

Legal education and research in France

Since the French legal education reform of April 2002, French legal studies have been divided into three successive stages of study, each leading to an autonomous, publicly recognized diploma: the *Licence*, which requires three years of studies or six semesters, the *Master*, which demands two additional years of study or four semesters, and finally the *Doctorat*, which requires three years or six semesters to complete. In France this is commonly known as "LMD". With this reform, France has transposed the Bologna-process, which it had committed itself to adopting.

After obtaining a *Master 1* degree and passing an entrance exam, French law students can begin a professional training program in a separate school in order to become either a lawyer, or a *magistrat*, which is a judge or a public prosecutor.

Research does not have the same importance in each of the three stages of legal education. Students matriculated in those schools that prepare them professionally to become lawyers or *magistrates* conduct hardly any research.

For this reason I will structure my presentation according to the three stages of legal study found in French universities, that is research conducted in the *Licence*, *Master* and PhD phases.

My presentation is based for the most part on personal experiences as a student and researcher in France and in Germany, as well as on my time spent as a lecturer in France.

Concerning those personal experiences, I spent the first two years of my legal education in Germany, after which I went to France to continue my legal studies. After obtaining a Master's degree in France, I came back to Germany and obtained an LL.M. degree. My PhD in a comparative subject was prepared within the framework of a co-tutelle procedure at the Universities of Paris 1 Panthéon-Sorbonne and Hamburg, with the guidance of a German and French professor.

During my PhD studies I taught a great deal at different French universities, and for more than two years I was a research assistant at the Max Planck Institute for Comparative and International Private Law in Hamburg.

At the moment I am a lecturer and researcher at the University Paris-Est Créteil Val de Marne, where I am working in the field of German, French and European private law (Civil Law, Corporate and Capital Markets Law).

For over three years I have served as the Deputy Secretary-General of the International Academy of Comparative Law.

These experiences have led me to several conclusions about comparative legal education, and have perhaps challenged me to scrutinize the methods and practices commonly found in French legal education.

In my presentation I hope to shed some light on various issues concerning research drawing from these perspectives: to what extent I personally have experienced my legal education as more or less research intensive; what is, in theory and in practice, expected or required from students in the field of scientific work; how research is integrated in education; and, finally, how research is conducted. I will focus, in a critical manner, on the strengths and weaknesses of the system concerning research and attempt to identify clear problems. I will limit my presentation mainly to the situation in France, but for some points I will look at Germany under a comparative lens.

i.) Licence en droit

The *Licence* studies lead, after three successful years of study (*Licence 1, Licence 2, Licence 3*), to the acquisition of the *Licence en droit* degree.

The *Licence* studies guarantee a basic, general legal education. Besides a big part of subjects that are compulsory for all, students can also, after their first year, and especially in their third year, chose subjects that they want to explore in-depth.

In comparison with Germany, students in France have more lectures. These are often given in very large rooms before a sizeable audience. During these lectures, students write down nearly every word of the "monologue" of the lecturer. In comparison with Germany, French lecturers rarely discuss research results and doctrinal controversies.

Students also have to attend the *travaux dirigés*, comparable to the German *Arbeitsgemeinschaft* and *Übung*, for the main subjects. These take place once a week. The 90-minute *travaux dirigés* are held in small groups of about 25 to 30 students. They are guided by a *Maître de conférences*, comparable to a *Juniorprofessor* in Germany or associate professor, a PhD student or a lawyer. In the *travaux dirigés* students are introduced to legal working methods, and through their training, a specific subject of the lecture is discussed and reinforced. Students are expected to solve hypothetical cases (*cas pratique*), to comment on and analyze legal texts, usually a legal decision (*commentaire d'arrêt*), and to write essays (*dissertation*), in which a legal topic must be closely examined. Students are required to actively participate in the *travaux dirigés*, prepare them independently with the help of books and legal journals, present a paper, and prepare homework on a theme in the form of a *cas*

pratique, a *commentaire* or a *dissertation* for each session. Therefore, students have to start research work early, at least in theory. In reality, research expectations are low, especially during the *Licence 1* and *2*. More emphasis is placed on methodology and form during these years. Students very often use only lecture notes and a textbook, a practice that is fully understandable considering the students' course load. It must also be noted that doctrinal controversies only play a limited role in the students' work. In addition, the traditional German method of thesis-antithesis-synthesis is not required in French legal studies, and thus French students are never introduced to this method. Students' performances are marked, which increases the pressure on students; however, this method requires students work harder and makes it easier for students who prefer guidelines and specific instructions.

In practice, notes of lectures and *travaux dirigés* frequently form the basis of preparation for exams; books and law journals are rarely used as study aids. The course and *travaux dirigés* notes are sometimes even learned by heart. This is because exams very often only ask for theoretical knowledge, which mostly cover the matters already discussed in the lectures and *travaux dirigés*. The final exams are usually in the form of a *dissertation* or a *commentaire* of a judgment. Case hypotheticals are rarely found on a final exam, however they are becoming more and more used as an evaluation of a student's competence.

However, in recent years students at many universities have the opportunity to learn in a seminar setting, how to conduct research: specifically which sources exist, where to find them and how to work with them. This is very useful, but students exploit them rarely.

ii.) *Master en droit*

After the *Licence*, the student can continue his law studies and obtain a *Master* diploma after the successful completion of two years of Master-level study. The *Master* studies are divided into two stages: *Master 1* in the first year, and *Master 2* in the second.

In the *Master 1*, student's knowledge in private or public law are reinforced and consolidated; sometimes, there is even already a specialization in a special legal field. In the course of the *Master 2*, students specialize even more in a domain of private or public law.

- *Master 1*

The *Master 1* studies aim to develop the students' legal knowledge and culture as well as to prepare them for the specialization of the *Master 2*.

The *Master 1* consists generally of two main subjects, which are accompanied by two *travaux dirigés*, and two elective subjects without the *travaux dirigés* per semester.

In comparison with the *Licence* studies, lectures are smaller. More independent learning, thinking, and researching are required from the students.

The exams are still often theoretical, requiring students to write an essay or a comment on a judgment. The students' notes are also the basis for the preparation of exams, although students do begin using more and more books, especially for their main subjects.

- *Master 2*

The *Master 2* studies exist in two forms: a *Master 2* oriented towards research (*Master 2 de recherche*) and a professional Master (*Master 2 professionnel*).

The *Master 2* studies, as a specialized degree program, aim to deepen a student's knowledge in a specific legal field.

The access to the *Master 2* is restricted, as candidates are selected. The selectivity of a program depends on the program's, as well as the university's, reputation. Sometimes, there are 300 to 400 candidates for 30 to 40 places. Students commonly privilege the *Master 2 professionnel* track because it is oriented towards legal practice.

The *Master 2 professionnel* constitutes a practical and professional oriented education. Research only plays a secondary role. Students have to complete about 300 to 400 hours of lessons, which are partly given by legal practitioners. An internship of two to three months is compulsory. In addition to the final exams, students have to write a report about the internship, which must be presented to a jury – this is also marked.

The *Master 2 de recherche* is a study of specialization. It serves in particular to prepare the student for a PhD program. But this is only in theory as only a few of the students really strive for a PhD. Compared to the *Master 2 professionnel* the education is much more theoretical and research intensive. Lecturers come mostly from universities or research institutions. About 200 hours of lessons (divided in principal and subsidiary subjects) have to be passed by the students. The lessons take place in the form of lectures or seminars. It is required that students independently prepare the lessons (before and after), especially if it concerns a seminar, which demands intensive research. In their seminars students have to participate actively, regularly present papers and write essays; discussions are also of a higher scientific level. In addition, students have to prepare, under the supervision of a lecturer (this

supervision can be more or less intensive), a work of personal and independent research (*mémoire*) on a specific topic linked with the Master 2 and usually chosen by the student himself. This work has normally 30 to 50 pages, but more and more often they reach up to 100 pages. The *mémoire* should be an analysis and research-intensive examination of the topic. The research is usually defended by the student in front of a jury at the end of the academic year. The defense usually consists of a scientific debate between the jury members and the student. The mark for this work is included to the final mark with a high quotient.

iii.) Doctorat en Droit

In principle, PhD students receive their *Doctorat en Droit* degree after a three to four hours, public defense of their thesis, in front of a jury, which has been chosen by the supervisor of the PhD candidate. The defense takes place in form of a scientific debate, i.e. there is a discussion between the jury members and the candidate about the thesis and the topic in general: any member of the jury may ask the candidate questions. Members of the jury may also judge the thesis in a very critical and open manner, to which the candidate can reply.

The student who has a *Master 1* may be admitted into a PhD track program. The decision of admission belongs to the supervisor, who takes into consideration the student's marks, his research subject, as well as his motivation.

Officially, the duration of one's PhD studies is three years. In practice however, it is much longer (5 to 7 years) in the humanities and social sciences, even though universities are now starting to limit the duration by obliging students to work faster. In the legal sciences, the reasons for this are various. First, the French PhD thesis is, at least concerning its length, similar to the work that is required in Germany to receive the postdoctoral lecturing qualification (*Habilitationsschrift*). The PhD thesis also necessitates intensive research, at least in the case of PhD students who are aiming for a career at a university (I will come back to this point later). Second, very often, PhD students, in addition to their research obligations, should teach some *travaux dirigés*. However, *travaux dirigés* require a lot of preparation by the lecturer before and after the class (many homework assignments and exams have to be corrected and marked). Third, in order to finance the PhD studies, a majority of students work outside of the university, because there are not enough scholarships and jobs at the university. These funding opportunities are only reserved for the best students and the selection process is very rigorous.

PhD students are integrated in a PhD school (*école doctorale*). At this school, PhD students are offered courses, information sessions, lectures in law given by invited professors, and sometimes even training in the rules of etiquette, as well as seminars in how to write a thesis, how to do

research in a library and on the internet, how to present a bibliography and footnotes and how to prepare the public defense. In a few *écoles doctorales* PhD students are invited to present their works in progress to the other PhD students, to the director of the *école doctorale* and sometimes to other professors, after which a debate usually takes place. However, research in a narrow sense with common research projects does not generally take place in the *écoles doctorales*. Whether the increasing structure and organizational requirements in the PhD phase, in particular by the *écoles doctorales*, is a desirable development, is debatable. Of course, the *écoles doctorales* present many advantages, at least in theory, for example the exchanges between PhD students and professors and the continuation of a student's education. However, the programs also present disadvantages, for example the sometimes fruitless communication between professors and students as well as a loss of time and flexibility. Doctoral candidates can join one of the research centers at the law faculty. However, there are few team research projects, in which the PhD students really participate.

Chaired professors, as they exist in Germany, for which PhD students can work as research assistants, are not found in French law faculties. However, a limited number can be found in French business schools (*école de commerce*) and the *Grandes Ecoles*, notably Science Po, several of which have a rather large legal studies department; in these schools students can do legal research and prepare their thesis in the domain of law. In these establishments, unlike public universities, research and publication play an important role in the life of the school, and PhD students are highly encouraged to participate regularly in scientific activities, and they in fact do.

I do not know of any legal research institutes in France that are not attached to a university, like for example the Max-Planck-Institute in Germany, where PhD students can work as research assistants in the institute. There is the Centre national de la recherche scientifique (CNRS) but it does very little legal research.

However, there is a new development in French legal research: more and more private associations have appeared in the field of legal research, such as Société de législation comparée, Association Henri Capitant, etc.). Students, especially PhD students, but also professors and professionals can join these associations. Participants of these associations have the opportunity to do collaborative research, sometimes in cooperation with a university or a law faculty. This work often results in publication or presentations at national and international conferences. In reality very few PhD students work actively in these associations.

Overall, PhD students at French universities generally receive little support, input and motivation from their thesis supervisors. There are several reasons for this: some professors supervise many PhD students at

the same time (even if this practice is supposed to be reformed), and many also work as lawyers or counselors.

French PhD students are not fully integrated into an institution and are often left alone to do their research. This, of course, does not enhance the students' motivation, research skills and the quality of their research work. The PhD student's research will generally be limited to only a few legal topics: the subject of his thesis and, if he teaches, the subjects of his courses, which are, however, often linked to the thesis.

It must also be noted that the PhD student rarely publishes before the end of his thesis. In any event it would be difficult for the student to publish because only a few publishers accept papers from PhD students. In addition, they are not expected to publish during the research phase of their thesis. In my opinion, in France, more emphasis is placed on teaching than on publishing.

The PhD thesis is generally very long, as I have already mentioned. The thesis should be of a high quality in terms of the research: a subject has to be analyzed in depth and from different perspectives; very often the practical aspects of the problem are ignored or only partly discussed. In other words, the approach is very theoretical: but this is the French way of doing things. Form and methodology are extremely important in France. Very often, PhD students are not required to find innovative solutions to a specific problem, or ask critical questions in their thesis. In contrast to Germany, it is a common practice for French PhD students, and other researchers, to exclude doctrinal controversies from their work. Instead they very often limit the presentation of their research to one viewpoint. However, in France there is also the unofficial distinction between a "simple" thesis and a *thèse d'agrégation*; the latter is prepared if the student aims for an academic career at a university. The *thèse d'agrégation* is generally better funded, requires more high-quality, intensive research and critical thinking.

Conclusion :

Some negative aspects of legal education and research in France have already been examined in this talk, but there are, of course, also positive aspects.

However, we find in French universities a type of mass education of students in law, which is worse than in Germany. French universities suffer just as much as German ones do from a lack of funding and resources. Professors are poorly paid, and teaching and learning conditions are not always satisfactory: the lecture halls and classrooms are sometimes old and neglected, and universities are often understaffed, specifically their libraries (although students now often have free access to

electronic resources). This reduces the appeal of legal education and research in French universities, for students as well as professors.

Looking at the big picture, French legal education and research are heavily theoretical and sometimes similar to the teaching and working methods, which are practiced at the secondary school level. Critical and independent thinking, creativity, and the search for innovative solutions are not in reality required from students nor are they encouraged and trained for this, most notably during their first four years of study. In addition, students do not really engage in independent research until their fifth year of university, and in particular until the *Master 2 recherche*.

Traditionally, French universities are less research-oriented than, for example, German universities: the French model of university, especially in law faculties, is to concentrate more on education and less on research, unlike Humbolt's concept of university, which calls for the complete integration of education and research. According to Humboldt, research should not be done exclusively outside of the university. This separation of education and research is, in my opinion, counterproductive. According to the French Minister of Research this situation will be changed.