SOME OBSERVATIONS OF LEGAL EDUCATION

In Australia, England, and Germany. [1]

I. *Australian and English University Law Schools.*

The most important difference lies in the fact that the majority of Australian University Law Schools are the recognised training institutions for the legal profession, while English University Law Schools are only loosely linked with professional legal training insofar as the LL.B. (or similar degree) of a recognised Law School saves two years articles. A university law course is not compulsory for either barristers or solicitors in England, and it is still only a minority of the students of either branch of the profession who take a university degree in law. This technical independence should enable the English University Law Schools to develop more fully the academic aspects of legal training and also to take a more ready and rapid account of modern legal development. This has not so far happened to a sufficient degree. The Law Schools still tend to lag too much in the wake of the professions whose own systems of legal education are, I think, absurdly out of date. The main difference, as far as I can see, lies in the teaching of Jurisprudence and Roman Law.

The Law course at London University—which is, I consider, now far more comprehensive than the corresponding courses at Oxford and Cambridge, and at least equal in quality—does go some way towards greater independence. In the LL.B. Finals course there is a number of alternatives of which Administrative Law, Industrial Law, Family Law, Conflict of Laws, and Public International Law are the most important. Many students pursue these subjects further in the LL.M. course, and it is now quite customary for solicitors specialising in local government (as town clerks, etc.) to take a London LL.B. or preferably the LL.M. degree.

Even in England, where a far greater number of law teachers is available, I regard the existence of three different types of Law Schools, with separate staffs, as a waste of energy. In Australia such waste would be calamitous.

In principle, I regard the coupling of university and professional legal training as distinctly preferable, provided that the legal profession is farsighted enough not to attempt to turn the university law

[1] This article is based on a paper read by the author to the third Annual Conference of the Australian Universities Law Schools Association held at Adelaide, in August, 1948.

school into a mere professional training institute, and that the university has the courage to resist any such tendency. As far as I can see, the legal profession in Victoria has seen no reason to regret the extensive teaching, in the university, of general Constitutional or Administrative Law, of Jurisprudence or Roman Law or Comparative Law. The leaders of the legal profession have undoubtedly found that a thorough grounding in fundamental legal subjects, and the development of critical and independent thinking, are far more important than an overloading with too many technical subjects which the good lawyer will quickly absorb in practice.

II. *German Legal Education.*

The main difference between the German system of legal education and those prevalent in both Australia and Great Britain is the degree of practical work preceding the final examinations.

German legal training is State-directed and consists of two major parts. The first part, lasting from three to four years, is study at the university—which is, on the whole, comparable with the type of teaching given at British University Law Schools, except of course for the difference in subjects which follows from differences in the structure of the legal system. As all universities within all States come under the supervision of the Ministry of Education, a student may study at different universities; it used to be quite normal, for example, for a student who intended taking his examination in Berlin to spend two terms or more at Heidelberg, Freiburg, or some other historical university. The examinations are held by a Board, presided over by a judge, and consisting of university teachers and leading practitioners (judges, senior civil servants, practising lawyers, etc.). The examination consists of a written thesis prepared at home on a complicated legal problem, a series of papers written under supervision, and an oral examination lasting one to two days for a group of candidates (usually five or six). Not more than one paper is written each day; the time is five hours. A problem is set for which the candidate can use the relevant code. The "time pressure," which makes legibility of handwriting and the ability to pour out the maximum number of words in the minimum of time such important factors in the examination systems both of Great Britain and Australia, is largely absent.

After the first examination the successful examinee becomes a provisional and unpaid official in the legal service. This is necessary because the second period of his training consists of a minimum of three years practical work during which he may have to discharge certain official duties. Minimum periods are prescribed for work at the different law courts, in the Public Prosecutor's department, and in a practising lawyer's office (there is no division corresponding to that of barrister and solicitor). The future administrative lawyer has a somewhat different practical training; a large part of his preparatory service is spent with various administrative authorities. Some of the German States used to have a common training system

for both types of lawyers, the civil lawyer and the administrator. It is likely that with the reconstitution of German federalism the different training systems may be revived. By way of a special, short-term commission, the trainee may be entrusted with the functions, for example, of Public Prosecutor at a police court. During the work at the higher courts, the probationer is allotted to one of the judges; his work then includes the preparation of opinions prior to the final hearing of the case, or the drafting of the court's judgment after that hearing. It should be noted here that German judgments are always given by the court as a whole and it is not outwardly apparent whether the judgment has been unanimous or not; there is no minority judgment. The probationer may also be granted a short-term commission to act as substitute for a practising lawyer during the latter's holidays or illness; but this occurs only during the later stages of training.

The final State examination qualifies for all branches of the law (subject to the differentiation between civil and administrative legal careers to which I have referred above). Like the earlier examination it is held by a State Board presided over by the President of the District Court of Appeal and consisting of senior judges, civil servants, and practitioners—but no full-time professors. The examination is very searching. It used to consist—and I believe this is being re-introduced—of two six-weeks papers, one on a difficult theoretical problem, and another in which the candidate has to deliver judgment on an actual case. Files containing the full proceedings, including briefs, evidence, etc., are collected from courts all over the country by the examination Board; the judgment is taken out and the file sent to the examinee. The second stage of this examination consists of a series of five-hour papers under supervision, in which practical problems predominate. The final stage is an oral examination.

The successful candidate is now qualified to become a judge, a practising lawyer, or a public prosecutor, or to pursue any other career, public or private, which presupposes full legal qualifications. The Nazi regime introduced a reform which—apart from the political indoctrination which characterised all education under that regime —is not a matter of political ideology. The future practising lawyer had to serve a probationary period of several years after which he would—or would not—be finally admitted as a practising lawyer. This was introduced mainly in order to restrict the overcrowding of the profession. The future judge will normally start with a short-term commission, sometimes unpaid, as a magistrate at a county court, police court, or labour court, until he obtains a permanent appointment. The vast majority of German—and other continental —judges are career judges. The senior judges have in most cases risen from the lower ranks; only in a few cases are distinguished practising lawyers or public servants appointed to senior judicial office.

To illustrate the working of this system by personal experience: The present writer had at the age of twenty-six acted several times

as a general lawyer's substitute, a function which included advisory work as well as court practice. He had also acted as a magistrate in one of the Labour Courts. These courts dealt speedily with industrial disputes of any kind; they consisted of a professional judge and two lay assessors chosen by the representative employers' and workers' organisations respectively.

Full legal training in Germany would therefore normally take seven to eight years. During the second part of that training, however, many legal probationers earned some money by working as paid assistants in a lawyer's office, as university tutors, or by doing other work. University fees are on the whole very low, and the practical training is at the expense of the State. Fees in Germany cannot compare with the sums paid for study and admission to the Bar in England, let alone the fees demanded by leading solicitors for articles. The length of the training thus presents less formidable financial problems than is at first apparent.

III. *Conclusions.*

To someone who, like the present writer, has had experience of both systems of legal education, the German legal training system appears preferable because of its more thorough combination of theoretical and practical education. There are, however, so many differences between the two systems that it would be rather difficult to apply any of the desirable features of the German system to legal education either in Australia or in Great Britain. The most important difference is perhaps that under the German system the State is responsible for legal training of all types, whereas the professions are responsible under the British system. The introduction of a practical training period (of not less than two years?) would however be worth very serious consideration; in that case certain vital modern developments might be taken into account. A period of practical training in a parliamentary draughtsman's office, for example, would seem to be as necessary a qualification for the modern lawyer as conveyancing or a knowledge of trust deeds. I would also suggest that certain aspects of the German legal examination system are worth considering. The present British and Australian examination methods still lay too much emphasis on technical accomplishments rather than upon evidence of independent thinking and a critical faculty.

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