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THE MACHINERY OF LAW ADMINISTRATION IN FRANCE AND GERMANY

FRANCIS DEÁK † AND MAX RHEINSTEIN ‡

In a recently published article ¹ the present authors have referred to the growing attention paid by the law schools,² by legal literature, and by the bench and bar, to the comparative study of foreign law and foreign legal institutions. Encouraged by this growing interest, the authors have undertaken to supply, in a series of separate studies, what they believe will furnish at least a cursory knowledge of the background and contours of the legal systems in which interest appears to be, for the moment, predominant—namely, those of France and Germany. Such knowledge would seem to be indispensable to an effective and useful study of foreign law. No argument is needed to convince lawyers trained in the tradition and technique of the English common law of the importance of acquaintance with the machinery of law administration in seeking to understand a legal system.

The purpose of this article is to give basic information concerning the organization and working of the judiciary in France and Germany. The undertaking is limited both in scope and in execution. The scope is limited in that the machinery of law administration is merely one, although doubtless a very important, element in the fabric of a legal system. Other equally important elements in this fabric—the personnel of the courts, the objectives of legal education which condition the approach and technique of lawyers, the law of procedure whereby the wheels of the administration of justice are set in motion, *etc.*—will be the subjects of separate studies. The present study is further limited in execution, for even within this narrow scope the authors seek to supply background rather than perfection in minute detail.

I. COURTS OF FRANCE ³

French judicial organization has certain characteristic features which may be summed up as follows:

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1. *The Development of French and German Law* (1936) 24 GEO. L. J. 551.

2. See Report of the Dean of the School of Law for the period ending June 30, 1935. Columbia University, Bulletin of Information, 36th Ser. No. 20, pp. 5-6.

3. The authors wish to acknowledge their indebtedness to M. Pierre Lepaulle, *avocat* at the court of appeals of Paris, for helpful suggestions and criticism for the improvement of this section.

(1) All courts, whether entrusted with the administration of private or of public law, are immediate organs of the *national* government.⁴

(2) The principle of "double degree of jurisdiction": In principle every lawsuit may be "appealed" once and only once to a higher court.⁵ Exceptions to this rule are what may be called petty litigations in which there is no right of "appeal". The function of the Court of Cassation, which is, as the words are used in French technical language, a court of *review*, as distinguished from a court of *appeal*, will be explained below.

(3) The principle of the "unity of jurisdiction": There are no separate courts for the trial of criminal cases. A single exception is the *cour d'assises*,⁶ a specially constituted court to try felonies, which is composed of judges drawn from the personnel of the ordinary law courts. One very interesting aspect of the principle of "unity of jurisdiction" is found in the procedural device called *procédure d'adhésion*. By this mechanism, a private party specially injured by a violation of a criminal statute may, instead of instituting a separate civil action, intervene in the criminal proceeding against the offending party and recover damages for the private injury. This mechanism has no counterpart in Germany or in the United States.

(4) The existence of a system of administrative law courts, distinct and separate from the ordinary law courts and charged with the adjudication of certain controversies between the state or other public authorities and private individuals.

(5) The total absence of juries in civil litigations.

(6) The collegiate (*i. e.*, plural) character of all courts, with the sole exception of the court of the justice of the peace.⁷

4. Since France is not a federal state, there are, of course, no separate federal and state courts.

5. A clear understanding of the distinction between "appeal" and "review" is essential in order to avoid confusion in subsequent discussion. An "appeal" from a trial court (justice of the peace, industrial council, district court or commercial tribunal, see *infra*) to an appellate court (district courts deciding on appeal from decisions of a justice of the peace or an industrial council; or courts of appeal deciding on appeal from decisions of a district court or of a commercial tribunal) brings up the whole record and permits practically a retrial of the case both on questions of fact and of law. The decision of the appellate court is substituted for that of the trial court; the case is never remanded for a new trial.

"Review" is a highly technical word used only to designate recourse to the Court of Cassation (see *infra*). A "review" does not reopen the case on questions of fact or on the evidence but brings up only the question of law within the pleading of the party petitioning for review, the record of the case being regarded as closed. The result of the "review" is never a decision *in lieu* of the decision reviewed. The Court of Cassation either dismisses the petition for review or remands the case. See *infra*, p. 855.

6. See *infra*, p. 853.

7. The presiding justice of the courts of first instance of general jurisdiction, (*tribunal civil* and *tribunal de commerce*, see *infra*) may, however, render interlocutory decisions alone when he sits as referee.

It may be noted here that French decisions and, in general, decisions of continental courts are anonymous, in contradistinction to English and American practice.⁸

8. The decisions are signed by the judges, and the reports usually give the name of the presiding justice and of the *rapporteur*, i. e., the judge to whom the case was assigned to be reported to the bench; but the decision is rendered in the name of the court. Nor is it re-

(7) The permanent representation of the state through government attorneys attached to every court of general jurisdiction and participating in civil as well as criminal cases.

(8) All judges (with the exception of the judges of the commercial courts and the labor courts) are trained in the law; they are appointed by the government and with the exception of the justices of the peace, they cannot be removed from office except for cause.

(9) The accessibility of the lower courts to litigants by reason of geographical decentralization.

A graphic representation of the organization of the French court system appears on the opposite page.

(A) ORDINARY LAW COURTS

(1) *Courts of Special Jurisdiction*

At the bottom of the judicial hierarchy is the court of the justice of the peace (*juge de paix*)—the only court in France where a decision is rendered by a single judge. There is a justice of the peace in every *canton*.⁹

The chief function of the justice of the peace was originally conciliation. In principle, and apart from specific exceptions in certain types of litigation, every civil lawsuit in France is subject to a preliminary attempt at conciliation before the justice of the peace. In practice, this is usually dispensed with or, at best, becomes a mere formality, except in rural communities where the justice of the peace still fulfills useful functions in composing petty disputes. In addition, the justices of the peace have jurisdiction to try civil actions where the amount involved does not exceed 4500 francs (about \$300.).¹⁰ Where the amount involved does not exceed 1500 francs (about \$100.), their decision is final; otherwise an appeal lies to the district court (*tribunal civil*, see *infra*). If the parties agree to submit a suit in which the justice of the peace has no jurisdiction *ratione materiae*, (*i. e.*, where the jurisdictional amount is exceeded), he is bound to render a decision. In cases from which no appeal lies the justice of the peace is free to decide on the basis of equitable considerations. In this respect he is the most independent of all French judges. But his decisions, where not subject to technical appeal, can nevertheless be brought for review before

vealed whether the decision was reached by unanimous or divided vote; dissenting opinions, so characteristic of American case law, are generally unknown in Continental case law. (Scandinavian countries are an exception in this respect.)

9. Continental France, including Alsace-Lorraine, is divided, from the administrative point of view, including judicial administration, into 86 departments (*départements*). The 86 departments, in turn, are divided into 359 *arrondissements* (hereinafter called districts), and the *arrondissements* into *cantons*. There are over 3,000 *cantons*. Each department comprises 2 to 6 districts and each district several *cantons*. A larger city, even though less than an *arrondissement*, may comprise several *cantons*.

10. The jurisdictional amounts are subject to frequent changes. The amounts stated here and below are those in force at present by virtue of the decree of March 28, 1934 (*Décret modifiant l'organisation judiciaire*) Dalloz, *Recueil périodique de jurisprudence* 1934. 4. 68.

the Court of Cassation on the ground of "excess of power" (*excès de pouvoir*).¹¹ Of course, where the decision is subject to technical appeal, it may eventually be brought before the Court of Cassation for a review of the decision on the law.

In conformity with the principle of "unity" of jurisdiction, the justice of the peace also acts as police magistrate (*tribunal de simple police*) with jurisdiction over petty offences¹² involving imprisonment of not more than five days and a basic fine not exceeding fifteen francs.^{12a} From the decisions rendered by the justice of the peace as police magistrate an appeal lies to the criminal division (*chambre correctionnelle*) of the *tribunal civil* of the appropriate *arrondissement* (the court of the first instance of general jurisdiction, hereinafter called district court, see *infra*) whenever a jail sentence or a basic fine exceeding five francs has been imposed.

In addition to his judicial functions, the justice of the peace is also called upon to act in various extra-judicial capacities, as, for instance, conducting preliminary inquiries in workmen's compensation cases, presiding over family councils (*conseils de famille*)¹³ or inventorying the property of absentees.

Another court of special jurisdiction is the industrial council (*Conseil des prud'hommes*) charged with the judicial function of deciding disputes between employers and employees and with the extra-judicial function of conciliating industrial and trade disputes. These councils are established in various industrial centers by presidential decree (*règlement d'administration publique*) upon the recommendation of local municipal councils or chambers of commerce. The members of these industrial councils are elected for a term. They need not be lawyers. When rendering decisions, the council is composed of four persons, two being representatives of the employers and two of the employees. Decisions are rendered by majority vote; in the event of a tie, the case is reheard by the same council, but presided over this

11. "Excess of power" does not mean merely lack of jurisdiction; nor does it refer to errors of law. The term as applied to courts covers decisions going beyond the general powers of any court or impinging on the powers of other governmental agencies.

12. French criminal law has three distinct categories of criminal conduct. The distinction is based, not on the nature or kind, but on the gravity of the offence against the social order. Offences of slight gravity, comparable to the infraction of our police laws are called in French technical language *contraventions*; graver offences, comparable to the common law misdemeanors are called *délits*; while the most serious offences, comparable to the common law felonies are called *crimes*. See Art. I of the PENAL CODE.

12a. The budget law for 1928, Art. 34 (*Loi portant fixation du budget général de l'exercice de 1928*, Dalloz, *Recueil périodique de jurisprudence* 1928. 4. 98, at 106) provided that fines assessed by police and criminal courts *inter alia* shall be augmented by a decimal tax of 65 *décimes*. (A *décime* is 1/10 of a franc; hence a fine of 15 francs at present means the basic fine plus 97.50 francs decimal tax.) The application of the decimal tax, originating in the early days of the revolution, was explained in the government's report accompanying the bill. The intention was thus to maintain the repressive character of fines without modifying the basic figures contained in the code and in statutes upon which jurisdictional competence is predicated.

13. The family councils are charged with the selection and supervision of guardians for minors and incompetent persons. See CIVIL CODE, Arts. 406 ff.

time by a justice of the peace. The decision of the council in cases involving a sum up to 1500 francs (about \$100.) is final; otherwise an appeal lies to the district court.¹⁴ In places where no industrial councils exist, their functions are performed by the justice of the peace.

The commercial courts (*tribunaux de commerce*) are also courts of special jurisdiction, charged with the determination of commercial litigation.¹⁵ These courts are established by presidential decree in towns and districts of sufficient industrial and commercial importance. The jurisdiction of each commercial court is co-extensive with the *arrondissement* in which it sits. The judges of the commercial courts, like the members of the industrial boards, are not appointed by the government but are elected for a term. The personnel of these commercial courts is recruited, not from among lawyers, but from business men of standing. Thus, commercial litigation in France is submitted in the first instance to men experienced in business affairs and supposed to be familiar with its intricacies and habits. In consequence, French business law appears to be simpler and less technical than the corresponding American law and seems to show greater flexibility in responding to new desiderata produced by changing conditions. On the other hand, the possibility of appeal to the law courts in actions of any importance offers sufficient safeguard that the inclination to expedite or accommodate business interests will not be favored in disregard of the law.¹⁶ The court renders its decisions with a bench of three judges. Its decisions are final in controversies involving less than 7500 francs (about \$500.); otherwise an appeal lies to the *cour d'appel* (see *infra*). In districts where no commercial courts have been established cases falling within their competence are brought before the district court.

It should be noted that the commercial court is the only judicial organ in France which antedates the revolution, though it has been, of course, modernized by subsequent legislation.

(2) Courts of General Jurisdiction

Courts of general jurisdiction are the district court (called *tribunal d'arrondissement*, or *tribunal de première instance* or, most frequently, *tri-*

14. The various laws governing the organization, competence and the mode of election of the members of the industrial councils have been codified and incorporated into the LABOR CODE (CODE DU TRAVAIL), Book IV (promulgated by the statute of June 21, 1924) (*Loi portant codification des lois ouvrières*), Dalloz, *Recueil périodique de jurisprudence*, 1924, 4, 235.

15. The CODE OF COMMERCE, Arts. 632 ff. lists as commercial transactions (*actes de commerce*), falling within the jurisdiction of commercial courts: sale of goods among merchants; manufacturing, distributing and transportation enterprises; banks and brokerage houses; bills of exchange; maritime shipping and insurance; and all transactions relating to maritime commerce.

16. The organization of commercial courts is regulated by the CODE OF COMMERCE, Arts. 618 ff. The judges are elected by persons engaged for a prescribed length of time in trade, commerce, industry, finance and shipping and domiciled for five years within the court's jurisdiction. Members of the chambers of commerce and judges of the industrial councils are also entitled to vote.

bunal civil) ; the court of appeal (*cour d'appel*) ; and, at the top of the judicial hierarchy, one supreme court or Court of Cassation (*cour de cassation*) for all France.

The original jurisdiction of the district court extends to all civil and criminal cases not assigned to courts of special jurisdiction. It also sits as an appellate court in cases where the decision of a justice of the peace or an industrial council is subject to appeal. The judgment of the district courts rendered on such an appeal is always final as to the facts, but it can be reviewed as to questions of law by the Court of Cassation. There are 350 district courts in continental France, one in each *arrondissement*.¹⁷ The district courts sitting in larger communities are formally organized into two or more divisions (*chambres*) ; one or more of these divisions (*chambre correctionnelle*), is in charge of criminal cases while the other division or divisions (*chambre civile*) adjudicate civil (and, in districts where no commercial courts have been established, also commercial) litigation. The number of judges attached to the various courts varies according to the population of the district ; the *tribunal civil* of the Seine, sitting in Paris, consisting of seventeen divisions, has over a hundred judges attached, while courts sitting in sparsely populated districts are manned by four to six judges only. The district courts must render their decisions by a bench composed of at least three judges. In civil cases their decisions (called *juge-ments*), are final in suits involving movable property up to 7500 francs in value and in suits involving real property yielding an income up to 300 francs per annum. In all other cases an appeal lies to the court of appeal. In criminal cases the district courts have original jurisdiction over *délits* ;¹⁸ they sit as appellate courts on appeal from decisions of the justice of the peace rendered as police magistrate in *contraventions*. In certain cases, the president of the district court is empowered to act alone and to exercise summary jurisdiction, to render interlocutory decrees and to perform certain other functions such as acting as mediator in divorce proceedings.

The jurisdiction of the courts of appeal is mostly appellate. They have, however, original jurisdiction over suits against judges of all inferior

17. See *supra* note 9. The only exception is the *tribunal* of the Seine, sitting in Paris, whose jurisdiction extends over the several *arrondissements* making up the City of Paris. During the last few years the drive for economy, inspired by the depression and an unbalanced budget, has also affected the judicial organization. The French government took several steps to reduce the expenses of law administration by reducing the number of district courts and by creating branch district courts in sparsely populated judicial districts in place of the heretofore independent district court. This meant a saving by reducing the number of judges and by lower salaries to be paid to the personnel of these branches, which have been reclassified into district courts of the third category. (The district courts are divided into three classes according to density of population and, consequently, according to volume of judicial business ; the salaries of the judges vary according to the class of the court). In fact, the number of judicial agencies accessible to litigants has not been materially changed. For the reorganization of the judiciary see the ordinance of March 28, 1934, cited *supra* note 10.

18. Art. 179, CODE OF CRIMINAL PROCEDURE. As to the distinction in French criminal law between contravention, misdemeanor and felony, see *supra* note 12.

courts (justice of the peace, commercial courts, industrial boards and district courts) against these courts as a whole or any division thereof as well as against an individual member of a court of appeal. This peculiar remedy available to French litigants against the judiciary passed from Roman law into ancient French law in the form of *prise à partie* and survived the revolution.¹⁹

The decisions of the courts of appeal are always "final" except for review, in matters of law only, by the Court of Cassation. There are twenty-six courts of appeal in continental France, each comprising (with the exception of the court of appeal sitting at Bastia on the island of Corsica) several *arrondissements*. As is the case with some of the district courts, most of the courts of appeal have two or more divisions; one or more divisions hear appeals from decisions of the criminal divisions of district courts involving misdemeanors, while the other divisions entertain appeals in civil and commercial actions arising in the district or the commercial courts. The number of divisions and of judges in each court of appeal depends, as in the case of the district courts, on the population of the area. It should be noted that the judges assigned to the divisions of the district courts and the courts of appeal, respectively, change from one division to the other according to a rotation plan.

The decisions of these courts (called *arrêts*) are rendered ordinarily (*audience ordinaire*) by a bench composed of at least three judges or councillors.²⁰ In certain cases, however, the court is bound to render decisions in what is called solemn session (*audience solennelle*) when various divisions of the court must sit with a quorum of at least nine judges drawn from the several divisions of the court.²¹

As has been indicated above, the trial of felonies is entrusted to a specially constituted court, the *cour d'assises*. This is the only court in France which sits with a jury. An assize court is formed in each department for each criminal term and is composed of three judges chosen from the court

19. The *prise à partie* is a civil action for damages against a judge or a court for improper acts committed in the exercise of his or its functions. It is available only: (1) if the judge committed a fraudulent or intentionally unlawful act in the course of the performance of his duties; (2) in certain special situations in criminal cases; (3) in cases of denial of justice. See Arts. 505, 509 of the Code of Civil Procedure.

The Court of Cassation has original jurisdiction if the *prise à partie* is directed against a court of appeal or a division thereof or against a judge of the Court of Cassation. This proceeding is not available against the Court of Cassation as a whole.

20. The judges of the courts of appeal of the Court of Cassation are called councillors (*conseillers*). The required quorum in the courts of appeal was originally five. It was reduced, for reasons of economy (see *supra* note 17) to three by the decree of June 25, 1934, Art. 2. (*Décret relatif à l'organisation judiciaire*, Dalloz, *Recueil périodique de jurisprudence* 1934. 4. 195).

21. Decisions are rendered in solemn session whenever the court acts as court of remand (*cour de renvoi*) in considering a decision which has been set aside and remanded by the Court of Cassation (see *infra*) and in suits against a judge *prise à partie*.

of appeal or the district court and a jury of twelve laymen.²² The presiding justice of the *cour d'assises* is usually a councillor of the court of appeal. There is no appeal from the decisions of the *cour d'assises*, except review of the law by the Court of Cassation.

The supreme judicial organ in France is the Court of Cassation, which sits in Paris. The Court is composed of forty-nine judges: the president, three vice-presidents and forty-five councillors; and has three divisions: the division of petitions (*chambre des requêtes*), the civil division (*chambre civile*) and the criminal division (*chambre criminelle*), each division being composed of one of the vice-presidents as presiding justice and fifteen councillors. It should be noted that, contrary to the rotation system followed in the lower courts, the judges of the Court of Cassation are not transferred from one division of the Court to another. The Court's jurisdiction extends to all "final" decisions of ordinary law courts, whether civil, commercial or criminal, throughout France and the French colonies. As has been indicated, the Court of Cassation has original jurisdiction in *prise à partie* suits against the courts of appeal and the *cours d'assises*.²³ It also has original jurisdiction over disciplinary proceedings against judges; in such cases the Court of Cassation sits as *Conseil supérieur du magistrat*.

Cases may be brought before it for review only on the ground of violation or incorrect application of the law by the lower court or on the ground that the lower court acted in excess of jurisdiction. A case may be brought before the Court of Cassation either by one of the parties to the suit (such a petition for review is called a *pourvoi* or *requête civile*, according to the applicable technical procedure) or by the Attorney General "in the interest of the law" (*dans l'intérêt de la loi*). Decisions are rendered by a bench of at least eleven judges; the quorum for the exceptional (and relatively rare) full bench meeting of the Court (see *infra*) is thirty-four.

Civil and commercial reviews, unless brought by the Attorney General, are first considered, on briefs and without oral argument, by the *chambre des requêtes*. If that division finds that the case presents no question for review by the Court, it dismisses, in a reasoned opinion, the petition for review, and the litigation is definitely closed. If, on the other hand, it comes to the conclusion that the petition for review has some foundation—in other words, if it finds at least a *prima facie* case for review—it transmits the case for disposition to the *chambre civile*.²⁴ On the other hand,

22. The function of the jury in trials before the *cour d'assises* has recently been substantially modified. While theretofore the jury was called upon to pass upon questions of fact only, at present they take part also, in certain cases, in the determination of penalties. See the statute of March 5, 1932 (*Loi ayant pour objet d'associer le jury à la cour d'assises pour l'application de la peine*). Dalloz, *Recueil périodique de jurisprudence*, 1932. 4. 129.

23. See note 19, *supra*.

24. Cf. this process, designed to weed out appeals and thus to prevent the crowding of the calendar, with the various attempts to restrict the number of cases heard by the Supreme Court of the United States, leading to the *certiorari* procedure in force at present. See

petitions for review of decisions in criminal cases are not subjected to this preliminary scrutiny of the *chambre des requêtes* but go directly to the *chambre criminelle*.

Perhaps the most interesting feature of French judicial organization is the role assigned to the Court of Cassation. The Court was established with a view to achieving a consistent interpretation of the law which had been, by and large, made uniform by codification. But the powers conferred on, and the function discharged by, the Court of Cassation are unlike the powers and functions of the courts of last resort of common law countries or of those civil law systems which have not adopted the French pattern for court organization.²⁵ The peculiarity of the Court of Cassation's function is that it never decides a case on the merits. A case brought for review before this court does not afford to the parties another ordinary forum of appeal.²⁶ The only issue which the Court of Cassation is empowered to consider is whether or not the law has been correctly applied by the court below; it cannot disturb the fact-findings of the lower court, even if there is no evidence to support those findings. Also, the Court is restricted to a consideration of violations of the law expressly alleged by the petitioner;²⁷ no new evidence may be introduced before the Court; nor can any new issue be pleaded, with one important exception, *i. e.*, questions affecting public policy may be raised at any stage of the proceedings.

Hence, it is said that the Court of Cassation never actually *decides* a case. As the French jurists express it, that court "judges decisions and not suits". If it finds that the lower court correctly applied the code or statute, the petition for review is dismissed; thus the judgment of the court below becomes final, and the litigation is closed. If it finds that the law was violated or incorrectly applied by the court below, then the Court of Cassation does not substitute its own decision for the holding below but sets aside (*casser*) that decision and remands (*renvoi*) the case to another court of the same rank as that which rendered the decision reviewed.²⁸ The court to which the case is remanded is called the *cour de renvoi*.

FRANKFURTER AND LANDIS, *THE BUSINESS OF THE SUPREME COURT* (1928) 187 *et seq.*, especially 210-216. See also, Taft, *The Jurisdiction of the Supreme Court under the Act of February 13, 1925* (1925) 35 YALE L. J. 1; Blair, *Federal Appellate Procedure as Affected by the Act of February 13, 1925* (1925) 25 COL. L. REV. 393.

25. Germany, Austria, Switzerland, Hungary and the Scandinavian countries did not follow the French system as to the functions assigned to their respective supreme courts. Belgium, Italy, Rumania, the Netherlands, Luxembourg and several South American countries, on the other hand, followed more or less closely the French pattern.

26. It may be noted that an "appeal" automatically stays execution except by special permission of the Court and then only if security is deposited. A "review", on the other hand, does *not* stay execution except by special direction of the Court.

27. Cf. the narrow limitations of the powers of the Court of Cassation with the freedom of the German *Reichsgericht* to consider errors other than those urged by the parties, *infra*, p. 868.

28. Let us suppose that a decision of the court of appeal of Paris was set aside. The Court of Cassation then remands the case to the court of appeal of Lyon. Or suppose that the decision reviewed was that of the *tribunal civil* of Bordeaux, rendered on appeal from a judgment of a justice of the peace. If that decision is set aside, it is remanded, let us say, to the tribunal of Besançon. The Court of Cassation is free to choose the court to which it remands a case.

The doctrine of *stare decisis* being foreign to the French legal system,²⁹ the court of remand is not bound—theoretically—to follow the indications of the Court of Cassation. In fact, the court of remand usually renders a decision in accordance with the views of the Court of Cassation. It does happen, however, that the court of remand sometimes entertains a view different from that expressed by the Court of Cassation and agrees with the decision which was set aside. If, in such a case, the decision of the court of remand is brought for review before the Court of Cassation a second time on exactly the same grounds as the first time, the case is heard and determined by all three divisions of the Court sitting together (*toutes chambres réunies*). If the decision of the court of remand is again set aside by this solemn sitting of the Court of Cassation on the basis of the same reasoning as in its first decision, the second court of remand is bound to conform to the views expressed by the full bench of the Court of Cassation. But the binding force of this decision is restricted—in principle at least—to that particular case.³⁰ Any court, either of first instance or of appeal, may subsequently, in a case involving precisely the same issues and an identical set of facts, between different parties, reach an opposite conclusion; nor is the Court of Cassation precluded from reversing itself.³¹ In fact, however, the authority which the Court of Cassation generally commands is greatly enhanced when a decision is rendered in this solemn fashion, and courts will as a rule not go against the deliberate and presumably well-considered conclusions of the supreme judicial authority.³²

29. The absence of the principle of the binding force of precedents is perhaps the most characteristic distinction between the common law and the continental civil law systems. To what extent the continental courts are *in fact* free to disregard the holdings of the highest courts or their own previous decisions is a matter which cannot be discussed here. This interesting problem will be dealt with in a study by the present writers to be published shortly. See on this point, Déak, *The Place of the "Case" in the Civil and in the Common Law* (1933) 8 TULANE L. REV. 337.

30. The system above outlined, whereby the Court of Cassation is given power to exert its influence in the interest of uniformity of case law and secure respect for its views without introducing the principle of *stare decisis* has been adopted, after various experimentations, by the statute of April 1, 1837 (*Loi relative à l'autorité des Arrêts rendus par la Cour de Cassation après deux pourvois*), 9 BULLETIN DES LOIS, Bull. 490, no. 6769 (1837). The statute reads as follows:

"Art. 1. When, after the setting aside (*cassation*) of a decision rendered in last instance, the decision of the Court of Remand rendered in the same case, between the same parties and with the same result, shall be attacked on the same grounds as the first, the Court of Cassation shall decide with all divisions sitting.

"Art. 2. If the decision of the Court of Remand is set aside on the same ground as the first decision, the Court of Appeal or the tribunal to which the case is remanded shall conform to the decision of the Court of Cassation as to the point of law decided by that court."

31. Cf. this with the attitude of the House of Lords in England: ". . . your Lordships would do well to act upon that which has been universally assumed . . . to be the principle, namely, that a decision of this House upon a question of law is conclusive, and that nothing but an Act of Parliament can set right that which is alleged to be wrong in a judgment of this House." Earl of Halsbury, L. C., in *London Street Tramways Co. v. London County Council* (1898) A. C. 375, 381. But the United States Supreme Court expressly reversed itself on several occasions. See, e. g., *Di Santo v. Pennsylvania*, 273 U. S. 34, 43, note 4 (1927). See generally, Sharp, *Movement in Supreme Court Adjudication—A Study of Modified and Overruled Decisions* (1933) 46 HARV. L. REV. 361, 593, 795.

32. The historical foundations of the functions assigned to the Court of Cassation can be traced back to the extraordinary remedy available since the end of the sixteenth century

(3) *The Parquet*

To complete the picture of law courts, the institution of the *parquet* or public ministry (*ministère public*) must be briefly discussed. A group of officials, called the *parquet*, is attached to every court of general jurisdiction, *i. e.*, to the district courts, courts of appeal and the Court of Cassation.³³

In each district court the *parquet* consists of a *procureur de la république* and one or more deputies (*substitut*). The *parquet* of each court of appeals is headed by a *procureur général* who is assisted by one or more *avocats généraux* and one or more deputies. The *procureur général* is the chief officer of the group of *parquets* comprised within the jurisdiction of his court of appeal; the *procureurs* attached to the various district courts are in reality his deputies, and he has wide supervision and disciplinary powers over all subordinates. The *parquet* of the Court of Cassation is composed of the chief *procureur général*, of six *avocats généraux* (two for each division of the court) and a secretary. This whole body of public ministry is headed by the minister of justice, sometimes called the keeper of the seals (*garde des sceaux*), who is a member of the cabinet. He has wide powers of direction and supervision over this branch of the judicial administration; on his initiative members of the public ministry may be removed from office by presidential decree.³⁴

The institution of the *parquet* dates back to the beginning of the fourteenth century. Although it has been taken over in modified form in many civil law countries, the functions discharged by it remain one of the most characteristic features of French judicial organization. The role assigned to these officials is to represent the state and protect the public interest whenever and however it may be involved. While the prosecution of crime, which is practically the only duty of the government's attorney in the United States or in England,³⁵ as well as in Germany, is one of the main tasks entrusted to the public ministry, it has also important functions to discharge in civil litigations; moreover it also has extensive administrative duties to perform.

In the exercise of his functions of judicial administration the appropriate *procureur* may act on his own initiative or may intervene in suits of

to have a judgment in violation of law quashed by the king's council (*Conseil du roi*). Cf. the somewhat analogous remedy in early English law, the appeal to the Privy Council in some cases where no appeal could be had to the King in Parliament. The jurisdiction of the Judicial Committee of the Privy Council grew out of the right of petitioning the Crown.

33. No *parquet* is attached to the courts of justice of the peace, the industrial councils and the commercial courts.

34. It should be noted that the *procureur général* attached to each Court of Appeal is directly under the authority of the minister of justice. He receives his instructions from the minister and not from the *procureur général* of the Court of Cassation, who has only a limited power of supervision.

35. But see the CONJUGAL RIGHTS (SCOTLAND) AMENDMENT ACT, 24 & 25 Vict. c. 86, § 8 (1861) whereby the Lord Advocate, the chief public prosecutor of Scotland, is authorized to intervene in actions of divorce.

private parties.³⁶ He appears, of course at his own initiative as principal party in criminal prosecutions;³⁷ but, in addition he may institute proceedings in various civil cases specified by statute; *e. g.*, for the annulment of inherently defective marriages (Arts. 184, 190, 191, Code civ.) and for the award of children in divorce suits (Art. 302, Code civ.). He may file petitions of lunacy (Art. 491, Code civ.) and for the cancellation of patents obtained by fraud or contrary to public policy or good morals (statute of July 5, 1844 concerning patent, Art. 37) *etc.*

His functions as an intervening party are either mandatory or discretionary. He is bound to intervene in all cases affecting public policy (*e. g.*, cases involving the judicial organization, such as challenge of a judge on account of personal interest; status of persons; protection of incompetents, of minors, and of absentees; protection of the property interests of the state and its political subdivisions and legally recognized public institutions such as schools).³⁸ He *must* be heard in every case of every kind before the Court of Cassation, presumably on the theory that every case reaching the highest court of France affects the public interest. He *may*, of course, intervene in any litigation in which he feels that the interest of the state or of the public is involved, and no litigant has any right to object to his intervention. It should be noted that the conduct of the public minister is independent of the court and vice versa. It should also be noted that while the *procureur* is bound to act under the statute or in pursuance of instruction from his superior, his duty has been fulfilled when he has filed his briefs. He is free orally to argue the case according to his conscience; he may move for the acquittal of a person whom he prosecutes and he may argue against a prayer of a brief which he was bound or instructed to address to the courts.

The administrative duties of the public ministry are to see that the administration of justice functions properly; he is to collect judicial statistics; and he is to report to his superiors on the business of the courts; on laxity or misconduct of the judges; to supervise the administration of unclaimed estates; to inspect lunatic asylums; to supervise the registers of civil status, *etc.*

(B) ADMINISTRATIVE LAW COURTS

As has been indicated above, one of the most peculiar characteristics of the French judicial organization—a characteristic followed by many civil

36. In French technical language the *procureur* acts *par voie d'action* when instituting proceedings; *par voie de réquisition* when he intervenes. The distinction is important, chiefly, because when suing at his own initiative, he may appeal, as any other party, and may bring his case before the Court of Cassation; whereas he has no such rights when he intervenes.

37. When the justice of the peace sits as police magistrate, the duties of the public prosecutor are discharged by the commissioner of the police.

38. The cases in which the intervention of the *ministère public* is mandatory are called cases "subject to communication to the public minister" (*affaires communicables*) because the parties are under a duty to transmit their briefs and pleadings under penalty of invalidity of the proceedings. See Art. 83, CODE OF CIVIL PROCEDURE.

law systems—distinguishing it from the common law systems, is the existence of administrative law *courts*, distinct from and independent of the ordinary law courts. The *judicial* function³⁹ of these administrative bodies is the determination of suits between public authorities (the state and its organs and its political subdivisions) and private persons. The chief objects and results of this function are the protection of the individual against arbitrary and ultra vires acts of public authorities and government officials. In common law countries this function is entrusted to the ordinary law courts. But in France courts have never arrogated to themselves the power to pass upon the constitutionality of a statute, to award damages for, or to issue injunctions against, unauthorized acts of public officials⁴⁰ or to compel the performance of an act by mandamus. However, the individual in France is by no means at the mercy of the government, as is sometimes believed. On the contrary, he is effectually protected by a body of law built up by the *Conseil d'Etat*, which body of law is, perhaps, the most convincing evidence of the ingenuity of the legal profession in France. Perhaps no other country has developed administrative law, as far as the protection of the individual is concerned, to that degree of efficiency and refinement reached in France.

The existence, side by side, of the ordinary law courts and the administrative tribunals is the result of the strict fulfillment of the fundamental principle on which successive French constitutions since the revolution have been based, namely, the separation of judicial from executive or administrative power. It was conceived to be inconsistent with this principle to permit the strictly judicial arm of the government to interfere with, or to pass judgment upon, the acts of the executive arm.⁴¹ Also, from a practical point of view, claims arising out of administrative acts involve problems the solution of which presupposes an acquaintance with the intricacies of the complicated governmental machinery, a knowledge not ordinarily imputable to judges of the *droit commun*. Since the determination of commercial and labor controversies is entrusted to tribunals composed of men possessing experience in those fields, it is even more desirable that specially

39. In this section only the judicial functions of these administrative bodies as distinguished from purely administrative functions will be considered. The judicial functions are designated as *administration contentieuse*, while the purely administrative functions are designated as *administration active*.

40. The law courts have jurisdiction, however, when the injury results from the *personal* fault of the official. But *cf.* the *prise à partie* proceeding against judges, *supra* note 19.

41. It should be noted, however, that the separation of law and administration was by no means an innovation of the revolution; the evolution in that direction was going on during the *ancien régime*. Due to the reluctance of the provincial *Parlements* (the courts of justice of the pre-revolutionary era) to obey the royal authority, which possessed comparatively little power over them, and to their resistance to any reform movement initiated by it, an increasing number of issues were withdrawn from their jurisdiction and brought within the competence of the King in Council—the predecessor of the *Conseil d'Etat*. See PORT, ADMINISTRATIVE LAW (1929) 296-7.

trained men should decide actions arising out of the exercise of governmental authority.

The foundation of the administrative court system in force at present is the statute of May 24, 1872,⁴² which reorganized the *Conseil d'Etat* and materially enlarged its powers. Theretofore the *Conseil d'Etat* (except during a very brief and insignificant interval) exercised its powers in a form designated in French technical language as *justice retenue*; i. e., it merely gave advice, and the final decision rested with the competent cabinet minister who was not bound by, but in practice usually followed, the *Conseil's* advice. The 1872 statute conferred on the *Conseil* the power to decide litigations submitted to it without interference by the executive; henceforth it exercised its powers in the form of *justice déléguée*.⁴³

The organization of the administrative law courts is quite different from that of the ordinary law courts; the hierarchy of jurisdictions characteristic of the latter is largely absent. As a French writer expressed it, the organization of law courts is pyramidal, while that of the administrative tribunals is concentric.

The administrative court of general and, in most instances, original and final jurisdiction is the *Conseil d'Etat*. In rank it corresponds to the Court of Cassation, but it performs its most important judicial functions—quite contrary to those of the Court of Cassation—as a court of both first and last instance. In other words, in many important cases the double degree of jurisdiction characteristic of the law courts is not available to the complainant. As a consequence, administrative justice is largely centralized in Paris, at the seat of the *Conseil*; this is another distinguishing feature of the administrative court system: it is not decentralized as are the law courts. But the *Conseil d'Etat* also sits as a court of appeal or court of cassation from decisions in certain cases in which the *conseil de préfecture* (administrative court organized in each department of continental France) has original jurisdiction. In addition, an appeal lies to the *Conseil d'Etat* from special administrative courts, which are all subordinated to the *Conseil*.⁴⁴

42. Dalloz, *Recueil périodique de jurisprudence*, 1872. 4. 88. *Loi portant réorganisation du Conseil d'Etat*. A tracing of the history of the *Conseil d'Etat*, from its establishment by early revolutionary legislation until its final shape, given to it by the constituent assembly of the Third Republic, cannot be undertaken here. For detailed information as to the various stages of the development of its powers and jurisdiction by the trial and error method, the animated discussion for or against its existence, the extension or restriction of its competence, and the remarkable body of case law which it has built up since 1872, consult: BARTHÉLÉMY, *TRAITÉ ÉLÉMENTAIRE DE DROIT ADMINISTRATIF* (11th ed. 1927); LAFERRIÈRE, *TRAITÉ DE LA JURISDICTION ADMINISTRATIVE*, 2 vols. (2d ed. 1896).

43. Art. 9 of the statute of May 24, 1872, Dalloz, *Recueil périodique de jurisprudence*, 1872. 4. 88. provides: "The *Conseil d'Etat* shall render final decision in administrative controversies and in suits to annul, as in excess of power, acts of the various administrative authorities."

44. The following special administrative courts exist at present in France: the administrative courts of the colonies (*conseil de contentieux des colonies*); the public audit office (*cour de Comptes*); the administrative court in charge of the military recruiting laws (*con-*

The *Conseil d'Etat* has original jurisdiction in suits for annulment of administrative acts performed by any government official, whatever his rank may be, on the ground of excess of power (*recours pour excès de pouvoir*)⁴⁵ or misapplication of power (*détournement de pouvoir*) and in suits for damages caused in certain instances by administrative acts or the operation of governmental agencies (such as railroads, public utilities).⁴⁶ The *Conseil* has also jurisdiction to adjudicate matters arising out of government contracts.

Its appellate jurisdiction extends to all decisions rendered by a departmental administrative court (*conseil de préfecture*) and, with a few exceptions,⁴⁷ to decisions rendered by all special administrative courts. Final decisions rendered by subordinate administrative tribunals, when not technically appealable, can be brought before the *Conseil d'Etat* for "review" (*recours en cassation*).⁴⁸ If the petition for review is well-founded, the *Conseil d'Etat*, like the Court of Cassation, merely sets aside the decision of the lower court and remands the case to an administrative court of equal rank or to another section of the court which rendered the decision. But, unlike the practice of law courts (see *supra* p. 856), the court of remand is bound at once to follow the indication of the *Conseil d'Etat*.

Litigation in the administrative courts is simpler and less expensive than in the law courts.

Administrative law is not embodied into codes and statutes to the same extent as private or criminal law; it is largely judge-made, gradually developed by the *Conseil d'Etat*. The administrative courts are, of course, bound by statutory standards of jurisdiction and procedure.

The departmental administrative courts and the special administrative bodies are, in contradistinction to the *Conseil d'Etat*, courts of special jurisdiction, *i. e.*, they can adjudicate only such cases as are referred to them by virtue of express statutory provisions.⁴⁹

seil de révision); the administrative bodies in charge of various stages of education (*conseils de l'instruction publique*). After the war two administrative courts were established to pass upon claims arising out of veterans' pensions (*tribunaux des pensions militaires*) and of war damages (*commissions des dommages de guerre*).

45. No administrative recourse is available against acts of the judiciary; but compare the civil law action for damages (*prise à partie*) *supra* note 19. It is doubtful whether any remedy lies in administrative recourse against parliamentary legislation.

46. But the law courts have jurisdiction over suits for damages caused by the personal fault of government officials.

47. In certain auditing cases appeal from the *conseil de préfecture* lies to the public audit office and not to the *conseil d'Etat*; appeal from decisions of administrative boards in charge of education lies to the *conseil supérieur de l'instruction publique*.

48. It should be noted that appeal from a subordinate administrative court to the *conseil d'Etat* does not, as in the case of an appeal in a law suit, automatically stay execution; such stay may, however, be granted by the *conseil*. It may also be noted that some recourse, either in the form of an "appeal" or a "review", is always permissible, irrespective of the importance of the claim or the amount involved—this on the theory that every administrative act affects the public interest.

49. To mention a few cases over which the departmental administrative courts have original jurisdiction (always subject to appeal): they sit as police courts in minor offences com-

The personnel of the judicial branch of the *Conseil d'Etat* is drawn from persons trained in the administrative branch of the government. The thirty-five members of the *Conseil*, called councillors (*conseillers d'état*), are appointed by presidential decree with the advice of the cabinet. In addition there are attached to the judicial section a number of *maîtres des requêtes* and *auditeurs*. The *auditeurs* are selected by civil service examination, and advance to *maîtres* according to a definite ranking list.⁵⁰

Corresponding to the public minister's functions in law courts,⁵¹ "commissioners" are attached to the *Conseil d'Etat* to represent the State's interests in proceedings before it.

The independence of the *Conseil d'Etat* as a judicial body is safeguarded by the fact that the personnel of the judicial branch is distinct from that of the administrative branch, thus preventing an executive officer from sitting in judgment upon his own acts. Although the Minister of Justice is *ex officio* President of the *Conseil d'Etat* as a whole, he is excluded from the activities of the judicial branch, which is presided over by the vice-president. While in theory the councillors of the *Conseil d'Etat* do not enjoy the guarantee of irremovability as do the judges of the law courts (they may be removed from office by the same process by which they were appointed) their independence seems to be secure. For over fifty years no councillor has been removed.

The judicial branch of the *Conseil d'Etat* is divided into sections and the sections into sub-sections. Cases are heard and decided, according to their importance, by one section (*section du contentieux*) composed of a president, twelve councillors (with a quorum of nine) or by full bench (*assemblée publique du contentieux*), presided over by the vice-president of the *Conseil*.

The departmental administrative courts are composed of three or four councillors (*conseillers de préfecture*) under the presidency of the *préfet*, the head of the *département* (the county government). As the *préfet* is a representative of the executive, the independence of these administrative courts is much less secure than that of the *Conseil d'Etat*. Also, the councillors are appointed by simple executive decree without civil service examination, and they are removable in the same way.

mitted on highways and navigable waterways (*contravention de grande voirie*); in suits relating to the execution of public works (both concerning the execution of contracts and damage suits for injuries); in complaints relating to direct taxes; in the audit of the budgets of districts and municipalities, etc.

50. The councillors must be appointed, in part from the *maîtres des requêtes*, and three-quarters of the *maîtres* must have the rank at least of an *auditeur* of the first class. The rest of the councillors may be appointed by the government from among persons not attached to the *conseil d'Etat*; these posts are usually filled by higher government officials with considerable experience in administration.

51. See *supra*, p. 857.

(C) THE TRIBUNAL DES CONFLITS

The existence of these two separate and parallel court systems makes it inevitable that there should arise between them conflicts as to jurisdiction. The statute of May 24, 1872, which reorganized the *Conseil d'Etat*,⁵² also established a *Tribunal des Conflits*, which has the delicate task of delimiting the respective competencies of law courts and administrative tribunals. This court, presided over by the Minister of Justice,⁵³ is composed of three councillors of the Court of Cassation and three councillors of the *Conseil d'Etat*, chosen by their respective brethren. In addition, the seven members elect two judges and two substitutes. The public ministry is represented in this court by two commissioners and two substitute commissioners, nominated by the President from among the *avocats généraux* of the Court of Cassation and the *maîtres des requêtes* of the *Conseil d'Etat*. The court renders its decision with a quorum of five.⁵⁴

Any jurisdictional conflict may be brought before this court. In case of a negative conflict (*i. e.*, when both law court and administrative court have declined to take jurisdiction) it may be brought by any individual injured thereby. The issue of positive conflict (*i. e.*, where a law court takes jurisdiction over an issue allegedly falling within the competence of the administrative tribunal) can arise only in the law courts⁵⁵ at the initiative of the *préfet* through a reasoned written petition called *déclinatoire d'incompétence*. If the court rejects the petition, the *préfet* may, in his discretion, request the Minister of Justice to bring the matter before the *Tribunal des Conflits*. When the *préfet* fails to act within a prescribed period, the party allegedly injured may raise the issue himself. The *Tribunal des Conflits* is, to a considerable extent, responsible for the progressive and liberal spirit in which French administrative law developed.⁵⁶ The liberalism of French administrative law has manifested itself, chiefly, in constantly widening the responsibility of the government's administrative agencies and in the corresponding recognition of the individual's right of action to seek relief against encroachments upon private rights by public authorities.⁵⁷

52. See note 42, *supra*.

53. In fact, the Minister rarely presides; he has a casting vote in case the court is equally divided. In most instances, a vice-president, elected by the members of the court, presides.

54. See Art. 25 of the statute of May 24, 1872, Dalloz, *Recueil périodique de jurisprudence*, 1872. 4. 88, cited *supra* note 42.

55. The issue cannot be raised before the Court of Cassation, the *cour d'assises* and the commercial courts.

56. For more detailed information concerning the working, jurisdiction and case law of administrative courts, consult: the treatises cited *supra* note 42. See also NÉZARD, *ÉLÉMENTS DE DROIT PUBLIC* (4th ed. 1928); ALIBERT, *LE CONTRÔLE JURIDICTIONNEL DE L'ADMINISTRATION* (1926); APPLETON, *TRAITÉ ÉLÉMENTAIRE DU CONTENTIEUX ADMINISTRATIF* (1927); Duguit, *The French Administrative Courts* (1914) 29 *POL. SCI. Q.* 385.

57. For more detailed information concerning the court-system of France generally see: ENSOR, *COURTS AND JUDGES IN FRANCE, GERMANY AND ENGLAND* (1933); I GLASSON-TISSIER, *TRAITÉ D'ORGANISATION JUDICIAIRE, DE COMPÉTENCE ET DE PROCÉDURE CIVILE* (3d ed. 1925); LEPAULLE, *LA JUSTICE* (1934); Walton, *The Organisation of Justice in France*

II. COURTS IN GERMANY

(A) GENERAL OBSERVATIONS

The French system of court organization, as established by the revolutionary governments and by Napoleon, exerted an immense influence all over Europe. Thus, when the German states, during the earlier part of the nineteenth century, reorganized their judicial systems, they followed the French pattern to a large extent. The same lines were followed in the uniform system which was established by the *Reich* in 1877 and which has not yet been materially altered by the National-Socialist regime. There are, however, several important differences between German and French judicial organization arising largely from the different political organizations, traditions and ideals.

1. As in France, all courts are maintained by the supreme political power, which, however, in Germany was divided between the Federal Government (the *Reich*) and the states, as in the United States. Prior to 1934, the majority of the courts were state courts, their organization being regulated by federal statute.⁵⁸ Only the supreme court (the *Reichsgericht*) in the hierarchy of the ordinary law courts and some administrative courts were maintained by the *Reich*. When the National-Socialist government abolished the sovereignty of the states by the Statute on the Reconstruction of the *Reich*, of January 30, 1934,⁵⁹ all courts became immediate organs of the *Reich*.⁶⁰

2. As in France, the judges are trained in the law and, in principle, appointed for life. They usually enter the judicial career, which may lead from the lowest courts to the supreme court, as young men immediately after completing their formal legal education.⁶¹

3. As in France, all courts with the exception of the lowest tribunals for petty civil and criminal cases, are made up of "collegiate" ⁶² benches.⁶³

4. Not all members of the bench are professional judges. In civil cases the court is composed exclusively of professional judges. But in commer-

(1903) 19 L. Q. REV. 263; Tyndale, *The Organisation and Administration of Justice in France* (1935) 13 CAN. BAR REV. 567; Morel in 3 LÉVY-ULLMAN AND B. MIRKINE-GUETZÉVITCH, *LA VIE JURIDIQUE DES PEUPLES* (1933) 342 *et seq.*

58. Gerichtsverfassungsgesetz, of January 27, 1877, REICHSGESETZBLATT 1877, 41.

59. Gesetz über den Neuaufbau des Reichs, REICHSGESETZBLATT 1934, I, 75.

60. See the Acts of February 16, 1934 (REICHSGESETZBLATT 1934, I, 91), of December 5, 1934 (*Id.* 1214), and of January 24, 1935 (*Id.* 1935, I, 68).

61. Training, position, and tenure of the judges will be dealt with in more detail in a later article.

62. *Supra*, p. 847.

63. The anonymity of the decisions is still greater than in France; see *supra* note 7. The published reports do not even mention the names of the presiding judge and the judge who prepared the opinion. In theory, it is the state, and not Mr. Justice So-and-so who speaks through the decision. The author recalls an incident in a German court where, in a criminal case, the presiding judge asked the prisoner, who was accused of burglary, for his personal data. "But what is your name, Mr. President?" retorted the prisoner. "I am sorry", was

cial and labor cases, in most criminal and in certain administrative matters, the bench is composed of professional judges and of laymen, the latter usually being in the majority. This large-scale participation of laymen in the administration of justice distinguishes the German system from the French (where laymen-participation plays a rather modest role).⁶⁴

In a German court no "jury" will be found. The lay judges sit together with the ordinary judges and deliberate with them. They have an equal vote on all aspects of a case, no distinction being made for this purpose between questions of law, of fact, or of punishment.

The lay-judges sitting on the criminal court benches are called "aldermen" (*Schöffen*).⁶⁵ A list of all men and women who fulfill the necessary requirements for being an alderman (majority and full enjoyment of citizenship rights) is prepared every year for the district of each County Court [*Amtsgericht*, see *infra*.] Out of this list a committee, whose members were formerly elected by the municipal councils of the district, chooses as many names as will be needed for aldermanic service during the year. The aldermen so chosen are allotted in advance to every court day of the year. Under the National-Socialist regime steps were taken to insure that only those are placed on the panel who are sufficiently reliable to cooperate in the administration of justice in the National-Socialist spirit.

The *Schöffen*-system, although sometimes attacked, has by and large proved successful. It is praised as an institution which not only insures the necessary influence of the average citizen in the administration of justice, without the dangers and drawbacks of the jury system, but which also gives a large number of citizens an opportunity to obtain an idea of the legalistic reasoning of the professional judges. The latter, in their turn, must listen to the common sense of the "man on the street". Decisions based on purely sentimental reasons or rendered in ignorance of the law or on a misinterpretation of a complicated set of facts are likely to be less numerous than in the jury system. On the other hand, there is, of course, a certain danger that the professional judges, with their superior education

the embarrassed judge's answer, "under the law, I have to ask you for your name, but of what concern is my name to you?"

64. Cf. *supra*, p. 850.

65. The "aldermanic system" (*Schöffensystem*) has its roots in old Germanic traditions which never entirely died out, although they were reduced to little influence under the absolute monarchy. When, in the 19th century, the governments tried to resist the liberal demand for a jury system on the French pattern, a compromise was finally worked out: the jury system was introduced for the trial of felonies, while for the trial of minor crimes, aldermanic courts were established (cf. Organization of Courts Act, of January 27, 1877, *supra* note 58. In the aftermath of post-war inflation the jury system was abolished by a decree of the Cabinet of the Reich (January 4, 1924, REICHSGESETZBLATT 1924, I, 15). It was based on the ENABLING ACT of December 8, 1923 (REICHSGESETZBLATT 1923, I, 1179) which empowered the Cabinet to take such steps as "it would regard necessary and urgent with reference to the emergency of country and nation". The step was sought to be justified as a matter of economy. As a matter of fact, the jury system was never very popular in Germany. Nevertheless, the name "Tribunal of Assize" (*Schwurgericht*) was retained for the aldermanic tribunal dealing with the most serious felonies.

and dialectics, may dominate the lay judges. It seems, however, that in most cases a genuine joint deliberation and discussion takes place and that the *Schöffen* have a real influence on the actual decisions.

In the commercial courts, the lay members are business men of high standing and reputation. They do not change from day to day or from case to case as the aldermen in the criminal courts do but are appointed by the government for a period of three years with the possibility of reappointment, which usually takes place. Although they take a regular and sometimes burdensome part in the work of the court division to which they are attached, they receive no salaries but only a modest compensation for their expenses. Nevertheless, the office of a "commercial judge" (*Handelsrichter*) is not shunned but rather sought as a high social honor, similar to that of the English Justice of the Peace. Unlike the French, the German tribunals dealing with commercial transactions are not composed of business men exclusively, but of two business men and a professional presiding judge.

The tribunals dealing with labor cases are composed of from one to three professional judges and two lay members (*Arbeitsrichter*), one of whom is an employer, the other an employee. They are appointed for three years, as are the commercial judges, but care is taken that the individual "labor judges" do not have to sit as frequently as the "commercial judges".

5. As in France, administrative law cases cannot be brought before the ordinary courts. Unlike the French, however, the German administrative courts are not organized as a single hierarchy with a supreme administrative court (the French *Conseil d'Etat*) at the top. There are not only different sets of administrative courts in each of the former states, but there is also a bewildering multitude of hierarchies of administrative courts of the *Reich*, each one dealing with a separate topic. There exists, for example, a three-graded hierarchy of courts dealing with taxation cases, another for social insurance cases, and many others. All the various supreme courts are of equal rank. There exists no "Supreme Court" for Germany which exercises final control over all courts of the country. The *Reichsgericht* is the court of ultimate resort in the hierarchy of the "ordinary" civil (including commercial) and criminal courts, but of these courts only. It has no jurisdiction to pass upon a decision rendered in a supreme administrative court of a state or in any one of the many supreme administrative courts of the *Reich*.

6. Judgments of most of the courts are regularly subject to revision by a higher court.⁶⁶ In their original form, the procedural codes⁶⁷ provided

66. As to details, see *infra*, pp. 870, 871, 873.

67. CODE OF CIVIL PROCEDURE (*Zivilprozessordnung*, ZPO) of January 30, 1877 (*REICHSGESETZBLATT* 1877, 83); CODE OF CRIMINAL PROCEDURE (*Strafprozessordnung*) of February 1, 1877 (*Id.* 1877, 253).

for a double review in most cases, with a sharp distinction being made between a petition for a first and for a second review. The former, called appeal (*Berufung*), could lead theoretically to a retrial of the whole case before the appellate court. Not only could new evidence be adduced unrestrictedly, but also the former witnesses had to testify again. By recent legislation, however, an appellant's right to introduce new witnesses and other new evidence has been considerably curtailed, and appellate proceedings have thus become similar to those before an intermediate appellate court in the United States, without, however, entirely abolishing the possibility of the appellate court hearing old or new evidence.⁶⁸ An application for a second revision, which ordinarily brings the case up to the highest court of the hierarchy of the ordinary courts (i. e., the *Reichsgericht*)⁶⁹ or of a particular set of special or administrative courts—for example, to the Supreme Court of Finances (*Reichsfinanzhof*) or to the Supreme Court of Social Insurance (*Reichsversicherungsamt*)—does not lead to a new trial. Such a petition, which is called "revision" (*Revision*) in the ordinary courts and usually "complaint of violation of law" (*Rechtsbeschwerde*) in the administrative courts leads only to an examination of the record in order to ascertain whether the law was correctly applied to the facts by the lower court. While the *Berufung* corresponds to the French "appeal", *Revision* and *Rechtsbeschwerde* find their counterpart in the French "review". A difference exists, however, in that the French Court of Cassation, when holding that an inferior court has misapplied the law, will invariably remand the case to an appellate court,⁷⁰ while the German supreme courts, especially the *Reichsgericht*, like the House of Lords or an American court of last resort, may and frequently do render a final decision where no new evidence is held to be necessary.⁷¹ When a case is remanded to an inferior court, the latter, unlike the corresponding French court, is bound immediately to conform to the construction of the law as laid down in the decision of the supreme court of the hierarchy in question, such binding force not extending, in theory, beyond the case at hand.

68. Decree on the Procedure in Civil Causes (*Verordnung über das Verfahren in bürgerlichen Rechtsstreitigkeiten*), of February 13, 1924 (REICHSGESETZBLATT 1924, I, 135).

69. In criminal cases, revision will not regularly lead to the *Reichsgericht* but frequently to a lower court of final jurisdiction. Furthermore, in criminal cases "revision" is regularly not an application for a second review. In many instances no appeal may be taken against a decision of a criminal court but application for revision only; in other instances the party may choose between appeal and revision (cf. the chart, *infra*, p. 872).

70. Cf. *supra*, p. 855.

71. It is misleading, however, to say, as it is frequently stated, that in Germany two "appeals" are available to a party while in France the decision of a court of appeal is "final" and only subject to "review" as to its correctness in law. The decisions of the German appellate courts are just as final as those of their French counterparts, namely, no stay of execution will usually be granted while the case is pending before the court of last resort. Nor are the differences in scope of the tasks of the *Reichsgericht* and the Court of Cassation and in certain other points so important that they would justify such a statement. French "cassation" and German "revision" are essentially alike in their scope, *viz.*, control as to legal questions exclusively, and in their task, *viz.*, to secure the uniform administration of justice throughout the respective countries.

In France the Court of Cassation will, in principle, not pass upon errors which are not explicitly excepted to by the party applying for cassation. The German supreme courts, however, are free to pass on any error of substantive law on their own motion. In so doing, they may substitute their own theories of law for those of the decision excepted to as well as for those of the appellant. Thus the *Reichsgericht*, for instance, is at liberty to inquire whether a remedy lies in contract or quasi-contract, though both the inferior courts and the appellant looked upon the cause of action as sounding in tort. The French Court of Cassation would have no such power.⁷²

7. As in France, criminal proceedings are ordinarily initiated by the state's attorney (*Staatsanwalt*). His office to some extent carries on old institutions of the various states and is modelled, in part, on the pattern of the French *parquet*. Unlike the French *procureur de la République*, the German *Staatsanwalt* has no standing, however, in civil cases except in divorce and annulment suits, in causes concerning the legitimacy of issue, and in proceedings tending to restrict the legal capacity of incompetents. He cannot interpose any appeal "in the mere interest of the law", nor is he in any way concerned with supervising the courts and the conduct of the judges.

(B) THE "ORDINARY" LAW COURTS

In describing the system of German courts it appears appropriate to distinguish between "courts" established for administrative and budgetary reasons and the several bodies (divisions, terms, tribunals) which are formed out of the personnel of the various courts and entrusted with the actual decision of cases.

I. The hierarchy of the "ordinary" law courts is a four-graded pyramid: at the bottom a large number of *Amtsgerichte* (County Courts),⁷³ above them a considerably smaller group of *Landgerichte* (District Courts),⁷⁴ above the latter a small number of *Oberlandesgerichte* (Superior District Courts),⁷⁵ and, finally, on top, the *Reichsgericht* (*Reichs* Court),⁷⁶ which has its seat not in Berlin but in Leipzig, Saxony.

72. There exist other minor differences between the roles of the French Court of Cassation and the German supreme courts in addition to those already mentioned. Decisions are more closely scrutinized by the German *Reichsgericht* than by the Court of Cassation. The latter leaves the lower courts a wide range of discretion in the application of such broad terms and standards as negligence, proximate cause, good morals, good or bad faith. The *Reichsgericht*, on the other hand, attempts to determine those standards for itself in order to assure a greater uniformity in the administration of the law throughout the country.

73. On February 1, 1935, altogether 1646, or 1 *Amtsgericht* for every 39,574 heads of population. The jurisdiction of the various deciding bodies established at the *Amtsgerichte* is considerably wider, the standard of their personnel higher than that of the French Justices of the Peace. Their task covers a large number of affairs which are entrusted in France to the *Tribunaux*, and their branches.

74. On February 1, 1935, altogether 153, or 1 for every 426,264 heads of population.

75. 26 in 1935; the Superior District Court in Berlin bears the historical name of *Preussisches Kammergericht* (Prussian Chamber Court).

76. A special supreme court, the *Bayerische Oberste Landesgericht* (Bavarian Supreme District Court) with rather limited ultimate jurisdiction in certain Bavarian cases, had its seat in Munich. It was abolished in 1934.

The various *Amts-*, *Land-*, and *Oberlandesgerichte* vary widely in size. While some rural *Amtsgerichte* have only a single judge who combines in himself all the various judicial bodies which are established at the County Courts, the *Amtsgericht* Berlin-Mitte has more than 200 judges and the *Landgericht* Berlin about 300 judges, each one exercising some highly specialized function. In the larger courts, one member will be the administrative head of the judicial, clerical and other personnel. Care is also taken that the various judicial members rotate in their various tasks. On principle, no judge can be transferred from one court to another against his wishes.⁷⁷ No such protection exists, however, against transfer from one division of a court to another.

The trial courts for labor cases are separate administrative units. The hierarchy of the judicial bodies dealing with labor cases, *Arbeitsgerichte* (labor courts) and *Landesarbeitsgerichte* (district labor courts),⁷⁸ is headed by a special division of the *Reichsgericht*, called the *Reichsarbeitsgericht* (*Reichs Labor Court*). In all of the labor courts, proceedings are simple, speedy, and inexpensive.

II. 1. The following "divisions" are established at the County Courts (*Amtsgerichte*):

A. For civil (including commercial) matters: The *Amtsgericht* (County Court), *i. e.*, a County Court judge sitting alone. His jurisdiction extends

- (a) to ordinary civil litigation of a pecuniary character up to RM 500.—(\$200.).⁷⁹
- (b) to certain civil cases beyond this amount which are typically urgent and in need of speedy disposal, as, for example, litigations between inn-keepers and travellers, or bastardy proceedings.

B. For criminal matters:

- (a) The *Amtsrichter* (the County Judge), *i. e.*, a County Court judge sitting alone. He has jurisdiction over infractions of police laws and minor misdemeanors.
- (b) the *Schöffengericht* (Tribunal of Aldermen): a County Court judge sitting with two aldermen; jurisdiction over misdemeanors and minor felonies.

77. Under the National-Socialist regime, this privilege has been restricted.

78. There existed 451 Labor Courts and 58 District Labor Courts in 1935.

79. This amount has been frequently changed by legislation; the latest change was made by the Act of December 13, 1935 (REICHSGESETZBLATT 1935, I, 1464), which reduced the amount from RM 1000.—to RM 500.—, thus transferring all cases over RM 500.—to the District Courts, where the parties must be represented by attorneys. No such representation is necessary before the County Courts. The step was justified as a relief measure for lawyers.

- (c) The *Jugendrichter* (Juvenile Judge): a County Court judge sitting alone; jurisdiction over petty offences of juveniles; (*i. e.*, persons between 14 and 18 years of age).
- (d) The *Jugendgericht* (Juvenile Tribunal): a County Court judge with two aldermen having special experience in juvenile welfare; jurisdiction over misdemeanors and minor felonies of juveniles.
- (e) The *Grosse Jugendgericht* (Great Juvenile Tribunal): two judges and three aldermen of special experience; jurisdiction over the most serious crimes of juveniles.

C. Besides its jurisdiction in ordinary civil (including commercial) and criminal matters, the County Court is charged with a great many tasks which are usually, though inappropriately, called "Voluntary Jurisdiction". The term covers a large bulk of quasi-judicial activities which are dealt with in informal proceedings in chambers, such as orphan and probate causes, and the keeping of the numerous public registers which are provided for by German law for the purpose of bringing to public knowledge certain important legal relations and transactions, for example, the register of title to lands, the registers of matrimonial settlements, of firm names and corporations, of ships, of design patents, of private associations, etc.

2. The following divisions are established at the District Courts

(*Landgerichte*):

- A. For civil matters: *Zivilkammern* (Civil Chambers): Three professional judges; Jurisdiction:

Original jurisdiction in all civil matters of a pecuniary character involving more than RM 500.; furthermore in all suits against the *Reich* or a state for torts committed by their officials while performing their public duties, and in suits against the *Reich* or a state brought for his salary by a public official; (in both classes of cases the Civil Chamber has jurisdiction irrespective of the amount involved); in civil matters affecting civil status, especially in suits for the annulment of a marriage and for a divorce.

Appellate jurisdiction over the decisions of the County Court in non-commercial civil causes provided the amount involved in the appeal is more than RM 100. (\$40.).

- B. For commercial matters: *Kammern für Handelssachen* (Chambers for Commercial Causes): one District Court judge and two "commercial judges".

Original jurisdiction: commercial causes involving over RM 500.

Appellate jurisdiction: over the decisions of the County Courts in commercial matters provided the amount involved in the appeal is more than RM 100.

The decisions rendered by the Civil and Commercial Chambers on appeal from the County Courts are final; they cannot be attacked by any other appeal or petition for revision.

C. For criminal matters:

- (a) *Kleine Strafkammern* (Small Criminal Chambers): one District Court judge and two aldermen; jurisdiction: appeals from decisions of the County Judge.
- (b) *Grosse Strafkammern* (Large Criminal Chambers): three District Court judges and two aldermen; jurisdiction: appeals from decisions of the Tribunal of Aldermen; original jurisdiction over certain serious crimes.
- (c) *Schwergericht* (Tribunal of Assize): three District (or Superior District) Court judges and six aldermen; original jurisdiction over the most serious crimes of adult persons.

D. For labor causes: *Landesarbeitsgericht* (District Labor Tribunal): one District Court judge and two "labor judges"; appellate jurisdiction over the decisions of the Labor Courts, provided the amount involved in the litigation is more than RM 300., or appeal has been allowed on account of the general importance of the case.

3. The following divisions are established at the Superior District Courts (*Oberlandesgerichte*):

- A. For civil (including commercial) cases: *Zivilsenate* (Civil Senates): three Superior District Court judges; appellate jurisdiction over decisions rendered by the Civil and Commercial Chambers of the District Courts in their *original* jurisdiction.
- B. For criminal cases: *Strafsenate* (Criminal Senates): jurisdiction in revision of
 - (a) certain decisions of the County Judge and the Tribunal of Aldermen;
 - (b) decisions of the Small Criminal Chamber and of the Large Criminal Chamber rendered on appeal;
 - (c) decisions of the Tribunal of Assize and of the Large Criminal Chamber rendered as a court of first instance when error excepted to refers to the violation of a *state* law exclusively.

LEGEND:

- (1) Decisions rendered by the *Landgericht* on appeal from the *Amtsgericht* are final; no further recourse is available.
- (2) Decisions of the *Amtsrichter* and of the *Schöffengericht* may be appealed from or brought up for revision. Where the *Landgericht* has acted on appeal by one of the parties, further recourse for revision is open only to the other party.
- (3) Revision of decisions of the *Grosse Strafkammer* and of the *Schwurgericht* is brought to the *Oberlandesgericht* when violation of a state law, and to the *Reichsgericht* when violation of federal law is alleged.
- (4) Original and final jurisdiction in certain minor cases of treason.

Original jurisdiction (5 judges) in minor cases of treason and espionage.

All decisions rendered by the Criminal Senates are final, *i. e.*, not subject either to appeal or revision.

4. The following divisions are established at the *Reichsgericht*:⁸⁰
 - A. For civil (including commercial) matters: *Zivilsenate* (Civil Senates)⁸¹; 5 *Reichsgericht* judges; jurisdiction: review of decisions of the Civil Senates of the Superior District Courts, provided the amount involved in the review is more than RM 6000. (\$2400.).
 - B. For criminal matters: Criminal Senates (*Strafsenate*);⁸² 5 *Reichsgericht* judges; jurisdiction: review of decisions of the Tribunals of Assize and of the Large Criminal Chamber rendered as a court of first instance, provided the error excepted to is a violation of a law of the *Reich*.
 - C. For labor causes: *Reichsarbeitsgericht* (*Reichs Labor Tribunal*); three *Reichsgericht* judges and two "labor judges"; jurisdiction: review of decisions of the District Labor Tribunals, provided the amount involved in the litigation is more than RM 6000. (\$2400.) or revision has been allowed on account of the general importance of the case.

5. New judicial bodies with jurisdiction over political crimes were established by the National-Socialist regime, *viz.*:

- A. "Special Courts" (*Sondergerichte*)⁸³ for the district of each Superior District Court with jurisdiction over certain crimes of a political nature. Their decisions are final.
- B. The "People's Court" (*Volksgerichtshof*)⁸⁴; it sits in divisions consisting of two specially selected professional judges and three non-legally trained National-Socialists; it has jurisdiction in cases of treason and other serious political crimes.

6. Criminal offences (ordinary as well as military offences) of members of the armed forces (Army, Navy, Air Forces) are dealt with by special military courts (*Kriegsgerichte* and *Oberkriegsgerichte*) composed of professional judge-advocates and lay members of the armed forces. Their decisions are controlled, in last instance, by the *Reichsgericht* (*Strafsenate*).

III. The interrelations between the various "ordinary" courts of general jurisdiction and their divisions will become apparent from the chart on the opposite page.

80. On February 1, 1935, the *Reichsgericht* had 102 judges who were distributed among its various divisions.

81. There existed 8 Civil Senates in 1929.

82. There existed 5 Criminal Senates in 1929.

83. Decree of March 21, 1933 (*REICHSGESETZBLATT* 1933, I, 136).

84. Act of April 24, 1934 (*REICHSGESETZBLATT* 1934, I, 341, 345).

(C) ADMINISTRATIVE COURTS

I. As in France, the protection of the individual against the executive branch of the government is not entrusted to the ordinary law courts. The executive is not, however, permitted to interfere with the freedom or the property of an individual without some statutory basis. This "principle of legality of administration" forms the German counterpart of the American doctrine of "due process", its scope, however, being considerably narrower, especially since the task of legislation has been taken over by the executive branch of the government.

Where an individual complains that an act of an executive official (*e. g.*, an arrest, an expropriation, a tax warrant, or a denial of a license to do a certain business) has no valid basis in law, or that the official has unreasonably abused the discretion granted to him by the law, he may, in principle, always petition for relief to the official's superior in the administrative hierarchy, and, in the last instance, to the minister in whose jurisdiction the case belongs. Since the middle of the nineteenth century this system of "administrative recourse" has been supplemented in the states by a system of "judicial control" by special administrative courts designed to a certain extent on the French pattern. Most of the German states went further than France; they provided that the judges, of the supreme administrative courts, at least, should enjoy the same guarantees of personal independence as the judges of the ordinary law courts.⁸⁵ On the other hand, the older laws did not provide for a general method of recourse to the administrative courts. They rather followed the "enumerative system" under which relief by the administrative courts could not be invoked except in cases specifically mentioned in a more or less extensive statutory catalogue. In all other cases the individual must still seek redress by administrative recourse. The "system of the omnibus clause" has been accepted in the most recent statutes of only a few states (Hamburg, Bremen). The Prussian law follows an intermediate system which gives the administrative tribunals a rather wide field of jurisdiction.

In Prussia, as in most states, only the highest administrative tribunal, which is called the *Oberverwaltungsgericht* (Superior Administrative Court)⁸⁶ is organized as a genuine court. In the inferior instances, administrative law cases are heard by boards composed of officials of the executive, sometimes with the addition of lay assessors.

In the *Reich*, no uniform system of administrative courts has as yet been developed. Rather, whenever the *Reich* took a new task into its own hands, it established a particular system of administrative jurisdiction over

85. In France, the members of the Council of State do not formally enjoy these privileges, although, as a matter of fact, no councillor has ever been removed or dismissed on account of his judicial activities; see *supra*, p. 862.

86. Its members are styled "*Oberverwaltungsgerichtsrat*".

this special branch of activities. As a result, a bewildering number of separate hierarchies of *Reich* administrative courts has grown up, especially since the World War when the *Reich* started to embark upon administrative activities on a large scale.

Among the most important of the various administrative courts of the *Reich* may be mentioned:

1. Those dealing with tax and customs cases: the *Finanzgerichte* (Finance Tribunals) with the *Reichsfinanzhof* (*Reichs* Finance Court) in Munich at the top.

2. Those dealing with social insurance cases: the *Reichsversicherungsamt* (*Reichs* Insurance Board) with many inferior boards.

3. Those dealing with military, especially veterans' pensions: *Reichsversorgungsgesetz* (*Reichs* Pensions Court) with many inferior boards.

4. The *Kartellgericht* (Cartel Court) with jurisdiction over certain activities of monopolistic trade associations.

5. The *Reichsaufsichtsamt für Privatversicherung* (*Reichs* Office for Supervision of Private Insurance.)

6. The *Bundesamt für Heimatwesen* (Federal Office for Questions of Domicile) with jurisdiction in suits between municipalities for the refund of sums spent for the relief of paupers.

II. Under the National-Socialist regime, steps were taken to insure that the political activities of the administration could not be hampered by the interference of any ordinary or administrative court.

On the other hand, the regime established to deal with new tasks a considerable number of new bodies with judicial and quasi-judicial functions. All of them were, of course, organized on such lines as to make them true organs of the National-Socialist spirit.

To deal with the numerous problems which are presented by the new law on Hereditary Farms,⁸⁷ a system of special courts (*Erbhofgerichte* Hereditary Farm Courts) was established, with the *Reichserbhofgericht* (*Reichs* Hereditary Farm Court) at its head. The Chief Justice of this Court is the *Reichs* Minister of Agriculture, a member of the Cabinet. The *Erbhofgerichte* also have jurisdiction to deprive a peasant of the right to manage his farm because of incompetency or of dishonorableness.

87. *Reichserbhofgesetz*, of September 29, 1933 (*REICHSGESETZBLATT* 1933, I, 685); it declares peasants' farms unalienable, unmortgageable, undivisible, and not disposable by will. Cf. Kaden, *The Peasant Inheritance Law in Germany—On the Basis of the Reich's Hereditary Farm Law of 1933* (1935) 20 *IOWA L. REV.* 350.

The *Erbgesundheitsgerichte* (Eugenics Courts) and *Erbgesundheitsobergerichte* have jurisdiction in matters of compulsory sterilization of persons affected with certain inheritable diseases.⁸⁸

Honor Courts of Labor (*Ehrengerichte der Arbeit, Reichsehrengerichtshof*) were established by the Act on the Organization of National Labor,⁸⁹ with power to fine employers and employees, to deprive the former of their right to manage their business, and to remove the latter from their jobs because of "infringements of the duties created by the community of the persons working together in an enterprise," especially in cases of "malicious abuse of an employer's powers," or "malicious disturbance of the operation of the business" by an employee.

The Honor Courts of the Craftsmen's Chambers have a similar jurisdiction as to offences against the "esprit de corps" of a compulsory craft guild.⁹⁰

Finally, special courts were established for members of the National Socialist Party (*Parteigerichte*) and its affiliated organizations⁹¹ and for the inmates of the Labor Camps.⁹²

88. Act of July 14, 1933 (REICHSGESETZBLATT 1933, I, 529). Castration of dangerous sex offenders may be ordered by the ordinary criminal courts (Act of November 24, 1933, *ibid.*, I, 995).

89. Act of January 20, 1934 (REICHSGESETZBLATT 1934, I, 45).

90. Decree on the Provisional Organization of German Handicraft, June 15, 1934 (REICHSGESETZBLATT 1934, I, 493).

91. Act of December 1, 1933 (REICHSGESETZBLATT 1933, I, 1016).

92. For more detailed information concerning German courts see Wilhelm Kisch, *UNSERE GERICHTE UND IHRE REFORM* (1908); Ensor, *op. cit. supra* note 57; Engelmann, Millar, *A HISTORY OF CONTINENTAL CIVIL PROCEDURE* [THE CONTINENTAL LEGAL HISTORY SERIES, vol. 7] (1927).