American Law Teachers in an Austrian University: Some Observations Gleaned from a Decade of the Kansas-Vienna Exchange Program

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I. INTRODUCTION

East of the picturesque Austrian city of Salzburg there lies a region of lakes of various sizes, each set within mountains rich in salt deposits. Indeed, until the tourists arrived, salt mining was the principal occupation and gave its name to the area: the Salzkammergut, the lord’s domain of salt. Emperor Franz Joseph of Austria¹ built a hunting lodge in the village of Ischl; members of his court followed his example, and Ischl became a prosperous and attractive resort town.

In the summer of 1983 Wallace Johnson, a professor of East Asian Languages and Cultures at the University of Kansas, was spending an extended vacation with his family in Ischl. On one of the many rainy days in the region he got into his rental car and headed for the nearest large lake, the Attersee. On an earlier trip he had noticed a sign identifying one of the lake villages as a site of the University of Vienna summer school. His curiosity aroused, he decided to visit the location.

He found that the summer school was designed to attract students from abroad, particularly English-speaking countries. Its director was professor of law Dr. Herbert Hausmaninger, who speaks English without a trace of an accent. Although his teaching field at the University of Vienna is in the field of Roman law, he is an internationally known authority in the field of Soviet criminal law. His visitor from Kansas is a specialist in early Chinese law.² A common base of interests was quickly established between the two men. Having learned that Hausmaninger would be spending the upcoming month of September as a visiting professor at the University of Virginia, Johnson’s parting shot was to invite his host to view the heartland of America, to come to Lawrence.

On his return to Lawrence, Johnson solicited and obtained the support of George Woodyard, the associate vice chancellor for academic affairs

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1. (1848-1916).
2. His major project is the translation into English of the code of laws of the T'ang dynasty. See 1 THE T'ANG CODE (Wallace Johnson trans., 1979).
responsible for international programs, and of Dean Michael J. Davis
of the School of Law. Hausmaninger's visit, he urged, might pave
the way to a continuing relationship with the University of Vienna.3 The
prospect appealed to both university officials, and arrangements were
made for Professor Hausmaninger and his wife to come to Lawrence at
the end of his teaching stay in Virginia. On the last day of his stay at
the University of Kansas preliminary agreement was reached for an
exchange program between the two schools of law. Final documents
were exchanged and officially ratified4 in the spring of 1984. The first
professor from Vienna, Hans-Peter Benöhr, a specialist in Roman law,
arrived in Lawrence on January 28, 1985, accompanied by his wife and
two teen-age sons, even as the first professor from Kansas had his and
his wife's bags packed to fly to Vienna.

The two professors exchanged everything: the Benöhr family moved
into Francis and Donna Heller's condominium in Lawrence while the
Hellers occupied the Benöhrs' apartment in one of Vienna's outlying
districts. They traded not only house keys but also car keys and, of
course, office keys. The Benöhr boys looked after the Hellers' German
shepherd while Donna Heller fed the large number of squirrels that
were accustomed to finding bowls of nuts on the Benöhrs' veranda.
This complete exchange has remained the pattern although variations
occurred over time as particular circumstances required them.5

There was one area where reciprocity between the two sides to the
agreement was not possible: command of the exchange partner's
language. Of the ten Kansas professors who have so far participated in
the exchange only four—Heller, Levy, Peck, and Westerbeke—speak
German. Heller, who is a native of Austria and actually had studied
law for two years at the University of Vienna gave all his lectures in
German.6 Westerbeke who holds a master's degree in German made
a few presentations in German but gave his continuing lecture course in
English. Knowledge of English is not as widespread in Austria as it

3. Founded in 1365, the University of Vienna is the second oldest institution of higher
learning in the German-speaking areas of Europe. Prague had been founded in 1348 at a time
when King Charles IV of Bohemia was also German emperor and the German imperial court was
located in Prague.

4. In Kansas, this required the signature of the governor.

5. The following faculty members from the University of Kansas have participated in the
exchange program with Vienna: Francis Heller (1985), Robert Casad (1986), George Coggins
(1991), John Peck (1992), and Keith Meyer (1993); Richard Levy is the exchange professor in
1994; Coggins will be the first repeater in 1995.

6. Heller earned his law degree from the University of Virginia in 1941. His 1985 lectures
at the University of Vienna were subsequently published in book form. FRANCIS H. HELLER,
is in northern Germany or in the Scandinavian countries, but enough
law students understand English to assure a fair to good audience for
the English-language lectures which the Kansas professors offer in
Vienna. The topic is usually announced as “Introduction to American
Law,” with the precise content differing somewhat depending on the
professor’s expertise.7 The Kansas professors are also frequently
invited to participate in “block events,” continuing legal education
activities usually scheduled on weekends at one of the many castles in
the vicinity of Vienna that have been converted into conference centers.
This has become more common as more persons are involved and thus
learn what can be expected from the other side.

The visitors to Kansas from the University of Vienna8 ranged from
very senior9 to quite junior.10 Their command of English also ran the
gamut from virtually fluent to just moderate. What they did while they
were in Lawrence has also varied considerably. In three instances
(Brauneder, Hofmeister, Ogris) they team-taught a course with
Heller.11 Verschraegen participated in a faculty seminar on “the New
Europe.” Somek audited three different courses and became virtually
a co-teacher in each of them. Every one of the visitors has given one
or more public lectures.

On both sides of the exchange the participants have taken advantage
of their stays to see wider areas. The Viennese visitors have used both
the spring break and the examination period to travel, ranging literally
from coast to coast and from Massachusetts and Florida to California
and Manitoba. Reaching out from Vienna, the Kansans have also
traveled widely, from Athens and Budapest in the east to England,
France, and Spain in the west. On both sides, former participants in the
exchange have opened their homes and extended warm hospitality. A
firm foundation for the continuation of the program appears to be well
in place.

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7. Thus, Peck emphasized family law, water law, land transactions, and contracts, the
subjects he normally teaches at the University of Kansas.
8. The following faculty members from Vienna have participated in the exchange program:
Hans-Peter Benöhr (1985), Wilhelm Brauneder (1986), Mechthild Fritz (1987), Herbert
9. Werner Ogris is the senior member of the legal history staff in Vienna and an
internationally renowned writer in the field.
10. Mechthild Fritz had completed her doctorate in law only a year earlier and was an
“Assistant” in church law. See infra note 17, and text at pp. 29-30. She was not asked to lecture
while at the University of Kansas but completed a major research project. Mechthild Fritz,
11. As a result of this collaboration, Ogris and Heller are planning to co-author a book on
the history of European law.
In the subsequent parts of this Essay we shall offer some observations on legal education and the legal profession in Austria. We shall begin with a brief summary of the historical background.

II. THE BACKGROUND: RICH IN HISTORY, FULL OF RIGIDITY

Modern universities had their beginnings in the eleventh and early twelfth centuries in Italy where students eager to qualify for the professions of law, medicine, and theology sought out practitioners and offered to pay for instruction. Bologna, founded circa 1080, is generally accepted as the first law school. Certainly, it predominated during this early period, especially after the discovery in a monastery in Pisa of a copy of the major portion of the Code of the (East) Roman emperor Justinian, a compilation prepared in the early part of the sixth century. This rapidly came to be accepted as the basic text for the study of law, and those teaching law devoted their efforts mainly to the interpretation of the ancient text.

When the Austrian Archduke Rudolf VI (nicknamed “the Founder” because of the numerous lasting structures—such as the cathedral of St. Stephen—he initiated) established the University of Vienna in 1365, it was not even open to question what should be taught: the law of Rome—both secular and religious. One who completed this course of study received the degree of iuris utriusque doctor, “doctor of both laws.” Even though the curriculum eventually underwent significant changes, the name of the degree was not changed until 1966.

Although it is customary to credit France with being the first country to have produced a modern comprehensive code of law, Austria had reformed its criminal code under the emperor Charles V in the sixteenth century and had further updated it under Maria Theresa and her son Joseph II in the late eighteenth century. The first part of a code of civil law went into effect in 1786, the remainder in 1811. Each of these changes was reflected in the course of study of the law school. By the middle of the nineteenth century it had reached a formal structure that would remain virtually unchanged for over a century when changes were introduced in the 1960s and 1970s. But it is important to note that these changes were brought about by laws adopted by the federal

12. Much of the information in the remainder of this Essay draws on WALTER H. RECHBERGER & HELMUT FUCHS, DAS NEUE RECHTSSTUDIUM [The New Law Curriculum] (3d ed. 1984), with some additional information from Hans-Georg Kautner, The Legal System of the Republic Austria (Republik Österreich), in MODERN LEGAL SYSTEMS CYCLOPEDIA 4:30 (Kenneth R. Redden & Linda L. Schlueter eds., 1989). Undocumented statements about conditions before World War II are based on Heller’s recollection of his days as a law student in Vienna in the 1930s.
Parliament: just as historically the university was subject to the will of the emperor, so it is now controlled by the government of the republic. Prior to World War II, this meant that radical thought was kept out, radicals were denied appointments, and radical students were often subject to discipline and even exclusion.

The curriculum of the Vienna law school from about 1859 to 1968 consisted of nine semesters, divided into three equal parts, at the end of each of which the student had to pass a major "state" examination. The first part was denominated "historical" and covered Roman law, canon law, the history of German law, and the constitutional history of both Germany and Austria. The second segment consisted of substantive law: "private law" (contracts, family law, property, torts), civil procedure, criminal law and procedure, and commercial law. Finally, the third part covered public law (constitutional law, international law, administrative law) as well as introductory courses in economics, political theory, and sociology.14

There were then—and there are today—no end-of-course examinations. What counted were the three state examinations and, to finally qualify for "promotion" (for example, the award of the doctorate), three rigorosa—as the name suggests, tough, written examinations. The state examinations were oral and held before three members of a large commission, the members of which consisted not only of members of the faculty but also included public officials and even some practitioners. The student did not know who the examiners would be until he entered the room where the ordeal took place.15

The first state examination served—as its successor, the first diploma examination, often does today—as a major means for the elimination of students who, for one reason or another, did not come up to the school’s expectations. Because two of the fields represented by the examiners, Roman law and canon law, were based on Latin course materials, it was the practice of the persons testing in these fields to present the candidate with a Latin text which he was first to translate and then to interpret. Failure to come up with an acceptable translation resulted in the immediate termination of the examination.

14. These subjects were not taught outside the law school. Thus, the famous "Vienna School of Economics" was a part of the law school. One could earn a degree of doctor rerum politicarum but only after one had earned a law degree, completed an additional year of course work, written a dissertation, and passed additional examinations. The hostility toward the social sciences was largely politically motivated: They were seen as dangers to the stability of the state and the government.

15. Heller recalls being told by his father, who had earned his law degree in Vienna in 1913, that the examination pressure was increased by the requirement that the candidate appear in white tie and tails. Women were not admitted until after World War I when this rigid dress code was at last discarded.
Thus, prior to the 1971 changes, a lack of adequate preparation in Latin was virtually a bar to the study of law. Except for the Latin requirement, anyone who had successfully completed a secondary ("middle") school could enroll in the school of law. But what the law professors expected was really the level of proficiency reflected by eight years of study. If your family could not afford to send you to this kind of a school, your chances in law school were slim indeed. One of the by-products of this system was that it was very difficult for the son of a worker's family to become a lawyer. Not surprisingly, greater access to the study of law was a major demand of the Social Democratic (now the Socialist) Party.

The Social Democratic Party and the Christian Social Party were bitter enemies throughout the inter-war years. After World War II, however, leaders of these two parties who had come to know each other as human beings during years together in the concentration camps of the Third Reich decided that their cooperation was essential to the future of the country and formed a "Great Coalition" government. In practice this meant that each party was in a position to veto matters proposed by the other; personnel vacancies were almost always filled in pairs—if the No. 1 was a "red," there had to be a No. 2 who was a "black." Vacancies on the university faculties were routinely handled in analogous fashion. Routinely two positions were filled at the same time, one with a black, the other with a red. The latter was likely to be in a technical or scientific discipline while positions in the humanities and in law tended to be filled with candidates endorsed by the blacks. This system, called the Proporz, lasted until 1966 when the blacks (now called the Austrian People's Party) gained an absolute majority in Parliament and elected to govern alone.

Just before this election, however, a compromise law governing university study, including the study of law, had been passed. It did

16. There were three basic types of middle school distinguished mainly by the languages the students had to learn. The Gymnasium required eight years of Latin and five years of classical Greek. The Realgymnasium had eight years of a modern foreign language, usually either French or English (a distant second) and five years of Latin. The Realschule required students to take two modern languages but no Latin. Students could enter any of these three tracks after five years of elementary school (four years by special examination). Transfer from one track to another was virtually impossible as was transfer from the Hauptschule, the years six through ten which were mainly preparation for trades.

There is nothing comparable to the American college in the Austrian system of education, and the bachelor's degree does not exist. Students in the "middle" schools, however, follow a curriculum that is academically more rigorous than that of most secondary schools in the United States and has virtually no extracurricular elements. Thus, students enter law school at an earlier age, usually 19, than they do in the United States, but the Austrian student's academic preparation is, at a minimum, at the level of college junior in this country.
away with canon law as a separate field of instruction.\textsuperscript{17} It made it possible for a student to complete the study of law in four years without having to write a dissertation—though the degree would then only be a “Magister” (master’s). The doctorate remained available but required a minimum of one additional year’s study, including the submission of an acceptable dissertation. The new law also eliminated non-faculty members from the examining commissions and allowed the division of the former “state” examinations into examinations over the several previously included subjects, some of which could be satisfied in writing.

Thus, university reform (and law school reform) at long last had been moved off dead center. But the bar association was outraged that it had now become possible—perhaps even normal—to be a lawyer and not be a “Herr Doktor.” This may seem a trifling point to anyone not an Austrian, but in that country titles continue to be highly important. The university law, for instance, provides not only that anyone who has been granted a university degree is entitled to use the respective title but that he may legally demand to be addressed by that title in any official proceeding. From time immemorial, Austrian lawyers had been addressed as “Herr Doktor”—to call them “Magister” put them on a level with pharmacists.\textsuperscript{18} Eventually a compromise was hammered out: Because a master’s degree is obviously less fulfilling than a doctorate, the diploma winners would have to serve for two years longer as apprentices than those who held doctorates.\textsuperscript{19}

Other changes were enacted in 1971 and 1978 after the Socialists, for the first time in their history, had won a majority in Parliament and controlled the government by themselves. The law schools had to provide an alternative route of admission for those who had not studied Latin for eight years. A separate examination would be administered

\textsuperscript{17} A redesignated field of “church law,” no longer a required subject, is limited to secular laws applying to churches. The state continues to pay the clergy from the proceeds of a church tax it levies with the income tax. It also registers denominations that qualify for this procedure and other entitlements, maintains a register of church membership, and changes must be registered with a state official. Laws of this kind—and not the canon law—are encompassed under the label “church law.”

\textsuperscript{18} Heller relates that one of his classmates, a pharmacist, upon completion of two terms as president of the National Chamber of Pharmacists, had been granted the title of professor by a presidential decree. He sent out gold-bordered announcements and threw a party for three hundred people. Heller also recalls that the man who was his violin teacher always wished to be addressed as “Herr Professor,” also a title conferred by the President of the Republic.

\textsuperscript{19} The apprenticeship, now set at five years for a “Magister,” is followed by an examination administered by the bar association. Until that examination is passed, one may appear in court only as an assistant to a litigating attorney.
not by the law school but by the Ministry of Science and Research that has the oversight of the universities.

At the same time the government provided scholarships for all Austrians studying at one of its twelve universities and set their amount at slightly higher than unemployment compensation. The result was, of course, a massive influx of students into the law school. Cram courses in Latin flourished because once that hurdle was overcome one could be a "student" on scholarship, at least for one year. One could not continue, however, without passing the first examination, now called a diploma examination. In practice, very few of the 8000-plus persons who make up the first-year class ever darken the door of the law school once they are enrolled (and can collect their scholarship). Heller was told by the dean in 1985 that fewer than 600 students venture the first diploma examination and that the number of those completing the study of law in any given year fluctuated between 250 and 300.

A further change was enacted in 1978. The new law established the curricular guidelines that apply today though with some flexibility allowed to the individual school. (By this time three law schools, in Graz, Linz, and Salzburg, had been added to the two long in existence, Vienna and Innsbruck. The new law schools were not nearly as impressed by the importance of Roman law and the Latin language as the old schools were and still are.)

The door of access to the university may have opened wider, but the road into the profession had been made more difficult. Tradition still has a strong hold on the system.

III. NEW BUILDING FOR AN OLD LAW SCHOOL

When the changes of 1966 and 1971 brought about dramatic increases in student enrollments, the law school found itself in a good position to ask for a building of its own. Its facilities on the second floor of the main university building had long become totally inadequate, and the faculty had become scattered over several city blocks, mostly in converted apartment buildings. Moreover, the central administration was eager to claim the space the law school occupied in the main building. The result was that approval was granted for a new structure for the law school.

But what kind of a building did the faculty want? About the only thing they agreed on was that it should provide adequate parking reserved for members of the faculty. The chair of the building committee, Professor Günther Winkler, embarked on an extended trip

20. In later years a (rather generous) needs test was introduced, but all students are entitled to such comprehensive benefits as health insurance and family support.
that took him to the Federal Republic of Germany, Belgium, the Low Countries, France, and the United States to look at recently completed law school buildings. As he related it to Heller in 1985 (the two had first met in 1965 when Heller had given some lectures in Winkler's class in Administrative Law), he was most impressed by the openness of some of the buildings he had seen in the United States, so much so that he had prepared a long argument in favor of this kind of building while flying back across the Atlantic.

But his colleagues would have none of it. What resulted is a structure that looks modern on the outside but is functionally a reinforcement of the old order.

The building heralds its spiritual ancestry by the Latin title its occupants prefer: "The Juridicum." It sits within a stone’s throw of the university’s main building though it is difficult to gain a full view of it, so closely is it shoehorned in between the adjoining city blocks. It is part of the Inner City, the original urban site, on a short street that bears the historic name Schottenbastei, the bastion of the Scots—the Scots here being the monks of a nearby Benedictine abbey originally set up in 1158 by missionaries from Ireland who, in the twelfth century, were commonly called Scots. The site thus had once been one of the city fortifications.

The city of Vienna has varying upper limits for the height of structures in the city, and they are more stringent in the Inner City than elsewhere. The architects overcame that problem by digging deep into the earth. There are five levels below ground, seven above. The building is in sharp contrast to its neighborhood, buildings that were erected a hundred years earlier, with ornate architectural features: statues; caryatides; reliefs; and varying patterns and designs in the construction material, generally light-colored stone, stucco, or brick. As Peck observed, if one removed the cars and busses and substituted horses and carriages, Vienna would resemble a nineteenth century city. Only one nearby building, the headquarters of the country’s largest bank, reflects a more recent style, that of the early twentieth century.

Not so the law school. It is a very modern, glass building, rectangular with rounded corners, amidst the neo-baroque of its neighborhood. Above the main floor, levels two through seven extend outwards on all sides about ten feet wider all the way around, cantilevered, producing a kind of covered walkway around the building at ground level. The lowest sub-basement level holds utility equipment; the two levels above house the prized parking space of the faculty, accessible by a car elevator that responds to a remote control garage door opener. The remaining two basement levels have a number of medium-sized (forty
to eighty capacity) classrooms and one large lecture room seating 400.21

The ground floor has ample, well-furnished lounge space, a book store, and the building security office. Between the ground floor and the second floor is a cafeteria-style eating space with ample seating to accommodate lunchers and coffee drinkers among the students. Faculty members are not excluded but few are ever seen there.

The second floor is the administrative level. Here one finds the dean’s office and the administrative, technical, and reference parts of the library.

Floors three, four, and five are all built to the same floor plan. Each is divided into five segments: library space in the middle, running from one side of the building to the other; on either end two faculty office suites and two rooms labeled seminar rooms but which, except for the large table in the center, we would call classrooms for thirty to forty students.

The faculty is organized into Institutes, comparable to departments in our liberal arts colleges, and those affiliated with an Institute are commonly officed together in suites that are placed on each side of the building. These are about as private as one can imagine. Except for posted hours, rarely more than three a day, the doors from the center hall are kept locked; only those having offices in the suite have keys. The visitor entering the office faces a partition behind which two secretaries sit, much as bank tellers are barred off in many banks. If the visitor wished to see one of the professors, the respective secretary would inquire on the intercom whether the visitor was to be admitted. The door leading from the entrance hall into the main area of the suite is also locked; the secretary has to press a button on his desk to release the latch.

Once inside that second barrier, the visitor would find herself in a long and wide hallway with a series of closed doors on the street side and some open alcoves on the other. The latter house a kitchenette with a full-sized refrigerator, almost always well stocked by the secretaries and the assistants who often take the noon meal together on the premises; an area filled with office equipment, such as a photo copier;

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21. In view of the size of the first-year class it might come as a surprise that this is the only lecture room of any size in the entire building. But class attendance is generally quite low, especially among first-year students who, as noted earlier, are often students in name only. Of course, in the absence of end-of-course examinations and any system of credit on the basis of courses, there is little incentive for students to sit through lectures. Most of them prepare for the diploma examination by enrolling in one of numerous for-profit cram schools in the vicinity of the law school. Heller noted that the cram school he used in 1936 was still operating in 1987 in the same premises and under the same name and family ownership.
and a supply room. The closed doors conceal the offices of the two professors, the research associate (often a more senior person still hoping to obtain a professorial appointment), and the assistants, of which each full professor has two. The two professors’ offices are large and elegantly furnished. Those on the higher levels afford fine views toward either St. Stephen's cathedral or the Vienna Woods.

At the end of the hallway a door leads into the library. At the University of Kansas, the law library protects itself against theft by limiting ingress and egress to one location, except for those few who have a special key allowing them to use another door or another elevator. At the University of Vienna everyone can get into the library either from the faculty suites or from the central hall, but nobody can get out without the special key in the possession of the library assistant on duty, copies of which are also supplied to members of the faculty. The library, incidentally, is so organized that the books appropriate to a particular Institute are almost all on the level on which that Institute is located.

The library is well supplied with materials from other countries, including the United States. It subscribes to a number of American law reviews, including all the leading ones (and some rather obscure ones). It has a set of the United States Reports (but none of the National Reporter System) and of *American Jurisprudence* as well as sets of both the current and the classic eleventh edition of the *Encyclopaedia Britannica*. It also has a number of American casebooks, though relatively few of recent date.

The top floor of the building, somewhat smaller than the floors below, is a veritable show piece—and rarely used. Faculty members refer to it as “The Club,” perhaps because its most prominent feature is a wet bar, but its main purpose is to provide a place for meetings of the faculty along with the representatives of the assistants, the clerical staff, and the students who by law must be included in the meetings of the faculty. The room is thus wide open, handsomely decorated with modern paintings and graphic adornments of the exposed structural building parts. It can also be used for lectures and recitals, but this use, too, is rather infrequent. It is another one of those instances in which people applaud a plan and, having done so, forget about it.

IV. ADMINISTERING THE UNIVERSITY AND THE LAW SCHOOL

Americans generally acknowledge that institutions of higher learning, be they large or small, are organizations that need to be managed. On most of our campuses, “Old Main,” or whatever it is called, is not only the hallmark of tradition but also the administrative center of the college or university. Europeans have generally been late to adjust to this fact
of life. The University of Vienna is no exception. Indeed, it was only last year that a modern pattern of administration was proposed, and in the face of strong opposition from defenders of century-old traditions, may or may not be enacted this year, more likely with an effective date that barely skirts the end of the millennium.

For centuries, Vienna, like other European universities, elected its principal official, the rector, from within for a one-year, nonrenewable term, as it also did with its deans. In practice, a system of rotation evolved within the university. Wearing the rector’s or dean’s insignia and being addressed by the ancient titles of “Magnificence” and “Spectability”22 were marks of honor, and every ordinary professor aspired to hold the office however briefly.

After World War I when the bureaucratic tasks began to be burdensome, the practice arose of having the rector or dean serve a second year, as “pro-rector” or “pro-dean,” to provide assistance and relief to the incumbent. The notion that there was some merit in having a qualified and competent administrator remain in office was not only unknown, it was unthinkable. Our Viennese colleagues are invariably astonished when they learn that “Jimmy” Green served as dean of the University of Kansas law school for forty years!

Actually, they also have begun to move in the direction of longer terms and greater responsibility. Nowadays, when a faculty member at the University of Vienna agrees to accept the nomination for dean, he knows that this is a commitment for four years: one year as “pro-dean” (dean-designate), two years as dean, and then one year as “pro-dean” (past dean). The same is true in the case of the rectorship. Thus, not only is greater continuity assured but there are also always two persons available to share the burdens of the office.

Some of these burdens are more time-consuming than they are taxing. Earlier it was noted that the school of law in Vienna graduates between 250 and 300 students a year. But when these students are awarded their degrees, it is done in relatively small groups, usually between forty and fifty. The ceremony is preceded by the signing of each individual diploma by the rector in his office after he is fully robed. The dean and the presenter attest as witnesses, and an attendant, also in pseudo-medieval garb and using sealing wax and a candle, solemnly affixes the university seal. The ceremony itself takes roughly one hour and is presided over by the rector and the dean of the respective school. An “ordinary” (full) professor, speaking in Latin, presents the candidates to

22. Austria may be one of very few countries that still retains these hoary titles. It is customary for professors of the same rank to address each other by the familiar “Du” rather than the formal “Sie.” To hear the rector being called “Du, Magnifizenz”—as Heller overheard it on several occasions in 1985—may strike the uninitiated as highly incongruous.
the rector. The dean, also speaking in Latin, confirms that the presentation of the candidates has the approval of the faculty and follows this by a brief address, in German, to the graduates. The rector accepts the list of graduates (again in Latin) and then, in German, delivers a fairly long speech of congratulations that winds up with a charge to conduct themselves as proper products of the university and a credit to their respective profession. A robed attendant then presents the university mace to each candidate in turn. The presenting faculty member reads the candidate's name and asks him, in Latin, to place his oath fingers on the mace and swear loyalty to alma mater and commitment to his profession. The candidate responds with the Latin word “spondeo,” or “I promise.” When all have taken the oath, the rector and his party depart, and the audience closes in to congratulate the new Magisters or Doktors.

It is customary for the families to follow this by a visit to one of the better restaurants. There are no “class” activities and, until very recently, no attempt was made to organize alumni. Only when the fiftieth anniversary of the “graduation” is reached is there any observance, but it consists mainly of the repetition of the oath-taking and is commonly done on an individual basis.

Because the rector has to participate in the ceremonies for candidates from all the schools, he has a graduation ceremony virtually every day unless he is out of town or otherwise committed. The dean of the law school may have a graduation every other week. But these are not the only ceremonal functions requiring the time and attention of university administrators. Vienna has had a socialist city government for sixty-three of the last seventy-five years, but pomp and circumstance continue to be important. Being the rector or a dean places one squarely in the middle of this sometimes bizarrely baroque lifestyle.

Modernity and technology, of course, cannot be denied. Accountability is as much a part of university life in Vienna as it has come to be in Kansas and every other state of the union. With accountability there comes conflict over not only goals but also what should count as progress toward those goals and how such progress should be measured. The Austrian university is, in this respect, no different than its American counterpart: Computers, copying machines, and paper galore are everywhere. One former dean told Heller that he was glad to have served his turn before the records had been computerized: “Now there is too much that can be known.”

23. When Heller attended such a ceremony in 1985, the rector misspoke and congratulated the candidates (all, of course, about to become Masters of Law) on having attained the doctorate in philosophy.
Another development that has increased the dean’s burden has been the legal requirement that the assembly authorized to make decisions (or recommendations) for the faculty must consist not only of all tenured members of the faculty but also elected representatives of the assistants, the professional and clerical staff, and the students. With this diversity of representation there is a tendency to move most contentious questions to these assemblies where there is usually more confrontation than cooperation. Our Viennese visitors are always surprised when they come to one of our faculty meetings and find that the agenda is commonly disposed of in a matter of minutes, notwithstanding that about one third of our assembly consists of student representatives. Heller attended the one faculty meeting of the law school that was held during his stay in Vienna: It lasted four hours, and except for a few routine matters, not a single item was brought to conclusion.

This is doubly striking if one bears in mind that the truly important issues—the curriculum, budgeting, and the allocation of positions and other resources—really are decided by the Parliament or in the ministry. Under the pending proposal for further reform, also prepared in the ministry and eventually to be passed by the federal legislature, both the university and each of the schools is to receive a full-time, permanent administrator with his own staff. Considering that many members of the faculty, especially the more senior ones, apparently continue to believe that it is they who make (or at least should make) the critical decisions, it is not surprising that they oppose this proposed move to more professional management.

V. THE FACULTY

Like everything else in the universities of Austria, the status and conditions of the faculty are set by laws passed by the federal parliament and enforced by the federal ministry of science and research. Historically, each Institute had only one professor, the director of the Institute who had total control over the resources, both human and financial, allotted to the Institute. He could, if he so wished, bring in other persons to teach, but only he was the professor and he virtually owned his Institute (often better known by his name than its formal title).

After World War II, quite a few university professors were barred, at least temporarily, from teaching because of their Nazi pasts, and in the course of official inquiries into their records, the public became aware of the dictatorial powers exercised by some senior professors. Therefore, Parliament sharply curtailed the control held by Institute directors and provided for several additional positions at the level of “ordinary” (full) professor in each Institute. Subsequent laws, especial-
ly those adopted in 1972, mandated the inclusion in the Institute's decisionmaking not only of lower ranked, or "extraordinary" (associate), professors but also of representatives of other elements of the university community, with due regard for democratic procedures. The full professors, not surprisingly, opposed this diminution of their powers, but the ministry was adamant.

There are two ranks of tenured faculty members, "ordinary" and "extraordinary" professors. The law declares them to be civil servants though in a category by themselves. One is given one of these two ranks, by a complicated procession in which the ministry has the last word, by being appointed to a position that carries the respective rank.

The title "professor," however, is not limited to persons teaching at a university. It is routinely awarded (by the ministry of education and culture which supervises all pre-university education) to secondary school teachers who have earned a terminal degree or have served for an extended period of time. It also may be granted by the Federal President to authors, artists, actors, musicians, and even journalists. Once earned it becomes a part of that person's name, and in any official proceeding the person can legally demand to be addressed by that title. One who holds the title by virtue of a teaching appointment at a university therefore will take pains to stress the university connection. Calling cards will read "Univ. Prof.," with either an "o." or an "ao." preceding to inform the recipient that one is either an "ordinary" or an "extraordinary" professor. Stationery, directory listings, wedding invitations, and obituaries will reflect the same distinction.

Full professors in Austrian universities are comparatively well paid. In 1985, when Heller gained some information on salary levels, senior members of the Vienna law faculty were being paid about fifteen percent more than those in comparable positions in Lawrence, Kansas. After-tax income, however, lagged by about five percent. Most full professors at the Vienna law school appeared to be almost constantly flying off, driving off, or taking a train to some meeting or consulting task. The law does not deny them the opportunity for such additional income, and many of them pursue it with vigor. It is common practice for professors to make money off the text of their lectures, either in photocopy format or as books. Various government agencies provide outside income for law professors, and with the "Great Coalition" of Socialists and People's Party returned, only those politically aligned with one of the three or four minor parties lack connections to secure such appointments. The presence in Vienna of numerous international
organizations provides a comparable, well-remunerated source of additional income.

In a practice that goes back to the earliest days of university legal education, courts seek the opinion of learned jurists. Just as practitioners' fees are set by law, so is the compensation to be paid for the rendering of a jurist's opinion—and full professors are paid substantially more than those in lower ranks.

In fact, the lowest ranking but numerically largest group of teachers, the Universitätassistent (hereafter simply called "assistants"), receives a salary that, if it were paid on an hourly basis for forty hours a week, is only a trifle more than what the University of Kansas School of Law is allowed to pay those of its students who are employed as research or teaching assistants. But Austrian assistants have, at least, the master's degree, and because they aspire to university teaching as a career, most of them are holders of a doctor's degree. Their appointments are for periods of between two and four years during which time they are removable for cause only. But the number of hours they work and the duties they may be asked to perform are within the discretion of the full professors to whom they are assigned. That discretion may also affect the assistant's ability to make progress toward the major goal, which is to prepare for and attain the right to teach within one's field of specialization (Lehrbefugnis). Because the process, called Habilitation, requires the submission of a major piece of research, how much time remains to the assistants after they have met the demands of the

24. The republic and the city invested large amounts of money to erect on the left bank of the Danube a huge complex ("UNO-City," with a direct subway connection into the center of the city) to house numerous agencies of or related to the United Nations.

25. Perhaps the most pronounced contrast between (Anglo-American) common law and the civil law system prevalent in most countries on the European continent is that the common law relies most heavily on what courts have done while the civil law turns first (if the code of law does not answer the question) to what jurists, i.e., professores, have written. The major aim of an academic lawyer in a civil law country is to become recognized as the author of a book on which courts rely. All other forms of publication fade as reputation builders when compared to an acknowledged treatise.

This status is most frequently accorded to full-time law teachers but also may go to others. Thus, as Peck sought to gather information about Austrian water law, he was told repeatedly that he should seek an interview with Ministerialrat Dr. Harald Rossmann. Ministerialrat, literally "counsellor to the minister," is a title generally given to civil servants of about the second or third highest rank. In the United States Dr. Rossmann would be called a bureaucrat. In Austria, his authorship of the authoritative commentary on water law earned him the right to teach the subject, first as a Universitätadozent and then as an "extraordinary" professor, and he is widely sought after as an established expert. But to find him Peck had to go to the Ministry for Agriculture and Forestry of which the Austrian Water Authority is a part.
supervising professors may actually determine whether or not the assistants reach that prized objective.\textsuperscript{26}

Once \textit{Habilitation} has been attained and the faculty of the Institute so recommends, the assistant may be granted the title \textit{Universitätsdozent} (our word "docent") and with that a small raise in salary. The status, however, remains that of an assistant until the term of the initial appointment has expired. Once that has occurred, the \textit{Frau} or \textit{Herr Dozent} may be continued in a loose affiliation with the university with pay dependent on the number of hours actually taught.\textsuperscript{27} What the \textit{Dozent} has to do now, assuming he is still determined to follow an academic career, is to find an appointment as an "extraordinary"—somewhere. The more languages one has mastered, the larger, of course, is the market in which one can seek a place. Differing from the restrictive policy followed in the United States, most European countries, whether they are members of the European Union or not, provide for the automatic grant of citizenship to any citizen of a reciprocating nation who accepts appointment as a university professor. The University of Vienna law school includes several full professors whose resumés list earlier appointments at other universities and in other countries and several others whose accented German clearly marks them as natives of northern Germany.\textsuperscript{28}

The number of vacancies in professorships is small and, worse yet, unpredictable. In the meantime, the \textit{Dozent} may find it necessary to seek a livelihood elsewhere. A fortunate few may land positions in legal or law-related research.\textsuperscript{29} Others may enter apprenticeships in

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\textsuperscript{26} Heller observed that of the two pairs of assistants in the office suite where he worked one pair was constantly complaining about the multitude of (often petty) chores that prevented them from making progress in their own research while the other pair frequently expressed appreciation for the support given them by their professor, especially his practice of always asking about their available time before he requested any particular service from them.

\textsuperscript{27} Until 1966 the title expressed the lack of any entitlement to a position: it was \textit{Privatdozent}, literally a private person who does some teaching.

\textsuperscript{28} Heller's counterpart in the exchange, Benöhr, is a good example. A native of Hamburg in the far north of the Federal Republic of Germany, he had served as an "extraordinary" at the University of Paris, was then "called" to a full professorship at Fribourg in the French-speaking part of Switzerland and a few years later to Vienna. While he was in residence in Kansas, he accepted another position, this time in Frankfurt on the Main. This brought him back to the country of his native citizenship. Along the road he had been a citizen of France, Switzerland, and Austria (the grants of citizenship typically lapse on a change of position). His case may be extreme but well illustrates the system.

\textsuperscript{29} The practice of concentrating research activities by discipline in separate, government-funded institutes was initiated in Germany before World War I with the creation of a group of Kaiser Wilhelm Institutes, renamed after the war in honor of the Nobel laureate physicist Max Planck, which greatly multiplied after World War II. More recently, the Austrians have copied this pattern by the creation of research institutes named after another eminent physicist, Ludwig
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law firms or in the judiciary. Some of these may eventually seek a professorship; the majority cannot afford the extended wait for such an opportunity.

One further observation about the faculty: Although it is customary for members of the faculty to be cordial and informal with one another, there is very little social interaction among them. Heller recalls from his student days in Vienna that social life was an important aspect of the academic community, but this was in the days when most members of the faculty lived in one of the many ornate apartment buildings near the university's main building. In the aftermath of World War II new housing was available only in the more remote suburbs. Today, some members of the law faculty spend an hour or more each way commuting from their homes to the university—and this allows for the savings in time provided by recent and very effective improvements in the rapid transit system. The resulting social separation of the faculty is, of course, no different than what one sees in urban universities in the United States but very different from what one finds in a place such as the University of Kansas. Austrian visitors invariably comment on the fact that a large part of the KU law faculty lives within walking distance of the law school, and thus also of one another, and the effect this has on their relationships to one another.

VI. THE CURRICULUM

The most striking difference between the law school curricula of the two schools in the exchange program is the emphasis on end-of-course examinations. While at the University of Kansas and all other law schools in this country most everything rides on examinations the students must take at the conclusion of each individual course, these examinations are rarely used in Vienna. As established by federal law, the curriculum of the Austrian law schools is divided in two parts, an introductory two semesters followed by six semesters of substantive

Boltzmann. Wilhelm Brauneder, professor of Austrian legal and constitutional history and the second Viennese law professor to come to Kansas under the exchange, heads the Boltzmann Institute for international cultural and economic relations (another example of multiple office holding by a full professor).

30. As is true in most countries outside the United States, the several branches of the Austrian legal profession are distinct from one another and there is little opportunity for crossover. Only at the level of the highest courts (and there only in the Constitutional Court and, to a lesser extent, the Administrative Court) will anyone other than a career judge be named to a court nor is it customary or, for that matter, practicable for a judge to relinquish the bench for private practice.

31. The informality manifests itself in the common practice of using the informal second person pronoun ("Du") and the first name instead of the formal "Sie," title and last name.
subjects. The first segment ends with the “first diploma examination,” and except for a possible grace period of an extra semester, this examination must be successfully passed before one may proceed to the second part of the curriculum. That portion of the curriculum (and the master’s degree program) culminates in the “second diploma examination.”

Differing from the practice that had prevailed for over a century, the examinee no longer faces a trio of persons whose identity was not known to the student until he entered the examination room. Moreover, only a portion of the first examination is likely to be an oral examination. By and large, however, while the student will know the name of the examiner, there is little opportunity for “academic forum shopping.” But the law school’s student newspaper actually will encourage students to “call your examiner and get him to know you.” It will come as no surprise that the faculty does not approve of this practice and rarely engages in conversation with such callers.

Considering that the American law student is likely to take ten written examinations in the first year, each typically scheduled for three hours—and that most students perceive of this as a highly stressful requirement—the brief time allowed for oral examinations in Vienna would seem even more stress-inducing. There are four parts to the first diploma examination: Introduction to Law and Legal Method, Roman Private Law, Austrian Legal History, Introduction to Economics and Economic Policy. On each of these parts, usually three to five students are examined together by one faculty member—for one hour.

The examinations are open to the public, and the classrooms where they are held are usually filled with students most of whom will have to take the same examination, perhaps before the same examiner, in the near future. Peck attended an examination in Austrian Legal History during his stay in Vienna in 1992.

Five students, two women and three men, were arrayed in the front row of the classroom facing the examining professor who proceeded to question the students—whom he evidently did not know. He began with the student on his right, asking a fairly general question. He followed this with more specific questions which he continued until the student no longer had the answers. He repeated the process with the other students. Because only about half the time had elapsed when he had completed the round, he then skipped around, asking some questions that could be answered briefly, others that required longer responses. He became more animated as the test continued, sometimes exclaiming “richtig!” (correct) or “genau!” (exactly), at other times grimacing, once even commenting that any junior high student would have known the answer to the question he had asked. At times he would punctuate his language with his finger or fist on the table while
at other times he joked pleasantly, all the time trying to educate, to draw out a correct answer, or to explain in more detail the answer to the question the student had not handled too well.

In short, this oral examination resembled a typical American classroom, under the direction of the classic Socratic questioner. But the similarity is superficial. The American student knows that a wrong answer does not mean failure in the course; the Austrian student has, quite literally, his future career at stake. The results of the examination are announced at the end of the hour. In the case of the test witnessed by Peck, two of the five students were informed that they had not passed. Failure on any of the four parts of the diploma examination constitutes failure on the examination as a whole. The unsuccessful candidate may try a second time a semester later but few do: They had never really expected to pass.\(^{32}\)

The six semesters that comprise the second segment of law study in Austria include eight required subjects: (1) *Private Law (contracts, family law, property, torts); (2) Civil Procedure; (3) Commercial Law and Negotiable Instruments; (4) *Criminal Law and Procedure; (5) *Constitutional Law and Theory; (6) *Administrative Law; (7) International Law and International Organizations;\(^{33}\) (8) Labor Law and Welfare Law.

In the subjects marked with an asterisk the examination is oral, with the only distinction being that the students are almost regularly examined in groups of three. In the other four subjects the examination is partly oral, partly written, with the written part usually handled in groups of six. In addition, each student must elect three other subjects, from a rather complex list, on which he also will be orally examined. Thus, the second diploma examination has eleven parts—but one has to keep in mind that this covers lectures one has supposedly attended over a period of six semesters.

There are two other requirements that must be satisfied before a student is awarded the *Magister iuris*. One is a diploma thesis which, in the words of the law, is to “demonstrate the success of the student’s scientific preparation” and must have been accepted before the student may take the last of the eleven part examinations of the second segment of study. In the newer law schools this is a “take-home” exercise. In

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\(^{32}\) Because the course of lectures offered by the visiting professors from the University of Kansas is, of course, wholly elective, no examination is given. However, students in Vienna will sometimes request an oral examination and a statement certifying to a passing result. Both Heller and Peck received and acceded to a few such requests, generally following the model described in the text but refraining from its extremes.

\(^{33}\) The Law of the European Union is to be added to this section once Austria is formally admitted to the Union, presumably on January 1, 1995.
Vienna and Innsbruck it resembles a course examination in an American law school, except that only one question is asked (which has been posted a month earlier). This is a requirement introduced at the time of the 1978 curricular changes. The students seem to like it; the faculty members mostly do not.

The other requirement is of old standing though its name was changed in 1966. It was called a "pro-seminar" but now goes under the name of Pflichtübung (obligatory exercise). In Heller’s days as a law student in Vienna every student had to enroll in a pro-seminar in each of the subjects covered by the first state examination and in about half of the subjects covered by the second state examination. This meant that one was expected to attend once a week at what was really a quiz session conducted usually by a Privatdozent and having about twenty students. In practice, the Herr Dozent distributed a schedule and one usually went to the session just preceding the one in which one was scheduled to be quizzed.

The 1966 reform justified the change in the name of this exercise as being indicative of its required nature while, at the same time, it reduced the number of required exercise sessions one has to complete. In the first segment a student must complete two such enrollments, in the second part, four. The student selects the subjects in which he wishes to satisfy this requirement.

In spite of the law’s intent, it does not work that way. Especially in the first segment, the large number of students enrolled and the limited number of faculty members (even with Universitätassistenten added) results in quiz sections of sometimes a hundred or more students. Some members of the faculty have argued for the discontinuation of this feature but the students see it as one of the few points of direct contact they have with the faculty and do not want to see it dropped.

Two final observations: (1) At first glance it would seem that the Austrian law student spends at least a third more time earning a law degree than does the American student. Here it becomes necessary to compare the two academic calendars.

34. Heller visited one such section, in Roman Law, with over 200 students assembled in the Juridicum’s largest lecture hall. About a third of the students called to respond did not answer to their names, presumably because they were absent.

Peck attended two sessions, conducted by different members of the faculty. One was almost informal, with the professor striding up and down the aisle, at times almost bantering with the students who remained seated as they responded to his questions. Although the faculty member conducting the other section also displayed humor and evidently sought to be agreeable, he required a student to stand as soon as he addressed a question to him and would fire follow-up questions at the student at machine gun velocity. The students being questioned were flustered and ill at ease. Evidently the two professors had rather different perceptions of how a Pflichtübung should be conducted.
The Kansas Board of Regents now requires that there be 150 instructional days in each year. The calendar in Vienna (again set by law) has the first semester (called the winter semester) starting on October 1 and ending before Christmas; the second (summer) semester begins on March 1 and ends on June 1. The days off during the semester are about the same in the fall: Kansas observes Labor Day and allows three days off at Thanksgiving; Vienna takes holidays on the national holiday (October 25) and on two religious holy days, All Saints (November 1) and All Souls (November 2). In the second semester, Kansas students have six days off (Martin Luther King Day and five days of the spring break in March); Vienna gives two weeks off at Easter (the week before and the week after Easter Sunday), plus May 1 (Day of Labor) and the religious holy days of Ascension, Pentecost Monday, and Corpus Christi. Even a casual computation indicates that the Vienna student has about a third fewer class days than does the Kansas student. In addition, classes do not meet with the same frequency in Vienna as they do in Lawrence. A course may be announced to have 22 hours—in the semester. Most courses observed by Heller were meeting once a week, and it was by no means unusual for students to arrive at the classroom only to find notice posted informing that the class would not meet that day.

(2) Examinations are bunched. January and June are set aside for this purpose and during these two months the members of the faculty are incredibly busy, many of them sitting as examiners for six to eight hours a day, five days a week. They tend to complain but would not have it otherwise. They are paid for each student they examine—another source of additional income.

VII. CONCLUSION

It was not the intent of the Authors of this Essay to offer a complete description of legal education in Vienna or to make evaluative judgments about it. Yet it is clear that we believe that something can be learned from looking at another system. Nobody who is engaged in the education of future members of the legal profession can fail to be aware that the process has been and continues to be subject to telling
criticism, and many members of the bar have more complaints than plaudits for American legal education.

What can be learned from a different system, a system that in some ways appears to be arcane yet has undergone change in the recent past and may be facing more change in the near future? It seems to us that what is of first importance is that neither system has yet fully answered the basic question of the purpose of legal education. European countries other than England are conditioned to have the answer to this question decreed by the law-giver. In the United States we have steadfastly refused to allow the government either exclusive or final power to decide on the content of education—at any level. Our observations about legal education in Austria include several references to the pervasiveness of partisan political views in a system that places this power in the hands of the government.

But apart from this overriding difference it is clear to us that, if nothing else, this exchange between a truly ancient European law school and one that has barely completed its first centennial provides challenges and opportunities for both sides. Whether they are limited to one individual’s questioning of some minor practice or procedure that he may have accepted as a given or extend to the broad issues facing education for the legal profession, we can only gain by the exposure, even if it does no more than to reduce the inherited belief that our way is the best—or perhaps even the only—one.

Neither Author of this Essay is prepared to provide a statement of the proper goals of legal education, and each would argue that neither system has yet resolved that issue. It is easier to dispute the effectiveness of the means chosen to work toward these as yet inadequately defined goals. It was our aim to provide enough of a description of how the law school works in Vienna; in the process, we trust, the point may have been made, if only by inference, that how things really work is often quite different from the way they were designed to operate. We are often reminded, in public as well as private discourse, that education is one of the most labor-intensive occupations in any economy. Whether artificial intelligence can in fact replace the human brain remains to be seen. For the time being at least, most teaching will continue to depend on humans in the role of teachers—and humans

in the role of learners. Whether they speak English or German or any other language, their reactions as humans will ultimately determine how the educational institutions they work in actually function. That, we believe, is the primary lesson that was reaffirmed for us during our respective visits to the city on "the blue Danube."