

THE FRENCH MAGISTRACY

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There exists in France two kinds of tribunal which are quite distinct: *l'ordre judiciaire* and *l'ordre administratif* (*Cour des comptes, Conseil d'État, Tribunaux administratifs*). In principle, the former resolves disputes between individuals while the latter exercises juridical supervision of the Administration. But in practice the situation is more intricate. Consequently, it has been found necessary to create the *Tribunal de conflits* to determine, if appropriate, whether the litigation relates more closely to the administrative or to the judicial jurisdictions.

This article is concerned solely with magistrates of the judicial tribunals. Despite the complexity of the French judicial pyramid there is only one kind of magistrate. The civil jurisdiction includes the *tribunal d'instance* (formerly Justice of the Peace), the *tribunal de grande instance* and the *Cour d'appel*. The criminal jurisdiction includes the *tribunal de simple police* (dealing with *contraventions*), the *tribunal correctionnel* (dealing with *délits*), the *Cour d'assises* (dealing with *crimes* and which, in fact, is a chamber of the *Cour d'appel*) and the *Chambre d'accusation*.

All those tribunals exercise what is called jurisdiction *de droit commun*¹ (which has nothing to do with English common law). A tribunal with jurisdiction *d'exception* is competent only in respect of certain matters specially conferred on it by decree, for example, the *Haut Tribunal militaire* (reserved for marshals, admirals and general officers) and the *Cour de sûreté de l'État*, established in 1963, and uniquely concerned with questions relating to the security of the State.

The decisions of tribunals *d'instance* or *de grande instance* may be reversed on appeal. All litigants can demand, in effect, to be judged a second time by a *Cour d'appel* if dissatisfied with the decision at first instance or of the opinion that the penalty imposed is too severe. There are twenty-seven courts of appeal distributed throughout France. No appeal lies from the judgment of a *Cour d'assises*.

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¹ It is important to note the numerous *tribunaux professionnels* which are rarely composed of magistrates, e.g., the *tribunal de commerce* (lay judges elected by the Chamber of Commerce), the *conseil de prud'hommes* (a kind of trade council representing employers and employees), the *tribunal paritaire des baux ruraux* (agricultural rent tribunal) and the *Commission de sécurité sociale* (employers and insured employees). The commercial tribunals deal with more than 100,000 cases annually—bankruptcy, liquidations, etc., and the *Prud'hommes* 50,000.

Control of the legality of judgments is vested in the *Cour de cassation*, the supreme judicial tribunal of France sitting in Paris. It does not constitute a jurisdiction of appeal for the reason that the facts presented to it are not questioned. The Court merely examines the judgments submitted in order to see if they have been rendered in conformity with the law or if there has been a wrong interpretation of the Code by the subordinate judges. If the judgment is faulty the *Cour de cassation* breaks it (*le casse*), i.e., annuls it, and sends the case back to be tried before a tribunal of equal standing with the lower court, but never before the same magistrates.²

The judicial edifice carries the mark of the Napoleonic era and its structure has scarcely changed during 150 years despite numerous projects of reform. But in 1958-1959 some important reforms took place which not only affected the structure of the courts, the codes of civil and criminal procedure, the venerable penitential system and the status of the magistracy, but also instituted a new scheme of training for judges by the opening of the *Centre national d'études judiciaires* in Bordeaux.³

It is of interest to recall the long-established distinction between the two great branches of the magistracy, namely, the *magistrat du siège* (literally, the magistrate seated on the bench) and the *ministère public* (the public prosecutor), often referred to as the *magistrature debout* or the *parquet* because he stands when addressing the court. The judiciary is numerically three times larger than the *parquet*⁴ but both branches of the magistracy are recruited from the same source and wear the same regalia. Transfer from one branch to the other is frequent with an equivalence of status and salary. In fact, the only terms which define the two categories of *collègues* (colleagues) are those of *juge* (or *président*) and *substitut* (or *procureur*) at the level of the *tribunal*; of *conseiller* (or *président*) and *avocat général* (or *procureur général*) at the level of the *Cour d'appel* or of the *Cour de cassation*.

If, having prepared a judgment, the judge is transferred to another office it is necessary either to rehear the case or to invite him to resume his place on the bench in order to deliver judgment. A decision can only be taken by a tribunal composed of judges who have been present at the discussions (*débats*) in court.

The judiciary is under the authority of the *Conseil supérieur de la magistrature* in respect of nomination to office on the bench and for

² In 1959-1960 the *Cour de cassation* gave 12,781 decisions.

³ I am indebted to the semi-official handbook *Le Nouveau Visage de la Magistrature* by George Verpraet, published in 1967 by the French Ministry of Education in collaboration with the Ministry of Justice, for most of the information contained in this article. I have tried to retain in translation the atmosphere of the original commentary.

⁴ There are about 4102 magistrates (8% of whom are women) in the French judicial corps, one *magistrat de parquet* for every three *magistrats du siège*. There are more than 6500 *avocats* (of whom 18% are women) and about 6400 *notaires* (0.5% only are women).

discipline, and is controlled by the *Ministère de la Justice* (Ministry of Justice) in purely administrative matters. In regional affairs the magistrate is answerable to the president of the *Cour d'appel*.

The *magistrat du Parquet* (prosecutor), so-called because his table used to be placed on the *parquet* (floor) of the court like that of the *avocat* (barrister) and not, as is now the case, on the same level as the judiciary, represents what is popularly known as the *ministère public*. He is a public official whose function is to protect the interests of society and, in a general fashion, to be vigilant over the due observation of the law. Acting as a kind liaison between the executive and judiciary the *Procureur de la République* (or the *substitut, avocat général, Procureur général*) is the mouthpiece of the law. He remains an agent of the *Garde des Sceaux* (Keeper of the Seals—another name for the Minister of Justice). The *magistrat du Parquet* is appointed by decree of the President of the Republic, on the advice of the Minister of Justice, and is under the regional control of his *Procureur général*.

The *parquetier* (as he is often called) supervises the smooth working of the criminal process, the execution of punishments and the pursuit of remedies. He is notified of violations of the law by *procès-verbaux* (written reports) addressed to him by the commissioner of police. As a superior officer of the *police judiciaire* (a special branch of the police) he can receive the complaints of those injured and the allegations of third parties. The *Procureur général* attached to a *Cour d'appel* is in charge of the *police judiciaire* within the jurisdiction of his court and he it is (or his deputy) who as '*avocat de la société*', robed in scarlet, delivers the public prosecutor's address to the Assize Court.

In civil cases the *parquetier* sometimes acts as principal or joint party and can require the production of documents in matters affecting, for example, the welfare of children, missing persons, the State, communes, etc. He has, in addition, extra-judicial duties to perform including the inspection of certain establishments and psychiatric hospitals, the verification of official registers, etc.

The *juge d'instruction* occupies a place apart between the judge and the *procureur*. His situation is ambiguous; legally, he is a *magistrat du siège*, in practice he resembles more the *magistrat du Parquet*. He not only collects evidence and controls the police during the investigation, but also exercises a veritable pre-trial jurisdiction. He decides whether to send the accused for trial and, if so, before which particular court. On the other hand, he may pronounce a '*non-lieu*' if he has not been able to assemble sufficient proof. Chosen from the *magistrats du siège*, on the advice of the *Conseil supérieur de la magistrature*, the *juge d'instruction* is placed under the supervision of the *président* of the *Chambre d'accusation*. But the latter can only instruct the *juge d'instruction* to make investigations and not direct him in the steps to be taken. He must exercise a good deal of initiative

in the course of his inquiries, in examining the witnesses in his office, in evaluating the worth of technical and medical evidence, and in guarding scrupulously against the abuse of preventive detention ('no one can be arbitrarily detained': art. 66 of the Constitution). There are nearly 400 *juges d'instruction* among the total of over 4,000 magistrates.

Under the Napoleonic system, once the judge delivered sentence he had nothing more to do with the case. The penal administration was alone responsible for carrying out the punishment. But under the new code of criminal procedure, which came into force in 1959, the judiciary is henceforth associated with the execution of sentence in the guise of an officer, called the *juge de l'application des peines*, who is appointed for three years by the Minister of Justice from the *magistrats du siège* of the *tribunaux de grande instance*. His task is to supervise the application of punishment in respect of individual prisoners accommodated in penal establishments within his jurisdiction and to co-operate with the prison governor, subordinate officials, doctor, psychiatrist, prison educators and social welfare officers. After the prisoner is released this magistrate advises on 'conditional release,' measures of assistance and control, supervision, probation, *etc.* Until recent years it was not uncommon for a judge never to have set foot in a prison and to be quite ignorant of the effects of punishment inflicted by him on the prisoner.

Mention might also be made of the children's courts staffed by a *juge des enfants* (established in 1945) who is a professional judge specializing in juvenile delinquency (about 150 such judges). This tribunal is presided over by the judge assisted by two assessors (not magistrates) and chosen by the Minister of Justice from men and women well-versed in matters of youth and education.

More than 100 magistrates are employed in administrative work, at the Ministry of Justice in Paris, which includes such matters as the elaboration of projects for the reform of the civil, commercial and criminal law, the direction of personnel and supply of equipment, *etc.* The Inspector General of Judicial Services is placed under the direct authority of the Minister of Justice.

The status of the magistrate is now governed by an ordinance of 22 December 1958. Before the reforms of 1953, 1955 and 1958 magistrates were divided into numerous hierarchical scales according to their grade and category of tribunal; a complicated, costly and inefficient system.

Henceforth, the number of grades is limited to two corresponding to the two degrees of jurisdiction, first instance and appeal, and is dissociated from the place of residence and category of tribunal. There are now only '*Juges*' and '*Conseillers*' (puisne judges) comprising the *magistrats du siège*. Advancement always involves a change of employment and sometimes of residence, but the reduction in the number of grades limits the mutations and assures a

greater stability of magistrates. The *magistrat du siège* cannot, without his consent, be transferred from his position even if it is an advancement. The two grades are each divided into two groups containing a number of scales (*échelons*).⁵ The two grades are in fact overshadowed by a third, 'hors hiérarchie', which embraces magistrates of the *Cour de cassation* as well as the highest provincial magistrates (*premiers présidents* and *procureurs généraux*), *présidents de Chambre* and *avocats généraux* of the *Cour de Paris*. These magistrates are themselves divided into five groups. No magistrate can be appointed to the *Cour de cassation* if he is over sixty-eight years of age and if he has not been a *premier président*, *procureur général*, *président* or *premier vice-président* at the Tribunal of the Seine, *procureur* or *procureur-adjoint* of the same tribunal, *président de Chambre* or *avocat général* of a *Cour d'appel*.⁶ Certain classes of eminent jurists, including professors of law of ten years standing, can be appointed directly to the offices 'hors hiérarchie.'

Magistrates may be seconded for certain tasks, e.g., of technical or cultural co-operation with a foreign State or on behalf of an international organization (at present there are almost 200 magistrates thus seconded), but the proportion of the magistrates thus detached must not exceed twenty per cent of the *corps judiciaire*.

A magistrate receives a monthly salary to which is added various *indemnités* (supplements) for such things as place of residence, size of family, motor-car, etc. By English standards the remuneration is very modest. Until 1852 there was no retiring age but a limit has now been fixed at sixty-seven years for all magistrates save those who are members of the *Cour de cassation* in which case it is seventy years. By 1973 it is expected that more than 160 magistrates a year will retire.

The office of magistrate was closed to women until the Law of 11 April 1946. Six months afterwards a mother of eight children took the oath of office as a counsellor of the *Cour de cassation*. Access by women is now on equal terms with men, including the office of *juge d'instruction*. Their influence has been particularly felt in cases of juvenile delinquency. In Aix-en-Provence, Mme Challe, counsellor at the *Cour d'appel*, was the youngest judge in France while her husband was a judge of first instance in Marseille.⁷

Before entering upon his functions for the first time the new magistrate takes the oath of office before a *Cour d'appel*: 'I swear to

⁵ In the *premier grade* (seven *échelons*) there are 822 magistrates; in the *deuxième grade* (nine *échelons*) there are 3035 magistrates.

⁶ In the *Cour de cassation* there are about eighty-five *magistrats du siège* and twenty *parquetier*.

⁷ Women judges are proportionately more numerous in France than in the United States where the magistracy has been open to them since 1924. There exists an *Association française des femmes des carrières juridiques* which publishes a journal *Robes noires*.

well and faithfully fulfil my duties, to guard religiously the secrecy of deliberations and to conduct myself in everything as a worthy and loyal magistrate.' There are, in addition, the annual judicial solemnities in September or October of the *audiences de rentrée* (opening of the legal year) which provide the occasion for discourses delivered by judges on historical and philosophical subjects often quite academic in content.

The Independence of the Magistracy

It is said that the independence of the magistracy is derived above all from the conscience and integrity of the judge himself, primeval qualities of character unlikely to be acquired in any professional school. Nevertheless, those attributes are fortified in France by constitutional and legislative provisions applicable to the judiciary.

They are shortly: (1) the rule of irremovability, an ancient principle of public law which, however, has often been exposed to dangerous attacks under the Empire, the Restoration, the Law of 30 August 1883, and the Law of 17 July 1940. Re-established by ordinance of 13 April 1945 and maintained by the two successive Constitutions, the rule of irremovability is subject to two exceptions: (a) a magistrate who has committed *fautes graves* is liable to penalties (*e.g.*, removal from office) imposed upon him by the *Conseil supérieur de la magistrature*; b) if he is suffering from severe and permanent incapacity so as to be unable to perform his functions he can be compulsorily retired. (2) the *Conseil supérieur de la magistrature* must protect the independence and status of the magistracy. This supreme body, brought into existence by the Constitution of 1946 and preserved in the Constitution of 1958, is charged, *inter alia*, with formulating proposals for the nomination of high judges and advising in the appointment of subordinate judges over whom it exercises discipline under the presidency of the *premier président* of the *Cour de cassation* (in the case of *magistrats du parquet* disciplinary power is wielded by the Minister of Justice acting on the advice of a *commission de discipline*). The *tableau d'avancement* (list of promotions) is communicated to the *Conseil supérieur* for its observations.

The *Conseil supérieur de la magistrature* is presided over by the President of the Republic, assisted by the vice-President, the Minister of Justice, and nine other members designated (no longer elected) by the Chief of State: three members of the *Cour de cassation*, a member of the *Conseil d'État*, three judges from the courts of appeal and other tribunals, and two persons who do not belong to the magistracy.

The office of magistrate is not compatible with the duties of a member of Parliament or other public appointment, nor with any professional and salaried occupation. He may, however, with the

permission of the *président* of his *Cour d'appel*, deliver lectures in law and engage in activities which do not impinge upon his dignity and independence. No magistrate can be nominated to office within the jurisdiction of a *Cour d'appel* in which he has practised during the previous five years as *avocat*, *avoué*, *notaire*, *huissier de justice*, etc. He is prohibited from engaging in political controversy or in the manifestation of hostility to the principle and form of government (in practice the right to strike is not given to magistrates), and he must reside in the locality of the court to which he belongs. The disciplinary sanctions to which he is liable range from a reprimand, and inscription on his dossier, to removal with or without suspension from office.

Two professional associations have for their aim the protection of the independence of the magistracy and its material welfare.⁸ Mention should also be made of the *Conseil de l'Organisation Judiciaire* (composed of eighteen high magistrates) created in 1959 and convoked by the Minister of Justice to consider all questions of judicial organization, including the creation and abolition of *Cours d'appel* or *tribunaux de grande instance*, and to consult with professional associations of judges and other economic and social institutions.

The Centre National d'Études Judiciaires (C.N.E.J.)

The *Centre National*, situated in Bordeaux, is the most recent of the French '*grandes écoles*' and was created on 1 March 1959. Its first students entered on 8 February 1960. It is for the magistracy the equivalent of the famous *École Nationale d'Administration* in respect of the other great branches of the State (*Conseil d'État*, *Cour des comptes*, *Inspection des Finances*, etc.). Placed under the aegis of the Minister of Justice this establishment, of a type quite unique in the world, has received from the legislature the task of giving the greatest efficacy to the technical initiation of the future magistrate while, at the same time, enlarging his general training. The basis of the scheme is that the judge of tomorrow must without hesitation be a technician familiar with all forms of judicial activity. Moreover, he will fail in his duties if he does not dominate and go beyond the confines of his technique. His humane mission requires of him a knowledge above all of life and an understanding of the economic and social milieu, of the great currents of thought and of the rapid transformation of the modern world.

Instead of attachment, as formerly, to a tribunal the future magistrate will henceforth undertake in the capacity of *auditeur de Justice*,

⁸ The *Union fédérale des magistrats*, founded in 1945, publishes a monthly journal *Le Pouvoir Judiciaire* and has an annual congress in May; the *Association de la magistrature*, created more recently, publishes a monthly bulletin *L'Action Judiciaire*. The *Association des auditeurs et anciens auditeurs de justice* also publishes a bulletin and organizes discussions notably on the relationship between the Press and the magistracy. These three associations created in 1966 an organ of liaison to study together professional problems.

during twenty-eight months of study at the *Centre National*, a modern and profound training in the great variety of problems which he will regularly encounter in the exercise of his functions. The curriculum embraces not only private law but also public, financial and social law. Furthermore, it is not confined to juridical knowledge; the *auditeur* will have to complete his training in the economic, social, administrative and even technical fields. The reading of the Code, treatises or manuals of procedure, no longer suffices for a judge. He who holds the sword of justice has need of human experience. This professional education is designed to replace the former system of training and the conditions of work all of which had tended to isolate the magistrate from the rest of the world.

Admission to the Centre National

Recruitment is primarily by way of annual competition under the auspices of the Minister of Justice, the examination embracing general culture and the law. Its purpose is to evaluate the candidate and his personal ideas. Some aptitude for discussion and knowledge of a foreign language are required. A maximum of one-sixth of the number of *auditeurs* may be admitted without competitive examination (*sur titres*) provided they hold particular qualifications and, if necessary, by submitting to an oral examination consisting of a fifteen-minute exposition on a juridical subject before a jury, followed by fifteen minutes free discussion with the same jury. Such qualifications include *docteurs en droit* who have been inscribed for at least three years on the *tableau* (roll) of the order of *avocats* (barristers) in a French jurisdiction, or have for at least three years exercised the profession of *avocat* at the *Conseil d'État* or at the *Cour de cassation*, or are qualified as *avoué*, *notaire* or *greffier* (registrar of a court), or who for two years have been teachers of law in a University Faculty of Law. Certain officials holding the *licence en droit* (the normal four-year law degree) whose competence and activity in the juridical, economic and social domains fit them for the exercise of judicial functions may be admitted under the same conditions.

For the annual competitive examination candidates must (a) possess the *licence en droit*, (b) have enjoyed French nationality for at least five years, (c) be in possession of full civic rights, (d) be of good character, (e) have regularized their position in regard to compulsory military service, (f) have passed a medical test, and (g) be under the age of twenty-seven years on 1 January of the year of competition (and between twenty-seven and thirty-five years in the case of a candidate *sur titres*).

There are extensions of the age limit for candidates having served in the military forces and for those with family responsibilities. The competition is open to men and women. Certain official documents, e.g., birth, nationality, medical, *licence en droit*, and photograph must be produced before the examination.

Preparation for the Competitive Examination by Instituts d'Études Judiciaires

The Institutes of Judicial Studies form part of the Faculties of Law and Economic Sciences in fourteen or fifteen universities. Preparation for the competitive examination is not obligatory but is strongly recommended to prospective candidates. One can register in the Institute as from the third year of the *licence en droit*. In principle, the course is of two years duration but candidates may present themselves for the examination after one year. On leaving the Institute students can obtain the *Certificat d'études judiciaires*, a diploma which is accepted as equivalent to the second part of the examination in the fourth year of the *licence*. Furthermore, students of law registered either for the third or fourth year of the *licence* can now participate in the non-jurisdictional work of tribunals and courts of appeal. These *auditeurs stagiaires* receive a monthly salary in return, thanks to a system of vacations, for work which is required of them. The institution of *auditeurs stagiaires* works in harmony with the teaching programmes of the *Instituts* and *Facultés*.

The competitive examination is held annually from 15 September onwards. No candidate may participate more than three times. 186 candidates were accepted for examination in 1966.

Written Examination

Candidates sit for a written examination at the Cour d'appel in the area of residence. The section on *culture générale* takes the form of an essay (six hours) on a subject appertaining to the general evolution of ideas and political, economic and social matters from the middle of the 18th Century (coefficient 6). Some examples are: 1962—'Noise and imagery in contemporary society'; 1963—'The evolution of the role of youth in French society since the beginning of the Third Republic'; 1964—'Do you think, as does a contemporary economist, that progress is expressed in terms of freedom and not in terms of well-being?'; 1965—'The idea of the upright man in his relations with the social order'; 1966—'Grandeur and misery in the plan of Europe since the 18th century'.

The section on *Droit civil* comprises an essay (five hours) on some branch of the civil law included in the curriculum of the first and second year of the *licence* (law of persons, property, obligations and responsibility) (coefficient 5).

Examples: 1959—'Absolute necessity'; 1963—'Case law as a source of private law'; 1964—'The development of rights of succession of the surviving spouse'; 1965—'The problem of damage in contracts'; 1966—'The legal presumption'.

The section on *Droit pénal* or *Droit public* consists of an essay (five hours) on a subject of the candidate's own choosing and expressed when he submits his application for the examination (coefficient 4).

The final written section is a translation into French (three hours) of a text of general character in a foreign language chosen by the candidate from a list compiled by the Minister of Justice: German, English, Spanish, Italian, Russian (coefficient 2). Coefficient 1 is equal to 10 marks.

Oral Examination

This consists of four interrogations (each of fifteen minutes duration) on various topics connected with the judicial organization, civil and criminal law and procedure, the public service and national enterprises, commercial and labour law. Each interrogation carries a coefficient of 2. Finally, there is a twenty-minute conversation with the jury taking for its point of departure a ten-minute commentary by the candidate on a text of general character (coefficient 4). The candidate is allowed thirty minutes to prepare his commentary. Among the subjects of the commentary in recent examinations are to be found texts of Raymond Aron, Georges Courteline, Baudelaire, Alain, Simone Weil, Maritain, Malraux, Pascal, Camus, Sartre, etc. The jury is presided over by a counsellor (judge) of the *Cour de cassation* and four other members including two senior professors of Faculties of Law or Letters, a member of the *Conseil d'État* or of the *Cour des Comptes* (audit office) and a judge.

After the examinations the jury draws up a list of successful candidates in order of merit within the limit of available places at the *Centre National* and they receive their 'baptism' in a solemn ceremony and ovation which generally takes place before the *Cour de cassation*.

Candidates must fulfil the obligations of military service before entering the *Centre National*, but since 1966 they have been allowed to substitute service in the cultural and legal services of embassies and consulates established in Africa, Latin America and countries of the Middle East.

The Teaching at the Centre National

The mission of magistrate requires, more than anything else, the qualities of independence and impartiality. Methods of training must therefore be adapted to suit the requirements of each candidate leaving him free to interpret to the best of his reason and spirit the wide avenues of information put at his disposal. Thus the aims of the *Centre National* are:

- (1) to perfect the judicial knowledge of theory and practice and the development of the appetite for general culture, the spirit of inquiry and the desire for intellectual enrichment;
- (2) to inculcate in the *auditeurs*, by frequent contact with experienced magistrates, a more flexible method of approach to problems, liberal reasoning and the taste and aptitude for synthesis;

- (3) to instruct them how to organize their own work in the interest of the better administration of justice.

In the pursuit of those objectives the *Centre National* provides a training course of twenty-eight months in which is incorporated a period of probation apprenticeship served in a court of appeal and other tribunals.

During his studentship the *auditeur* receives regular emoluments and family allowances, etc. (fifty per cent of *auditeurs* are married). He is assimilated to the status of magistrate, with obvious reservations, and takes the oath in solemn audience. When on probation to the courts and tribunals he is robed as a judge of the *tribunal de grande instance*, save for the shoulder-band, and is bound to professional secrecy. The *auditeur* who does not complete the training course reimburses his remuneration unless given dispensation and undertakes on passing out to serve in the office of magistrate for at least ten years.

The Régime of Study

The twenty-eight months of training (in place of the three years originally planned) are spent as follows:

- (1) The first eight months at the *Centre National* in Bordeaux, during which time the *auditeur* may become acclimatized to the transition from university to judicial practice and prepare himself for apprenticeship in the courts and tribunals. Seminars in professional techniques (ten-twenty participants) are conducted by experienced magistrates and acquaintance is made with the courts of Bordeaux, the Bar, the orders of *avoués* and *notaires* and the *Tribunal de Commerce*. There are also numerous lectures and plenary sessions. So far as possible material is circulated in advance to facilitate discussion. The curriculum embraces a wide range of legal topics, both domestic and international, and explores such important economic and social problems of contemporary life as the magistrate is likely to encounter, not forgetting various literary and artistic subjects. One may cite as examples the economic structure and planning of France, the management of territorial regions, trade unionism, agriculture, psychology, modern philosophy and national defence. Subjects more closely associated with his professional activity include commercial accountancy, forensic medicine, neuropsychiatry, criminal science, toxicology, Interpol, disputes concerning social security, crimes against the security of the State, economic offences, insurance and leasehold legislation.

- (2) At the end of this eight-month period the young *auditeur* leaves the *Centre* for a year and is appointed to one of the twelve *Centres d'initiation à l'activité judiciaire* attached to certain *Cours d'appel* in the provinces: Aix-en-Provence, Bordeaux, Caen, Colmar, Dijon, Douai, Lyon, Nancy, Montpellier, Poitiers, Rennes and Toulouse. In each centre the *auditeurs* are grouped in a maximum of ten in order

not to inconvenience the functioning of the courts and to permit effective organization. Whenever possible the *auditeur* is posted to a *Centre* which is remote from his place of origin so that he may develop his personality by exposure to a complete change of living conditions and social activity. He is brought into immediate contact with the daily practicalities and routine of judicial life while making the round of different jurisdictions (*instance, grande instance, appel*) and of the ancillary services (*siège* and *parquet*) and specialized offices (*juge d'instruction, juge de l'application des peines, juge des enfants, etc.*). Moreover, since he is obligated to professional secrecy he may be present at investigations and participate in the deliberations of the courts. He familiarizes himself with the corps of ministerial officers and auxiliaries of justice: *greffiers, avoués, notaires, huissiers, etc.* He can even be inscribed on the roll of *avocats stagiaires* (barristers undergoing the probationary period) on a voluntary basis, without having to obtain the certificate of aptitude of the profession, and he can be entrusted with causes to plead. At each *Centre* the *auditeurs* are placed under the direction of a judge of the *Cour d'appel* whose task it is to guide, counsel and supervise their activities. The judges encourage the *auditeurs* to take part in their discussions of the cases which are heard and of the written pleadings. They are taught how to write judgments and instructed about the imposition of criminal sanctions, the preparation of interrogatories by the *juge d'instruction*, and the addresses to the court by the public prosecutor, *etc.* In addition, they must frequent outside the *Palais de Justice* the important administrative services of the State, in particular, the *préfecture* and leading industrial and commercial enterprises such as docks, shipyards, chemical and petroleum undertakings, engineering and steel works, radio manufacturers, *etc.* By so doing the *auditeurs* may learn something of the economic and social activities of the region and converse with workers and management in trade unions, co-operatives, mutual benefit societies and agricultural credit banks thereby experiencing at first-hand the problems of labour and their connection with the law. These direct contacts also provide an antidote against the professional dehydration of pure law. It was realized that formerly the young judge took up his first appointment fresh from the lecture rooms of the Faculty and equipped only with his *licence en droit*. While well-versed in Roman Law he was frequently ignorant of the living law, such as leasehold legislation and its grave social and human implications, which he would be called upon to apply in his daily work.

(3) The last period of eight months is spent in Paris where the training, called 'of perfection,' is carried out at the Paris *Cour d'appel* and at the *Tribunal de grande instance de la Seine*. In addition, the *auditeurs* are attached for at least two weeks to a prison, penal establishment and Borstal type (approved school) institution. How many judges in the past who have daily inflicted punishment have

ever, during the whole of their career, passed through the iron gates of a prison or have taken the trouble to ascertain what in reality their heavy sentences entail? Today the *auditeurs* will gain practical experience in the methods of treatment of all kinds of delinquents, treatment which for twenty years has remained so imperfectly understood by those outside the institutions. Always with the intention of opening a window on the outside world these *visites d'études*, above all in Paris, give to the future magistrate an incontestible enrichment which can only be of benefit to his judicial activity. There are, for example, visits to the *Banque de France*, insurance companies (to study claims), the National Railways (to study accidents), Orly Airport (to study aerial security), Customs and Excise, the National Security, the Gendarmerie, the *Préfecture* of Police (problems of identification), Bank of Social Security, Directorate of Manpower, Inspectorate of Labour, *etc.* He will attend consultations at the Psychiatric Hospital of Villejuif, the Medico-Legal Institute, *etc.*

In order to introduce him to European problems a study tour is organized each year to Luxemburg (European Court of Justice) and to Brussels (European Economic Community, Euratom). Henceforth, on leaving the *Centre National* the *auditeurs* will be able to participate in short study programmes at the headquarters of the European Communities and perhaps even visit the United States for ten months to study Anglo-American law. It will be seen that this programme is designed to prevent the inculcation of an attitude to life which is too scholastic, uniform and *ex cathedra*. Thus the *auditeur* is encouraged to adopt an active rather than passive approach to problems. The personal contact with living sources of teaching in all spheres is encouraged and facilitated. The progress of the *auditeurs* in this 'practical' training is evaluated by the Director of the *Centre National* and counts towards the examination and classification of the student. It should also be mentioned that in order to continue this training of magistrates a *Centre d'information et de perfectionnement judiciaire*, administered by the Director of the *Centre National*, was opened in 1966 at which is organized, four or five times each year, courses of specialized training of one week's duration in the form of conferences, lectures, visits, seminars, *etc.* Leading experts in various fields of law, economics, and administration are called upon to assist. The *Centre National* is also open to a certain number of *auditeurs* from foreign countries, not only French speaking, including Japan, Tunisia, Thailand, Greece, Poland, Yugoslavia, Spain and the Lebanon.

The Passing Out Classification

On completion of the course at the *Centre National* the aptitude of the *auditeurs* for judicial office is assessed in order of merit on a *liste de classement* compiled by a jury and published in the *Journal officiel*. The classification is arrived at by the addition of three elements: average marks in the training courses and in the practical

work, and the results of an examination comprising four tests: the writing (five hours) of a judgment in the civil law; the preparation (five hours) of a criminal dossier; oral examination (for which three hours preparation is allowed) consisting of a prosecutor's *réquisitoire* (closing address) or of counsel's *conclusions* (final address), for which a maximum of fifteen minutes is allowed, and a *conversation* (general discussion) of thirty minutes with the examining jury. If two *auditeurs* obtain the same total of marks they are convoked separately by the jury and freely interrogated for fifteen minutes.

The examining jury is not composed exclusively of magistrates as heretofore. Presided over by a magistrate of the *Cour de cassation* it is made up of seven members: a *directeur* of the Ministry of Justice, two magistrates (*Cour d'appel* and *Tribunal de grande instance*), two professors of law and a high public official. The jury can exclude an *auditeur* from access to judicial office or impose a further year of study.

If the *auditeur* figures on the class list he is nominated by the President of the Republic as *Juge* or *Substitut de Procureur de la République* in a *Tribunal de grande instance*. The appointment is made in accordance with his classification from a list drawn up by the Minister of Justice of vacancies among the 178 *tribunaux de grande instance*. If he is classified in the top third the *auditeur* can be nominated *Substitut à l'Administration centrale* of the Ministry of Justice in Paris.

If his name does not figure on the class list the *auditeur* can enter without further examination a new *corps* called *Attachés de Justice*. As such he may be assigned to the *Cour de cassation*, a *Cour d'appel* or a *Tribunal de grande instance* where he will exercise certain non-judicial functions such as administration and research.

It is clear, therefore, from the foregoing that the law reforms of 1958 included important changes in the methods of recruitment to the magistracy and of their professional training. The moment was well chosen. Although the role of the magistrate today does not differ in principle from that of his predecessors his task is necessarily more exacting, for it is increasingly difficult to maintain public order and social stability in a rapidly changing world and to preserve human values in the midst of technical and scientific progress which threatens to outstrip mankind. In the result it is necessary to mould the education of future magistrates to fit the present needs of society and to provide them with the means of acquiring, before entry into office, not only the best training in judicial techniques but a clear and vibrant

perspective of current developments in the fields of culture, economics and sociology.⁹

⁹ *The Social Recruitment of Magistrates*

The following information on the social origins of *auditeurs* was obtained from 210 dossiers:

Workers and employees	----	----	----	----	----	16 or 7.6%
Farmers and shopkeepers	----	----	----	----	----	43 or 20.4%
Public and private middle-class occupations	----	----	----	----	----	64 or 30.5%
Public and private higher occupations	----	----	----	----	----	58 or 27.7%
Liberal professions	----	----	----	----	----	26 or 12.4%
Independent means	----	----	----	----	----	3 or 1.4%

It was found that fifty-three *auditeurs* in the above classification (*i.e.*, 25% of the total) came from families associated with the law: 28—the children of magistrates, 4 of *avocats*, 3 of *avoués*, 10 of *notaires*, 2 of *huissiers*, 5 of *greffiers*, 1 of *agrégé*.