EXPERIENTIAL EDUCATION: LESSONS FROM ABROAD

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The modern-day legal community once again finds itself grappling with an issue it faced in the early nineteenth century—the adequate education and training of aspiring attorneys.1 The then-rapidly growing demand for practice-ready lawyers created a need to ensure competent, practical training, particularly in burgeoning communities where population, business, trade, and industrialization necessitated increased legal access, advice, and intervention. The task then was the creation of a system in which legal training would be delivered systematically, proficiently, and expeditiously. From this need grew the birth of the law school classroom and the adoption of the Socratic teaching method.2

While circumstances today are to one degree or another different, there remains an underlying dynamic that is at the core of the current discussion. Each year, thousands of law school graduates are deemed ready practitioners by virtue of obtaining a Juris Doctor degree and passing the requisite licensure examination. However, as novices to the profession, and in spite of the fact that virtually every law school offers the courses that cover the essential issues a young lawyer might face in practice, precious few newly minted attorneys possess the skills necessary to effectively navigate the complex waters of the legal world. There is a compelling argument that the pervasive use of the case method in law school narrowly focuses student preparation on analyti-

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1 See Joan MacLeod Heminway, Caught in (or on) the Web: A Review of Course Management Systems for Legal Education, 16 ALB. L.J. SCI. & TECH. 265, 270–71 (2006) (discussing the early nineteenth-century transition in American legal education away from the apprenticeship model to a classroom learning model).
2 Id. at 271.
cal readiness, thus eclipsing what many legal professionals would agree should be an expanded, if not equal, emphasis on functional preparedness.\(^3\)

For years it has been the commonplace practice of institutions to include in their curriculum classes in trial advocacy, drafting, and research. It has been accepted that this design provides students with a sufficient base from which to grasp the real-world demands they are likely to face in practice.\(^4\) The challenge, of course, is how to achieve an appropriate balance between the teaching of both law and skills—a challenge made all the more difficult by the singular focus of the bar examination on familiarity with legal concepts over practice. This weakness in our system is the prime driver in our efforts to develop novel and progressive methods for bringing equilibrium to legal education. In this endeavor, we should explore not only the present but also the past, i.e., models in current use around the world as well as relevant past practices that very often produced exceptional and innovative training systems.

The United States long ago abandoned the apprenticeship model that remains part and parcel of legal preparation in other parts of the world. The modern-day lecture-style classroom was the answer to an apprenticeship format that, according to some, was broken and criticized by others for not producing much-needed lawyers quickly.

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\(^3\) See, e.g., Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, A Dialogue About Socratic Teaching, 23 N.Y.U. REV. L. & SOC. CHANGE 249, 250 (1997) (“[I]t is surprising—and perhaps unfortunate—that the Socratic method has so dominated thinking about legal education that other teaching methods have been marginalized or precluded. Except in clinical programs, the collaborative and experiential learning models that have become commonplace in other higher education contexts are rarely used in law school courses.”).

\(^4\) According to the 2013–2014 ABA Standards and Rules of Procedure for Approval of Law Schools, skills courses are not required but are encouraged by the ABA.

A law school shall require that each student receive substantial instruction in . . . other professional skills generally regarded as necessary for effective and responsible participation in the legal profession . . . . A law school shall offer substantial opportunities for live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one’s ability to assess his or her performance and level of competence . . . .

enough to meet market needs. Yet the benefits of such a model continue to be widely recognized in a great many parts of the world. Many countries continue to mandate this critical practice component as a condition of licensing. From Angola and South Africa to Chile and Malaysia, compulsory apprenticeship components are credited for the enhanced readiness of newly graduated attorneys to deal effectively with client issues.

Germany’s legal education system, for example, includes a four-year undergraduate degree undertaken after the completion of secondary school and success on a formal entrance exam. Students then take the “First Examination,” a comprehensive test of legal theory and the elements of German law. Students are then required to complete a two-year apprenticeship program, after which they are given a second exam designed to assess their knowledge of practical legal skills. Upon successful completion of the “Second Examination,” students are eligible to enter the profession as practicing attorneys.

Throughout Europe, countries continue the practice founded in the guild system during the Medieval Period. In several European

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5 See Susannah Furnish, The Progression of Legal Education Models: Everything Old Is New Again . . ., 6 NE. U. L.J. 7, 8 (2013) (“Prior to the 1870s, the predominant method to prepare lawyers for practice was training through apprenticeships. However, this model of apprenticeships was criticized for several reasons, including that it could not adequately prepare lawyers for the realities of practice.”); see also Roscoe Pound, The Law School and the Professional Tradition, 24 MICH. L. REV. 156, 159 (1925) (noting “the change from an apprentice-trained profession to a school-trained profession” had been largely precipitated by the need for “the administration of justice in the complex urban industrial society,” which “call[ed] for a deeper and wider training of lawyers than the training in rules of thumb and in procedure which was afforded” under the old system).

6 See generally ABA SECTION OF INT’L LAW & ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, THE ABA GUIDE TO INTERNATIONAL BAR ADMISSIONS (Russell W. Dombrow & Nancy A. Matos eds., 2012) [hereinafter ABA GUIDE] (discussing mandatory traineeship programs required for admission to international bars).

7 Fátima Freitas, Angola, in ABA GUIDE, supra note 6, at 3, 4–5; Dawn Mpati-Muchira, South Africa, in ABA GUIDE, supra note 6, at 39, 41–42; Andrew Lee, Malaysia, in ABA GUIDE, supra note 6, at 83, 85; José Tomás Cuevas Errázuriz et al., Chile, in ABA GUIDE, supra note 6, at 317–18.

8 Anne Englehard-Caldwell, Germany, in ABA GUIDE, supra note 6, at 161, 163–65.

9 Id. at 163.

10 Id. at 163–64.


countries with longstanding and well-developed apprenticeship programs, the unemployment rate among youth has been restrained in large part by the application of those thoughtfully designed programs. In fact, the three European countries that were least affected by the recent economic decline—Austria, Switzerland, and Germany—registered less than nine percent youth unemployment compared to the European average of just over sixteen percent. With the United States facing similar employment challenges among law school graduates, this apprenticeship model might be worth a second look.

**Apprenticeships as the Pinnacle of Experiential Education**

Imagine a curriculum similar to that employed in the early Inns of Court in England, where the standard methods of instruction combined formal lecture, repeated practice, and obligatory observation of skilled barristers. This type of education established the Inns as institutions of quality education. As Sir D. Plunket Barton wrote,

> The Inns of Court are alive to the responsibilities which are cast upon them as the keepers of the keys, and the guardians of the honour, of the English Bar. It is their common aim to serve their countrymen by rendering their profession a polished and efficient instrument for the ascertainment of the truth . . . .

Our American legal education system is by and large exemplary at lecture. We are equally excellent at providing our students with opportunities to observe. Each academic year thousands of students visit law firms and county, state, and federal courts to watch lawyers, jurists, and the judicial process at work. In some instances, students assist with basic legal tasks that give them limited and shielded exposure to the real-world, risk-filled application of the law. While these experiences are not without merit, preparing our students to be effective professionals means providing them meaningful and significant opportunities to practice. In those countries that have preserved the apprenticeship

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13 *Id.* at 5.
17 As an aside, while most U.S. law schools provide opportunities for their students to observe practitioners of law, we are still not adept at providing similar opportunities and job placements for students who wish to utilize their Juris Doctor degrees in ways other than traditional law practice.
model, “meaningful” means more than a summer placement or short-term stay. Italy, for example, requires prospective attorneys to complete a two-year traineeship with an attorney admitted to the bar where the prospective attorney plans to take the exam.\textsuperscript{18} Singapore requires a six-month practice training period before one can seek full admission to the bar.\textsuperscript{19} When a Dutch law degree holder is sworn in as an advocate, admittance is on a conditional basis pending completion of a three-year traineeship.\textsuperscript{20} In Russia, an individual seeking to become an advocate must either have two years of experience in the legal profession or complete a one- to two-year traineeship in an advocate’s organization.\textsuperscript{21} In Switzerland, a trainee lawyer must serve as an apprentice in the courts or with a lawyer or law firm for one to two years and subsequently pass the cantonal bar examination before becoming a practitioner.\textsuperscript{22} Many other countries have similar practical preconditions to becoming a bona fide attorney.\textsuperscript{23}

What can an apprentice expect to do? Much like the protagonist in the German poet Goethe’s 1797 poem, \textit{Der Zauberlehrling} (The Sorcerer’s Apprentice),\textsuperscript{24} apprentices learn the trade through observation, emulation, practice, and rehearsal. Essentially, they \textit{do} what they will be expected to do when they are no longer working under the support of a master teacher. They have real-world encounters and have an opportunity to bypass that intimidating first year of practice, where every moment and every client meeting is a new, eye-opening, and often disquieting experience. It is a means for the simultaneous development of the intellectual, social, and professional skills critical to competent, trustworthy performance. Apprentices are treated as novice attorneys. They are expected to apply what they have already learned and to acquire new knowledge and skills on a daily basis. The apprenticeship component of their legal training is the very best that experiential education has to offer. They will have had the benefit of classic classroom instruction.

\textsuperscript{18} Andrea Boggio, \textit{Italy}, \textit{in} ABA Guide, \textit{supra} note 6, at 171, 172.

\textsuperscript{19} Brad Alexander, \textit{Singapore (Republic of Singapore)}, \textit{in} ABA Guide, \textit{supra} note 6, at 95, 97.

\textsuperscript{20} Nancy A. Matos, \textit{Netherlands}, \textit{in} ABA Guide, \textit{supra} note 6, at 175, 177.

\textsuperscript{21} Olga Zalomiy, \textit{Russia (The Russian Federation)}, \textit{in} ABA Guide, \textit{supra} note 6, at 187, 189.

\textsuperscript{22} Catherine Crowe, \textit{Switzerland}, \textit{in} ABA Guide, \textit{supra} note 6, at 205, 207.

\textsuperscript{23} See generally ABA Guide, \textit{supra} note 6, for examples of various countries’ practical component legal education requirements.

instruction and a genuine opportunity to apply knowledge, practice skills, and evaluate and refine their ability to be effective lawyers.

Can an Apprenticeship Model Work in the United States?

What are some of the challenges of resurrecting this enduring model? If we endeavor to mirror the early Inns of Court, we have two of the three essential components well established: classroom lecture and observation. However, it is the third element—the distinctive long-term work experience—that would require a restructuring of the current American system. There exist a good many law schools that have instituted internships or externship components as part of their curriculum.25 While this provides students with some meaningful experience, many employer-sponsors do not view their role as that of master teacher, and these experiences are usually part-time or completed over a summer or a single semester. In order to develop a true apprenticeship program, a new relationship between the university and other professionals in the community must be established. One of the reasons the Inns worked so well is the affiliation they established with the legal community. Professionals appreciated the opportunity to train individuals for future employment while promising lawyers valued the individualized, personal instruction. The concept of a “legal community” was more than jargon; the community was real, tangible, and genuine. Without a valuable association, a future practitioner would effectively be precluded from swift entry into the profession. Exceptional performance was the goal of both apprentice and master.

This outlook remains energetically active in other parts of the globe. Employers utilize and treat their apprentices as practitioners. They invest their time and energy into creating competent, knowledgeable, and skilled attorneys. In fact, employers that participate in apprentice programs are sometimes criticized for exploiting apprentices as they provide a thoroughly inclusive and rigorously detailed experience—one in which student apprentices are expected to do some of the very same heavy lifting expected of their full-fledged colleagues.26 Some firms, after devoting time and resources to personalized training


26 Aivazova, supra note 12, at 7.
of their pupils, have been accused of capriciously lengthening an apprentice’s training period to take advantage of inexpensive, well-trained labor.\(^{27}\) This issue has been addressed in a variety of ways by countries that employ the apprenticeship model.\(^{28}\) And while there is concern that the talents of our law students may be taken advantage of, this issue is itself indicative of a system that produces highly capable, accomplished individuals who are wholly prepared to enter the job market.\(^{29}\)

While the issues of remuneration and fairness in the workplace need to be addressed, it is the time requirement that poses the greatest challenge to most law schools. When bar examination results are a critical element in the ranking of law schools, preparing students for the bar examination becomes—whether we like it or not—a crucial component of most law school programs. Trying to embed a year or more of full-time work into a three-year time frame will present significant challenges, but with creative curriculum mapping and effective teaching, a full year of intensive work experience can become the new model of legal education. Like the Inns of Court, law schools might reinvent themselves as pipelines to specific areas of practice, training


\(^{29}\) In some European countries, should a firm wish to hire an apprentice, it must have a record of hiring at least fifty percent of those it has trained in the past. Lyndon Thompson, *Quality Apprenticeships: The New Degree?,* OECD Observer (June 23, 2014), [http://www.oecdobserver.org/news/fullstory.php/aid/4142/Quality_apprenticeships:_The_new_degree_.html](http://www.oecdobserver.org/news/fullstory.php/aid/4142/Quality_apprenticeships:_The_new_degree_.html).

This regulation was put into place to help prevent these types of abuses. *Id.* In this way, companies can tap into the skills pool only if they have already put something into it. *Id.* In Australia, apprentices are certified as soon as they have demonstrated their competence in their chosen area, rather than when they have completed a stipulated training period. *Id.* In Germany, social partners work together to set professional standards and exams, which are formally issued by the Ministry of Economic Affairs and Technology, and determine apprentices’ salaries through collective wage negotiations. *Id.* Canada and France relieve some of the pressure on employers through tax credits. *Id.* France also gives additional social security exemptions to employers, especially those employing a disadvantaged or disabled young person. *Id.*
students to enter specialized fields of law and maintaining connections with successful lawyers who practice in those areas. Students would reap the benefit of a more carefully crafted curriculum and enjoy the opportunity to create a more permanent placement for themselves. Attorneys who take on the role of master teacher will have the benefit of a steady stream of well-prepared, strategically trained individuals who are equipped to further refine their craft and ready to dedicate themselves to intensive, meaningful training.

The states’ Boards of Bar Examiners might also begin to reconsider its bar admission criteria. As previously noted, in many parts of the world, work experience, however it is labeled, is required of students or graduates before they are permitted to practice law.\textsuperscript{30} The medical profession may provide the most obvious example of a system composed of a tightly structured combination of theory and practice.\textsuperscript{31} Restructuring the model for legal education so that it encompasses meaningful practice might not only ensure a greater level of preparedness for the profession, but may also have the secondary effect of better preparing students for the state examinations. It follows that these students would bring an increased facility in specific areas of the law to the examination table. Moving towards an examination process that not only tests an individual’s ability to memorize voluminous black letter law but also requires that candidates demonstrate their ability to deal with legal issues in a professional, competent, and effective manner makes sense.\textsuperscript{32} Unlike the state of affairs in early nineteenth-century America, we are no longer facing a shortage of attorneys; the capability of institutions to turn out large numbers of attorneys as quickly as possible is no longer a concern. But in times when informa-

\textsuperscript{30} See supra notes 6–14 and accompanying text.

\textsuperscript{31} See, e.g., Dr. Kimberly Boland, Program Director, Professor of Pediatrics, Vice Chair for Medical Education, University of Louisville, Perspectives from Other Disciplines, Plenary Discussion at the Second National Symposium on Experiential Education in Law (June 14, 2014).

\textsuperscript{32} For example, the University of New Hampshire recently introduced the Daniel Webster Scholars Program where students bypass the traditional bar examination altogether. “In their final two years of law school, the students, who are members of the Daniel Webster Scholar Honors Program, completed rigorous practical preparation in addition to their traditional legal education, created portfolios of their work, met with bar examiners on three different occasions, and were certified by the state bar as having passed all requirements without sitting for the traditional exam. In essence, the honors program offers a two-year instead of a two-day bar examination.” Peter Davies, \textit{Graduating Daniel Webster Scholars Bypass Traditional Exam, Sworn in to NH Bar}, UNH TODAY (May 21, 2014), http://www.unh.edu/unhtoday/2014/05/graduating-daniel-webster-scholars-bypass-traditional-exam-sworn-nh-bar.
tion is easily accessible, and when increasing numbers of individuals are turning to do-it-yourself legal forms, those who seek to retain the services of an attorney are looking for well-trained, highly specialized experts. Simply put, while we are producing graduates who are solidly knowledgeable in legal theory and the law, we are not consistently producing graduates who are able to hit the ground running as a result of substantial hands-on training.

The pendulum continues to swing. The continuum of our education model, from elementary to graduate to professional education, has increasingly embraced the value of combining theoretical and experiential learning opportunities. By the time students begin law school, they will already have cut their teeth on numerous classes that incorporate a compulsory element of applied learning. The American legal education model, notwithstanding its image as firm in its reverence for tradition, is nothing if not adaptive. In a system renowned for invention, there is even greater promise in its capacity for reinvention. With renewed interest in producing practice-ready graduates, as well as in providing a more pervasive practical component to legal education, the apprenticeship model that defined this nation’s early formation of attorneys may be a solution worthy of further consideration.