The history of the law faculties, of legal education and legal research, is a part of the history of the universities, but it is more than that. Law schools belong to two worlds: the academic and the legal, and many law professors, teachers or researchers are more familiar with legal professionals than with their colleagues from other faculties. In fact, many academic lawyers are also practising lawyers and true academics are a rare breed in law schools, only to be found in some unpractical, and hence very minor, fields like the philosophy of law. Moreover, unlike the subject of other sciences, law is not universal, but national, which means that national law, national legal culture and national legal professions have done as much to shape the law schools in the second half of the twentieth century as the global evolution of science and education, which is generally disregarded by lawyers, even academics, when they discuss the history, the current situation or the reform of law faculties. Nevertheless, law schools took part in the general evolution of the European universities, but sometimes the common pattern was warped by elements specific for the legal world and some evolutions were unique to law schools.

One of the best examples of the former is ‘the wind changed’ after World War Two. European universities lost their leadership in the legal field to their American counterparts, for a host of reasons, like the political and economic domination by the United States and the emigration of some of the brightest and most creative German scholars (and also to England) in the 1930’s. In this, law only conformed to a general tendency in which the United States displaced Germany as the world’s scientific leader, for example, replacing it as the country producing the most Nobel prize winners for science. However, the decline of German law had already started before the 1930’s. After the great codifications around 1800 European countries had developed their own national legal systems instead of the ius commune, the common law of Europe, which had prevailed until then. This meant that legal education and legal science had become national, not having much influence outside a country’s borders. Germany was an exception, as the country was, politically, not unified before 1871 and thus stuck to the old ius commune, which allowed German lawyers to keep and even expand upon the leading role in European law they had gained in the eighteenth century. This ended with the codification of private law in 1900, German law also becoming national and German lawyers losing their universal status. Even without the Nazi era and the emigration German law would have lost its pole position, though the decline would have been more gradual. The atrocities of the Nazi regime also meant that, even if German lawyers still had the ability to lead the way in the field of law, they no longer had the moral authority to do

so. German lawyers themselves were aware of this and, therefore, the first years after World War Two saw a (short) flowering of the study of natural law in Germany.  

The success of German refugee lawyers in the United States and the influence of American legal science in Europe were less marked than in other fields, because the national character of law was an obstacle for the diffusion of ideas. Hence, the achievements of the émigré lawyers in the United States are limited to fields in which the national element is less important or even absent: philosophy of law, legal history, Roman law and public and private international law, and most of all, comparative law, and even then acceptance was sometimes only achieved after retraining. National boundaries also hindered the transplant of American legal ideas and theories in Europe, even though the United States became the foreign country of choice for European lawyers to study for a post graduate degree. Nevertheless, important new American schools of jurisprudence, like Law and economics or Critical legal studies have not really taken root in Europe, European education and research having remained much more positivistic and authority based. Law is what the lords of the law, the legislators, the judges and the leading professors, say it is. There are of course exceptions to this. For example, even though the traditional lectures were not replaced by the American case method, in which leading decisions by the courts are analysed in a Socratic dialogue between a teacher and his students, casebooks, following the American model, supplementing the lectures have become popular, but they are used in another context, more to teach the rules than to teach the process of legal reasoning which has shaped these rules. That the case method, which is only fit for small bodies of students, could not be transplanted to Europe after World War Two was, apart from differences in legal culture, also due to the democratisation and massification of education in Europe since the 1960’s, which had an even greater impact on law faculties than on other parts of the university. University boards and governments alike considered law teaching to be cheap. As long as the lecture hall is not filled, there is to them no cost for adding an additional student and, if one, why not hundreds? The result is that on the one hand classes of hundreds of students became the norm, whereas this did not lead to any greater investment in staff or facilities. In many countries law faculties are the faculties which receive the least money, even though law professors have been increasingly burdened with advising government about new legislation. Nevertheless, law faculties have become popular with students in the 1960’s for various reasons: a legal education was the best general education on the market, it opened the door for some high status professions or top jobs in the administration and students had to work less to get their degree. Hence, the law faculty became some kind of refuge for superfluous young people.


who wanted an easy ticket to a diploma, a tendency which was more marked in the Latin countries than in the north of Europe.\textsuperscript{12} However, the popularity of law studies ensured that these became harder. Although a law degree is necessary, it is not sufficient for being allowed entry into most of the legal professions. The greater influx of newcomers has led to stricter entrance requirements, new lawyers, judges, notaries and so on, having to take mandatory professional training and/or exams. Apart from Germany, where the regional authorities organise exams, the entry to the legal professions is controlled by professional organisations.\textsuperscript{13} Whereas other faculties acquired more freedom after World War Two, government intervening less in their affairs, law schools have slipped under the tutelage of the legal professions. As these are, in general, rather conservative, new and unconventional forms of law teaching have not been able to break through and the same holds for legal scholarship.\textsuperscript{14} The greater importance of the law practitioners has also led to a certain disdain for academics, which is the strongest for those professions, which have their own schools for training, as in France where magistrates study at a special school.\textsuperscript{15} Experiments to integrate theory and practice in university education, for example, in Germany from 1971 to 1984, have failed.\textsuperscript{16} In general, the legal professions, supported by students who wanted an education as useful as possible, have promoted the idea that a legal education should be practical instead of liberal and this has led to the disappearance or reduction of metajuridical courses in the curriculum. A specific victim of this was the study of Roman law, which had been for centuries the only law (together with canon law) to be studied at universities.\textsuperscript{17}

Apart from the greater interference of the legal profession, law studies have also become harder because of the enormous proliferation of law. Like the United States, the countries of Europe are ‘nations under lawyers’.\textsuperscript{18} In the decades after World War Two, law has intruded into all parts of society. Factories, farms, hospitals, schools, sports clubs and so on have been invaded by law and lawyers. Consequently, all kinds of new fields of law, like aviation law or sports law, have come into existence and are studied at the university, but most of the time in the form of electives. Insurance or labour law, for example, may have become of extreme importance to ordinary citizens, but the law curriculum does not always give them their due.\textsuperscript{19} Law has come to dominate society because it is an instrument of government for social engineering. Therefore, public law, dealing with government and its relationship with the citizens, has overtaken private law, dealing with the relationships of citizens amongst themselves, but in many law schools private law still dominates, because its professors are

\textsuperscript{12} Cf. TWINING, W., Blackstone’s Tower. The English Law School, London, Stevens & Sons/Sweet & Maxwell, 1994, 51.
\textsuperscript{17} See e.g. for France, HILAIRE, J., ‘La place de l’histoire du droit dans l’enseignement et dans la formation du comparatiste’, Revue internationale de droit comparé, 50, 1998, 323.
\textsuperscript{18} GLENDON, M.A., A Nation under Lawyers. How the Crisis in the Legal Profession is transforming American Society, Cambridge (Mass.), Harvard University Press, 1996.
well entrenched, public law only being taught as a separate discipline since the seventeenth century or even later.\textsuperscript{20}

The rise of public law is a minor effect of government interference when compared with the growing body of legislation. In other sciences the basics may be rather stable, in law one has to keep in mind: “Three rectifying words of the legislator and whole libraries become waste paper.”\textsuperscript{21} Unfortunately, regular overhauls of major parts of the law have become so common and judges have become so active in the creation of case law, that many jurists no longer can find the time for new research, but have to limit themselves to describing the latest changes, which is not enhancing their status among their colleagues in the university.\textsuperscript{22} Not writing for the practitioners would, however, lead to an even greater rift with the legal professions. From the 1960’s critics have been stating that it would be better to educate lawyers than to teach law.\textsuperscript{23} In reality, this has not happened and the exploding body of statute and case law has led to ever growing demands on students, because, although professors may claim to be interested in general principles only, exams still focus on ever more detailed problems.\textsuperscript{24} One reaction to the flood of legislation was the call for deregulation, which had been started by the Law and Economics movement in the United States in the 1970’s,\textsuperscript{25} but adherents of Law and Economics have been less influential in Europe, in spite of some successes in the 1980’s, because their scholarship has been associated with right wing anti welfare state politics. (In fact, the 1990’s have seen another great growth of legislation.) Another way of dealing with the growing body of law was specialisation,\textsuperscript{26} but this has not always been welcomed, many lawyers preferring a generalist over a specialist and most law programs reflect this. Specialisation is growing, however, in professional practice and research, where the isolation of individual fields of law is becoming a growing problem.\textsuperscript{27}

The evolution sketched above influenced all countries in different ways, not only because their universities are different, but also because their national legal tradition is. England is a case in point, as it has a legal system which has known its own particular development,\textsuperscript{28} in which the universities were relegated to the sidelines. In fact, only after World War Two were most practitioners really willing to answer yes to the question ‘Can English law be taught at the universities?’\textsuperscript{29} English universities have since come to dominate the field of legal


\textsuperscript{24} See e.g. for Germany, BÖCKENFÖRDE, E.W., ‘Juristenausbildung - auf dem Weg ins Abseits?’, Juristenzeitung, 52, 1997, 317-326.


\textsuperscript{29} This question was posed by A.V. Dicey in his inaugural lecture as holder of the Vinerian chair in Oxford (DICEY, A.V., Can English Law be taught at the Universities?, London, Macmillan, 1883).
studies, but even nowadays it is still possible to become a solicitor without having an LL. B. Nevertheless, there is a convergence of legal systems in Europe and thus also of legal education and research.

The main cause of this is European unification, which started in the 1950’s. Yet, at first, its impact upon law schools was limited, European law in many cases, even in some of the old member states, only becoming part of the curriculum in the 1990’s, which proves that law faculties were slow to catch on to this evolution. Europeanisation was contrary to what European lawyers had become used to. Law was national and, therefore, at the university one could only study the national law of one’s own country and thereafter the diploma one obtained had an effect limited to that country. The latter was the first to change, as from the 1970’s both the European institutions and citizens strove for a European-wide recognition of diplomas. Several directives (in 1977, 1989, 1995) and famous cases (Reyners, Van Binsbergen, Thieffry, Klopp, Vlassopoulou, Kraus and Gebhard) have resulted in an open market for lawyers since the 1990’s. However, the freedom to establish oneself in another country as a lawyer is still limited, because at the university one is still taught the law of one’s own country, not the legal systems of other member states of the Union. Universities have therefore placed a greater emphasis on European and comparative law, but the bulk of what most of them teach is still national. Several scholars have called for a European law school, modelled on the American national schools, in which one does not learn the law of the home state, but the general principles of the law of all the 50 states of the U.S. Likewise a European law school should teach the general principles of the legal systems of the European countries rather than that of one country. The first example of such a school is the European Law School of Maastricht University, founded in 1995 but the Maastricht experience has shown that a truly European law school is not yet a reality, as the Maastricht students still have to study Dutch law. Moreover, at first, the Maastricht teachers had a problem, because they wanted to teach a subject which led only a marginal existence when they started. The bulk of law is still national and before the 1990’s textbooks, law reviews, casebooks and the like were still national with a few exceptions, for example, for comparative law or legal history. However, in the 1990’s several groups of lawyers have started to write down the general principles of European law, the first and most famous of these collaborations of European lawyers being the Lando commission for contract law. The enthusiasm these projects have


37 The work of the Lando commission is available in several European languages. In English: LANDO, O. & BEALE, H. (ed.), Principles of European Contract Law, I & II, Dordrecht, Nijhoff, 1999; LANDO, O.,
engendered is enormous. In 2001 the European Parliament accepted a resolution calling for a common body of rules on contract law in 2010 and, less ambitious, but more realistic, the European Commission in 2003 put forward an action plan to establish a ‘common frame of reference’ for European contract law. Moreover, European reviews appeared from the 1990’s and likewise European casebooks and textbooks. One may wonder whether some scholars are not exaggerating as there is even a commission which wants to harmonise and unify European family law. The new enthusiasm for European law has also been stimulated by research into legal history, the new gospel being preached in Reinhard Zimmermann’s book The law of obligations. Its message can easily be reduced to: Europe had one legal science in the past, the ius commune of the era before the great codifications and it will once again have a common legal science in the future, a new ius commune. This message has been misunderstood by many who thought Zimmermann wanted to have one common law instead of one common legal culture, in which national or regional rules would not disappear, but in which lawyers would use a common legal grammar, common textbooks, casebooks and so on.

One should not overestimate the importance of the new ius commune. There will always be a need for purely local lawyers and it can be argued that there will also be more need of them, as the decades after World War II have also seen a growing importance of regional law and institutions in countries as diverse as the United Kingdom and Spain. Moreover, today lawyers can still get by, even if they read publications from their own country only, and there are a lot of obstacles to be overcome, like for example the lack of a common language (English due to the peculiar nature of English law not really being the best language for expressing concepts which have been developed in continental legal systems.) Nevertheless, thanks to the Europeanisation there are once again scholars, like Zimmermann, Lando, von Bar, Gandolfi, Van Gerven, to name only a few, who are known all over Europe, at least in academic circles, and it may be that the new European lawyers will be able to regain the leadership lost to the American law schools, but that belongs to the future, not to their history.

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