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## The Teaching of Law in France

Claudine Bloch

*Centre National de la Recherche Scientifique*

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# Comments

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Claudine Bloch\*

The Teaching of Law in France

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## I. *Introduction*

For a little over thirty years<sup>1</sup> the teaching of law in France has conjured up the image of a vast expanse of land, the boundaries of which are continually being extended: the observer will see a succession of cultivated fields, plots of land which are constantly being tilled so that one wonders if they will ever bear a crop; but he will also see ground lying fallow which is coveted by the wealthy and the pioneers: they plough their furrows, which they then either abandon or untiringly plough even deeper or longer. These remarks, preceding the presentation of so serious a subject, are an invitation to the reader to consider with a duly critical mind and the necessary degree of relativism, the developments which the complexity of the matter will sometimes make irksome or even baffling. A recent work on "Le système d'enseignement du droit en France" offers an interesting summary of the genesis of, and changes in, the teaching of legal disciplines from the creation, by the Act of 13 March 1804, of "schools of law", to the Act of 26 January 1984 on higher education: the author cautiously concludes that the discussion remains open.<sup>2</sup>

Controversy over the aim and the organisation of the teaching of law have been kindled for almost two centuries by the interplay of three factors: 1. the intrinsic evolution of the French legal system; 2. the emergence of new conceptions of the role of the jurist in society<sup>3</sup>; and 3.

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\* Claudine Bloch, Docteur d'Etat en Droit, Ingénieur de recherche au Centre national de la recherche scientifique, Paris. This study was carried out within the Centre d'Etude d'Histoire Juridique (Université Paris II, Archives de France, associé au C.N.R.S., URA no. 955.

1. That is, since the reform of the licence en droit (law degree) on 27 March 1954. Previous important reforms dated back to 1922 and 1905.

2. Jacqueline Gatti-Montain, "Critique du Droit" series, Presses universitaires de Lyon, 1987. Cf. the report by Jean-Jacques Beinvenu, *Revue d'histoire des facultés de droit et de la science juridique*, Paris, 1987, pp. 152-153.

3. In 1971 Dean Georges Vedel wrote in his report on "The adjustment of law studies to the needs of modern society", submitted to the Council of Europe: "... even if the jurists who, until recently, in certain countries had always had the lion's share, have had to make room for people with a different background from their own (he had just been alluding to economists, sociologists, psychologists, political scientists, engineers, farmers, labourers, management technicians, trade unionists), the place they occupy in the government, the civil service, the economy and social institutions is still sufficiently large for the way in which they have been formed to have real consequences at national and international level", *Proceedings of the second Conference of Law Faculties, Strasbourg, 1971*, p. 311 (typewritten report).

attacks launched against universities in general and, consequently, against the faculties of law in particular.

The result is an ongoing process of adjustment, in order to meet the needs of society and of the decision makers, but interaction among these three factors does not always run smoothly. The above mentioned image is unfortunately not a caricature. Whenever new plans for reform are mooted, the history of law teaching is raised and thrashed out (for or against innovation). Where do we stand in 1988-89?<sup>4</sup> The present description does not claim to be exhaustive and its limits must be indicated.<sup>5</sup> The type of teaching covered by the present essay is that provided in public university institutions,<sup>6</sup> under the control of the Ministry of National Education: it concerns the former law faculties (*Facultés de Droit*)<sup>7</sup> which became Training and Research Units (*Unités de formation et de recherche*: U.F.R.) by virtue of the Act of 26 January 1984.<sup>8</sup>

For roughly a hundred years, resistance to the "adjustments" sought by professional circles has led to legal "subjects" or more simply "concepts" being taught by various institutions of higher or vocational education. The creation of University Technological Institutes (*Instituts Universitaires de Technologie I.U.T.*) in 1971, designed to provide short, post secondary education (two years), made it possible to include in certain courses of study, education with a legal slant.<sup>9</sup> Today, only the law U.F.R.'s, whatever the pluridisciplinary approach adopted by the university (political sciences, economics, social science), offer a full and open course of studies in law. These are the only establishments which will be considered here, as they constitute the perfect example for anyone

4. Thomas E. Carboneau put the question some ten years ago when giving Canadian jurists an historical explanation of the French system, from mediaeval education up to the reforms arising out of the enforcement of the Act of 12 November 1968. The French legal studies curriculum: its history and relevance as a model for reform, [1980] McGill Law Journal, 445.

5. The remarks to which it gives rise relate to professional experience in education (Paris II and Paris XI Law faculties) and in research (Centre National de la Recherche Scientifique, Section "Sciences of Law").

6. Law is taught, at various levels, in a certain number of private education establishments. They do not appear to play a very important part, but the fact that they exist should be mentioned (the Catholic Institute of Paris, for example).

7. Law "schools" which were created in 1804 became "faculties" in 1808, which was the name which had been adopted by mediaeval university tradition.

8. The statutes of Paris II university (University of law, economics and social sciences of Paris II) drawn up on 26 October 1988, use the definition to be found in the 1984 Act, as they describe it as: "a public establishment, of a scientific, cultural and vocational nature, with legal personality and enjoying pedagogical, scientific, administrative and financial autonomy". In metropolitan France, there are at present just under 40 UFRs with mainly law-related activities. These will often be referred to as "law faculties".

9. In these different contexts "legal" training is often entrusted to university staff and not only to practitioners.

wishing to understand the shift, which has taken place over the past fifteen years, in the causes underlying the intellectual and political divergences, or antagonisms, in respect of the conception of the teaching of law. It did not, moreover, appear necessary to consider the approach adopted by these institutions as a whole; a sample of recent or long established universities, in Paris or the provinces, is sufficient to reveal at one and the same time, the cumbersomeness of the former system and the new dynamism which is capable of revising deeply rooted ideas: a "young"<sup>10</sup> Parisian University can be more "conservative" than a venerable, provincial university which is well integrated into the social and economic life of its region.<sup>11</sup>

The debate on the teaching of law, its aims and methods, began in the first half of the nineteenth century. And it seems as if it will never end:<sup>12</sup> since law is part of the "social sciences" and is taught from a scientific, cultural and vocational<sup>13</sup> angle, such that the level of study is recognised as being "higher", the jurist thus trained can become independent of the system which "produced" him only by challenging it.<sup>14</sup>

In 1972, in a report on higher education in law, commissioned by Unesco, Charles Eisenmann reiterated the twofold equation he had already defined in 1954 on the relation between the problem of the goals and the nature of teaching law on the one hand, and, on the other, the very organisation of such teaching.<sup>15</sup> Law can be taught for practical or scientific purposes; if these are indeed the alternatives, then it will be taught either as if it were a vocational subject, or as general legal culture. Universities for a long time refused to opt solely for one or the other. The teaching of law in law "Faculties" generally tends to be the result of a subtle blend,<sup>16</sup> which sometimes gives the impression that professionalism

10. Those created after 1968.

11. Examples given should in no way be interpreted as a value judgment, meaning that the "bad" universities are left aside, and only the "good" ones are mentioned.

12. See the bibliography quoted by J. Gatti-Montain, *op.cit.*

13. See the Act of 26 January 1984.

14. André-Jean Arnaud, "Les juristes face à la société du XIXe siècle à nos jours", Paris, 1975, Jean-Jacques Gleizal, "La formation des juristes dans l'Etat Français", *Procès, Cahiers d'analyse politique et juridique*, 1979, No. 3, p. 70, where the author speaks about the "crisis" in the education system.

15. "Les sciences sociales dans l'enseignement supérieur — Droit", UNESCO, Paris, 1972.

16. Statutes of the Faculty of Law and political science of Aix-Marseille ("Guide de l'étudiant", 1988-89) Article 2: "the fundamental mission of the faculty of Law and Political Science of Aix-Marseilles is to assemble and transmit knowledge in the fields of Law and Political Science. To this end, it provides its students with general and specialised culture, which is essential for their individual education and their access to professional life . . ."

Comment by the Dean of the law faculty of the University of Social Sciences of Grenoble (*Guide de l'étudiant*, 1988-89): "Being a student at Grenoble Law Faculty means acquiring rigorous legal training, whilst preserving awareness of professional opportunities".

in studies can be attained only if the general legal culture<sup>17</sup> is duly taken into account, but that scientific research in the legal area can be promoted only if the needs of professional circles are known, and can be anticipated. In 1804 a legal education was designed for certain judicial and legal professions.<sup>18</sup> Up to the mid 20th century, attention was increasingly paid to the scientific teaching of law (law, a social science); since then, due to national and international economic evolution, and given the structural changes to which traditional social relations are subject, society's expectations with regard to the teaching of law have become more complex.

Although the University has no longer the monopoly of answers (which generally came too late), it is nonetheless the Universities which the State is now summoning to find the relevant solutions. Solutions, as will be seen, are varied, but the system maintains its cohesion for a series of disciplines, the specificity of which must be preserved. Universities teaching "law" and "legal sciences" have interpreted and enforced the 1984 Act as meaning tightly controlled plural disciplinarity.<sup>19</sup> Here, as in other sectors of French society, it is difficult to call traditions into question, or to interfere with "privileges", in other words, to lay open

Comment by the Dean of the Faculty of Law of Lyon — III ("Guide de l'étudiant, 1988-1989): "The Lyon Law Faculty has struck an intelligent balance in its various courses of study between the ever-essential acquisition of a sound general legal culture and that of know-how which has a more directly vocational objective".

Preface by the Dean of the Faculty of Legal, Political and Social Sciences of Lille-II (Guide de l'étudiant, 1988-89): "Indeed, despite the setbacks arising out of the various higher education reforms, our faculty continues to concentrate on two objectives: pluridisciplinarity without superficiality and professionalisation without disavowal."

17. Shortly before the events of 1968, Jean Rivero submitted some "Reflexions sur l'enseignement du Droit" (Studies in honour of Louis Trotabas, Paris, 1970, pp. 447-458), which have lost none of their relevance in 1989: "... of all disciplines, it is in law that culture, from the point of view of practical usefulness, is infinitely more necessary than knowledge ... what he, (the student) and society, are entitled to expect of legal training is that it enable them to understand and apply the succession of rules which they will encounter in the four or five decades of their professional life. It is here that training with an eye to practical needs becomes indissociable from Culture".

In 1975 René David used the same terms to stress the shortcomings of the methods used in law teaching in France; he deplored the "atmosphere of self-satisfaction" reigning among students and staff in law faculties and the lack of awareness of the problem of law teaching (report drawn up for the "Travaux du onzième colloque international de droit comparé"). Collection of works by the Faculty of Law of the University of Ottawa, 1975, pp. 189-197.

18. Concerns mainly (ie. it is necessary in order to be able to practice the profession) judges, public prosecutors, lawyers and *avoués* (solicitors), not to mention teachers of law (chapter IV of the Act of 13 March 1804).

19. In fact immediately after the 1968 Act: "European" report submitted by Dominique Carreau to the Council of Europe for the 3rd Conference of Law Faculties "Les matières d'enseignement", Proceedings of the third Conference of Law Faculties, Strasbourg, 1974, p. 49 et seq (typewritten report).

systematically highly hierarchical, and often rigid, mental and intellectual structures; changes which occur, in spite of all this, are considered to be the result of "unforeseeable" ground swells. . . .<sup>20</sup>

The exact nature of legal education in universities at the end of the twentieth century, and society's expectations of it, must be looked at from three points of view: firstly, the Law Faculty environment (students, lecturers, their pedagogical relations), secondly, the structure of the university course in law and, finally, the main features of the curriculum. In order fully to understand this type of education, it will be necessary to constantly revert to the twofold equation mentioned above: it permits an easier appreciation of the respective importance of the established realities and the fallacious innovations in each of these perspectives.

"The *raison d'être* of teaching and of the teacher, is the person being taught." This remark by a "law faculty" professor,<sup>21</sup> may have surprised the members of the university hierarchy at the summit of which he and his colleagues were placed; it is a reference to the decision taken to present the protagonists in the U.F.R.'s in the opposite order to that traditionally adhered to.<sup>22</sup>

## II. *Students*

For five years, law students have accounted for between 13% and 14% of all students registered with universities.<sup>23</sup> Their numbers levelled out at the same time as the overall university population.<sup>24</sup> Here as elsewhere, the number of female students has increased. In order to understand the situation of law students within the university, and their expectations, attention must first be paid to the question of university entrance. None of the secondary and higher education reforms in France has managed to

20. For example, the population increase which led to the 1968 reforms and the employment crisis which was the central concern of the authors of the 1984 reform. These "ground swells" are a direct question to universities as to what they are doing about integrating their students into professional life. Law faculties' response, although by no means a panacea, was not the worst, given that institution's traditionalist reputation; statistical studies confirm this, see *infra*.

21. Jean Rivero, Professor at the Faculty of Law and Economic Sciences in Paris. Article written before 1968 and quoted above. He continued: "we do not apologise, contrary to custom, for repeating the obvious: if we continue to believe that the obvious is so obvious that there is no point in explaining it, there is indeed a real danger that it will gradually fade away".

22. An order which was scrupulously followed by another law teacher, originator of a history of law faculties, which puts questions about students in the fifth and final point under research objectives, Stéphane Rials: "Quelques questions pour l'histoire des facultés de droit" *Annales d'histoire des facultés de droit*, Paris, 1984, No. 1, pp. 57-62.

23. In Ministry of National Education statistics, law students and political science students are counted together. It would be inappropriate here to explain the complex relations existing between the teaching of these two subjects. Since the present study relates only to legal education, figures are only approximate. Official statistical tables make a distinction only in respect of diplomas awarded. This issue will be taken up later.

24. Just over 980,000 students in December 1987, for roughly 55 million inhabitants.

dispel the mirage of freedom of access to university for all holders of the upper-secondary school diploma (baccalauréat).<sup>25</sup> Partisans and opponents of pre-university selection have been quarrelling over this for more than a century, to no avail,<sup>26</sup> and the contribution of the law faculties to this debate has been to use the first year of study as a means of selection.<sup>27</sup>

In 1988 José Savoye, Dean of the Lille Faculty of Law, put the problem to his students in the following terms: "something must be done about first year failures. Our Faculty, faithfully observing the republican principle of equal access for all to higher education, has refused to apply [quotas] on admission, which would in no way solve the problem of selection through failure, which is a tremendous waste of human and financial resources".<sup>28</sup> The student whose capacity to follow high level legal studies, who has not been put to the test, is thus confronted with the specificities of a discipline about which he is generally ill-informed.<sup>29</sup> What are the motivations of secondary school graduates<sup>30</sup> who register with a law faculty? One thing they have in common is the desire to obtain a diploma, which will open the way to professional life, but the diploma, whilst being a prerequisite, is not always sufficient on its own.

25. For non-"bacheliers", and subject to certain conditions, there is a special examination for admission to university studies (decree of 1.10.1986). We shall be dealing below with the particular case of holders of the "capacité en droit" diploma, for whom there has never been a "baccalauréat" requirement (order of 24.08.1987).

26. A survey, covering all universities, carried out by Alain Charlot, "Chargé d'études" at the "Centre d'études et de Recherches sur les Qualifications" (CEREQ), found in 1987 that there has been a drop in "academic output" at the first university level; only one student in three moves on to the second university level. "Formation-Emploi", Paris, 1987, No. 18, pp. 111-117, "A propos du rendement académique des premiers cycles universitaires".

27. In 1979, Michel Maille ("Sur l'enseignement des facultés de droit en France — les réformes de 1905, 1922 et 1954" in *Procès, Cahiers d'analyse politique et juridique*, 1979, No. 3 pp. 78-107) stressed the rigorous "process of selection through failure" in law faculties. This was indeed one of the main sources of concern for the legislator in preparing the latest reform of higher education. The rapporteur presenting the Bill to the "Assemblée Nationale" in autumn 1983 pointed this out when proposing what he hoped might be the solution. Cf. J. Galti-Montain, *op.cit.*, p. 262 et seq.

28. Preface to the "Guide de l'Etudiant", Faculty of legal, political and social sciences of Lille-II — 1988-1989. The legislator's good intentions have had little effect, as the Dean of Lille University points out.

29. Information and guidance provided at the end of secondary schooling are helpful for the choice of a profession, but offer no explanations about the constraints inherent in the teaching systems for the various disciplines, nor their specific content. Where law is concerned, most "baccalauréat" holders are totally unprepared.

30. Here, reference is made neither to students taking a legal course after other higher education studies, nor to those who already have a profession, but who wish to acquire some legal training; both categories have their own specific motivations, but they are not the ones for whom the law teaching system was designed. It is true that the 1984 Act attaches great importance to permanent education in universities.

Enquiries<sup>31</sup> launched with a view to seeking solutions to the employment crisis reveal that jurists holding higher education diplomas have withstood the crisis very well.<sup>32</sup> In addition to this pragmatic motivation, there are other elements which may make it easier to understand the students' difficulties in adjusting to their studies, and those of the lecturer in adjusting to his or her students. Roughly speaking, it can be said that first year law students fall into two main categories:

- a. those who choose law because their secondary studies<sup>33</sup> do not give them access to other higher educational channels;<sup>34</sup>
- b. those who have a more or less clear idea of their future profession and who study law out of family tradition or in the hope of social advancement, depending on their social background.<sup>35</sup> Not so long ago, lectures were attended by a high percentage of sons and daughters of well-to-do families who came to pick up some legal "culture", until such time as they could take over the family business or meet a spouse with the "right" background. At the end of the 20th century, this image has not completely disappeared, although the prime concern is indeed that of future career. Once the first year hurdle (the most selective) has been cleared, and if the second year diploma (diplôme d'études universitaires générales DEUG) is obtained, the students can take the university courses which correspond to their individual possibilities and needs.

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31. Statement by Alain Charlot on "L'insertion professionnelle des Juristes" at the colloquy organised by the Law Faculty of Paris XI in April 1988: "La formation dans les Facultés de droit et son adaptation aux perspectives de l'emploi".

32. One of the consequences of the extension of the tertiary sector and recent diversifications therein. It is interesting, in this respect, to compare the presentation of the 1974 and 1986 versions of the monthly magazine "Avenirs, le droit: quels débouchés?" This is a publication brought out by the "Office national d'information sur les enseignements et les professions" (ONISEP) for the information of potential students. In 1974, a distinction is made between "Professions on the borderline between the business world and the judicial world", "Professions in the judicial world", "Civil Service", in 1986, a distinction is made between the "private sector" and the "public sector", in describing the professions in which legal training is required.

33. The vast majority have "baccalauréat" diplomas in branches A (literary), B (economic and social sciences), C (management).

34. Dean G. Vedel in the above-mentioned report (p. 132) referred to the "revenge of the jurists" whose role in society was diminishing, he noted, in 1971: "... their science concerns each and every one of us, including the man in the street himself. Because law is a logical discourse expressed in everyday language. It is less logical than mathematics, and less popular than literature. But this is a fair enough average to convey the impression that it concerns everyone."

35. The analysis of the statistics of the Ministry of National Education for 1986-1987 shows that "there is a slight and regular increase in the number of students from middle and lower socio-professional categories. However, students with parents in the 'liberal professions' and from 'senior executive' families are still in the majority in all disciplines". Tableaux statistiques. Statistiques des étudiants inscrits dans les établissements universitaires. Enquête détaillée par fiches individuelles. Direction de l'Evaluation et de la Prospective, Paris, January 1988 p. 16.



### III. *Teaching staff*

Teachers in faculties of law (or law U.F.R.'s as they are now called) form a heterogeneous structure albeit with its own hierarchy. The hierarchy is that traditionally found among teaching staff (*professeurs, maîtres de conférences, maîtres-assistants, assistants*), and which is carefully upheld by the corporatism for which it is often outspokenly criticised, and which the uniformisation (and extension) of the statutes of the civil service have continued to consolidate since 1984. Heterogeneousity has arisen out of the need since 1968<sup>37</sup> to call increasingly on temporary staff (*professeurs, maîtres de conférences and assistants associés*,<sup>38</sup> *professeurs agrégés du secondaire, allocataires de l'enseignement supérieur, chargés d'enseignement et de travaux dirigés*). Law faculties frequently have recourse to high ranking professionals from the public sector (eg. magistrates or public officials from administrations) or from the private sector (lawyers, senior business executives) whose qualifications and competence are much appreciated. Here then is one of the reasons for this mixture of conservatism and innovation which is to be found in the teaching of law. Recruitment of permanent staff and the management of their careers are the responsibility of the *Conseil National des Universités*, which guarantees, in principle, their freedom of choice vis-à-vis the public authorities (ministry of national education) and at the same time ensures the preeminence of the teaching staff. Law faculties have thus contrived to defend their own recruitment system, the corner stone of which is the *concours d'agrégation*,<sup>39</sup> which from the point of view of quality is highly selective, and places the holder of this diploma at the summit of the university hierarchy, which is so jealous of its autonomy.<sup>40</sup>

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36. 2nd level: licence (1 year), followed by maîtrise (1 year) 3rd level: Diplôme d'Etudes Supérieures Spécialisées (D.E.S.S.) or Diplôme d'Etudes Approfondies (D.E.A.) ending generally with the "Doctorat" thesis. The university course can therefore last between 2 and 6 years (or even 8 or 9 for doctorate studies with presentation of thesis).

37. The increase in the number of students and the extension of programme content have not been accompanied by an adequate increase in the permanent teaching staff. They account only for between 7% and 8% of higher education staff, whereas they are responsible for between 13% and 14% of all students.

38. This procedure makes it possible to take on teachers on a provisional basis, in particular foreigners.

39. Created in 1855. This is a national competitive post graduate examination and is taken in Paris. At present, for legal disciplines, it is divided into four branches: history of law, private law, public law, political sciences. The "agrégation" competitive examination in political sciences, despite the autonomy obtained in the teaching of the relevant subjects, remains very much within the "legal" orbit, whereas the "agrégation" in economic science and management has become independent — in "law" — U.F.R.'s, economics is taught by lecturers from the economics U.F.R.'s. See J. Gatti-Montain, *op.cit.*, pp. 178-204.

40. With each law degree reform, "selective" practices have remained one of the constant features of law teaching, or at least of the conception of a specific type of legal education. First

Generally, this competitive examination follows post-graduate studies, coming after the doctor's thesis.<sup>41</sup> Candidates are judged on the scientific quality of their research<sup>42</sup> and their ability to teach, which they must demonstrate in an exercise in style known as the *Leçon d'agrégation*. For this, they are asked to prepare and to deliver a lecture in three subject areas chosen by the board of examiners (*Jury*) before whom they appear. The system provides for no actual verification of the pedagogical ability of the candidate.<sup>43</sup> There is little criticism of the shortcomings of the recruitment procedure, but simply by listening to the students, it becomes clear that the "transmission of legal knowledge", in many cases, is of little importance to pedagogics, even in higher education! In this respect, law faculty staff never really call themselves into question. A brilliant researcher may be a mediocre teacher for degree and master's degree students. This situation leads to the difficulty which has been encountered in attempting to find a solution to the failure rate in first degree students.

There are other recruitment and promotion procedures, but they are heavily dependent upon the teleology of the "agrégation" competitive examination (or of access to the rank of Professor by the "long-way", subject to seniority, and after having been heard by a board of professors). The elitist conception of the traditional university has found a sound refuge in the law faculties. Generally, there is a gaping chasm separating first year students from their lecturer, with his "agrégation", who teaches in the shelter of his plenary lecture.<sup>44</sup> Inroads have been made, and links have been established, over the past fifteen years, thanks to individual efforts or outside pressure (private professional spheres, civil service requirements, legislative demands). At all levels, teaching staff who have been, or still are, in contact with the practice of law (private or public sector professions) are doing their utmost to bring about the

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year students who are the first to fall victim to the system are also the first to benefit by it! The problem with this type of recruitment is, it is claimed, that it leads to a sort of co-option at the various levels of the hierarchy, which is contrary to democratic principles. It is simply the mirror image of the political society which devised it. "The mechanisms by which the teaching staff is renewed are an important element of cohesion for the future of the faculties". J. Gatti-Montain, *op.cit.*, p. 185.

41. Recruitment from outside university circles is not unusual but, generally, it is after the "agrégation" that lecturers have other professional activities compatible with their status (consultant, arbitrator, lawyer, etc.). This is one of the incidental aspects of the more open attitude adopted by university legal teaching with regard to the expectations of professional circles.

42. Permanent staff in law faculties attach particular importance to their status as teacher-researchers, which is an important component of the law teaching system. We shall revert to this point below.

43. Subject to the prior experience of the candidate, who has generally been in charge of "guided work" or teaching, which may be taken into account, unofficially, by the "Jury".

44. See the comments by Thomas E. Carbonneau, *art. cit.* above, p. 471 and *infra*.

necessary adjustments; similarly, the development of scientific research in law, under the sole responsibility of the universities, or in collaboration with other public or private institutions, is an incentive to teacher-researchers to invent an attitude towards research which will have repercussions on the very conception of the teaching system.<sup>45</sup> These initiatives are more or less broadly accepted by the universities which find themselves in competition with higher or vocational educational establishments which have included in their teaching or research programmes certain legal disciplines.<sup>46</sup>

#### IV. *Student-teacher relations*

Student-teacher relations are situated at two levels: (1) the transmission of knowledge and (2) verification of the acquisition of this knowledge.<sup>47</sup> In law faculties, by tradition, the principle form of teaching is the plenary lecture, whereas the tutorial (*encadrement rapproché*)<sup>48</sup> plays a varying and ill-defined part. The plenary lecture is aimed at an anonymous public in a lecture-hall capable of seating between 200 to 2000 persons, the so-called "close" instruction (*rapproché*) is for groups of thirty to fifty named students. This situation is a direct result of the implementation of a certain type of pedagogics: the increase of the number of students and the financial difficulties of universities are not the only reason why plenary lectures have always had their detractors and defenders. Its form, it is claimed, encourages a passive attitude in students who, at best, do nothing more than listen to a monologue and take a few notes.<sup>49</sup> There are indeed many students who much prefer to work alone, or in a group, using the numerous text-books and other works which correspond to

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45. The best example, which today has become almost commonplace, concerns the part played by social standards (law-judgment) in keeping in check the effects of the implementation of new technologies. See two recent studies published by the Reports and Studies Section of the "Conseil d'Etat": *Administration et nouvelles technologies de l'information, une nécessaire adaptation du droit* (la Documentation française, Paris, 1988, no. 4851) — *Sciences de la vie, de l'éthique au droit* (la Documentation française, Paris, 1988, no. 4855).

46. Here, by way of example, one can quote the predominant part played by the *Instituts d'Etudes Politiques (I.E.P.)* (Political Studies Institutes) and the *Fondation Nationale des Sciences Politiques (F.N.S.P.)* (National Foundation for Political Sciences). Law faculties, in this area, are attempting to regain lost ground (creation in 1985 of a degree in public administration).

47. These comments concern the first two levels of study. Problems relating to the third level are different; they will be discussed at the same time as the "programmes" at this level.

48. Expression used by J.J. Bienvenu, "Politique et technique de l'encadrement de l'étudiant", *Annales d'histoire des facultés de Droit et de la science Juridique*, Paris, 1985, no. 2, pp. 143-150.

49. Passivity aggravated by the use of tape recordings.

their course; they do not see what the unilateral intervention of the lecturer has to offer, which will enable them to acquire the knowledge which has been laid down in advance. In fact, the plenary lecture has been challenged ever since it ceased to be an indispensable means of access to knowledge.<sup>50</sup> It has been maintained by tradition, and teachers of law are particularly attached to it.<sup>51</sup>

The positive effects of a well-delivered plenary lecture are far from negligible: Jean Rivero considered it to be an audiovisual technique,<sup>52</sup> the effectiveness of which was due to the investment of the person who designed it "for his students", which led that same teacher to question the very content of the lecture.<sup>53</sup> Our legal system lends itself easily to a dogmatic presentation,<sup>54</sup> and the lecturer who underestimates this danger will soon find himself facing an increasingly empty lecture-hall. But a class can also serve to convey the results of the teacher's own research, enabling him this way to enrich<sup>55</sup> his teaching with positive law. Whereas the importance of this is more noticeable from the perspective of a master's degree, when it is recognised that teaching should encourage research,<sup>56</sup> such a conception may, at any level, lead to the wish to pay more attention to awakening a critical attitude in students, by the way subjects are taught.

Teaching is more individualised in sessions of "guided work" (*travaux dirigés*) which are compulsory. The aim is to "guide" the personal work of the student whilst requiring his active participation, both oral and written, in the exercises offered: the way in which they are organised is prescribed in the statutes of each U.F.R. and the solutions adopted are

50. Attendance at plenary lectures is optional.

51. J.H. Robert: "Le cours magistral", *Annales d'histoire des facultés de Droit et de la science juridique*, Paris, 1985, no. 2, pp. 135-142.

52. "Man, before an audience, thinks and speaks. Gestures and intonation stress the spoken word, and accentuate the essential feature in order better to engrave in on the mind of the listener, shape the subject, change the vantage points. Who was it who said that it was a monologue? A hall full of students, even if they remain silent, has a voice". *Réflexions sur l'enseignement du droit*, art. cit above, p. 456.

53. Important task for him. We still believe that, even after having been thus trimmed, and thereby curtailed, the oral class, as a means of presenting the student with an unfamiliar subject is irreplaceable". Art. cit., *ibid.* who

54. Jacques Lambert, in 1961, stressed "the role of teaching in distinguishing the common law system from the civil law system" (*Studies in honour of Paul Roubier*, 1, pp. 295-299). "Because one of these systems of Law was taught and written by persons other than those who had constructed it, it is knowledge of the legal rule which predominates, because the other was "shown" to those who wished to know about it by those who were making it, here it is the memory of the case which predominates".

55. This expression is used by Jean Rivero in the article quoted above.

56. Dean Gabriel Marty referred to this idea to justify plenary lectures. "Le cours magistral", *Revue de l'enseignement supérieur — les études juridiques*, Paris, 1958, no. 3, pp. 63-66.

therefore extremely varied.<sup>57</sup> This “guided work” is the responsibility of the teacher in charge of the corresponding plenary lecture, and the pedagogical hierarchy reflects the staff hierarchy. The quality of the teaching team collaborating with the “Professor” depends on the latter’s interest in the training of his students, which means that the staff involved in “the guided work” will enjoy a greater or lesser degree of autonomy.<sup>58</sup> There is considerable, endemic, controversy over “guided work”, for this form of teaching is considered inferior to the plenary lecture. Claims are made that guided work is repetition of the lecture, complementary to the lecture, or merely methodological training in legal practices,<sup>59</sup> introduction to research, or introduction to professional practice?

The point of view of SIRIUS tends to indicate a kind of “Spanish Inn” where everything depends on the scientific, intellectual and pedagogical qualities of those involved (teachers and students). There is a striking contrast between the way the U.F.R. (as we shall see later) carefully constructs the curricula for the subject taught, and the carelessness of which they are capable, in failing to impose upon their members a minimum of didactic constraints. Would that really be a threat to the freedom of higher education?

The assessment of knowledge acquired by students is carried out according to more or less standard methods, of which it will suffice to mention the main ones: it comprises two phases, the admissibility phase in the form of written examinations on the subjects studied in *travaux dirigés*; admissibility is the result of a combination of the results of written examinations and grades earned by the student during *travaux dirigés*. The second phase, known as the admission phase, comprises oral examinations relating to those parts of the programme studies which the student has not elected to pursue in *travaux dirigés* sessions. Controversy arising out of this form of organisation challenges the undue importance given to memory in assessing the intellectual capacity to practice law. That is only one of the consequences of the overall conception of the teaching system.

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57. At each level, subjects studied in “guided work” are compulsory or left to the more or less free choice of the student who subsequently has to choose groups of subjects laid down by the U.F.R.’s.

58. Not necessarily from university circles.

59. Decoding, analysing and commenting on legal texts; learning about documentary research; studying files and drafting summary notes; case studies (which work in small groups, may resemble from certain points of view the *case method*. See the article by Jacques Prévaut, *Méthode des cas et présentation systématique dans l’enseignement du droit*, *Annales de la Faculté de Droit et de Science politique, Clermont-Ferrand*, 1987, no. 23, pp. 107-117).

## V. *The 1984 Act*

The 1984 Act was an attempt at harmonising the structure of the three levels of university studies, but the specific features of each subject give these structures a different meaning. We shall be taking a look at the solutions proposed by the law faculties. The three levels of university studies took shape gradually after the 1968 *Loi d'orientation*. They were subsequently subjected to overall reforms or partial modifications, until the legislator in 1984 drove the law U.F.R.'s (and the others) into a corner, and obliged them to seek the official recognition of the Ministry of National Education and approve all national diplomas awarded by them.<sup>60</sup> Emulation by universities, which it was hoped would ensue, was in fact very limited where law faculties were concerned.

### 1. *First Level*

The first level is subject to guidance and training constraints, which legal teaching would have difficulty in meeting.<sup>61</sup> It comprises two years of studies leading to a *Diplôme d'Etudes Universitaires Générales (DEUG)* with an option in "law", the main objective of which is to admit the student to the second level of law studies whilst equipping him either for immediate entry into professional life<sup>62</sup> (the first level must therefore be in the form of short-term, homogenous training<sup>63</sup>) or for the pursuit of studies designed to permit the practice of a given profession, legal or otherwise (inside or outside the university structure) or for admission to other university studies, whilst preserving the academic assets acquired during the two years spent in higher education. As the two-year period is compulsory,<sup>64</sup> teaching has been organised in such a way as to sacrifice basic general legal training to vain attempts at facilitating the reorientation of those who have been "disappointed" by their experience

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60. Universities award their own diplomas, the value of which depends on the renown of each establishment at regional or national level; in this respect, the 1984 reform, which gave universities greater autonomy, gave a new lease of life to qualifications which, until then, had been considered "inferior" to those of national diplomas.

61. The last time it was reorganised was in 1985 (order of 26.8.85)

62. This level is sufficient to sit a certain number of competitive recruitment examinations, for administrative posts, for example. Similarly, one might quote here the Strasbourg Law Faculty which offers a specific programme leading to the award, at the end of the first year of university studies, of a university diploma on "legal and economic initiation" (DUIJE).

63. Certain law faculties offer successful 1st year DEUG students the possibility of orienting their 2nd year studies towards short vocational training (Scientific and Technical University Diploma): Real estate professions; Territorial communities, Banking, Financial and savings bodies.

64. In these two years, students can repeat only once. And since it is generally the first year which is repeated, the student who has not found his true vocation in law has simply wasted his time and money for three years.

of law faculties. In order to avoid upheavals, either upstream or downstream, the first level of university is expected to be both a college *and* "a school of law" of the type to be found in the American system. Isn't this expecting too much of it?

The 1984 reform of the DEUG indeed provides that the two years leading to the diploma may<sup>65</sup> "comprise an initial orientation period, whilst respecting the student's freedom of choice" (who may or may not opt for this "renewed" form of the DEUG). At the beginning of the 1986 academic year, scarcely a third of the law U.F.R.'s had organised such a stream,<sup>66</sup> and they did so by devoting a part (of varying duration) of the first semester of the first year to a programme "designed to provide a better understanding of university life in general and of legal studies in particular".<sup>67</sup> After this period, the student is interviewed and takes tests which should assist him in making his choice. How effective can such a procedure be? It is too soon to judge.<sup>68</sup> If one were to add that the 1984 Act also provides that the first level should "sensitize" the student to research, one can but deplore the legislator's lack of common sense. It is indeed a fortunate second level teacher who discovers that the students before him not only have an accurate grasp of legal vocabulary but also know how to use the concepts!

## 2. *Second Level*

The objectives of the 2nd level raise different problems. The student is now convinced that his vocation lies in law, but how is he to use this acknowledged capacity to continue his studies? The second cycle comprises, to varying degrees, elements of general and vocational training. Such training, organised *inter alia* with a view to preparing for a profession, or a series of professions, enables students to supplement their knowledge, to extend their culture, whilst introducing them to the corresponding scientific research.<sup>69</sup> In other words, behind the expression, used by the authors of the 1984 Act<sup>70</sup> who refer to "knowledge", "culture" and "scientific research", lurk the dangers of over-early

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65. It is up to each U.F.R. to decide.

66. Of the 8 law U.F.R.'s in the Paris region, only 3 make use of this possibility.

67. Faculty of Law and political science of Aix-Marseille — Guide de l'Étudiant, 1988-89.

68. The Dean of the Faculty of law in Lille sees this as a means of making a "qualitative" instead of a "quantitative" selection (laying down a *numerus clausus* at the time of first registration). Guide de l'Étudiant, 1988-89. Selection will in any case be extremely summary, in such a short period of time.

69. Section 15 of the Act of January 1984.

70. It should be recalled that no Minister would be so bold as to promulgate a reform in higher education if it had not been prepared (or even mooted) by the university "corpus", i.e. the teachers acting as advisers to the Ministry.

specialisation which is strickly career-oriented. The legislator moreover continued: "The provision of this type of training takes into account the foreseeable evolution in qualifications and needs which are currently being assessed at regional and national levels".

The options available to U.F.R. students at this level are decisive in the debate on the teaching of law for practical purposes, or with scientific, vocational training, or general legal culture objectives in mind. The first year of the cycle leads to the diploma of "licence en droit" (law degree), the second to "maîtrise en droit"<sup>71</sup> (master's degree in law). These three or four years of study give access to a broad range of professions calling for a legal training. Professional spheres have, for decades, been accusing the law faculties of "producing" jurists who were not immediately usable, not to say totally ineffectual, because they knew nothing about the needs in "their" practice. What, then, can be the meaning of a recent report by the Conseil d'Etat, which is at present under press, and to which contributions were made by professors of law faculties?<sup>72</sup> For the report accuses the authors of our laws, and thus the legislator who takes responsibility for them, of disregarding the "general principles of our law"; "specialists in certain branches, [the authors] appear to know nothing about the general legal rules of law". The report directly calls into question the standard of basic education in the legal training of civil servants (firstly those in the universities,<sup>73</sup> and secondly those in institutes of political studies). And the temptation to specialise is even greater when degree and master's degree students are offered additional training in preparation for judicial and legal careers in the private and public sectors.

### 3. *Third level*

The last stage of university studies is the 3rd cycle, which claims to be "training in research and through research, which consists in the carrying out of original scientific work, both individually and collectively."<sup>74</sup> It comprises high level vocational training which constantly takes into account scientific and technical innovations.<sup>75</sup> This definition of the 3rd cycle reveals the extent to which it is intended, in future, to associate in

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71. The second level (cycle) is at present governed by a 1976 decree which was somewhat modified in 1979 and 1981.

72. Report adopted by the Report and Studies section of the "Conseil d'Etat" on 21 April 1988: *La formation juridique des fonctionnaires*. To be published in the "Documentation française" series.

73. More than fifty per cent of students having finished the second level of legal studies become, after a competitive examination, executives in the civil service.

74. In 1986, roughly 13% of students (including a large proportion of foreign students) registered with U.F.R.'s were at the third level.

75. Section 16 of the Act of January 1984.



the final stage of university training, fundamental research with applied research and technology.<sup>76</sup> Are not these viewpoints of the legislator somewhat artificial, particularly when the content of the 2nd cycle is being seriously challenged and continues to be the subject of great controversy, particularly among jurists? Since the 3rd cycle is aimed at a more varied public (students and employed persons) it has a twofold orientation: doctorate studies and *diplômes d'études supérieures spécialisées* (DESS) (Diploma of Higher Specialised Studies). The doctorate studies involve the preparation of a *diplôme d'études approfondies* (DEA) (Diploma of further studies) and the submission of a thesis (doctor's degree); the training is focused on research and is followed mainly by students who have contrived to reconcile their financial resources and their interest in scientific research.<sup>77</sup> The DESS<sup>78</sup> is the award corresponding to highly specialised, applied training, which gives immediate access to a professional activity; such training is accessible chiefly to persons already in gainful employment. Admission to the third cycle is subject to an authorisation by the person in charge of the U.F.R., which is issued on the basis of the opinion of a board of teachers who examine the candidate's file.<sup>79</sup> This system which is deliberately selective gives full powers to a co-opted body of teachers, established on a hierarchical basis, and which is expected to give impetus to "original" research and to encourage scientific "innovation".

But are the legislator's good intentions sufficient to overcome the rigidity and the routine of the traditional university institution? One wonders if the introduction of uniformity into the organisation of higher education is really likely to foster the fulfilment, by the universities, of the almost impossible tasks with which they have been entrusted. Indeed the obligation for law faculties to spread out the contents of teaching over three cycles, each with clearly defined objectives, confronts them with problems of compatibility with their conception of legal studies and with the priorities that each UFR is required, or requested, to determine in its geographical, economic, and social environment.

## VI.

For twenty years (between the 1968 Act and that of 1984) law faculties applied a "reformative" strategy, which today can be defined in terms of the limits which they placed on society's demands (those of students,

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76. Chapter 1 of the January 1984 Act, defining "higher education, a public service" expresses this objective at Section 6 which aims at "human and social sciences in particular".

77. Decree of July 1984, modified in 1988.

78. Decree of April 1974.

79. Account is taken of diplomas, any professional experience, and the candidate's aims.

professional spheres, and of the state). These limits can be characterised roughly as follows: 1. the maintaining of legal studies based on the private law/public law dichotomy;<sup>80</sup> 2. the upholding and diversification of the practice of compulsory and optional subjects;<sup>81</sup> 3. the adoption of a pluridisciplinary approach, extremely limited in the first cycle, but much broader in the 2nd and 3rd cycles because of the influence of the equivalence of diplomas and professional experience; 4. the integration of modern language teaching (compulsory and optional), and computer science (optional) "for jurists" at all levels of all three cycles; 5. the inclusion, in various manners, of an introduction to professional practice.

Such is the complexity of the programmes of the various UFR that it is possible here to present only a brief overview which will necessarily be incomplete. Firstly, general indications will be given concerning the choice of subjects taught in each cycle, along with explanations, as far as possible, of the implications of these choices. Then we shall go on to look at the way in which the law faculties, through the provision (long-standing or recent) of original courses, have expressed their will to extend their role in society or to occupy a specific position in respect of vocational training.

### 1. *Study programmes in the normal courses*

#### (i). *The Diplôme d'Etudes Universitaires Générales.*

The training leading to the DEUG reveals that law faculties find it difficult to preserve the conception of education in general, legal culture.

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80. This distinction is linked to the evolution of the legal system and the part played by law in society since the beginning of the 19th century. Professors in schools of law in 1804 taught about the "code". Knowledge transmitted was confined to the new substantive law contained mainly in the civil Code, which replaced the customary diversity of private law under the "Ancien Régime". It was only in the second half of the 19th Century, however, that public law achieved recognition in law faculty teaching. It is in this context that controversy sprang up over the "vocational" or "scientific" teaching of law (see the work by J. Gatti-Montain quoted above). Today, it seems that the permanence of this module, the contents of which have changed considerably, is the last bulwark against the irreversible professionalisation of legal studies in universities.

81. Up to the "maîtrise" (four years of study) teaching is organised, according to establishments, in hours or semesters (one semester is in general 37 hours, 30 of instruction, but each U.F.R. is free to adapt its duration to 30 hours or even 50, or to adopt any other distribution of time . . .) of plenary lectures (11 semesters on an average). Such a distribution makes it possible to accentuate the importance one attaches to a given subject, by making it compulsory or optional, annual or semestral. In order to assert their autonomy or originality, U.F.R.'s never fail to offer very diverse solutions . . . Similarly, each establishment is free to choose the subject in which students have to attend weekly "guided work" sessions. These choices may be affected by scientific or intellectual considerations, but how much weight is there attaching to the financial policy applied to universities by the State, territorial communities, and the professional circles concerned by the teaching of law?

During these first two years, there are scarcely any innovations in comparison with the system introduced by the 1954 reform. All UFRs have maintained, as compulsory subjects, civil law (in the 1st and 2nd years), constitutional law (1st year), and administrative law (2nd year); they constitute the basic legal training, from the point of view of the acquisition of knowledge and an introduction to the methods of legal technique. Other compulsory subjects in most UFRs have an economics or history bias;<sup>82</sup> indeed since the 19th century, these have always been considered to be auxiliaries of law, and to contribute to broadening the outlook of future jurists by providing a more "scientific" education, as it was understood at that time.<sup>83</sup> But these subjects do not cover the eleven or twelve semesters which are devoted to the general university training in law. The UFRs also offer optional subjects which correspond to the orientation of studies which they intend to introduce in the 2nd cycle and to follow up in the third.

One can easily imagine the puzzlement of the first-year student who, quite often, is not really sure how he came to be in this law faculty after his *baccalauréat* examination. It is naturally too early to make any valid judgment on the way in which the legal UFR's have implemented the 1984 orientation Act, but on looking at study programmes offered by universities one would be tempted to proffer a humorous appreciation, were it not for the reference in the report of the Conseil d'Etat (see above) to the fact that the 1st cycle of university studies in law faculties is too short, too heavy and very heterogeneous, in that, in order to take in all of the aspects which are deemed necessary, this structure leads, to the detriment of subjects taught on a yearly basis and which are pedagogically better fitted for bringing out the cohesion of a subject, to an increase in the number of subjects taught on a semestered basis. Training is thus reduced to a sort of accumulation of more or less "disjointed elements". This opinion, a harsh one, and one which has been endorsed by one of the three highest jurisdictional bodies of the country, does not, in fact, call the system into question, it is rather a denunciation of its basic shortcomings. Instead of seriously thinking about really restructuring basic legal education (in order not to have to change the traditional methods used in higher education) students are provided with a veneer<sup>84</sup>

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82. This "non-legal" training, which is however aimed at jurists, seems to be less disconcerting to the first-year student than the elementary difference between le "droit objectif" ("objective law") and "les droits subjectifs" (subjective rights). The student finds points of reference in the secondary education he received in history and economics.

83. Cf. J. Gatti-Montain, *op. cit.*, p. 76s, p. 83 s.

84. Among "compulsory" subjects in the first year, taking a random selection of U.F.R.'s, one finds: Criminal law and criminal sociology — International relations — Political science — Philosophy of law — European institutions — Introduction to sociology — French politics

of superficial knowledge which gives them the impression that they are free to choose;<sup>85</sup> the illusion is sustained throughout the 2nd cycle; it is however dispelled at the beginning of the 3rd cycle when the teacher makes them realise that the ability to carry out research and to innovate requires first of all a sound knowledge of the entire range of the basic machinery of legal life. The first cycle does not fulfil this task satisfactorily.<sup>86</sup>

The report of the *Conseil d'Etat* suggests that "the various subjects, or their components, be taught in an order which conveys the impression of the gradual acquisition of legal understanding, which is impossible with a two-year first cycle<sup>87</sup> and simply leads to repetitions later on". It suggests that "this distribution in time should be accompanied by a corresponding balance between public and private law. Indeed, before becoming a specialised subject, which is more and more doubtful judging by the shortcomings on both sides, knowledge of both types of law should be the very essence of any basic legal training". The report calls for what it considers to be the indispensable reinforcement, during the first cycle, of teaching in international and comparative law.<sup>88</sup> The succession of "curriculum" reforms, and their complexities, have lead to

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since 1945 — Administrative institutions. As to "optional" subjects: History of political doctrines — Introduction to the study of the media — Introduction to economic public law — Introduction to management — Moral and political philosophy — Contemporary social problems — General problems of law. A comparable list could be drawn up for the second year, to which new "subjects" would be added, among which priority would go to criminal law and business law, both compulsory.

85. The choice is even greater in U.F.R.'s with a pluridisciplinary orientation, which allow students to choose a "university module" in the form of one or two non-legal "units of value".

86. In 1982, François Boulanger suggested the creation of a first-year legal "propédeutique" "devoted to the study of basic classifications and key concepts" in both private and public law. ("Réflexions sur les problèmes de formation des étudiants dans les facultés de droit". *La semaine juridique*, 1982, I, Doctrine, no. 3077).

87. In 1974, Dominique Carreau, in the conclusion to his report on "Les matières d'enseignement" on European law faculties, put the question, when comparing European training with that received by American Jurists, whether the length of legal studies was sufficient to satisfy, at one and the same time, plural-disciplinary ambitions and the tendency to specialise or professionalise. "Proceedings of the third Conference of Law Faculties", Strasbourg, 1974, pp. 51-52.

88. Expressing the needs of the French civil service within the European Community and given the unprecedented development of international legal relations, both public and private. Comparative law as such is at present taught only at the second and third levels. At the first level, instruction is confined to describing international or community institutions. See the report by Denis Tallon on "The contribution of comparative law to law teaching research and reform", Proceedings of the fourth European Conference of Law Faculties, Strasbourg, 1977; pp. 26-31. On 22 April 1988 law professors (French and foreign) taking part in a "Journée sur l'enseignement du droit comparé" (conference on the teaching of comparative law) organised by the French Centre for Comparative Law, Paris II, underlined the continuing shortcomings in the teaching of this discipline at all three levels, and criticised the methods used to present it to students (Reports by professors André Tunc and Christian Mouly).

the emergence in law faculties of a force of inertia which is an obstacle to the enforcement of the provisions of the 1984 Act. The constraints arising out of the latter simply increase the mass of knowledge to be acquired and accentuate the defects of the traditional system for the teaching of law: "the critical and cultural components of education gradually give way to immediate economic utility."<sup>89</sup>

(ii). *Degree and Master's Degree*

Does the content of 2nd cycle programmes enable the "selected" or more "motivated" student to make the right choices from among the vast range of subjects offered? The third year of studies leads only to the degree, there being no officially recognised specialisation: hats off to the "good old" 1804 diploma. Indeed, students who wish to enrol for the master's degree are advised, even compelled, to choose certain legal disciplines, but there is only one diploma and in principle there are no special references (*mention*) attaching to it.<sup>90</sup> What is the actual situation? It might be useful here to distinguish between two situations which give rise to different problems when starting out on a degree course, but which are rarely taken into account by law faculty curricula: that of the student with a "law" DEUG, and that of the student who is admitted on the basis of an equivalence of diplomas obtained in non-legal branches.<sup>91</sup>

How do the programmes enable the former to "supplement his knowledge" and "extend his culture" whilst at the same time offering vocational training? As to the latter, with no basic legal training (whatever the shortcomings of the "Law" DEUG may be), he is expected, as a member of the "élite", to be capable of identifying the elements composing the "education" of a "good" jurist. This conception of pluridisciplinarity is not without danger, and this should be borne in mind, because this "élite" is going to be found among the senior executives in both public and private sectors. The *Conseil d'Etat*, as has been seen, has denounced the negative effects on the public service: the problems are no doubt the same in the private sector. The weighting of subject matters in degree studies has moved rather towards a

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89. Cf. A.J. Arnaud, *op. cit.* p. 198. The author's remarks in 1975 on the "reign of the technocrats" are just as pertinent today.

90. Grenoble and Lyon law faculties have nonetheless imposed private and public law "streams" or "options"; Grenoble also offers the law "stream", with no other specification. Lille university has been authorised to award a law degree, with the qualifying specification "business law".

91. Or foreign law diplomas. International university collaboration programmes, particularly European, have been organised now for over ten years; this type of work, because it is somewhat limited, can only be alluded to, but the vast majority of law U.F.R.'s have adopted this approach, in response to general demand at all levels.

"balkanisation of legal knowledge"<sup>92</sup> than towards an enrichment of legal culture, not only because of the increasingly diversified influence of optional and compulsory subjects, but also because of the increasing number of semestered courses. The breakdown into semesters affects equally civil law and administrative law, which are compulsory subjects, taught on a yearly basis in the second year of the DEUG. In the degree course, priority is generally given to commercial law (or business law), to social law (labour law, social security law), to international public law and Community law, and to courses in "public freedoms". In all, there are 8 or 9 semesters for compulsory courses, and 2 or 3 for optional courses, including semesters on civil law and administrative law (left to the appreciation of the UFR). The list of optional subjects has grown,<sup>93</sup> but some UFRs have only organised semesters of compulsory subjects offering students a freedom of choice solely in subjects studied in "guided work".<sup>94</sup> This diversity underlines the frictions in university law teaching, which seeks to preserve its monopoly in respect of awarding national diplomas, whilst trying to accommodate conflicting social demands.

At Master's Degree level (4th year of law studies) the situation seems to be relatively clearer, in that faculties award diplomas for purely professional purposes; in such cases, students choose a career, rather than subjects. For those who have not yet chosen a specific profession, the UFRs organise Master's diplomas in "Law", "Private Law" and "Public Law"; teaching becomes highly specialised and options offered take into account the students' previous training: for data processing, for example, they must have taken the DEUG and degree courses, or have some other data processing training which is deemed equivalent;<sup>95</sup> for legal subjects, however, it is ensured that they have not already taken the same subjects as options in the degree course.<sup>96</sup> UFRs define the group of possible

92. See A.J. Arnaud, *op. cit.* p. 13 s.

93. 5 at Clermont-Ferrand, 8 at Rennes and Strasbourg, 9 at Bordeaux, 14 at Dijon and Lille, 20 at Paris-II; at Bordeaux, Clermont-Ferrand and Dijon, the two semesters of civil law are optional. These are just examples. It would be extremely tedious to list all of the choices available. It will be noted however, and this is intimately linked to the history of our legal system since 1804, procedural law (civil and criminal procedure) is rarely taught before the degree. Criminal procedure is sometimes studied in the second year of the DEUG, and as to civil procedure, in our survey it was taught at DEUG level only in the Montpellier law faculty. The characteristics of the civil procedure are summarily described in certain courses on judicial institutions, but the basic training of the jurist comprises nothing about procedural technique.

94. At Aix-Marseille, Grenoble and Lyon, for example.

95. The same criteria were adopted at degree level. Identical solutions have been adopted for the teaching of accountancy and foreign languages.

96. The choice of a general "maîtrise" or a specified "maîtrise" is decisive for admission to the third level, be it with a view to a profession or research. U.F.R.'s oblige students to think seriously about their choice of "maîtrise" which will have implications for their acceptance at 3rd level.

optional subjects in the light of the orientation selected: "vocational" or "further specialised training".

The "private law" master's degree in most UFRs carries the qualifying specification: "Judicial careers", "Business Law" or "*Notarial Law*".<sup>97</sup> Such references are less frequent in the "public law"<sup>98</sup> master's degree, as training for the civil service has gained independence, as compared with the law faculties, within the various institutions having links with the National Foundation for Political Science, or in the civil service "schools". The private law/public law dichotomy, which is maintained in the titles of what are becoming increasingly specialised diplomas, is finding it difficult to withstand the importance acquired by the teaching of subjects, which fall under both public and private law. The list of such subjects, which is by no means exhaustive<sup>99</sup>, confirms the importance which ought to attach, in a four-year course, to general legal training, both critical and technical at one and the same time, in order to enable the young jurist not only to understand and apply a series of legislative and jurisprudential standards, but also to find solutions to situations of latent or open conflict, and to understand the mechanisms of social regulation before they lead to disputes.

### (iii). *DESS and doctor's degree studies*

The concept of "programme", when embarking on the 3rd university cycle, takes on a new meaning; reference has already been made to the modes of admission to this cycle and its aims, which are "training in research through research".<sup>100</sup> General legal training and specialised training (for professional purposes or otherwise) are considered to have

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97. Other possibilities are open, of which it will suffice to give a few examples: "Private international law" specification at Paris-XI; "Law of the sea and air" at Nantes (situated on the Atlantic coast), "International Law" at Dijon, "Criminal sciences", "Real estate studies" "Law of enterprises" "Accountancy" in Montpellier.

98. Here one might quote Nantes, with its specification "Territorial and urban planning", Aix-marseille with "Domestic law", Lyon with "Careers on Enterprises", "Careers and the administrative examination". At Rennes one finds "General administration" and "Public Health".

99. Economic law, tax law, labour law, insurance law, law on health, environmental law, distribution law, consumer law, communication law, development law, human rights, etc.; all of which are moreover directly concerned by "criminal law", and one now wonders why it remained for so long in the private law area when public law is increasingly involved in the implementation of the criminal procedure.

100. The type of relationship which grows between teachers and students is considerably modified. In theoretical teaching (plenary lectures) as in practical work (meetings, seminars, "directed" studies and research replace the "guided work" of the first two levels), closer relations are possible, not only because there are fewer students, but also because it is often the same person who is responsible for both types of teaching, which is conducive to a more active pedagogical method.

been acquired and the third cycle is devoted to studies and intellectual activities in general which are oriented towards the discovery of knowledge and new laws".<sup>101</sup> Such a definition, when applied to the legal field, merits further reflection. In order to understand the strong and weak points of the teaching of law in France, it must be borne in mind that for a long time research into law was carried out solely in universities. It is the law faculty professors who have made law a subject of scientific research,<sup>102</sup> not simply one of dogmatic teaching, as it had been conceived in 1804. They first tackled the cult of the law, by introducing into their teaching the solutions found by those whose daily task it was to apply the law, namely the judges (trained by them).<sup>103</sup> By assisting the judicial world in finding "solutions of principle" in their courtrooms, they endowed the caselaw of the *Cour de "Cassation"* and then that of the *Conseil d'Etat* with "authority", which placed limits on the legalism of the system. Thus it was they who made the main contribution to the establishment of legal doctrine<sup>104</sup>.

Law professors subsequently went on to assert that law was a social science and that they should apply methods used in sociology, history and economics. This approach proved to be irreversible and spread to politics, philosophy, anthropology, ethnology and finally to the methods used in the exact sciences.<sup>105</sup> This brief review stresses the fact that the content and quality of 3rd cycle studies are closely linked to the scientific personality of the teachers/researchers, assessed at both national<sup>106</sup> and international levels. The 3rd cycle "programmes" are simply the sum of individual or collective research programmes; guidelines may be suggested by demands from society, backed up by financial support, but there is no guarantee that they will receive satisfaction. The dynamism of certain sectors of legal research,<sup>107</sup> the chief aim of which is to fill legal "vacuums" brought about by profound changes in all aspects of social life, is well known, but what role is played by creation and innovation in the traditional legal disciplines? The teaching of the philosophy of law,

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101. Definition of this specific meaning of the word "recherche" given by the "Dictionnaire alphabétique et analogique de la langue française" by Paul Robert, known as "Le Petit Robert".

102. On all these points, see Evelyne Serverin "De la Jurisprudence en droit privé — Théorie d'une pratique", Lyon, 1985, p. 123 s.

103. See E. Serverin, *op. cit.*, p. 159 s.

104. With practitioners (lawyers and judges), authors of "Notes" or "Comments" on case law.

105. Particular use of statistical methods in analysing legal phenomena. Development of legal data-processing.

106. The "agrégation" competitive examination at the beginning of the teacher's career.

107. Criminal sciences, labour and social law, environmental law, economic law, legal data-processing, law on health, to mention only a few, and not forgetting the sub-categories of these disciplines.



the general theory of law, sociological methodologies, comparative law, and history occupies a subordinate position during the first two cycles, and such a situation is not conducive to the development of the student's critical mind and does little to arouse his scientific curiosity. Are the requisite conditions for fundamental research into the very conception of the legal system now met? It is doubtful.

The professionalisation of legal studies, in the 3rd cycle, was consecrated by the creation, in 1974, of the DESS. Diplomas in specialised higher studies are increasingly numerous: in 1985-86 there were more than 60 classifications — most of them related to *droit notarial*, local government, business and tax law, and the diploma of business lawyer.<sup>108</sup> Certain specialities are directly related to the economic needs of a region: law on wine-growing and wine at Aix-Marseille, economic law and management of the wine-growing and marketing chain at Bordeaux, maritime activities at Brest, law relating to the economics and management of agricultural industries and food and agricultural undertakings in Toulouse.

Generally speaking UFRs can be said to have met the demands of the majority of the tertiary sector interested in having executives with a legal background. Since "habilitations" are issued by the Ministry of National Education for a five-year period (which may be renewed), universities are obliged constantly to adapt whilst maintaining the standard and efficacy of education.<sup>109</sup> To achieve this, they have to innovate by creating diplomas which correspond to the needs of the social environment.<sup>110</sup> But is one year sufficient to ensure high-level specialisation? The outcome may be satisfactory for the student who knew how to structure his university course — with a given objective in view — during the first two cycles, but what about those whose only background was their professional experience?

Doctor's degree studies, comprising a *Diplôme d'études approfondies* (DEA) (Diploma of advanced studies) which may be followed by a thesis, are still very much in the university tradition of law faculties. "The aim of this training is the mastery of rigorous methods of reasoning and

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108. Law relating to town planning, the environment, regional planning and anything connected with commercial activities are areas which are particularly well "covered" by these specialised diplomas.

109. In the organisation of studies for the D.E.S.S., particular importance is attached to the two or three-month training period spent by the student in a professional environment in relation with the chosen specialisation. The training course results in the student being given a mark, either by the persons with whom he worked, or by the teachers on the basis of their assessment of his report on the course.

110. In fact, certain U.F.R.'s have received authorisations for two, three or four year periods only. They may however be renewed.

testing, which are equally necessary in professional activities, scientific research and higher education.”<sup>111</sup> It is not yet possible, by statistical means, to assess the effects of the 1984 reform in this area, in that the “old” and “new” systems are both in use.<sup>112</sup> In 1985-86, there were 79 “doctor’s degree training groups”<sup>113</sup> distributed throughout the “various UFRs.” It is in the way DEAs are organised that the links between education and research are the most interesting. Most UFRs have received a certain heritage from research institutes<sup>114</sup> and centres which were set up before 1968, whilst the “new” universities have developed their own groups, research centres or institutes: some of them have become associated with the *Centre National de la Recherche Scientifique*,<sup>115</sup> others have been recognised as specific CNRS research units whilst remaining with their university and maintaining the participation by teacher-researchers in their research work.<sup>116</sup>

Here the role of the teacher-researcher is decisive. His initiatives can lead to the creation of DEAs in all sectors of legal research, and the development of his own research is stimulated by the desire to preserve existing DEAs, which are considered to be the official consecration of the topicality of research programmes.<sup>117</sup> Theoretical and practical teaching provide the opportunity to describe the problems being tackled in the research in question, and to highlight the difficulties and obstacles

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111. “Guide du troisième cycle et du doctorat”, of the Faculty of law and political sciences of Aix-Marseille, 1988-89, p. 15.

112. The statistics of the Ministry of National Education apply to the entire 3rd level, and it is not therefore possible to calculate the percentage of students registered for DESS or D.E.A. courses. However, the tables concerning diplomas awarded in 1986 reveal that whereas at national level there were more D.E.A.’s than D.E.S.S.’s, the ratio was the reverse in certain universities such as Aix-Marseille, Clermont-Ferrand, Dijon, Montpellier, Paris-XI, Rennes. The D.E.S.S.’s they offer are not more numerous than elsewhere; it is probable that they correspond more closely to needs.

113. This expression is used in the July 1984 decree on doctorate studies, and hints at origins that are more technocratic than academic!

114. It is thanks to these “institutes” that universities were able to offer teaching in subjects which had not yet been included in their curricula (this was the case, for example, with Institutes of comparative law); thanks to the drive of their directors, these institutes were finally authorised to award (at the various levels), university diplomas, the most long-standing of which were subsequently “nationalised”. At present, there are many University Institutes: some, since 1984, have acquired the same degree of autonomy as the U.F.R.’s (eg. in Strasbourg, among others, the Labour Institute, the Institute for Higher European Studies). In parallel whilst pursuing their normal course of studies, to prepare for the civil service competitive examination (Institutes for Legal Studies, Institutes preparing for General Administration).

115. C.N.R.S. Department of sciences of man and society — Section 37, “Sciences du Droit”.

116. Participation by C.N.R.S. researchers in teaching is frequently requested by U.F.R.’s particularly for certain D.E.S.S. and D.E.A. courses.

117. D.E.A.’s are subject to the same authorisation constraints as the D.E.S.S.

encountered and results obtained; stress is laid on the methodological training of the student who has to demonstrate his ability to carry out research by submitting a memorial or report on a subject defined in collaboration with the teacher: the acquisition of more thorough knowledge, and scientific curiosity are the two parameters defining the role of doctor's degree studies. The area covered by the DEAs is broader than that for DESS for it takes in research in legal theory and philosophy, the history of the law, the various branches of fundamental private and public law. Most of the second levels of higher education are followed by one or more DEAs, which it would be too long to mention here. The percentage of students who round off their higher education by preparing a thesis is difficult to assess. Since 1984, the doctor's diploma has been awarded after the presentation of a thesis or a "series of works" the duration of which cannot normally take more than two to four years; the award of this diploma is now the responsibility of each university, for the state doctorate has been abolished. The intention of the legislator is plainly to keep up competition among universities. But are the resultant conditions really conducive to the development of scientific research in the university framework?<sup>118</sup>

## 2. *The curricula in the original courses*

They relate to the former national diploma (*capacité en droit*) and a recent university diploma<sup>119</sup> which receives national accreditation (*le magistère*). Paradoxically, the former, which was created in the 19th century, still remains the symbol, at a very early stage of higher education, of the opportunity for non-*bacheliers* to gain admission to law faculties; the latter, on the contrary, at a time when the democratisation of university studies is a source of pride, is extremely selective, since it is aimed at the best students with a "law" DEUG, with the thinly veiled intention of beating the "*Grandes Ecoles*"; moreover, it is characterised by a heavily vocational objective.

The *capacité en droit* certificate was designed to provide basic legal training, over a two-year period, for employees, "office boys" and "clerks", from modest backgrounds who, because they worked for a solicitor (*notaire*) or in an administration, wished to improve their

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118. In official statistics, a distinction is still drawn between the 3rd level doctor's degree and the state doctor's degree. The following examples give a rough idea of the situation in 1986: the Aix-Marseille law faculty awarded 92 D.E.A.'s and 17 3rd level theses and 7 State theses were submitted; in Grenoble 30 D.E.A.'s, 2 3rd level theses, 4 State theses; in Lille 69 D.E.A.'s, 10 3rd level theses, 7 State theses; Lyon 126 D.E.A.'s, 6 3rd level theses, 6 State theses; Strasbourg 81 D.E.A.'s, 10 3rd level theses, 1 State thesis.

119. Set up in 1985.

professional circumstances by furnishing evidence of their newly acquired knowledge.<sup>120</sup> A good grade at the *capacité en droit* certificate exam gave access to first year law studies.<sup>121</sup> This diploma has never caused any great controversy. The law faculties are the only higher educational institute to implement this "social advancement" policy; it should be noted; however, that only 5% to 7% of students who enrol for the *capacité* course in fact obtain the certificate. The curriculum content of this course is truly homogeneous, complete and simple. Almost all UFRs offer the same programme: general concepts of private law (civil and commercial law) and of public law (constitutional and administrative law) in the first year; in the 2nd year a varying number of semesters of courses provide an introduction to civil procedure, criminal law and criminal procedure, "notarial" law, social law, political economics. Thus the *capacité* enables the students to acquire general, basic training, and one wonders why, for reasons of simple common sense, it is persistently ignored as a model for the training of students with the *baccalauréat* diploma who need to be really initiated into the elementary and technical principles of law.<sup>122</sup> As has been seen, the "Law" DEUG, because of its complexity, is ill adapted to this purpose.

Resistance on the part of the university world to the systematic professionalisation of law studies has induced the Ministry of National Education, under pressure from professional circles, to create a new university course, managed by the legal UFRs.<sup>123</sup> The three years spent on the *magistère* studies are sanctioned, not by an examination, but by a competitive examination system. Each UFR decides on the number of diplomas it intends to award each year. The desire here, to set up a diploma for the best students, is manifest. After the DEUG, students are selected firstly on the basis of their record,<sup>124</sup> and then on their performance in a written examination and interview. The first year contingent is restricted to 30 or 40 places and a competitive examination is organised for admission to subsequent years. Alongside this, at the end of the 1st, 2nd and 3rd years, students obtain, on the basis of equivalence, the law degree, the *maîtrise* (master's degree) a DESS or a DEA,

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120. The only registration requirement is that the candidate be of at least 17 years of age.

121. Or having received other training deemed to be equivalent.

122. This objective is heavily stressed in the August 1987 Order, which extends access to holders of the "capacité" certificate to the first year of DEUG studies with the "law" specification.

123. The Lyon law faculty describes the "magistère" as "a university diploma sanctioning higher vocational studies and enabling immediate integration into professional life in key positions".

124. The student must have at least one subject marked "assez bien" in first and second year DEUG examinations. Knowledge of foreign languages is also taken into account.

depending on the options studied. The *magistère* is not offered in all universities<sup>125</sup> for there are certain prerequisites which have to be met; indeed, while the general education is the same as for the degree, the *maîtrise* or the 3rd level courses,<sup>126</sup> specific forms of teaching (lectures, “guided work” or training courses,) rely heavily on the collaboration of professional circles (lawyers, notaries, legal advisers, company executives, etc). Thus everything depends on the quality of relations between universities and the local or regional professional circles. This is why universities have to maintain, by constant selection, a high level of training, whilst ensuring that the structures and content of the *magistère* correspond to the labour market, in order to attract the best candidates both among students and teachers (at national or regional level).

In 1963, Professor Claude-Albert Colliard suggested that the legislator grant universities, and in particular law faculties, managerial autonomy “which would be in line with our day and age and also with the concept of university freedoms and the need to take effective action.”<sup>127</sup> Has this result been achieved? Since 1954, reforms undertaken by jurists have always been lengthy and difficult to implement. The UFRs are trying, to the best of their ability, to adapt their teaching and research to an unpredictable future; they have entered into competition, not so much however among themselves, but rather in order to recover, if not exactly their monopoly, at least a predominant role in the legal training of decision makers and managers. Unfortunately, in the adjustment process, the university edifice becomes increasingly complicated because it is unable — or unwilling — to call itself fundamentally into question.

Jean Rivero, in 1968, pointed out the paradox of a system in which subjects are taught, in parallel, and in total ignorance of what the others are doing, like channels which are absolutely watertight, but which nonetheless flow into the same reservoir: the intelligence and the personality to the student. Twenty years later, despite a succession of reforms, specialisations arising out of the professional orientations of universities have accentuated this compartmentalisation. Moreover, although traditionally law is seen as an “art”, teachers are more or less gifted in the “art” of teaching: static methods, a “revisionist” attitude

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125. A “magistère” in “Business, law, taxation and accountancy” has been organised at Aix-Marseille and Dijon, a “magistère” entitled “Company lawyer” has been created at Montpellier, and there is a “Business lawyer” “magistère” at Lyon and Paris-II; Strasbourg’s law faculty trains “Franco-German business lawyers” and Paris-X offers a “magistère” in “Social law”.

126. The choice of subjects is governed by the specialisation of the “magistère”.

127. “Présent et avenir des facultés de droit et des sciences économiques”. *Revue de l’Enseignement Supérieur*, 1963, no. 1, pp. 8-19.

towards programme content, a tendency to increase the number of subjects and diplomas.

The twofold equation drawn up by Charles Eisenman has not been solved: general education is considered inadequate, and preparation for active life provided by universities is still considered unsatisfactory. Is the problem insoluble? The majority of universities have only slowly become aware of the implications of 1993;<sup>128</sup> they have consolidated their model for the transmission of knowledge by offering a proliferation of subjects, but have not taken the opportunity to adjust their methods of analysis and reasoning in a way which would promote the understanding of, and an open attitude towards, other structures and other legal practices. The report of the *Conseil d'Etat* in April 1988 comprises some rather astonishing antinomies, expressed by its authors: who will be able to understand European Community law if he knows nothing about modern history?<sup>129</sup> Moreover, this same report, which denounces the training and options provided by the law faculties, proposes choices which are still based on the traditional conception of legal learning.

Has not the time come for the methods employed in the social sciences to be integrated into the various levels? It would then no longer be a question of asking teachers to fill "reservoirs" but, with the backing of directly accessible legal documentation,<sup>130</sup> of entrusting them, over and above the compulsory "programmes", with responsibility for equipping their students to handle any legal system. The point is constantly being made that the teaching of law has always been in the hands of a dominant group.<sup>131</sup> Have not teachers and practitioners always enjoyed the comfort of an established position? This is probably one of the reasons why "our" law faculties continue to withstand, come what may, the onslaughts of technocracy.

*May 31, 1989.*

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128. Which were predictable when the Rome Treaty was concluded in 1957.

129. The rapporteur refers to the choices which are "necessarily" imposed in basic legal training which "can more easily forego modern history teaching than it can instruction in European Community Law". See p. 15 of the typewritten report mentioned above.

130. Development and widespread use of telematics.

131. See the above-mentioned works by A.J. Arnaud, M. Mialle and J.J. Gleizal.