

LEGAL EDUCATION IN GERMANY TODAY

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I. INTRODUCTION

This Article seeks to provide an overview of German legal education as it exists today. First, I provide a brief overview of the main characteristics of the system. In Part II, I explain some of the historical background. Part III examines the institutional arrangement and regulation of the system. Part IV analyzes the curriculum and the first state examination. Part V explains the practical training phase and the second state examination. Part VI investigates the potential legal careers available, including the teaching profession. Part VII looks at the reform efforts in legal education, and Part VIII concludes the article.

German legal education has four main characteristics. First, legal education is separated into two stages. The first stage consists of legal studies at university law faculties in a program of at least four years.¹ This first stage is followed by a compulsory practical training (*Referendarzeit*, or apprenticeship) of two years.² There is no law school system like that of the United States.

Second, both stages end with a state examination covering the entire scope of the law.³ Students do not specialize in training for specific legal professions. Only the last reform of 2002 introduced a certain degree of specialization during legal study;⁴ this is examined by the law faculty but counts for the state examination.

Third, after successfully passing both state examinations, the young lawyer, at this stage called an *Assessor*, is theoretically

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¹ Deutsches Richtergesetz [DRiG] [Statute of Judges], Sept. 8, 1961, BGBl. I at 1665, § 5 abs. 1 (F.R.G.), available at Gesetz im Internet, <http://bundesrecht.juris.de>.

² *Id.* § 5b I; Bayerische Ausbildungs- und Prüfungsordnung für Juristen [JAPO] [Judges for the Law Studies from the Federal State of Bavaria] § 48, Apr. 16, 1993, GVBl Bayern at 335 (F.R.G.), available at http://www.justiz.bayern.de/ljpa/japo/Japo_1993_Bayern.pdf.

³ DRiG §§ 5d II, III; JAPO §§ 16 abs. 1, 57.

⁴ See MICHAEL GREßMANN, DIE REFORM DER JURISTENAUSBILDUNG (2002).

qualified to adopt any legal profession, including that of a judge.⁵ The second examination provides a uniform qualification for all legal professions.⁶ German legal education produces the so-called *Einheitsjurist*. Only a few young lawyers, however, become civil servants, judges, or public prosecutors. Most of them practice as *Rechtsanwälte* (attorneys at law), as only a formal admission to the bar is required for *Assessoren*.⁷

Fourth, legal education in Germany is strongly regulated by federal and state law. Its focus lies on the judiciary. Law faculties and lawyers traditionally have had very little impact on the frame of legal education. Only recently has their influence grown; the 2002 reform has strengthened their position.⁸

Each of these characteristics has been in question since the 1950s, with the debate about the necessity of reforms, and the direction they should take, peaking during the late 1960s⁹ and again in the 1990s.¹⁰ In the end, only a few details have changed. Apart from these small alterations, legal education has remained unamended, despite social and economic changes. It is likely, however, that the process of European integration and globalization will initiate a radical change in the near future.

II. HISTORICAL BACKGROUND

To understand the particularities of German legal education, some historical background may be useful. In the fourteenth century, the first German universities — Prague (founded in 1348), Vienna (1365), Heidelberg (1368), and Cologne (1388) — started to teach law, basically the system of Roman law and how

⁵ DRiG § 5 I; JAPO § 1; Bundesrechtsanwaltsordnung [BRAO], Aug. 1, 1959, BGBl. I at 565, § 4 (F.R.G.).

⁶ DRiG § 5 I; JAPO § 1; BRAO § 4.

⁷ BRAO § 6 f.

⁸ DRiG § 5a; JAPO § 38.

⁹ Karl Wilhelm Geck, *The Reform of Legal Education in the Federal Republic of Germany*, 25 AM. J. COMP. L. 86-119 (1977).

¹⁰ Jutta Brunnée, *The Reform of Legal Education in Germany: The Never-Ending Story and European Integration*, 42 J. LEGAL EDUC. 399 (1992).

it had developed in the classical period.¹¹ A strong and widespread reception of Roman law led to an *ius commune*, which provided the general terms of civil law and which was applicable if there was no local or regional law (*Partikularrecht*). As universities often refused to teach the unstructured regional law, the two-stage approach, still valid in Germany today, was introduced: lawyers were educated in theory at universities, and they gained their practical knowledge through special training in the territories. With this education and the development of the modern European state, the importance of lawyers began to increase in an unprecedented way. Especially in the German territories, lawyers became the most important specialists concerning the administration of government. Only at the end of the eighteenth century did the authorities establish some general standards of legal education.¹² At that time, a unified Germany did not exist; rather, it consisted of kingdoms and other territories. The most important state was Prussia, which was developing rapidly; it needed a strong administration that had to be loyal, on the one hand, and well trained and capable of independent thinking, on the other.¹³ Civil servants educated in law performed primary functions in this administration.

¹¹ HELMUT COING, *REPERTORIUM UND BIBLIOGRAPHIE FÜR DIE DEUTSCHEN UNIVERSITÄTEN BIS 1500* (1966); MIROSLAV BOHÁĚEK, *REPERTORIUM UND BIBLIOGRAPHIE FÜR DIE UNIVERSITÄT PRAG BIS 1500* (1966); HERMANN BALTE, *REPERTORIUM UND BIBLIOGRAPHIE FÜR DIE UNIVERSITÄT WIEN BIS 1500* (1966); on the development of Legal Education in the 12th century see JOHANNES FRIED, *DIE ENTSTEHUNG DES JURISTENSTANDES IM 12. JAHRHUNDERT: ZUR SOZIALEN STELLUNG U. POLIT. BEDEUTUNG GELEHRTER JURISTEN IN BOLOGNA U. MODENA* (1974); Filippo Ranieri, *Juristen für Europa: Wahre und falsche Probleme in der derzeitigen Reformdiskussion zur deutschen Juristenausbildung*, 1997 *JURISTENZEITUNG [JZ]* 801; Filippo Ranieri, *From Status to Profession: The Professionalisation of Lawyers as a Research Field in Modern European Legal History*, 10 *J. LEGAL HIST.* 180, 180-90 (1989).

¹² *INTRODUCTION TO GERMAN LAW 28* (Werner F. Ebke & Matthew W. Finkin eds., 1996).

¹³ On the development of Legal Education in Prussia see INA EBERT, *DIE NORMIERUNG DER JURISTISCHEN STAATSEXAMINA UND DES JURISTISCHEN VORBEREITUNGSDIENSTES IN PREUSSEN (1849-1934)* (1995); CORNELIE BUTZ, *DIE JURISTENAUSBILDUNG AN DEN PREUSSISCHEN UNIVERSITÄTEN BERLIN UND BONN ZWISCHEN 1810 UND 1850: EIN STUDIENFACH IM SPANNUNGSFELD ZWISCHEN NEUHUMANISTISCHEM BILDUNGSIDEAL UND PRAXISNAHE* (1992); UWE BAKE, *DIE ENTSTEHUNG DES DUALISTISCHEN SYSTEMS DER JURISTENAUSBILDUNG IN PREUSSEN* (1971); WILHELM BLEEK, *VON DER KAMERALAUSBILDUNG ZUM JURISTENPRIVILEG; STUDIUM, PRÜFUNG UND AUSBILDUNG DER*

Another reason for giving legal education a general standard was the emerging idea of the rule of the law — the German way was (and still is) called *Rechtsstaat*. The *Rechtsstaat* required independent judges for criminal and civil administration of justice. As a kind of counterweight to this movement toward independence, the state decided to supervise legal education strictly. Every young jurist, even the *Rechtsanwälte*, was obliged to be very loyal to the state. The aim was to establish a kind of corporate identity among all lawyers. Thereafter, only the theoretical foundations of the law were left to the universities. In the light of the Humboldt-Reform of the university system in about 1820, the state became suspicious even of the influence so far assigned to the universities. Prussia established a rigorous practical training of at least four years based on legal education at university called *Referendarzeit*.¹⁴ Under the supervision of trained jurists, mainly judges, the *Referendar* reported on cases, gave legal opinions to the judges, and drafted decisions.¹⁵ This training ended with the *Große Staatsprüfung* (Great State Examination).¹⁶ It was held by the ministry of justice and covered the complete existing law, thus ensuring a unified profession. The connection between demanding legal education and the simultaneously progressing development of the legal system should not be ignored. In the nineteenth century, a systematic legal system with high standards was created in Germany.

The conceptual precisions of this legal system are still important today. When the German Reich was founded in 1871, the states remained responsible for legal education. Federal law, at that time mainly the Court Constitution Act (*Gerichtsverfassungsgesetz*, 1877), prescribed some essentials: the notion of the *Einheitsjurist* (the same qualification for all legal professions), the two-stage approach, and the judge as a model for all jurists. The system of two state examinations obtained its present form

HÖHEREN BEAMTEN DES ALLGEMEINEN VERWALTUNGSDIENSTES IN DEUTSCHLAND IM 18. UND 19. JAHRHUNDERT (1972); Gerhard Dilcher, *Die preußischen Juristen und die Staatsprüfungen. Zur Entwicklung der juristischen Professionalisierung im 18. Jahrhundert*, in Festschrift für Hans Thieme zu seinem 80. Geburtstag 295, 295-305 (Karl Kroeschell ed., 1986).

¹⁴ ARBEITSKREIS FÜR FRAGEN DER JURISTENAUSBILDUNG, DIE AUSBILDUNG DER DEUTSCHEN JURISTEN 52 (1960).

¹⁵ EBERT, *supra* note 13.

¹⁶ *Id.*

at the beginning of the twentieth century. Since that time, the general system of legal education remained nearly unchanged. Today's Federal Judge Act (*Deutsches Richtergesetz*) stipulates in Section 5 that "those who finish the study of legal sciences with the First State Examination and the subsequent preparatory service with the Second State Examination obtain the qualification for the office of a judge."¹⁷

Challenges to legal education grew, and a single but important fact changed: the two-stage approach and the practical training requirements were designed for a small elite, but today there are about one hundred thousand law students at forty-three law faculties (as of 2003).¹⁸ Each year, approximately ten thousand candidates successfully pass the Second State Examination and are thus qualified for every legal profession.¹⁹ As the state does not want to increase the number of civil servants, public prosecutors, and judges, nearly 60-70 percent of the young lawyers become *Rechtsanwälte*.²⁰ The total number of *Rechtsanwälte* had reached 126,793 as of 2004.²¹ About ten years ago, there were only 70,438 attorneys; in 1970, there were only 22,882.²² These figures indicate the important role of law in German society and political culture and the growing need for legal advice. However, there can be no doubt: the number of attorneys is much too high. Competition seems to have a negative effect on the quality of legal advice. Also, the number of judges is quite high: nearly 21,000 serve in five different branches of courts,²³ while 5,150

¹⁷ DRiG § 5 I.

¹⁸ Studierende an Hochschulen Wintersemester 2003/2004 Fachserie 11 Reihe 4.1 - 2004> des Statistischen Bundesamtes, <http://www-ec.destatis.de/csp/shop/sfg/bpm.html.cms.cBroker.cls?cmspath=struktur,vollanzeige.csp&ID=1014818>.

¹⁹ Prüfungen an Hochschulen - Fachserie 11 Reihe 4.2 - 2004 des Statistischen Bundesamtes, <http://www-ec.destatis.de/csp/shop/sfg/bpm.html.cms.cBroker.cls?cmspath=struktur,vollanzeige.csp&ID=1017027>; Prüfungen an Hochschulen - Fachserie 11 Reihe 4.2 - 2003 des Statistischen Bundesamtes, <http://www-ec.destatis.de/csp/shop/sfg/bpm.html.cms.cBroker.cls?cmspath=struktur,vollanzeige.csp&ID=1014965>.

²⁰ Statistik Jurastudenten, Prüfungen, Rechtsanwälte der Bundesrechtsanwaltskammer, http://www.brak.de/seiten/08_02.php.

²¹ Entwicklung der Zahl zugelassener Rechtsanwälte von 1950 bis 2005, Bundesrechtsanwaltskammer, http://www.brak.de/seiten/08_02.php.

²² *Id.*

²³ Ausgewählte Zahlen für die Rechtspflege Fachserie 10 Reihe 1 - 2004 des Statistischen Bundesamtes, available at <http://www-ec.destatis.de>.

jurists serve as public prosecutors, and 20,000 work as civil servants.²⁴ Following a long tradition, lawyers (about twenty-five thousand) are also employed directly by companies.²⁵ Last, but not least, there are about a thousand law professors teaching at the forty-three law faculties. All in all, there are nearly two hundred twenty thousand active jurists in a country with a population of eighty-two million.

III. INSTITUTIONAL ARRANGEMENT AND REGULATION OF LEGAL EDUCATION

Unlike students in other countries, German law students begin legal studies without an undergraduate degree. At the age of nineteen or twenty, after thirteen years of school (nine years in the *Gymnasium* with the uniform final examination/graduation *Abitur*), most students go directly to a university. There is no admission test for law students. Students can choose the law faculty they want to attend.²⁶ Only in cases of overcrowded law faculties²⁷ can students be refused, and those not accepted are guaranteed a place at another university. Studies are free of charge.²⁸ Law faculties are not allowed to establish admission exams.

This easy access to the university system results in a high number of students. Some students soon find out that they have chosen the wrong subject. About 20 percent or more change their subject or leave the university before taking the First State Examination, but the number of college dropouts is regressive.²⁹

²⁴ *Id.*

²⁵ Personal an Hochschulen Fachserie 11 Reihe 4.4 – 2003, <http://www-ec.destatis.de/csp/shop/sfg/bpm.html.cms.cBroker.cls?cmspath=struktur,vollanzeige.csp&ID=1015287>.

²⁶ Ingo v. Münch, *Juristenausbildung*, 51 NEUE JURISTISCHE WOCHENSCHRIFT [NJW] 2324, 2326 (1998).

²⁷ By a “capacity regulation” the state assigns an exact number of students who have to be accepted to every law faculty.

²⁸ The single exception is the Bucerius Law School in Hamburg, the only private law school in Germany. The system of free university education is changing. Most of the states (e.g. Bavaria and Hamburg) decided to introduce a fee of 500 € per semester from 2007. Only a few of the sixteen German states (e.g., Mecklenburg-Pommern) declared to keep the system of free university education.

²⁹ Twenty-seven percent among the students who began their studies in the beginning of the 1990s, Sixteen percent among the students who began their studies in

All law faculties, with the single exception of the private Bucerius Law School in Hamburg (founded in the late 1990s), belong to state universities. Their organization is regulated by state law, and most importantly, they depend financially on state contributions. Constitutional law, however, provides that the state may not interfere with academic self-regulation and scientific freedom; the freedom of science, research, and scientific teaching is guaranteed in Article 5, subsection 3 of the *Grundgesetz*, the Federal Constitution.³⁰

Today, universities struggle with cuts in state contributions. While the number of students has doubled in the last thirty years, neither the number of teaching staff nor the amount of funding has increased. As one example of the student-teacher ratio, the law faculty of the Ludwig-Maximilians-Universität Munich has thirty full professors and about fifty-five full time assistants (who teach and do research under the supervision of a professor) for four thousand law students. The number of law students does not include those students who choose law as a minor subject besides their studies of political sciences, business, and other fields. Full professors teach nine hours a week during the semester (winter term from mid-October to February, summer term from mid-April to July), and assistants teach five hours a week.³¹

According to section 5a, subsection 1 of the Federal Judge Act, legal studies at university normally take four years.³² The average duration is, in fact, about five years at the moment, including six months for the first examination.³³ Since the reform of 2002, this examination is no longer called the state examination because 30 percent of it is now organized by the law faculties.³⁴ The remaining 70 percent is still organized by the ministry

the middle of the 1990s. HIS (HOCHSCHULINFORMATIONSSYSTEM), STUDIENABBRUCHSTUDIE 2005, at 17 (2005), http://www.bmbf.de/pub/studienabbruchstudie_2005.pdf.

³⁰ Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law] May 23, 1949, BGBl. I at 1, art. 5 III.

³¹ Professors: Verordnung über die Lehrverpflichtung des wissenschaftlichen und künstlerischen Personals an Universitäten und Fachhochschulen (LUFV), Sept. 19, 1994, GVBl. Bayern at 956, § 4 I 1 Nr. 1 ; assistants: *Id.* § 4 I Nr. 3.

³² DRiG § 5a.

³³ Statistik Jurastudenten, Prüfungen, Rechtsanwälte der Bundesrechtsanwaltskammer, <http://www.brak.de/seiten/pdf/Statistiken/Jurastudententext.pdf>.

³⁴ JAPO § 17 I 2.

of justice of the states (*Bundesländer*).³⁵ The board of examiners is made up of practitioners and university professors.³⁶ As the frame of the legal education system is set by federal law, legal education is almost completely standardized throughout the country.³⁷ The reputation of a law faculty plays a minor role in the students' choice of university compared to Anglo-Saxon countries, especially the United States.³⁸

Other aspects of regulation will be discussed in the context of the curriculum, practical training, and examinations, in Parts IV and V below.

IV. CURRICULUM OF UNIVERSITY EDUCATION AND PRACTICAL TRAINING

A. UNIVERSITY EDUCATION

During the four years at university, all law students have to cover a wide range of compulsory subjects (*Pflichtfächer*) and an elective subject (called *Wahlfach* until 2002 and now called *Schwerpunktbereich*).³⁹ In addition, universities require students to learn a foreign language, either in a lecture or in a language class.⁴⁰ Students also must complete a practical stage of at least three months during the breaks.⁴¹

This frame, binding upon the legislation of the states, is set by the Federal Judge Act in Section 5a.⁴² It also prescribes the compulsory subjects: the main elements of civil law, criminal law, public law, procedural law, and the law of the European Union; legal methodology; and the philosophical, historical, and social foundations of the law.⁴³ The optional subjects are not set by federal law. The law simply states that they should broaden and

³⁵ *Id.* § 17 I 2.

³⁶ *Id.* § 19 S. 1.

³⁷ DRiG §§ 5a ff. .

³⁸ Jürgen R. Ostertag, *Legal Education in Germany and the United States – A Structural Comparison*, 26 VAND. J. TRANSNAT'L L. 301, 321 (1993-94).

³⁹ JAPO § 39.

⁴⁰ *Id.* § 24 II.

⁴¹ *Id.* § 25 I, II.

⁴² DRiG § 5a.

⁴³ *Id.* § 5a II 3.

deepen the compulsory subjects.⁴⁴ The intention is to teach the interdisciplinary and international aspects of the law. This framework is completed by the respective Legal Education Act (*Juristenausbildungsgesetz, Ausbildungs- und Prüfungsordnung für Juristen*) of each state.⁴⁵ The space left by this double legislation of the federation and the states can be filled by the law faculties.⁴⁶ The law faculties do not have any discretion concerning the compulsory parts of the legal study, but as a result of the reform of legal education in 2002, they now have broad discretion over the optional parts; state legislation only prescribes the aims, allowing the optional subjects to be defined by the law faculties.

To a great extent, law education at university still consists of formal lectures, a one-way presentation by the professor or the assistants. However, many lecturers try to integrate student participation into the lecture by asking questions. In addition, besides the lectures there are seminars and study groups in which lecturers and students work together on the subjects. The standards for the students are high.

As the system deals primarily in abstract, theoretical concepts and is formed systematically rather than through the influence of case law, students must learn to evaluate concrete situations in light of abstract norms. In general, students should, but are not obliged to, rework or prepare the topics presented.

The “great lectures” in civil, criminal, and public law are attended by two hundred to six hundred students at the larger law schools. Thus, students and professors have little personal contact, about which both groups complain. The lectures in civil, criminal, and public law are accompanied by compulsory tests during the term (*Übungen*).⁴⁷ In written examinations and papers, the students must give legal opinions for a set of hypothetical facts, applying statutes, legal doctrines, and cases to draw up a proper legal report. Students are required to render impartial

⁴⁴ *Id.* § 5a II 4.

⁴⁵ JAPO § 39 I.

⁴⁶ DRiG § 5a II; JAPO § 39; Studien- und Prüfungsordnung der Ludwig-Maximilians-Universität München für den Studiengang Rechtswissenschaften mit dem Abschluss Erste Juristische Staatsprüfung, Jun. 1, 2004, §§ 38 ff [hereinafter Studienordnung der LMU].

⁴⁷ JAPO § 24 I 1; Studienordnung der LMU §§ 11 III, 21 I.

opinions for the facts presented. They are taught to deal with the facts and the law from a judge's point of view.

Because the focus is on rendering impartial decisions, in general, students are not trained to take adversarial positions during their studies at university. Only a few new teaching methods are applied to exercise these situations from an advocate's point of view, and students are not obliged to attend these classes. Section 5a, subsection 3 of the Federal Judge Act provides that university studies take the practical needs of a judge, a civil servant, and an advocate into consideration, but this is only soft law. It is worth noting that legal education also puts emphasis on the so-called key qualifications: soft skills like conflict management, advocacy, mediation, and rhetorical skills needed by lawyers.⁴⁸ However, the law does not prescribe compulsory classes to develop those abilities.

Several examinations are required during university education. During the four years at university, students must present twelve written examinations and six papers in the "minor" and "major" exercises⁴⁹ in criminal, civil, and public law for beginners and advanced students. For passing each exercise successfully, students receive a certificate (*Schein*), which is a necessary prerequisite for the admission to the first state examination.⁵⁰ Moreover, since the late 1990s, an intermediate exam has also been required.⁵¹ During the first four semesters, students have to pass three written examinations in civil, criminal, and public law, and one written examination in the so-called *Grundlagenfach*, an optional subject that is related to the historical, social, and philosophical foundations of the law (for example, Roman law, history of German law, philosophy of law, or ecclesiastical law).⁵² If they fail, they are excluded from further law studies.⁵³ While this exam is intended to regulate the very high number of students, in fact,

⁴⁸ DRiG § 5a III 1.

⁴⁹ Some law faculties have abolished the "minor" exercise (which is possible under federal and state law) in order to replace it by examinations at the end of a lecture.

⁵⁰ JAPO § 24 I 1; Studienordnung der LMU § 23 I, II.

⁵¹ Studienordnung der LMU §§ 11 II, 24-36.

⁵² *Id.* §§ 11 II, 25 I 2, 28 II.

⁵³ *Id.* § 24 I 4.

the intermediate examination expels only those students who are completely unable or unwilling to cover the subjects.⁵⁴

Students also have to take part in a seminar covering a subject of their choice.⁵⁵ There, they present a paper on an abstract subject in about thirty minutes. Only small groups of five to thirty students attend the seminar. These seminars give the students the opportunity to take an active part in an academic, and more scientific, discussion. Good students often enroll in more than one seminar in order to learn through active academic exchange with the professor.

A small reform in 2002 altered certain aspects of the elective portion of studies. The elective part became more important and now constitutes 30 percent of studies.⁵⁶ A small revolution has also taken place concerning the legal education system in relation to exams: the university is exclusively responsible for the written and oral examinations related to the elective part. At the same time, these examinations are integral parts of the state examination. As this new system has just been introduced, the law faculties do not have any definite experience at this stage. On the one hand, it offers new opportunities to concentrate on teaching and learning a certain subject. On the other hand, specialization may now occur too early in the educational process and could be the first step to abolish the overall uniform qualification, which is still the aim of legal education in Germany.⁵⁷

Despite some changes in the last decade, the programs of legal studies in Germany have only a loose structure. The formal curriculum of each law faculty is only precatory. This provides academic freedom, and some students make use of the wide variety of options. Good students who organize their course of study according to their interests profit from this freedom, but most students focus on the requirements of the First Examination.

⁵⁴ Nobody knows how many students fail in this intermediate examination. It is estimated that the rate is ten to twenty percent, *see* Joachim Münch, *Zwischenprüfung und Schwerpunktbereichsprüfung*, in *DIE NEUE JURISTENAUSBILDUNG, CHANCEN, PERSPEKTIVEN UND RISIKEN* 9, 9-16 (Joachim Münch ed., 2004).

⁵⁵ Studienordnung der LMU § 10 I.

⁵⁶ DRiG § 5d II 4; JAPO § 17 I 2.

⁵⁷ Peter A. Windel, *Scheinspezialisierung und Verzettelung als mögliche Folgen der Juristenausbildungsreform*, 26 *JURA: JURISTISCHE AUSBILDUNG* 79 (2004).

Between 50 and 90 percent of the students, depending on local customs, rely on the expensive services of private repetition classes, where they are taught the required knowledge during the preparation period for the state examination. The reason for this is, first of all, a psychological one: as students have to pay for and attend these classes regularly, they show a certain discipline which cannot be ensured at a law faculty. Moreover, students often think that professors are unable to teach them in a manner that is suitable for the preparation of the First State Examination. Law faculties are trying to keep up with the private repetition classes by offering special preparation classes which, of course, are free of charge.⁵⁸ Most faculties are more and more successful with these programs.

B. FIRST EXAMINATION

The First Examination is a comprehensive final examination. It covers all the knowledge acquired during all semesters at the university.⁵⁹ It consists of a written and an oral part.⁶⁰ Students take between seven and eleven written exams in which they have to give legal opinions on hypotheticals related to civil, criminal, and public law.⁶¹ Each exam is evaluated by a professor and a practitioner.⁶² The oral part, which composes about 30 percent of the examination, takes four to six hours.⁶³ Two professors and two practitioners, usually judges, form the board of examiners and examine four students.

Most students think the State Examination is very demanding. They are right. It is a great challenge to have complete command of the entire law in force at the time of the examination. In addition, the students do not know in advance which professors and practitioners are going to examine them. Thirty percent of the candidates fail to pass the First Examination successfully, and

⁵⁸ *E.g.*, the LMU offers so called *Examinatorien* and *Tutorien*.

⁵⁹ DRiG § 5a II; JAPO § 18 I, II.

⁶⁰ JAPO § 5.

⁶¹ *Id.* §§ 28 I 1, II.

⁶² *Id.* § 30 I 2.

⁶³ *Id.* § 32 III. In Bavaria, this is twenty-five percent; JAPO § 34 I 2.

only 10 percent reach a level above average.⁶⁴ The examination period is about six months, mainly because the exams have to be evaluated and a date for the oral examination has to be set. The examination may only be re-taken once, unless the student made use of the possibility of a “free shot,” which is granted if the exam is taken before the ninth semester.⁶⁵

V. PRACTICAL TRAINING AND THE SECOND EXAM

A. PRACTICAL TRAINING

The First Examination marks the end of legal study at the university and opens the way to the second and practical stage of legal education. All successful students, now called *Referendare*, obtain a practical training, the *Vorbereitungsdienst* (preparatory service). Section 5b of the Federal Judge Act sets the legal framework for practical training, which is filled out by the requirements imposed by state legislation.⁶⁶ During the two years of this preparatory service, the *Referendare* have the special status of civil servants and receive a salary of about €800 per month.⁶⁷ The aim of the preparatory service is to train the *Referendare* in the practical work of jurists in the main legal professions.⁶⁸ Practical instruction takes place in several compulsory stages (civil court, criminal court, public prosecutor’s office, administrative agency, and the law firm).⁶⁹ In an additional, optional stage, the *Referendar* can choose any legal profession, training again at court, but also in parliaments, ministries, companies, international organizations, churches, and elsewhere.⁷⁰

⁶⁴ Bundesministerium der Justiz, Übersicht über die Ergebnisse der ersten juristischen Staatsprüfung im Jahre 2004, <http://www.bmj.bund.de/media/archive/1038.pdf>.

⁶⁵ JAPO §§ 36 I, 37 I.

⁶⁶ DRiG § 5b; JAPO §§ 44 ff.

⁶⁷ Gesetz zur Sicherung des juristischen Vorbereitungsdienstes [SiGjurVD], Dec. 27, 1999, GVBl. Bayern at 529, art. 3.

⁶⁸ JAPO § 44 I 1.

⁶⁹ DRiG § 5b II; JAPO § 48 II.

⁷⁰ DRiG § 5b III; JAPO § 49.

During each stage, the *Referendar*, to whom a supervisor is assigned, has to draft legal documents of the respective profession.⁷¹ *Referendare* mainly learn to write a court decision.

Prior to the reform of 2002, the practical training had little focus on lawyering skills like negotiation, advocacy, and legal advice, but now more emphasis is placed on these skills.⁷² *Referendare* have to participate in court hearings and act on behalf of a public prosecutor or an attorney. Moreover, the *Referendare* attend special study groups (*Arbeitsgemeinschaften*), where practical problems of the legal professions are discussed.⁷³ The *Referendar's* performance in every stage and in the study groups is evaluated by the supervisor, but does not count for the following State Examination.⁷⁴ While the stages at court, at the public prosecutor's office, and in the administration last three months each, the *Referendare* (since the reform of 2002) work at a practicing advocate's office for nine months.⁷⁵ This was a reaction to the fact that 60 to 70 percent of all young lawyers start a career as advocate after their graduation.⁷⁶

B. SECOND EXAMINATION

The Second, or Great State, Examination marks the end of legal education. As in the first examination, the candidates take from eight to twelve written tests and have to pass an oral examination. In contrast with the First Examination, the Second Examination aims at testing practical skills, and the board of examiners consists exclusively of practitioners. Again, the examination is very demanding. Only 15 percent reach a level above average. The results of this examination are very important for a lawyer's career, especially in the beginning. After passing the Second State Examination, the *Referendar* becomes *Assessor*. He or she has spent at least six or seven years, and in most cases,

⁷¹ JAPO § 50 II.

⁷² *Id.* § 48 II Nr. 3.

⁷³ *Id.* § 50 II.

⁷⁴ *Id.* § 54.

⁷⁵ *Id.* § 48 II Nr. 3.

⁷⁶ Statistik Jurastudenten, Prüfungen, Rechtsanwälte der Bundesrechtsanwaltskammer, http://www.brak.de/seiten/08_02.php.

eight or nine years, undertaking the study of the law. The *Assessor* is qualified for any legal profession, including that of a judge.

VI. LEGAL PROFESSIONS AVAILABLE AFTER TRAINING

As mentioned above, legal education in Germany consists of the two stages of university study and legal training, each concluded with a major examination. This system creates the so-called *Einheitsjurist*.⁷⁷ At the moment, there is no other way to become a lawyer. For example, after the First Exam, no student could start as a trainee in a law firm in order to become a lawyer, even if he already knew during university studies that he wanted to become an attorney. Even completing the education process does not necessarily result in obtaining a legal career. About ten thousand students pass the Second State Examination every year.⁷⁸ They are, in theory, qualified for every legal profession. In fact, it has become more and more difficult, especially during the last decade, for *Assessoren* to find a proper career opportunity. Mainly due to the unlimited access to legal studies, the system produces too many lawyers. It is estimated that only three thousand new lawyers are needed per year.

In practice, 85 percent of the *Assessoren* start a career as *Rechtsanwalt* after the Second Exam.⁷⁹ The reason is quite simple: there is no bar exam in Germany—only a formal admission is required.⁸⁰ On the other hand, not all professions are open to every *Einheitsjurist*. Only candidates with good results in the examination (about 7 to 10 percent) have the option to become a judge. It is the classical aim of the legal education system that only the best shall obtain the office of a judge, but there have always been many highly qualified young *Assessoren* who do not want to become judges. In comparison to the best attorneys, the income is much lower, and moreover, the position of judge is not

⁷⁷ DRiG § 1; BRAO § 4.

⁷⁸ 2003: 11 276. Bundesrechtsanwaltskammer, Statistik Jurastudenten, Prüfungen, Rechtsanwälte, <http://www.brak.de/seiten/pdf/statistiken/Jurastudenten2003.pdf>.

⁷⁹ Lawyers from countries within the European Union may practice in Germany. They have to use the professional title of their home state. They can qualify as *Rechtsanwalt* after practicing in Germany for three years and passing an aptitude test.

⁸⁰ BRAO § 6 f.

as prestigious as it is in common law systems. In the German legal system, judges are powerful but they are part of an anonymous judiciary. In the public sector, the *Assessoren* can also become civil servants or public prosecutors. The entry to those careers also depends on very good grades.

In the private sector, the greatest group among the jurists, the *Rechtsanwälte*, has faced many changes in the last fifteen years. Traditionally, German *Rechtsanwälte* worked only locally in small partnerships of about ten people at most.⁸¹ The rules of ethics (*Standesregeln*) set by the *Rechtsanwälte* themselves, were strict: self-presentation and advertisements were not allowed. Since the beginning of the 1990s, large law firms, some of them international partnerships, have been established in Germany.⁸² They have introduced American customs and have tried to recruit the best *Assessoren*. In the last five years, however, the situation seems to have deteriorated even for them; economic decline and growing competition makes it more difficult to gain a piece of the pie. Crisis has also reached the traditional small firms, in which 60 percent of the *Rechtsanwälte* still practice.⁸³

For those who want to start an academic career, which may terminate in a professorial post, it is not necessary to have undergone the regular *Vorbereitungsdienst*, but it is very common.⁸⁴ It provides law professors with an understanding for practice. If an academic career fails—which can happen easily, as the selection of professors is very strict and there are few professorial posts—it is possible to launch another legal career. Generally, the path to the teaching profession consists of three stages.⁸⁵ First, it is necessary to take one's doctor's degree (while a Ph.D. in law is not necessary, only useful, for practitioners). Immediately after the First Examination, one can begin writing the thesis at the same time as undertaking the *Vorbereitungsdienst*, subsequently

⁸¹ Alexandra Schmucker, *Entwicklung der Strukturen und Beschäftigungszahlen in Rechtsanwaltskanzleien*, 2000 BRAK-MITTEILUNGEN, No. 4, 166-69.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Hochschulrahmengesetz [HRG], Jan. 26, 1976, BGBl. I at 185, § 44; Bayerisches Hochschulrahmengesetz [BHSchLG], July 24, 1998, GVBl. Bayern at 440, art. 11.

⁸⁵ A description in English is given by Philip Leith, *Legal Education in Germany: Becoming a Lawyer, Judge, and Professor*, 4 WEB J. CURRENT LEGAL ISSUES (1995), available at <http://webjcli.ncl.ac.uk/articles4/leith4.html>.

publishing the thesis as a book. It can also be written after the Second Examination. Currently, an academic career usually starts with a post as a *Wissenschaftlicher Assistent* or *Wissenschaftlicher Mitarbeiter* (assistant). Those in these posts are chosen to work at the *Lehrstuhl* (chair) by a professor, which means that they teach under the supervision of the professor and support him with his research, working on their own projects at the same time.⁸⁶ The assistant can stay at the university for six years at the most.⁸⁷ If the candidate is awarded the doctor's degree with outstanding results, with the professor's approval he or she can start the most crucial and difficult phase on the way to a professorship: the *Habilitation* (university lecturing qualification),⁸⁸ for which candidates must write a second book, which must be an outstanding and innovative work. If it is accepted by the law faculty as a *Habilitationsschrift*, the candidate obtains the *facultas docendi* and the status of a *Privatdozent* (the right to teach without any supervision).⁸⁹ The first and second books, among other publications, enable him or her to obtain a professorship at another law faculty.⁹⁰

There are two different levels of professorship at German universities. On the higher level, there is the *W3 Lehrstuhl* (formerly *C4*), which is the most prestigious post and includes control over rooms, a library, a secretary, assistants, and one's own budget. The *W2 Lehrstuhl* (formerly *C3*) is on the lower level (but there is no difference in the title, it is sometimes called *Professur*), which does not provide the holder with his or her own secretary or assistants and only gives control over a small budget. A *Privatdozent* can immediately be offered a *Lehrstuhl*. A board of professors chooses the candidate for a vacant professorship, either a *Privatdozent* or a professor from another law faculty. The appointment to a *Lehrstuhl* and a *Professur* is for a lifetime. If the *Privatdozent* fails to obtain a professorship, he or

⁸⁶ BHSchLG art. 18 II.

⁸⁷ *Id.* art. 19 I 1, 2.

⁸⁸ Bayerisches Hochschulgesetz [BHG], Dec. 1, 1993, GVBl. Bayern at 953, art. 91 III 1, 2.

⁸⁹ *Id.* art. 92 I.

⁹⁰ § 32 I 1, 2 Bundesbesoldungsgesetz [BBesG], May 23, 1975, BGBl. I at 1173, Anl. II, IV.

she has to leave university at some time. There are no tenure tracks for academic teachers below the level of a professor.

This system, which has hardly changed since the nineteenth century, may be subject to alterations in the near future. In 2002, federal law abolished the *Habilitation*, the classical prerequisite for professorship in Germany, and established the *Juniorprofessur*, a completely new post, which is comparable to an assistant professor in the American system.⁹¹ This change was declared unconstitutional by the Federal Constitutional Court in 2004, but only for formal reasons: the Federation does not have the competence to regulate details of the law concerning the universities because it is subject to state legislation. Some of the sixteen states in Germany want to keep the *Habilitation*, while others might implement the *Juniorprofessur* besides or instead of the *Habilitation*. That post will lead to a professorship after six years, without *Habilitation*, but is, of course, still dependent on evaluations of publications and research activities. In my opinion, the classical German way to professorship, the *Habilitation*, has many advantages, at least in the human and social sciences. The intensive study of at least two great subjects, leading to the two books, provides the candidates with essential abilities and knowledge in a relatively early stage of their scientific career. It also proves to be an advantage that the assistants who aspire to a *Habilitation* have comparatively few teaching obligations and thus can concentrate very much on their scientific publication.

In Germany, it is very unusual for a learned and experienced practitioner to start a university career. This may be the reason for the widespread assumption that a professor at the university with little practical experience (mostly only during the *Vorbereitungszeit*), and who concentrates on the teaching and research, lives in a more or less comfortable ivory tower. This, assumption, however, is incorrect in most cases. Some of the professors serve as judges as a sideline,⁹² and many of them advise companies in legal questions and ministries. In addition, many professors give legal opinions in major law disputes and cases in all fields from criminal law to constitutional law.

⁹¹ HRG § 47 f.

⁹² DRiG § 7.

VII. LEGAL EDUCATION REFORM: AN UNENDING STORY

The reform debate is as old as the legal education system itself. Some aspects have been criticized again and again, and some reproaches are new, due to the challenges of European integration and globalization. For every change in legal education, the Federal Judge Act and the state legislation have to be amended; this makes it difficult to introduce major changes. Some reforms took place during the last few decades; the most recent one, implemented in 2002, was intended to emphasize the lawyering skills most students would need in their career.⁹³ Also, elective parts of the study became more important.⁹⁴ However, the two-stage approach with accompanying state examinations remained unchanged.

It is the long duration of the legal education for which today's system is most often criticized. Young German lawyers are in their late twenties when they start their career. It is quite interesting to note that it is the politicians who see this as a problem. The reason is simple: university study, which is free of charge for the students, and the training of the *Referendare* cost a lot of public money. Law firms and other parts of the private sector, which are not financially involved in the legal education, do not seem to care about the duration too much. From my point of view, the duration should not be overestimated: German lawyers start their practical career late, but they have passed through a comprehensive theoretical study and practical training before they begin formal practice. I have observed that German lawyers at the age of thirty have the same abilities as lawyers of that age in other countries, such as in Great Britain, where lawyers start their career at age twenty-two or twenty-four. In particular, German jurists are capable of quickly familiarizing themselves with new fields of law.

A second complaint about the current system concerns its broad educational content. The system of the *Einheitsjurist* requires that all students have broad knowledge in all fields of law until they have passed the Second State Exam. It is often

⁹³ DRiG § 5a II; JAPO § 2.

⁹⁴ DRiG § 5a II; JAPO § 2.

doubted whether it is sensible for a company lawyer to be experienced in criminal law, planning law, and family law, or whether a public prosecutor needs to learn property law in detail. In my opinion, it is useful. It provides all jurists with a common standard, enables them to change careers, and gives them a solid knowledge about how other lawyers work.

There are, however, disadvantages as well. The compulsory content neglects the historical and philosophical foundations of the law. Furthermore, it is very difficult to integrate new and important subjects such as European law, tax law, or environmental law, into the curriculum. In addition, it places heavy pressure on the students to repeat the main parts of civil, criminal, and public law over and over again until they pass the Second State Exam. All attempts to reduce the compulsory contents have failed thus far.

The third complaint is closely connected with the second one. The examination is very demanding and has colossal dimensions. The eight or eleven written examinations and the oral examination cover years of university study. However, though the system is hard, it proves again to be fair and a suitable way to find the best candidates.

In my view, the main problem of legal education in Germany today is the great number of students who face the general problem of overcrowded classes. An observer wrote:

During his three and a half to four and a half years of university studies the prospective lawyer is exposed to a system of lecture and discussion courses, both often crowded by hundreds of students, which imposes few sanctions against underachievement. Competitive, hard study is not particularly characteristic of German law students – a fact that corresponds to the secondary role of competition in the ideals and the actual life of the profession. The combination of sudden academic freedom after highly regimented high school studies with a completely new subject matter, which is not presented in ways to make it attractive to the uninitiated, often leads to a crisis that is resolved by most students in one of three ways: they leave university altogether, they change their field of studies, or they stay in law school, but they withdraw their energies more or less

from the offerings and ideals of the university and turn to commercial cram schools and correspondence courses.⁹⁵

This was written in 1973, but it is still more or less true. However, it has to be stated that the growing competition between the students has a tendency to prompt students to show more effort. It is quite obvious that law faculties and lawyers will not be able to solve the problem of overcrowding. Politics forces the law faculties to accept every high school graduate (*Abiturient*). Politics wants to keep at least two major subjects at the university, law and economics, free of access restrictions. In my opinion, this is a kind of social welfare policy but not a concept of higher education.

Last but not least, it will be necessary to question the division of theoretical education at university and practical training during the second stage of legal education. There were attempts to change this division into a one-phase model during the 1970s, but these experimental models were terminated in the early 1980s. Supporters of this one-phase model wanted to change not only legal education, but also the society,⁹⁶ with lawyers as “social engineers.” The conservative majority of lawyers did not favor this model.⁹⁷ Integration of theory and practice can be and should be done without an ideological frame. Today’s discussion

⁹⁵ DIETRICH RUESCHEMEYER, *LAWYERS AND THEIR SOCIETY: A COMPARATIVE STUDY OF LEGAL PROFESSION IN GERMANY AND IN THE UNITED STATES* 102 (1973).

⁹⁶ In an oft cited article, a well known judge wrote that legal education had traditionally meant “education to the establishment.” RUDOLF WASSERMANN, *ERZIEHUNG ZUM ESTABLISHMENT: JURISTENAUSBILDUNG IN KRITISCHER SICHT* 37 (1969).

⁹⁷ I am also skeptical of a legal education in the Federal Republic aiming mainly at the production of a social engineer with a one-sided, policy-oriented approach. Nowadays it is common knowledge that every judge, administrative officer, attorney, etc. participates at some extent in forming the law which he is called upon to apply. . . . The requirements of our times do call for a jurist with appreciation of the law in its political, economic and social context. Yet the Federal Republic of Germany is a parliamentary democracy with equal rights for voters, with well protected fundamental rights and freedoms. . . . I doubt that such a state needs jurists who see themselves mainly as self appointed legislators.

Geck, *supra* note 9, at 104.

does not care about this too much; reform debates are now initiated by economic needs and pressure, and focus on the technical aspects.

VIII. CONCLUSION

The last minor legal education reform in Germany in 2002 maintained the major classic feature of the German system, the *Einheitsjurist*.⁹⁸ The only significant changes were to place more emphasis on the elective parts of legal studies at universities and on the practical training at law firms. As a result of the 2002 reform, the debate has calmed down, but probably only for a short time. At this stage, law faculties are beginning their first experiences with the new curricula.

The decision to keep the *Einheitsjurist* as the product of the legal education system was the right one. The *Einheitsjurist* is qualified to work in any legal profession — as a lawyer in a law firm, in the public administration, and as a judge — after having successfully completed the study, the practical training, and the examinations. Even if the scope of the law tends to widen and becomes more diversified and complicated, holding on to the ideal of a broad legal education prevents loss of the overall view of the law.

I doubt, however, that this special and proven approach will survive the next decade, thanks to outside pressure. European integration also enforces the assimilation of higher education of the member states. The European Credit Transfer System (ECTS) allows students to integrate minor examinations from their study in other countries of the E.U. into their German legal education. Moreover, the members of the E.U. have agreed to standardize university study, requiring a first lowest qualification for a job, in as many subjects as possible, after taking the bachelor's degree. This may be followed by a master's degree as a second qualification.⁹⁹ Though this standardization was mainly designed for natural sciences, it will affect legal education as

⁹⁸ DRiG § 5 I; JAPO § 1; BRAO § 4.

⁹⁹ Empfehlungen zur Reform der staatlichen Abschlüsse vom 15.11.02, available at http://www.wissenschaftsrat.de/texte/5460_02.pdf.

well.¹⁰⁰ Some law faculties in Germany have started curricula for a “bachelor of law” and a “master of law” parallel to the classical education aiming at the overall lawyer.¹⁰¹ Students with these new degrees are not entitled to start in a classical legal profession, but the pure existence of these new curricula may change a lot. Conservative as it is, traditional legal education will survive for some time, especially because the ministries of justice are involved, as well as the ministries of higher education. Yet a change during the next ten years is likely. I share the doubt, common to many lawyers, that it will change for the better. Especially on the European level, there is no profound concept of reforming legal education, only the well-known and extra-legal demands that it should be faster and less expensive. This could end with a specialized legal craftsmanship, neglecting all the questions that have to be answered before designing legal education. This would exactly be the opposite of what today is, and traditionally has been, the subject and the aim of legal education. It is necessary to have a concept of law and the role of legal sciences and jurists when thinking about legal education.¹⁰²

¹⁰⁰ Norbert Reich & Frans Vanistendael, *Bologna und der Euro-Jurist*, 35 ZEITSCHRIFT FÜR RECHTSPOLITIK [ZRP] 268 (2002).

¹⁰¹ The approach of the law faculty at the university of Greifswald is described by Helmut Heiss, *Modularisierung als Königsweg? Zur Konkurrenz von Staatsexamen und Bachelor am Beispiel der Juristenausbildung an der Ernst-Moritz-Arndt Universität Greifswald*, in DIE NEUE JURISTENAUSBILDUNG. CHANCEN, PERSPEKTIVEN UND RISIKEN, *supra* note 54, at 55.

¹⁰² Hans Peter Bull, *Von der Rechtswissenschaftlichen Fakultät zur Fachhochschule für Rechtskunde?*, 57 JZ 977, 978 (2002).

