the Court of Cassation, containing three times that number of names.

36 Potocki, supra note 18.
37 Jurisdiction rests with the commercial courts, composed of elected businessmen.
1. The Institutional Framework for Access to the Legal Profession

Unlike many foreign countries where the status of "lawyer" is unified through the existence of a bar association which accommodates all forms of legal practice, in France the profession and its structures are highly fragmented. In 1971 and 1990, efforts to achieve unification resulted in only partial amalgamations. A distinction may be drawn between the avocats, other court officers, and notaries (notaires).

a. Avocats (Avocats)

Avocats assist and represent clients. The assistance is provided outside the context of trial (advice and consultation) or on the occasion of trial (assistance during pre-trial proceedings, and representation in court\textsuperscript{39}). This is the equivalent of the English barrister. The same applies to representation: the avocat may act for his client in any negotiations or the conclusion of any legal transaction or represent him on the occasion of a trial; he is then "agent ad litem" for the accomplishment of all procedural acts. He thus represents him in the conduct of litigation\textsuperscript{40} and in this context functions as the equivalent of the English solicitor.

Under an important Act of December 31, 1971, the former professions of avocat, avoué de première instance (attorney in courts of first instance), and commercial attorney (lawyer practicing in commercial courts) were amalgamated. This was the so-called "minor reform," which, following corporative debates of a rare intensity, excluded appeal court attorneys and conseils juridiques (legal advisers) from the new profession of avocat.

Exactly nineteen years elapsed before another step was taken towards fully unitifying the legal profession (which is still far from being achieved). The second amalgamation, brought about by the Act of December 31, 1990,\textsuperscript{41} concerns the professions of avocat and legal advis-

\textsuperscript{39} The avocat has a monopoly to represent litigants in any court except the two supreme courts of the Council of State and the Court of Cassation, which have their own special attorneys, and the labor courts where the representatives of trade union organizations perform the same role. Law of December 31, 1971, art. 4.

\textsuperscript{40} Outside the context of the trial, the avocat has no monopoly right to represent his clients. On the occasion of the trial, his monopoly is fully recognized only in the courts of major jurisdiction, where only an avocat who is a member of the bar of that court can represent a party, with the exception of the Paris region; this is the principle of the area-based nature (territorialité) of litigation Law of December 31, 1971, arts. 1, 4 and 5. In courts of special jurisdiction, any party can be represented by a person of his choice.

\textsuperscript{41} Judicial and Legal Professions Reform Act No. 90-1259 of December 31, 1990, JOURNAL
er. A "new profession" was to be created with effect from January 1, 1992, following promulgation in the intervening period of the decrees of implementation. In fact, this Act led to the absorption of legal advisers (numbering about 5,000) into the profession of avocat (numbering about 19,000); rules were adapted accordingly.

Conditions governing access to the profession remain liberal.\textsuperscript{42} Avocats are required:

(1) to be French or a national of another Member State of the European Communities, or of another State that grants French citizens the right to practice the same professional activity under the same conditions, or to have the recognized status of refugee or Stateless person;
(2) to hold a master's degree in law (four years of legal studies) or qualifications recognized as equivalent (subject to more liberal European Community directives, particularly in regard to the recognition of degrees and diplomas);
(3) to hold the professional certificate of avocat (CAPA), subject to the same Community provisions or, for foreigners who are not citizens of a Member State of the European Communities and subject to the condition of reciprocity, to have passed an examination designed to assess knowledge of French law;
(4) no convictions or penalties for acts contrary to honor, integrity, or accepted standards of good behavior.

The CAPA is awarded on completion of one year training in a Regional Vocational Training Centre (CFPA), for which there is an entrance examination. It is followed by an oath and a two-year training period.

The following, however, are not required to obtain the CAPA or to undergo the training period:

- enrolled or trainee legal advisers as of January 1, 1992;\textsuperscript{43}
- any person, regardless of his nationality, who can prove that he has exercised on a continuous, exclusive, and paid basis in France, for a period of at least five years, an activity as legal consultant and drafter of juridical acts, or any person, of French nationality or an EEC national, who can prove that he has exercised the same activity as a

\textsuperscript{42} 1971 Act, art. 11 as amended.
\textsuperscript{43} Act of December 31, 1971 as amended, art. 50 § VI.
professional lawyer for five years outside France;\textsuperscript{44} foreigners, nationals of the EEC or of a country offering the same reciprocal possibility to French professionals who are members of a regulated legal profession in their country and have exercised the same activity as professional lawyers for at least three years, including eighteen months in France.\textsuperscript{45}

The date of reference for the latter two exceptions, which are of special interest to foreign lawyers, is also January 1, 1992, but they can be applied up to January 1, 1994.

The same holds for another facility, feared by some observers to be another "wooden horse of Troy":\textsuperscript{46} groups formed under foreign legislation (e.g. partnerships), established in France on December 31, 1990, can be enrolled in the bar association of their choice, up to January 1, 1994, "if they can prove that they effectively and regularly exercise in France, in an exclusive capacity, an activity as legal consultants and drafters of juridical acts, and provided that all the members having the power to represent the group in France are enrolled in a bar association."

These are the primary conditions for access to the new profession; their complexity is due to the effect of Community law and, especially, the importance of interim provisions. These were necessary in order to integrate practicing or trainee legal advisers into bar associations, along with the many foreign lawyers practicing in one capacity or another on the Paris market.

Finally, no quota system exists to restrict entrance flows into the profession of avocat: university degrees, entrance examinations of vocational training centers (CFPA), and graduation examinations from those centers (CAPA) are not competitive examinations, and the new avocats can freely start to practice without having to obtain a "ministerial license." This is the mechanism that accounts for the increase in the number of avocats: they numbered 16,484 (including 2,581 trainees) in 1986, 18,017 in 1987, and 19,033 (including nearly 4,000 trainees) in 1990. In Paris, in two decades, the number of avocats has more than doubled: 3,000 in 1967; more than 7,000 today.

\textsuperscript{44} Id. at § VII.

\textsuperscript{45} Id. at § VIII.

\textsuperscript{46} Damien, supra note 41, at 11.

\textsuperscript{47} Act of December 31, 1971, art. 50 § XIII
b. Other Officers of the Court

Due to very long-standing traditions, as well as a corporative defense that has in recent years been managed efficiently and intelligently, a wide variety of court officers exists. Most are "ministerial officers." They are professional lawyers holding an "office" which they have acquired, usually for payment, from their predecessors. Additionally, they must be approved by the government, which verifies requirements (diplomas, professional examinations, periods of training) to assume the duties in question on a monopoly basis. The patrimonial nature of these offices thus has the result of limiting access to them. A quota system operates, which has become more flexible in recent years through the establishment of professional non-commercial partnerships (SCPs: Sociétés Civiles Professionnelles) to which the duties in question are assigned and within which several ministerial officers (and a large number of associates) can operate.

These ministerial officers of the court are:

- appeal court attorneys (avoués prés les cours d'appel)\(^{43}\) which have the monopoly of representing clients in appeals courts (conduct of litigation). They were spared amalgamation in 1971. They number 330 (138 individual attorneys, 192 associate attorneys, members of professional non-commercial partnerships);
- avocats who practice before the Conseil d'État and the Court of Cassation\(^{49}\) have the monopoly of assistance and representation in these two courts. The number of offices is limited to sixty. Just over eighty "avocates in council" practice, as twenty function as SCPs;
- bailiffs (huissiers)\(^{50}\) on the contrary, are very numerous. Nearly 3,000 perform a variety of tasks. On one hand, on a monopoly basis they have responsibility for process and "enforcement of judgments and pre-trial attachment";\(^{51}\) on the other hand, they recover debts, take

\(^{43}\) Their status is governed by Order No. 45-2591 of November 2, 1945 (Implementing Decree of December 19, 1945, several times amended, as well as Decree of November 29, 1969, which concerns attorneys' SCPs).

\(^{49}\) Avocats au Conseil d'État et à la Cour de Cassation: Status is governed by an order which dates back to September 10, 1817, several times amended, and a Decree of March 15, 1978, which concerns their SCPs.

\(^{50}\) Huissiers de Justice: Their status is governed by Order No. 45-2592 of 1945 and an implementing decree of February 29, 1956, several times amended, a Decree of August 14, 1975, as amended (on the conditions for access to the profession), and a Decree of December 31, 1969, which concerns their SCPs.

evidence, and perform as legal advisers on a day-to-day basis.

Other court officers exist, both ministerial and non-ministerial. The latter include court-appointed administrators and liquidators. Their respective professions were reorganized by a 1985 Act which sought to put an end to the long-standing confusion between the functions of official receiver (in bankruptcy) and administrator. Administrators are agents appointed by the court to administer a person's property or to supervise its management. Receivers and liquidators, also appointed by the court, are responsible for representing creditors and, where necessary, to wind up an insolvent company. Exercise of either of these professions, which cannot be combined, is subject to inclusion in a roster (national for the former, regional for the latter) which involves the vetting of qualifications and moral qualities of the applicants.

c. Notaries (Notaires)

Notaries are "very much in evidence on the legal market." They number approximately 7,500 "with nearly 40,000 salaried personnel of whom a considerable proportion hold the notary's diploma." Their main function is to draw up official, enforceable deeds; but they perform an important advisory function when such deeds are being prepared. Their work relates just as much to property transfers as to family law and business (company law, moveable business assets). According to the representatives of the profession, turnover accounts for about forty-six percent of the total turnover of the legal and judicial professions. Yet recourse to them is often optional. They are required to act by law only for certain particularly serious matters ("solemn" acts, i.e. acts under seal) such as donations, marriage contracts, and the establishment of mortgages.

52 Such as the official valuers and auctioneers (commissaires-priseurs), responsible for estimating the value of furniture and selling it by public auction.
53 The status of these two categories of court officer was established during the reform of collective procedures (judicial recovery and liquidation) by Act No. 85-99 of January 25, 1985, and then by an implementing decree of December 27, 1985. In France in 1987 there were 200 judicial administrators and 250 receivers in bankruptcy.
55 Id. at 64.
56 Id. at 63.
57 Their status is governed by a number of still applicable provisions of a very old Act of March 16, 1803, and especially by Ordinance No. 45-2590 of November 2, 1945, supplemented by numerous decrees: Implementing Decree of December 19, 1945, Decree of October 2, 1967 (SCPs); and Decree of July 5, 1973 (conditions of access to the profession and vocational training).
d. Questions and Commentary

Thus, of all those belonging to the legal profession in France, avocats alone are not subject to officially restrictive access conditions and have no control over input flows into the profession. Some professional organizations are worried about this and would like bar associations to ensure selection. However, this is not the prevailing opinion. While in Paris nearly half the avocats either find it difficult to earn a living from their profession or do not practice, the other half are very busy; in the provinces avocats are in great demand. According to the President of the Paris Bar, there is room for more than 1,000 avocats to be admitted to the various French bar associations each year.

In the opinion of all those qualified to speak about the French legal profession, there is not as yet an excessive number of lawyers. The question is rather whether the present divisions between various branches of the legal profession are desirable. Doubt exists about this. Individuals and corporations must request and pay for the services of four or five different professionals. This specialization leads to an excessive fragmentation of tasks and tends to frighten away potential clients who often require, in the final analysis, a well-rounded legal adviser. Where Europe is concerned, this dispersal is more unfortunate. The monopolies of ministerial offices are temporary and members of the French legal profession will soon be poorly positioned in the face of structures being developed in countries like England, Germany, and the Netherlands.

B. The Structure of the Demand for Legal Services in Society and the Contemporary Economy

It is patently clear, although not always fully recognized, that the legal services available in France are currently inadequate. This occurs in both firms and government offices where the legal dimension is underestimated or indeed neglected. In some areas (big firms and local government, etc.), there is no lack of trained lawyers. But legal services are understaffed and scarcely heeded.

In the firms, power is traditionally divided between engineers (who are responsible for product design and management) and marketing people, who oversee sales. They come from scientific or commercial grandes écoles and prefer to recruit their successors from among the most recent graduates of those schools. As fairly closed groups, they have a

58 They are known as "lawyers without lawsuits."
rather limited view of law, viewing it more as an accidental factor of complication than as a tool of management (to improve profits and prevent risks).

This is generally the traditional image. However, in recent years signs of a change have emerged leading gradually to the legal function being recognized and upgraded in big firms. The signal for the emergence and advancement of “company lawyers” was given in Belgium nearly thirty years ago. However, a great deal remains to be done, and the efforts of the National Association of Company Lawyers, backed by the National Association of Banking Lawyers, are necessary for full recognition of the specific role of lawyers in companies, particularly small or medium-sized firms.

The situation is similar for government lawyers. A serious shortage exists. The Conseil d’Etat regularly complains of the inadequate legal training given to civil servants, noting the unfortunate effects on an increasingly large volume of administrative litigation. Moreover, due to decentralization, local government authorities have an urgent need for sound legal structures. This lack of legal infrastructure is especially noticeable because in France (approximately two years behind political and social developments in the United States) the law has regained its importance.

Lastly, a large part of legal services demand cannot be met, corresponding to all the needs of persons whose income is insufficient to pay for legal assistance. The legal aid mechanism currently in operation is inadequate to remedy this serious social handicap.

C. Description of Growth

1. Changes in the Legal Profession

Lawyers usually possess a high socio-occupational background.
For example, in the Paris Bar\textsuperscript{65} far more future *avocats* than magistrates have fathers who practice a liberal profession or are managers or senior personnel (seven percent versus sixty-eight percent).\textsuperscript{66} To date, there has been no major change in this respect.

On the other hand, the average age of lawyers' is tending to become younger, which is one of the consequences of growth. Above all, the legal profession is tending to attract larger numbers of women. The phenomenon is particularly perceptible in bar associations. In Paris, in October 1989, the "roster" comprised thirty-five percent women, but women represented fifty-six percent of trainee *avocats* (i.e. those who will be practicing in the future).

Lawyers receive their basic training at a university where, after four years of study, a master's degree in law with certain areas of specialization is awarded. Two changes are to be noted however.

First, the training period is lengthening. After the master's degree, a postgraduate diploma (the diploma of advanced studies (DEA) or diploma of specialized higher studies (DESS), obtained during a fifth year of study) is often considered desirable, if not indeed required, by prospective employers. (The DEA leads to research (theoretical or applied), the DESS serves a clearly identified professional purpose.)

Second, future members of the legal profession, like their future employers, often look for additional training in another field of study. There is a particular demand for management, finance, or accountancy. But a diploma from the Paris Institute of Political Studies, or graduation from one of the leading teacher training colleges, is a useful "plus" as it signifies a broad cultural background and sound work methods. At least one foreign language (English) is now required in companies, banks, and large law firms, while familiarity with a foreign legal system, if attested by studies in a foreign university, is also a very favorable ingredient in any young lawyer's curriculum vitae.

2. Methods and Trends

For a number of years the legal profession has been divided into two distinct or contrasting types of activity: litigation, the preserve of traditional *avocats*, who frequent the law courts, and of officers of the court and legal counseling, where legal advisers, notaries, and business

\textsuperscript{65} The Paris Bar Association communicated the findings of a survey conducted among its members, commissioned by its communication Commission from a research unit, the COFREMA. The "findings of the qualitative survey" (June 12, 1990) and the "summing-up of the qualitative survey" (May 1990) serve as a basis for some of the following observations.

\textsuperscript{66} Results of the COFREMA survey, *supra* note 65, at 3.
lawyers, negotiate, draft documents, and serve as consultants. The bar is fundamentally split between these two poles, and very few avocats combine the two activities in a harmonious, balanced manner either in Paris or the provinces. Avocats in the provinces are essentially trial lawyers. This is also true of many Paris avocats, especially if they have been in the profession long and practice on an individual basis.67

However, young lawyers, particularly men, are more attracted to counseling, where the needs and prospects of development are greater, and fees are higher. However, they are mainly attracted by its international dimension: the prospect of negotiating and drawing up major international contracts, participating in deals leading to the acquisition of prestigious properties and assisting companies in international arbitration, or being arbitrators themselves, hold a mythical aura or form part of the dreams of young lawyers in France.

D. Causes of Growth

Factors contributing to legal profession expansion are various and overlapping. First, legal services of firms and government offices have not kept up with demand.68

Next, the law has regained its importance. In other words, citizens have become more aware of their rights and the requirements of a State subject to the rule of law; there has been an increase in legal protection and in the fundamental guarantees of human rights and individual freedoms. As a result of this phenomenon, as well as technological progress and environmental protection requirements, a substantial increase in the number and complexity of legal rules has occurred. These developments in contemporary societies, which correspond to well-rooted trends, lead to a considerable litigation increase in all of its forms.

Lastly, in order to meet these new legal needs, but also because the legal profession is beginning to enjoy a fairly good reputation among students in France, far more young people choose to study law. Admittedly, the increase in student population and graduates in all fields of study is a general phenomenon. But it is relatively more pronounced in law, either because certain other professions are now saturated (medicine, upper echelons of the civil service) or less attractive (teaching).

In the medium term, the increase in the supply of legal services can be expected to lead in turn to an increase in demand, which is at present not being adequately met or expressed, owing to the lack of legal infrastructure discussed earlier.

67 Results of the COFREMA survey, supra note 65, at 2.
68 See supra text accompanying note 63.
E. Consequences of Growth

1. The Recruitment of Young Lawyers

In economic terms, the "market" for legal services seems to be sufficiently "elastic" for only a slight imbalance between supply and demand: it is fairly easy for a big law firm to increase its workload in order to cope with a sudden rise in demand and, conversely, a company or a client may not express a need or may forego the services of a professional if demand cannot be adequately satisfied.

However, young law graduates currently experience some difficulty in rapidly finding work. Banks and companies do not hire lawyers when the economy is poor, as is the present case. They hold the view, in accordance with a deep-rooted prejudice, that lawyers are not directly productive and hence do not represent a priority investment.

At the present time law firms continue to develop. However, firms prefer to recruit from among young lawyers who have passed the CAPA and are beginning their probationary period; these lawyers attain "associate" status and will consequently be regarded as members of a liberal profession for the purposes of taxes and social charges.

2. The Increase in the Size of Law Firms

Increase in law firm size is a recent albeit highly significant phenomenon. Notaries, especially legal advisers (in the case of trust companies with establishments throughout the country), have set an example by founding real firms with a large number of salaried employees. Avocats have followed that example. A considerable increase in group practices in the legal profession (professional non-commercial partnerships) is occurring. For avocats, non-commercial firms share premises, equipment and associated chambers in Paris and the provinces alike. In this legal marketplace, the race towards expansion is intense: several French law firms now employ more than 100 avocats.

The legislature has recently authorized even more growth. Following a second Act of December 31, 1990, joint stock companies can be established for the liberal practice of these legal professions. Substan-

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69 In Paris, in 1989, out of 4,780 avocats, 765 practice in 281 SCPs, 572 in 199 associations, 522 in 190 group practices, and 334 in 110 non-commercial solicitors' firms (SCMs). The groups remain quite small, being composed on average of approximately three avocats. See PARIS BAR ASSOCIATION, LE BARreau DE PARIS (1990).
70 The largest firm, Gide, Loyrette and Nouel, employs nearly 200 avocats.
71 Act No. 90-1258 of December 31, 1990 (concerning practice in the form of liberal profes-
tial external financial resources can thus be collected, provided however that more than half the capital and voting rights are held by practicing lawyers belonging to the company.\(^{72}\)

These large firms link up with foreign law firms, particularly in member countries of the European Economic Community, to form international practices.\(^{73}\) This trend towards the multinationalization of law firms, which French lawyers were slow to join, is now well-developed.

3. Very Keen Competition

Competition between members of the legal profession is becoming more varied and intense. First, legal advisers, *avocats*, and notaries compete to supply firms with legal services. The amalgamation of legal advisers and *avocats* placed them on equal footing and, as a result, had a beneficial effect on free competition.\(^{74}\)

Within the same market, this competition also exists between foreign and French law firms. French firms faced with the establishment of several powerful and dynamic Anglo-Saxon law firms in Paris, have suffered and are still suffering from competition which developed in Paris alone, due to liberal legislation. However, this competition has been ultimately beneficial, having forced them to make radical changes to their structures and methods of work and, in response to the requirements of clients who have become more demanding, to improve their "professionalism." In the past twenty years Paris has acquired a primary position in the legal market and lawyers who realized this and acted accordingly have benefitted from this competition.

Lastly, (this is an equally important development, highly welcome in France), American and English law firms and their French counterparts are developing methods and facilities which are creating additional demand for legal services among their clients (especially in big firms).

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\(^{72}\) Act of December 1990, art. 5.

\(^{73}\) For example, the second largest French law firm, Jeantet et Associés, has formed with major German, Belgian, Dutch, and Spanish law firms, an *Alliance of European Lawyers*, consisting of more than 500 lawyers.

\(^{74}\) Competition Board, Opinion No. 90-A-01 January 4, 1990, (concerning the preliminary draft of the Legal Profession Reform Act); J.C.P., No. 63664, 1990 (study of the market for legal services).
III. THE BOUNDARIES OF LEGAL PRACTICE

A. Company Practice

The practice of company law is developing in France due to several factors:

- the formation and growth of groups, leading to buying operations, takeovers, mergers, and the establishment of subsidiaries;
- new rules on the protection of public savings, minority shareholders, and company employees;
- development of international trade, naturally followed by the multinationalization of firms and their funding mechanisms.

These operations require careful legal monitoring, which can only be carried out by big firms specializing in the legal management of expansion, and particularly in company law, tax law, financial law, and social law. These big firms are located in Paris. As mentioned earlier, some form part of multinational law firms (usually of American origin); others are gradually forming into international networks in order to stay abreast of their clients (multinational corporations) in worldwide expansion. However, French firms (of all sizes) sometimes prefer to use the services of a national trust company, as it has the advantage of being firmly established, through its many branches, throughout the national territory.

These large firms attract young lawyers. Their substantial resources, national and international activity, prestige, and high rates of pay offered cause them to receive many applications and allow for a high degree of selectivity.

B. Changes in the Structure of the Market for Legal Services

1. The Clientele of Companies and Banks

This is the field of business law with various specialties: company law, tax law, social law, industrial property, bank operations, distribution and competition, among others, (and of course with its Community and international aspects). To satisfy a very demanding clientele, lawyers must specialize in one of these fields or join together to form firms sufficiently powerful to meet these various needs.

75 Like the FIDAL, the Bureau Francis Lefebvre, etc.
Law firms are becoming increasingly specialized. The new Act of December 31, 1990 authorizes lawyers to place after their titles a mention of "one or more specializations."\(^\text{77}\) This is the embodiment of an earlier practice on the part of certain bar associations (mention of "main activities"\(^\text{78}\)) which the case law of the appeal courts had begun to legalize,\(^\text{79}\) and which is gaining ground among the major bar associations.\(^\text{80}\)

The other move towards attracting the clientele of companies consists of expanding human and material resources of the law firm (as previously noted), establishing a group practice and bringing the firm to a multinational level.

Legal services provided under these conditions are increasingly expensive, owing to the huge rise in overhead costs (premises, computer facilities, office automation) and to time spent studying and dealing with files. The fees charged on the basis of hourly costs also represent large amounts.

2. Individual Clients

Individual clients cannot meet the fees demanded by these large firms and are no longer of interest to these firms. As a result, ordinary people turn to traditional lawyers, notaries, and judicial marshals for matters to do with the family, rent, and neighbors, for instance.

In the final analysis, differing status within the legal profession is perhaps no longer the most important feature of the French legal market. Equally important, it is now divided between two distinct clienteles, catered for by equally distinct professional structures. Furthermore, as many individuals are unable to pay these traditional lawyers decently, a third market may be developing.

3. The Demand for Legal Services by Insolvent Clients

Demand is very great, both for access to the courts and to legal services. Thus, in civil matters, sixty-five percent of divorce cases are


\(^78\) LE BARREAU DE PARIS, supra note 69, at 37.

\(^79\) CI. Woog, L'activité de l'Avocat (Globale, Spécialisée ou Dominante) et son Image Auprès du Public", J.C.P., No. 3413. The judgments published and analyzed of the Bordeaux, Dijon, and Paris appellate courts.

\(^80\) In 1983, the Association of International Law Firms (Association de Cabinets d'Avocats à Vocational Internationale: ACAVI) was founded in order to publicize the practice of international law and to promote co-operation among the firms concerned. In 1990, its membership comprised more than 80 firms, or approximately 1,000 lawyers (see its yearbook).
brought with legal aid, while litigation involving housing legislation, labor legislation, and juvenile legislation remain insufficiently covered. In criminal matters, lawyers officially appointed under the legal aid system are involved in less than twenty percent of cases. The defense of litigants is insufficient, even when solvent, in administrative matters or before many quasi-judicial commissions where they are summoned to appear. As for access to legal counselling (i.e. to legal advisers), local initiatives taken by certain bar associations or certain local government offices remain inadequate and piecemeal. In 1990, the Conseil d'État painted a very gloomy picture of all these needs and the failure to meet them.\(^{81}\)

Public funds earmarked for legal aid in France are very meager: less than 400 million francs in 1989, corresponding to a contribution of seven francs per head yearly, as opposed to thirty francs in Germany, thirty-four francs in the United States, and ninety-eight francs in England.\(^{82}\)

The debate on legal aid has been very fierce in the last few years, leading to strikes by French bar associations. The Ministry of Finance was anxious not to add to the public budget and was reluctant to raise the fees paid to lawyers entrusted with such aid as well as the upper limit on resources within which a litigant can benefit from such aid. Furthermore, lawyers themselves were divided, since a person of modest means allowed to receive legal aid through a raising of the upper limit on resources for which such aid can be granted ceases to be a client for traditional lawyers who would have been satisfied with moderate fees. And if remuneration of lawyers entrusted with such aid is increased, it may well become sufficiently attractive for lawyers without clients to agree to specialize in this area and thus to become a proletariat of the bar. This is partly the case at present, evidenced by the recent study of the Conseil d'État,\(^{83}\) as the burden of civil legal aid and officially assigned commissions for criminal matters is unevenly distributed, not only among the lawyers in each bar association (some lawyers are willing to take on a large number of such cases), but also between bar associations.\(^{84}\)

The former system\(^{85}\) has been completely overhauled. An Act of

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82 Id. at 15, 67.
83 Id. at 124.
84 The number of lawyers enrolled, the size of the population concerned, and its economic and social level should be accounted for.
85 Legal Aid Act No. 91-647 of January 3, 1972.
July 10, 1991 has been promulgated which is intended to ensure "legal aid" in its two forms: access to justice by means of aid in litigation, and access to legal services by means of "legal counselling aid," which includes assistance of consultancy and in non-judicial proceedings. It remains to be seen whether the good intentions of the legislature will be followed by a corresponding effort on the part of the Minister of Finance and the bar associations.

C. Relations Between Lawyers and Allied Professions

All the branches of the legal profession were listed earlier. They compete with one another in certain sectors, especially regarding advisory services and drafting legal documents. While some branches have merged (avocats and legal advisers) and have become largely accessible to foreign lawyers, others have retained their former status, such as notaries, bailiffs, etc.

However, all branches are equally affected by a major innovation introduced by the Act of December 31, 1990. For the first time in France the practice of law has become a regulated activity. Henceforth, no one can, "in a habitual, paid capacity, give legal consultations or draft legal documents for another person" unless he is a member of one of the professions specified by law. The list is comprehensive and includes all the branches of the legal profession discussed above, along with professors of law and, in the exercise of their functions, company lawyers.

The sharpest debate concerns independent auditors and accountancy firms, in particular the famous Anglo-Saxon "Big Six," well established in France and the business world. Having both the means and the ambition to develop strictly legal activities independent from accountancy work, but (so they contend) in conjunction with it and for the greatest advantage of clients, they claim the right to act as legal consultants, and draft documents. This battle between the world of law and the world of accountancy came provisionally to an end with the legal purists victory; Article 58 of the Act maintains the present situation, allowing other regulated professions to give legal consultations only within the context of "their principal activity" and to draft only such deeds as are "directly

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87 See supra text accompanying notes 39-57.
88 Act of December 31, 1990. See also supra text and accompanying notes 39-47.
89 Act of December 31, 1990, arts. 54-61. See also A. Benabent, La Réglementation de l'Exercice du Droit, J.C.P., No. 3490.
incidental to the service provided."\(^{90}\) However, the battle continues.

**D. The Changing Image of the Legal Profession**

The establishment and expansion of large law firms impairs the traditional image of the lawyers' profession, defined again by the Act of December 31, 1990 as "liberal and independent." Admittedly, many avocats still recognize themselves in this definition. However, many are content as salaried legal technicians, without clients. The same Act has helped confirm this development (and further split) by authorizing salaried activity for avocats, whereas previously it was allowed only for legal advisers.\(^{91}\)

Notwithstanding these distortions, lawyers, "all very different," love their profession, and are happy to practice it.\(^{92}\) (This is a general impression and points to a fixed attitude).

On the other hand, the traditional lawyer does not always have the time or the inclination to modernize his work methods by making rational use of new technological tools. Moreover, these traditional lawyers all suffer from inadequate continuing training, made particularly necessary by the current changes in the legal profession.

In this connection, notaries, powerfully organized at the national level through painstakingly adapted methods and functions, have proven more efficient. Although many modest traditional practices still exist in small towns, like the most ambitious in the sphere of business law, a highly efficient professional body, the CRIDON, quickly answers a wide variety of legal questions encountered by notaries in professional activities.

Finally, the bar associations are beginning, belatedly and hesitantly, to move in the same direction. In 1981, a joint access facility to existing legal data banks was created, the CEDIA, which now comprises fifty bar associations and 11,500 avocats, in the legal form of an economic interest group.

\(^{90}\) Act of December 31, 1990, art. 58.


\(^{92}\) "Summing-up of the qualitative survey," supra note 65, at 4.
IV. SOCIAL CHANGE AND THE ROLE OF THE LEGAL PROFESSION

A. Historical Role of Lawyers in Society

It is not necessary to retrace the history of the various branches of the legal profession. Rooted in the distant past, the legal profession's history is complex and often bound up with contingencies. In general, a gradual specialization of legal functions and proliferation of "ministerial offices" occurred wherein royal power found precious succor. More noteworthy was the fight for professional independence vis-à-vis the political authority, as well as for bar association independence.

On the whole, lawyers do not carry a favorable image in the public eye, but this requires qualification; despite a monopoly and archaic terminology, notaries are better liked than bailiffs, who are considered pitiless. Avocats are taken to task both for being over-eloquent (often at the expense of honesty) and for living off pettifoggery and human suffering. These peremptory views stem primarily from public ignorance. Few know the work and functions of the avocat; the media add to the misunderstanding by catering to the public's taste for outrageous simplifications, amounting to disinformation.

It is easily forgotten that avocats played an important role in the advent and development of democracy in France and that they remain in the forefront of the fight for freedom. Conversely, they rarely possess economic power.

B. Lawyers in Political Structures

Since the establishment of the fifth Republic in 1958, avocats have played a lesser role in political life, replaced by senior civil servants from the Ecole Nationale d'Administration (ENA), and ministerial advisers. This reduction in role occurred concurrently with a lessening of the Parliamentary role where, traditionally, in the third and fourth Republics, avocats occupied a leading position. Politically and socially, avocats are generally conservative; some are active in human rights courses.

Avocats' professional associations are as diverse as the objectives that each pursues. Some are politically-oriented; many confine themselves to defending professional interests. The bar associations play a

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93 For example, the Syndicate des Avocats de France, which has a fairly leftist orientation.

94 Nationally, like the Confédération Syndicale des Avocats (OCSA), the Association Nationale des Avocats (ANA) or, with a membership of avocats under the age of 40, the Unions des Jeunes Avocats or their national federation (FNUJA). The point of view of the younger members of the profession expressed by the FNUJA (see the proceedings of their most recent Congress, held in Montpellier from May 9 to 11, GAZ. PAL., August 1, 1991) is often rather dif-
major role in this task, as well as representing avocats in court relations and ensuring observance of professional ethics. Jealous of their independence, each bar (there are 180) has maintained its own association,\footnote{Each association is administered by an elected executive council and president.} possessing disciplinary powers and prerogatives prescribed by law.

It was not until the latest reform that the National Council of Bar Associations was established. This occurred due to pressure from legal advisers desirous of having an official national organization for the new profession “responsible for representing avocats in their relations with public authorities and for ensuring the harmonization of the rules and practices of the profession of avocat.”\footnote{Act of December 31, 1990, art. 5 (inserting a new Article 21-1 into the Act of December 31, 1971). Regarding its complex composition and its functions, see Bénabent, \textit{supra} note 41, no. 30.}

\section*{C. Lawyers and Political Problems}

The fragmentation of the legal profession and, where avocats are concerned, the splintering of bar associations, as well as proliferation of professional organizations in open competition with each other has hindered the emergence of lawyers in national political life. Moreover, neither image nor political or social position has allowed any real ascendency. Lawyers in general and avocats in particular are not noted for having taken any significant action to solve such social problems as environmental protection or poverty.

It may be observed simply (the problems are encountered in day-to-day practice of the profession) that avocats and some organizations are especially sensitive to the problems of outcasts, minorities, and immigrants, for whom they demand greater equality and better social integration. Also in the same spirit, avocats are endeavoring to introduce, at the national level or individually, a more accessible form of legal aid more relevant to litigants and their difficulties. Avocats are thus rediscovering the natural meaning of their work, through or in spite of changes imposed on them by modern society.
Since September 1991, when the above report was drafted, several texts, of unequal importance, have been published in France.

1) A real reform of the status of the *Magistrature* has been commenced. It is still somewhat timid, but nevertheless significant. A first *loi organique* No. 92-189 of 25 February 1992 (Journal Officiel of 29 January 1993), followed by an implementation order (*décret d’application*) No. 93-21 of seven January 1993 (J.O. 8 January 1993), has simplified the hierarchical levels, made the conditions of promotion transparent and improved the possibilities of access to the judiciary. But this reform required a constitutional amendment (Article 65, Constitutional Act No. 93-952 of 27 July 1993, J.O. 28 July 1993); the composition of the *Conseil supérieur de la magistrature* has been modified and its competence extended to government attorneys. The purpose of this reform, which continues through other *lois organiques* about to be adopted by Parliament, is to enhance the independence of magistrates in relation to the Executive Branch.

2) For the independent legal professions, the following texts implementing the provisions of two Acts of 31 December 1990 should be noted:

The voluminous Order No. 91-119 of 27 November 1991, organizing the profession of *avocat* (J.O. 28 November 1991) which, in six chapters and 286 articles regulates:

The organization and management of the bar, access to the profession of *avocat*, exercise of the profession of *avocat*, discipline, freedom of practice in France for attorneys from the Member States of the European Community, insurance and financial guarantees, rules governing fees, and bookkeeping of *avocat*.

In 1992 and 1993, a series of implementation orders of the Act governing the *exercise of the independent legal professions by corporations* were issued. These corporate structures have been successively regulated in respect to notaries, bailiffs, appeals court advocates, *avocats*, legal advisers, liquidators, etc.