

**HOW TO PRODUCE A LAWYER IN BRAZIL
AND IN FRANCE: A BRIEF COMPARATIVE
AND CRITICAL ESSAY**

// COMO SE FAZ UM ADVOGADO NO
BRASIL E NA FRANÇA: UM BREVE ENSAIO
COMPARATIVO E CRÍTICO

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>> ABSTRACT // RESUMO

This essay proposes a comparison between the lawyer production process in France and in Brazil, aiming to bring critical approaches towards the Brazilian experience. It is not a full scientific paper once I do not present a complete data based analysis to build an objective point. This paper was written in the frontier between a scientific article and a position paper. The subtitle “brief essay” is an attempt to avoid raising readers’ expectations. // O presente ensaio propõe uma comparação entre o processo de produção de advogados na França e no Brasil, com o objetivo de provocar reflexões críticas acerca da nossa experiência. Não se trata, por certo, de um artigo científico em sentido estrito, onde uma pesquisa é apresentada e a análise sistemática de dados constrói o coração de um argumento objetivo. Pretendo aqui ficar na fronteira entre este tipo de produto e o que conhecemos por “artigo de opinião”. Resolvi chamar então de um “breve ensaio”, para desde o início dar ao leitor conta da maneira com a qual pretendo abordar o tema.

>> KEYWORDS // PALAVRAS-CHAVE

Lawyers training; legal teaching; sociology of legal professions. // Formação de advogados; Ensino jurídico; Sociologia das profissões jurídicas.

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>> ABOUT THIS ARTICLE // SOBRE ESTE ARTIGO

Translated from Portuguese by Camila Souza Alves. // Traduzido do original em português por Camila Souza Alves.

INTRODUCTION

During my five-year academic experience in France – four of them as Political Sciences Ph.D. candidate¹ and one as an *Attaché Temporaire d'Enseignement et de Recherche (ATER)*² – in the Department of Political Sciences of Montpellier Law School, I studied the French selection process of judges. Indirectly, I also learned about the professional training of jurists, especially lawyers, for the reasons I will explain later.

This paper will not review a great number of scientific works on its theme³ and it will not present first-hand empirical data. This essay presents an overview, in which institutions and the way they operate are contrasted through a normative approach. It aims to seek the institutional meaning that agents and stages convey to the production of lawyers in Brazil and in France.

I organized this essay according to the institutional path to become a lawyer. Therefore, after a short explanation about the use of comparisons, I firstly discuss the admission in a Law School; then, the preparation to exams; the exams themselves; and, finally, the professional training.

1. THE USE OF COMPARISON

The comparative method is widely used by several areas of knowledge; consequently, there is a huge range of variations and nuances concerning it. Legal studies have linked the comparative method – which some legal scholars call “comparativism” or “Comparative Law” – to an idea of *pattern*. Rather than trying to understand similar institutions through generalization or the typification of their most remarkable characteristics, the idea of pattern brings out a normative attribute that alters its meaning; it conveys the idea of an example that comes from the occasional need of importing a foreign legal concept (some jurists call it an “alien legal concept”). This paper does not adopt such approach, because I do not intend to provide a critique to Brazilian institutional meaning that would exhort Brazil to do as France does.

My approach is closer to those that a social scientist adopts. It consists on the systematization of categories, making comparison parameters explicit, as Cécile Vigour (2005: 7) summarized. The author explains that comparisons provided by social sciences studies are different from analogies or homologies; they are a process in which there is no “impossible comparison”, once the researcher establishes similarities, connections and contrasts between different objects (*Idem*: 8). Hence, I will try to compare the institutional designs of lawyers professional training in Brazil and in France according to the following parameters: (1) the homology of duties and expectations concerning lawyers in both countries; and (2) the fact that lawyering is a profession that only the ones who hold a bachelor degree in Law and that succeed examinations are entitled to perform.

Furthermore, my approach is closer to the anthropological idea of comparison (although this paper does not even resemble an ethnography).

Known as Structural Anthropology, there has been a long tradition of ethnological studies that describe universal characteristics of the human spirit through a comparison based on *similarities*, as expressed by the work of Claude Lévi-Strauss (1962). The author pursues the “savage mind” – the subjective stage of every human being before “cultivation” or “domestication” – instead of seeking the “mind of savages”. Social Anthropology uses comparison based on *differences*, according to which the study of the *other* broadens one’s knowledge on *oneself*. Such approach plays an important role of denaturalization of western culture – by removing its alleged universality – through ethnographies that express different ways of constituting knowledge and diverse social practices and demonstrate they are *native* categories found in different contexts. Moreover, anthropological comparison allows one to *denaturalize* one’s knowledge and practices through the strangeness of *oneself* caused by the study of the *other*. Concerning Legal Anthropology, Roberto Kant de Lima (2008: 5) asserts that comparisons often systematically hide the observer’s society, because they value the absence of the *self* negatively. Therefore, I do not have any interest in exhorting the adoption of a French “pattern”. I simply intend to question the training of lawyers in Brazil by describing the French institutional design of its Instituts d’Études Politiques elements and stages.

2. THE FACULTÉ DE DROIT⁴ AND THE FACULDADE DE DIREITO

In a co-authored paper – written with Michel Mialle (2010) – I had the opportunity of discussing similarities concerning the *Faculté de Droit* and the *Faculdade de Direito* that are different from the previously mentioned characteristics: they are both a subsequent stage to high school and they are an indispensable platform to legal professions. Mialle and I questioned one of the aspects that have contributed to the loss of the central position of Law: the organization of legal studies in Law Schools based on subjects that “reflect” the legal system; and on a structure of prerequisites that conveys a false idea of progression, according to which students would only acquire knowledge that is more complex if they had formerly learned a simpler one. We used Immanuel Kant’s (1973) distinction – later adopted by Pierre Bourdieu – between critical and mundane schools to highlight the political colonization of the intellectual environment of the *Facultés de Droit*; institutions that are power-oriented instead of knowledge-oriented.

Universality has long been the paradigm of French university, as opposed to *talent reserve* (Charle: 1994). However, as Michel Mialle (1979) points out, the *Facultés de Droit* experienced the massification that would deeply change them in terms of faculty and students during the postwar period, a phenomenon Brazil would only experience during the 1990’s. Such massification of the *Facultés de Droit* is a result of French government efforts towards public universities: private *Facultés de Droit* are rare and not prestigious, except for *Université Catholique de Lille*. In Brazil, the massification of *Faculdades de Direito* also involves government efforts, although the private sector runs most of Brazilian Law Schools.

The admission in a *Faculté de Droit* begins with an application in which applicants must send their *baccalauréat* certificate, known as “BAC”, a high school examination report. In practical terms, there is no initial selection, once the positions are filled according to applications. During the first year, one quarter of students drop out, and this kind of selection process becomes more intense as students come closer to achieving higher education diplomas. Examinations that guarantee positions in the legal career are the final stage of such selection process. In Brazil, although *Faculdades de Direito* have been replacing the traditional *Exame Vestibular* for the *Exame Nacional de Ensino Médio – ENEM*, the admission in a Law School is a real selection process. There are positions for everyone, but not in the most prestigious colleges, which are mostly public institutions. I believe readers know the consequences of such structure to the social distribution to Brazilian legal professions, but they are a topic of this paper.

The *Faculté de Droit* had to adapt themselves – not without protesting – to the European university system. As a result, they now offer four degrees: (1) *License*, obtained after a three-year course; (2) *Master 1*, which consists of the fourth year of a course; (3) *Master 2*, which is the fifth year of a course; and (4) *Doctorat*, obtained after three years of research practice and the presentation of a thesis. *Master 1* degree (obtained after a four-year course) authorizes the application in legal profession positions, such as lawyers’ judges’ and commissioner of police’s. The *Faculdades de Direito* offer a bachelor degree, which is obtained after a five-year undergraduate course, and it authorizes the application to all legal professions, except for the teaching of Law in higher education institutions.

In the *Facultés de Droit*, holding a Ph.D. is a prerequisite for a professional to be accepted as a faculty member. Indeed, even an ATER⁵ position requires a Ph.D. candidacy. Exceptionally, however, some outside professionals – such as lawyers and judges – may be recruited as *vacataire*. They are offered a fixed-term contract, and they are paid on hourly basis; moreover, they do not establish an institutional affiliation with the University and they cannot be a member of a research center. Their activities are limited to *Instituts d’Études Judiciaires (IEJs)*, which will be later commented. In *Faculdades de Direito*, there is a great difference between the recruitment of professors in private and public universities, and although the number of professionals that hold a Ph.D. degree is increasing, the doctoral degree is not a prerequisite to become a faculty member. Furthermore, being a Law Professor is a rare profession; multi-professionalism, on the other hand, is a much more frequent phenomenon (Almeida: 2012). Ordinarily, in Brazil, lawyers or judges are Law Schools’ faculty members, and they often hold important positions, such as Graduate Programs Coordinators and thesis and dissertation’s supervisors.

Maybe the difference between legal scholars and legal practitioners in France (Bourdieu: 1986) and in Brazil is most remarkable contrast between this and that country. The teaching of Law as well as the practice of law are professions that one performs exclusively, and exceptions are quite rare. It is interesting to notice that exclusiveness is not

limited to faculty members; students must also dedicate themselves solely to their study routine; in fact, they often have classes and exams during the weekends. Being a student is the main occupation of French law student for at least three years; universities only allow students to become interns during their fourth year, and all internships are closely and strictly supervised.

In *Faculdades de Direito*⁶, generally, classes occur during mornings or evenings, and some schools offer classes during the afternoon. A Brazilian law student often becomes an intern early, sometimes during the first year of the undergraduate course. It is interesting to notice that before the fourth year – when the universities provide an administrative staff that do not supervise, but at least regulate legal internships – informal internships are quite frequent, and public bodies offer many of them. Likewise, some students work during the undergraduate course, and several of them to pay for fees and tuitions. In addition, a third type of behavior has become more common among Brazilian students: law students attend university and examination preparatory courses' classes concurrently. The only kind of Brazilian student that one cannot find is a full time Brazilian law student.

Probably, the first contrast that constitutes our first critical strangeness concerning Brazilian situation is the following: the institutional meaning of Law Schools in France is that they structure the entire legal scenario. The central position of Law Schools produces material and symbolic effects that amaze Brazilian observers. Professors are the most valued legal professionals; the *Councours d'Agrégation* is highly prestigious, and the professorial supremacy is immediately recognized during interprofessional interactions, such as the examinations committees that I could observe during 2007 and 2008 French examinations for judges' positions (Fontainha: 2009). I also demonstrated the strategic importance of using – or not – undergraduate and graduate degrees during French examination for judges' positions depending on one's educational attainments (Fontainha: 2010). Academic supremacy is not exclusively found in French Law; however, its consequence is impressive: a deep difference between academic training (what a scholar must know) and a professional training (what a lawyer or a judge must know).

This paper focuses on the professional training of lawyers. I will begin by debating the professorial supremacy during the transition from a type of training to another, that is, I will start with the preparation and initial selection processes of legal careers. From now on, similarities become rarer and differences are more perceptible.

3. THE INSTITUTS D'ÉTUDES JUDICIAIRES (IEJS) AND THE "CURSINHOS"

1958 is a crucial year to the French legal professional system, once it is when De Gaulle government created the *École Nationale de la Magistrature*, and established the examinations for judges' positions and

lawyer's examinations. The *Facultés de Droit* were assigned the institutional mission of preparing both exams; they were also assigned to create examination preparatory institutes without receiving a budget supplement. In 1961, thirty-two preparatory centers had been already created; twenty-two of them already bore the form of *Instituts d'Études Judiciaires (IEJs)* (Bodiguel: 1991). Currently, there are forty-one of them in the following mainland France's *Facultés de Droit*: Aix-Marseille, Amiens, Angers, Avignon, Bordeaux IV, Brest, Caen, Cergy-Pontoise, Chambéry, Clermont-Ferrand, Dijon, Évry Val d'Essonne, Grenoble II, La Rochelle, Le Mans, Lille II, Limoges, Lyon 3, Montpellier 1, Nancy II, Nantes, Nice, Orléans, Paris I, Paris II, Paris V, Paris X, Paris XI, Paris XII, Paris XIII, Pau, Perpignan, Poitiers, Reims, Rennes, Rouen, Saint-Étienne, Strasbourg, Toulon, Toulouse, Tours, Versailles Saint-Quentin. There are also two IEJs in the overseas territory's law schools: La Réunion, and Martinica.

It is important to mention that IEJs have always considered *Instituts d'Études Politiques (IEPs)* a competitor in relation to the preparation to examinations for judges' positions, once the law requires applicants to attest the completion of any four-year undergraduate course. IEPs are elite schools that teach not only Political Sciences but also Management, Economy, and Law. They can be found in the following cities: Aix-en-Provence, Bordeaux, Grenoble, Lille, Lyon, Paris, Rennes, Strasbourg, and Toulouse. In 2007, IEPs' degree holders had been authorized to undertake lawyer's examinations, but they had to face the protests of the heads of Paris and Montpellier universities' *Facultés de Droit* reported by *Le Monde* (Antonmattei; Maistre du Chambon: 20). I do not have data concerning the competition between former law and political sciences students; nevertheless, collected data on 2007 French examination for judges' positions impressively indicates that former IEPs' students have better attainments, as we can bellow:

Table 1: French examination for judges' positions passing rates per institution

Institution attended	Preparatory institution	Passing rate
SciencesPo Paris	Instituts d'Études Politiques	87,5%
SciencesPo Rennes	Instituts d'Études Politiques	80%
SciencesPo Grenoble	Instituts d'Études Politiques	66,67%
Université de Paris 11	Instituts d'Études Judiciaires	55,56%
SciencesPo Lyon	Instituts d'Études Politiques	50%
Université de Paris 10	Instituts d'Études Judiciaires	40%

Institution attended	Preparatory institution	Passing rate
Université de St. Étienne	Instituts d'Études Judiciaires	40%
Université de Paris 2	Instituts d'Études Judiciaires	35,21%
Université de Cergy-Pontoise	Instituto de Estudos Jurídicos	33,3%
Université de Évry Val d'Essone	Instituts d'Études Judiciaires	33,3%
Université de Poitiers	Instituts d'Études Judiciaires	30%
Université de Paris 1	Instituts d'Études Judiciaires	29,36%
Université de Nice	Instituts d'Études Judiciaires	28,57%
Université de Rennes 1	Instituts d'Études Judiciaires	27,27%
Université Catholique de Lille	Instituts d'Études Judiciaires	25%
SciencesPo Bordeaux	Instituts d'Études Politiques	25%
Université de Orléans	Instituts d'Études Judiciaires	25%
Université de Valenciennes	Instituts d'Études Judiciaires	25%
Université de Lyon 3	Instituts d'Études Judiciaires	17,31%
Université de Bordeaux 4	Instituts d'Études Judiciaires	16,67%
Université de Strasbourg 3	Instituts d'Études Judiciaires	14,29%
Université de Montpellier 1	Instituts d'Études Judiciaires	12,5%
Université de Paris 13	Instituts d'Études Judiciaires	12,5%
Université de Rouen	Instituts d'Études Judiciaires	12,5

Institution attended	Preparatory institution	Passing rate
Université de Aix-Marseille	Instituts d'Études Judiciaires	11,36%
Université de Toulouse 1	Instituts d'Études Judiciaires	11,36%
Université de Caen	Instituts d'Études Judiciaires	9,09%
Université de Clermont Ferrand 1	Instituts d'Études Judiciaires	9,09%
Université de Nancy 2	Instituts d'Études Judiciaires	8,33%
Université de Lille 2	Instituts d'Études Judiciaires	7,41%
Université de Nantes	Instituts d'Études Judiciaires	5,56%

IEJs are examinations preparatory institutions mainly concerned with exams to become lawyers, judges, public attorneys, and police officers. Law students who had concluded the fourth year of their education and intended to pursue such careers are eligible to apply for a position in a one-year preparatory course offered by those institutes. Granted titles vary widely, but almost all of them mention “Judiciary Career”, followed by a reference to Procedural Law or Criminal Law. The preparation for the exam that enables someone to become a lawyer is known as pre-CAPA; CAPA stands for *Certificat d’Aptitude à la Profession d’Avocat*, a document that authorizes the practice of law in France.

The IEJs teaching exclusively aims to the preparation to admission exams. Small groups of students perform practical tasks, debrief former tests, and emulate tests while coaches supervise them. Preparation focuses on Broad-based Knowledge and Private Law; and it is important to mention that Criminal Law, Labor Law and Procedural Law do not constitute part of Public Law in the French legal system. Concerning educational costs, students must only pay a registration fee of less than € 200, once French government mainly supports education.

Instituts d’Études Politiques and *Instituts d’Études Judiciaires*’ lecturers are different from Universities’ faculty members: many of them are *vacataires*. It is only during the preparation to examinations that lawyers and judges can play a role in French legal teaching, but they are not alone: faculty members also take part in the preparation of students and they are responsible for the management of the institutes.

For those reasons, it is no exaggeration to say that *Faculté de Droit* has the monopoly of examinations, especially lawyers’ examination. Private institutions or private instructors marginally assist students in few cases.

As a consequence of this monopoly, which is considered one of the results of the institutional role *Facultés de Droit* play, the professorial supremacy will be reproduced during the recruitment of legal professionals - especially the selection of lawyers. Therefore, the *Faculté de Droit* frames not only the recruitment of French lawyers, but also the French lawyering.

This shows us that Brazil has not overcome the idea that the *Faculdade de Direito* only grants degrees to future lawyers, instead of facing it as a lawyering school. Until 1960, one had only to present a university law degree to one of the Brazilian Bar Association's (*Ordem dos Advogados do Brasil* – OAB) sections in order to become a lawyer. After the implementation of the OAB's Exam, our institutional framework considers the examination an evaluator of the knowledge law students acquire during the undergraduate course. While law schools are considered the only preparation needed, reality proves this idea wrong. The difference between the institutional design and reality produces a clash between two factors: (1) a law school that is unable to cause full legal academic reverberations and that fails in framing the Law; and (2) a legal scenario that is individually dominated by legal practitioners and institutionally ruled by courts and large law firms. As a result, the selection of lawyers does not comply with *Faculdades de Direito*, and does not evaluate the necessary skills to practice law.

We will discuss later the OAB's Exam. For now, we will debate the preparation. The consequence of such shock is the creation of a huge preparation market that joins both the OAB's Exam and the examinations to recruit civil servants. It is an unregulated market in every respect. Essentially private, it is organized by the competition between several companies that offer the following services: classes, practice tests and workbooks. In general, practitioners are recruited to teach and many of them are the co-owners of *cursinhos* (preparation courses). *Cursinhos'* instructors are better paid in relation to private law school's lectures and professors; and the fees and tuitions students must pay are unrestricted and unregulated as well.

The autonomization of lawyers and civil servants' selections is such a powerful phenomenon that even the courts and the OAB's Sections were unable to make any good institutional use of it; they profited financially though. What do I mean? Many of Brazilian courts and OAB's members take part in the preparation to exams; however, these institutions could not turn the examinations into a tool to “measure one's calling”, in which potential skills would be tested, considering each profession daily work's needs. No. Instead of not taking part in this market share, these institutions gradually created schools to compete in it. Therefore, many *Escolas da Magistratura* essentially prepare students to succeed the public examination to select judges⁷. Public Attorney Offices and Public Defender Offices have also created their own preparation schools. Since 2009 May, when the OAB's Exam was unified, many *Escolas Superiores da Advocacia* (ESAs) were also created by OAB's sections.

There is no better demonstration of the loss of the central position of *Faculdades de Direito* than such scenario. It also shows the total lack of

institutional meaning of professional schools in Brazil. We shall discuss the OAB's Exam and the French lawyer's examination in more details now.

4. THE *CERTIFICAT D'APTITUDE À LA PROFESION D'AVOCAT (CAPA)* AND THE *ORDEM DOS ADVOGADOS DO BRASIL'S* EXAMINATION

French lawyers themselves professionally around *Barreaux Régionaux*⁸. Although there is a *Council National des Barreaux*, each *Barreau* is autonomous and independent. A harsh national regulation guarantees the institutional cohesion of the profession. The Federal Statute of 1971, December 31 (altered by the Federal Statute of 2004, February 11) regulates the lawyer profession in France. Even though the *Council National des Barreaux* has the competence to write the National Rules of Procedures, local *Barreaux* are the basis of the profession organization, as lawyers are professionally associated to a *Barreau*. Moreover, the *Barreaux* organize the admission exam to lawyering schools that are called *Centres Régionaux de Formation à la Profession d'Avocat (CRFPAs)*. Currently, there are one hundred and eighty one local *Barreaux* in France, but only the ones with a great number of members can house a CRFPA, such as Paris, Versailles, Lille, Strasbourg, Villeurbanne, Marseille, Montpellier, Bordeaux, Poitiers, Bruz, Córsega, Guadalupe, La Réunion and Martinica.

One of the major differences between the *Examen d'Admission* and OAB's Exam is that if an applicant succeeds the former, he is admitted in a CRFPA where he will receive professional training; while if an applicant succeeds the latter, he can become a professional member of OAB. The Decree of 1991, November 27 regulated by the *Ministère de la Justice's* Ordinance of 2003, September 11 establishes the CRFPA *Examen d'Entrée* Program and its types. The exam takes place once a year. The presidents of each university must set a date and inform it to the CRFPA three months in advance. Students cannot apply directly to the exam; each IEJ sends a list of students that are apt to take the exam. Applicants must hold a French nationality and a degree that attests a four-year legal higher education. In other words, each CRFPA is affiliated to a university that organizes the exam. The university appoints an evaluation committee and issues certificates that allow students to enroll in a CRFPA.

The exam is divided in two stages. The first one consists of three tests. All the tests have the same weighting (weight 2):

1. A five-hour test in which students must write a summary note based on "documents related to legal aspects concerning social, political, economic and cultural issues of contemporary world";
2. A five-hour test that consists of two essays that will evaluate the candidate's ability to "legal reasoning", one test on Law of Obligations and another one on Civil Procedure, Criminal Procedure or Administrative Law, on candidate choice.

3. A three-hour test in which students must write an essay that approaches practical issues related to one of the following subjects: Law of Persons and Family, Property Law, Criminal Law, Corporate Law, Collective Lawsuits and Guarantees, Administrative Law, Public Law of Economic Activities, Labor Law, Private International Law, European Community Law, Business Tax Law.

Candidates that succeed the first stage face five tests in the second stage. All tests take place in public sessions. The second stage consists of:

1. A fifteen-minute oral presentation that occurs after a one-hour preparation. The presentation is followed by the inquiries of the evaluation committee on the following topic: “the protection of freedom and fundamental rights, which evaluates the candidate’s capacity of reasoning and oral expression” (weight 3);
2. A fifteen-minute oral test after an equal time preparation on one of the subjects that the candidate did not chose in the first stage (weight 2);
3. A fifteen-minute oral test after an equal time preparation on one the following subjects: Civil Enforcement Procedure or European Community Law (weight 1);
4. A fifteen-minute oral test after an equal time preparation on one the following subjects: Private Accountancy and Public Finance (weight 1); and
5. An oral inquiry that is performed in one of the following foreign languages: German, English, Classical Arabic, Chinese, Spanish, Hebrew, Italian, Japanese, Portuguese and Russian (weight 1).

The *Facultés de Droit* that organizes the exams recruit committee members. Two Law professors, one ordinary court judge, one administrative court judge, three lawyers – generally, a *bâtonniers* or an *ex-bâtonniers*⁹ – and a foreign language professor form the committee. The presence of legal educational institutions in professional selections is more impressive in the examinations for judge’s positions, in which the *École Nationale de la Magistrature* recruits the committee, generally formed by Law professors and judges. The supremacy of the university during professional selection is not limited to the recruitment of committee members; the university is also responsible for designing and planning the selection and for preparing candidates. Many best-seller manuals for the preparation to legal careers are written by professors and they mention in the title the good results in relation to both CRFPAs exams and examinations for judge’s positions (Ghérardi; Sabio: 2003), (Harichaux: 1999), (Dubos *et al.*: 2004), (Marmoz *et al.*: 2007), (Néret: 1977), (Pierre: 2006), (Ortega: 1996).

Succeeding this exam does not guarantee the CAPA. It only entitles the candidate a right of enrollment in a CRFPA, differently from the OAB approval certificate. Another fundamental difference is that candidates only have three attempts to succeed the *Examen d’Entrée* – after the third unsuccessful attempt, the candidate can no longer pursue a lawyer career;

the examination for judge's positions applies the same rule – while the OAB's Examination does not limit the number of attempts.

In Brazil, Federal Statute n. 8,906 of 1994 regulates the lawyer profession. *Ordem dos Advogados do Brasil's* Federal Council Provision n. 51 of 1996 created the OAB's Exam and Provision n. 144 of 2011 regulates it. The OAB's Exam happens three times a year. Candidates apply directly to the OAB, which also recruits committees and publishes the results. In general, differently from the French experience, the institutions that are responsible for the selections hire private institutions to organize OAB's Exams and Public Examinations to civil servants positions. Fundação Getúlio Vargas has organized the most recent OAB's Exams.

OAB's Exam consists of two stages. The first one is a test that contains eighty multiple-choice questions. In order to achieve the second stage, candidates must provide correct answers for at least half of the questions on the following subjects: Civil Procedure, Criminal Procedure, Civil Law, Criminal Law, Corporate Law, Labor Law and Labor Procedure, Tax Law, Constitutional Law, Administrative Law, Human Rights and Deontological Ethics. The second stage consists of one test that is divided into two sections: the first one is a writing section, in which candidates must "write professional documents", such as pleadings or legal reports; while the second one consists of a set of essay practical questions on one of the following subjects, on the candidate choice: Administrative Law, Civil Law, Constitutional Law, Corporate Law, Labor Law, Criminal Law, and Tax Law. Successful candidates must achieve the minimum score of six in this second stage.

The hired institution must recruit the committee that not only prepares the exams but also corrects them. I do not have precise data on the evaluation committees' morphology, but it is important to emphasize that multiprofessionalism is not an exception in such groups: it not an exception in OAB's Exams nor in Public Examinations' committees. It is interesting to notice that many public examinations for legal professional's positions recruits committees members among internal – once each public body organizes its own selection processes – and outside professionals. Among the latter, some are Law professors; however, as a rule, (multi)professionals are recruited, that is judges, public attorneys, public defenders, etc. that also teach in *Faculdades de Direito*. Indeed, the power of recruitment adds immense value to a jurist's career in Brazil because there is a high level dispersed capacity of adaptation to committees' expectations, which allows that the opinion of a committee member increases the possibility of changing some of his legal opinions and publications.

The *Faculdades de Direito* are not completely distant from this process; differently from the *Facultés de Droit*, they are not the foremost players either. In fact, *Faculdades de Direito* are subject to OAB. The latter publishes the results of its exam together with a raking of the *Faculdades de Direito*, according to their passing rate. Top *Faculdades de Direito* receive a quality label called "OAB *Recomenda*". OAB acts as the Brazilian legal teaching quality standard-setter, and that is the usual explanation to

OAB's label. Although "OAB *Recomenda*" is not a topic of this paper, it is important to mention Edson Nunes, André Magalhães Nogueira and Leandro Molhano Ribeiro's (2001) criticism to OAB's label methodology. On the other hand, *Faculdades de Direito* – especially the public ones that usually rank better than private schools – make no efforts to adapt legal teaching to OAB's Exam.

Concerning *Facultés de Droit*, they are evaluated by the *Ministère de l'Éducation Nationale*, which also publishes a ranking (as Brazilian Ministry of Education does). Moreover, private research and assessment institutions evaluate *Faculté de Droit* as well. They publish a ranking according to their employability index.

This section not only emphasizes the secondary role of *Faculdades de Direito* in Brazil but also demonstrates the total lack of institutional meaning in the professional training of Brazilian lawyers: while a successful OAB's exam candidate can immediately become an OAB member, a successful French candidate can only become a CRFPA student.

5. THE CENTRES RÉGIONAUX DE FORMATION À LA PROFESSION D'AVOCAT (CRFPAS) AND THE ESCOLAS SUPERIORES DA ADVOCACIA (ESAS)

Successful *Examen d'Entrée* candidates become *élèves-avocats* (lawyer-students) in CRFPAs. They receive an eighteen-month professional training that is funded by lawyers' donations and the French government; students also pay enrollment fees. It is worth noticing that this is the moment that *Facultés de Droit* leaves the stage: experienced lawyers conduct the professional training; Law professors – legal scholars – only complementary and marginally assist them. *École Nationale de la Magistrature* also adopts the same pattern: its faculty members are judges with at least ten years of experience that will instruct students for five years.

Article 57 of Decree n. 91 of 1991, November 27 regulates the initial training of French lawyers, which consists of an eighteen-month three-stage program. During the first stage (the first six months), lawyer-students attend classes on professional deontological ethics, and on the Rules of Procedure. They also study legal writing, oral debates, oral statements, procedures, law firm management, and a foreign language. During the second stage (the next six months), lawyer-students write an Individual Pedagogical Proposal to be submitted to CRFPA, which will revise and approve it. Students must present an internship proposal that cannot include law firms. Students are introduced to the professional world, and even though this introduction leaves lawyering activities out, it is still related to the interests of future lawyers. It is quite common to see lawyer-students who intend to develop a career as a criminal justice lawyer become interns in a Police Department or a student who wants to pursue a career as a tax lawyer to become an intern in the General Inspection of Finances. A CRFPA committee must approve and evaluate all internships through the reports students must present. The third stage (the last six

months) consists of an internship at a law firm. An appointed lawyer-instructor evaluates students together with a CRFPA committee.

After an eighteen-month professional training, the lawyer-student can apply for the CRFPA *Examen de Sortie* (an exam to leave). Successful candidates receive a CRFPA certificate that allows them to become a *Barreau* member and to practice law. This exam's committee is similar to the *Examen d'Éntrée's*, but its members are appointed by CRFPA. Students receive seven scores, which are obtained through:

1. a five-hour writing test, in which students must write a legal report and a pleading (weight 2);
2. a fifteen-minute oral statement after a three-hour preparation (weight 2);
3. an oral test on Rules of Procedure and professional deontological ethics (weight 3);
4. an oral test on a foreign language after a twenty-minute preparation (weight 1);
5. an oral test on the Individual Pedagogical Proposal report (weight 1);
6. an oral test on the law firm internship report (weight 1); and
7. a continued control score, which consists of the average all scores obtained during the professional training (weight 1).

After succeeding the exams and having obtained the CAPA, the French lawyer is finally produced. It is important to emphasize that initial training period is not only a learning and evaluating process, but also a strong professional socialization process. During CRFPAs classes, lawyer-students are in contact with experienced local lawyers. Moreover, the two internships are the opportunities students have to become members of extraordinary professional networks; many students find their first jobs during the internships at law firms. CRFPAs effectively acts as strong regulator of a market that is known by its liberal and private characteristics.

In Brazil, OAB's Exam successful candidates face this market differently. Candidates who intend to develop a career as lawyer depend on their own abilities to constitute a network that guarantees important clients and a satisfying position in the market. Those who intend to pursue a legal career and to become a civil servant also needs the same social and financial aid to support an exclusive preparation that can take many years.

Finally, in order to illustrate the lack of institutional meaning of the initial training of Brazilian lawyers, it is worth mentioning the recent profusion of *Escolas Superiores de Advocacia* (ESAs) that are associated to OAB's sections. ESAs express two movements: (1) the increasing offer of OAB's Exam preparation courses, and (2) the offer of specialization courses and *lato sensu* graduate programs; both of them are paid and unregulated courses. The institutional meaning of initial and continued professional training is that they are mandatory; otherwise, it is impossible to enter the profession. In Brazil, there is no such meaning. Instead, there is a confusion between legal training and professional training.

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I promised to readers that I would not conclude this paper by exhorting Brazil to “follow in France’s footsteps” or to get inspired by the French “pattern”. There is no French “pattern”, there is simply a way to produce lawyers in France that is a result of a social reality – not addressed in this paper – that is different from ours. However, the way *avocats* and *advogados* are produced express the meaning – or the lack of it – conveyed in each stage.

The differences between the two production processes demonstrate a first Brazilian paradox: the most secondary institution – the *Faculdades de Direito*, which only issues degrees – is the only one that holds the institutional mission of training all legal professionals; in other words, they hold the mission of training a kind of *ultraprofessionals*, that is, the ones who can pursue all types of legal positions.

In France, there is a clearer distribution of institutional missions: police schools train police officers, judges’ schools train judges, and lawyers’ schools train lawyers. The *Faculté de Droit* trains scholars.

Obviously, such distribution – in both France and Brazil – is not a result of “institutional spontaneities”. Power struggles are present in all institutional arrangements, especially the ones related to the Law. The professorial supremacy in the French Law is known for the excessive power of legal scholars over other legal professionals, in symbolic and practical terms. However, the constitution of an institutional meaning that maintains such professional production process is based on an internal coherence that allows the interaction of diverse agents, and that guarantees the effective regulation of the process. In France, the institutional meaning of stages and institutions involved enables to diminish inequalities that were inherited by the ones who take part in the competition – that is what it is about – not only from the perspective of individuals, but also from institutions’ point of view.

I do not mean that Brazil must do as France does. But we must do something in Brazil!

>> ENDNOTES

- ¹ During my doctoral training, I studied the recruitment of judges in France (Fontainha 2011).
- ² Temporary Lecturer and Researcher.
- ³ However, I recommend the reading of some relevant works in the topic: Christophe Charle (1989) and Jean-Jacques Gleizal (1979) on the Social History of French legal professions. Concerning the Social History of lawyer profession specifically, Lucien Karpik (1995). Also, the work of Liora Israël on the actions of judges and lawyers during the processes of handing Jews to Nazis in the “Vichy” regime; and the work of Anne Boigeol (2004) on the difficult entry of woman in the lawyering profession during the beginning of 20th Century.
- ⁴ From now on, in order to adapt my writing style to comparative method, I will maintain the name of French institutions and degrees in the original language.
- ⁵ See note 2 above.
- ⁶ This paper aims to exploratory analyze the general institutional design of Law undergraduate courses, in order to extract their meaning compared to other legal institutions. The idea is to build a comparative platform, and not to provide a detailed analysis on Brazilian legal teaching. Still, it is important to mention the vast number of works on the topic, especially the following fundamental studies: Falcão (1978 e 1984), Faria (1987), Campilongo (1994), Junqueira (1999), Felix (2001) and Adeodato (2008).
- ⁷ I teach “Sociology of Law” in the Escola da Magistratura do Estado do Rio de Janeiro’s – EMERJ – “Especialização em Direito para a carreira da magistratura” course.
- ⁸ *Barreau* has its etymological origin the word “bar”, the place where lawyers pronounced their oral statements.
- ⁹ The *bâtonniers* is the President of a *Barreau*. The word alludes to the baton carried out by Medieval homologous.

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