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The Development of French Law

Rene de Chambrun*

THE ORIGIN OF THE FRENCH LEGAL SYSTEM flows from the history of the French Kingdom itself.

French unity was made by the kings. The continued evolution toward centralization developed into a long war against feudality, the enactment of decrees enforceable in the whole kingdom and the progressive establishment of nation-wide controls by the king's representatives.

The French Revolution inherited a country still divided by territorial particularisms and by privileges inherent in various social groups.

Feeling the political necessity of building a strongly unified nation, the Revolution standardized the territorial administration by redividing the country into new administrative units, the "departments," thereby breaking up the former provinces which had long fought for their administrative and judicial autonomy, and by undertaking the abolition of regulations restricted to any particular part of the country or of the population.

The fundamental result of today's administrative and territorial organization is that this unitary system over the whole territory places all citizens under the same law.

Napoleon I, whose two hundredth birthday was celebrated last year, completed this reorganization by a huge work in which are gathered customs and practices, and the new laws designed to unify the regulations and to protect the rights of individuals and property.

Furthermore, the State no longer holds its power from God but from the nation. The nation being the source of the legal power, the State itself becomes bound by law. The arbitrary rule of the king, and the confusion between the property of the king and that of the nation, becomes a thing of the past.

Paradoxically, the concept of separation of powers does not directly mean that the principles of submission to law and the protection of liberty, as they were defined in the Declaration of Human Rights in 1789, will be guaranteed insofar as the executive power is concerned. The revolutionary legislators expressed their distrust of the judiciary as a result of the many encroachments by the old regime Parliaments, which were vested with judicial powers, upon the executive and administrative life of the country.

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For a long period, conflicts concerning the Administration were solved by the Administration, which became the judge and the party.

It was the creation of the *Conseil d'Etat* (Council of State) in 1800, and the decision in the *Blanco* case in 1873, that laid down the principles of a public autonomous law. Its methods of reasoning are different from those of private law. The responsibility of the State is neither general, nor absolute; it has its special rules.

Obedience to the law on the part of individuals and administrations presupposes, of course, obedience to the Constitution. A special entity has been created in France to control the constitutionality of laws.

After a long period of hesitation, France finally rejected the American system of objection on the ground of violation of the constitutional rights which affords private individuals the possibility of referring a matter of law to the Supreme Court.

As a rule, French magistrates are appointed, not elected, with the exception of the judges of the commercial courts or associate judges in various fields, such as the labor courts. The magistrates are divided into two large bodies, with the possibility of moving from one to the other. These bodies are the Bench and the Public Prosecutors.

The French judicial system is presently being reconsidered and is undergoing changes tending toward more adaptability to the needs of those who are subject to court action. Otherwise, these individuals will remain over long periods in a state of uncertainty regarding their rights and obligations, or else, in view of the delays and expenses, they will prefer to resort to the private techniques of arbitration, whenever law permits.

The major change which has already gone into effect concerns the territorial organization of justice. This twin organization of penal jurisdiction, specializing in the repression of infractions, combined with jurisdiction in civil matters, settling disputes in matters of private law, leaves an important place to specialized jurisdictions.

The structure of these judicial districts, which must combine the proximity of the court and the convenience of those who resort to it or fall within its jurisdiction, comprises several levels. The Chief of Police or the Mayor acts as prosecuting magistrate in sessions of the Magistrate Court, and there is a single judge in the case of civil matters of minor importance or offense.

The one hundred and fifty Civil Courts constitute the civil jurisdiction in matters of common law. These courts are composed of an uneven number of judges and specialized magistrates on tenancy, real estate, juvenile, and other matters. In addition to his duties as a judge, the president holds special powers; he may take emergency measures through an injunction order or interlocutory injunctions upon petition.

When judging penal matters, the court becomes a Criminal Court, competent in such instances as are determined by law.

France, having the system of double degree jurisdiction, makes it possible to take an appeal from any judgment rendered by the Civil Court, whether it be a civil or a criminal matter. This appeal is lodged before the Court of Appeal provided with three magistrates on the Bench. Execution of a judgment is stayed until the decision on appeal.

At the top of this judicial pyramid, we find the Court of Cassation, mainly responsible for the proper application of the law and the coherence of jurisprudence. Normally, the Court of Cassation examines only the lawfulness of the decision referred to it, and not the case itself. If the decision is annulled, a new Court of Appeal is designated to re-examine the case.

The Fifth Republic, under the Presidency of General DeGaulle, has innovated in a number of sectors of judicial life. It created Courts of Exceptional Instances, which originally prompted by circumstances, have now become permanent and act as their name indicates: State Security Courts. These courts are competent not only in cases of revolt, sabotage, and the like, but also in espionage matters.

From the purely juridical standpoint, the Fifth Republic has made important modifications in the field of regulations governing the family and corporate law.

Furthermore, an amendment has been under study for several years, tending toward the unification of the various French judicial professions, in order to render them more efficient and competitive, particularly within the framework of the Common Market.