

Lawyers in Society

THE CIVIL LAW WORLD

Edited by
RICHARD L. ABEL
and PHILIP S. C. LEWIS

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VOLUME TWO

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Preface

This is the second of three volumes on the comparative sociology of legal professions. In the first volume we analyzed the legal professions of the major common law countries of the industrialized world (England and Wales, Scotland, Canada, the United States, Australia, and New Zealand) and that of the most populous common law country in the third world (India). We made no effort to cover other common law systems in Northern Ireland and the Republic of Ireland, the Caribbean, Asia, and Africa because of limitations on our resources and our inability to identify national reporters and because the International Center for Law in Development previously produced a book on several of those countries.* In addition, the Commonwealth Legal Education Association currently is investigating access to legal education and the legal profession in Commonwealth countries, including those of the third world.

The present volume contains studies of eleven civil law professions (Belgium, Brazil, the Federal Republic of Germany, France, Italy, Japan, the Netherlands, Norway, Spain, Switzerland, and Venezuela). This is a broad, though not entirely representative, selection from northern and southern Europe and the Latin American countries influenced by Spain and Portugal. Limited resources and the lack of national reporters prevented us from surveying the legal professions of the socialist and the Islamic worlds (although a Yugoslav colleague did participate in early discussions). The third volume in this series uses these national reports and other sources to draw theoretical and comparative conclusions. All three volumes are the product of the Working Group for Comparative Study of Legal Profes-

*Dias, C. J., R. Luckham, D. O. Lynch, and J. C. N. Paul, eds. 1981. *Lawyers in the Third World: Comparative and Developmental Perspectives*. Uppsala: Scandinavian Institute of African Studies; New York: International Center for Law in Development.

sions, which was created by the Research Committee on Sociology of Law, a constituent of the International Sociological Association.

The Working Group was formed in 1980 and met annually thereafter, in Madison (Wisconsin), Oxford, Mexico City, and Antwerp, during the conferences of the Research Committee. These meetings were devoted to discussing theoretical approaches to the legal profession and developing an inventory of information that national reporters were to collect. Drafts of most of the chapters were presented at a week-long meeting at the Villa Serbelloni, the Rockefeller Foundation's Conference Center in Bellagio, Italy, 16–21 July 1984. They have been revised extensively since then, assisted by further discussions during meetings of the Working Group in Aix-en-Provence and New Delhi in conjunction with the annual conferences of the Research Committee.

During the course of such a lengthy project involving so many people we have been assisted by numerous individuals and institutions. The Board of the Research Committee on Sociology of Law consistently offered moral and financial support. Stewart Field, currently on the law faculty at the University of Wales Institute of Science and Technology, Cardiff, took extensive notes on the discussions at Bellagio, which helped all of us to revise our contributions. Pam Taylor of All Souls College, Oxford, typed those notes and retyped many of the contributions. Dorothe Brehove and Marilyn Schroeter, together with other members of the secretarial staff of UCLA Law School, also retyped many contributions. We are grateful to the Rockefeller Foundation for hosting our conference and to the American Bar Foundation for the financial support that made the conference possible. Terence Halliday of the Foundation provided invaluable administrative assistance in organizing that conference and since then has taken responsibility for leading the future activities of the Working Group. Richard Abel would like to thank UCLA Law School for continuing administrative and financial support. Philip Lewis would like to thank the Trustees of the Nuffield Foundation who made possible his participation in the early stages of this project.

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Lawyers in the Civil Law World

RICHARD L. ABEL

Readers are likely to approach a book of essays about lawyers in the civil law world with two initial questions: why lawyers, and why the civil law world. Philip Lewis addressed the first question in his introduction to our earlier volume on lawyers in the common law world (Lewis, 1988). We believe that an understanding of the characteristics and practices of lawyers can offer important insights into the workings of legal systems. We also feel that this understanding is best advanced through research that is comparative, sociological, and historical.

The reasons for focusing on the civil law world are more complicated. Very little has been written in English on lawyers outside the common law world. English-speaking students of comparative law (which generally, although not invariably, means civil law) have paid little or no attention to lawyers, although works intended for a more popular audience sometimes offer useful observations (e.g., Burdick, 1939; Bedford, 1961). The leading texts and casebooks ignore the subject entirely or treat it very briefly (e.g., Gutteridge, 1949; von Mehren, 1957; von Mehren & Gordley, 1977; Schlesinger, 1960; Glendon et al., 1982; Barton et al., 1983), although the latest contribution offers a fuller exposition (Glendon et al., 1985). Historical approaches are equally neglectful (e.g., Watson, 1981; but see Clark, 1987). John Henry Wigmore had virtually nothing to say about lawyers in his three-volume *Panorama of the World's Legal Systems* (Wigmore, 1928). René David omitted all coverage of lawyers in the civil law world in the three editions of his *Modern Legal Systems in the World Today* (David & Brierly, 1968; 1978; 1985). The contemporary ten-volume *Modern Legal Systems Cyclopedia* (Redden, 1984) offers only the most general and superficial observations, bereft of empirical data. The seventeen-volume *International Encyclopedia of Comparative Law* (1975–1979) ignores the subject except for brief references to judges and prosecutors in the national reports, and the first eight volumes of the *Compara-*

tive Law Yearbook (1977–1984) touched on the subject just once, in a symposium on legal education. In the decade 1976–1985, the leading *American Journal of Comparative Law* published one article on German legal education (Geck, 1977), one on the employment of *avocats* within French law firms (Le, 1981), and one comparing lawyers (Clark, 1981). Its British counterpart, the *International and Comparative Law Quarterly*, published nothing on lawyers in the decade 1974–1983.

I do not want to overstate the neglect, however. Scholars have offered accounts of lawyers in the civil law world in treatises on civil procedure (e.g., Ginsburg & Bruzelius, 1965; Herzog, 1967), overviews of particular civil law systems (e.g., Cappelletti et al., 1967) and of the civil law generally (Merryman, 1969), sociologies of particular legal professions (Lynch, 1981), symposia on legal systems and legal professions (e.g., Magnus, 1929; Union Internationale des Avocats, 1959; Dias et al., 1981; Kötz et al., 1982; Wagner, 1985; Katz, 1986a), comparative statistics on legal professions and legal systems (Johnson et al., 1977; Merryman et al., 1979), comparative sociology of the professions (Conze and Kocka, 1985), and other sources I rely on in this introduction. Nevertheless, there clearly seemed to be a need for more systematic, empirical, coordinated examination of lawyers in the civil law world.

This review of the literature assumes that answers to two questions that really should be antecedent: is there a civil law “world,” and what countries exemplify it? There are ample historical grounds for expecting similarities among lawyers *within* each of these two categories—common and civil law—and differences between them. English lawyers founded the legal professions in the colonies that later became the United States, Canada, Australia, and New Zealand. Although Scotland originally had a civil law system and trained its lawyers on the continent, centuries of English political and economic domination wrought a close resemblance between Scottish and English lawyers. In addition, several hundred years of British colonial rule over India superimposed a “common law” profession that coexists uneasily with indigenous institutions and traditional cultures. Historical interconnections also can be traced among civil law countries, if with more branches. The combination of revolutionary example and Napoleonic conquest exported the French legal system throughout much of Europe. Colonial expansion, especially by France, Spain, and Portugal (although also by Belgium, the Netherlands, Germany, and Italy), imposed European legal systems on the Americas, Asia, Africa, and Oceania. After political ties were severed, these links were preserved through economic dependence, cultural influence, education, and language. Even in the absence of colonization, countries as diverse as Japan, Turkey, and Ethiopia adopted European legal systems, in whole or in part.

Each world may be coherent and distinct for another reason as well—because the parts of its social order fit together. This functionalist explanation can be applied to many different social environments, from the nation-state to the smallest of its subsystems. At the highest level of generality, we could explain the characteristics of lawyers in terms of national histories. It has been suggested, for instance, that the sequence in which a powerful state apparatus and an industrial economy emerge strongly affects the relative prominence of lawyers employed by the state vis-à-vis private practitioners (Rueschemeyer, 1973: 7–8; 1978: 112; Clark, 1981). Evan (1968) found a correlation between the proportion of the labor force employed by public bureaucracies and the number of law schools. Others have focused on relationships within the legal system. All students of comparative law are familiar with Weber's (horrified) observations about the differences between England and Germany with respect to the location of legal education, the nature of legal thought, and the openness of the legal system to reform (Weber, 1954: 198–206). Since then, scholars have suggested connections between codification and the role of lawyers (e.g., Cohn, 1960, 1961; Merryman, 1975), between the relative responsibilities of lawyers and judges in developing facts and the characteristics of private practice (Langbein, 1985), and between the nature of authority (hierarchical versus coordinate) and the legal process (Damaska, 1986). In this introduction, I would like to offer a more modest justification for using the analytic category of the civil law world by exploring whether lawyers in these countries actually share traits that distinguish them from those in the common law world and whether these traits are interconnected.

Although I have been speaking of “worlds,” our coverage of civil law countries is partial and possibly unrepresentative. I have tried to supplement it with data from other European and Latin American countries. However, I have made no effort to include either socialist countries that built on civil law systems or Islamic countries that had experienced European colonial rule and thus inherited a civil law tradition. The difference between the viewpoints that inform the national reports on one hand and this introduction on the other hand may illuminate the value of these analytic categories. All the authors of the following chapters are participants in the societies, the legal systems, and sometimes also the legal professions that they are describing. As editors, we have tried to preserve the unique perspectives they bring to that inquiry. By contrast, I am an American law teacher asking questions that inevitably are influenced by my very different background. We hope that the interaction between these different versions will provide fresh insights.