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Learned Law, Legal Education, Social Capital, and States

European Geneses of These Relationships and the Enduring Role of Family Capital

The strong linkage between legal and social capital is a by-product of the competition between empires in Western Europe (Burbank and Cooper 2010). There was a Roman model for constructing and administering vast and fragmented empires, one that continued for many centuries in Constantinople, though it was structured very differently there by the Moslem caliphate and later the Ottoman Empire. The Roman model went in a different direction in Western Europe. There, the Roman institutional framework of governance was appropriated quite rapidly by new ruling elites—in particular, by a mix of the Roman Catholic elite and the landed aristocracy (cf. Schmidhauser 1997). The rapid demise of Rome as a centralized site of power contributed to lasting competition and fighting among peripheral regional elites, with only a few limited attempts (such as that of Charlemagne) to recreate a more coherent set of institutions and rules over a vast territory. All of this meant that the more ambitious rulers could only expand their territory through alliances with powerful aristocratic families and their complex systems of feudal clientelism among the lesser nobility.

The development of the legal profession in Europe took place in this specific context, which required compromising with feudal institutions of power. That meant accommodating family ties and capital as well as a system of seigneurial justice, the latter a hybrid of customs and some remnants of Roman law. Thus, the embeddedness of law in social hierarchies and capital is at the core of the historical construction of political power in Western Europe (in contrast to the completely different approach to managing imperial power in the Ottoman Empire, which carefully avoided any compromise with local elite families) and the related history

of the legal profession. The specific broker or double agent role of elite lawyers (and those who have followed the same model) is a product of this history. The classic volumes on the origins of the legal profession by Lauro Martines (1968) and more recently James Brundage (2008) demonstrate the complicated processes whereby family capital was converted into legal and diplomatic capital.

LEARNED LAW AND THE TRANSFORMATIONS IN MEDIEVAL AND RENAISSANCE ITALY

Learned law, associated especially with the University of Bologna, wherefrom it expanded to other universities, was an important tool for mediating the interplay of jurisdictions in the service of emerging power relations. The circumstances that led to this are explained in Brundage's (2008) work on the formative period, 1140–1230. He details the close relationship between the rise of canon law, closely linked to the Gregorian Revolution and the Catholic Church's efforts to free itself from lay control, and the revival of Roman law especially through the rediscovery of Justinian's Digest late in the eleventh century (Berman 1983). These parallel yet related developments led to the two degrees offered by the University of Bologna: the doctorate in civil law based on the newly recovered Corpus Juris Civilis, and the doctorate in canon law after the latter part of the twelfth century.

Ambitious scholars recognized the prestige associated with Roman law and the Corpus Juris, and canon law scholars drew increasingly on Roman law as well. According to Brundage, they began "to align themselves intellectually more with Roman law than with theology. They borrowed ideas, insights, tools, and techniques from their civilian counterparts with increasing frequency and enthusiasm, yet at the same time they sought to preserve their autonomy from civil law as well as from theology" (2008: 125). Already by 1200, according to Brundage, there were two distinctive sets of "operating rules, a specialized literature, and a distinctive way of approaching problems" (155). The power of this learned law became apparent. The practitioners of Roman and canon law gradually became "aware of their collective identity as an advantaged social group during the latter part of the twelfth century" (155). They used their tools to "attach themselves to the elite classes that ruled Western society" (155).

On the civil side, "the recovery of the juristic learning embodied in Justinian's Digest came as a powerful, almost intoxicating revelation to western European scholars. . . . Medieval jurists learned from the Digest how to frame sophisticated legal arguments, how to manipulate legal categories, how to analyze problems, and how to find solutions to them" (Brundage 2008: 77). This prestigious and sophisticated set of universals corresponded to a growing number of opportunities to put those universals to work. Economic developments, especially in northern Europe, provided one type of opportunity: "The Corpus iuris civilis offered a system of commercial and municipal law that could be adapted to meet those needs. Its

attractiveness was enhanced, not diminished, by its antiquity and its association with Roman imperial power" (95).

Meanwhile, the emerging canon law provided the Church with tools for strengthening its reform movement. As Brundage notes, "each of these claims carried legal implications, as reform leaders were acutely aware" (2008: 79). The learned law could be deployed to support the reforms. The reform movement attracted people "gifted with brains, energy, and ambition," who "discovered that those with specialized knowledge of the law fared distinctly better than those without it" (80). Learned law, once mastered, provided them with a key weapon.

Within the Church and outside it, "between the 1140s and the 1230s, the lawyers went from strength to strength" (Brundage 2008: 166). The successes of individuals armed with the new learned law meant that wealthy families found it "advantageous to send one or more of their sons to study law at a university in order to improve their chances of beating out competitors in the contest for prestigious appointments in church or state" (220). The rigorous education meant that graduates were well-suited to "the highest courts, providing sound legal advice to clients, both public and private, for serving as judges, and for administrative careers in either church or civil government" (269). Accordingly, "by the mid-twelfth century clever and enterprising men could already make a living, often quite a comfortable one, from the teaching and practice of civil or canon law" (203).

The leaders of the city-states in medieval and Renaissance Italy took advantage of the intellectual infrastructure in place to mediate among emerging jurisdictions and social and political groups. Roman law was available to serve these emerging groups. As Berman noted, "Roman law was called 'a handmaiden of canon law': it could equally have been called a handmaiden of imperial law and a handmaiden of the positive law of the emerging secular kingdoms and city-states. It was, however, always a handmaiden" (1983: 205). Law-trained individuals possessed the tools to offer legitimate solutions to disputes and social problems in the language of the highly respected learned law. Law graduates could shift and circulate among jurisdictions and powers, including the church and the state. Upward mobility was achieved through that circulation, based on legal knowledge that could be used as a weapon by either side.

There is evidence that these developments were fluid. It is noteworthy in this regard that the students who paid the professors at Bologna held back their payments to ensure that the professors would not leave to take advantage of other opportunities to market their expertise. The rapidly changing religious and political world had opened up opportunities to apply familial, legal, and diplomatic capital to new problems and conflicts. Lawyer brokers and double agents thrived within a fragile and constantly shifting social and political environment (Brundage 2008).

The founding of the powerful city-states late in the medieval period amounted to an affirmation of their legal and political autonomy at the expense of older

feudal, imperial, and religious regimes. But those older jurisdictions continued to exist and to confront one another and the city-states, at all levels—commercial, military, territorial. The management of those confrontations added a powerful international dimension to the construction of state law. The multitude of turf battles among overlapping and competing state institutions provided one of the principal markets for legal experts. They could interpret texts so as to justify the claims of one or another side; they could act as arbitrators or consultants in proceedings before powerful groups or authorities (including, for example, the Council of the Seigneurie of Florence or the Papal Courts). Martines thus noted that "overlapping jurisdictions [were the] source of many conflicts [and] legal knowledge [represented] a useful weapon on both sides" (1968: 251).

The law patricians produced at Bologna and comparable schools drew on their cosmopolitan capital to achieve their positions at the top of a new "noblesse d'etat," which drew on more than individual states. Elite jurists positioned themselves very early as courtiers of the international in the name of the universal principles of learned law, which were deemed valid for civil law as well as for canon law. In fact, if we look deeper into the process, we see that the success of the learned capital was inseparable from investments in cosmopolitan capital. These jurists had acquired their cosmopolitan capital through journeys they took at a very young age as well as the long years spent at prominent universities such as Bologna, where they met their counterparts from other cities. They took advantage of numerous opportunities to grow their international capital, be it in legal practice or in the service of the state.

A practice that assisted them was that certain judicial activities were reserved for "foreign" judges. This tradition, which goes back to the model of the Roman Empire, was justified in the name of impartiality. Judges from city-states not involved in a dispute were considered more neutral than their local counterparts for the purpose of deciding disputes. In this way, adversary parties were prevented from mobilizing extended family and clientelist networks.

This imperial holdover helped build cosmopolitan connections and experience, but in fact it represented but a small part of the international market for legal expertise among the new states. The mix of relational and learned capital acquired by the offspring of old patrician families furnished useful instruments that allowed the new holders of power in the city-states to manage confrontations between rival cities, be it commercial or political. This resort to "legal diplomacy" meant there was less call to resort to military action, which would have risked disrupting the merchant economies.

As Martines showed (1968), these international legal courtiers served many functions: negotiating and drafting treaties, drafting legal opinions where there were potential differences of interpretation, and providing arbitration in order to avoid the use of force between rival cities. Finally, for the ambassadors to Rome, these jurists also fulfilled a double function: to advise and negotiate the numerous

fiscal and jurisdictional relationships between the religious and state authorities; and to handle judicial proceedings involving important individuals before the Papacy. The market involved legal expertise with legitimacy across borders, access to which was reserved for the descendants of the great patrician families—those able to take full advantage of a learned capital claiming to be universal through combination with cosmopolitan relational capital.

This trans-frontier dimension in early European legal history helps clarify the analysis developed by Kantorowicz (1997). Kantorowicz developed the truism that lawyers serve power by providing a legitimacy that protects the interests of the powerful; at the same time, those who hold power accept some limits on that power in exchange for legitimacy. But Kantorowicz was focusing on one site—the state. The availability of multiple sites to construct cosmopolitan capital offered legal elites the additional advantage of being able to play on two or more scales. They could construct their professional autonomy and credibility in part through cosmopolitan circles and then put their expertise in the service of the new holders of state power; this allowed the further acquisition of the capital of political influence vital to continuing professional success. The descendants of aristocratic and patrician families therefore played a powerful role in the construction of the modern state in part because they could rely on family resources that permitted them to connect themselves to trans-frontier power through networks situated above—but also within—the city-states.

This history is consistent with the theoretical perspective of the legal field as fluid and shifting while maintaining a kind of crossroads position—between religion, state, community, and so on. This focus—hinted at by Bourdieu's lectures (2012: 556)—facilitates an analysis of the role of jurists as courtiers and diplomats between different fields of power; but more importantly for our purposes here, it facilitates analyses of the relationship between learned, familial, and political strategies in periods of transition between political regimes. This same paradigm also takes into account the diversity of connections between law and state in different national spaces and in different contexts. More generally, as noted above, this approach helps explain and demonstrate the paradox formulated by Kantorowicz: the clerks of the law affirmed their autonomy with respect to power even while putting their expertise in the service of power. As shown by numerous works of history (Martines 1968, Brundage 2008, Whaley 2001) consistent with this theoretical approach, the relative mobility of jurists—for example, between different royal courts or principalities and the hierarchies of the church—was the best guarantee of their autonomy in the sense that it permitted them to break from those holders of power who were too heavy-handed or who undertook activities that threatened the clerks' credibility.

The embedding of legal fields within national fields of power thus was combined with a relative mobility of legal professionals. They could circulate among different national spaces on the basis of their expertise and claims to universality,

undertake strategic reconversions during political transitions, and provide continuity between successive regimes.

As discussed in the previous chapter, revolutionary (or lesser) changes, be they religious or political, are opportunities for factions of legal elites to update legal doctrine in sync with the political objectives of new ruling groups seeking allies and privileged collaborators. Part of this process involves investment in meritocratic scholarly capital to challenge and ultimately relegitimate the legal order and its hierarchies.

What emerged from the relatively fragile creation of a new profession and new site of knowledge production continued to shift and absorb new movements and sources of power. The law school at Bologna, as scholars have noted about the earliest European universities generally, was born between states and the church.[1] Developments in Germany built on and continued this central role of the universities and their professors despite transformations in state power.

PROFESSORENRECHT AS AN ONGOING ELITE STRATEGY AROUND STATES: FROM NOTABLES AND MEDIATORS WITHIN THE FRAGMENTED HOLY ROMAN EMPIRE TO A LEARNED ELITE MOBILIZED IN A "CATCH-UP" STATE STRATEGY PROMOTED BY BISMARCKIAN PRUSSIA (AND EXPORTED ALSO TO MEIJI JAPAN)

Germany represents both a break from and a continuity with what Brundage and Martines depicted. The continuity relates to the structure of the Holy Roman Empire, which lasted from about 800 to 1806. The Holy Roman Empire, centered on part of what today is Germany, was divided into countless individual entities governed by kings, dukes, bishops, and other rulers, who governed their lands independently of the Roman Catholic emperor. The emperor's power was limited strongly by local leaders. The half dozen universities in Germany that began to open late in the fourteenth century played precisely the same role as Bologna in the medieval and later periods. Doctoral degrees from these universities helped legitimate professors and law graduates, who offered their knowledge to broker disputes between and among state and church entities. As described by Whaley (2012: 47), the professors and law graduates drew on the Roman Law heritage—"interpreted by legally trained officials through the conceptual language of Roman law"—as well as other sources, to maintain a strong tradition consistent with the role of lawyers with doctorates from Bologna.[2] The lawyers thus inhabited a context very similar to that of Bologna in the twelfth century. It is no surprise, then, that there was strong continuity in the mix of family capital, law schools, and shifting broker roles across different jurisdictions: the conditions were perfect for it.

As Berman shows, the Lutheran revolution early in the sixteenth century challenged the conservative mix of religious authority and royal power (2003). That revolution developed and was consolidated on the basis of an alliance between emerging scholars—theologians or jurists—and new leaders—princes, bishops, and merchants (Berman 2003: 66). After this revolution, however, professors and lawyers continued to occupy the privileged position that flowed from their proximity to the various holders of power they advised and served on the basis of their doctrinal authority. The high prestige of professors in particular meant they were consulted by high courts in cases involving important questions of law—a practice termed *Achtenversendung*.[3] These practices reaffirmed the collective stature of the professoriate within the legal field, as well as more generally regarding the interpretation and definition of legal norms.

The Holy Roman Empire provided a perfect space for continuing the mix of practices that had evolved in Bologna. However, the situation changed substantially with the transformation in Prussia associated with the revolution-from-above launched by the Prussian monarchy. There was a break in the legacy of the Holy Roman Empire when Prussia emerged as the most powerful state in the weak empire. There was a rather large legal profession in Prussia—some 1,200 attorneys—around the year 1700, and their reputation was poor: "Though not very often aristocrats themselves, many attorneys were associated with aristocratic interests—as legal advisers, agents, or administrators. . . . Their qualifications were extremely uneven" (Rueschmeyer 1997: 208). They were blamed for a legal system geared toward the aristocracy: "Dominated by aristocratic interests, the administration of justice was cumbersome, slow, and incomprehensible to intelligent outsiders. . . . Attorneys were blamed for the ills and contradictions of this system of justice, a system they did not control" (208). So the Prussian state in the eighteenth century "sought to reform and regiment not only the system of justice dominated by the aristocracy but also the size, composition, and competence of the Bar" (208). In 1713, accordingly, the bar was purged of more than half its members. The idea was not just to reduce the size of the bar but "to change its character" as well (208).

This offensive conducted by the Prussian bureaucracy enabled it to consolidate royal power at the expense of the feudal aristocracy, implement its "catch-up" economic strategy, and at the same time restore the authority of judicial institutions while rationalizing and imposing on them more meritocratic and rigorous recruitment practices. In this way, "the new order represented an authoritarian rule by professional, highly educated administrators which was based on compromises with the nobility and concessions to the aspiring bourgeoisie, especially the educated bourgeoisie. . . . While traditional privileges were de facto retained, education became 'now the official mainspring of privilege'" (151). The professors produced a kind of pure law while at the same time acting under the control of the state government.

Yet this break did not fundamentally challenge the relationship between the legal and political fields as posited by Berman. On the contrary, this bureaucratic relaunch of law was supported by an alliance with the professors and thus entailed a reinvestment in legal learning as well as more meritocratic lines of recruitment. The proximity between the hierarchies of law and the seats of power led to a logic of connivance. As Rueschmeyer noted, in serving the interests of the landed aristocracy and the merchant class, legal and judicial expertise tended to mix with the ensemble of government, including the aristocratic and merchant elites. This risked weakening the credibility of institutions of government, which appeared to be mere instruments of political power.

The rise of Prussia thus led to continuity *and* rupture in the German legal field. The continuity was evident in the continuing strong role of professors and their pure law; the break, in a weakening in the *noblesse de robe*, who found themselves replaced by the high civil service. With the rise of codification, there was also more control by the state over the professors. The Prussian Code of 1794 was based largely on customary and Roman law, and in that sense it was conservative; yet as the embodiment of state law, that code circumscribed the professors, who had long used the combination of scholarly and family capital to take the lead in combining Roman and customary law. This elite of the professors reasserted a somewhat different role as the authoritative spokespersons for the codes.

Within the Weberian model of "*Professorenrecht*," there is a division even to this day between two kinds of faculty members. The dominant producers—those with the authority "to speak the law"—are characterized by their ability to combine academic competence with an important mix of political and social capital. This divide continues in the present. A German grand professor states that it is a matter of the difference between "true professors" and those who, lacking the power to mobilize multiple forms of social and political capital, are mere "teachers" (*lehrers*), contenting themselves with their contributions to legal knowledge but without the social authority to "speak the law" (interview with Dezalay). That authority flows from networks and alliances within the world of law—from the judicial hierarchy and the elite of the bar—but also from within the field of state power and parliamentary politics, as well as from the world of business and activism—labor unions, NGOs, and even the media.

The story of Prussia and the decline of the *noblesse de robe*—in relation especially to the high civil service—was made still more complex by the plurality of approaches within the Holy Roman Empire and Germany. With respect to the development of the high civil service, these approaches evolved directly from the model of the Roman Empire. Parts of the territory within the Holy Roman Empire—and, later, Germany—resembled the British, with lawyers serving other holders of power, including bishops and landowners, creating a mix of feudal justice; other parts had quasi-lawyers brokering customary law through justices of the peace instead of relying on codification.

The coexistence of these different relationships suggests that the standard opposition between the civil code and the common law makes much of a very late development in the legal field. It appears, in fact, that the development of national codes related less to different "legal cultures" and more to efforts to strengthen the role of state power as a component of state-led industrialization as states attempted to compete with the British. The export of codes from France and Germany coincided with efforts to buttress state power (e.g., in Japan and in Argentina) in addition to legal legitimacy. The chapters on South Korea, Japan, and China in Part IV fit this general model.

THE REINVENTION OF FRENCH ADVOCACY AS CIVIC AND PARLIAMENTARY RHETORIC: FROM TRIBUNES OF THE NEW ENLIGHTENED BOURGEOISIE TO LEADERS IN PARLIAMENTARY POLITICS

The decline in the value of learned capital was far sharper in France than in Germany. Variations from the paradigm established in medieval and Renaissance Italy stemmed in large part from the eighteenth-century transformation of the high judicial positions in France into ones that could be bought and sold and passed on through inheritance. This push in favor of family capital shifted the hierarchies of the French legal field.

This weakened the law faculties' control over the reproduction of professionals. Bell (1994: 70) points out that the French bar was a "nursery of dignitaries" and the means of access to positions of power in and around the state. But the restrictions created by the venality of the legal system created incentives for the less wealthy members of the bar to find other means of gaining power and asserting their expertise, be it professional, scholarly, or civic. They found new openings in revolutionary politics, as tribunes and leaders. This was the beginning of a professional valorization that made defending the public and the citizen a new source of prestige, which developed in conjunction with flourishing printing presses and public scandals (Bell 1994: 83).

There were attempts to improve legal education, such as under Louis XIV in the late seventeenth century, but they did not succeed. Carbonneau notes that prior to the French Revolution, "despite the integration of national French law into the law school curriculum and the revival of the system generally, the reforms . . . had failed to offset the decline of legal education. The Facultes de droit were content to see their task as the preparation of practitioners who, paradoxically, were trained in classical oratory, and the precepts of Roman civil law and canon law" (1980: 452).

The new opportunities linked to the tribune role helped change how members of the French bar were recruited. This led to a change in lawyers' professional profile (Bell 1994: 84). The earlier generation had sought to be "high priests of the

law" and to validate their technical skill, their legal science, and their political wisdom; the new arrivals valued rhetorical and theatrical skills that allowed them to speak effectively for various causes. They valued "genius, a good voice and the art of touching hearts" (Bell 1994: 94). Nevertheless, even if this new approach to practice was dressed up in the language of civic virtue and lack of concern about money, the profits were not insignificant: "barristers' careers reached new peaks as a result of the public's endless taste for sensational causes célèbres" (94).

This shift in the legal profession's "mindset"—from that of dignitaries serving the constitutional monarchy to that of tribunes for the public—happened in tandem with an expansion in recruitment to the bar. Reforms prior to the French Revolution had already abolished the monopoly of the organized bar and opened the profession to all law graduates. The bar's monopoly control of the market for political pamphlets free of royal censorship gave lawyers a central role in constructing and feeding public opinion. "Factums" describing particular arguments were disseminated by the thousands: "Factums take the place of judicial rulings and direct those of the judge" (Voltaire); "your judges will be, even without realizing the fact, compelled or restrained by the Public, by the most widely spread opinion. It is thus the Public we must instruct, convince and win over" (Linguet) (Bell 1994: 85). The strategy whereby lawyers were converted into tribunes for the public and political causes permitted this group to dominate the emerging market for political representation even if it meant sacrificing the organization of the bar. This explains the paradox of revolutionary assemblies dominated by advocates acting to abolish the bar.

After the revolutionary turmoil passed, Napoleon restored the professional structures, albeit while restraining their autonomy. The French Civil Code was part of this strategy to circumscribe the bar and the judiciary. But the role of advocate-politician and champion of public opinion was sufficiently profitable that it reappeared when political circumstances allowed. Young advocates from the urban middle classes gained fame in the courts and in the press by denouncing the government's abuses of power. Indeed, even today in France, access to elite legal positions is determined by performance at the Conférence du stage, which is nothing but a competition in public speaking.

The need to maintain credibility by mobilizing legal resources in the political field did impose restrictions in terms of investments in business law, which meant that business lawyers occupied only the margins of the legal field. But political profits, as noted above, were not trivial, even if they had to await the arrival of the "république des avocats" in the late nineteenth century for the consecration of this strategy of the advocate as a notable professional in the political field.

The strong connection between law and politics helped continue to marginalize the production of legal learning that characterized the eighteenth century. In a recent book calling for the modernization of the teaching of law, Christophe Jamin, the founding director of the law faculty at Sciences Po, wrote: "We know that the old faculties of the Ancien Régime were nearly abandoned at the time the

Revolutionaries suppressed them in 1793: the professors barely gave their lessons and the students no longer attended in mass. Better to learn the law at the office of a practitioner than to go and follow, in Latin, the vague teachings of Roman law and canon law, with lessons on French law being almost negligible" (2012: 34).

After the faculties of law were re-established by the Napoleonic reforms, professors were limited to the function, in Jamin's terms, of "repeaters of the imperial catechism about the codes" (36), and they were quite reticent with respect to new disciplines, such as history and political economy. To illustrate the intellectual poverty of this manner of teaching, Jamin quotes Flaubert, who referred to his years of studying the law as evoking "huge amounts of boredom" (39).

The mandate for legal education after the Napoleonic revolution was summarized by Carbonneau as follows: "education in the law schools would be restricted to the texts of the codes and the principles of private French law. The professors would teach private law by dictating their comments on the codal provisions to their students" (1980: 455). Courses that went beyond the codes, such as philosophy of law, legal history, and natural law, were not taught. The codes then also dominated French scholarship: they were seen as "definitive and immutable works; this attitude gave rise to a casuistic tendency to give the codal texts primacy over legal principles and fostered a belief in mechanical jurisprudence" (455).

To better situate the professional context and clarify its internal criticisms, we can rely on the historical research by Sacriste in *La république des constitutionalistes* (2011), which covers the years 1870 to 1914. He describes the faculties of law as essentially professional schools. This characterization especially applied to provincial faculties, which responded to the demands of local practitioners, who sought to ensure the reproduction of highly segmented regional legal worlds in which the professors were themselves highly involved. The professors were thus much closer to the pole of legal practice than to the intellectual pole: "The production of written works—articles, notes on jurisprudence, treatises or manuals—did not constitute a valued criterion of professional excellence" (2011: 48). And the professors spent much of their time and resources in their legal offices, "pleading most often themselves or providing written opinions for the benefit of the local bourgeoisie" (48).

The dominance of civil law professors in faculties of law was directly linked to their integration into these parochial legal worlds, which reproduced while educating the inheritors of the local notables of the bench and bar in the rules established by the Civil Code. With teaching activity dominated by the exegesis of texts, all innovation was, if not excluded, at least marginalized—*a fortiori* any reference to new ideological currents or new disciplines such as sociology and other social sciences that emerged in new intellectual circles close to the reformist milieu, such as the School of "sciences morales et politiques."

All of this makes it easier to understand why the young upstarts of the faculties of law, whose learned expertise was going unrecognized—by the hierarchy of professors of civil law as well as by the notables of the bar—were inclined to

form alliances with emerging political leaders. Such alliances offered positions and careers that could valorize their capital of legal authority. The success of these promotional strategies came from the ability to put forward a new scientific legitimacy that conformed to the university's new model of academic excellence encouraged by the new political leaders. In this manner the partisans of these reforms in legal education were also able to bring scholarly value where the actual production of that value had been lacking (121). They offered continuity and legitimacy to those who brokered the change.

The role of the legal academy and the professoriate underscores that there is a more limited role in France for the legal profession in the governance of the state than there is in Germany (or Great Britain or the United States). As in Germany, however, there are professors who combine family and learned capital with a series of connections to the field of power. They can draw on the learned investments of those less endowed with social capital to support their own careers and paths as power brokers and agents of legal change. They may also be advocates or judges or have other links to the kinds of elite lawyers who connect, absorb, and broker emerging forms of capital into institutional and legal investments (Kawar 2015). The interconnected elite, including prestigious professors of law, is central to both continuity and change in the law, the profession, and the relationship between lawyers and the state. The meritocratic investment in the narrative of change and continuity is not inconsistent with the continued relative depreciation of investment in learned law in France and in the many countries whose legal education systems have followed the post-Napoleon French pattern (e.g., Bohmer 2013 for Argentina).

This French variation departed in different ways than Germany from the medieval model of lawyer-brokers using their command of Roman civil law or canon law to serve and mediate between different jurisdictions and sources of power, including customary law. But the continuity in the history, as in southern Germany, was not consistent. There were patterns within the French empire—in the coastal trading areas of Africa, for example—of negotiated justice that involved in effect legally trained courtiers operating between French and indigenous power (for Tunisia see Gobe 2013).

ITALY: BUILDING THE STATE AND BROKERING POWER

Italy at the time of unification in 1860 had professions that "preserved the original features of arrangements in the country's previous regions" (Mazzacane 1995: 80). The universities by this time had "largely fallen into decay and dispute" (80). Professors "simultaneously practiced as lawyers or magistrates" (84), and attendance at universities for students and professors was poor: "Professors and students were largely indifferent to the university," and indeed many classes were taught

in professors' homes (84). In addition, "teaching in the university was trapped in the mechanical transmission of an ancient 'culture of cloisters' which was entirely irrelevant to professional problems and needs" (87).

The key to the legal profession was that "legal professionals were the members of the bourgeoisie imbued with a rhetorical and humanistic culture who possessed the greatest expertise in politics and institutions" (81). This was especially true in Naples, where "the dominant role occupied for centuries by the judiciary and the Bar in the city explains the poor regard in which the university was held" (81).

Naples and its lawyers in the nineteenth century "played a decisive role in . . . the building of the Italian state" (81). Working from all parts of Italy after a diaspora of exiled southern lawyers, they provided the architecture of a "national jurisprudence" (82). Part of the story is that the bar—*avvocatura*—in Naples during the decade of rule by Joseph Bonaparte had to learn the French codes and more generally the French legal system (83), and this knowledge and experience helped them provide later leadership. The center of know-how, however, was not the universities. The center of the legal field was private practice. Naples was "truly the city of lawyers," noted Savigny after visiting Naples in the mid-1820s (83). For Savigny and other German observers, this dominance of private practice and the weakness of public universities meant "backwardness" (86).

Mazzacane, however, notes the importance of "private colleges, academies, and institutions" (86), where the judiciary and the bar transmitted learned law. Because Savigny focused on the role of professors in public universities, as in Germany, he left these entities out. Yet they played a crucial role in a transition to the new legal code (89). The universities insisted on staying focused on Roman law, whereas the private schools tied together the older traditions and the new approaches identified with French law (90). The vicissitudes of governance brought some repression with respect to the private schools, including exile for leading members of the legal profession; however, the ascent to the throne of Fernando II in 1830 introduced an openness that "reinvigorated the private schools. Now directed by leading lawyers, they were able not only to provide training of immediate practical usefulness but also to adopt new approaches and to broach new fields of study" (93). The offices of "certain lawyers" evolved into "power-houses of legal culture and southern liberalism" as well as "civil education" (94). The leading lawyers brought ambition and learning to a program that saw law as "the perennial link among the human generations" (95).

Political activities again led to many being exiled, and the diaspora "spread among jurists the most typical paradigm of the Neapolitan legal professional: the lawyer-professor-politician adept at switching from one role to another and often combining all three of them in one person" (99). They drew on ties to major institutions, "cultural and political reform" activities, "the close study of foreign developments in order to keep abreast of them, [and] finally liberalism and *laissez-faire* economics" (99). After unification they were key "artificers of the 'national legal

science'" (99). They invested heavily in the state as the "engine of modernization" (100), and since a major task of the state was to handle regional and local issues and conflicts, the lawyers' market expanded further through opportunities to serve the "mediatory function that they had always performed" (103).

Musella (1995) illuminates this classical brokering role of Italian lawyers before and after unification. He notes that after unification, the key to success was through "legal work that enabled these lawyers to establish the connections and relationships that they required to build their political careers" (315). Also, "a political career became the final and indispensable accomplishment for the successful lawyer, because it enabled him to forge close connections with the inner circles of state administration" (316). That career typically began with family connections: families were "the first network" (317), and indeed professional training was typically in the office of family or family friends (317). For example, the sons of the wealthy urban bourgeoisie as well as rural landowners found places through family connections in the offices of prominent lawyers. Marriage was also important in extending family ties: "In many cases, a member of the professions already belonging to a family of professionals would resort to marriage to establish new relations, and to buttress his social position further" (318). In some places, professionals typically married "women from the propertied class" (319), while in others, "the son of the property-owner . . . married the daughter of the professional" (319).

The web of connections with the state and the social world enabled lawyers to "operate in two different spheres" (320) that worked together. Wealthy clients helped political careers, and politicians in turn helped wealthy clients. The lawyers operated in the national government but also at local levels. In sum, "political and professional activities thus fused and reinforced each other. Many leaders of those years [after unification and into the twentieth century] were at the centre of manifold and disparate interests which gravitated around the local administrations, and in many cases they became the legal and political representatives of those economic groups which built their fortunes on public resources" (328). Lawyers were "the brokers *par excellence* within civil and political society" (333). This role, which went with a relative downgrading of universities and scholarly capital, had much in common with what we see in Great Britain in the next section.

FROM THE EARLY CONSTRUCTION OF THE COMMON LAW TO THE IDEOLOGY OF THE RULE OF LAW: THE POLITICAL RISE OF A SOCIAL ELITE OF BARRISTERS AND THE DEMISE OF DOCTORS OF LAW AS KING'S OFFICERS

Great Britain provides a similar example of a variation of the classic medieval model in terms of highlighting the importance of private practice over academic

learning. In Britain, private barristers ascended while Bologna-inspired doctors of the civil law were eclipsed.

As Berman documented, the rise of the common law, beginning especially in the latter half of the twelfth century, was built on a delegation of power by English kings to feudal lords while the king spent time outside of England (Berman 1983: 440). The hybridization of British feudal status with expertise borrowed from canon law and Norman practices helped create a process that the Crown could later borrow from and compete with. Henry II began to increase the royal investment in courts with the creation of the King's Bench and the expansion of the writ system, among other activities. These became the basis of the common law as it emerged, taking that name a few centuries later.

Prior to the emergence of the common law, a group of learned judges in England sought to use the prestige of Roman and canon law to influence and legitimate emerging British law (McSweeney 2019). Bracton's Treatise, published in the mid-thirteenth century, provides evidence of the influence and prestige of Roman and canon law in Britain. As shown by McSweeney,

> the authors of Bracton were people who, for reasons specific to the way English judicial careers were developing in the early and middle decades of the thirteenth century, saw canon law and, more particularly, Roman law as attractive models for the work they were doing in the royal courts. They used Roman law to make the case that the common law was a body of knowledge that should only be applied by justices who had mastered it through a long period of study and practice. . . . In this time before the common law was yet the common law, when its nature was contestable, the justices and clerks wanted to show that it was a constituent part of the universal law of the Latin West.

They sought to identify emerging British law and judges with the prestige of the law coming from Bologna. But the effort to build the credibility of the emerging common law on Roman law did not succeed:

> From 1290 . . . the king regularly appointed practicing lawyers to the Common Bench and the court coram rege. By the middle of the fourteenth century, the crown was turning primarily to lawyers to fill vacancies on the judicial bench. The community of justices and clerks focused on a particular set of textual practices envisioned by the Bracton authors could not have survived long, if it ever really came into being.

The rise of the common law led to the development of barristers, who, from the fifteenth century, were trained at the Inns of Court through a process that could last ten years and could be compared to education at a "finishing school" (Prest 1986). Those who accumulated sufficient social and learned capital were ideally suited to serve as agents and intermediaries for the monarchy or the landed aristocracy—defending independence against royal or religious power. They provided advice and resolved disputes, serving also as justices of the peace. The autonomy of

the bar was thus constructed on the basis of capital and activities attuned not only to legitimation but also to maintaining equilibrium within the field of political power. Since they were recruited from within the elite of the landed gentry—and to some degree from the new merchant bourgeoisie—the barristers trained and socialized at the Inns of Court were predisposed to become the representatives of the two social groups to which they were already well introduced (Lemmings 1990). These learned gentlemen became both the champions and the guardians of an equilibrium among various powers against the absolutist claims of the monarchy supported by the bureaucrats and jurists of the state.

While retaining their privileged relationships with the new ruling classes whose interests were now represented in Parliament, these legal practitioners succeeded in legitimating their jurisdictional monopoly and affirming their autonomy with respect to the holders of power. This strategy of autonomization was facilitated by the fragmentation and decentralization of the field of power in the context of the civil war and religious battles favoring the emancipation of cities and the growth in power of an alliance between the gentry and the merchant bourgeoisie. The strategy also drew on a mode of familial reproduction through co-optation and apprenticeship under the aegis of the Inns of Court, which reinforced the sociological homogeneity of this professional guild, which was dominated by a hierarchy of barristers controlling the judicial power and the learned authority of the law.

This double control of the production of law and the reproduction of lawyers allowed the barristers to thrive in the litigation market. Their monopoly gained credibility because it rested on the affirmation of the need for the law to be independent with respect to the holders of state power, be it central or local. At the same time, however, the guild structure kept the bar very closed and small in number and promoted the decline of the role of the Inns of Court. Intellectual activities diminished at the inns, which lost their role in educating the descendants of the elite.[4]

The universities, including Oxford and Cambridge, did not pick up the slack. Since medieval times, Oxford and Cambridge had been teaching Roman and (until the Reformation) canon law, but law professors were unable to compete with the bar with respect to the common law. The history of law faculties is one of low prestige, and until recently, those who joined the legal profession either as solicitors or barristers were unlikely even to bother with an undergraduate law degree before going through the practical programs of the legal profession. Law professors had little prestige and were thought of as merely teachers; they were respected by neither the rest of the academy nor the legal profession (Twining 1994).

Berman noted that unlike the Gregorian and Protestant revolutions, the revolution associated with the English transformation in the seventeenth century was facilitated by a cohort of barristers and judges (coming from the bar), who made the effort to revamp learned law: "the authors of the first treatises on English

law were not professors but judges and practicing lawyers, and their treatises in fact strongly affected the fundamental structural and institutional changes in the English legal system that took place in the late seventeenth and early to mid-eighteenth centuries" (Berman 1983: 184). Berman noted that earlier legal theory was primarily professorial whereas the new English legal theory was "primarily judicial in its origin and nature" (184). The legal profession became "guardian not only of the positive law but also of legal science" (184). The bar therefore upgraded the role of learned law and the role of law and lawyers in governance. According to David Lemmings, even after the settlement of 1689, "politics in general and parliamentary business in particular was expressed in the language and lore of the courtroom" (1990: 184).

Lemmings documents the role of the bar and the judiciary—led by relative outsiders—at a time when industry and global trade were being transformed. Consistent with the "revolutionary" scenario depicted by Berman, Lemmings shows the role that outsiders played in remaking commercial law with the rise of trade and commerce: "Barristers who were able to adapt to the changes in English society tended to be men who were not closely identified with its ancient institutions" (177). Lemmings includes the key figure of Lord Mansfield among the outsiders. Lord Mansfield, who was educated in Scotland, became the leading figure later in the century in remaking and systematizing the emerging English commercial law. This relatively outsider group was also linked to politics: a "sizeable number of barristers were also MPs during these years and they played an important part in the activities of the legislature" (178).

The connection of this expertise to the strong personal relations central to the elite of the bar is evident in Kostal's book about the relationship between law and the railroad industry in England in the nineteenth century (Kostal 1994). Lawyers played a key role with that industry, not just as lawyers but also as brokers and even investors. They created the necessary legal and financial instruments to facilitate that industry's growth and guaranteed its value to potential investors (many of them their clients). They also coached the new entrepreneurs (many of them amateurs or engineers) in this sophisticated new technology, negotiated with the landed aristocracy (also their clients) for the sale of land at huge prices, and when necessary lobbied in Parliament to get a private bill authorizing these railroads to operate. Many lawyers were also investors, and profited enormously during the railroad financial boom—which ended with a huge crash and an enormous wave of litigation (again to their huge profit). Despite growing resentment at their enormous legal fees (estimated at more than 30 million pounds), particularly after the crash when small investors lost their investments and the entire industry was financially strangled, most of these lawyers managed to survive the crisis untouched.

Even more interesting is the hierarchical diversity of treatment. After twenty years, Parliament imposed a fee limitation on solicitors, but the dozen elite Queen's

Counsel who had built a cartel to act in front of the parliamentary committees managed to continue for decades until the railroad industry was consolidated. Their peers tried timidly to discipline them, but their recommendations were easily bypassed. The only revenge was to exclude them from the prestigious ladder toward judgeships and political appointments on the pretext that their practice was too specialized and not intellectually challenging enough to qualify them for judicial appointment. Nevertheless, the elite lawyers serving the railroads enjoyed a tremendous period of success.

Kostal's explanation for this central and highly profitable role is based on the barristers' strategic position between the landed aristocracy (whose trust they enjoyed since they were frequently second sons or poor cousins), the railroads, and Parliament (where that aristocracy was well represented). The legal construction of this new industry thus served to build a compromise between the new entrepreneurs and the landowners, who relinquished some of their property rights for a huge price (corollary of the huge legal fees)—either directly through the brokering of their family solicitors or after an enormously costly legal battle in the parliamentary committees granted the power of expropriation. The high legal costs also served as a barrier to entry, thus excluding less wealthy players from the competition. Elite barristers in particular played a key role mediating among business interests, the state, and the landowning class that dominated the state. Those same barristers continue to hold this leading position despite efforts to build up the position of legal education and the role of solicitors in multinational business and finance.

Returning to the railroads, the experience of Great Britain provides a telling confirmation of the role of elite barristers as leaders of the legal field—and also above and around it, through their close connections to family capital, the state, and economic power. We cannot provide detailed comparisons here, but it is highly suggestive to contrast the English experience with the German one, where elite lawyers within the state bureaucracy played the most prominent role in constructing the railroads, and France, where state engineers and private entrepreneurs were at the forefront (e,g., Mitchell 2000). For Italy, we do not have details on railroad construction, but the depiction of elite lawyers in Italy as being closely linked to local, regional, and national governments, urban wealth, and private property, suggests a general role very similar to what Kostal found in Great Britain.

The institutional location of the key actors, the relevance of lawyers, and the place of lawyers who "count" thus varies according to the different national experiences. The US experience with railroads, to add one more example, involved alliances between an emerging group of corporate lawyers, the so-called robber barons, and state power (e.g., Martin 1992). This comparison shows how these very different professional and political paths produce different institutional and regulatory landscapes—as well as different profiles for those who lead in shaping those landscapes. At the same time, the classic lawyer strategy of brokering,

converting, and absorbing what is emerging outside the legal field can be seen in each of the contexts.

Finally, we can recap the low investment in learned law by the British barristers and a complementary lack of respect for law professors in the universities. The bar had very little respect for the academic work of professors, and professors often even considered themselves failed members of the bar. The legal scholarly tradition at Oxford, for a notable example, was extremely poor until very recently. Taking up a chair in philosophy of law at Oxford in the 1950s, H.L.A. Hart noted that the form of typical scholarship was a very mild and formal critique of judicial decisions (Lacey 2006: 157). Hart wrote, "What is odd about the whole faculty (there are 4–5 exceptions) is that they regard themselves as a pack of failed barristers and a weak version of the Real Thing in London" (2006: 157).

As noted above, a law degree until very recently was not even the preferred undergraduate degree for admission to the bar or the solicitors' branch. Family capital, secondary school at Eton and Harrow, and graduation from Oxford and Cambridge were the key credentials for gaining access to elite careers. As David Sugarman wrote about the mid-1960s, "Relative to their Continental European or United States counterparts, English law faculties were small, poorly resourced and failed to attract a fair share of the best talent among university students and from within the legal profession. . . . Most lawyers, and virtually all superior court judges, had not read law at university but had learnt what they thought of as 'law' in legal practice. Judges usually expected sycophantic praise, and legal academics normally obliged" (2009: 8). In William Twining's words, "One of the recurring themes that runs through debates and histories of legal education in most common law countries is the low prestige of law schools and the low status of academic lawyers, both within the universities and in the eyes of the profession" (1994: 25).

THE RELATIVE DECLINE OF SCHOLARLY CAPITAL IN FAVOR OF FAMILY CAPITAL

The European stories, including those of France and especially Great Britain, point to a relative decline in the value of scholarly capital in favor of scholarship dominated by the exegesis of civil codes, by conservative and relatively static approaches to scholarship, and by the elevation of the role of dinners at the Inns of Court over any pretensions to learned activity; all of this was consistent with the relatively higher value of family capital as opposed to learned legal capital. In such settings, despite important exceptions such as the rise of the constitutional law scholars in France, the continuing strong role of German professors of law, and the role of the learned British judiciary in building British trade and commerce, there were few ongoing mechanisms to keep law and legal discourse abreast of new political interests, new disciplinary approaches, and new political regimes. There were cycles of more or less investment in scholarly and meritocratic capital versus family capital,

but family capital over time maintained a very strong role. These European histories reflect a relative devaluation of scholarly capital over time.

This decline was especially noteworthy during the post–Second World War years. In none of the European countries discussed above were lawyers central to the field of state power. The welfare state developed through various expertises, among which law was not of primary importance. Neither the bar, the solicitors, the French legal academy, nor the German legal academies retooled after the Allied victory in a way that placed lawyers and the law at the top of the hierarchy of governing expertise. Lawyers as brokers and capital converters were not open enough to the new social movements and social science expertise. Lawyers primarily provided legitimacy for the state in a manner that had not changed substantially since the Prussian era and the Napoleonic regime. The British welfare state similarly went around the deeply conservative English bar (e.g., Abel-Smith and Stevens 1968). Family capital continued to play the major role in the reproduction of the legal professions—leaving relatively little place for more open and meritocratic scholarly investment.

IMPERIAL SOCIETIES, IMPERIAL RULE, AND INDEPENDENCE: RELATIVE MARGINALIZATION OF LAW AS STATE GOVERNING EXPERTISE

The European examples illustrate interrelated histories built on the legacy of the Roman Empire and the medieval construction of the legal profession—shaped subsequently by the rise of the city-states. The German experience linked to Prussia has particularly privileged the "true professors" at the top of the professional hierarchy but also above and around the legal field. The related French experience has professors in a similar role, but the elite brokers are a group of notable *avocats* connected to the courts as well as to the faculties of law. The top of the English bench and bar assumes a comparable position in Great Britain (and offers a much more minor role for legal academics), and leading Italian advocates/brokers are central to the Italian legal field. Who the key actors are in the legal field in a specific country during a specific period—professors investing in political alliances, *avocats-tribunes* or QCs embedded in oligarchic elites—is the product of strategic battles involving competing factions of legal elites (either well-established reformist hierarchies building on their mix of social and professional capital or ambitious and successful newcomers). And even if there are fairly stable hierarchies in different countries, lawyers still may adopt the full range of strategies—including learned and familial strategies and speaking for marginal groups—seen in classic medieval practices. It is, then, a dynamic and highly contested process where the values of different forms of capital constantly change. Detailed comparative study, is, therefore, essential if we are to understand the construction and operations—and constant change—of these elites.

There is also continuing mutual influence, which comes in part from the fact that lawyers in a great number of settings come in contact with their counterparts among elites and within law, interact with them, learn from them, and borrow from them both to maintain their position and credibility and to manage processes of change. They build hybridizations seen as institutional innovations. Each national variation involves newcomers whose promotional strategies, in alliance with modernist rulers or entrepreneurs, are built on borrowed institutional transplants.

The export of these models—and of approaches to colonies—tended to occur with different patterns associated with competition among European imperial powers. In each case, what was exported was at best a truncated version of what existed at home. Also, the interest in investing in law and lawyers varied over time and in different places. Imperial powers sought conquest, natural resources, trade, and the religious conversion of indigenous peoples, among other things, and the investment in law accordingly varied substantially.

The British had the longest and most varied experience with law. The export of law typically began with local justices of the peace, as in India, and these men often came initially from the merchant class. There was also typically a double aspect to the justice system that the British promoted abroad. The top tier of justice was for the British in the colonial setting; a second-class system sufficed for indigenous people. There was a long evolution in places like India, however, that included the incorporation of locals initially educated at the Inns of Court or evolving from local *vakils* into advocates. The most successful of the local advocates became known as the "nabobs of the law" in India because of the great wealth they acquired through litigation, especially of land disputes (Dezalay and Garth 2010).

Later in the imperial relationship, law became a central component of the legitimation of the British Empire. As detailed by Benton and Ford (2016), early in the nineteenth century the British Empire built a structure of international law through officials of all ranks in the empire constantly promoting legal discourses and solutions to augment and lock in what the British imagined as a structure of imperial governance well beyond the places of formal colonies. The structure of core and periphery in the law, as a part of this process, was put in place and survived the end of colonialism. Late in the nineteenth century, the Dutch in at least Indonesia invested in some of the same processes of co-option through law and through education abroad, but the British had a longer and deeper commitment to this.

In contrast, the Germans were late to colonize, and law played a minor role in their colonies. As Steinmetz showed, different sectors of German society dominated different colonial relationships (2007). In East Africa, for example, the army ran the show. In Asia, merchants were the dominant players in shaping colonial governance, while in the various island colonies most of the investment was by more meritocratic scientists. In none of these cases, however, did law play a major role. France, like Germany, also did not invest much in law in their governance

of the French empire (S. Dezalay 2017; Burgis-Kasthala 2018). Legal education in French Africa, for example, was essentially nonexistent prior to independence (S. Dezalay 2017). In some places, law and lawyers became important, most notably in Tunisia (Gobe 2013), but the overall story was one of very little investment in the export of the French legal profession and law.

We do not focus here on the former Spanish colonies, but we can note that the Spanish empire in South and Central America was somewhat different. Legal education came relatively late in the race for gold. Ultimately, however, it became a key credential for the elite of mainly Europeans, who assumed the major places in governance, and it helped integrate local criollos and Europeans; but law itself was not very important (Pérez-Perdomo 2006). Accordingly, the law degree became embedded in the fabric of the elite families that dominated Latin America after independence, exemplified especially by Chile and Brazil. Legal education was a way to select those who served as cosmopolitan politicians and brokers with the colonial state. But again, a key feature of that domination was that the law-trained oligarchs were above the law, occupying a variety of roles in and around the state and economic power. Law practice had very little to do with what was taught in law school, and elite law graduates only incidentally practiced law.

In the South and East Asian countries that we study in this book, the legal revolution we focus on is in large part a product of the United States as it evolved through and after the colonial legacy of the British. The British relationship has been especially important in shaping the role of law and lawyers in India and Hong Kong. The role of Germany in particular is also evident in East Asia, but that influence came mainly through Meiji Japan's self-conscious effort to mimic the role of law in Prussia—both to demonstrate to the West that Japan was sufficiently "civilized" to justify the benefits of international law and to justify the strong Japanese state (Flaherty 2013; Yukihiko 1997). Japan imposed that model of governance on Korea (and Taiwan) during the period of colonial domination from the turn of the twentieth century until the end of the Second World War, and the Chinese borrowed from Japan for the same reasons Japan borrowed from Germany. Leading Japanese and German law professors long maintained their influence in Korea and China in a kind of legal core-and-periphery relationship. As we shall see in later chapters, the legal revolution we describe challenges both the Japanese/German legacy and the legacy of the British Empire.

One feature we see in the legal transformation we depict in this book is the role of the codes in shaping legal education. Thus the French and French-inspired civil codes were especially attractive to elites in South America, who used them to strengthen their power in the newly independent states (Bohmer 2013). The later Prussian and German codes, in contrast, were more attractive to reformers in Japan and China, consistent with the influence of the Prussian model of the state. In both cases, the emphasis on codes helped reshape legal education and produce the mix of learned and family capital that the most recent legal revolution coming

from the United States has challenged. According to Baade, "virtually all late-twentieth century civil lawyers have received their legal education from professors of law at university faculties . . . with emphasis on a codified body of private law" (2001: 232). It is the product, in his words, of "forces set free by the French Revolution" (233). The educational innovation followed on the system introduced in 1806 in France: "That new method was, in essence, the teaching of the texts of the new law [—the 'Cinque Codes'—] by rote pursuant to a detailed uniform curriculum prepared by the Ministry of Education" (227). This rote method and model of legal education more generally represents part of the structure attacked in recent decades in Korea, Japan, and China by the US-led legal revolution, which, as noted above, began after the Second World War and gained momentum especially after the end of the Cold War.

The role of lawyers as brokers and converters of capital is evident in colonial settings and in the countries that adapted under pressure to Westernized legal systems. They therefore show the same patterns of boom and bust that we see in Europe and elsewhere. We turn now to the United States, where the same processes led to the emergence of the key components of today's legal revolution.