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The Role and Functions of Legal Professions: A Comparative Study

W.J. Wagner

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THE ROLE AND FUNCTIONS OF LEGAL PROFESSIONS: A COMPARATIVE STUDY

W. J. WAGNER*

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I. INTRODUCTION

This report has been prepared on the grounds of eight national reports supplemented by personal observations of the general reporter.¹ The national reports are fairly representative of various legal systems of the world: The Australian and United States reports, prepared respectively by Prof. David S. Clark² (University of Tulsa, Oklahoma, U.S.A.) and Prof. Roman Tomasic³ (Kuring-Gai College of Advanced Education, Lindfield, N.S.W., Australia) present the common law jurisdictions of two distant continents. From Western Europe, a report on the Federal German Republic has been submitted by Prof. Hein Kötz⁴ (University of Hamburg). The Venezuelan report, written by Prof. Rogelio Perez Perdomo⁵ (Universidad Central de Venezuela), was the only one dealing with the situation in Latin America. Three reports came from communist countries: Hungary - an analysis by Prof. László Nevai⁶

1. Presented at the XI International Congress of Comparative Law, Caracas, 1982; Professor W.J. Wagner, General Reporter.

2. D.S. Clark, *The American Legal Profession in Comparative Perspective: Growth and Specialization* (1982) (unpublished manuscript) [hereinafter cited as *United States*].

3. R. Tomasic, *The Functions of the Legal Profession in Australia* (1981) (unpublished manuscript) [hereinafter cited as *Australia*].

4. H. Kötz, *The Role and Functions of the Legal Professions in the Federal Republic of Germany* (1981) (unpublished manuscript) [hereinafter cited as *West Germany*].

5. R. Perez Perdomo, *The Legal Profession in Venezuelan Society: Report for a Comparative Study of the Legal Profession* (1981) (unpublished manuscript) [hereinafter cited as *Venezuela*].

6. L. Nevai, *The Role and Function of Legal Professions in Hungary* (1981) (unpub-

(Eotvos Lorand University, Budapest), Romania - by Professors Savelly Zilberstein and Viorel Ciobanu⁷ (University of Bucarest), and the German Democratic Republic, by Prof. Kurt Wunsche⁸ (Humboldt University in Berlin). At last, the Japanese report illustrated the approach of an Asiatic country. The author was Akira Takakuva, Esq.⁹

II. FUNCTIONS OF THE LAW

The law in its various forms is as old as humanity and constitutes a system of norms of behavior which regulates relations between individuals as well as between individuals and the collective. There are, however, examples of absolutist leaders and military dictators who did not consider themselves bound by established norms. In Communist systems, as illustrated in the report of the German Democratic Republic, the law reflects the will of the ruling class and serves primarily to organize life rather than settle conflicts; it is "used by the working class and its allies . . . for the shaping, safeguarding and perfecting . . . the socialist social system . . ." with the use of force, if necessary.¹⁰

In general, periods of lawlessness in history were considered to be abnormal and transitory. Thus, members of the legal profession (hereinafter jurists) have typically held the role of promoting the application of legal rules in society. The Venezuelan report enumerates the most important functions which are performed by jurists with the exclusion of others.¹¹ *Mutatis mutandis*, the observations of the functions of jurists in the Venezuelan report are applicable to other legal systems and include:

1. Representation of and assistance to individuals and legal entities before the courts;
2. Preparation and verification of legal documents;
3. Consultation regarding all matters of law;
4. Assumption of important positions in the legal system such as

lished manuscript) [hereinafter cited as Hungary].

7. S. Zilberstein & V. Ciobanu, *The Role and Functions of Legal Professions* (1981) (unpublished manuscript) [hereinafter cited as Romania].

8. K. Wunsche, *Role and Functions of Legal Professions* (1981) (unpublished manuscript) [hereinafter cited as East Germany].

9. A. Takakuva, Esq., *The Role and Functions of Legal Profession in Japan* (1981) (unpublished manuscript) [hereinafter cited as Japan].

10. East Germany, *supra* note 8, at 1.

11. See *infra* p. 668 for the concept of unauthorized practice of law.

judges and prosecutors.¹²

Additionally, jurists frequently perform many other activities such as mediation, conciliation, creation of the frame work for the structuring of businesses and organization of political functions.¹³ Jurists in the Communist countries are also expected to promote the legal consciousness of the citizens.¹⁴

The most important obligations of the lawyers, as stated in the Japanese statute on the legal profession, are similar in other countries. In Japan, the obligations of the jurists are to protect fundamental human rights and realize human justice. In order to meet these obligations, jurists should carry out their duties faithfully and sincerely, be well acquainted with the law and its practice, promote social order and strive to improve and reform the legal system.¹⁵

The Romanian report states that "the lawyer's main task is of granting legal assistance to the population or to any type of units, to the end of protecting their rights and legitimate interests and enhancing legality before courts or granting legal advice and drawing up any kind of legal deeds."¹⁶ It may also be added, as suggested in the German Democratic Republic report, that lawyers exercise their counseling and representing activities in an independent way, without being bound by direction other than reasonable demands of their clients.¹⁷

III. LEGAL EDUCATION AND THE DEVELOPMENT OF LEGAL SKILLS

The law developed from a small set of basic rules applied by the members of primitive tribes into a comprehensive and complex system of guidelines for societies in industrialized, modern countries. The mastery of law, even in part, requires a long period of time and considerable effort. Today, no person can know all the legal rules in force in his legal system. Thus, specialization is progressing and the most important skill of a jurist is merely the ability to find and interpret the law when needed.

12. Venezuela, *supra* note 5, at 13-14.

13. *Id.* at 14.

14. East Germany, *supra* note 8, at 3.

15. Japan, *supra* note 9, at 7.

16. Romania, *supra* note 7, at 2.

17. East Germany, *supra* note 8, at 17.

The preparation for practice in a legal profession is not uniform in the various countries. The simplest form of preparation still applied in some common law jurisdictions as an alternative to the formalities of law school is the acquisition of legal knowledge and skills through an internship with a senior member of the profession. This method was developed in England and continues to be practiced in Australia. It has all but disappeared in the United States.

In most countries, including Germany and other civil law jurisdictions, formal legal education begins after graduation from a secondary school and lasts at least three and one half to four years.¹⁸ In the United States, law schools are considered "graduate" level and are thus accessible only to persons who have completed "college" studies after finishing their secondary studies. The law school curriculum regularly requires three years of studies. Thus, a law school graduate is usually three years older than colleagues in other countries. In order to practice law, a law school graduate¹⁹ must pass a Bar Examination.

In Japan, only two years of studies are required for an individual to be eligible to sit for this examination and the studies need not necessarily be pursued in a law school.²⁰ In contrast, a student in the Federal Republic of Germany who has finished law school education has a long way to go. Initially, a student must take a state rather than a university examination which covers the entire curriculum in order to obtain the level of *referendar*.²¹ A *referendar*, while taking courses offered by judges and civil servants, must spend two and one half years obtaining practical experience by working under close supervision, initially as a court assistant. The *referendar* then works in a prosecutor's office followed by an administrative agency and finally in a lawyer's office. Thereafter, in order to achieve the title of *assessor* and begin the practice of law,

18. Venezuela, *supra* note 5, at 7-8. In Venezuela, the program lasts for five years or more.

19. In some jurisdictions, the prerequisite for taking this examination is not graduation but the successful completion of a stated amount of courses in accordance with the value of their "credit hours" (amount of class hours per week in a semester). Usually, this is equivalent to three years of study.

20. Japan, *supra* note 9, at 5. Interestingly enough, this is a most difficult exam and on average, about 550 succeed in passing the test while more than 27,000 do not. Part of the test consists of questions on legal problems and part is taken from other social sciences such as economics, politics, psychology, and accounting. *Id.*

21. West Germany, *supra* note 4, at 3.

the *referendar* must take another state examination.²² In contrast, the postgraduate legal training in the German Democratic Republic takes only twelve months.²³

In France, in order to be eligible to enter the legal profession, a university examination is required after the completion of law studies. A mandatory period of apprenticeship follows the examination. In Japan, the practical training of the apprentices is similar to that of the German system as this system served as a model to the Japanese at the time of the law reform near the end of the nineteenth century. The Japanese system of training is supplemented by a six month educational program which is supervised by the Supreme Court.

All graduates of law and political sciences in Venezuela traditionally receive the title of *abogado* (advocate) which is granted by the universities and requires no apprenticeship.²⁴ In Hungary, however, the theoretical studies at the university are followed by a two year "practical period." The Hungarian legal training is based on "the appreciation of a *Marxist-Leninist* spirit of the State and legal institutions . . ." and supplemented by historical, sociological and comparative studies.²⁵ As in Hungary, a two year period of "probation" followed by examination is required of persons in Romania who intend to engage in one of the legal professions.²⁶

IV. CAREER CHOICES IN THE LEGAL PROFESSION

Candidates in the legal profession may begin a career in one of the branches of law after completion of all requirements. In certain branches, candidates are free to begin their careers immediately whereas other branches require an appointment or election which may take a long time. The main legal professions are those of a practicing lawyer, judge, prosecutor, and, in many jurisdictions, a notary public. Lawyers may also seek administrative, government,

22. *Id.* at 4-5. This system was criticized on a few grounds and in particular because the training was too long; the average age of the candidates for the second examination was 29. Other areas of criticism were that social sciences were disregarded and that the system indicated a marked division between the theoretical and practical training of the candidates. Many universities began to experiment with new study programs which incorporated responses to the above criticisms. *Id.*

23. East Germany, *supra* note 8, at 6-7.

24. Venezuela, *supra* note 5, at 3,8.

25. Hungary, *supra* note 6, at 9-10.

26. Romania, *supra* note 7, at 3. This requirement does not apply to the academic career.

corporate, or private employment. It is also possible for lawyers to engage in business or any other activity of their choice thereby treating their legal background as a good foundation for the demands of complicated modern society.

Most frequently, jurists exercise their skills in performance of the basic practice of law. In the majority of the world's legal systems, there is no duality in its exercise. There exists in a dwindling minority of systems, however, a division of functions between the *barristers* who appear in court and the *solicitors* who work out of court and prepare legal documents.

The system distinguishing between *barristers* and *solicitors* is well established in England and also applies in some other common law countries such as a few jurisdictions of Australia.²⁷ It is also in force in some civil law countries such as France where it is being phased out. In France, for example, the functions of the *avoués* at the level of first instance courts has already been assumed by the *avocats*.

In general, in most of the common law systems, switching from one branch of the legal profession to another is not only possible but it is a frequent occurrence.²⁸ In some common law systems such as Australia, however, the first type of legal work that a young lawyer obtains usually determines the lawyer's legal career for life.²⁹ In this type of system, the preparation for the various branches may not be exactly the same and thus switching may either be contrary to custom and the rules in force, or at least be made difficult.

In the Federal Republic of Germany, a person beginning a legal career as a public prosecutor treats the choice as permanent.³⁰ Crossing the lines between this profession and the judiciary is frequent, however, particularly in the early years of the career.³¹ The interchange is rare between either branch and the practicing attorney.³²

There is, in Venezuela, an "expectation" that the chosen career branch will be permanent, particularly with respect to

27. Australia, *supra* note 3, at 6, 9.

28. United States, *supra* note 2, at 7.

29. Australia, *supra* note 3, at 7.

30. West Germany, *supra* note 4, at 9.

31. *Id.*

32. *Id.* at 9-10.

judges.³³ In Hungary and Romania, there are no official obstacles to mobility from one branch to another but changes in the selected career do not frequently occur.³⁴ Likewise, in Japan, there is very little switching, particularly from the career of a practicing lawyer to that of a judge or prosecutor.³⁵ After retiring at age sixty five, however, judges of inferior courts frequently enter private practice or become notaries public.³⁶

V. SCOPE OF THE PRACTICE OF LAW

In most legal systems, lawyers have a monopoly to render legal services to their clients. For example, in the Federal Republic of Germany, a special statute makes it illegal for anyone "to give legal advice or represent a person in court unless he is an admitted attorney."³⁷ There is, however, no uniformity with respect to the scope of matters reserved for the members of the bar. In the common law world and particularly in the United States, the concept of "unauthorized practice of law" is very broad, unless restricted by recent enactments.

In France, as in many other civil law systems, persons not admitted to the bar cannot appear in court but are free to advise their clients on legal matters, to draft contracts, and to enter into settlements. Also, as the Hungarian report rightfully observes, there are many problems in everyday administrative and economic life which have a legal character and are handled by non jurists.³⁸

The problem of whether it is possible to appear in court without a lawyer is a separate question. In general, as stated in the German report, this is permitted, with some exceptions, only in the court of first instance.³⁹ Even if there is no legal impossibility to appear without a lawyer in a higher court, there may be practical impossibilities or the custom may be one of representation by a lawyer. Thus, as in Hungary, "the representation by a lawyer . . . is *never obligatory* . . . [n]evertheless, the parties usually have recourse to the legal aid of a professional jurist."⁴⁰

33. Venezuela, *supra* note 5, at 12.

34. Hungary, *supra* note 6, at 12, 24; Romania, *supra* note 7, at 10.

35. Japan, *supra* note 9, at 3,6.

36. *Id.* at 11.

37. West Germany, *supra* note 4, at 12.

38. Hungary, *supra* note 6, at 1.

39. West Germany, *supra* note 4, at 12.

40. Hungary, *supra* note 6, at 22.

In criminal cases, the accused has the right to have a defense lawyer and, in many jurisdictions, representation is mandated. In Romania, legal assistance is compulsory in cases provided for by law and particularly, if the accused is subject to a penalty of confinement for more than five years, under the age of majority, in military service, or incompetent as determined by the court.⁴¹

VI. CHARACTERISTICS OF LEGAL PRACTICE

In the Communist systems, the practice of law is usually considered a "social institution."⁴² Individual practice is either rare or prohibited and the usual method of work is in teams. In the German Democratic Republic, more than nine tenths of the lawyers practice in *collegia* which is, of course, quite different from a voluntary partnership.⁴³ The establishment of large law firms where partners practice together, share fees, and hire associates on salary is a phenomenon which first appeared in the United States and is now spreading to other countries.

In the relatively brief period between 1948 and 1970, the percentage of sole practitioners in the United States fell from 56% to 37% of the whole number of lawyers; the percentage of lawyers practicing in law firms increased from 25.6% to 36.2%; the figures for 1975 reflect that only 9.1% of lawyers were working as sole practitioners while 43.9% were working in law firms.⁴⁴ In 1969, there were twenty law firms with more than one hundred lawyers; today, there are more than one hundred such firms.⁴⁵

In the Federal Republic of Germany, lawyers are permitted to form partnerships, yet, the majority of lawyers are sole practitioners; in 1972, 30% of lawyers practiced in 2,984 partnerships but only 47 of these partnerships had six or more members.⁴⁶ Similarly, in Venezuela, there are no very large law firms as "[t]he largest barely have thirty lawyers and there are approximately ten which have more than ten lawyers."⁴⁷ The partnership form of practice

41. Romania, *supra* note 7, at 4.

42. East Germany, *supra* note 8, at 16. The Romanian report stresses that, as a promoter of justice, the lawyer performs "a significant social function." Romania, *supra* note 7, at 2.

43. East Germany, *supra* note 8, at 16.

44. United States, *supra* note 2, at 12a.

45. *Id.* at 14.

46. West Germany, *supra* note 4, at 14.

47. Venezuela, *supra* note 5, at 16.

appeared in Venezuela in the 1940's and is slowly becoming more popular, particularly among corporate lawyers.⁴⁸

Many legal offices in Venezuela have five to ten members and these are growing; their basic activity is counseling and business planning rather than trial work.⁴⁹ As noted in the Venezuelan report, in the partnership type firms, the practice of law mirrors a "legal services company;" the attorney members pool their work and employ clerical personnel, accountants, students, and some-time translators.⁵⁰

The Venezuelan report also notes the emergence of another type of service firm in which lawyers play a prominent part. This type of service firm is an interdisciplinary institution where the lawyers constitute the planning and counseling body of an economic group; lawyers work along with economists, engineers, accountants, and other professionals. There are in Venezuela, at the present time, two companies of this kind which employ about twenty lawyers in all.⁵¹

VII. SPECIALIZATION

Specialization among lawyers is increasing in response to the growing volume and complexity of the law. In the United States, the majority of the lawyers in a number of surveys considered themselves specialists in one or more fields of the law.⁵² The institution of a general practitioner who is competent to solve legal problems in diverse areas of law is on the wane; the official recognition of this reality seems to be approaching at a slow pace when compared to the recognition of specialists in the medical field.

Only a few years ago did some states in the United States decide to certify legal specialists in an experimental program.⁵³ The ethical rules of the American Bar Association had forbidden lawyers from representing themselves to be specialists except in certain fields such as patents, trademarks, admiralty and immigration.⁵⁴

48. *Id.* at 17.

49. *Id.*

50. *Id.* at 16-17.

51. *Id.* at 17.

52. United States, *supra* note 2, at 14.

53. *Id.*

54. *Id.* at 14, n. 31.

In the Federal Republic of Germany, it is widely recognized that specialization is necessary yet "the organized bar has for many decades successfully resisted pressures for more liberal regulations that would allow an attorney to hold himself out as a specialist."⁵⁵ The only exception to this is with respect to tax law due to the fear that ground would be lost by the bar to accountants and special consultants.⁵⁶ The Federal Ministry of Justice is contemplating a rule change which would permit lawyers to hold themselves out as specialists in labor, administrative, and social security law.⁵⁷

VIII. LEGAL AID FOR THE INDIGENT

The problem of legal aid for the indigent was neglected for a long time in many countries. In some legal systems, the bar associations would assign lawyers to assist the poor; in other systems, this duty was fulfilled by young lawyers who had not yet acquired the right to practice as regular members of the bar.

In recent years, there has been growing recognition that everyone has the right to legal counsel, even in non-criminal cases. Various governmental agencies in the United States have started legal clinics for the indigent. These clinics are staffed by members of the bar and, in some states, similar clinics operate at law schools. The students participating in these clinics represent clients and are permitted to appear in court under the supervision of a faculty member.

In the Federal Republic of Germany, indigent persons may petition the court for aid either as a party plaintiff or defendant.⁵⁸ The court will grant the petition if two conditions are fulfilled.⁵⁹ The first one relates to the financial condition of the petitioner. If his income level is greater than the established limit, monthly payments representing a contribution to the legal expenses may be required. The second condition is that the petitioner's allegations disclose a *prima facie* case. This procedure is conducted by a lawyer selected by the petitioner; if successful, the court usually appoints the same lawyer as the legal aid lawyer for the case. In the

55. West Germany, *supra* note 4, at 17.

56. *Id.*

57. *Id.* at 17-18.

58. *Id.* at 19.

59. *Id.* at 20.

event the petitioner wins the lawsuit, the lawyer recovers all fees and expenses from the losing party; otherwise, the lawyer is paid from the legal aid fund. Recently, it has become possible for an indigent person to obtain legal advice even when not involved in a court case.⁶⁰

There are many variations in different countries of methods for extending legal aid to the poor. In Venezuela, the method adopted is essentially a legal clinic approach where approximately five hundred lawyers are on the government payroll at fixed salaries.⁶¹ Some of these lawyers are dedicated, but frequently, the fact that they are not paid by their clients, coupled with a heavy case load, makes them insensitive to the client's needs; the lawyers are often reluctant to file certain claims such as those against the Social Welfare Institute.⁶² In general, the quality of services rendered is poor and has thus generated the advancement of suggestions for improvement.⁶³ They include the establishment of mediation centers, the involvement of universities, bar associations, unions, municipalities, and other institutions, as well as the imposition of duties on recent graduates.⁶⁴

In Romania, there are detailed legal provisions for legal assistance to the indigent. Generally, lawyers are assigned to indigent clients by the bar association or by a legal aid bureau; if the case is lost, the lawyer's fees are paid from a special fund allotted by the Ministry of Justice.⁶⁵ The right to free legal assistance ceases with the improvement of the financial condition of the party.⁶⁶

IX. THE ROLE OF JUDGES

In many jurisdictions, the most prestigious position in the legal profession is that of a judge. This is particularly true in the common law world where the judge is considered the "highest priest in the temple of law;" the application and interpretation by judges of the written law is a powerful means of shaping and developing the law itself.

60. *Id.* at 22.

61. Venezuela, *supra* note 5, at 23.

62. *Id.* at 24.

63. *Id.* at 25-26.

64. *Id.* at 26-27.

65. Romania, *supra* note 7, at 4.

66. *Id.*

In a common law system, with some exceptions, judicial precedents have to be followed in accordance with the principle of *stare decisis* which guarantees some degree of consistency, limits judicial arbitrariness, and permits the courts to fill gaps found in statutory provisions. In such countries as England and the United States, higher court judges are greatly revered and seem to incarnate the law itself; the title of a member of the United States Supreme Court is *Justice*.

It is noteworthy that in comparison with other legal systems, there are very few judges in the common law world. In the United States, judges constitute only 3% of the body of jurists;⁶⁷ in Venezuela, this figure is estimated to be 8.65%;⁶⁸ and in the Federal Republic of Germany, the figure is close to 20%.⁶⁹

The most important reason for this phenomenon is the fact that the role of the common law judge is much less active than that of his civil law colleagues; the attorneys prepare the texts of most legal documents, conduct the questioning of parties, witnesses, and experts and prepare and develop a case; the masters, referees, and registrars perform some functions of judicial character even though they do not have the title of judge. In the Federal Republic of Germany, however, the preparation and development of a case lies in the hands of judges.⁷⁰ Even so, the fact is striking that for roughly the same population, in the Federal Republic of Germany there are about 15,500 judges while England manages with about 200.⁷¹

X. JUDICIAL INFLUENCE

Judges in the United States do more than apply and interpret the law. The courts endeavor to strike the balance between the respective scopes of the federal and state powers; the courts test the constitutionality of the state and federal written law. In the area of federal law, this task belongs to the federal courts and ultimately to the United States Supreme Court pursuant to the powers outlined in the Constitution; the union has only those powers which have been delegated to it and all other powers have been reserved

67. United States, *supra* note 2, at 8a.

68. Venezuela, *supra* note 5, at 10-11.

69. West Germany, *supra* note 4, at 4.

70. *Id.* at 9.

71. *Id.*

to the states or the people.⁷²

The division of powers may seem to be a simple concept, yet, it is a complicated principle to implement. The scope of delegated powers, either "express" or "implied," is subject to various constructions and greatly influenced by the holdings of courts, particularly with respect to issues concerning the federal union. Indeed, the position of the Supreme Court has changed frequently with respect to federal and state relations. Thus, it has been said that the Constitution is what the judges say it is.

The general and vague wording of many provisions in the United States Constitution provides a fertile ground for formulation of different theories which may each appear warranted. The judges deciding such issues appear to the public not only as expert jurists but also as arbiters of the federal and state system; the judges formulate the mold into which the relations between the union and its members take shape. The common law practice of publishing majority and dissenting opinions makes it possible to follow the philosophy of the judges.

XI. JUDICIAL QUALIFICATIONS AND SELECTION

There are detailed rules on qualifications of prospective judges in some countries although there are few similar requirements in the United States. There were instances in the nineteenth century, for example, where persons without legal training were called to the bench of the states. This rarely happens today and the role of a justice of the peace, a non-professional who decides trivial cases, has generally been replaced by small claims courts staffed by judges who are law school graduates.

In the common law world, there are no professional judges but professional jurists. In this respect, there is unity in the legal profession. Judges are recruited from among successful practitioners, government lawyers, and sometimes law professors. In the federal system of the United States, judges are appointed by the President with the "advice and consent" of the Senate;⁷³ the nine Supreme Court Justices are appointed for life.⁷⁴ In most of the states, however, judges are elected while in others, they are appointed by vari-

72. U.S. CONST. amend. X.

73. U.S. CONST. art. II, §2.

74. It has been said that these judges never retire and rarely die.

ous methods.

In civil law countries, the profession of judge is a career. Magistrates are civil servants who select their career soon after graduation from law school. Thus, in the Federal Republic of Germany, the decision to enter the judicial career is normally made after the second state examination; in 1979, nearly one fourth of the judges were thirty five years of age or younger.⁷⁵

The judges in the Federal Republic of Germany begin to work in a lower court and are promoted, as are other public employees, with the passage of time and consideration of the quality of service. The first five years of service are considered probationary and are followed by either an appointment or dismissal.⁷⁶ Judicial independence is assured by the principle that once permanently appointed, the judge cannot be transferred, forced into retirement, or dismissed except for cause provided by law.⁷⁷

Although the career of a judge in the Federal Republic of Germany and other civil law countries is promising, it does not attract the most forceful, outspoken, and ambitious personalities.⁷⁸ The civil service mentality and the fact that no concurring and dissenting opinions are published except those in the Constitutional Court does not enhance prestige of a judicial career. "In general, those who become judges are men and women who prefer the security of life-long tenure with a modest salary to the rough-and-tumble of life and the risks of competition."⁷⁹ Another factor which may contribute to the lower prestige of the position is that a most important function exercised by the courts in the common law world, the making of the law, is denied to the civil law judiciary.⁸⁰

In Venezuela, with the exception of the most important judicial functions, the administration of justice was in the hands of laymen until the twentieth century; the most important occupation for jurists was politics.⁸¹ During the twentieth century, a true legal profession emerged in accordance with the European pattern. To-

75. West Germany, *supra* note 4, at 5.

76. *Id.* at 6.

77. *Id.* at 7.

78. *Id.* at 8.

79. *Id.*

80. With the notable exception of Switzerland (article 1 of the Civil Code of 1907); Swiss courts, however, are reluctant to take advantage of this power.

81. Venezuela, *supra* note 5, at 4-5.

day, there is a clear functional specialization in the profession and politics is often of great influence. Judges, for example, are selected and promoted by the political party in power; "in deciding controversial cases which interest the national political parties, the judges are divided along the line of their party affiliations or sympathies."⁸²

In the German Democratic Republic, some qualifications are imposed on judges by the Constitution and the Court Constitution Act. The relevant provisions state that in order to become a judge, the position requires a person "who is faithfully devoted to the people and their socialist state and has a high measure of knowledge and life experience, human maturity, and strength of character. . . ." and "who has acquired a legal training at an educational institution dedicated to that purpose and who has the right to vote."⁸³ Before becoming eligible, the candidate must prove his ability by working for one year as a judge's assistant. The judges are elected by the group of persons serving as the people's representative bodies for the period of the group's term; the judges have the obligation to submit detailed reports on their work to the group and may also be recalled by it.⁸⁴

Similarly, in Hungary, statutory provisions are intended to insure that the judges have high moral character, graduated from a law school, attained the minimum age of twenty four, and have passed a special examination; judges are elected to office by the Presidential Council of the state for an indefinite period.⁸⁵ Consistent with the usual European approach, judges are considered to be independent and also cannot make the law.⁸⁶

Similar requirements with respect to the qualifications of judges are in force in Romania.⁸⁷ The law makes clear that a judge must display "a constant preoccupation to safeguard and enhance socialist legality."⁸⁸ Judges are subjected to the possibility of disciplinary proceedings upon request of the Disciplinary Council; the

82. *Id.* at 30.

83. East Germany, *supra* note 8, at 11.

84. *Id.*

85. Hungary, *supra* note 6, at 13-14.

86. *Id.* at 14.

87. Romania, *supra* note 7, at 5. Prospective judges must have five years of training before election by the People's Council; appointments can also be revoked by this Council. The Supreme Court members are elected by the National Assembly for the length of the term of the Assembly. *Id.*

88. *Id.* at 15.

proceedings are either before the Council or the body which elected the judge.⁸⁹

Romanian judges are independent and expressly required by law to play an active role in court proceedings searching for truth and admitting only proper evidence.⁹⁰ Along with the task of implementing legislative provisions, the judges have the duty to defend the state, socialist and public order, rights of citizens, and to firmly oppose any violation of the norms of social coexistence.⁹¹ Judges are, however, forbidden by express constitutional provisions to make law or question the validity of statutes.⁹²

The position of a judge is also a career in the Japanese system which was modeled on the German system. In this system, while the status of the judges was considered higher than that of practicing lawyers, it was not necessarily more prestigious than that of high ranking administrative officers. Judges and prosecutors were less influential in politics and did not participate in political, economic, or social matters.⁹³

Japan was influenced by the United States after World War II and adopted a new constitution which provides that the courts are an independent branch of government.⁹⁴ The Supreme Court has the power "to examine constitutionality of any laws, regulations, rules or any official acts."⁹⁵ Lower court judges find facts and apply the law based on precedent. Generally, "judges in Japan are quite independent, neutral . . . and they reject undue influence and pressures from any directions. Therefore they are more respected than other legal professions."⁹⁶

Judges in Japan are appointed by the Cabinet from a list of persons nominated by the Supreme Court.⁹⁷ The term of office is ten years with the possibility of reappointment; during a term, they may be impeached or declared mentally or physically incom-

89. *Id.* at 15-16.

90. *Id.* at 7.

91. *Id.*

92. *Id.* at 8.

93. Japan, *supra* note 9, at 3.

94. *Id.* at 3-4.

95. *Id.* at 12.

96. *Id.* at 11.

97. *Id.* at 10. The members of the Supreme Court are appointed by the Cabinet. The Chief Justice is nominated by the Cabinet and appointed by the Emperor. The Constitution provides that these appointments must be confirmed by the voters in the next parliamentary elections and, to date, there has been no instance of rejection of a judge. *Id.* at 11-12.

petent to perform their duties.⁹⁸ The judges constitute a special class of senior civil servants and are under the control of the Supreme Court which determines judicial promotions.⁹⁹ In the Supreme Court, out of fifteen seats, five are reserved for career judges, five for attorneys and five for other candidates such as career diplomats, prosecutors and professors.¹⁰⁰

XII. PARTICIPATION OF LAYMEN

In most countries, laymen participate in the administration of justice in various degrees and under different circumstances. Thus, in England and France, they sit together with regular judges in important criminal cases. In the United States, the Constitution provides for *juries*. There is a clear division between the functions of judges and *jury* and they do not deliberate together. The *jury* finds the facts of the case based on evidence presented and the judge applies the law to these facts. This method applies both to criminal and civil cases unless both parties waive their right to a *jury*.

In many Communist countries, the citizens are called to sit in court along with the regular judges. For example, in the German Democratic Republic, the courts of first instance are composed of one professional judge and two *assizes* (lay judges).¹⁰¹ There also exists as part of the court system a set of about 30,000 honorary social courts called *dispute commissions* in enterprises and *neighborhood commissions* in residential areas. These commissions are staffed by laymen and decide minor cases involving various disputes and breaches of the law.¹⁰²

XIII. ROLE OF THE PROSECUTION

All jurisdictions are in agreement with respect to the role of the prosecutors. These jurists defend the legal order against criminal encroachments and initiate proceedings for the imposition of sanctions on the law breaker. In various systems, there are, of course, differences in the classification of illegal acts and the role of

98. *Id.* at 10.

99. *Id.* at 10-11.

100. *Id.* at 12.

101. East Germany, *supra* note 8, at 4.

102. *Id.*

the prosecutor may be broader or narrower than that of a colleague elsewhere.

In the United States and England, the targets of the prosecutors are the common law criminals and persons who engage in activities which threaten the overthrow of the government by force. The institution of the prosecutor, however, is not established to protect the existing political system from change provided for by lawful and peaceful means. Thus, the political role of the prosecutor is much weaker than in those countries where constitutions or other legal rules provide for a determined system of government or vest all power in one political party. In such systems, the most important function of the prosecutor is to discover any possible threat to the established state, stop the threat, and have those opposing the status quo eliminated from the public life of the country. Therefore, the prosecutor becomes a prominent, and frequently dreadful person in the political scene.

In the United States, there are no career prosecutors. In conformity with the idea of unity of the legal profession, no special training or examination is required. Frequently, the position of prosecutor at the lower levels is viewed as a step towards a legal career in other branches of the profession, particularly in criminal law. In general, the prestige of the prosecutor is lower than that of judges and well established lawyers.

On the contrary, the prevailing civil law approach is to treat the position of a prosecutor as a permanent one. Thus, in the Federal Republic of Germany, prosecutors are civil servants whose recruitment and career pattern are similar to that of judges. Exchanges between the career lines of judges and prosecutors are frequent, particularly in the early years of the career. It is rare, however, for either judges or prosecutors to enter private practice, particularly after serving some time in the public service.¹⁰³ Due to the active role of the judge in civil law countries, the role of the prosecutor is much less vigorous than in common law countries;¹⁰⁴ in the United States, for example, the existence of *juries* calls for lively participation of the lawyers in the proceedings.

In some countries, the role of the prosecutor goes considerably beyond criminal investigation. In Hungary, the prosecutor's general function is to supervise the enforcement of the "socialist law

103. West Germany, *supra* note 4, at 9-10.

104. *Id.* at 10.

and order" and is allowed to take part in civil court proceedings as well as exercise "supervision over the legality of the activities of a legal charater of State, social and cooperative organs."¹⁰⁵ In the event the prosecutor notices an infringement upon the law, there is the duty to stop it; proper corrective action may be ordered either by a superior or a court.¹⁰⁶

In Hungary, the prosecutor may also intervene in civil actions such as domestic and guardianship cases although such instances of intervention are infrequent.¹⁰⁷ The Chief Prosecutor plays a significant role in the preservation of the legal order; this position includes the authority to file objections on legal grounds to any legally binding judicial decisions if it is determined that they infringe upon the law or are unfounded.¹⁰⁸ The Supreme Court rules on the conclusions of the Chief Prosecutor.¹⁰⁹

Likewise, in the German Democratic Republic, the role of the prosecutor is not only to enforce the criminal law, but also to supervise legality in the functioning of all institutions and state organs.¹¹⁰ There is a similar situation in Romania where a statute states that public prosecutors contribute "to the education of citizens in the spirit of observing the law and social co-existence rules."¹¹¹ In Japan, the prosecutors may also become parties *ex officio* in some civil cases along with their criminal law duties.¹¹²

XIV. ROLE OF THE NOTARY

Generally, the role of most legal professions is similar in various jurisdictions; the contrary is true with respect to notaries. The position of the notary in the civil law world, a well established jurist who specializes in drafting certain categories of transactions, has no counterpart in the common law where the role is assumed by lawyers. Typically, in England and the United States, a notary public is a person in a non-legal profession who, on a part-time basis, certifies the authenticity of signatures on legal documents. It

105. Hungary, *supra* note 6, at 15-16.

106. *Id.* at 16.

107. *Id.* at 16.

108. *Id.* at 17. The Chief Prosecutor is selected by the Parliament for a five year term. The person selected then appoints lower level prosecutors for an indefinite term. *Id.*

109. *Id.*

110. East Germany, *supra* note 8, at 12.

111. Romania, *supra* note 6, at 2.

112. Japan, *supra* note 9, at 13.

may be assumed, with few exceptions, that a notary public has no legal training. Often, the lawyers and judges in both the common law and civil law systems do not realize this fundamental difference in the institution of a notary in the two legal worlds; serious confusion and misunderstanding may therefore result.

In the Federal Republic of Germany, as in other civil law countries, the notary is an important figure in the legal profession. A notary is required to possess the same qualifications required of candidates for judicial office and the number of notaries is limited.¹¹³ In some of the German states, lawyers may also be admitted to the exercise of profession of the notary.

Notaries in the German states have the exclusive right to perform certain acts such as certification of a signature, attestation to a declaration or agreement for transactions involving the sale of real estate, a promise to make a gift or a contract for marriage. Despite the validity of holographic wills in Germany, notaries often draft and attest to their clients' wills.¹¹⁴ It is the duty of a notary to ascertain the true intention of the parties, advise them of all legal aspects and consequences of a transaction, protect each party from being taken advantage of in the course of the transaction and draft all statements in proper legal form.¹¹⁵

European notaries often have a monopoly of notarial practice in their territory and are appointed to their position only when a vacancy occurs. A notary typically employs a number of persons in an office and has a higher social standing than that of a practicing lawyer.

In the German Democratic Republic, the main premises on which the institution of the notary is founded are similar to those in the Federal Republic of Germany. Some important functions of the notary differ, however, and include certification of inheritances and estates, issuance of letters of administration, safekeeping and reading wills, and mediation in estate distribution. In addition, notaries are authorized to initiate and follow through a guardianship proceeding in the case of mental incompetency or absence, and also, to accept deposits in connection with the settlement of certain financial transactions.¹¹⁶

113. West Germany, *supra* note 4, at 21-22.

114. *Id.* at 22.

115. *Id.*

116. East Germany, *supra* note 8, at 14.

Essentially, the role of the notary is to extend legal help to parties in specified, uncontested transactions and to "carry out tasks of the civil administration of the law . . . in the interest of safeguarding social legality in certain relations of importance for society. . . ." ¹¹⁷ The qualifications of a notary are the same as those applicable to the judges and prosecutors. ¹¹⁸

The role of notaries in Hungary and Romania is the same as in the German Democratic Republic. Notaries in Hungary are considered to be civil servants and receive a salary from the state in contrast to notaries in civil law systems who derive income from client fees. ¹¹⁹ In Romania, the notarial office was established as an independent state institution in 1950 with laws detailing all functions which the notary is authorized to perform. ¹²⁰

In Japan, notaries were introduced in 1886 under the French influence but in 1908, the law was amended to follow the German pattern. ¹²¹ An interesting feature of the Japanese system is that most notaries are appointed from among judges and prosecutors who are close to retirement. ¹²²

XV. CORPORATE IN-HOUSE COUNSEL

An ever growing number of law graduates work for business and industrial enterprises, usually corporations, as salaried legal counsel or executives. In the United States, corporations employed 6.3% of all lawyers in 1951, 9.3% in 1960, and 11.4% in 1970. ¹²³ In Australia, corporate counsel, as well as government lawyers, "are becoming major sectors of the profession. . . ." ¹²⁴ A corporate lawyer in Venezuela may be termed as "an important employee who intervenes as an adviser in the most important decisions of the employer." ¹²⁵

In the Federal Republic of Germany, "the importance of house counsel in German business life cannot be overestimated;" banks, insurance companies and most of the larger industrial corporations

117. *Id.* at 14-15.

118. *Id.* at 15.

119. Hungary, *supra* note 6, at 15.

120. Romania, *supra* note 7, at 10-11.

121. Japan, *supra* note 9, at 14.

122. *Id.*

123. United States, *supra* note 2 at 12a.

124. Australia, *supra* note 3, at 1.

125. Venezuela, *supra* note 5, at 16.

have their own legal departments.¹²⁶ The German approach to the admission of in-house counsel to the bar is restrictive and regulated by the law on lawyers, as interpreted by the courts. One of the admission requirements is that the lawyer's service to the employer must be characterized by a fair amount of independence and responsibility and also allow time for the lawyer to do other legal work. As a result, only about 30% of the lawyers employed by various enterprises are members of the bar.¹²⁷

In the common law systems, corporate lawyers are members of the bar. In some civil law countries, particularly in accordance with the French tradition, lawyers are not permitted to work at salary along with other employees of an enterprise; lawyers must exercise their profession independently of any supervision on the part of the corporate or other "bosses" and may not be subjected to the obligation of taking orders or instructions.

Japan follows this civil law tradition. The number of lawyers specializing in corporate law has grown in response to the expansion of Japanese business and industries.¹²⁸ Many of these lawyers are not included in the staff of the corporations; they have independent offices and advise their clients on corporate, patent, contract, and international matters.¹²⁹ In recent years, however, organized legal departments of corporations have emerged and serve with advice and consultations upon request of other departments; the in-house lawyers cannot appear in court, as mentioned above, due to the fact that Japanese law prohibits lawyers to work as employees.¹³⁰ "In short, practice relating to corporations and economic activities of enterprises are becoming similar to American ones. Consequently corporate lawyers of big enterprises are becoming one of the leading professions in Japan."¹³¹

XVI. LAWYERS IN GOVERNMENT SERVICE

In many countries, there is a recent movement of lawyers "away from private practice into corporate employment and gov-

126. West Germany, *supra* note 4, at 23-24. Frequently, one or more fully employed lawyers are also on the payrolls of institutions such as labor unions, employer's associations, automobile clubs, home owner's associations, and trade associations. *Id.*

127. *Id.* at 23-24.

128. Japan, *supra* note 9, at 17.

129. *Id.* at 9.

130. *Id.*

131. *Id.* at 4.

ernment service. . . . New government initiatives appear. The state accepts responsibility for major social problems which previously were left to chance and private ordering. A massive bureaucratic structure develops on the federal, state, and local levels. . . ."¹³² Typically, in common law countries, government lawyers are members of the bar. In civil law countries, these lawyers fill various administrative positions without having the status of attorneys.

In the Federal Republic of Germany, a background in law is preferred for persons in government service, particularly in the higher civil service positions. The main reason for such a preference is the conviction "that the basic skills of analyzing a situation, of conducting a discussion of specialists, and of evaluating the admissibility and legality of state action are best acquired through a programme of legal instruction."¹³³

In Communist countries, most, if not all enterprises are state owned. Thus, lawyers who work for them are on the state payroll. These *legal advisors* receive orders from the managers of the enterprise and also are obligated to give legal advice, safeguard socialist legality, and implement the rights of the working people.¹³⁴ Further, as the German Democratic Report states, the legal advisor has the obligation "to explain to the workers in the enterprise the socialist law and to coordinate the measures of legal propaganda to be carried out within the enterprise."¹³⁵

The importance of having persons with "legal training and qualifications" in Hungarian public administration is emphasized in statutory provisions which require that some positions be filled by law graduates; often, filling these positions has been difficult due to the stringent statutory requirements.¹³⁶ In Romania, two categories of government jurists merit attention. Lawyers in the legislative branch of government consist of permanent and temporary counsellors, and experts and expert advisors, all of whom provide qualified assistance in the preparation and coordination of the legislation.¹³⁷ Jurisconsults and legal counselors work within minis-

132. United States, *supra* note 2, at 11-12.

133. West Germany, *supra* note 4, at 10-11. Recently, this "lawyers privilege" weakened.

134. East Germany, *supra* note 8, at 19.

135. *Id.*

136. Hungary, *supra* note 6, at 23.

137. Romania, *supra* note 7, at 13.

tries or other central bodies "safeguarding the patrimonial interests of the unit. . . ."¹³⁸ Neither category of jurists may appear in court.

XVII. PROFESSORS OF LAW

One of the most important functions that jurists may perform is the teaching of law. The need for lawyers and professionals with a legal background has resulted in the growth in numbers of both law students and professors. As law schools offer more specialized courses, the number of teachers on the faculty increases in response to this need for specialized instruction.

Clearly, the duty of law school professors is to teach the law. This function is not understood in the same way in various systems and thus, the realities of legal education differ in accordance with local traditions and rules. In the United States, a student entering the usual three year law school program must first have completed approximately four years of college. Although the law school program is professionally oriented with an emphasis on skills necessary to begin a law practice immediately after graduation, there are elective courses on legal philosophy, history, law and economics, law and medicine, etc.. Uniformity is absent in the university systems in the United States because each of the fifty states has its own rules and many law schools are private institutions which have their own customs and regulations.

This program is in sharp contrast with the continental system where law studies begin after high school. These law studies usually take four years and the purely legal courses are supplemented by offerings such as history, economics, and political science, which are traditionally studied in United States' colleges. Law graduates will often spend the first few years after graduation working under supervision of a senior colleague.

While there is some interchange between teaching and other branches of the legal profession such as judges and practicing lawyers who engage in part-time teaching, typical law professors in the United States devote full time to scholarly work which includes classroom instruction, research leading to publication, and activities in professional and learned societies. Most law professors belong to the bar although the time that they may devote to private

138. *Id.*

practice is limited by rules of the Association of American Law Schools.

A person entering the teaching field usually receives the title of assistant professor. The next step before achieving the level of professor is the position of associate professor. At some point, a professor is granted tenure which is a life appointment and thus, the professor cannot be dismissed except for good cause.

Law professors fulfill two important functions: the formation of the minds of the young generation and the preparation of contributions to legal literature which often develop the law. The status of the teaching profession in the common law is not as high as in most civil law countries. Priority in prestige and social standing is given to the judges in the common law systems as compared to the continental systems where legal scholars who teach the law are generally considered prestigious leaders in society. In the continental systems, the very careful selection of teaching candidates, the difficulties involved in obtaining the position of law professor and the limited number of full fledged faculty members contribute to the esteem which they enjoy in the society.

Until World War II, law professors enjoyed great esteem in Japan.¹³⁹ They were considered as authorities in their fields of expertise and had a higher prestige than judges and practicing lawyers. There were only four or five public universities with law schools and several private law schools throughout the country. After the war, however, with the proliferation of law schools resulting from the American influence, the number of law teachers increased and their status became somewhat lower.¹⁴⁰ In general, law professors in Japan do not practice law; they exert influence on lawyers and the development of the law through their writings.¹⁴¹

In some countries, and particularly in Latin America, law instructors are drafted mainly from among legal practitioners and teach on a part-time basis. In Venezuela, about 600 of the 15,000 lawyers have law school appointments but only about one fourth teach on a full time basis.¹⁴² In general, the teaching is practice oriented and has been criticized for lack of emphasis on "abilities such as searching for information, reasoning, and problem

139. Japan, *supra* note 9, at 20.

140. *Id.*

141. *Id.*

142. Venezuela, *supra* note 5, at 11.

solving."¹⁴³

In Communist countries, law school curricula offer many courses on the *Marxist-Leninist* approach to society in order to supplement the learning of various disciplines. In Romania, for example, the teaching includes "the latest gains in the field of legal sciences, culture and human knowledge, scientific socialism and the historical dialectical materialistic conception on world and life."¹⁴⁴ The teaching staff also has the obligation "to steadily raise the level of professional and political ideological training. . . in the spirit of love and devotion to the homeland and the people, [and] of the lofty ideals of socialism and communism."¹⁴⁵

Similarly, in the German Democratic Republic, the instructors must endeavor to train graduates to be qualified in the area of law and also to be firm in their political, ideological, and ethical formation.¹⁴⁶ Contrary to the traditional continental approach, it is believed that there must be a close connection between the law in books and the law in practice. Thus, faculty members may be temporarily delegated to judicial organs and practitioners may be appointed to teaching positions.¹⁴⁷

XVIII. LAW AND POLITICS

In the traditional legal systems, the role of members in legal professions is to implement the law in the manner called for by the particular position that they hold; this task is separate from politics. Many legal professional are active in politics, but in so doing, are exercising a right which they share with all other citizens.

On the contrary, in the Communist legal systems, jurists are expected to promote the political approaches of the system in which they live. According to the official theory, the law cannot be disassociated from politics. In the countries which became Communist after World War II, governments made special efforts to replace the old class of legal professionals with a new generation of lawyers who were formed in post-war schools and universities. In Hungary, for example, the image of the "bloodsucker lawyer" and "incorrigible bureaucrat" was to be transformed into that of an ac-

143. *Id.* at 8.

144. Romania, *supra* note 7, at 14.

145. *Id.* at 15.

146. East Germany, *supra* note 8, at 21.

147. *Id.* at 20.

tivist imbued with socialist ideology who "joined vigorously in the carrying out of State organization and legislative tasks connected with the social transformation."¹⁴⁸ The ranks of the Hungarian legal professions became filled with the youth of the "worker-peasant" class.¹⁴⁹

In countries in which, at least in principle, law is disassociated from politics, actual practice may deny the theory. The Venezuelan report notes that the professional legal activity is interwoven with politics; the administration of justice is costly and slow so that "the system thus favors those who can pay the costs and wait the longest time with least damage to their assets."¹⁵⁰ In Venezuela, the selection and promotion procedure of judges is marked by the political party system which, the author of the report notes, may indicate that some judges are sensitive to the expectations of their political patrons: "[M]oreover, it could be empirically demonstrated that in deciding controversial cases which interest the national political parties, the judges are divided along the line of their party affiliations or sympathies."¹⁵¹

The questions which naturally follow this proposition, however, are in how many cases do political parties have an interest, and what may the so called "political patrons" expect from a judge in an average civil or criminal case? Probably, there is no such interest in the majority of situations. Aside from this, it is questionable if a judge can do much to satisfy a "political patron" if another political party has taken power.

XIX. LEGAL ETHICS: ADVERTISEMENTS AND CONTINGENCY FEES

In many jurisdictions, the principles of professional ethics which developed in the course of years are usually the subject matter of statutes or rules of the bar associations. For example, the American Bar Association has enacted *Cannons of Professional Ethics* and the Japanese Federation of Bar Associations has adopted the *Lawyers' Ethics* as a code of conduct for lawyers

148. Hungary, *supra* note 6, at 5.

149. *Id.*

150. Venezuela, *supra* note 5, at 30. Political life is also interwoven with persons having legal training. From 1936 to the present, seven of the fourteen presidents of the country have received full or partial legal training; between one and two thirds of the cabinet members have been lawyers; and between 25% and 40% of the members of the National Congress are jurists. *Id.* at 31-32.

151. *Id.*

which is based on the American code.¹⁵²

Advertising by lawyers in most jurisdictions, including the United States and Federal Republic of Germany, has traditionally not been permitted. Recently, this well accepted approach has been challenged. In particular, the advertising ban was not strictly adhered to by some practitioners in the United States and, as a result, a few lawsuits were instituted. One very significant case heard by the United States Supreme Court resulted in the holding that some form of advertising is protected by the free speech clause of the First Amendment of the Constitution and thus, restraints on this right are unconstitutional.¹⁵³

Another ethical question which has not found a uniform answer in the several jurisdictions involves contingent fees. The general continental approach, derived from the Roman law disapproval of *pactum de quota litis*, bans legal fees based on the percentage of recovery. This ban is also in force in some common law systems as Australia¹⁵⁴ and England.

In the United States and most Canadian provinces, contingent fees are widely accepted in certain types of cases. Often, the lawyer and client reach an agreement establishing the fee. In the absence of such agreement, there are some official tables established either by statute or bar rule which serve as a guide.

XX. LEGAL ASSOCIATIONS

In many countries, supervision of the performance of duty by lawyers is exercised by integrated bar associations; the membership in these associations is often mandatory. The bars are not integrated in some states and thus, membership is optional. Examples of countries having integrated bars include France, the Federal Republic of Germany,¹⁵⁵ Venezuela, Japan,¹⁵⁶ and the

152. Japan, *supra* note 9, at 21.

153. *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

154. Australia, *supra* note 3, at 26. However, in Australia, "[t]here is a feeling that fee scales are out of date" and "that lawyers should be able to collect contingent fees. . . ." *Id.* at 26.

155. West Germany, *supra* note 4, at 15. There is also a voluntary association, the *Deutscher Anwaltverein*, which promotes the interests of the profession, prepares comments on pending legislation related to the bar, and sets up courses in continuing legal education. *Id.* at 16. The Lawyers Associations of the German Democratic Republic has similar goals. East Germany, *supra* note 8, at 22.

156. Japan, *supra* note 9, at 8. In Japan, acceptance to membership in a bar association

United States. There exist in the Federal Republic of Germany a multiplicity of bar associations.¹⁵⁷ In spite of the supervisory and disciplinary role bar associations hold over their members, typically, important sanctions and disbarment may only be imposed by the courts.

The activities of the associations in certain countries are multifarious. In Venezuela, for example, the *colegios* organize refresher courses, publish magazines and books, run social clubs, and engage in sporting and cultural activities.¹⁵⁸ Also, in Hungary, the twenty bar associations have diversified functions ranging from imposing disciplinary measures to advising on current legislation.¹⁵⁹ The supreme autonomous organ of the Hungarian lawyers is the National Lawyers' Council which is composed of the presidents of the bar associations and elected representatives.¹⁶⁰

XXI. THE EFFECTIVENESS AND GROWTH OF THE LEGAL PROFESSION IN SOCIETY

In most traditional governmental systems, the functions ascribed to the legal professions are considered vital. The law is treated as an autonomous set of social norms binding equally on everyone, rich or poor, governing or governed. The legal rules could not be enforced without the legal profession. Those responsible for the elaboration of these rules and the administration of justice are particularly entitled to the esteem of their fellow citizens and enjoy a high prestige. Depending on the jurisdiction, this applies, in the first instance, to judges and legal scholars.¹⁶¹

There are, however, differences in some countries. In Japan, where well disciplined society and a closely knit family life tended to solve disputes by extra-judicial methods, the importance of the legal professions and the law itself was not too great. Prior to the advent of World War II, people were reluctant to go to court and human relations were governed by customs which had their own

is a prerequisite to legal practice. *Id.*

157. West Germany, *supra* note 4, at 15-16.

158. Venezuela, *supra* note 5, at 10.

159. Hungary, *supra* note 6, at 9.

160. *Id.*

161. According to the Hungarian report, at present, the moral prestige of Hungarian judges and prosecutors is high and the judge's profession has been "unbrokenly appreciated as the highest. . . ." *Id.* at 25.

"principles of conduct."¹⁶² Although some branches of Japanese law had been strongly influenced by European methods of dispute resolution by the end of the nineteenth century, real progress in the improvement of the status of the legal professions did not occur until post World War II; after the war, the Japanese Constitution provided for the judiciary to become an independent branch of government and to have "the power of judicial review of constitutionality."¹⁶³

Even in societies which keep the law in high respect, reproaches are frequently leveled against the legal profession for the way justice is administered.¹⁶⁴ Most criticism is directed at the high costs of litigation, rigidity of procedure, excessive formality, and slow progress of proceedings. In 1906, the great American legal scholar, Roscoe Pound, wrote an article entitled *The Causes of Popular Dissatisfaction With the Administration of Justice* in which he discussed various shortcomings of the judicial system in the United States; many of his comments are applicable to other countries and are still timely.¹⁶⁵

The congestion of the courts and the ensuing delays in the administration of justice is a phenomenon which plagues most countries in the world. It has been said, with good reason, that the delay of justice is the denial of justice. If one of the essential functions of the legal professions is the administration of justice, it is clear that it cannot be properly exercised with such serious impediments as mentioned above. In many countries, as in Venezuela, for example, "there is a general perception that justice. . . is especially costly and slow."¹⁶⁶

Practicing attorneys have merited more criticism than any other member of the legal professions. According to the Australian report, monetary considerations rather than the achievement of so-

162. Japan, *supra* note 9, at 21.

163. *Id.*

164. Throughout the history of some judicial systems, there have been various means of responding to necessary change. In medieval England, for example, the writ system became ossified and had to be excepted to by the application of the flexible notions in equity. In the course of time, equity merged with the law and became equally stiff. Evidentiary rules are often cited as an objectionable area in common law systems because they are unduly complex, filled with loopholes and often serve to obscure the truth rather than facilitate its discovery.

165. 40 AM. L. REV. 729. The shortcomings of judicial procedure are the main reasons for the development of extra-judicial methods of settling disputes and for the frequent resort to arbitration.

166. Venezuela, *supra* note 5, at 30.

cial justice are uppermost in the minds of certain lawyers; it is difficult for the clients of these attorneys to obtain redress in the event their lawyer has improperly handled a case.¹⁶⁷

Nevertheless, the role played by the lawyers in most countries is necessary for the society and is generally appreciated as such. Aside from legal work, many lawyers are involved, either individually or through bar associations, in charitable activities and other socially desirable projects.

The technological progress and complicated social problems in modern life require more legal regulation than ever before. Thus, there arises a need for more lawyers and other members of the legal professions.¹⁶⁸ In Australia, the number of lawyers "is increasing considerably faster than the population as a whole."¹⁶⁹ In Hungary, a country sometimes called "a nation of jurists," the legal diploma has a "generally qualified" character which enables persons to succeed in almost every intellectual occupation.¹⁷⁰

XXII. CONCLUSION

With the increased scope of duties of the legal professions and the growing number of persons having qualifications in these professions, it is imperative that the moral standards of the jurists be as high as possible. Their main duty is to ensure that the law rather than violence regulates the relations between man and society. On the international scene, legal professionals have the lofty

167. Australia, *supra* note 3, at 22.

168. United States, *supra* note 2, at 11-12. The report states that "[t]he relative size of a nation's legal profession . . . correlates . . . closely with the level of economic development." *Id.* at 8. "We rely more heavily on statutes and regulations, and courts play a greater role . . . in matters that affect all of us. Law in modern society tends to have both a much wider scope of application, in regulating contractual relations and bureaucratic organization, as well as a deeper penetration by affecting all socioeconomic classes." *Id.* at 3-4.

169. Australia, *supra* note 3, at 3. The author comments as follows: "On the whole, it seems that the legal profession is rapidly expanding, indicating that it is playing an increasingly important, if rather narrow, role in Australian society. . . . The increasing legalizing of our rights conscious welfare society as well as the increasing expansion of government regulation, strongly suggests that lawyers are being called upon much more so by society than was previously the case." *Id.*

170. Hungary, *supra* note 6, at 4. The main reason for the increase is ascribed by the report to the damages in the economic structure of the country: "One of the indirect effects of the new system of economic management in Hungary manifested itself in the fact that both the jurisdictional and State organizational work. . ." called for the participation of jurists and those tasks "became more and more substantial and intricate." *Id.* at 6.

task of promoting the settlement of disputes between nations by the application of the law rather than by recourse to war.