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Effects of Legal Education on Legal Culture: Comparing France and England

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ABSTRACT

This essay critically examines the influence of legal education on legal culture during the early modern period, focusing on the comparison between the English common law and European civil law systems. It first outlines the structure of legal education in England, noting the role of the Inns of Court and the distinctive approaches to teaching law to barristers and attorneys. The impact of such education on the development of common law, the doctrine of law, and advocacy skills is explored, emphasizing the elitism and exclusivity of legal education in England. The essay then shifts to discuss the Continental model of legal education, particularly in France, where a focus on textual analysis of canonical and civil law texts prevailed. It highlights the codified nature of civil law and the significant role of legal scholars in shaping the legal culture in Europe. Through a comparative analysis, the essay underscores how these divergent educational models have historically influenced the respective legal cultures, shaping the conceptualization of the law, modes of reasoning, and approaches to legal interpretation in both systems. The essay concludes that legal education profoundly impacts legal culture, evident in the contrast between the common law's emphasis on case law and civil law's reliance on codified statutes.

Keywords: *Legal Education, English Common Law, European Civil Law, Legal Culture, Inns of Court, Legal Tradition, Codification, Comparative Law.*

I. INTRODUCTION

This essay is an attempt at comparing two systems, namely the English common law system and the European civil law system and to ascertain to what extent the legal education in the early modern period shaped their legal culture. At the onset, it is important to point out that while the essay mentions civil law, it is generalising the system and is not referring to a particular country and recognises that the system of civil law may apply differently in different countries. The essay will first examine the educational structure and systems that were present in England and then comment on how they influenced legal culture. Followed by a discussion regarding the educational system in civil law with references to the civil law in France while examining the influence on legal culture. Finally, the essay provides a comparative analysis of

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the two systems and ascertains to what extent legal education was reflected in the legal culture of the land.

II. LEGAL EDUCATION – ENGLISH COMMON LAW

During the early modern period English legal education in relation to common law was undertaken by the Inns, there were four inns, the Inner temple, Middle temple, Gray's Inn and Lincolns Inn. Although the initial function of the Inns was uncertain, the Inns were originally hostels designed to lodge lawyers who came to town for their trials at Westminster. It was only during the 15th CE that the Inns became a place of residence and a centre for the legal education of law students and practitioners.²

Legal education at the Inns were carried out through learning exercises, the most important of them being readings and Moots. Readings were normally held twice a year. The reader had to provide an introduction, followed by explaining the matter covered by the statute, provide analogies or distinctions by employing case laws, then had to analyse and comment on each paragraph of the statute raising any important issues they find and finally express his own opinion on the statute.³ They were aimed at the clarification of uncertain points of law and to provide lawyers an actual practice of legal pleading.

Another important point to note here would be the divide in education that barristers and attorneys used to receive. Members of the upper branch, now referred to as barristers, used to have a higher social standing due to their perceived greater intellectual ability than attorneys who were regarded as the lower branch of the profession. While both the groups received their education at the Inns, attorneys were generally educated by lower inns like the Inns of Chancery. This divide was partly due to barristers regarding their work as a “scientific study which involved liberal learning” whereas attorneys were merely “mechanical practitioners”

This resulted in barristers requiring knowledge of the law and attorneys were specialists in court procedure and other aspects of litigations.⁴

III. INFLUENCE OF LEGAL EDUCATION ON LEGAL CULTURE IN ENGLAND

The way the Inns conducted themselves drastically affected the way the common law developed, and we will now examine some of the influences they had. The formation of a doctrinal body of law or an informal source of the law in the English common law system can

² Olivier Moréteau, Aniceto Masferrer, and Kjell Å Modéer (eds), *Comparative Legal History* (Edward Elgar Publishing 2019) [<https://doi.org/10.4337/9781781955222>] (accessed 18 October 2023) pg. 243

³ *ibid*

⁴ David Bamford, Thornburg, 'Learning the How of the Law: Teaching Procedure and Legal Education' (2013) 51 *Osgoode Hall L J* 45 Pg 80.

trace its roots back to the “collective and growing wisdom of the profession and the received wisdom of the Inns of court”. These set of rules were the opinions given by the lawyers during the readings and moots. They would be assessed, restructured, and transferred during the learning exercises held at the Inns of court.⁵

Furthermore, exercises like the Moot developed some of the famous traditions associated with the common law today. The use of public speaking led to the formulation of strong oral advocacy skills, this ability to articulate legal arguments in court was highly valued. This also resulted in the development of the adversarial tradition, wherein two parties present their arguments in front of a neutral judge. This then later went on to become a hallmark of the English common law system. The arguments put forth during the moots employed reasoning involving case precedents which further developed the role of precedents in English common law. Finally, access to legal education was heavily constrained as the fees necessary to attend the inns was higher than the fees charged by universities like Oxford and Cambridge, this coupled with the expensive London life ensured that accessibility to legal education was limited only to the Elites and rich.⁶ This was in direct contrast to what was happening in Continental Europe as the presence of several universities in Europe made legal education comparatively more accessible.

IV. LEGAL EDUCATION – EUROPEAN CIVIL LAW

Continental lawyers primarily studied law at the universities of Europe. According to the Bologna model, the students had to participate in the *lecturae* and the *quaestiones disputate*. The *lecturae* consisted of a reading and explanation on the part of a doctor (the professor). This analysis included, reading the chosen text, and explaining its contents, dividing the text into different parts, and examining each separately, explaining the reasons and aims of the legal principles in question, referring to parallel texts and analogous cases and finally provide concluding remarks along with a solution to the legal problem. The *quaestiones disputatae* was a practical exercise to help the lawyers prepare for court. After a period of five to six years and having completed several *lecturae and. Disputates* the student had to take part in a public exam to be awarded the *licentia docendi*⁷.

In France, a three-year course allowed students to study both the cannon law and civil law. The civil law course comprised a textual analysis of Justinian’s code. The professors provided lectured on the institutes, the code (which was a collection of decisions of Justinian’s

⁵ Ibid

⁶ Ibid

⁷ Ibid

predecessors. Canon law was also textually oriented, the core was built around five books of decretals. Despite being examined at equal lengths on both subjects civil law was always deemed to be superior. The introduction of French law however was the only significant change to the curriculum as the reformist movement which provided for the introduction of natural law in universities in Germany did not gather support in France.⁸

(A) Influence of Legal education on legal culture in Europe

As explained in the above section the civil law system placed great emphasis on written codes for example, *Decretum Gratiani*, a legal text, which was published in its final version around 1140 and was regarded as the central authority of Canon law. The students focused on understanding and interpreting the codes of the respective countries. This led to emphasis being placed on the codified nature of laws in the civil system.

Furthermore, another facet of the development of legal culture in Europe was the fact that the law had been developed on the strength of texts that were largely free from political domination i.e., texts like the *decretum Gratiani* and *Saxon mirror* were written by individuals outside the political and governmental spheres.⁹ Legal scholars were usually tasked with writing and creating rules that would formulate into a code that would then be adopted as the law of the land. Therefore, the role of legal scholars in drafting and refining the codes played a huge part in the culture of Europe.

Additionally, as highlighted earlier in several countries like France although canon law, civil law and French law were being taught, Civil law was given utmost priority. Students studied classical Roman texts and Roman legal principles which influenced the development of modern civil law. This highlights a culture that valued the continuity of ancient legal traditions.

V. COMPARATIVE ANALYSIS AND THE IMPACT ON LEGAL DEVELOPMENT

As Franz Wieacker highlighted in his paper titled “Foundations of European Legal culture” the Common law tradition and the continental system however different have for a long time traced their legal roots to the traditions of the European *jus commune* and *jus utrumque*.

Furthermore, theories like fundamental human rights and liberties and the guarantee of due process were decisive impulses that influenced the civil law.¹⁰ These provide an understanding

⁸ L.W.B. Brockliss, *French Higher Education in the 17th and 18th Centuries: A Cultural History* (Clarendon Press 1987) pg. 277-281

⁹ Nils Jansen, *The Making of Equal Authority: Non-Legislative Codification in Historical and Comparative Perspective* (Oxford University Press 2010) pg. 41

¹⁰ Franz Wieacker and Edgar Bodenheimer, "Foundations of European Legal Culture" (1990) 38 *American Journal of Comparative Law* 1 pg 6-7

of some of the contributions each system has had on the other.

The fundamental understanding and the mode of thought which condition the way a professional approach their profession is greatly shaped by the method and studies included in the individual's legal education.

As a response to the way the law is taught at university students conceptualise the law and the mode of reasoning in their own way. When encountering problem questions or mock cases students studying civil law in France will be asked to examine one avenue of the law in the belief that each situation is governed only by one set of rules with limited flexibility. This "absence of pluralism is a clear manifestation of the dogmatic character of the French legal culture". Nevertheless, English students will try to stretch the rules which will cover the situation as the rules are flexible and have a pragmatic approach. This shows how civil law students, especially French ones learn a set of rules and English students learn a skill.¹¹

A student of law at England often practices hypothetical practical problems which helped him to develop a skill of analysing judicial decisions to identify the narrow holding of a judgement which is entitled to the application of stare decisis as a precedent, while simultaneously learning to distinguish it from other cases. However, a student of civil law was taught general principles and how to think in abstractions.¹²

Due to the high weightage placed on codes, we can observe how there is a focal point on civil law that surrounds legislations and written down laws which hold precedent. This can be seen when judges in civil law jurisdictions use statutes as their starting point and provide a liberal interpretation of the same. In contrast, the legal education for common law lawyers placed importance on the "primacy of decided case laws and emphasised the role of the king's court in the unification and the development of the law and interpret statutes in a strict manner".¹³

However, it must be noted that due to the idea of parliamentary sovereignty acts of parliament is regarded as a primary source of law. While judges in civil law jurisdictions would interpret this law freely judges in common law jurisdictions have to interpret it strictly.

VI. CONCLUSION

This essay highlights the fact judicial decisions determine the status of the common law, while the written law is the basic characteristic of the civil law. Apart from this the role of legal

¹¹ 383 Natalie Cohn And Amandine Grade, "Mutual influence of English and French legal cultures through legal education"(1999) 3 *European review of private law* 381

¹² Joseph Dainow, "The Civil Law and the Common Law: Some Points of Comparison" (1966) 15 *American Journal of Comparative Law* 419-435, JSTOR pg. 429

¹³ *Ibid*

scholars, formulation of doctrines, exclusivity of entry into the legal profession have all shaped the legal culture of UK and Europe. This stems directly from the methods employed by the Inns and the universities in teaching their students. Therefore, we can see that legal education and the way students are taught to some extent defines the culture of a legal system.

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