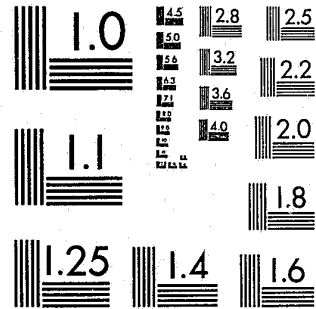


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ACQUISITIONS

SUMMARY REPORT

A COMPARATIVE ANALYSIS OF THE STATISTICAL
DIMENSIONS OF THE JUSTICE SYSTEMS OF SEVEN
INDUSTRIAL DEMOCRACIES

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PREFACE

A popular assumption prevails in the United States that we have a lavishly-funded justice system which must justify each additional employee and each new penny of appropriations for each of its components: courts, prosecutors, legal aid and the rest. Legislators continue to debate the appropriate level of resource commitment to courts and related institutions, with very little to guide them.

A study at the University of Southern California attempted to provide a comparative context for the controversy. Statistics were collected from the United States (mainly "proxied" by the State of California) and six analogous industrial democracies -- Canada, England-Wales, France, Italy, Sweden, and West Germany. These statistics were then analyzed for the purpose of deriving comparative indicators of manpower levels, governmental investment, and caseload for major components of the seven justice systems. The period studied was 1960 to 1973.

Study Methodology

The lack of readily available international statistical data concerning national justice systems made it necessary to utilize foreign consultants to retrieve and compile information about each of the countries selected for study. The United Nations Social Defense Research Institute in Rome, Italy, helped us to select and recruit six national consultants who included:

- . Robert Cooper, Attorney and Canadian Broadcasting Corporation
Ombudsman, Toronto, Canada
- . I.R. Scott, Director, the Institute of Judicial Administration,
University of Birmingham, Birmingham, England
- . Philippe Robert, Director of Criminological Research, The
Ministry of Justice, Paris, France
- . Harald von Kempster, Economist on the staff of the Ministry
of Justice of West Germany,
Bonn, Germany
- . Antonio Brancaccio, Chief of Staff, Ministry of Justice,
Rome, Italy
- . Anders Bruzelius, Chief Judge, District Court, Lund, Sweden

These consultants were asked to supply statistics for the years 1960, 1965, 1970 and 1973, in response to two mail questionnaires. Raw statistics received from the six foreign countries and the state of California were tabulated and refined.

The report is organized into three parts. Part I introduces the seven jurisdictions embraced in this study, comparing them in demographic and economic terms. Part II describes the justice systems of the six foreign countries and the state of California. Each of its chapters briefly describes the court system of that jurisdiction, its legal profession, and its non-judicial dispute resolution machinery, and finally, provides a statistical overview of the system. Part III consists of a comparative analysis of the statistical dimensions of the seven justice systems with individual chapters on the courts, the legal profession, and total justice system expenditures.

In spite of many statistical and definitional caveats, the study's results pose some interesting issues for U.S. policymakers to consider.

Part I -- INTRODUCTION

While a comprehensive review of the history, culture, and values of each of the countries studied is beyond the scope of this report, population characteristics and economic development -- two environmental variables which are particularly salient to a statistical study of legal systems--were examined.

We found that, although the nations exhibited differences among themselves in these dimensions, these were the differences of small degree that exist among industrialized societies; that the seven nations could be considered analogous for the purposes of this study.

Part II -- AN OVERVIEW OF DISPUTE RESOLUTION SYSTEMS IN SEVEN INDUSTRIAL DEMOCRACIES

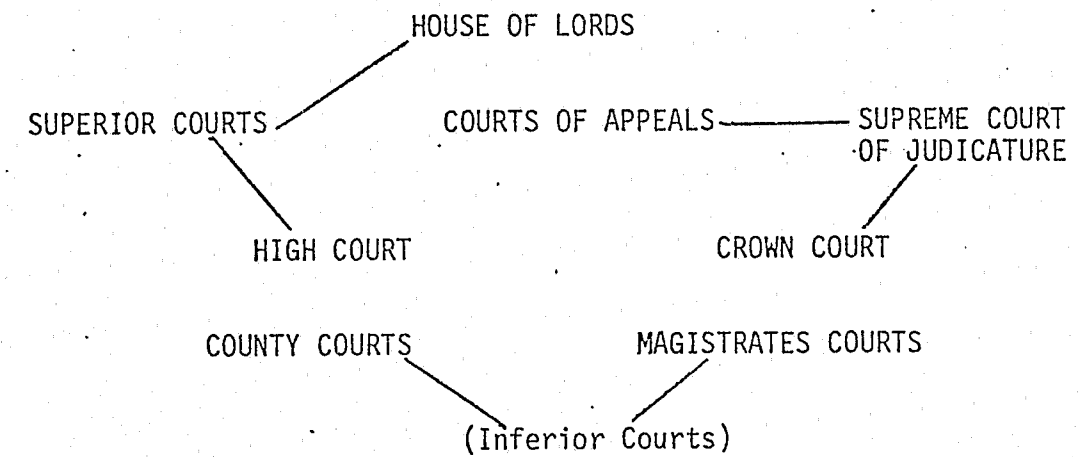
A. England and Wales

The United Kingdom is made up of three constituent territories -- England-Wales, Scotland, and Northern Ireland -- which have separate legal systems, each with its own bodies of substantive law, court structures, and judges. The Westminster Parliament, consisting of the House of Commons and the House of Lords, currently legislates for the entire United Kingdom.

Overview

The English court system consists of the Supreme Court of Judicature and two inferior court networks: (1) the county courts and (2) the magistrates' courts. The Supreme Court consists of the court of appeal, and two trial courts: (1) the high court (civil jurisdiction), and (2) the Crown Court (criminal jurisdiction). The county courts may be thought of as civil courts of limited civil jurisdiction. The magistrates courts deal mainly with minor criminal cases, although in certain instances they have civil jurisdiction.

The House of Lords, has judicial, as well as legislative, functions. It acts as an ultimate court of appeal from the legal systems of the three constituent parts of the United Kingdom.



Legislative changes have generally been made in the direction of centralizing the courts, reducing their number, and simplifying their structure(s). They have also rationalized procedures and protected the higher trial judges from 'unnecessary' work. Jurisdictions of the inferior courts have steadily expanded, and efforts have been made to improve appeal and review procedures from courts at this level.

The judiciary in England and Wales consists of the following professional full-time judges: (a) lords of appeal; (b) lord justices of appeal; (c) justices of the high court (senior trial judges); and (d) county court -- "circuit" -- judges. In addition there are professional part-time judges: (a) recorders and part-time lay judges and (b) justices of the peace -- stipendiary magistrates.

In addition to the above, England-Wales has two specialized courts: (1) the Restrictive Trade Practices court and (2) the National Industrial Relations court -- now, called the Employment Appeal Tribunal.

Non-Judicial Tribunals

Administrative Tribunals¹

Administrative tribunals were originally created in England by administrative departments to deal with disputes and investigations arising in connection with a social program or public dissatisfaction with a problem. Their major purpose is to relieve the courts, contribute specialized expertise, and provide the flexibility of not being formally bound by precedent. They deal primarily with protecting individual rights against authority established by statute (some of these--frequently called "domestic tribunals"--ensure voluntary-contractual adherence of members to standards of conduct established by a professional association, council, etc.).

There are only limited rights of appeal from the decisions of most tribunals. The courts only consider questions of law and jurisdiction--not the substance or merits of a decision in deciding appeals.

A Council on Tribunals was established in 1958, as a kind of oversight body to review the operation and procedures of the tribunals toward systematizing and standardizing the administrative law.

The Parliamentary Commissioner

In 1967, a parliamentary commissioner was mandated to investigate complaints of maladministration with no judicial remedy or potential appeal to an administrative tribunal, as well as to assist members of parliament with investigations.

Arbitration

Legislation permits the courts to divert a case to arbitration if judicial proceedings have been commenced in a dispute involving a contract containing an arbitration clause. This has the net effect of keeping civil cases out of the courts. Informal arbitration procedures have been developed by consumer and commercial groups. Schemes to deal with disputes involving code infractions have also been developed by certain trade associations to reinforce codes of practice established as an outgrowth

¹This section is based on: Hanson and Wallis "Delegated Legislation and Administrative Tribunals" in Governing Britain, revised Ed., 1975; and Borrie, Gordon, "New Developments in Procedures for the Protection of Consumers in England," in Colloquium on Judicial and Para-Judicial Procedures for the Protection of Consumers, Montpellier, 1975.

of the 1973 Fair Trading Act (e.g., The Association of British Travel Agents, The Croydon Chamber of Commerce).

Small claims arbitration procedures in the County Courts have also been operating since October 1973, whereby any claim up to £100 (\$260) may be referred to arbitration whenever one of the parties requests it.

The Legal Profession

It is difficult to distinguish concisely the respective roles of solicitors and barristers. Briefly, solicitors are office lawyers who deal directly with the public and act and advise on all legal matters. The extent to which individual firms of solicitors engage in civil litigation and criminal cases varies enormously.

Barristers do not deal directly with the public. Their clients are solicitors whom they are available to advise on special legal problems, particularly on matters relating to the pre-trial stages projected on anticipated civil litigation.

B. WEST GERMANY

I. The Judiciary

The judicial system in the Federal Republic of Germany, like that in the United States, contains a complex division of authority shared, on the one hand, by the "Bund" (Federation) and the eleven "Lander" (States); on the other hand, by a number of interacting levels or jurisdictions. The courts of the Lander include most of the courts of the Republic and are courts of both first and second instance. These courts apply to both Federal and Lander law.

In addition to the allocation of judicial power among the Federal and Lander governments, court authority is further divided into constitutional jurisdiction, five independent jurisdictions (subdivided into "Ordinary," "Labor," "Administrative," "Social," and "Fiscal") and a number of special disciplinary jurisdictions for government workers and members of certain professions.

The one Federal and nine Lander Constitutional Courts are the highest judicial authorities in the Federation, concerned with the interpretation and application of local and Federal Constitutional law and with the "guarantee" of rights to citizens of the Republic. The authority of the Constitutional Court, with its 16 full-time judges, is heightened by its separateness

from the other government organs in Federal budget allocations. Primarily its functions to : (1) review decisions made at lower levels with respect to legality, validity, and compatibility with the basic law; (2) resolve disputes between the Federation and the Länder; (3) protect individual rights under the Constitution; and (4) carry-out a variety of other miscellaneous activities, (e.g., impeach the President, scrutinize elections, lodge complaints against judges).

Special shipping courts decide disputes connected with the use of inland waters, and several different juvenile courts have jurisdiction over different kinds of juvenile cases. Cases of a "non-contentious" nature require the intervention of a public authority (e.g., probate cases, registry of property). These "non-contentious" matters are processed by the ordinary courts; however the work is performed primarily by magistrates' clerks rather than judges who only hear rare appeals from the decisions of the clerks.

Courts of Ordinary jurisdiction are classified by court level -- District (or Local), Regional, Higher Regional, and Federal. They serve as: (1) courts of first instance in all civil cases not within the jurisdiction of the County Court; (2) courts of appeals for the County Court; and (3) criminal courts for more serious criminal charges.

The Social and Fiscal divisions are both special branches of the Administrative jurisdiction, although they also remain autonomous. The Social courts have responsibility for disputes arising out of the administration of government benefit programs. The two-tiered Fiscal division was established to settle public law cases involving taxation. The Administrative division exists for the legal protection of the individual against governmental action. The Labor courts decide disputes arising out of relationships between employers.

In addition to these court jurisdictions, members of certain professions (e.g., medicine, law, armed forces) are governed and disciplined by "honor jurisdictions," which are analogous to the disciplinary courts described above.

II. The Legal Profession

In Germany, like in the United States, four major subgroups of lawyers are often distinguished: those in the judiciary; those in private practice; those in government service; and those in salaried positions with business or elsewhere in the private sector. However, in Germany, these cate-

gories imply a life-time occupational commitment. It is also interesting that, while the Anglo-American adversary system tends to place the judge in the position of passive umpire with the disputants' lawyers acting as both counselors and investigators, the German system allocates much of the investigative responsibility to the judge and minimizes the lawyer's role in the litigation process. Salaried lawyers represent a considerably larger share of the profession in Germany than in the U.S.

German judges are of two types: professional and honorary, although only the former are members of the legal profession. "Honorary judges" are laymen who serve in a court with the full voting rights of professional judges. They are common in all but the highest courts (e.g., Higher Regional Courts, Constitutional courts, etc.). They resemble jurors in the American system although they differ in that German "honorary judges" generally participate in decisions about legal as well as factual issues.

In contrast to the United States the inquisitorial nature of trials in Germany gives the public prosecutor the function of helping the court to reach a proper judgment, presenting both incriminating and exonerating evidence. The prosecutor sees that any sentence is carried out, and sometimes asks the court for an appeal.

Although the careers of prosecuting attorneys and judges are closely intertwined and sometimes interchangeable in terms of qualifications, prosecutors are civil servants (accountable to the Ministry of Justice) while judges enjoy an independent status.

Non-Judicial Dispute Resolution

Germany has created a comprehensive court system whose jurisdiction extends to virtually every category of disputes. Private arbitration boards provide machinery for cases which are voluntarily brought by the disputants. These boards possess no powers to make witnesses and parties appear before them and because of the consensual nature of their cases there is limited right of appeal to public courts -- only where there are some especially serious breaches of due process.

In the Hamburg city-state, the Public Office for Legal Information and Conciliation mediates and furnishes legal advice.

C. SWEDEN

Sweden's legal system, like West Germany's, is largely based on written law with judicial practice and administrative discretion playing a subordinate role. In contrast with the majority of continental legal systems however, Sweden has abstained from comprehensive codifications along the lines of the "Burgerliches Gesetzbuch" of West Germany or the "Civil Code" of France. Its statutory framework more closely resembles a separately enacted compilation of laws such as the California Code or the U.S. Federal Code. Like the legal systems of other Scandinavian countries, Sweden's can be viewed as a kind of "halfway house" between the continental European and Anglo-American systems.

Judicial System

Sweden has a three-tiered hierarchy of courts: the courts of first instance; the intermediate courts of appeal; and the Supreme Court.

The courts of first instance constitute a unified trial court system with virtually unlimited jurisdiction. District courts consist of a president or chief judge, one or more assistant judges, and a number of judicial trainees, deputy judges, and law clerks who have not yet qualified as ordinary judges, and "expert judges" and politically-elected panels of lay assessors ("namnd") who take part in the main hearings of specified classes of cases. The namnd (a legally-trained judge) serves primarily in serious criminal and family cases, assessing issues of fact and law.

The intermediate courts of appeal are available to re-try the evidence as well as to examine the legal issues in cases appealed from the district courts. With only minor restrictions, parties are entitled to appeal any judgment to an intermediate court of appeal. Most cases are decided by panels of four or five law-trained judges, although in certain types of cases involving expropriation and real estate, the bench includes expert judges.

The Supreme Court is the court of final instance, reviewing only issues of law as opposed to fact, and cases deemed to raise especially important legal cases. It is divided into three separate divisions which operate autonomously.

Legal Profession

Sweden is unique among the countries discussed in this report in that its legal profession does not have a monopoly over representation in the courts. In most proceedings, a litigant can be represented by a relative, a friend, or anyone else, although in practice, the majority of civil litigants do, in fact, employ attorneys. Members of the Swedish Bar Association must be citizens, at least 25 years of age, have passed a written examination, and have satisfied the Association's requirements.

The Swedish legal aid system was transformed in 1973 when the new Public Legal Aid law became effective, permitting clients to choose between representation by salaried lawyers employed at Public Law Offices, or private attorneys compensated by the government on a fee-for-service basis. The government has negotiated a national fee schedule with the bar for criminal and divorce cases.

The Swedish prosecution system is organized into local prosecution districts each headed by a chief prosecutor (including the Supreme Courts), ultimately responsible to the Chief Public (or State) Prosecutor, appointed by the Cabinet.

Non-Judicial Dispute Resolving Mechanisms

A wide variety of cases are handled outside the formal judiciary in Sweden. Among the most important of the non-judicial fora are the Swedish Ombudsmen, the Market Court, the Labor Court, the Administrative Boards, rent and tenancy tribunals, private arbitration, and the Public Complaints Board.

The Parliamentary Ombudsmen -- almost always prominent judges who are appointed by the Swedish Parliament (or "Riksdag") -- investigate reports of abuse by government officials and administrators, make inspection trips, and prosecute, through a court if necessary, any evidence of wrongdoing that might be found. The Antitrust and Consumer Ombudsmen enforce laws pertaining to restrictive trade and marketing practices, and improper contract terms. The privately funded Press Ombudsman handles violations of press ethics (i.e., what or how items have been reported by the press), seeking resolution through negotiation or by referring the case to the Board.

The Market Court is a special tribunal consisting of a jurist and four lay assessors of which two represent the business interests and two the consumer interests. If the Market Court finds harmful practices in the marketplace, it will attempt to negotiate changes.

The Labor Court handles all disputes between trade unions and employers organizations.

Administrative Boards (e.g., National Board of Health and Welfare, National Police Board, National Tax Board, Aliens Board, Psychiatric Board, and the Discharge Board) are concerned with such issues as: (1) the rights of individuals to welfare; (2) the revoking of drivers' licenses or (3) the consigning of alcoholics to special care institutions. Their decisions are not appealable to an ordinary court of justice and are taken up by a special system of administrative courts.

Rent and tenancy tribunals (1) conciliate, (2) decide or (3) act (if both parties so wish) as arbitration boards with no right of appeal.

The Public Complaints Board represents consumer and merchant interests and mediates consumer grievances by telephone or by an entirely written procedure.

D. FRANCE²

Introduction

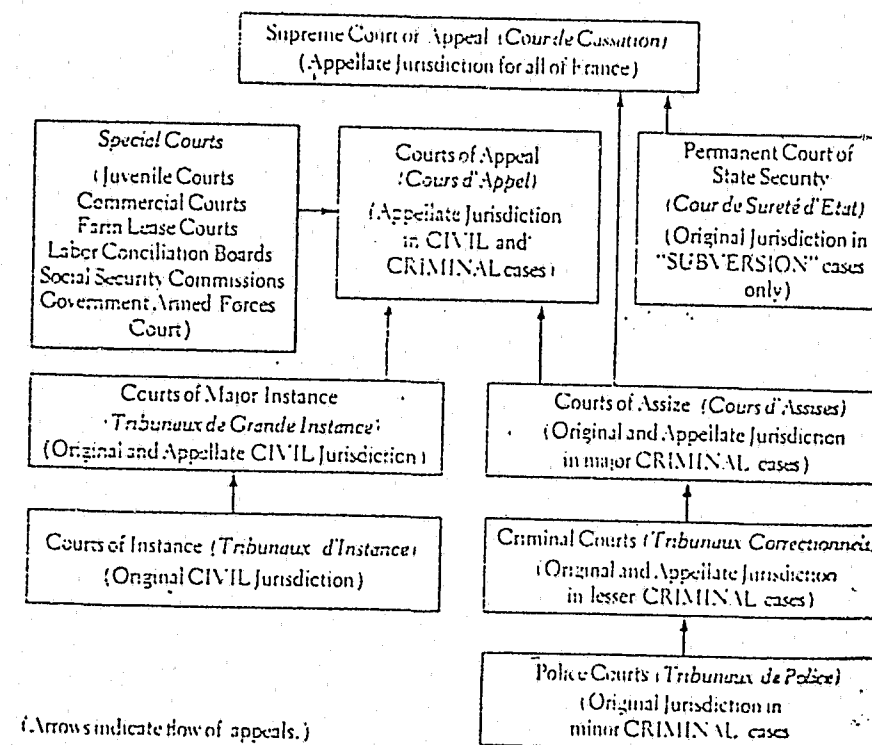
The French government, like the United States government, is organized into legislative, executive, and judicial branches. However, the interrelationships of these three powers, greatly differ in the two countries. The judicial branch in France, for example, has virtually no jurisdiction over the other two. The power of the French courts is further reduced because rulemaking is not a judicial function.

The French court system for the administration of justice is divided into two separate hierarchies: (1) the regular ("ordinary") courts, and (2) the administrative courts. In case of controversy, a conflict tribunal, headed by the Minister of Justice, makes a final judgement as to which of these two systems a case goes.

² This material on the French legal system, although based on a reading of several references relies heavily on two volumes: (1) Henry J. Abraham, The Judicial Process, Oxford University Press, New York, 1975, and (2) Rene David and Henry P. Devries, The French Legal System, Oceana Publications, New York, 1958.

In 1959, Gaullist government reforms -- augmented in 1963, 1965, 1967, and 1972 -- somewhat restructured the courts and provided a more geographically equitable distribution of specialized judges. In general, the court system -- organized on the basis of limited and general jurisdiction -- is pyramidal, headed by a Supreme Court of Appeal for both civil and criminal cases throughout France. As the figure below shows, some courts have either original or appellate jurisdiction, and some have both. Court the regional courts of appeal and the Supreme Court criminal and civil cases.

THE REGULAR (ORDINARY) COURTS OF THE FIFTH FRENCH REPUBLIC (1974)



(Arrows indicate flow of appeals.)

Civil Courts

Under the de Gaulle reforms, local courts of first instance were established to replace justices of the peace for all minor civil cases. These courts, of general jurisdiction, are a key unit in the judicial system and have considerably more power than the prior justices of the peace. Courts of major instance have unlimited civil jurisdiction in more serious cases.

Criminal Courts

In penal cases, the courts are organized according to the criminal sanctions applicable. The lowest courts are the police courts which deal with offenses involving punishment not exceeding 60 days imprisonment and/or small fines.

³ David and Devries, see note 2 supra, page 11.

Criminal or correctional courts deal with offenses involving up to five years of imprisonment and/or fines over \$40,000. Appeals are made to the Court of Appeal's Chamber of Correctional Appeals.

Courts of Assizes have original and final jurisdiction in all major criminal cases (e.g., murder). Three judges (always drawn from the Appeals courts) and a lay jury of nine members preside over these cases.

Permanent Court of State Security

The Permanent Court of State Security has original jurisdiction in subversion and treason cases with appeal to the Supreme Court.

In addition, there are a series of decentralized specialized courts for specific crimes or offenses, including The Juvenile Court, The Commercial Court, The Farm Lease Courts, The Government Armed Forces Court, The Social Security Commission, and The Labor Conciliation Board.

Courts of Appeal

The courts of appeal take appeals on the basis of the law and fact from the criminal assize courts, the Civil Courts of Major Instance, and the special courts. Appeal on the basis of fact is final in these courts. Further appeal can only be made on question of law in the Supreme Court of Appeal.

The Supreme Court is divided into six chambers, three of which handle civil cases -- personal and family status and property; additional chambers handle commercial, social, and criminal matters. It has final jurisdiction in all criminal and civil cases in points of law, not substance. Any case can be appealed before the Supreme Court, providing it was originally decided by a court of last resort, including the lower appeals courts.

Extra Judicial Review

The Constitutional Council (composed of ex-presidents and lawyers who are highly experienced in politics) can declare rules of procedures and organic laws unconstitutional, as well as other laws, treaties, "protocols" referred to it by the president of the republic, the prime minister, the president of the senate, the president of the national assembly or parliament.

Administrative Courts

In contrast to the United States where governmental administration is highly determined by the political party in power, a permanent, continuous

administrative structure governs France, irrespective of changes in regime. Although the government in France is highly involved in regulating the administration's activities, it is not the "ordinary" judicial courts which perform this function, but rather the system of administrative courts. This system is widely believed to provide inexpensively for comprehensive and broad judicial review, greater accessibility to the courts, more efficient settlement, and an equitable sharing among all citizens of the effects of governmental action. It consists of: (1) administrative tribunals and (2) the Council of State.

Administrative Tribunals are located in each national region which act as administrative courts of first instance. The average French citizen can bring his complaints against the administrative branch of government to one of these courts and find its decisions generally biased in his favor.

The Council of State -- a kind of constitutional "watchdog" originally organized by Napoleon -- not only has appellate but, also, original jurisdiction in certain important or "delicate" cases. Its litigation section functions as an administrative tribunal.

The Legal Profession

In 1972, a new system of legal aid was established, and toward this end, the organization of the legal profession was also reformed. A new profession emerged which integrated avocats and avoués (similar to the solicitor-barrister dichotomy). Its members -- all called avocats -- can act as agents for litigation, carry out procedural formalities, and present oral arguments. They can also give legal advice and prepare documents, although the legal counsel, as well as notaries, can continue to perform these functions.

Other legal professionals are: the court registrar/clerk, a civil servant who records minutes of hearings, judgments, and any judicial action; the marshall who serves the process, execution of judgments, and maintains order at hearings; and the notary -- a trained lawyer, uninvolved in litigation -- who performs many administrative functions in addition to those of the notary public in the United States, and who frequently functions as a family counselor and informal arbitrator of disputes.

In France, the Bench is not viewed as a reward for legal excellence. Law students decide at the outset of school whether to be, on the one hand, a judge, prosecutor, or in the Ministry of Justice, or on the other hand, a private lawyer. If they choose to practice law, they become avocats or notaires.

If they want to become judges, prosecutors, or ministers of justice, they are trained in a national school for jurists, for a period of 24 months, during which they are paid by the government.

Prosecution

The prosecution (Ministère Public) is parallel to the hierarchy of judges whose officials are agents of the Executive Branch and they are also appointed and classified as judges, since they are part of the magistrature under the review of the Minister of Justice. One or more representatives is assigned to each or criminal court of France except for the police court and lowest civil courts. In criminal cases, this office corresponds to the district attorney or prosecutor in the United States. In non-criminal proceedings, the prosecution represents community and societal interests, as opposed to those of the state.

Legal Aid

Prior to 1972 reforms, a person seeking legal aid addressed a petition to the mayor of his municipality or to the "procureur de la republique" (district attorney) attached to a given court who transmitted the petition to a legal aid bureau composed of avocats, avoués, retired judges, and representatives of the French Tax Administration. The whole institution of legal aid was mistrusted, partly because of unpaid, inexperienced lawyers who, it was felt, might not be motivated to do their best. The 1972 reforms attempted to deal with criticisms of that system -- its arbitrariness, inflexibility, financial burden on attorneys, and review by Legal Aid Bureau of cases' merits. Now, partial or total legal aid is granted by the Legal Bureaux established at the Seats of the Courts of Main Instance, Courts of Appeal, Supreme Court, and the hierarchy of Administrative Courts.

E. ITALY

The judiciary in Italy, unlike that in the United States, is a national system without regional, municipal or local courts. Furthermore, it is autonomous and separate from the rest of the government. All judges are appointed, promoted, and supervised by judges through the Superior Council of Magistrature, which supervises not only the judiciary, but also the public prosecutors who are also considered to be magistrates.

In general, the Italian system is divided into three major sections -- the Constitutional Court, the Ordinary Courts, and the Administrative Courts. Following the Fascist regime, which demonstrated the dangers of unchecked legislative power, the Constitutional Court was created to override unconstitutional legislation. It has original jurisdiction over actions initiated by the state against a region, a region against the state, or another region and any other conflicts between basic organs of the state.

There are five ordinary court levels in Italy. At the top are the courts of appeal (the Appeals Court and the Court of Cassation), followed by the Tribunal Court (somewhat equivalent to the U.S. Superior Court), the Pretore Court (somewhat equivalent to the U.S. Municipal Court) and the Conciliatori (similar to the U.S. Small Claims Courts). With the exception of the Conciliatori, most judges are career judges, who have been appointed to their posts by the Superior Council of Magistrature.

The Court of Cassation is the highest ordinary court of appeal, and is often compared to the Supreme Court of the United States. This court has an extremely heavy workload, since the constitution guarantees the right to have all previous proceedings reviewed by the court of cassations.

The Court of Appeals is divided into five major sections: the criminal and the civil courts of appeal; the assize court of appeal; and the criminal and civil juvenile courts of appeal.

The Tribunal Courts -- equivalent to the U.S. Superior Court -- are somewhat analogous to the superior courts in the United States. They constitute the court of first instance for serious civil cases involving more than 750,000 lire, and for all criminal cases for which the maximum punishment is more than three years of imprisonment. The tribunal is divided into three main sections -- the civil court, the criminal court, and the court of assizes. In addition, there are sections dealing with juveniles, agricultural problems, etc.

The Pretori -- equivalent to the U.S. Municipal Court -- are the courts of first instance for cases involving claims under 750,000 lire (about \$1100), and for criminal cases for which the penalty is no more than three years of imprisonment. The pretori also hear appeals for the conciliatori.

The Conciliatori -- equivalent to the U.S. Small Claims Court -- serve for prestige only and in fulfillment of civil duty. They are not paid for their services and need not be graduates of a law school. They are competent only in some civil cases which involve claims under 50,000 lire (about \$85).

Administrative Courts

Italy has initiated a system of administrative courts to review administrative acts that involve issues of "legitimate interest" (as opposed to violations of legal rights which are heard by the ordinary courts). It is divided into several sections which hear welfare cases as well as other cases against the national, regional, and other branches of government. The administrative court has more power over the administrative branches of the government than does the ordinary court which can only make declaratory judgments and monetary awards but it cannot render any kind of money judgment, except for the cost of using the court.

Most of the other specialized courts within the administrative court system are concerned with taxation issues.

The Legal Profession in Italy

The Bar

Graduation from law school and a year of apprenticeship in the office of a practicing "procuratore," qualify one to take the state examination required to practice as a "procuratore." In theory, the procuratore is a legal technician, who prepares procedural documents for the client. He is authorized to practice only within the district in which he resides.

The title of "avvocato" is automatically conferred on anyone who has practiced as a "procuratore" for six years; all regional restrictions are removed, and freedom to practice in all but the highest courts is granted. The completion of eight years in practice as an "avvocato" constitutes the only prerequisite to practice in the highest courts of the land.

Although free legal services to indigent parties are guaranteed by the Constitution, there is no public defender system per se. Instead, the entire burden is placed upon the legal and judicial professions to provide services.

Not to be confused with the prosecutor's function, state attorneys provide legal counsel to the state, state agencies, and governmental corporations. Their function is restricted solely to the role of attorney for the agency which they represent.

Notaries draft, execute, certify, and retain most legal agreements, public acts, deed transfers, wills, and contracts. They are respected and well paid by clients who pay for their services based upon a generous fee schedule set by law.

The Judiciary

In contrast to practice in common law systems, the prosecutorial function and the judicial function in Italy are combined into the single profession of magistrate. Although functionally separate, both prosecutors and judges are governed entirely by the Superior Council of Magistrates, and are, at least in theory, professionally interchangeable. The rationale for this is that the effective prosecutor in Italy must be impartial and free from governmental and political pressures. Membership in the judiciary is not considered the necessary culmination of a successful legal career, but rather an important bureaucratic and civil service position.

Since there is no jury system in Italy, it is not necessary to speed-up trials in the interest of reduced costs. Each case is allowed to develop over an extended period of time, with progress occurring in small increments. When the judge feels that the case has "ripened," he calls for the final summary statements from the parties concerned which are then considered by the full judicial panel during the adjudication phase of the trial.

F. CANADA

The Court System⁴

The political organization of the Dominion of Canada is federal, but the system of courts is different from the allocation of central-state

⁴ This section describing the court system is a composite drawn from the following references: J.R. Mallory, The Structure of Canadian Government, Macmillan: Toronto (1971); R.M. Dawson (5th ed. by N. Ward, The Government of Canada, Univ. of Toronto Press: Toronto (1970); The Canadian Law List 1974 (P. Egan ed.) Canada Law Book: Agincourt, Ont. (1974); Canada Year Book Statistics Canada: Ottawa (1972).

authority in the United States. Basically, there is one system of courts, provincial at the lower levels and federal at the higher levels.

The BNA Act confers to the provinces' "exclusive" legislative power over "the Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and Criminal Jurisdiction, and including procedure in Civil Matters in those Courts." At the same time, the federal Parliament was given exclusive power over criminal procedure over the appointment, tenure, and salary of the most important provincial judges, and it was given the power to establish the Supreme Court of Canada and any other courts "for the better Administration of the Laws of Canada." Taken together, then, the courts of Canada form a hierarchical structure.

Under the general power to create courts, Parliament set up two of major importance, the Supreme Court and the Federal Court. The Supreme Court consists of a chief justice and eight puisne judges. It exercises general appellate jurisdiction throughout Canada in civil and criminal cases. Appeals may be brought to it from any final judgment of a court of final resort in a province in any case where the value of the matter in controversy exceeds \$10,000.

Several special courts and boards are designated by statute as federal courts of record (e.g. the Court Martial Appeal Court, the Tax Appeal Board, the Tariff Board, and the Canadian Transport Commission). Finally, there are territorial courts of the Yukon Territory and the Northwest Territories which exercise both civil and criminal jurisdiction, as well as appellate jurisdiction over decisions of justices of the peace and police magistrates.

Provincial Courts

Provincial courts may be divided into three classes, depending on the tenure of their judges. The provincial superior courts all have a court of appeal consisting of several judges sitting together and courts of original jurisdiction in which a single judge will sit, sometimes assisted by a jury in criminal or libel cases. The appellate division will hear appeals from the trial division and from inferior courts.

Below the superior courts are the county and district courts. They hear civil cases where less than a certain amount is at stake (\$500 in Ontario in 1971) and in criminal cases may sit with a jury as a Court of General Sessions or without a jury as a Criminal Court of summary jurisdiction.

All provinces have created a variety of lesser courts. There are surrogates courts to deal with decedent's estates, family courts to handle divorce, custody, adoption and delinquency cases, and magistrates courts to hear petty offenses, conduct preliminary hearings, and issue warrants.

Because of the civil law prevailing in Quebec, its courts are somewhat differently organized than in the common law provinces. For example, there are two separate superior courts in Quebec, the Court of Queen's Bench and the Superior Court. The Court of Queen's Bench is both a court of appeal and the court of original jurisdiction in serious criminal matters. As a court of appeal, it hears both civil and criminal cases and may sit in more than one division. Quebec does not have county or district courts, but the Provincial Court has comparable jurisdictions. There are also four social welfare courts dealing with juvenile delinquency and children's welfare. There is a Court of Sessions of the Peace handling a variety of minor matters and, lastly, municipal courts established by city and town councils staffed by magistrates appointed by the provincial government.

The Legal Profession

Information about lawyers and the legal profession in Canada is sporadic. Data indicate that coproration law and litigation have become increasingly more important, estates less so. Large firms do a disproportionate share of lucrative commercial work, but undertake virtually none of the less prestigious, less-remunerative family or criminal law work. In a nutshell, the general picture of law practice in Toronto in 1970 does not differ significantly from the organization of practice in large cities in the United States. Nor are law schools in Canada remarkably differently from their American counterparts, except that there are few of them.

Legal Aid

Canada is committed to the proposition that legal aid should be provided to any person requiring legal representiaton which he cannot afford. Publicly-funded legal aid programs have been established in each province. Most programs provide relatively comprehensive coverage in civil matters.

The manner of delivery of legal aid services is a contested issue in Canada as it is in the United States. Three provinces (Nova Scotia, Saskatchewan, and Prince Edward Island) rely almost exclusively on clinics or community legal

centers which employ staff lawyers. Alberta, New Brunswick, Newfoundland, and Ontario rely on a judicare model; services are provided by private lawyers selected by the client whose bills are then paid by the legal aid plan.

Non-judicial Dispute Resolution Mechanisms

Non-judicial resolution by government agencies of private disputes is most common in Canada in consumer and civil rights matters. In British Columbia, the Office of the Rentalsman has been granted exclusive jurisdiction to process landlord-tenant disputes (with appeal to the courts possible).

Box 99 is the popular title of the consumer complaint service of the federal department of Consumer and Corporate Affairs. Originally a centralized service in Ottawa, Box 99 now channels complaints to regional offices across Canada for processing.

The regionalized British Columbia Service Centers are a provincial counterpart to Box 99, which, if mediation of consumer complaints fails, give the consumer advice about pursuing legal remedies, cease and desist orders through administrators of the Trade Practices Act, and on occasion, initiate class action suits.

Human Rights Commissions have been established for complaint resolution and education, focussing on discrimination in housing, employment, and public facilities.

Ombudsmen having the power to investigate decisions of provincial departments, agencies, and employees have been established in eight provinces. The ombudsman is able to correct improper official action through informal investigation and negotiation with the concerned officials, although more formal processes are available. Table XIII summarizes the disposition in 1974 and 1975 of complaints to ombudsmen in seven provinces. From the consumer perspective, the main defect in ombudsmen operations is their limited jurisdiction.

G. THE COURT SYSTEM OF CALIFORNIA

The judicial system of the United States contains a complex federated network of courts which operate alongside a growing number of unique and independent state court systems for which they also function as appellate forums.

The fact that federal courts in the United States may, under certain circumstances, function as courts of first instance distinguishes them from those in other nations which exist only as forums for appeals at the apex of the court hierarchy.

The legislature's primary source of control over the judiciary lies in its ability to create laws and allocate monies.

The Federal Court System

The three-level federal hierarchy of courts consists of district courts, courts of appeal, and the Supreme Court. The eleven area U.S. courts of appeal -- in contrast to the U.S. Supreme Court -- must hear all appeals brought to them from district courts. The United States Supreme Court usually hears only cases which raise "special and important issues" (under a writ of "certiorari").

In addition to these three types of courts, there are special federal courts which usually sit in Washington, which handle cases involving fiscal or excise matters, patents, claims which involve the liability of the state, and problems in areas and territories of the United States which do not have their own court systems.

The Judiciary of California

Because of the dearth of available aggregate data concerning state judicial systems in the United States, it was decided to study the unusually progressive judiciary of California for the purposes of this report, since, if California compares unfavorably with the judicial systems of other developed nations, changes throughout the other United States might be strongly indicated.

California's judiciary consists of a four-level hierarchy of courts, headed by the Supreme Court, which generally only hears issues of great legal or public interest, and five regionalized courts of appeal. Below are three types of trial courts: Superior courts (one for each of the urban judicial districts which have jurisdiction in civil cases over \$5,000 and certain criminal cases; municipal courts (one for each county) whose jurisdiction involves lawsuits up to \$5,000, misdemeanors with a one-year maximum sentence and small claims not exceeding \$500; and justice courts which serve rural judicial districts with a population of less than 40,000. A "watch dog" judicial council is constitutionally established to: make recommendations for the improvement of the administration of justice and the courts.

In addition to the basic courts, there exist special departments to speed-up the flow of cases (e.g., traffic tickets and uncontested divorces). Similarly, small claims courts -- part of municipal and justice courts -- deal only with claims under \$500. Juvenile courts -- part of the superior court system -- have jurisdiction over minors in criminal reform, probationary and dependency matters.

In the United States, judges play an extremely powerful role in the administration of justice, particularly with respect to judicial processing largely because of the judiciary's independence from other branches of government, as well

as the independence of individual courts from other similar courts. They are also made powerful by their conscious interpretation of law, and, thus, policy-making, which puts them in a stronger position to influence societal norms and change than their counterparts in countries which are based more on written law.

Criteria for holding a judgeship vary widely by type of court. Strangely enough, the least stringent are for federal judgeships which have no residence, educational or professional requirements. Judges in California (and several other states) are chosen by non-partisan elections, and then selection has developed into a system of life term appointments because of the governor's right to choose judicial successors and the overwhelming success of incumbents in winning non-partisan elections. Requirements for holding a judicial position vary generally by the type of court. Judges of superior and appellate courts are required to have been members of the state bar for at least 10 years. Municipal court judges need only five year's membership in the state bar to hold office.

Legal Profession

According to California's Constitution, all lawyers are required to be members of the State Bar of California which requires completing at least three years of legal training and passing a stringent three-day bar examination historically failed by at least 50% of its applicants. Because of its mandatory membership, the state bar has been able to wield a powerful force in state affairs. Additionally, the State Bar exercises considerable power in choosing judges.

Public Prosecutors and Defenders

Every level of government in the United States and California has its own legal agents, and, thus, the range of operations performed by public prosecutors varies widely. Five different types of prosecutors exist within California: district attorneys who decide whether or not to press charges against arrested individuals; county counsels and city attorneys who provide defense, opinions, and advice in civil suits involving local government; The attorney general who provides services to other prosecutors who have their own power base, while also performing his/her own role as prosecutor in appellate court criminal cases and defender in claims made against the state in both federal and state courts; and The U.S. Attorney who integrates the roles of district attorney and governmental counsel handling a large number of civil cases involving the federal government.

Some other California "courts" outside the formal judiciary are: a pool of hearing officers used as judges by the numerous administrative agencies which license and discipline professional and business people; The Unemployment Insurance Appeals Board, which handles appeals of decisions by local unemployment offices;

The Department of Alcoholic Beverage Control which can suspend or revoke licenses for violations of laws relating to the sale of alcoholic beverages; The Department of Consumer Affairs which is charged with "examining, licensing, and regulating over a million professionals in California in over 100 diverse occupations, including a Division of Consumer Services which handles consumer complaints, research, legislation, and the dissemination of educational materials to the public and other state agencies; the San Jose Ombudsman's project established to handle disputes affecting police-community relations.

Public Legal Services: California and the United States

Between 1960 and 1973, legal services in California, as well as in the entire United States, grew rapidly. In both civil and criminal matters, there was a growing awareness of the inequity existing within an adversary system of criminal justice and a civil justice system which have relied heavily on the ability of litigants to pay lawyer and court fees. Supreme Court decisions in criminal cases which had restricted legal assistance to felony cases tried in federal courts were consistently overturned between 1960 and 1973.⁵ Aside from the demands of these two groundbreaking decisions, a series of recent court decisions have required that indigent defendants have counsel from the time of arrest to release.⁶ The employment of legal defenders has also experienced a rapid growth, and California appears to have a highly disproportionate share (approximately one-third) of all public defenders in the United States. Prior to the 1960's, civil legal assistance was generally available only from private agencies, mainly legal aid societies which permitted legal assistance only to indigents. In 1966, however, a federally-funded legal assistance program was organized within the Office of Economic Opportunity (OEO) to provide legal services for the poor throughout the United States.

Despite the substantial growth of legal services since the 1960's, a number of significant problems remain, including the failure of funding to keep pace with inflation. A crucial problem confronting legal services is the excessively low economic eligibility standards for its recipients, which have not been adapted to inflation so that many people cannot afford the cost of private counsel without access to "indigent" legal assistance.

⁵ 372 U.S. 335 (1963); 407 U.S. 25 (1972).

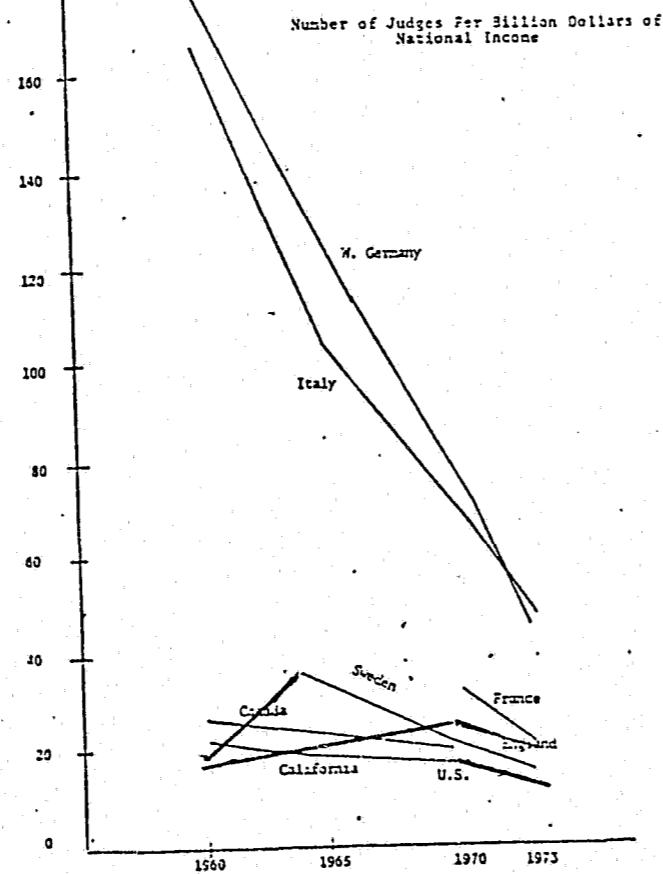
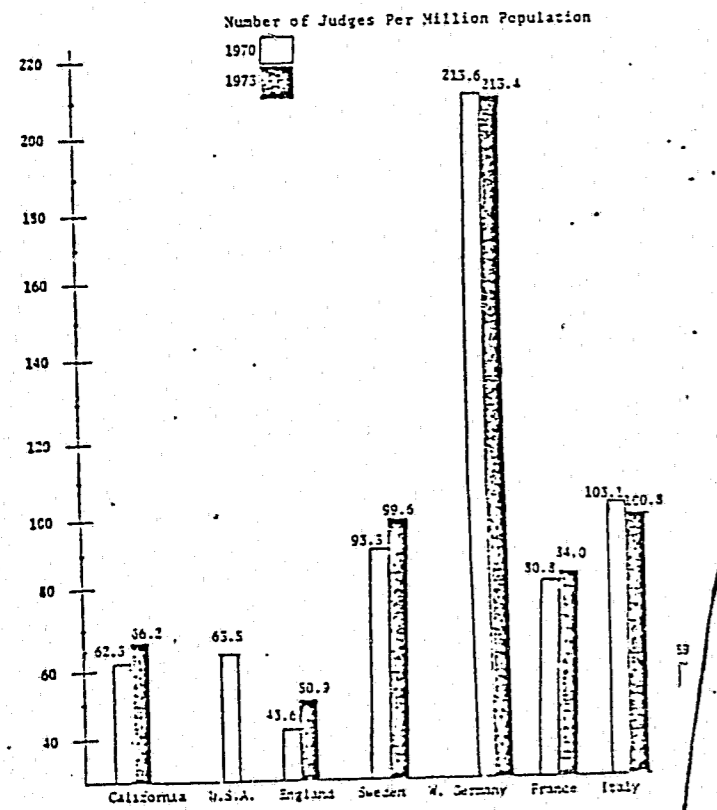
⁶ See Gault, 387 U.S. 1 (1967); Escobedo v. Illinois, 378 U.S. 478 (1964); Kirby v. Illinois; Hamilton v. Alabama, 368 U.S. 52 (1961); Coleman v. Alabama, 399 U.S. 1 (1970); Mempa v. Rhay, 389 U.S. 128 (1967); Douglas v. California, 372 U.S. 253 (1963); Gagmon v. Scarpelli, 13 Cr. L. 3081 (1973).

Part III -- COMPARATIVE STATISTICAL ANALYSIS OF JUDICIAL SYSTEMS

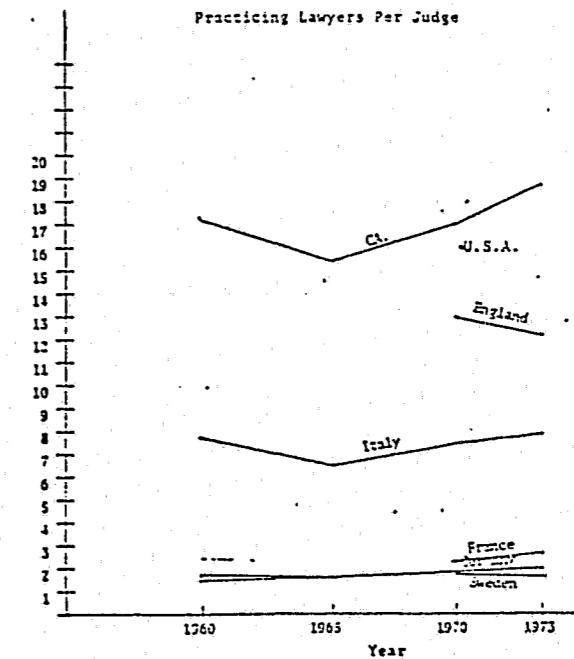
At least a general comprehension of the similar socio-economic characteristics and different legal systems found in the seven jurisdictions studied permits some statistical comparisons.

Judicial Manpower and Financing

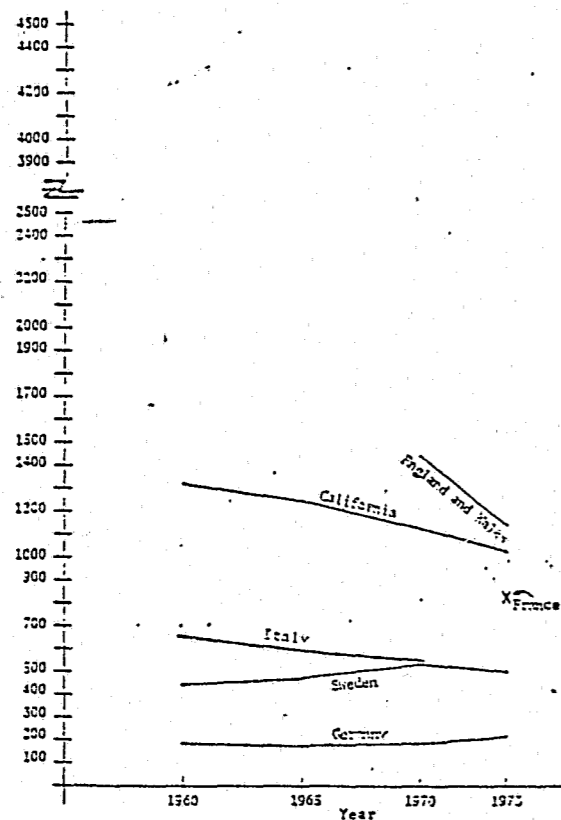
1. The judiciary in the United States appears under-manned, relative to several comparable jurisdictions. U.S. jurisdictions employed only one-third as many judges, per capita, as West Germany and two-thirds as many as Sweden -- the two most economically analogous countries studied.



Relative to national income, substantially fewer judges were employed in the U.S. (42.7 per billion dollars) than in any other jurisdiction studied with the exception of England which employed 37 judges. In contrast, Italy employed 103.1 judges and West Germany 90 judges per billion dollars of national income. This particular indicator is relevant because of a possible relationship between national income and the incidence of disputes and, important because it reflects the resources available to employ additional judges.



Judicial Non-Auto Dispositions Per Judge

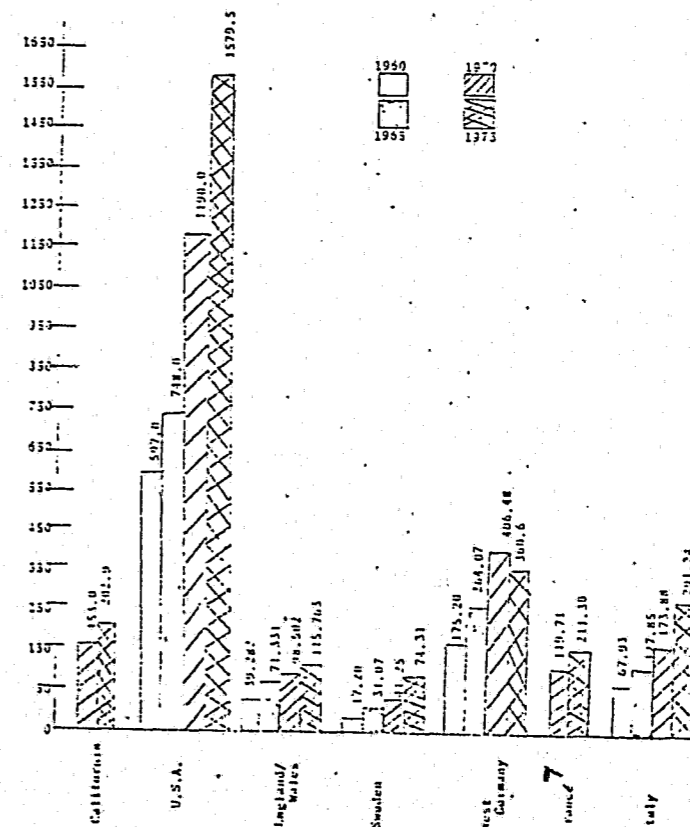


Compared with foreign systems, the U.S. judiciary appears overwhelmed statistically by the size of the legal profession which constitutes one of its major "input" (case generating) factors. The number of practicing lawyers for each judge in California is more than ten times West Germany's and Sweden's ratios, eight times France's, more than two-and-one-half times Italy's and nearly twice England's. Similarly, California's ratio of prosecutors per judge exceeded Italy's by a factor of seven, West Germany's by a factor of six, and France's by a factor of five. It was 76% higher than Sweden's.

Given the difference in resource commitment, it is not surprising to find the average California judge called upon to dispose of six times as many cases as the average West German judge, even after deducting auto traffic-related criminal cases. He is likely to handle two-and-one-half times the caseload of Swedish and Italian judges and 60% more cases than a French judge.

The U.S. judiciary also appears under-financed relative to several jurisdictions. Over the period studied, the United States spent about half as much on its courts per capita as West Germany and 20% less than Sweden. Similarly, the United States allocated only half as much of its national income to judicial functions as West Germany and not much more than half of Italy's allocation.

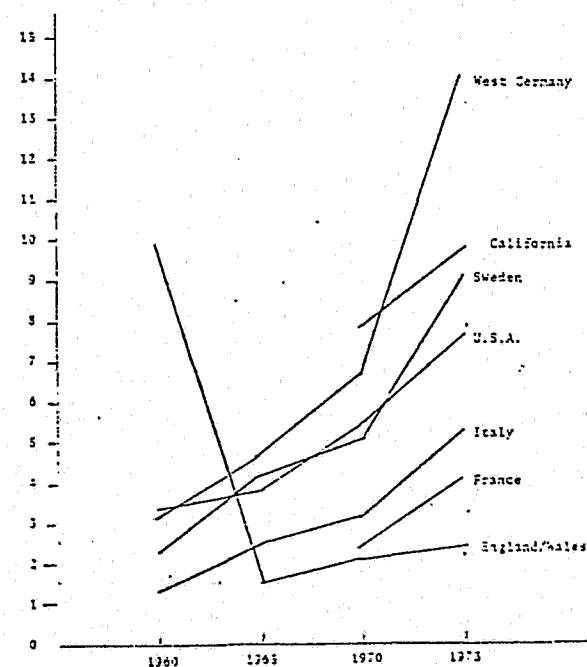
JUDICIAL BUDGETS (in millions of dollars)



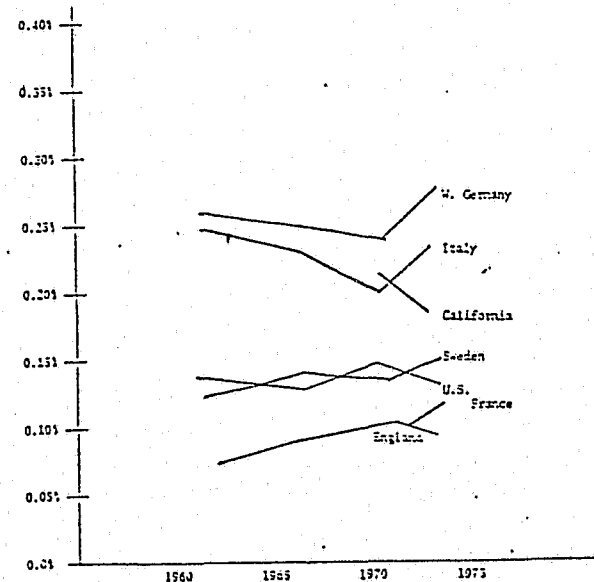
7 For France, all expenditures include both judiciary and prosecution expenditures.

The individual national trends illustrated above at least put this in some sort of comparative posture. Although the United States has continued to have the largest judicial budget (followed by West Germany, Italy, France -- and lastly Sweden), its 160% per capita increase in expenditures between 1960 and 1973 falls short of Italy's (180%) and Sweden's (332%). Moreover, while the judiciary's share of national income was increasing slightly in England, Sweden and West Germany, it was remaining nearly constant in the U.S. and Italy. California's sharp decrease in judicial expenditures relative to total state income provides a notable contrast and exception to this profile.

JUDICIAL DOLLARS SPENT PER CAPITA



Judicial Budget as a Percentage of National Income



Comparative Analyses of Judicial Expenditures

Some interesting comparisons among these jurisdictions may help to explain a frequent charge that the U.S. judiciary is "in crisis," overloaded, slow and otherwise failing to perform to the standards of other court systems. Although the measurement of comparative judicial performance is beyond the scope of this report, the distribution of the total judicial budget among its several elements has important implications. Visualizing the entire system as a multi-section funnel, the relative expenditures on a given component will determine the diameter of that section: if one is disproportionately large, another may become overloaded -- a "bottleneck." All Justice System expenditures reported embrace administrative and operating costs exclusively, and include: 1) police and law enforcement; 2) advocacy; 3) formal judicial adjudication; and 4) corrections.

Applying this analogy to justice system expenditures, we find that U.S. jurisdictions have spent comparatively small sums on the courts in relation to their budgets for the police and prosecution -- functions which are responsible for generating most of the criminal caseload. For every dollar it devoted to the courts, the United States has spent five on the police while West Germany expended less than two dollars on the police for each one invested in its judiciary.

In the meantime, California was spending half as much on prosecution as on the courts. In contrast, most foreign jurisdictions allocated only one-fourth as much to their prosecution offices as to their judicial systems. In the thirteen-year period studied, the United States and California were the only jurisdictions where police and prosecution expenditures expanded substantially more rapidly than expenditures on the courts.

Comparative Justice System
Per Capita Expenditure by Type of Function

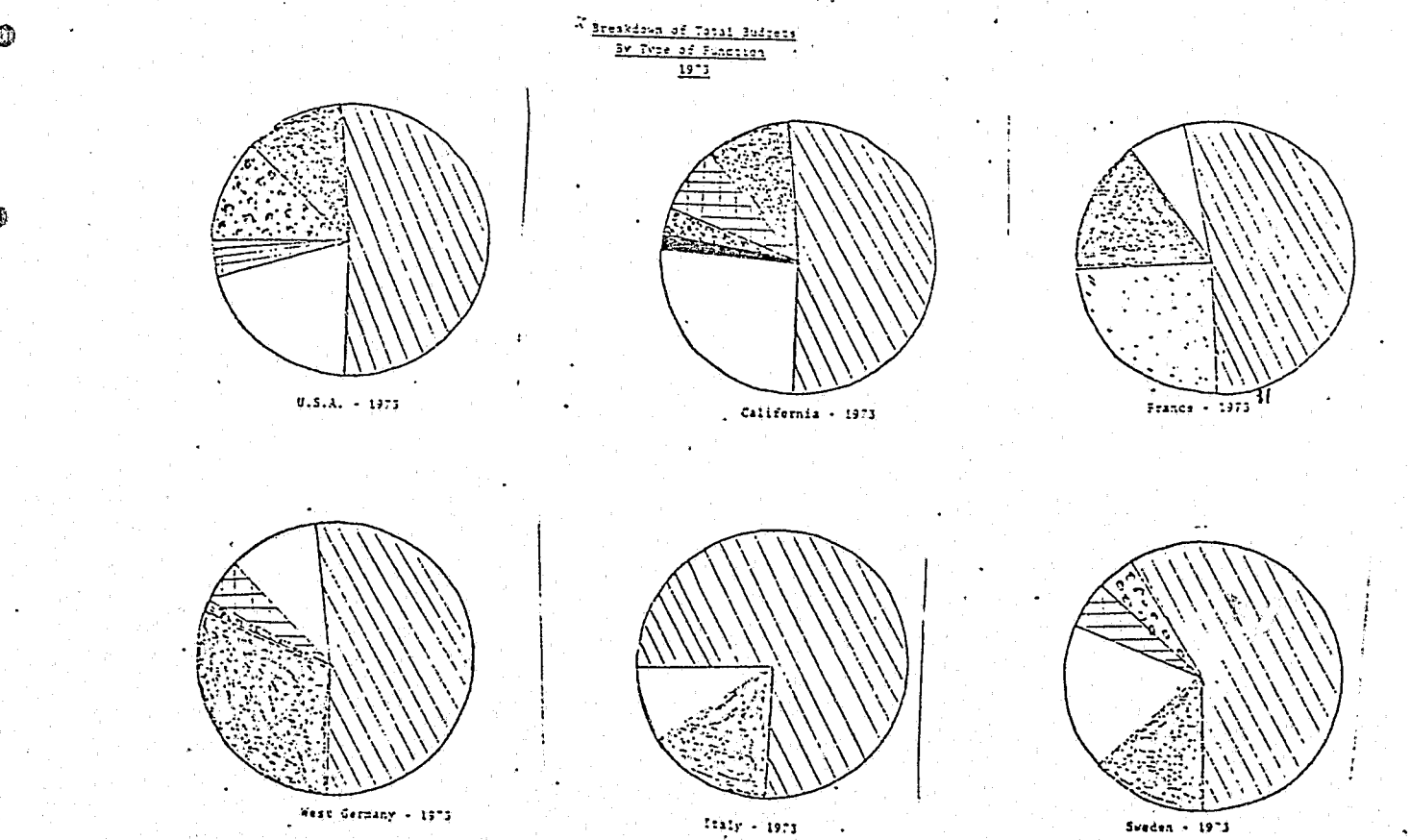
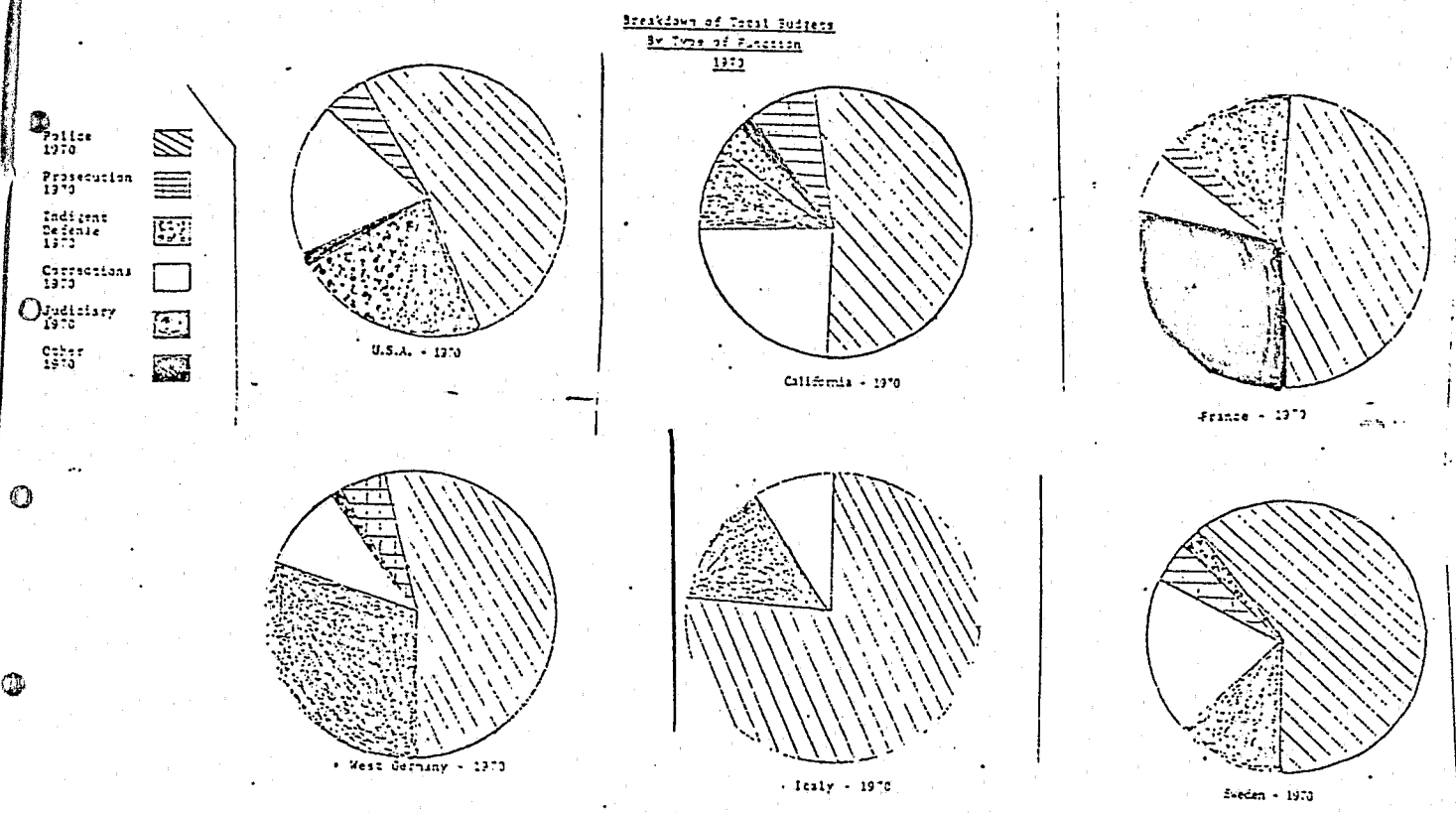
FY ⁸	Police	Prosecution	Indigent Defense	Judiciary	Corrections	Other	TOTAL
California	1960 N.Av. \$3.37	1960 N.Av. .51	1960 N.Av. .13	1960 N.Av. .77	1960 N.Av. 2.38	1960 N.Av. .07	1960 N.Av. \$6.39
U.S.A.	1960 N.Av. \$1.11	1960 N.Av. .39	1960 N.Av. .13	1960 N.Av. .59	1960 N.Av. .84	1960 N.Av. .02	1960 N.Av. \$2.36
Sweden	1960 N.Av. \$1.45	1960 N.Av. .14	1960 N.Av. .05	1960 N.Av. .25	1960 N.Av. .17	1960 N.Av. .00	1960 N.Av. \$1.42
West Germany	1960 N.Av. \$1.33	1960 N.Av. .07	1960 N.Av. .03	1960 N.Av. .46	1960 N.Av. .15	1960 N.Av. .00	1960 N.Av. \$1.52
France	1960 N.Av. \$1.73	1960 N.Av. 0.0	1960 N.Av. 0.0	1960 N.Av. .23	1960 N.Av. .11	1960 N.Av. .05	1960 N.Av. \$2.12
Italy	1960 N.Av. \$1.05	1960 N.Av. .25	1960 N.Av. .13	1960 N.Av. .52	1960 N.Av. .18	1960 N.Av. .00	1960 N.Av. \$1.53
England/Wales	1960 N.Av. \$1.59	1960 N.Av. .15	1960 N.Av. .08	1960 N.Av. .52	1960 N.Av. .18	1960 N.Av. .00	1960 N.Av. \$2.07

Percent Increases in
Comparative Justice System Expenditures
by Type of Function

FY ⁸	Police	Prosecution	Indigent Defense	Judiciary	Corrections	Other	TOTAL
California	1960/1965 31.2	1960/1965 30.5	1960/1965 37.6	1960/1965 24.6	1960/1965 35.0	1960/1965 39	1960/1965 31.81
U.S.A.	1960/1965 27.3	1960/1965 33.4	1960/1965 24.6	1960/1965 24.0	1960/1965 37.4	1960/1965 70.4	1960/1965 341
Sweden	1960/1965 61.2	1960/1965 8.1	1960/1965 55	1960/1965 37.9	1960/1965 53	1960/1965 ---	1960/1965 55.21
West Germany	1960/1965 41.6	1960/1965 57.8	1960/1965 50.9	1960/1965 11.5	1960/1965 43.2	1960/1965 ---	1960/1965 42.41
France	1960/1965 37	1960/1965 43.1	1960/1965 46.6	1960/1965 33.7	1960/1965 42.9	1960/1965 ---	1960/1965 36.91
Italy	1960/1965 54.5	1960/1965 51.4	1960/1965 64.4	1960/1965 52.8	1960/1965 49.2	1960/1965 ---	1960/1965 53.41
England/Wales	1960/1965 47	1960/1965 100.0	1960/1965 43.4	1960/1965 39.4	1960/1965 30.3	1960/1965 10	1960/1965 40.71

These comparisons suggest that this country's capacity to resolve cases has not kept pace with its capacity to generate case-load for the courts by investigating crime and apprehending suspects. This trend is paralleled on the civil side. The ratio of practicing lawyers per judge has been climbing steadily since 1965. Moreover, the bottleneck which has resulted may be around for a while, since in 1973, all three case-generating components (police expenditures, prosecution expenditures, and the size of the private legal profession) were continuing to expand relative to the judiciary.

⁸ Fiscal years are indicated but these vary somewhat by country.
⁹ Includes both judiciary and prosecution.
¹⁰ Juvenile expenditure.



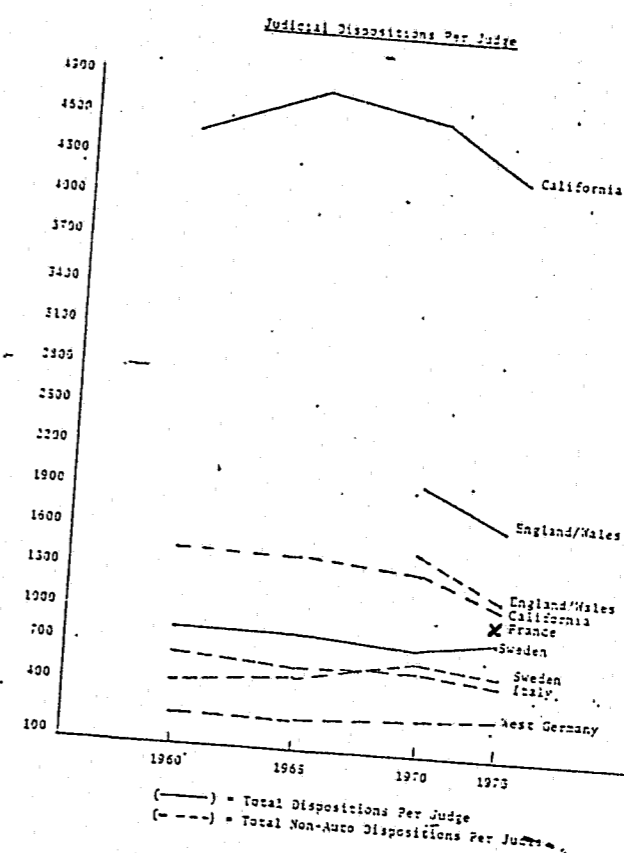
¹² "Judiciary" expenses include both judicial and prosecution expenses. Also, "Other" includes juvenile expenditures.

It is also clear that considering the fundamental nature of government's dispute resolution function, not one of the nations studied is to be applauded for its commitment of resources to the judiciary -- 1/1000 to 3/1000 of national income.

Judicial Caseload

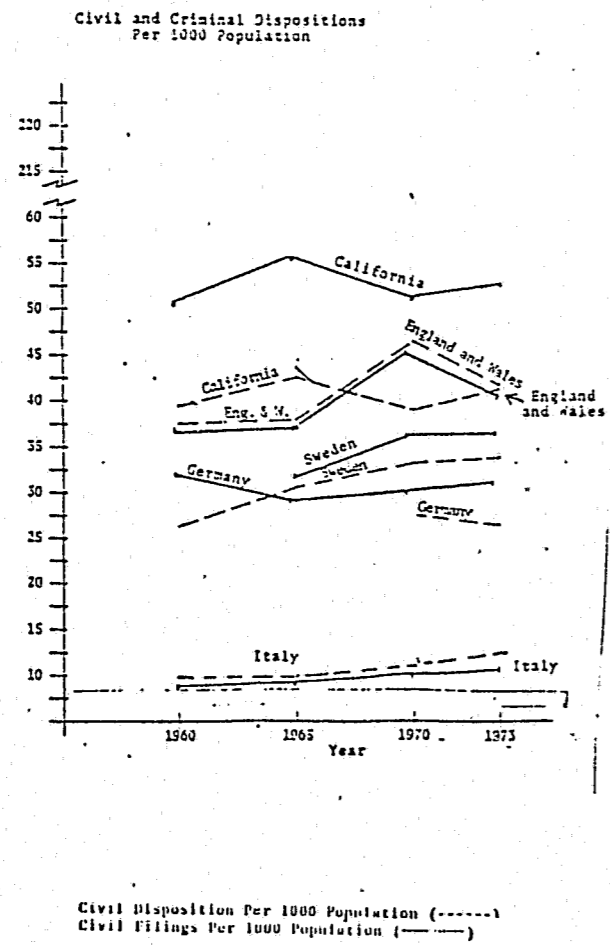
The truism that court systems in the United States are burdened with a heavy caseload is well illustrated by California whose total number of dispositions between 1960-1973 increased more dramatically than that in any of the other court systems which had available figures -- by nearly 50%. Moreover, when population size is controlled, a dramatic gap emerges between California's per capita ratio (250-300 cases per 1,000 population) and the ratios of the foreign jurisdictions, none of which exceeded 90 cases per thousand.

Before adjusting for automobile-related offenses, California's rate of dispositions per judge in 1975 was 6 times Sweden's, 8 times Italy's, 20 times West Germany's, twice England's and more than five times France's! Even correcting for the distorting effects of its voluminous traffic caseload, California's number of dispositions per judge was 2½ times Sweden's and Italy's and 6 times West Germany's; however, it was only sixty percent higher than France's and approximated England's. With respect to filings the patterns were similar.



Despite these impressions, the commonly-held belief that we are an especially litigious breed -- variously attributed to our heterogeneity, frontier origins, crowded cities, general ram-bunctiousness and the excessive expectations of our courts -- tends to be tempered by statistics. In fact, although in terms of the volume of civil filings, California leads all of the other jurisdictions studied, its per capita civil disposition rate has fallen short of England's in recent years. And even Sweden -- a country that takes pride in its homogeneous conciliatory culture -- is creeping toward a similar per capita disposition rate. Moreover, after controlling for population growth, the volume of civil dispositions remained relatively stable in California during the 1960-1973 period, only growing from 38 to 42 per thousand population.

California, at least, does not present the image of an inordinately litigious society compared to analogous foreign jurisdictions, whether litigation quantity is measured by filings or dispositions. If we are too ready to take our grievances to the courts, then so are Englishmen, Swedes, and Germans.



And when one examines criminal (non-auto) caseload alone, California's filings and dispositions per 1000 population far exceed those in any of the other nations studied.

Judicial Expenditures in Relation to Caseload

Using the admittedly suspect figures of total criminal and civil dispositions produces the startling result that West Germany spent nine times more per case than California, over ten times what England-Wales expended, nearly five times the Italian figure and two-and-one-half times the Swedish per case investment. However, correcting once again for the distorting effects of auto-related criminal cases, the comparisons stand but become somewhat less dramatic.

Non-Judicial Forums

It would be misleading to assume that the judicial caseload of a country is synonymous with the total number of disputes since nonjudicial forums represent a major and rapidly expanding method of dispute resolution in several of the jurisdictions studied. In England-Wales, for example, the number of cases disposed of in non-judicial government forums reached seventy percent of the civil case volume processed in the courts by 1973. And, an incomplete estimated total of cases handled outside the formal judiciary in California during 1973 is still over one-third the volume of all civil cases processed by the formal judiciary in that year.

7. The Legal Profession /

Legal Aid

The adjudicative function performed by the courts and their companion institutions is not the only element in the dispute resolution process. The "advocacy" or "representation" function including fact investigation, organization of the evidence, and presentation of the law and facts is equally significant. In nearly all cases processed by the formal judiciary, most of these tasks will be performed by members of the legal profession. Unlike the judicial system, however, the cost of this advocacy function ordinarily will fall on the private litigants rather than on government.

In most countries, the total legal profession actually encompasses several categories of advocates and even the judges themselves. For purposes of this report, we have deleted the judiciary and certain members of the profession not performing an advocacy or representational function. They are considered an input factor for the judiciary, an integral part of the dispute resolution system, and a partner of the judiciary.

The Private Pr

In the seven jurisdictions with available data, the number of private lawyers per unit of population has been increasing steadily, with the United States, and particularly California, in the lead.

Italy and England also have a relatively large private bar. On the other hand, by comparison with the other jurisdictions, France and Sweden are "lawyer poor."

When the practicing bar is related to national income, an entirely foreseeable downward trend is apparent in all jurisdictions since, during the period studied, per capita income -- in both monetary and real terms -- was increasing.

Data suggest that citizens in Germany, France, and Sweden invest a substantially smaller proportion of national income in advocacy services than do people living in the United States and England. It is difficult to make a similar statement about Italy with any confidence because of the distinct possibility that practicing lawyers earn far less on the average than in the other countries. In the United States, it appears that roughly 1.35% of total national income, and more than \$52.00 per capita, were devoted to purchase the services of private lawyers in 1973.

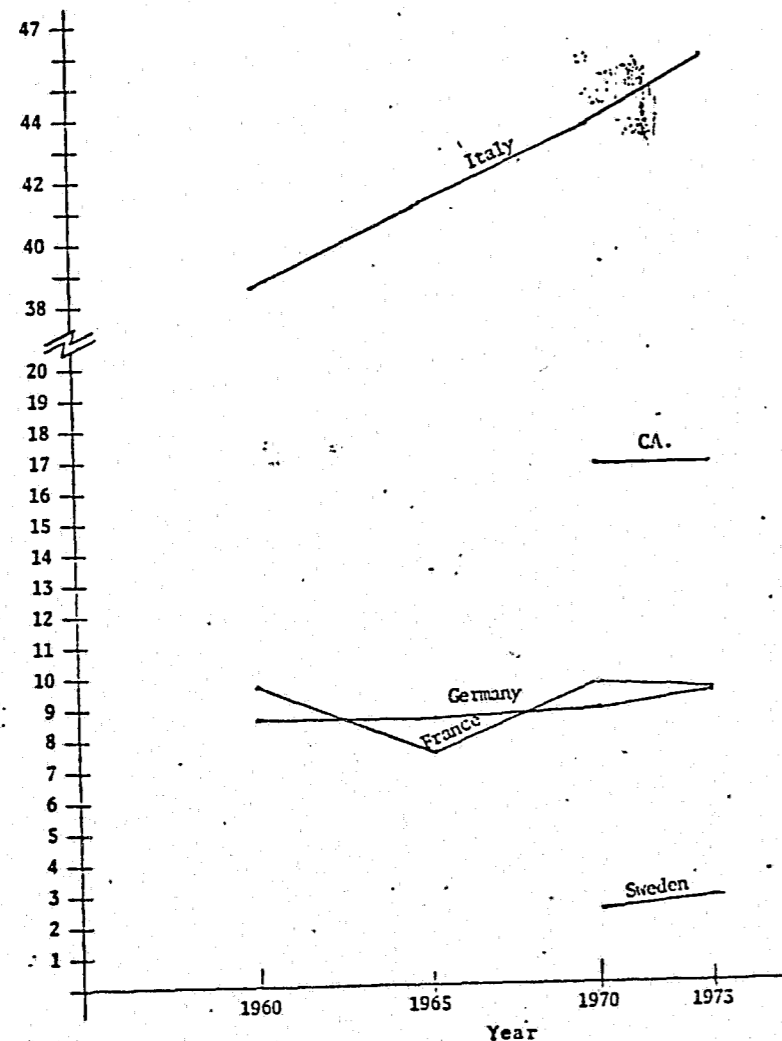
A particularly revealing indicator of the "state of the act" of the legal profession is the ratio of practicing lawyers to judges. Lawyers (like the police) represent an "input" factor for the judiciary. A "civil case" is seldom litigated unless a lawyer is available to file it. Within limits, the more lawyers, the more lawsuits and hence the larger the civil workload of the courts.

In any event, the differences are rather remarkable. California's ratio of more than twenty-one private legal practitioners per judge contrasts with the lot of West Germany and Sweden which have less than 2 practicing lawyers per judges.

Of course, not all of the advocacy function is performed by attorneys paid by private persons. In at least two fields public funds are used to employ lawyers for this purpose. The first of these fields is prosecution of criminal offenses; the second is the representation of persons unable to afford to hire their own attorneys.

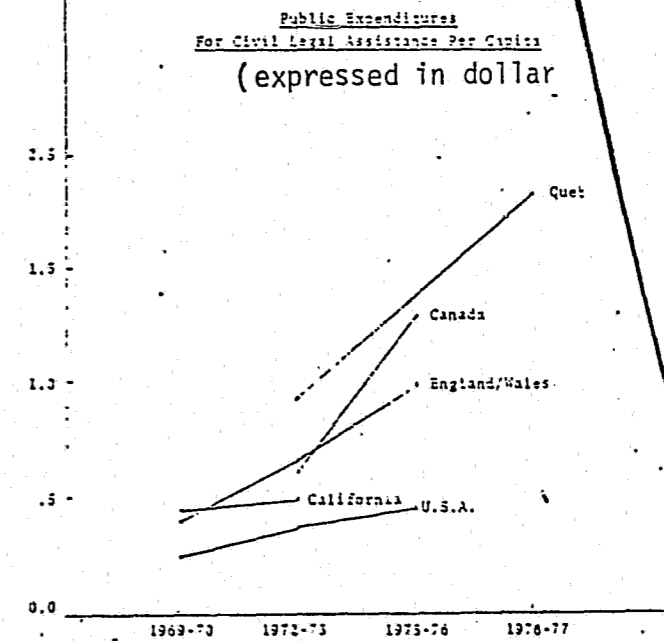
Except for England-Wales, the jurisdictions studied, however, use salaried prosecutors. Although on a per capita basis, California and Sweden outdistanced the other jurisdictions in their sheer numbers of prosecutors, the prosecution sector occupies a particularly significant position in the legal profession of many jurisdictions outside the U.S.

Practicing Lawyers Per Prosecutor



Legal Aid

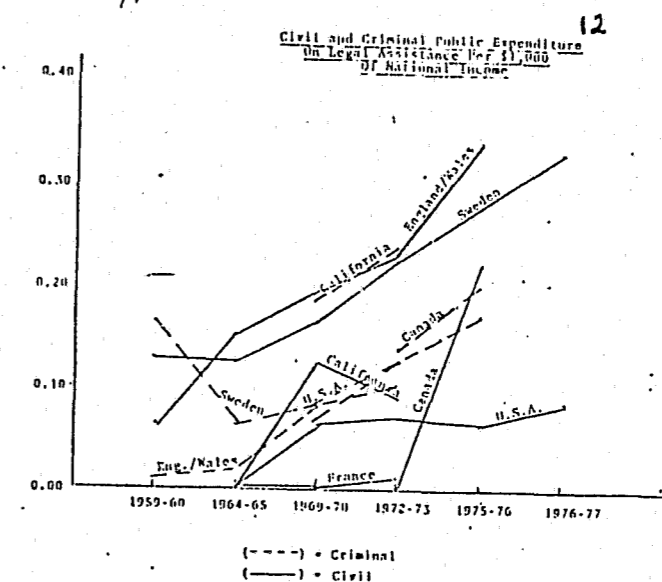
If our courts appear undermanned and underfinanced, our legal aid component suffers even more. The rapid growth of the American legal services budget since the advent of the OEO Legal Services Program in late 1965 has led some political leaders and commentators to adopt the attitude that we have taken care of the legal needs of the poor, the rich take care of themselves, and now all we have to worry about is the middle class. Although statistics reflect a dramatic expansion of government expenditures on civil legal assistance in the United States between 1965 and the present, recent public investment in civil legal aid in California and the United States generally appears to be lagging behind that in England-Wales, Sweden, and Canada. As of 1970, per capita governmental expenditures on civil legal aid in England-Wales -- an economically depressed nation -- were 58% higher than the U.S., by 1973 the gap had reached 75%, and in 1975-76 England-Wales invested over twice as much per capita as the United States on legal assistance for the poor.



In Sweden, where two-thirds of the total legal aid budget was allocated to civil cases, per capita investment in civil legal assistance more than tripled the U.S. level in 1972-73. Not only that, by 1976-77, Sweden dwarfed the United States by a factor of four in per capita expenditures, despite the rapid growth of the U.S. civil legal aid budget after the Legal Service Corporation came into existence in mid-1975.

Total Canadian per capita expenditures on civil legal assistance reached \$1.28 by 1975, precisely triple the American level for that year. Quebec Province allocated 1½ times more per capita (\$.92) to civil legal assistance in 1973-74 than did the United States and in 1976-77, in excess of three times more (\$1.80).

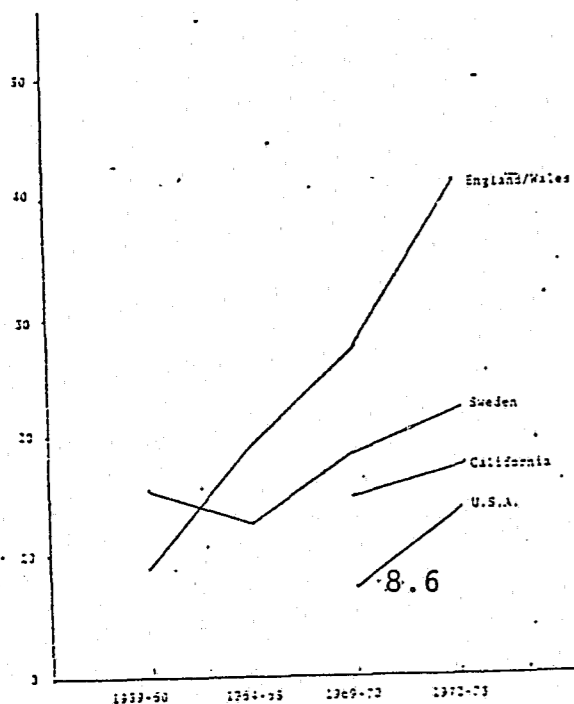
Another relevant measure of commitment to legal assistance is the proportion of national income devoted to this purpose. While the United States government spent barely \$.07 per \$1,000 of national income on civil legal aid in 1973, both Sweden and England-Wales came up with more than three times this figure; and Canada spent \$.22 per \$1,000 national income in 1975, approximately triple the U.S. expenditure of \$.065 per \$1,000 in that year.



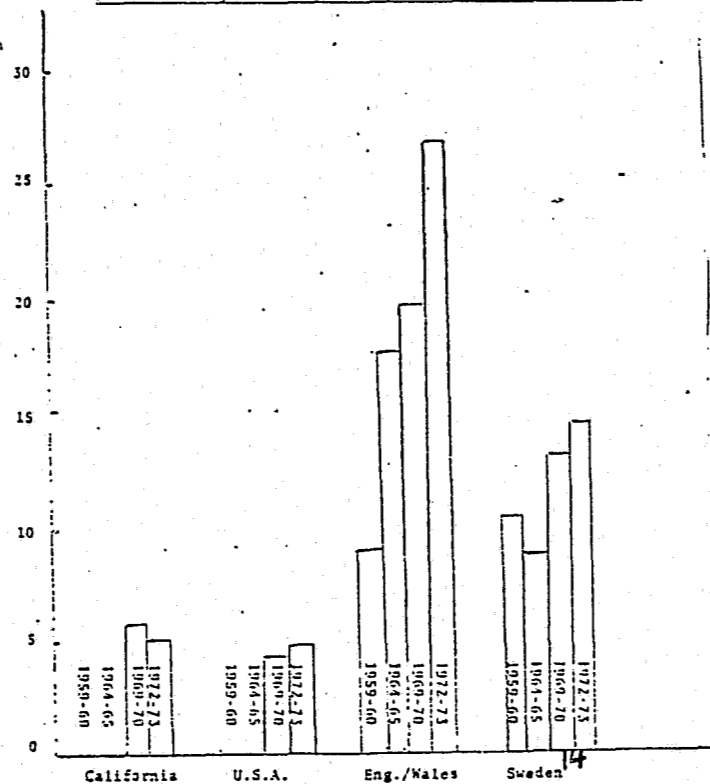
The United States and England, in general, allocate more responsibilities to advocates, as opposed to the courts, than most other countries do. When public investment in the advocacy function is compared to investment in the judiciary, England was five times more generous in subsidizing the legal assistance necessary to insure that the responsibilities assigned to advocates were, in fact, performed for low income litigants. It spent 27% as much on civil legal assistance in 1973 as it did on the judiciary compared with the United States and California which spent 5% as much.

12 See full report for an accurate understanding of the table.

13
Public Expenditure for Legal Assistance
As a Percentage of the Total Expenditure
For the Judiciary



Public Expenditure for Civil Legal Assistance
As A Percentage Of The Total Expenditure For The Judiciary



Even Sweden, with its relatively small legal profession (fewer than 2 lawyers per judge), allocated 15% as much to civil legal aid as it did to its judicial budget in 1975-76 -- three times the U.S. figure.

13 France is not included because of the absence of adequate judicial expenditure data.

14 Based on consultant's estimate that approximately two-thirds of legal aid expenditures were devoted to civil representation and one-third to criminal representation.

Although the U.S. looks somewhat better comparatively in its expenditures for criminal legal aid, this effect is somewhat diminished when these expenditures are related to national income or to total judicial expenditures. In 1973, the U.S. far outdistanced England-Wales in total criminal legal aid investment. However, the two jurisdictions expended nearly equal proportions of national income on this function. Moreover, the U.S. spent only 8% as much on criminal legal assistance as it did on judicial expenditures, where England-Wales spent 14% as much.

United States expenditures on criminal and civil legal aid combined were only 13% of judicial expenditures -- less than one-third the ratio obtained in the other large common law jurisdiction (England-Wales) embraced in the study.

Public vs. Private Investment

Data, albeit incomplete and imprecise, suggest that compared with other jurisdictions, the public sector of the American dispute resolution system is much smaller relative to the private sector.

Defining private expenditures on lawyers as a measure of the private sector and combined public expenditures on courts, prosecution and legal aid as a measure of the public sector, the Swedish and West German governments actually invested more in the public sector than their citizens invested in the private sector. Sweden, in fact, probably expended more on its court system alone than its private citizens paid to the private bar for legal help, even without considering its substantial tax support

for prosecutors and legal aid. In sharp contrast, public sector expenditures in the United States were about one-fourth to one-fifth of private expenditures. Only England makes a relative public investment anywhere as small as the United States, while Italy's public sector approximates one-half of its private sector.

Dispute resolution systems which are unusually dependent upon the private sector appear particularly subject to problems caused by economic disparities between litigants. Investigation of the facts, research of the law and many essential dispute resolution tasks must be bought and paid for by private citizens. When one or both parties lack the necessary funds, these tasks are not performed or are done inadequately. If neither side is financially able to discharge its responsibilities, the court is seriously handicapped by lack of evidence and thorough research of the applicable law. If only one litigant lacks sufficient means, the judge will hear only one version of the dispute and there is an obvious danger of bias in the result. Thus, it may be that the American judicial system which can deliver a very precise and equitable form of justice under ideal circumstances, currently is being sabotaged by an inadequate public investment.

Summary |

Although these particular statistical comparisons do not conclusively resolve any policy issues, they may disturb certain widely-accepted assumptions and raise some intriguing new questions. Explanations for some of the dramatic contrasts between the United States and other industrial democracies, are probably debateable. But, at the very least, the statistics and observations we have presented invite our society to consider seriously whether its public investment in the justice system -- particularly the courts and civil legal aid -- measures up to that of analogous nations.

END