

## LEGAL EDUCATION IN AUSTRIA AND GERMANY AND THE IMPORTANCE OF THE STUDY OF LEGAL HISTORY\*

JUDITH VON SCHMÄDEL\*\*

### I. *Introduction*

“Legal education” refers to the schooling and training of legal professionals at university law faculties and, in some cases, further practical training, which often involves additional examinations.

Both legal education and the legal profession have a long tradition in Europe. After the first law faculty opened its doors in Bologna in the twelfth century, legal studies spread throughout Europe and soon became an important, if not mandatory, prerequisite for the practice of law.

The oldest German law faculty is located at the University of Heidelberg, where the first law lectures were held as early as 1386. The first law faculty in Austria commenced classes in 1402 as part of the University of Vienna, which had been founded in 1365.

Traditionally, legal education at Austrian and German universities — and at European universities in general — included secular law (which for a long time meant exclusively Roman law<sup>1</sup>) as well as ecclesiastical (canon) law. Canon law was generally regarded as being more important than secular law. In fact, during the first hundred years of its existence, the Viennese Law Faculty, for example, offered only canon law.<sup>2</sup> Today, however, the curriculum comprises secular law exclusively. Nevertheless, canon law can still be chosen as an elective subject at many universities.

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\*\* The author is a Research Assistant at the Department of Constitutional and Legal History, University of Vienna, Austria. She served as Visiting Researcher at the Hitotsubashi University International Research and Education Center for Japanese Law from 1 to 31 October 2008 on the invitation of Dr Rei Yashiki.

<sup>1</sup> In daily life, however, the local common law was of greater significance. That was only introduced to university education in 1753 following the reforms of Empress Maria Theresia.

<sup>2</sup> Ilse Reiter, *JuristInnenausbildung an der Wiener Universität. Ein historischer Überblick*, 1, <http://www.juridicum.at/index.php?id=275> (05.11.2008).

## II. *Legal Education at University*

### 1. Overview

Over the last few decades, the study of law has become more and more popular. In 2007, for example, there were approximately 150,000 students enrolled at German law faculties, but there was an equally high number of early dropouts. The reason for this is that there are no university entrance examinations in Germany or Austria, unlike in countries such as the United Kingdom.<sup>3</sup> Many students simply enrol on trial and soon decide to switch to another faculty. Also, while admission to a law course is not dependent on the candidate having passed an entrance examination, the demands on students in completing the course are rather high. It is, therefore, not unusual for students to be unable to complete such courses successfully.

Entrance to universities in Austria is also free. This means that anyone who, typically after twelve or thirteen years of school, has obtained a senior high school diploma (which also serves as the qualification for entrance to university) can study whatever he or she wishes. Only students of medicine have to sit an entrance examination. The only requirement for studying law in Austria is the so-called *Latinum* (certificate of proficiency in Latin), which students either attain through their high school education or within the first couple of semesters at university.

In Germany, Latin is not a prerequisite for studying law unless one wishes to enrol in a doctoral programme. Some universities, however, require candidates to have attained a certain average grade on their high school leaving certificate. This is called a *Numerus Clausus*. Until recently, the *Numerus Clausus* was centrally regulated and the same for all universities. Students would go through an application process and be allocated a place in a law course. Now it is left to each university to set its own *Numerus Clausus*, and differences do exist between universities. At Regensburg, there is currently no *Numerus Clausus*, but at Munich, for example, the cut-off score is 2.8 (on scale from 1 to 6).<sup>4</sup>

Austria and Germany have recently introduced tuition fees. These are approximately € 380 in Austria and approximately € 600 in Germany per semester.

In Austria and Germany, there are certain structural requirements for legal education at universities, but each university may otherwise organize its law courses freely. Legal education therefore differs from university to university, and the law courses at the University of Regensburg will serve as a good German example here. Likewise, I will use the law courses at the University of Vienna as an example of the Austrian system.

### 2. Criticism and Reform

As a result of the so-called Bologna Process, which I will explain later, the curricula of

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<sup>3</sup> Filippo Ranieri, *Vergleichender Überblick über die Juristenausbildung in Europa heute. Auf dem Weg zu einem europäischen Rechtsunterricht?*, 2, [http://www.berlin.de/imperia/md/content/senatsverwaltungen/justiz/gipa/vortrag\\_prof.\\_dr.\\_ranieri.pdf](http://www.berlin.de/imperia/md/content/senatsverwaltungen/justiz/gipa/vortrag_prof._dr._ranieri.pdf) (05.11.2008).

<sup>4</sup> LM University/Munich, [http://www.uni-muenchen.de/studium/beratung/vor/studienplatz/studienplatz/zulassungsbeschr/zulas\\_oertl/index.html](http://www.uni-muenchen.de/studium/beratung/vor/studienplatz/studienplatz/zulassungsbeschr/zulas_oertl/index.html) (05.11.2008).

many courses at German and Austrian universities — including law at the Universities of Regensburg and Vienna — have been reformed recently. I will mention some of the reasons for these reforms here briefly as they have been, and are still, frequently discussed.

Over the past decade, legal education at Austrian and German universities has repeatedly been the object of criticism. Legal education is generally perceived as being too far removed from reality, tedious, and inflexible. Among the first issues mentioned in this context, apart from the fact that students study too long, is the lack of knowledge and understanding of economics among law graduates. Law curricula formerly provided very little coverage of economic and business aspects, foreign language training, and soft skills,<sup>5</sup> despite the fact that most practising lawyers require most or all of these abilities to some extent. Legal education in Austria and Germany has also been seen to be geared too strongly towards the public and judicial sectors.<sup>6</sup> Until recently, this may have been reasonable, since the state was the main employer of lawyers. This was particularly true in the case of Austria. Lately, however, there has been a drastic reduction in the number of jobs in the public sector and a freeze in recruitments over the past three or four years.

Another recent trend is that the only notably growing job sector for lawyers is the private sector, especially the business-affiliated service sector, where law graduates have to compete against commerce and economics graduates and are disadvantaged by their lack of knowledge of economics. A constant criticism in Germany has also been that law students are not satisfactorily prepared for the first state examination, forcing most students to take expensive private preparatory courses.<sup>7</sup> A specific Austrian problem, on the other hand, is that students would usually study a single subject, such as business law, take the examination, and then turn to another subject. In this way, students acquired detailed knowledge, but did not learn to think across different fields of law or gain a deep understanding of the law.<sup>8</sup>

These problems lent weight to the demands in Austria and Germany for systemic reforms of legal education at university. In connection with this, another important factor for university politics has to be mentioned: the Bologna Process.

As mentioned above, education in general at universities in Europe is currently undergoing major reforms. This is mostly by virtue of the so-called Bologna Process, which is a non-binding treaty signed in 1999 between 46 European countries that aims to raise the competitiveness of European universities and the mobility of students in Europe. A central concern of the Bologna Process is to standardize university degrees to make them comparable.<sup>9</sup> The chosen model here is the Bachelor-Master Model, with a three-year undergraduate programme and a two-year graduate programme. As a result of this, many study programmes in Germany and Austria have been reformed to comply with the Bologna guidelines.

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<sup>5</sup> Benedikt Kommenda, “Jus neu: Englisch statt Latein, mehr Wirtschaft? STUDIENREFORM”, *Die Presse* (15.01.2005).

<sup>6</sup> Martin Klingst, “Aussicht auf Reform”, in *Zeit* 39/1998, [http://www.zeit.de/1998/39/199839.c-juristen\\_.xml](http://www.zeit.de/1998/39/199839.c-juristen_.xml) (05.11.2008).

<sup>7</sup> Manfred Löwisch, “Juristenausbildung in Deutschland”, *Ritsumeikan Law Review: International Edition* 7 (1992) 71, 78.

<sup>8</sup> Heinz Mayer, “Die Zukunft hat begonnen: die Reform des Studiums der Rechtswissenschaften am Wiener Juridicum”, *ÖJZ* 2006/45.

<sup>9</sup> Peter Huber, “Zwischen Konsolidierung und Dauerreform — Das Drama der deutschen Juristenausbildung”, *ZPR* 2007, 188, 188-189.

For the above reasons, reform of law courses has also been strongly desired. It was, however, quickly decided that the Bologna Bachelor-Master Model would not match the special needs of law school education. Unlike most other study programmes, law schools are involved in the training of legally-regulated professionals. The legal education provided by a Bachelor's course would not fulfil the needs of such a profession unless it was supplemented by an additional two-year Master's programme. The not-unreasonable concern was that Bachelor's programmes would jeopardize legal educational standards and give birth to some kind of "lawyer light", for whom there would exist a much smaller job market. On the other hand, the necessary period of study for a programme that would enable access to the traditional branches of the legal profession (namely, the judiciary, public prosecutors, and attorneys) would be extended from the current approximately four years to at least five.<sup>10</sup>

In Germany, an additional issue was that the state examination is viewed as a cultural achievement, guaranteeing the high standard and reputation of German legal education. The Bologna Model does not suit this state examination system, and there was no wish to substitute the first state examination with Bachelor's and Master's degrees, which are mere university degrees.<sup>11</sup>

Due to these considerations, the Bologna Model was not implemented when the law school curricula in Germany and Austria were reformed. However, new law courses emphasizing commerce and economics can and have been established in addition to regular law courses. These programmes do follow the Bachelor-Master Model. The Vienna University of Economics and Business Administration, for example, created a Law and Economics course in 2006. Recent graduates from its Master's programme are also qualified for the traditional branches of the legal profession, thus making them equal to graduates from the Vienna Law School. Similar programmes have been created at many German universities. Graduates from these courses are, however, not equal to law school graduates and therefore not qualified to become a judge, prosecutor, or attorney.

### 3. The Reformed Law Programme at the University of Vienna

The University of Vienna is the oldest and largest university within the German linguistic and cultural sphere. There are currently about 72,000 students enrolled in over 130 degree programmes.<sup>12</sup> About 10,000 students are enrolled at the Faculty of Law, which also makes the Viennese Law Faculty the largest in the German-speaking world. As with all other Austrian law faculties, the law programme at the University is the so-called *Diplomstudium*, which is comparable to a Master's programme, although not exactly the same. The degree granted after successful completion of the programme is *Magister iuris*.<sup>13</sup>

At this point, it may be interesting to say a little about titles in Austria. Academic and professional titles are highly regarded there, and there is consequently a wide range of them in use. Titles are included in the name and often a person is addressed only by his or her title (for example, *Herr Magister*), omitting the actual name itself. To address someone with the wrong

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<sup>10</sup> Walter Barfuß, "Die Zukunft hat begonnen", *JBl* 2007, 35, 35; Mayer, *ÖJZ* 2006/45.

<sup>11</sup> Huber, *ZRP* 2007, 188, 190.

<sup>12</sup> University of Vienna, <http://www.univie.ac.at/> (05.11.2008).

<sup>13</sup> Faculty of Law, University of Vienna, <http://www.juridicum.at/> (05.11.2008).

title or forget the title completely is considered impolite or even an insult and people may react very touchily to such treatment. In other countries, this unique Austrian obsession with titles is seen as a kind of oddity. In particular, the habit to include *Magister* — which simply means Master — can only be found in Austria and is sometimes thought as rather eccentric in other countries. However, anybody who wishes to do business in Austria should be aware of the fact that Austrians feel very differently about this.

According to the Preamble to the curriculum of the law degree programme at the University of Vienna, its aim is to provide students with a global legal training, combined with soft skills and a basic knowledge of economics. The focus is on current Austrian law with its historical foundations and European and international references. Emphasis is placed on interdisciplinary learning rather than the accumulation of detailed knowledge. In this way, students are prepared for all the traditional branches of the legal profession as well as various other legal professional fields.

The law programme at the University of Vienna consists of a standard period of eight semesters of study. It is, however, quite common for students to study much longer than this.

The programme is divided into three stages. The first stage is designed to be an introductory one. Here, a general introduction to legal thinking and work as well as the philosophical and historical roots of modern law and a basic knowledge of civil, criminal, European, and international law are taught. The second stage (the legal stage) deepens the knowledge of criminal and civil law, including the law of civil procedure, commercial law, and social and labour law. In the final stage (the political science stage), public law (including tax law) is taught and the knowledge of European and international law is deepened.

During each stage, a number of different subjects (so-called modules) are taught. Each subject usually consists of several lectures and courses and must be completed successfully through a written or oral examination. Usually only one of the examinations is a written one of three hours' duration. Altogether, students must take eight oral examinations and three written ones, usually covering an entire field of law, such as constitutional law, civil law, or criminal law. They must also complete fourteen case exercise courses in different fields of law, including one or two written examinations. At the end of each stage, a written three-to-four-hour interdisciplinary examination covering several subjects of that stage must be passed. In addition to this main part of the course programme, students are required to choose an elective subject, consisting of several courses including examinations, according to their personal interest — for example, gender law or intellectual property law — and take one course each on foreign language and media (legal database) skills and specialized legal history skills. The programme is completed by two seminar papers, which serve as a Master's thesis.<sup>14</sup>

After graduation, every graduate may undergo a nine-month judicial clerkship at a court. This so-called *Gerichtsjahr* is mandatory for a number of legal professionals, such as judges and attorneys.

#### 4. The Reformed Law Programme at the University of Regensburg

After several failed attempts to establish a university in Regensburg, dating back as early as 1487, the University of Regensburg was finally founded on 18 July 1962 by the Bavarian

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<sup>14</sup> Curriculum of the University of Vienna Law School, in *Juridicum. Studienführer Jus WS 2008/2009*.

Parliament. Among the first three faculties commencing classes in 1967 was the Faculty of Law. Although the University of Regensburg does not enjoy a long tradition, it has nonetheless earned itself a fine reputation. Among others, the Law and Economics programme is well-regarded and medicine especially is held in high esteem. The most eminent professor who has taught at the University of Regensburg is probably Pope Benedict XVI.<sup>15</sup>

Currently, approximately 16,000 students are enrolled at the University, with 1,600 at the Faculty of Law.<sup>16</sup> Before I give an overview of the Regensburg system as an example of how a typical German law programme is structured, I would like to mention some particularities of the German legal education system that may be of special interest on account of their similarity to the Japanese system.

Legal education in Germany is two-tiered. It consists of one law programme, of at least nine semesters' duration, at a university and two years' practical training in civil service (clerkship/*Refrendariat*). Each stage ends with a uniform state examination. Students who do not pass the first state examination are not allowed to complete the law programme. The second state examination qualifies the successful candidate to work as a judge or in higher general administrative service, and is a prerequisite for working as a lawyer, public prosecutor, in the higher civil service, and a number of other legal professional occupations.<sup>17</sup>

Germany is the only European country where a uniform state examination at the end of the academic education of jurists exists. This uniform state examination has its origins in the Prussian model for the education of judicial personnel, which was developed in the late eighteenth century. Since 1878, the Prussian model of a dual education for jurists, consisting of a clerkship (*Refrendariat*) and a uniform state examination, has been mandatory throughout Germany and, as we have seen, still dominates the judicial and legal system.<sup>18</sup>

Another characteristic of German legal education is that graduates of the first state examination are traditionally not granted an official academic title, since the first examination is regarded as simply being a step towards the second one. Graduates who do not wish to take the second state examination because they plan to engage in a profession (such as in-house counsel) which does not require it often face disadvantages. Nowadays, some universities therefore grant graduates the title *Jurist (Univ.)*, *Refrendar*, or on request, *Magister legem*. Nevertheless, most students still take both examinations, meaning that graduates who have passed only the first examination will have fewer chances on the job market.

The law programme at the University of Regensburg is divided into basic, intermediate, and review stages. During the basic stage, the historical and philosophical fundamentals of the legal system, the fundamental theories and rules of civil, criminal and public law, and casework methods are taught in lectures and exercises. Students must pass a civil, criminal and public law exam respectively and write a legal opinion on a case in each of these fields. Additionally, they must pass a kind of "elimination" examination comprising examinations in all three of these fields and either history or philosophy of law. Students who do not pass this examination will not be able to continue the programme. These "elimination" examinations must be taken

<sup>15</sup> University of Regensburg, <http://www.uni-regensburg.de/Universitaet/Portrait/urwwweng.htm>.

<sup>16</sup> University of Regensburg, <http://www-verwaltung.uni-regensburg.de/scripts/WWWProgStuStatBest.exe> (05.11.2008).

<sup>17</sup> Stephan Zimprich, "Jura/Wirtschaftsrecht", in *Zeit Online CHE Hochschulranking*, <http://ranking.zeit.de/che9/CHE?module=WasIst&do=show&esb=5> (05.11.2008).

<sup>18</sup> Filippo Ranieri, "Juristenausbildung und Richterbild in der europäischen Tradition", *DRiZ* 1998, 285, 285-287.



for the first time by the fourth semester and can only be repeated once.

The intermediate stage deepens the knowledge of civil, criminal and public law, including European and procedural law. Students must attain certification in civil, criminal and public law. To do so, they must pass at least three examinations in different fields of civil law, two examinations in different fields of public law, and at least one examination with a certain minimum score in criminal law. During this time, students must also choose an elective subject and attend a foreign language course and courses on soft skills. The elective subject consists of several lectures, courses, and two seminars. The first seminar only requires one ordinary paper and a presentation, but for the second seminar, students must prepare a kind of minor Master's thesis, which will count towards the final grade.

The review stage (three semesters) does not bring — except for the elective subject — any new subjects, but serves as preparation time for the first state examination. During this time, most students attend either private, rather costly preparatory courses or free preparatory courses offered by the University. Graduation depends on the candidate successfully passing the written and oral portions of the first state examination, submitting a thesis, and passing an oral examination on the elective subject. Students must take the first state examination for the first time prior to the thirteenth semester. It can usually only be taken twice and failure rates tend to be somewhere between 20 and 40 per cent, depending on the state. Additionally, every student has to complete three months' practical training in two different fields of law.<sup>19</sup>

Graduates who have passed the first state examination usually continue their education by completing a two-year legal clerkship. During this time, the legal clerk goes through different training segments, of which at least one has to be at a law court, one at an administrative civil office, and one with a lawyer. This is accompanied by preparatory courses and lectures. In this way, graduates are expected to apply and deepen the knowledge they have gained during their studies. At the end of the legal clerkship comes the second state examination, the successful completion of which will qualify the graduate to work as a judge or request accreditation as an attorney (be admitted to the Bar). Graduates of the second state examination are entitled to use the title *assessor iuris*, but are usually just called *Volljurist* (fully-qualified lawyer).

The main difference between the German system and the Austrian one, apart from the state examination, is that civil, criminal, and public law in Germany are taught simultaneously from the beginning and over a longer period of time than in Austria, but some subjects, such as international law and Roman law, are not included on the curriculum. Also, it is not unusual for graduates in Austria to decide not to undergo a clerkship and only those who aspire to work as attorneys continue on as trainee lawyers and take the bar examination, whereas in Germany almost all graduates who pass the first state examination also take the second one.

### III. *The Legal Profession*

Neither in Austria nor in Germany is the study of law restricted to a few. This has consequences for the job market, especially in Germany. Graduates there can be divided into two groups. Those with good or very good grades have excellent prospects, whereas those with

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<sup>19</sup> Curriculum of the University of Regensburg Law School, <http://www.uni-regensburg.de/Fakultaeten/Jura/index.html> (05.11.2008).

only mediocre or poor final grades often face grave difficulties, long waiting times, and the prospect of very low wages. For some the only possibility will be to practise law on their own account, with all the risks that may entail. Due to a very restrictive grading system, only 20-30 per cent of graduates belong to the first privileged group, meaning that the majority of law graduates in Germany will experience difficulty in finding a satisfactory job. This prospect is not attractive after 6.5-7 years of full-time study.<sup>20</sup>

In Austria, law graduates encounter less problems finding employment than those who hold degrees in other fields. However, such positions may not necessarily be the ones desired. Most companies expect at least two years' prior work experience. The only positions which require no previous job experience are those at law firms and those for which law graduates may be regarded as overqualified, such as real estate agents and bank trainees. This means that many graduates who do not actually want to become lawyers are forced by circumstance to begin their careers as trainee lawyers at law firms — usually under very bad conditions. Often the pay is very low and work hours extremely long. Work hours of up to 12-13 hours per day are common, as is overtime on weekends. It is therefore not surprising that law firms are a rather unpopular choice as potential employers. If asked, most law students state that they would like to work in the public service, for NGOs or international organizations, or independently. While the public sector is still an important employer, the reality is that many law graduates ultimately find work in the private sector.

I will now briefly introduce the requirements for the three traditional branches of the legal profession — namely, the judiciary, public prosecutors, and attorneys — in Austria and Germany.

## 1. Judges

As mentioned above, law graduates in Germany qualify to become judges by passing the second state examination. This means that no further education is required and, in theory at least, all successful candidates could become judges. In reality, however, very good final grades in both state examinations are required. This grade average is usually only attained by the top 15 per cent of graduates. New judges are hired on probation for at least three years. If the judge is not laid off during this period, he or she must be made a judge for life within five years.<sup>21</sup>

In Austria, graduates wishing to become a judge must apply for a training position as a judge candidate at the beginning of their nine-month judicial clerkship. Within the first three months of the judicial clerkship, applicants must take part in courses and sit examinations. Whether candidates can proceed further in the application process or not will be determined by their results from these courses and examinations, the personal evaluation by their supervising judge, and their performance in interviews. Those who are rated positively take special courses, and at the end of the judicial clerkship must pass two oral and two written examinations, as well as a two-day psychological aptitude test. By means of these and further personal interviews, a list of candidates is decided upon, from which the Minister of Justice will select

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<sup>20</sup> Zimprich, <http://ranking.zeit.de/che9/CHE?module=WasIst&do=show&esb=5> (05.11.2008).

<sup>21</sup> Bavarian State Ministry of Justice, [http://www.justiz.bayern.de/ministerium/berufe/rista/00042/#anker\\_sprungmarke\\_0\\_23](http://www.justiz.bayern.de/ministerium/berufe/rista/00042/#anker_sprungmarke_0_23) (05.11.2008).



those who are to be appointed as judge candidates. Usually about 10 per cent of those who apply are appointed as candidates. The successful candidates have to complete a four-year traineeship under the supervision of a judge and pass through several stages. At the end of the four years, candidates sit another examination, the successful completion (failure rates are very low) of which qualifies the candidate to become a judge.<sup>22</sup>

## 2. Public Prosecutors

In Austria and Germany, the requirements for becoming a public prosecutor are basically the same as for becoming a judge.

## 3. Attorneys at Law

The requirements for becoming an attorney at law in Germany have already been explained.

In Austria, law graduates wishing to become attorneys must complete a total of five years' legal professional work. A nine-month judicial clerkship and at least three years' experience at a law firm as a *Konzipient* (which is often called an "associate", but is more like a trainee attorney) are mandatory. During this time, a number of seminars must also be taken. After three years, the candidate may sit the bar examination. The Austrian bar examination consists of three written parts and one oral part and is considered rather difficult. Failure rates are, however, rather low on account of the excessive time candidates usually invest in preparing for it.<sup>23</sup>

In Austria and especially in Germany, the number of attorneys has increased steadily in recent years. By 31 December 2007, there were approximately 5,200 Austrian attorneys and 1,898 Austrian associates (*Konzipienten*). In Germany, about 147,000 attorneys are currently registered. The ratio of attorneys to members of the general population is good in both countries, but much higher in Germany, with one attorney per 560 inhabitants as compared to approximately 1,600 in Austria.<sup>24</sup> This can mostly be attributed to the fact that almost every law student in Germany takes the second state examination, which automatically qualifies him or her to work as an attorney. The path to become an attorney is, therefore, much shorter in Germany than in Austria and for some it may be an alternative to unemployment. More than 80 per cent of lawyers in Germany work as attorneys after the second state examination, either for a large law firm or independently or as in-house counsel.<sup>25</sup> In Austria, on the other hand, it is only those who really wish to work as a lawyer who take the bar examination on account of the long period of traineeship.

It should also be noted that while almost half the trainee attorneys in Austria are female, only 16 per cent of practising attorneys are.<sup>26</sup> The reasons for this discrepancy are probably the extreme, family-averse working hours and the long training period for becoming an attorney.

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<sup>22</sup> Austrian Judges' Association, <http://www.richtervereinigung.at/content/view/56/45/> (05.11.2008).

<sup>23</sup> Austrian Bar Association, <http://www.oerak.or.at/www/getFile.php?id=22> (05.11.2008).

<sup>24</sup> Austrian Bar Association, <http://www.rechtsanwaelte.at/www/getFile.php?id=43> (05.11.2008).

<sup>25</sup> Zimprich, <http://ranking.zeit.de/che9/CHE?module=WasIst&do=show&esb=5> (05.11.2008).

<sup>26</sup> Austrian Bar Association, <http://www.oerak.or.at/www/getFile.php?id=43> (05.11.2008).

Women therefore often choose to switch to companies (as in-house counsel), banks, or the public sector once they have gained a couple of years' work experience at a law firm. In Germany, the situation is slightly better, with females constituting about 30 per cent of attorneys.<sup>27</sup>

#### IV. *The Significance of Legal History*

Traditionally, legal history has been an important and valued part of legal education at universities. The main reason for this has been that at the beginning of the nineteenth century, Friedrich Carl von Savigny established the so-called German Historical School, a legal philosophy from which the *Pandektenwissenschaft* (conceptual jurisprudence) later sprang. The Historical School perceived law not as something that could only be discovered by rational deduction from the nature of man,<sup>28</sup> but rather as an expression of the convictions of the people, in the same manner as language, customs, and practices are expressions of the people. Law is, therefore, usually not created by authorities, but emerges organically over time without outside interference. Study of the history of the positive law is therefore a prerequisite to a correct understanding of the science of law. Within this philosophy, legal history became the essence of legal science and legal historians the only true legal scholars.<sup>29</sup>

The Historical School proved to be extremely influential on legal education first at German law faculties and then later in Austria. Legal history thus became a substantial part of Austrian and German law school curricula. After 1945, however, a gradual decline in the esteem in which legal history is held set in, leading to constant cutbacks in the teaching of legal history as a subject as well as the number of legal history chairs at law schools. This was supported by the fact that legal science ceased to be historical legal science over the course of the twentieth century. At the same time, legal history — especially in Germany — emancipated itself from legal sciences and became a field for highly-specialized experts that probably could be placed within a philosophical-historical faculty as well.<sup>30</sup> Scholars of legal history, legal philosophy, and Roman law have increasingly found themselves having to justify the practical value of their subject as one to be taught in future at law schools.

In the course of the recent reforms of the law curricula in Germany and Austria, the importance of legal history and Roman law within legal education has again been fiercely debated. In view of the above-mentioned changes in the job market for lawyers, there have been strong voices within and outside universities advocating the elimination of history subjects. Others, however, have pleaded forcefully for the retention of these subjects. The outcome was — as it is most times — a compromise. The history subjects will be kept, albeit in reduced form.<sup>31</sup> At the University of Vienna, the cutbacks mostly affect Roman law, but at Regensburg, for example, legal history is not a mandatory subject, but can be substituted for

<sup>27</sup> German Bar Association, <http://www.brak.de/seiten/pdf/Statistiken/2008/RAinnen.pdf> (05.11.2008).

<sup>28</sup> As did the Natural Law School.

<sup>29</sup> Jörn Eckert, "Vorwort zu FS-Hattenhauer" in Jörn Eckert (Hrsg.), *Der praktische Nutzen der Rechtsgeschichte. Hans Hattenhauer zum 8. September 2001*, Heidelberg 2003, 5.

<sup>30</sup> Reinhard Zimmermann, "Savignys Vermächtnis — Teil II. Rechtsgeschichte, Rechtsvergleichung und die Begründung einer Europäischen Rechtswissenschaft", *JBl* 1998, 288.

<sup>31</sup> Mayer, *ÖJZ* 2006/45.

either legal philosophy or Roman law.

In general, one can say that legal history and Roman law maintain a stronger position in Austrian law school curricula than in their German counterparts, although the Historical School took foot in Austria much later and under greater resistance than in Germany. This is also demonstrated by the fact that professors of legal history in Austria are not required to teach any other subject, whereas their German counterparts are traditionally required to teach civil law as well.<sup>32</sup> This difference in the status of legal history in Austria and Germany may be explained by the fact that Austria and Austrian universities are generally more conservative than Germany and German universities and therefore tend to retain traditional structures longer.

### V. *Some Final Remarks*

These cutbacks in the teaching of legal history and legal philosophy are regrettable for many reasons. It is worrying that new positions within the legal historical field at Austrian universities are unlikely to be created and it is actually more probable that even existing jobs will not be posted again when they become vacant. In a country such as Austria with only five law faculties, a policy like this will hamper the forthcoming generation of legal historians.

While it is true that neither legal education in Germany nor Austria provide students with a sufficient understanding of economics nor prepare them adequately for the “real world”, the current trend to focus more and more exclusively on economic and business factors ignores the fact that an academic education should be more than mere preparation for a job. Academic education should also lead to originality and independence of the mind and the ability to think and work in a reflective and academic manner. A university graduate should have received not only schooling (training), but also education in the sense of *Bildung*. Otherwise, law programmes may become not much more than apprenticeships and universities mere polytechnics.

A legal education that omits fundamental subjects such as legal history and legal philosophy can scarcely be called “academic”. It lacks a solid foundation and runs the risk of giving birth to lawyers who may have learned the law, but do not grasp its deeper meaning. This is all the more true given the ever-continuing harmonization process of the European Union, where it is vitally important that the structural differences in the legal and judicial systems of the various European countries be understood. As the reasons for these differences are historical in nature, it is only the study of legal history and comparative law that open for us the path to mutual understanding. The old proverb that one cannot know where one is going without knowing where one has come from springs to mind. This really brings home the point that legal history is as essential a part of legal education as are basic legal disciplines.<sup>33</sup> Convincing law faculties, students, and politicians of these facts is indeed one of the challenges that legal historians face today.

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<sup>32</sup> Michael Stolleis, *Europäische Rechtsgeschichte, immer noch ein Projekt*, <http://www.ens.fr/droit/spip/spip.php?article13> (05.11.2008).

<sup>33</sup> Ranieri, *DRiZ* 1998, 285, 285-287.