



A STUDY IN *Contradictions*

Le Stage International du Barreau de Paris. AMY BRENNAN

An examination of France's legal system highlights some of the many contradictions of French society. The most highly respected members of society in France are not doctors and lawyers. Rather, the best and brightest postgraduates in France go to L'ENA (*L'École nationale d'administration*). L'ENA is a graduate institution, which educates the vast majority of France's senior civil service. Public servants, alongside academics, sit at the very top of the society tree.

It may be fair enough that lawyers are not that well respected – lawyer bashing is a popular sport in this country too – but surely judges are well respected at least? Not so. Since the days of Napoleon's success over the French royalty and their raft of loyal judges, judges are regarded warily. They are not appointed by the State. They too are the product of a graduate education institution. As such, they begin their career very young and they are not particularly well paid, even as the years draw on. They are certainly not revered.

Judges are not considered law-makers in France. The Government makes the laws. Judges are not even widely

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considered to be the ones who interpret the law. They pronounce upon the law by handing down decisions but their decisions rarely extend beyond one page. If the law requires interpretation, the public and lawyers alike turn to the writings of law professors, such is the eminence of academics.

With all of this in mind, you might be surprised to find out that the French, nonetheless, are very proud of their legal system. In a survey conducted in 1999/2000, just under 50% of the public polled stated that they had “quite a lot” or “a great deal” of confidence in their justice system¹.

A good demonstration of the pride that the French take in their legal system is the Stage International du Barreau de Paris. Every year, in October and November, the body equivalent to the Paris Law Society, in conjunction with the Paris equivalent of Leo Cussen (if Leo Cussen were compulsory to all lawyers wishing to practice in Melbourne), runs an eight week ‘traineeship’ for international lawyers. The only three pre-requisites for participation are being a qualified lawyer, being under 40 years of age and speaking French.

The traineeship consists of an initial four weeks of classes at L’Ecole du Formation du Barreau de Paris, followed by four weeks of work experience in a Parisian law firm (France does not have a split legal profession). In late 2012, I was fortunate to be one of the participants among 52 in total. Of the 52 participants, there were 32 women and 20 men from 35 different countries. Only seven of the participants came from English speaking countries. Although for most of the others, English was their primary second language, it was especially pleasing that the common language between us remained French throughout our time together.

This coming together of people from all around the developed, and less well developed, world provided a fascinating opportunity for exchange. Some of the participants provided incredible insights into difficulties dealing with corruption within their political and legal systems. My colleagues from Argentina, Romania and the Democratic Republic of Congo come to mind. Others, particularly those from countries like Tunisia and Mauritius, where there is a significant Islamic population, talked of the strong influence that religion has on their legal system. Lawyers who came from Greece and Italy talked of the challenges they face conducting large litigation matters in context of governmental instability leading to changes in the law overnight. My experiences reminded me that there is so much for us to be thankful for in this country.

In addition to providing an opportunity to learn about the legal systems of each of the participants, the traineeship gave me a comprehensive introduction to the proud French civil system. The four weeks of classes ran a little bit like a mini Bar Readers’ Course. The main classes covered the basics of the set up and workings of the French courts within the various jurisdictions, the French separation of powers, the civil system, ethics, civil procedure and French legal history with a bit of politics thrown in. The remainder of the classes provided a brief introduction into a number of different areas of the law.

The teachers were generally of an exceptional quality. Our international arbitration class was held at the International Chamber of Commerce and was conducted by a member of its Secretariat to the International Court of Arbitration. Our class on French legal structures was taken by the Managing Partner of Clifford Chance in Europe.

As for the second four weeks, we were each allocated a law firm according to our preferences. I practice predominantly as a criminal defence barrister so I elected to be placed in a criminal law firm. I was extremely fortunate to find myself placed at Le Borgne – Saint-Palais Associés. Apart from it being superbly well located in the heart of Saint Germain, the head partner, Jean Yves Le-Borgne, is one of Paris’ most celebrated criminal lawyers. In 2010-2011, he held the role equivalent to the Law Society Vice-President in Paris. He is commonly regarded as one of Paris’ legal profession’s best orators with a most charming, operatic voice. His partner, Christian Saint-Palais is also an excellent criminal lawyer and proved to be a wonderful mentor to me.

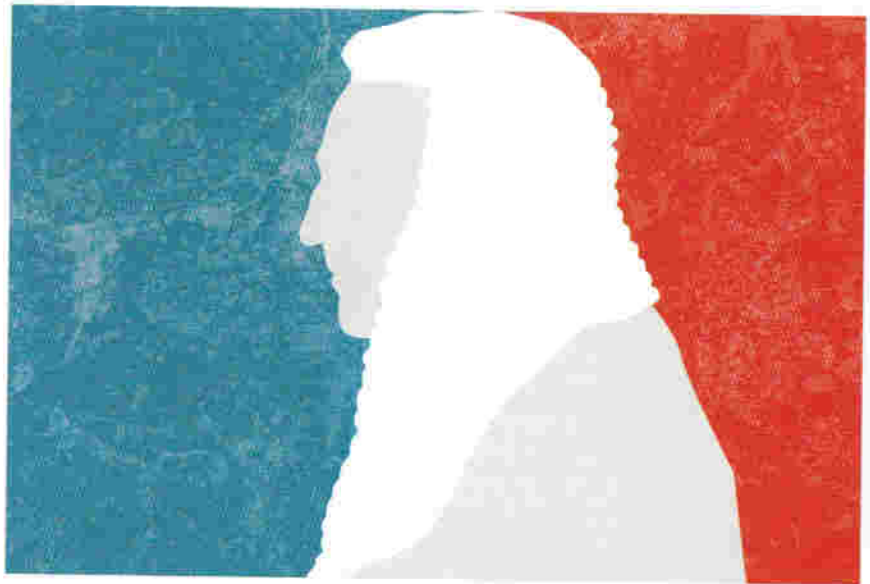
Although France does not have a split profession, there are a great many senior lawyers who specialise in advocacy and act almost as ‘in-house counsel’ within their own firms. It is also not uncommon for firms without specialist advocates to ‘brief’ senior lawyers from other firms to do the appearance work for litigious matters.

Another surprising contradiction is that in some respects, the French civil system provides greater scope for formidable advocacy than the Australian adversarial system. The existence and scope for cross-examination is more limited, although a practice of allowing far more significant cross-examination is developing, particularly in the criminal and commercial courts and in international arbitration. When making opening addresses, legal argument and particularly final addresses in France, lawyers seem to have far greater scope to deliver exquisitely crafted monologues, incorporating just the right touch of theatre. This is mainly because, during these types of addresses, advocates in France hold the floor and it is almost impermissible for a judge to interrupt the flow. Questions are reserved to the end.

The knowledge that one won't be interrupted with words common to our benches such as "Ms Brennan, get to the point," allows for the use of alliteration, repetition and word play (a full time hobby for most literary inclined French people) in a way that can give breathtaking results.

It is true that this feature of the system can also lead to interminably boring addresses that are unable to be cut short. In turn, this can lead to very long running cases. Countering this effect are the sitting times of the courts. The French are well known for their reluctance to give up the 35 hour working week, yet a 35 hour week is a very far cry from the hours worked by those in the legal profession in Paris. It is true that a lawyer's day doesn't often begin before 10 to 10.30am and that many of the courts don't begin sitting until 1 or 2pm, but the courts don't cease sitting until they've "completed the list" or at least concluded with the allocated witnesses for that day. This regularly leads to courts sitting until 7 or 8pm and can result in the court sitting until as late as 2 or 3am.

These sitting hours are particularly family un-friendly. You might be forgiven for thinking that this was simply in keeping with France's traditionally patriarchal society. Elements of this traditional orientation definitely still resonate. When the (equivalent) head of the international relations section of the Law Institute took one of our classes, he told us that a significant percentage of female lawyers in Paris practiced in family and social law (social law incorporates employment and social security law). He analysed this result by stating that this is because these are the areas of the law that most interest females. I raised my hand and explained to him that in Victoria, when we look at the large numbers of female barristers working in family law and the Children's Court, we tend to analyse the results by questioning whether this isn't because these are the areas of the law in which they can work



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without feeling discriminated against by their male peers. His response was that in his view "It's necessary to call a cat a cat." That he would say this to a room of international lawyers, 32 of whom were women, astounded me.

Despite all of this, 64% of judges in France are female. This is acknowledged by the French as being the result of the fact that the graduate institution responsible for training judges is a selected entry institution. In their late twenties, when most candidates seek entry, female candidates outperform their male counterparts by a significant margin. Whether this predominance of women at the top level of the legal system in France is helping to broaden the representative nature of the judiciary is altogether another question. Of those postgraduate students who successfully become judges, they are overwhelmingly young white women from very wealthy Parisian families.

In amongst the many contrasts and contradictions revealed within

the French system and across the world, the traineeship highlighted some startling similarities. Almost unanimously, the participants and French lawyers complained that access to justice comes at too high a price for most ordinary citizens. For the French at least, this complaint resonates despite their system being far less costly than that in Australia. Another unanimous complaint was that the wheels of justice move too slowly. Perhaps the most remarkable of the universal complaints was that legal aid (or its equivalent) is drastically lacking in funding. Hopefully, in seeing our own problems reflected, we all left Paris somehow strengthened in our resolve for change. I, for one, have at the very least resolved never again to tell a bad lawyer joke. I can now see that they are dismal when told in any language. ■

1. World Values Survey 1999-2000. In the same survey in 1995-1997, just in excess of 30% of Australians held the same level of confidence in our justice system.