

Opinio Juris in Comparatione

Op. J. Vol. 1/2010, Paper n. 3

Studies in Comparative and National Law

Études de droit comparé et national

Estudios de derecho comparado y nacional



LEGAL EDUCATION IN ITALY

by

Vittoria Barsotti and Vincenzo Varano

Suggested citation: V. Barsotti and V. Varano, *Legal Education in Italy*, *Op. J.*, Vol. 1/2010, Paper n. 3, pp. 1 - 16, <http://lider-lab.sssup.it/opinio>, online publication March 2010.

LEGAL EDUCATION IN ITALY¹

by

Vittoria Barsotti and Vincenzo Varano♦

Abstract:

This article examines the present situation of legal education in Italy. What becomes readily clear is that practical elements are almost totally absent from legal education, which remains largely theoretical. Though some attempts have been made at making legal education more practical, it is only after graduation that students, by and large, will have to become familiar with the practical side of the law.

¹ The authors bear joint responsibility for the whole of the Report. However, Vittoria Barsotti is primarily responsible for Section A, Vincenzo Varano for the remainder of the Report. Both authors wish to express their deepest gratitude to Ms. Sara Benvenuti and Ms. Caterina Mugelli, PhD candidates in Comparative Law at the University of Florence, for their invaluable help in the preparation of the Report. This paper will be presented on the 18th INTERNATIONAL CONGRESS ON COMPARATIVE LAW, Washington 2010.

♦ Professors of Comparative Law, University of Florence Law School

Section A: General Structure of Legal Education

Mauro Cappelletti, John Henry Merryman and Joseph Perillo wrote in 1967 that in Italy “Law School is not considered a professional training school but a cultural institution where law is taught as a science”. From this fundamental observation other important consequences follow which still hold substantially true: “Legal education is concerned not with the techniques of problem solving but with the inculcation of fundamental concept and principles [...] The learning is passive [...] the student is not trained to handle a concrete case [...] legal education gives him a strong orientation toward doctrine, as opposed to precedent, and toward the orthodox dogmatic approach of the academic establishment”².

As a consequence of the described philosophy, notwithstanding some recent reforms and some very limited trends toward a more professionally oriented education, the Italian law school lacks what is most familiar to American students: case method, problem solving, moot courts and clinics³.

An important feature of the Italian university system and therefore another important element of legal education is that traditionally law schools are public. Currently there are 47 “state” law schools, that is public, 8 private law schools and 8 schools based on e-learning. The latter schools are much criticized because - even though e-learning and long distance education is important because gives access to legal knowledge to persons otherwise excluded from it – the quality of faculty and students is generally considered of low level.

The requirements for the establishment of a university within which a law school must be located are provided for at a central level. In fact, “*Università*” can be called only those institutions, both public and private, that are created following article 10 of the Law of October 1st, 1973, n. 580.

As we have already mentioned, the Italian university system has gone through an important decade of reforms: during the 90s, following a period of great centralization, the universities were given what was called *autonomia*, that is a limited budgetary and curricular autonomy. As for the curriculum, the law school passed from a 4 years compact system to one defined as 3+2⁴. The law school that came out from the reform was intended to follow to some extent the American model. In the first place, the curriculum was split in two units. A three year degree (i.e. law degree of first level) gave access to some

² M. Cappelletti, J.H. Merryman, J. Perillo, *The Italian legal System. An Introduction*, Stanford University Press, 1967, pp. 89-91. The idea of a continental style of legal education based primarily on theory rather than practice is shared by Mirjan Damaska: “A distinctive continental *mos iura docendi* still seems to exist. As I see it, one can distil the essential ingredients of Continental law school experience. This essence involves exposure to what I will call the grammar of law, a panoramic view of the most important field of law, and some initiation into the patterns of legal reasoning. These three essential ingredients must be treated separately although they are imparted simultaneously”. M. Damaska, *A Continental Lawyer in an American Law School: Trial and Tribulations of Adjustment*, 116 U. Pa. L. Rev. 1363 (1968).

³ See *infra*, Section B.

⁴ Law of May 15, 1997, n. 127.

professions as, for instance, entering the public administration or the banking system, but only if the first level of legal education was completed with the two year second level degree one could enter the classical and traditional legal professions, and therefore could become an attorney, a notary or a judge. The same reform also introduced for the first time in Italy a credit system of evaluation. In order to obtain the first level degree a student must take 20 exams building up 180 credits, and in order to obtain a second level degree must add 12 exams and 120 credits. For the purpose of this report, it is important to note that of the first 180 credits the law school has the possibility to devote a maximum of 60 credits to “professional abilities” and of the 120 credits of the second level degree a maximum of 40 credits can be devoted to the same skills; this is one of the results of the curricular autonomy introduced in 1997, nevertheless, as we shall see infra in Section B, only a few law schools have given the students the possibility of obtaining credits for “professional abilities”.

The system very briefly described had a short life because a new reform was adopted in 2005⁵. As a result we now have a system in which there are two kinds of law degree. A three year “short” degree, and a five year compact degree called *Laurea magistrale*. Only the *Laurea magistrale* gives access to the bar, the notariat, and the bench.

The most widespread three year short degree is called “*Scienze dei servizi giuridici*”, that is “Sciences of Legal Services”. It provides a basic legal education that allows graduates to become court clerks, paralegals, experts in labour relations or enter the public administration or the banking system.

Following the reform of 1997 that gave universities some kind of autonomy, the curriculum of *Scienze dei servizi giuridici* is composed in part of credits that cover required subjects and in part of credits that are left to the choice of the law school and the individual student.

The required credits are 90 and must be selected among the following subjects:

- 39 credits must be divided between subjects which are considered fundamental such as: roman law, history of law, jurisprudence, private law and constitutional law
- 9 credits must be devoted to economic subjects such as: economic analysis of law, economics, statistics
- 21 credits must be divided between: commercial law, labour law, administrative law, international law, European law, criminal law
- 21 credits must be devoted to subjects such as: comparative law, comparative constitutional law, civil procedure, criminal procedure, business law, sociology of law.

⁵ Ministerial Decree of November 25, 2005.

The credits that are left to the choice of the law school are also 90 for a total of 180 credits that are necessary in order to obtain the short *Scienze dei servizi giuridici* degree.

The University of Florence Law School offers a three year degree which can be considered a typical example of a *Scienze dei servizi giuridici* curriculum.

In the Florence Law School there are two common years, while the student can choose his third year among four different tracks.

In the first common year, the following exams are required:

- ✓ Private law, part I, Fall semester (12 credits)
- ✓ Economics, Fall semester (9 credits)
- ✓ History of law, Fall semester (6 credits)
- ✓ Constitutional law, Spring semester (9 credits)
- ✓ Private law, part II, Spring semester (6 credits)
- ✓ Jurisprudence, Spring semester (9 credits)
- ✓ History of roman law, Spring semester (6 credits)
- ✓ Computer science for lawyers, Spring semester (3 credits)

In the second common year, the following exams are required:

- ✓ Administrative law, Fall semester (9 credits)
- ✓ Labour law, Fall semester (6 credits)
- ✓ Comparative law, Fall semester (9 credits)
- ✓ Company law, Spring semester (9 credits)
- ✓ European Union law, Spring semester (6 credits)
- ✓ Criminal law, Spring semester (9 credits)
- ✓ How to find the law, Spring semester (3 credits)

In the third year the student can choose among four tracks: Legal executive for private companies (“Giurista d’impresa”), Legal executive for the civil service (“Giurista di amministrazioni pubbliche”); Expert in labour relations (“Consulente del lavoro”), Legal executive for welfare administrations (“Giurista del terzo settore”).

In the “Legal executive for the civil service” track the following exams are required:

- ✓ Tax law (6 credits)
- ✓ Introduction to procedure (9 credits)

- ✓ Administrative law, part II (15 credits)
- ✓ Economics of public bodies (6 credits)
- ✓ Land law (6 credits)

In the “Legal executive for private companies” track the following exams are required:

- ✓ Tax law (6 credits)
- ✓ Introduction to procedure (9 credits)
- ✓ Business law, II part (15 credits)
- ✓ Auditing (6 credits)
- ✓ Company liability (6 credits)

In the “Legal executive for welfare administrations” track the following exams are required:

- ✓ Tax law (6 credits)
- ✓ Introduction to procedure (9 credits)
- ✓ Administrative law, part II (6 credits)
- ✓ Welfare law (15 credits)
- ✓ Sentencing process and imprisonment law or Law and religion (6 credits)

In the “Expert in labor relations” track the following exams are required:

- ✓ Tax law (6 credits)
- ✓ Introduction to procedure (9 credits)
- ✓ Labour law, part II (15 credits)
- ✓ Social security law (6 credits)
- ✓ Economics

Twelve credits have been reserved by Florence Law School to the so called “prova finale” (final test), which must be a (roughly) 50 pages paper to be defended before a panel of professors of the Law School.

After 2005 the student that intends to enter the bench, the bar or the notariat, must complete the five year curriculum known as *Laurea magistrale in giurisprudenza*. Again, this curriculum is composed in part of credits that cover required subjects and in part of credits that are left to the choice of the law school. The required credits are 216 and those left to the free choice of the school are 84 for a total of 300. These numbers show that the curriculum is pretty much rigid and fixed at the central level and that the idea of autonomy of the single law school is more or less an empty box.

The best way to illustrate the organization of the *Laurea magistrale in giurisprudenza* is to take the curriculum of a specific law school as an example and, again, reference will be made to the Florence University Law School.

Apparently, the choice made by Florence is to limit the freedom of choice of the student even beyond what is prescribed at the central level, given the fact that the credits that cover required exams are 234.

Exams required in the first year:

- Private law, part I, Fall semester (9 credits)
- Economics, Fall semester (9 credits)
- History of law, Fall semester (9 credits)
- Constitutional law, Spring semester (9 credits)
- Jurisprudence, Spring semester (9 credits)
- Roman law, Spring semester (9 credits)

Exams required in the second year:

- Business law, Fall and Spring semester (15 credits)
- Labour law, Fall and Spring semester (15 credits)
- Private law, part I, Fall semester (9 credits)
- Comparative law, Fall semester (9 credits)
- European Union law, Spring semester (9 credits)
- Criminal law, Spring semester (9 credits)

Exams required in the third year:

- Administrative law, part I, Fall semester (9 credits)
- International law, Fall semester (9 credits)
- Criminal procedure, Fall and Spring semester (15 credits)
- Criminal law, part II, Spring semester (9 credits)
- Legal history or Roman law, Spring semester (12 credits)

Exams required in the fourth year:

- Private law, part III, Fall semester (9 credits)
- Constitutional law, seminar, Fall semester (6 credits)
- Civil procedure, Fall and Spring semester (15 credits)
- Administrative law, part II, Spring semester (9 credits)
- Ecclesiastical law, Spring semester (6 credits)

Exams required in the fifth year:

- Tax law, Fall semester (9 credits)
- Legal reasoning or Computer science for lawyers or Legal sociology, Spring semester (6 credits)

After having obtained 234 credits with the above listed exams, the student, in order to obtain the degree, must collect: 24 more credits choosing among a variety of optional exams; 3 credits for computer science for lawyers; 6 credits for the knowledge of a foreign language; 9 credits are completely free, and the students can utilize these credits for “professional abilities”; 24 credits for the final written dissertation. The total sum is 300, as required by state legislation. The dissertation is a substantial piece of research, a sort of monograph in the range of 2-300 hundred pages, which is expected to show that the student has acquired a good command of the law, and its methodology. The dissertation, once approved by the professor the student has chosen as supervisor, will be discussed before a panel of 11 professors of the law School.

As the example drawn from the Florence Law School curriculum shows, the practical aspects of legal education, notwithstanding the most recent reforms, have not become part of our system. Nevertheless something is moving in Italy, and more generally in Europe. In fact there is an important trend towards the internationalization of legal education, through a variety of such programs as the Erasmus programs within Europe and exchange programs with non European legal institutions. In the former case, students of law schools of a European member state are welcome in the partner law school of another member state for one or two semesters, and the student is allowed to take exams and gain credits in the foreign law school that are recognized by her home institution. The Erasmus program is partly funded by the European Union, and is a tremendously successful program that moves hundreds of thousands of students around Europe every year, facilitating their integration and the opening of their minds. Florence Law School has instituted over 50 Erasmus partnerships with other European Law Schools.

Other programs are provided for by many Italian law schools with non European institutions, such as American Schools, Latin American Schools or Law Schools of China, Japan and Australia. For example, Florence Law School has exchange agreements with Boston University and with Monash University, in Australia.

Some law schools go as far as offering joint degrees with foreign partners. Florence offers two highly selective joint degrees: one with the University of Paris I Panthéon-Sorbonne, and one with the Universidad Autonoma of Madrid. In the former case, the student that successfully completed the five years course of study, which is held part in Firenze and part in Paris, will obtain contemporarily the *Laurea magistrale in giurisprudenza* and the *Maitrise-Master2 en Droit*. Similarly, for the Spanish case, after

two years of course in Firenze, two years in Madrid and the final year devoted to the dissertation, the student will obtain the *Laurea magistrale in giurisprudenza* and the *Licenciatura en Derecho*.

Another way of implementing internationalization is providing courses in English, that are attended not only by Erasmus students or students of exchange programs, but also by Italian students interested in gaining credits for the knowledge of a foreign language (as requested by the curriculum), in making their curriculum more attractive to international law firms and/or companies, and are, more generally, interested in broadening their legal culture. Many Italian law schools have introduced courses in English. Again as an example, Florence offers International Law, Comparative Legal Systems, Comparative Labour Law and Comparative Criminal Law.

To have access to law school in Italy is relatively easy. After the completion of a full course of pre-university education, that is five years of elementary school, three years of junior high and five years of high school, approximately at the age of 19 a young person has the possibility of entering the university system. Traditionally, there was no admission test but recently all public law schools have introduced an auto-evaluation test. This test does not preclude enrolment in case of failure, but is meant to allow the student to verify her attitude to law and decide consequently if entering law school or not. The only public law school that prescribes a selective test is the one located in Trento. The case of private law schools is different because these institutions are “closed number” in the sense that there is only a certain number of positions available and therefore the selective test is inevitable.

In order to have an idea of the number of students who choose to go to Law School, in the academic year 2007/08, 6737 students have enrolled in the first year of one of the three year degrees offered by the various Italian Law Schools, while 28186 have chosen the five year degree. In the same academic year, the total number of students enrolled in some course of study in the Italian law schools amounts to 218.700⁶

Even though there have been several reforms in the Italian university system, as we have seen, and in particular in the structure of legal education, it remains still true that students are not required to take an exam until they consider themselves ready to take it. “Failed examinations may be retaken indefinitely. No student is dismissed for failure. He may remain enrolled as long as he pays his tuition”⁷, well beyond the three or five years indicated by the law. In many cases, students remain enrolled for a few months or a few years before they decide to drop the law school—the rate of attrition is supposed

6 Data available at <http://statistica.miur.it/scripts/31gennaio/TOTALI.ASP>

7 See Cappelletti, Merryman and Perillo, *The Italian Legal System*, supra note 2, at p. 90.

to be rather high; in any case, only an average of 30% of the students manage to graduate within the prescribed time limits: for instance, 31% of the 15448 students who graduated in law in 2008⁸

As for costs, compared to the American system, Italian law schools, being primarily public institutions, are not expensive. Even though it is not easy to generalize because there are differences among the various law schools, it is possible to say that fees are directly proportional to the student's family income and that the first year is generally the more expensive. For example, Bologna costs an average of € 1.320,00 per year; Roma La Sapienza costs an average of € 1.500,00 per year; Milano Statale an average of € 2.800,00 per year; Firenze an average of € 1.165,00 Euros per year⁹; Catanzaro an average of € 790,00 per year. Obviously, private law schools are relatively more expensive: Milano "Bocconi" goes from a minimum of 4.500,00 to a maximum of 10.000,00 Euros per year and Roma "Luiss" costs 7.500,00 Euros per year.

In order to complete the picture of legal education, mention must be made of the doctoral or Ph.D. programs which many law schools offer. They have a duration of three years, which can benefit of an extension of one year. Doctoral programs are open to a very limited number of graduate students – two or three at most for each doctoral program –, who have to pass an admission test, attend some advanced seminars, but above all they are expected to write a doctoral thesis under the close supervision of a professor, which is supposed to be a substantial and original piece of scholarly research, possibly the first step towards the publication of a monograph and an academic career. During the three years of the program, PhD candidates receive a modest monthly allowance of roughly € 1,030.

Section B. Practice elements within the law school curriculum or otherwise, prior to licensure.

The teaching of "elements of practice", although permitted by the regulations, is not yet common in the ordinary curriculum of the law student, in view of the teaching tradition sketched under *Section A*. Occasionally, law professors may include some practical elements in their courses, such as a visit to the local courts or jailhouse or the analysis of a concrete case and the judgment which it originated.

⁸ Data available at <http://www2.almalaurea.it/cgi-php/statistiche/>

⁹ In the academic year 2009/10, Florence law students with a yearly income between € 0 and € 17.500, pay as low as € 315,62, students with an income between € 30.000 and 40.000 pay € 1.165,62, students with an income higher than 75.000 pay € 2.015,62. See Manifesto degli Studi for the year 2009/10 at http://www.unifi.it/upload/sub/studenti/manifesto_studi_0910.pdf at p. 56.

The recent reforms of university education encourage students to gain some working experience through stages and internships before graduation. As a matter of fact, while the percentage of students who went through stages before the reform was very low (in the range of 2%), almost 20% of students who have obtained their first degree has had some working experience prior to graduation¹⁰.

Some law schools have established in their bylaws the possibility for their students to obtain a certain number of credits (nine out 300, which are required for the completion of the 5-year curriculum) through stages and training periods. For instance, Florence and Bologna are among the Law Schools which allow a limited number of students to go through stages as part of their curriculum.

The Law School of the University of Florence has signed conventions with the local Bar, the Tribunals (i.e., courts of general jurisdiction) of Florence and Prato (an industrial city just a few miles from Florence), the Association of Labor Consultants, which allow periods of training for the students towards the acquisition of credits¹¹. The stages can take place in judicial offices, law offices, government agencies, and private companies. The orientation and placement office, headed by a Faculty member, advises individual students on the choice of the most adequate stage, given their curriculum and their professional aspirations.

The Law School of Bologna University, in turn, has signed similar conventions with the Court of general jurisdiction, the Juvenile Court, and the Administrative Regional Tribunal¹².

Moot courts are not practiced in Italian law schools. The only exception we are aware of is the Law School of the University of Torino, which has introduced the discussion of moot cases within the course of "Private Law". More in general, no clinical program is run in Italian law schools which offers legal services to real clients though under the supervision of faculty members, as well as no preparation and conduct of interviews with possible or present clients, fact investigation, development of case theory, counselling, selection of expert witnesses.

Some law schools, including Florence, offer optional courses on the judicial system and the organization of the legal profession. Their content depends very much on the personality of the teacher; but we would expect that, as in Florence, the course pays attention to the constitutional implications of the judicial and the legal profession, to the policy issues raised in the current debate for reform, and that it includes elements of legal ethics and professional responsibility.

10 Laureati in Giurisprudenza. Le caratteristiche di studio e gli sbocchi professionali dei laureati in Giurisprudenza, <http://www.almalaurea.it/universita/altro/giurisprudenza2008/giurisprudenza2008.pdf>, at p. 3.

11 For further information, see the Students' Guidebook under www.giuris.unifi.it

12 See www.giuri.unibo.it.

In conclusion, elements of practice are almost totally absent in the teaching of law in Italy – and, we dare say, in most civil law legal systems. However, they make their appearance in post-graduate legal education.

Especially after the reform brought about by the law n. 127 of May 15, 1997, as implemented by the ministerial decree of November 3, 1999, n. 509, many master programs and courses of professional specialization have been introduced in many law schools, as well as courses offering continuing legal education. Their duration varies from a couple of months to a whole academic year, they are open upon payment of a fee which may be rather substantial to a limited number of students (who may be also professionals), and their emphasis is chiefly practical. A typical example is the Law School of the University of Florence, which offers a 9-month Master in “Information & Communication Technologies” in collaboration with the Telecommunications Authority, the Personal Data Protection Authority and the National Center for the Informatization of the Public Administration at the cost of € 3,000. In addition, a few specialization courses are offered in “The quality of statutes and regulations”, “The new law of public administrations”, “The law of foreigners”, “The law of the ECHR: procedural problems”, “The new bankruptcy law”, “Conciliation as a technique of conflict resolution”, “The law of prisons”, “The new labor law”. The average fee for the attendance of the specialization courses in Florence is € 300.

Since 1967, the Law School and the School of Political Science of the University of Florence offer every year a unique, highly successful and prestigious 5-month program which prepares candidates to the position of officers of the two Chambers of Parliament. Its name is “Seminario di Studi e Ricerche Parlamentari”, it is sponsored by the two Chambers of Parliament, by the Presidency of the Council of Ministers and by the Regional Council of Tuscany. It is open to 25 students who pass an admission exam and are granted a scholarship.

When we turn to the practice of law, the difference must be underlined between the U.S. legal system where the legal profession is thought of as a single entity, where it is relatively easy to move from one position to another, and the civil law systems where there is a variety of legal professions open to law graduates, whose initial choice tends to be final. Typically, the law graduate can embark on a career as a judge, as an attorney or as a notary. Access to each of these careers takes place through a separate exam, and a separate period of practical training.

We must also mention at this point that there are institutions and programs which are designed to help students, once they graduate from law school, to prepare for admission to the legal professions.

We refer, in particular, to the so called “Schools of Specialization for the Legal Professions”, introduced by the decree n. 537 of December 21, 1999, whose purpose is to prepare graduate law students to the exams for the admission to the legal professions. The Schools are run by the Law Schools in collaboration with the local bar association, the judicial council of the district, and the local notarial council. The first year of the School offers a common preparation for candidates to the three legal professions; the second year is divided into two curricula, one for prospective judges and attorneys, the other for prospective notaries. The Schools are open to a limited number of fee paying students (from € 315,62 to € 2.015,62 per year in Florence, depending on the income of the applicant¹³) who pass the admission exam. Students take their degree at the end of the second year through a written and oral final exam. Successful attendance of the school substitutes one year of apprenticeship for candidates to the bar and the notariat exams, and is now one of the additional prerequisites for admission to the exam to enter the judiciary.

At the time of writing, there are more than 200,000 attorneys, registered with some 160 local bars. More precisely 36,8 attorneys every ten thousand people, which makes Italy the third country in Europe, after Liechtenstein and Spain for number of practicing lawyers. From another perspective, we can mention that Germany has 146.910 attorneys out of a population of 82 million, the United Kingdom has 140.685 of them, France only 47.765. There has been a remarkable increase in the last decade or so: in Milan, for instance, in 18 years the number of registered attorneys has increased from 4.429 to 19.569. Probably, the shrinking of the labor market has favored this increase in the legal profession. More law graduates take the bar exam now than they used to do also because they do not find other jobs, and hope to make out a living from practicing law. It has been calculated that every year 10.000 new attorneys register in the bar associations throughout the country¹⁴. The resentment against the number of attorneys is widespread in the legal profession, and some reform proposals are presently pending before the Justice Committee of the Senate, with reasonable prospects of being approved¹⁵, to make access to the profession more selective, and limit the number of registered attorneys to those who practice effectively and continuously, and who can prove to have a minimum income.

¹³ See Manifesto degli Studi for the year 2009/10, http://www.unifi.it/upload/sub/studenti/manifesto_studi_0910.pdf at p. 56.

¹⁴ Corriere della Sera, April 29, 2009, http://www.corriere.it/economia/09_aprile_29/focus_avvocati_albo_e320505a-347e-11de-b6cb-00144f02aabc.shtml

¹⁵ Senato della Repubblica, XVI Legislatura, Atti (Bills) nrs. 601, 711, 1174, 1198, www.senato.it

Attorneys are still basically regulated by the law of November 27, 1933, n. 1578, which has been amended several times, but has never undergone major changes. Admission to the legal profession is open to law graduates who have completed the required period of a 2-year apprenticeship in the law office of a qualified attorney, and passed a rather selective bar exam, both written and oral, of a theoretical and a practical nature. The exam, which takes place in every Court of Appeal district, covers the main areas of law, as well as the organization of the legal profession and legal ethics. In particular the written exam, which unfolds during three entire days, consists of the drafting of two attorneys' opinions on questions regulated by the civil code and the criminal code, and the drafting of a procedural act on issues of both substantive and procedural law, pertaining to either civil or criminal or administrative law depending on the choice of the individual candidate. The board of examiners is composed of attorneys, judges and law professors; the written exams are the same throughout the nation, and are prepared by the Ministry of Justice. One year of apprenticeship can be substituted by the attendance of a post-graduate course of study of a theoretical and practical nature¹⁶. Supervision of the apprenticeship, as well as in general on the legal profession is entrusted to the Bar Association of the tribunal district where the attorneys and the apprentices have their residence and practice. The Bar Association is a semi-autonomous quasi-governmental agency that is responsible for keeping the register of attorneys and for disciplining violators of professional ethics.

Analogous rules preside over the selection of notaries, who are very important professionals who draft and authenticate legal instruments such as wills, corporate charters, conveyances, and contracts. Acts drafted by the roughly 6000 notaries operating in Italy, are known as 'public acts', and are conclusive evidence that the act has been so drafted and executed, that the recitals and agreements expressed in the instrument are accurate reports of the parties' statements and agreements, and that any fact said to have occurred in the presence of the notary did occur, or that any fact said to have been performed by him was performed. A public act can be challenged only through a 'querela di falso', i.e. a special proceedings with criminal connotations.

Also in the case of candidates to the notariat, they must serve an eighteen month apprenticeship in the office of a qualified notary, and pass a very difficult and competitive national examination. Only one candidate out of twenty usually passes the exam¹⁷. The exam is both written and oral, and has a theoretical and practical nature. The written exam consists of three tests, such as the drafting of a will and the drafting of two acts *inter vivos*, one of which deals with commercial law. The exam is national; the board of examiners is composed of notaries, judges, and law professors. Notaries are public

¹⁶ See the "Schools" mentioned above.

¹⁷ www.notariato.it

officials, but receive no salary; rather, they are paid by their clients on the basis of substantially high fees, which however are rigidly fixed by law¹⁸. Notwithstanding the similarity of the word, the civil law notary has nothing to do with the common law notary public, as it can be seen very clearly from the above short description of her education, role, selection and social status.

Both the professions of notary and that of attorney are compatible with the position of professor of law. As a matter of fact, though the exact numbers are not available, many law professors are heavily engaged in the practice of law, most frequently as attorneys. Two observations can be made in this connection. First, professors in legal practice will usually attract good clients with important and lucrative business. Secondly, as John Merryman suggested in his seminal book on the civil law tradition, “the law professor engaged in private practice produces a curious sort of professional schizophrenia. As a lawyer, he will be pragmatic, concrete, and result-oriented...He will be fact-conscious...As a professor, he will write and teach in the prevailing doctrinal style, working in the central tradition of legal science...He becomes aggressively academic, as a kind of reaction against his practical work as advocate”¹⁹

In Italy, as in any civil law system, the judiciary is made up of several thousand professional judges, 8547 presently serving, including the 2104 public prosecutors, who are part of the judicial organization according to art. 107, para. 4 of the Constitution²⁰. In addition to professional judges, there are also, since 1991, 4700 justices of the peace. They have a limited, but not trivial, civil and criminal jurisdiction, they are honorary rather than career judges, appointed from among law graduates, 30 years old or more, for a four year term, renewable once.

Access to the professional judiciary depends on the passing of a highly competitive national examination, mandated by art. 106 of the Constitution and designed to assure that the recruitment is based on the ascertainment of technical skills, and not on political considerations. The last complete data relate to the exam announced by the Ministerial Decree of March 23, 2004 for 350 vacancies, they are rather typical, and may give the reader an idea of the selectivity of the exam. The applications were 45.404, the candidates which showed up to the written exam were 5.083, those who did actually complete the three written tests were 3.602, 327 candidates were admitted to the oral exams, but in the end only 300 did eventually pass the exam and were appointed²¹.

18 www.giustizia.it/giustizia/it/mg_2_4_2.wp

19 J.H. Merryman, *The Civil Law Tradition*, Stanford University Press, 2nd ed., 1985, p. 108.

20 <http://astra.csm/organicoOrdinari/orgord.php>

21 C. Castelli, *I fatti: magistrati della Repubblica, non ultracasta*, available at <http://magistraturademocratica.it/files/replica%20Livadiotti.pdf>

Following the recent law of July 30, 2007, n. 111, art. 1 – which is part of a reform process which the judiciary has been undergoing in Italy – in order to take the examination, it is no longer sufficient to be law graduates, unless they already occupy certain positions in the civil service, or are already registered attorneys, or administrative judges, or have completed their legal education with a Ph.D. degree in Law or have obtained a degree from one of the already mentioned schools of specialization for the legal professions. Successful candidates have then to go through a period of eighteen months of apprenticeship, during which they are expected to receive some training in various judicial offices, before they become full judges, and then advance in their career based on seniority and on a system of internal evaluation of the merits. The Law n. 111 of 2007 provides also for the institution of the Superior School of the Judiciary which will be in charge of the initial and continuing legal education of judges, which, however, has not yet been implemented. It is still possible to move from judicial to prosecutorial functions and vice versa, subject to attending a course where the specific skills required are taught and in some cases moving to a different district. However, a very hot political debate is under way at the time of writing which may bring about further changes in the organization of the judiciary. The most serious could be the complete separation of the judicial and the prosecutorial careers, which is strongly advocated by the center right government presently in power. The reform could possibly go as far as establishing the submission of the public prosecutor to the directives of the Ministry of Justice, and the transformation of the duty to prosecute, which is today mandated by art. 112 of the Constitution, into a discretionary power to prosecute. Obviously, constitutional amendments would be necessary to effect changes of the kind just mentioned.

Section C. Possible future elements of practice in legal education

We have already said that the recent reforms of university education, and legal education in particular, provide for the teaching of elements of practice and encourage students to gain some working experience through stages and internships before graduation. Law schools throughout the country, in turn, seem to understand that their reputation depends also on the kind of support they can offer to their students in finding jobs, and preparing them for a smoother entrance in the labor market. Things have changed significantly in the last couple of decades. Master programs have been set up, as well as schools of specialization for the legal professions, as we have seen, orientation and placement offices have been instituted. Clearly, the emphasis seems to be on the advanced, post graduate study of the law. The basic legal education will tend to remain, though with some injections of few elements of practice, very much similar to what it is today, and has always been, a sort of curriculum in public affairs. After all, since the middle ages its purpose has been to teach law as a model of social

organization rather than the law as it is, the principles, or “grammar of the law”, rather than the ability to solve legal problems²², especially in view of the fact that a minority of our law graduates will actually become a member of one of the legal professions.

²² See Damaska, *A Continental Lawyer*, *supra* note 2.