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The Role of Practice in Legal Education

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General Reporter

This general report represents a synthesis of national reports, as well as the observations and conclusions of the author, the designated General Reporter for the 18th International Congress on Comparative Law, on the topic of The Role of Practice in Legal Education. It is based in part on a compilation and synthesis (see Tables A and B, attached) of information from 17 national reports submitted in response to a questionnaire (attached as Appendix A) sent to national reporters from the author as part of his responsibilities. I received reports from the following countries, in alpha order: Australia, Belgium, Canada (Quebec Province), Czech Republic, England and Wales, France, Germany, Greece, Hungary, Ireland, Italy, New Zealand, Portugal, Switzerland, Taiwan, Turkey and Venezuela. In addition, I will draw on specific country information from my home country, the United States, as well as from the Netherlands, where I recently spent a semester in residence at the University of Utrecht. The report will also draw various academic sources on this topic, both recent and historical.

“Reform of legal education is a hot topic.”¹ So it would seem, at least from recent developments around the world. Prof. Maxeiner notes that the German Lawyers’ Association proposed a new law in 2007 that would “completely overhaul post-university

¹ James R. Maxeiner, Integrating Practical Training and Professional Legal Education, in THE INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION 37 (Jan Klabbers & Mortimer Sellers, eds. 2008)

legal education,” in an effort to bring about “practical lawyer-training’ (*praktische Anwaltsausbildung*).” “Practical training is an issue in legal education,” he goes on to argue, “because legal education does more than convey legal knowledge: it prepares students for professional practice.”² At the recent annual meeting of the Law and Society Association in Chicago, Illinois, two French scholars delivered a paper noting the tempest that was unleashed there when the government issued a decree, again in 2007, permitting graduates of the Institut d’Études Politiques de Paris, or “Sciences Po” as it is known colloquially, to sit for the bar entrance examination, the exam that allows students to move into the apprenticeship phase of their training there. Until that date, only graduates of university law faculties could sit for that exam, and law faculty professors were so enraged they took their case against Sciences Po to court. The professors lost, but the litigation raised the central question of the French scholarly study: “What is a good jurist?”³ As will be noted below, similar questions have swirled through U.S. legal education for at least the last two decades. Whether or not legal education does, *or should*, prepare students for professional practice is, in fact, one of the central debates in the academy, and the central subject to which this report will address itself.

This report will proceed as follows. In the first section, it will provide a brief analytical typology, as well as a framework for comparative law analysis, followed by some explanations of definitions used throughout. The second section will provide what might be called the “prevailing paradigm” of the role of legal education within the context of the submitted national reports, that is, countries from the continental civil law tradition. A

² *Id.*, at 37-38.

³ Myriam Aït-Aoudia & Rachel Vanneuville, “What is a Good Jurist? Contemporary Debates on French Legal Education,” Law & Society Annual Conference, May 29, 2010 (unpublished paper on file with the author).

second subsection will also briefly summarize the role of practice in legal education in the United States and the Netherlands, drawing from the general reporter's personal knowledge of those two countries. A "minority paradigm" will then be offered, drawing from the reports from common law jurisdictions and the United States.

A brief third section will provide information on some of the unusual or noteworthy aspects of the national reports, taken by issue, and not necessarily reported in the Tables. Some of these data may be said to constitute trends in legal education, while others simply stand out as unusual enough to note.

In order to provide a more rounded picture of the issue of practice in legal education, the fourth section of the report will offer a very brief overview of the major developments in the teaching of practice within the academy in "the rest of the world."⁴ If one takes into account the trends across the rest of the world, it is suggested that the prevailing paradigm of these reports reverses itself, and that continental Europe becomes the minority paradigm in the teaching of practice within the academy. A brief conclusion follows the final section.

I. An Overview of Issues for the General Report

A. A Brief Taxonomy, and Some Issues in Theories of Comparison

A quick taxonomy of the submitted reports indicates the following about their general characteristics. First, they overwhelmingly come from Continental Europe (Western and Central), and more broadly from the civil law tradition. Over two-thirds of the reports (11 of 17, or 65%) come from member countries of the European Union, plus

⁴ An analysis based on wealth and poverty provided the origins of the term "the West and the Rest," used by David Landes in his book, *THE WEALTH AND POVERTY OF NATIONS: WHY SOME NATIONS ARE RICH AND OTHERS ARE POOR* xx (1998). I adopt a variation of that terminology here, in that the national reports come predominantly from the West.

Switzerland within that geographic and legal tradition. Of those twelve countries (EU plus Switzerland), only Ireland and England & Wales share the common law tradition. Outside of Europe, another four country reports also hale from the civil law tradition: Turkey, Taiwan, Venezuela and Quebec Province in Canada. Second, and a corollary of the first observation, only four reports come from the common law tradition: the two mentioned above, plus Australia and New Zealand. Even if one adds the author's personal knowledge of the U.S. system of legal education, briefly summarized below, the common law tradition is under-represented here. Third, and perhaps most importantly, aside from a core of relatively wealthy countries in the developed world of the global north, countries from the global south - that part of the world where five-sixths of the world's population lives - are barely represented at all. There is only one national report each from Latin America and Asia, and no reports from Africa or Eastern Europe, while countries of the G-20 are found in ample abundance.

Perhaps this profile of the reports is attributable to the ability of the wealthier countries to contribute to events such as comparative congresses, but such reporting can hardly be called a fair sampling for comparison, whether on legal education or any other topic. The sample might also be said to reflect what Prof. Mathias Reimann criticizes as the "Country and Western tradition" of comparative law more generally, in which the emphasis is on Europe and its scholars who focus their comparative attentions on the operation of private law within "nation state legal systems and Western capitalist societies." That tendency, he suggests, is in "dire need of a major overhaul."⁵ Here, the individual national reporters could have no way of knowing who would respond on the topic under review,

⁵ Mathias Reimann, *The Progress and Failure of Comparative Law in the Second Half of the Twentieth Century*, 50 Am. J. Comp. L. 671, 685 (2002).

and most of the legal education under study here is within the public realm. Yet the Reimann critique must be taken seriously if true and accurate comparisons are to take place within the academy.

Moreover, the particular data-set reported here (again, through no fault of the individual national reporters) generally skews toward those countries in which the role of the teaching of theory within the academy has long reigned supreme over that the teaching of practice. It does not allow, on its face, for any general conclusions as to the global prevalence and trend in growth of what I will call a pedagogy of practice within the legal academy. I have written elsewhere on the reasons for the absence of practical training within the academy in Western Europe.⁶ While my focus in that article was on clinical legal education, the critique applies broadly to the theory-focused legal education that historically predominates in continental Europe as well as in the United States, where the Langdellian case-method of 1870, the verifiable child of German legal science, remains the dominant pedagogy. The national report of Germany specifically engages my critique and provides the beginnings of an international dialog on the topic. I encourage such debate, grounded in accurate data about the real situation of legal education around the globe today, and believe that the occasion of an international congress on comparative law creates an appropriate forum for the development of our collective judgment about the role of legal education in the creation of legal culture.

Whatever the shortcomings in the sample, however, I have developed a careful analysis of the national reports, in both narrative form here and schematic form, in the attached tables. Table 1, with explanations, represents an effort to systematically represent

⁶ Richard J. Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 *German L. Rev.* 823 (2009).

the data from part 1 of my survey questionnaire, on the general character of legal education in the reporting countries. Table 2, with explanations, provides the real meat of this report, as it portrays the ways in which the national reports present information on the extent of the teaching of practice within legal education. For our purposes, Table 1 is necessary only in order to give context and potential explanation for the data in Table 2. For example, as the New Zealand report notes, legal education is divided into three broad stages: a first academic phase, a second professional training phase, and a third post-admission phase of ongoing or continuing legal education, often required in many countries.⁷ The reports themselves all reflect the first two stages: a period of formal training is followed by a required period of apprenticeship in every reporting country. The apprenticeship period is required before a student who has graduated from law school can be admitted to practice as an advocate, and often before he or she can move on to specialized training for either the judiciary or prosecution services. It is often within the apprenticeship phase of training that the trainee-lawyer is said to gain an exposure to training in the actual practice of law.

Another immediately apparent aspect of the reports is that all but three are presented in comparative law's "most important common language today, i.e., English."⁸ Two reports, those from France and Quebec, were submitted in French, while the Venezuelan report was submitted in Spanish. English, it can be argued, has become the *lingua franca* of international and comparative law.⁹ This is important not only in its own right, but because it strongly relates to information in both the national reports and in

⁷ New Zealand national report, at 1. While many reports make mention of continuing legal education requirements, my focus here is on legal education itself, so there will be no discussion of CLE.

⁸ Reimann, *supra* n. 5, at 673.

⁹ An interesting new title, published in May of 2010, suggests that English can be reduced, in turn, to "Globish," with a reductive vocabulary of some 1500 essential words used for business purposes. ROBERT MCCRUM, *GLOBISH: HOW THE ENGLISH LANGUAGE BECAME THE WORLD'S LANGUAGE* (2010).

general on comparative legal education. First, it is obvious from the national reports that English has become an important tool for teaching law in a globalized world, and as a common root language for students across borders. Many of the reports note a trend toward a more globalized curriculum,¹⁰ and law courses in English seem to offer a kind of common denominator for whether schools will attract a global study body. In Belgium, France, Germany, Hungary, Italy and Switzerland, at least some courses are offered in English. (see Table 2, "Foreign Language" column) Second, this reporter is limited to his knowledge of English and Spanish in reviewing any scholarship on the role of practice in legal education, and therefore may not be fully apprised as to the extent of scholarship in other languages on the subjects covered here. One might also note, finally, the role that language plays within the domestic organization of legal education, as is most prominent in the reports from Belgium and Switzerland, where multiple language communities contribute to the diversity and challenges of organizing legal education throughout a linguistically diverse nation.

A second issue in conducting a comparative study is the frame of reference for comparison itself. Comparative law has struggled mightily with this theme throughout its existence, and modern comparative study of legal education and the legal profession is not immune to this critique. Some of that, in turn, has to do with the existing literature on the topic, and prior frames of reference. First, then, let us briefly review the English-language literature on comparative legal education and the legal professions.

¹⁰ See, e.g., Belgium Report, at 10; Greece Report, at 17; Italy Report, at 6; see generally, THE INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION, *supra*, n. 1.

Literature on comparative legal education is sparse at best, and where it exists, it tends toward comparisons of U.S. and classic European systems. In 1965¹¹ and 1970,¹² comprehensive bibliographies on comparative legal education were published in the United States. The later bound volume is significantly larger, and contains over 100 pages of annotated entries on legal education around the world, under the heading of "Comparative Legal Education." These materials are organized by region and country, and make no further subject-matter distinctions within countries. In 1993, another volume appeared, this time on international legal education,¹³ but bibliographies appear to be otherwise limited to country-specific materials.

Comparative materials on the legal professions share much the same fate, aside from the general observation that legal professions and legal education are often treated as separate fields of study, as though the two were completely unrelated. The definitive series of books on *Lawyers in Society*, edited by Richard Abel and Philip Lewis in the late 1980s,¹⁴ remain the best single collection on comparative legal professions, but their work focuses primarily on the sociology of law rather than purely comparative perspectives. Now more than twenty years old, this collection still remains as the best comparative source on these topics, but it too is limited largely to comparison of lawyers in Europe and the United States. A more recent volume represents a kind of sequel, but again focuses on Europe and North America, with additional chapters on Australia, Korea, Mexico and Latin America

¹¹ DORIS YENDES ALSAUGH, *A BIBLIOGRAPHY OF MATERIALS ON LEGAL EDUCATION* (1965).

¹² DUSAN J. DJONOVICH, *LEGAL EDUCATION: A SELECTIVE BIBLIOGRAPHY* (1970).

¹³ *INTERNATIONAL LEGAL EDUCATION BIBLIOGRAPHY* (Donald B. King ed. 1993) (loose-leaf document prepared for the Section on International Legal Exchanges of the Association of American Law Schools).

¹⁴ RICHARD L. ABEL & PHILIP S.C. LEWIS, *LAWYERS IN SOCIETY* (1989), 4 vols.

generally.¹⁵ The late Mauro Capelletti's multi-volume series on access to justice, completed in the 1970s, contained more information on a wider range of countries, but on a narrower topic.¹⁶ There is, to my knowledge, only one volume exclusively devoted to the legal professions in the global south, primarily Africa and Latin America, but also including Malaysia, and that volume is now nearly 30 years out of date.¹⁷

The most recent volumes on comparative legal professions take a more cultural perspective,¹⁸ while challenging the dominant paradigms of comparison through the traditional civil v. common law structures.¹⁹ Prof. Garth, for example, suggests that perspectives grounded in institutional economics, such as the writings of Ugo Mattei, or with market-oriented grounding, provide better alternative frameworks for analysis than the traditional comparativists. Each alternative "defines the object of study differently, and each provides very different insights about what it means to be a 'lawyer' or 'jurist' in different places."²⁰ Other comparativists suggest abandonment of the common-law-versus-civil-law paradigm entirely, in favor of broad factors such as prestige, power or efficiency as motivators on the part of the receiving countries in the "legal transplant" process, while imposition through colonialism or imperialism is the primary tool of the exporting countries.²¹ Prestige and power, politics and economics, patriarchy and paternalism may

¹⁵ REORGANIZATION AND RESISTANCE: LEGAL PROFESSIONS CONFRONT A CHANGING WORLD (William L.F. Felstiner ed. 2005).

¹⁶ ACCESS TO JUSTICE (Mauro Cappelletti ed. 1978-1979) 4 vol.

¹⁷ LAWYERS IN THE THIRD WORLD: COMPARATIVE AND DEVELOPMENTAL PERSPECTIVES (C.J. Dias et al. eds. 1981).

¹⁸ See, e.g., LEGAL PRACTICE AND CULTURAL DIVERSITY (Ralph Grillo et al. eds. 2009).

¹⁹ Bryant Garth, *Comparative Law and the Legal Profession: Notes Toward a Reorientation of Research*, in LAWYERS' PRACTICE AND IDEALS: A COMPARATIVE VIEW 227 (John J. Barceló III & Roger C. Cramton eds. 1999).

²⁰ Id. at 228.

²¹ Gianmaria Ajani, *By Chance and Prestige: Legal Transplants in Russia and Eastern Europe*, 43 AM. J. COMP. L. 93, 112-114 (1995); Michele Graziadei, *Comparative Law as the Study of Transplants and Receptions*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW 441, 355-461 (Mathias Reimann & Reinhard Zimmermann eds., Oxford University Press 2006).

also provide significant structural frameworks for the analysis of the persistence of tradition within legal education.²²

In this study, for example, there is no analysis of the implications for legal education of the economic and sociological phenomenon known as "big law," or the growth of the enormous, multi-national law firm. The biggest 100 global law firms, mostly based in the United States, but also found in England, the Netherlands, Spain, France, Australia and Canada, averaged over 1,000 lawyers per firm in 2008 for the first time.²³ In 2009, the biggest U.S. firm, Baker & McKenzie, topped out at just short of 4,000 lawyers in 39 countries.²⁴ Its gross revenues of \$2.1 billion rank it higher than the GDP of 32 countries of the world in 2009, by World Bank measures of GDP. Recent studies show that the particular organizational structures of these firms, as well as the lawyering skills needed to perform well within firm culture, may require us to change our views of the legal profession and the ways in which legal education trains future lawyers.²⁵ Market-driven decisions erode lawyer's ethics and can make the practice of law more a business than a profession.²⁶ And the lure of big money goes with big law -- starting salaries for new associates, even during the recession and with delayed start dates, have stayed in the neighborhood of \$160,000 per year in the U.S. And even though big law laid off lawyers,

²² See, e.g., Duncan Kennedy, *The Political Significance of the Structure of the Law School Curriculum*, 14 Seton Hall L. Rev. 1 (1983-1984); generally, Ugo Mattei, *Why the Wind Changed: Intellectual Leadership in Western Law*, 42 Am. J. Comp. L. 195 (1994).

²³ *The Global 100: Most Lawyers*, 30 American Lawyer 171 (Oct. 2008). The German national reporters also note the growth of "big law" in that country.

²⁴ *The Am Law 100, 2010*, 32 American Lawyer 137 (May 2010).

²⁵ RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* (2009)(British perspective); THOMAS MORGAN, *THE VANISHING AMERICAN LAWYER* (2010)(American perspective).

²⁶ See, e.g., *LAWYERS' PRACTICE AND IDEALS: A COMPARATIVE VIEW* (John J. Barceló III & Roger C. Cramton eds. 1999), with six chapters on legal ethics in the profession, and MILTON REAGAN JR., *EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER* (2005).

deferred new hires, and slashed the size of incoming classes of associates,²⁷ revenue per partner in the biggest firms in 2009 still averaged just over \$1 million, with the top firm's partners taking in \$4 million each.²⁸ While this report lends itself to the traditional construct of comparison by civil law/common law distinctions, these economic factors are profoundly changing the face of the bar, and raising troubling questions about legal education's relationship to -- and arguably its profound disconnection from -- the contemporary practice of law.

B. Definitional Issues

It was apparent, on reading the national reports, that the general reporter's attempts to adopt a common vocabulary that might provide a common frame of reference for national reports were sometimes unavailing, despite valiant attempts. Before beginning a detailed discussion of the data, then, I will provide some definitional framework for common reference. At the heart of the matter is the question of what constitutes the "practice" of law; put another way, what is the legal "profession" and what do law professionals do? A related question is what terminology should be used for one who engages in the practice of law.

When using those terms in the United States, the usage is relatively straightforward. In *Black's Law Dictionary*, a "lawyer" is defined as "a person learned in the law; as an attorney, counsel or solicitor; a person licensed to practice law." Even there, several synonyms are offered: attorney, counsel or solicitor. In the U.S., however, the term "solicitor" is not used, as the bar is unitary; the last half of the definition is better. A lawyer

²⁷ *No Answers Easy: Am Law 100 Firms Laid Off Thousands of Lawyers in 2009*, 32 *American Lawyer* 108 (May 2010).

²⁸ *The Am Law 100, 2010: 2009 Profits Per Partner/By Location*, 32 *American Lawyer* 157 (May 2010). The top firm, in PPP, was New York's Wachtell, Lipton, Rosen & Katz, with \$4,300,000 each for 86 equity partners.

is, simply, one who holds a license to practice law, that license having been issued by the highest bar authority in the state in which the law school graduate sat for a state bar examination and passed the related "character and fitness to practice" element of the licensing process. Once a lawyer has her license, she can appear in any state court within that jurisdiction, and without much more than payment of an additional licensure fee, can appear in the federal courts as well.

Lawyers in the U.S. engage in the practice of law, whether they are self-employed, or employed by a law firm, as in-house counsel in a business entity, by government, prosecution services, or as court personnel other than judges. The area of practice focus matters little for lawyers in the U.S., and lawyers rarely take on the role of judge immediately after law school graduation; judicial positions are gained later in one's career by either nomination or non-partisan popular election. One can readily see that the term "lawyer" captures the vast majority of the legal profession, other than the judiciary and most of the teaching profession. A lawyer is, in short, a provider of general legal services. While some law school graduates do not actively practice law, the vast majority take a bar exam and become licensed in some state, usually within the first year after their graduation from law school. In the U.S., a notary is not legally educated, and serves simply as a qualified public official who certifies that a document has been sworn under oath to be true and accurate. Legal secretaries often act as notaries after taking a short course and obtaining a notary certificate; a small fee may be charged for notary services.

The U.S. definition of law practice and membership in the legal profession does not hold true almost anywhere else in the world, and certainly not within the civil law world. As was apparent from the reports (and the general reporter's prior knowledge), many law

school graduates from Europe and other parts of the world do not go on to become licensed practitioners after law school graduation. While many national reports were not able to make accurate estimates, most reports suggested that somewhere between 60 and 75% of all law school graduates go on to pursue a law license, and are now in practice. (See Table 1, column marked "Grad % prac."). Only one country report, Italy, suggested that a "minority" of law grads go on to licensure,²⁹ while several suggested that "most" graduates obtain licenses. In many parts of Europe, such graduates of law school without licensure are referred to as "jurists," and they will be designated as such hereafter. In-house counsel for corporations or businesses often fall into this category, and may not need formal licensure to advise their business clients.

For those with legal training who go on to licensure and then into private or public practice, the most common term is "advocate," although countries that are part of the British tradition (England & Wales, Ireland and Australia) continue to make distinctions between two categories of training and practice: solicitor and barrister. The barrister is most associated with those who appear in court to plead a client's case, while a solicitor traditionally engages in out-of-court advisory work, but those distinctions are blurring, despite maintenance of the hierarchy of barrister over solicitor. Here, I will use the term advocate or lawyer when referring to individuals licensed for the private or public practice of law within a national jurisdiction. In his study comparing lawyers and law practice between the common law and civil law tradition, however, American scholar Richard Abel

²⁹ Bar leaders in the Netherlands hold a similar view; see below.

found accurate comparisons of the legal professions to be "acutely problematic" across the civil and common law, but not impossible.³⁰

There are, however, categories of the legal profession that are not associated with the traditional practice of law. These include, most typically, notaries, prosecutors, judges or magistrates, and sometimes bailiffs. For those statuses, special additional training may be required in addition to or distinct from the traditional apprenticeship stage before entry into law practice, and such forms of the legal professions often have their own guilds or bar associations apart from advocates. Positions in these fields are normally begun after law school, are life-long specialized careers, and are not considered to be engaged in law "practice." The same may be true in some countries for specialized training in a particular area of law, especially in fields such as tax or real estate law. Thus, as the French report notes (in my own translation from the original French), "law studies offer numerous possibilities: the professions of advocate, notary, magistrate, in-house counsel, bailiff, realtor, insurer, judicial administrator, appraiser, banker, different positions within the public sphere (professors, hospital directors, lieutenants and commissioners of police, work inspectors, customs inspectors, tax controllers, etc.)" and others.³¹ One may or may not have a formal license to practice law in order to engage in some of these functions, and sometimes one must have more than formal legal education and an apprenticeship to hold such positions, but all are available with a law school diploma.

The European distinctions between law practice and other legal roles, however, do not appreciably differ from the functions carried out by U.S. jurists and advocates, and legal

³⁰ Richard I. Abel, *Lawyers in the Civil Law World*, in *LAWYERS IN SOCIETY: VOL. 2, THE CIVIL LAW WORLD* 1, 5 (Richard I. Abel & Philip S.C. Lewis eds. 1988).

³¹ French report, at 8.

education still has, as its primary function, "the formation of skilled lawyers," as noted in the Belgian report.³² The report goes on to suggest that because the skills of a lawyer remain a "tricky" question, the inclusion of skills training in law school curricula remains difficult, as there is "no general accepted 'standard' for implementing practice in curricula."³³ That may well be true in Belgium, and more broadly in continental Europe, but it is not true in England and Wales, nor in the United States, where the bar and the academy together have sharpened answers to the question of what baseline skills a lawyer needs in order to competently engage in the practice of law.

No generally accepted standard for the teaching of practice exists on the Continent for a number of reasons. First, very little time has been devoted by the legal academy there to the question of what a lawyer does in practice, as most law school academics do not practice law themselves, and the topic holds little academic interest. More than twenty years ago, Richard Abel noted that "students of comparative law . . . have paid little or no attention to lawyers," at least in English-language studies. He noted in 1988 that "very little has been written in English on lawyers outside of the common law world."³⁴ Second, and a corollary of the first, issues of practice on the Continent are best designed and taught by the bar or bench during the separate period of apprenticeship, as it is the bar or bench that is best equipped to teach skills.³⁵ Third, it is assumed that issues of practice can and will be taught adequately during the period of formal apprenticeship, a period of immersion in the world of law practice, often accompanied by classes intended to expose students to practice

³² Belgian report, at 9.

³³ Ibid.

³⁴ Abel, *Lawyers in the Civil Law World*, supra n. 30, at 1.

³⁵ Note that three jurisdictions - Australia, Belgium and Italy - report that law school faculty design and teach the courses offered during the apprenticeship period.

issues. All of the reporting countries in this study provide for some period of apprenticeship, although the time period for such training varies radically, from as short as 18 weeks, in New Zealand, to as long as 3 years, in Belgium, the Czech Republic and Hungary. (see Table 1, first column under "Apprenticeship" heading). Finally, it is assumed that if the apprenticeship does not adequately prepare the new advocates for practice, they will get that training on the job, through training programs conducted by the law firms by which the advocate will be employed.

The French report hints that practical training is easy for recent graduates to pick up; the report seems to suggest that, for starting in-house counsel, such training can occur in "less than two months, if the new recruit demonstrates such a mind or natural potential to reinforce [such training] quickly."³⁶ If there is little current scholarship on what lawyers do in practice on the continent, there is even less, empirical or otherwise, on the question of what actually happens during the apprenticeship period or with other forms of on-the-job training, except very anecdotally. One can fairly conclude, I believe, that the legal academy, in both Europe and United States, knows very little about what happens after formal academic training is over, whether in an apprenticeship or in practical, on-the-job training. Indeed, one can make the case that the legal academy, not only in Europe but throughout the world, is strangely balkanized from the law profession and law practice itself, and that legal education's age-old romance with doctrinal issues - whether through codes or cases - comes at the expense of actually knowing, and helping students to learn, what lawyers need to know and do in their professional work. If the national reports are a reflection of the broader world of law teaching, that is certainly the case in continental

³⁶ French report, at 9.

Europe and Latin America today, after millennia of teaching law as science through an overwhelmingly mandated doctrinal curriculum, via dogmatic lecture and rote memorization to huge classrooms of students.³⁷ Law teaching, we might note, is no less tradition-bound and doctrinally focused in the United States or throughout the common law system. U.S. history is simply shorter, and the historical direction is discernibly more toward a greater role for practice within the academy.

It is not the purpose of this report to call for a legal education to exclusively or *only* teach practice. To focus legal education on practice skills exclusively might well, as the French national report notes, "suppress any systematic or synthetic thinking."³⁸ Rather, the purpose of the report is simply to document the extent to which legal education today gives attention to what might be called a pedagogy of practice, *in addition to* imparting the skill of careful and logical legal reasoning.

The recent report of the Carnegie Foundation for the Advancement of Teaching, *Educating Lawyers: Preparation for the Profession of Law*,³⁹ critiquing legal education in the United States today, suggests that the role of legal education should be to focus on what it calls the "three apprenticeships": training for thinking, performing and professional conduct. The first apprenticeship is intellectual or cognitive, and is the traditional

³⁷ If taken as accurate, this was certainly true fifteen years ago, when the great comparative scholar, John Henry Merryman, wrote that in Western Europe, "[q]uestions about teaching objectives and methods are considered uninteresting or not open to discussion. One teaches as professors have always taught; one's purposes are the same purposes as they have always been; questions about such matters do not arise." John Henry Merryman, *Legal Education There and Here: A Comparison*, in CIVIL LAW 79, 85 (Ralf Rogowski ed., 1996). And later, he opines that in "the civil law world, the educational focus is primarily on substance; method is deemphasized." *Id.*, at 91. This seems no less true in Latin America today. See, Juny Montoya, *The Current State of Legal Education Reform in Latin America: A Critical Appraisal*, 59 J. Legal Ed. 545 (2010) (commenting that in Latin America, the "teaching of law has inherited medieval, dogmatic methods and later incorporated a further, inner dogmatism shaped by the ideology of codification." *Id.*, at 546).

³⁸ French report, at 14.

³⁹ WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (Carnegie Foundation 2007).

apprenticeship that dominates legal education throughout the world today. The second apprenticeship is "the forms of expert practice shared by competent practitioners," and must be taught by "quite different pedagogies" than those by which theory is taught. The third, an apprenticeship of "identity and purpose," inculcates values for which the legal profession is responsible.⁴⁰ While the Carnegie Report authors do not explicitly so conclude, one can make that case that these apprenticeships are universal; they are or should be common to the mission of legal education throughout the world. It may be that the traditional apprenticeship period following law school in many countries contributes to construction of the three essential apprenticeships, but the question remains as to whether legal education lives up to its promise to prepare skilled, competent beginning lawyers.

One final issue deserves explication, that of what constitutes the scope or range of the teaching of practice in legal education. Is the teaching of practice primarily focused on the content of the subject matter offered within a school's curriculum, or is the teaching of practice a question of teaching methodology? This report, and hopefully the questionnaire itself, left ample room for broad inclusion of both content and method in the teaching of practice.

There are a range of courses, or methods used in the teaching of substantive doctrinal courses, that constitute the teaching of practice, as the national reports noted with some frequency. Here, and within Table 2, I have included a number of courses or subjects that constitute the teaching of practice, or what has come to be called, in English, "lawyering" courses. This term, which emerged in the scholarship in the 1970s, refers to

⁴⁰ *Id.*, at 27-29.

the things that a lawyer does, and is simply a verb constructed from the noun. I will use the term here, when appropriate.

Methods of teaching practice are often referred to as "active" or "experiential" methods, as they engage the student in some activity other than passive listening. They may be hypothetical or real, but all involve activity: doing, rather than merely thinking.⁴¹ In this sense, active or experiential learning goes beyond not only the classic lecture method, but also the "Socratic-case" method in U.S. legal education, developed from roots at Harvard Law School in the late nineteenth century. The case method, although grounded in the study of cases as precedents, was designed by Dean Langdell pursuant to the notion that a few essential principles of law could be discovered in the cases through a scientific method. This concept was borrowed from German legal science, then seen as a guiding force by many American academics.⁴² It is, as such, a method of legal analysis or legal thinking, and the use of cases is simply another context for critical legal reasoning; it is grounded in thinking, and not in doing. Nonetheless, because at least six national reports from the civil law tradition⁴³ included the study of cases as a method for teaching of

⁴¹ Julian Webb, a British scholar, draws more subtle distinctions between experiential learning and practical or experiential knowledge. The experiential model "places a premium on the know how rather than the know what aspects of learning." Julian Webb, *Where the Action Is: Developing Artistry in Legal Education*, 2 Int'l J. Legal Prof. 187, 190-191 (1995).

⁴² See, Laura I. Appleman, *The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped Our System of Legal Education*, 39 New Eng. L. Rev. 251 (2005) (arguing that German legal science, as adopted by Langdell, was "less about individual German courses and more about a specific scholastic ideology -- a way of thinking about learning -- focusing on scholarship and research as the definition of one's professional career . . . The scientific method, emphasized by such German scholars as Leopold von Ranke, emphasized long hours in the library and absolute fidelity to sources." *Id.*, at 274); Howard Schweber, *The "Science" of Legal Science: The Model of the Natural Sciences in Nineteenth-Century American Legal Education*, 17 Law & Hist. Rev. 421 (1999) (suggesting the science was a natural science inherited from the British, but arguing that "Langdell's 'legal science' was emphatically not based on the experience of legal practice." *Id.*, at 461).

⁴³ Belgium, Hungary, Portugal, Switzerland, Turkey and Venezuela. Germany notes that cases are used in state examinations.

practice, five civil law countries list seminars,⁴⁴ and another three civil law countries⁴⁵ use what is commonly called problem-based learning, I have included those three methods or course contexts along the continuum of the teaching of practice. (see Table 2, columns headed "Cases," "Seminars" and "PBL")

Thinking of the teaching of practice as flowing along a continuum of courses or subjects might be helpful in approaching this topic within the report.⁴⁶ The constellation of courses moves from the more passive to the more active in engaging the student in the learning process. Courses or subjects such as a foreign language, cases, problem-based learning and seminars are all included here, but all involve either teaching or learning contexts only of legal thinking or analysis. The mere fact that a student is speaking in class can arguably make a subject active, but it is not yet experiential; that is, students are largely using their cognitive, analytical skills rather than other, less cognitive processes such as judgment, creativity, interpersonal skills or time-efficiency. Another set of courses engages the students in activities that are experiential in the sense that they simulate lawyering tasks through replication in often-complex and lengthy hypothetical situations. These include such courses as legal research, legal rhetoric, legal drafting, or other simulation courses (examples might include courses on client interviewing or counseling, trial practice, or on alternative dispute resolution methods such as negotiation, mediation or arbitration). Those courses are listed in Table 2 as well, although there is one catch-all

⁴⁴ Belgium, Czech Republic, Greece, Hungary and Turkey.

⁴⁵ Belgium, Greece and Turkey. Among the common law countries, England & Wales and New Zealand also listed PBL as a context for teaching practice.

⁴⁶ I first suggested the existence of a "passive-to-active pedagogical continuum" for legal education in Richard J. Wilson, *The New Legal Education in North and South America*, 25 *Stan. J. Int'l L.* 373, 420-422 (1989).

category called "Simulation" that is intended to capture subject-matters taught through simulation or role-play, but beyond the most basic lawyering skills.⁴⁷

This is not to say, of course, that all courses or subjects on the continuum are of equal weight or strength as teaching methods. Each has come under significant criticism, particularly when compared to the benefits of work with actual clients in the clinical context. Moots, for example, have been justifiably criticized. Although mooting is seen, in Canada and elsewhere, as "one of the rites of passage of undergraduate legal education," moots inappropriately shift their focus "away from finding a 'good outcome' towards discovering a 'winning formula' with little attention paid to the actual consequences. [Mooting] is incomplete and naïve when it comes to dealing with real life problems and real life clients."⁴⁸ By contrast, problem based learning, or PBL, a method often used in medical training, can provide opportunities for cooperative and collective work, if conducted properly. It also emphasizes the process dimensions of learning by encouraging student groups to "think about *how* they went about the task they were assigned, to reflect on what problem-solving techniques they are developing and what worked and did not work to produce good results."⁴⁹ The same is true of the experiential context of clinical education, in which the cycle of planning, doing, reflection and abstract conceptualization is central to the clinical enterprise.⁵⁰

⁴⁷ One course listed in the German report as "Legal Methods," appeared to fall within this category, but the German national reporters clarified that this is not a skills course. He noted that skills courses are offered on an optional basis.

⁴⁸ Julie Macfarlane, *What Does the Changing Culture of Legal Practice Mean for Legal Education?*, 20 Windsor Y.B. Access to Just. 191, 195 (2001).

⁴⁹ *Id.*, at 203-204 (emphasis in original).

⁵⁰ Steven Hartwell, a clinical teacher, suggests ways in which experiential learning can be incorporated into the traditional, and much larger, doctrinal class. Steven Hartwell, *Six Easy Pieces: Teaching Experientially*, 41 San Diego L. Rev. 1011 (2004).

Another Canadian scholar criticizes the difference between role-play or simulation's artificially constructed learning contexts and those of clinical work:

These arise because a student caseworker who engages with the contexts of poverty law with a "live client" must confront contingencies which often cannot be adequately replicated in a simulated exercise. When a client is facing homelessness, deportation or other dire consequences of poverty, a host of issues may surround and enmesh the legal issues, including the need for an interpreter, the need for psychological assistance, the need for medical treatment, the need for food, the need for shelter and so on. . . It is clearly a very different enterprise . . . to prepare a distressed non-English-speaking client for next Monday's deportation proceedings than it is to dissect and prepare questions based upon the facts gleaned from a five page "transcript" of an "interview" for a role-played direct examination.⁵¹

There also are courses or options that involve the actual doing of a lawyer's work. These technically include only clinical courses, but here will include externships as well, as the two are normally included together within the ambit of clinical legal education.⁵² A number of national reports noted that students may make visits to local courts or other legal institutions. These are not externships in the sense in which this report means the term. As one British source notes, "observation exercises (e.g., court visits, watching practitioners either in life or on video or film) being essentially passive," do not qualify as clinical experiences.⁵³ An externship (sometimes also called an internship; the terms seem interchangeable) is the placement of a student within a legal institution or law office, under the supervision of an employee of that office who works within the legal profession,

⁵¹ Rose Voyvodic, "Considerable Promise and Troublesome Aspects": *Theory and Methodology of Clinical Legal Education*, 20 Windsor Y.B. Access Just. 111, 117-118 (2001).

⁵² See, e.g., Elliott S. Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations*, 51 J. Legal Educ. 375 (2001). The massive bibliography on clinical legal education compiled by Profs. Sandy Ogilvy and Karen Czapanskiy also includes externships and in-house clinics (those housed within a law school) within the definitional scope of clinical legal education. J.P. Ogilvy and Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography* (3d ed.), 12 Clinical L. Rev. 5 (2005), also available on-line at <http://faculty.cua.edu/ogilvy/Index1.htm>, visited on 21 May 2010.

⁵³ Andrew Boone, Michael Jeeves & Julie Macfarlane, *Clinical Anatomy: Towards a Working Definition of Clinical Legal Education*, 21 The Law Teacher 61, 65 (1987).

allowing the student to observe and occasionally take part in the work of that person or office, hopefully for credit within the law school but sometimes on a volunteer basic. There should be some oversight of the student's work in the office by a faculty member of her school, and in law schools such as my own, externships are rarely taken for credit without an accompanying externship seminar, often with people from the same subject area. Simulations⁵⁴ and externships⁵⁵ have their strong defenders, and are included here within the realm of experiential learning because they are forms of active student experience.

In the questionnaire, I defined clinical legal education to mean "a course within the law school, for credit, in which the student provides legal advice or other legal services to persons who could not otherwise afford counsel." This is a rather simplified definition, but was intended to be inclusive. By contrast, a Canadian scholar says that clinical legal education can be described as "a process, or method, of teaching that is ' . . . a curriculum-based learning experience, requiring students in role, interacting with others in role, to take responsibility for the resolution of a potentially dynamic problem,' and in which the student performance is subjected to intensive critical review."⁵⁶ Earlier, the same author cautions on over-inclusion regarding the scope of a definition of clinical legal education:

[T]here appears to be a tendency to label many law-related activities students engage in outside of the classroom, including such traditional activities as legal research and mooted, as "clinical." This usage has been traced to associations of this term with innovative or novel programs which depart from the case method, but may have little else in common, or with instructional methods which appear to be primarily focused on skills.⁵⁷

⁵⁴ Deborah Maranhville, *Passion, Context and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences*, 7 *Clinical L. Rev.* 123 (2000) (United States); Russell Stewart, *Making Simulations Stimulating*, 3 *J. Prof. Legal Educ.* 51 (1985-1986).

⁵⁵ For a very recent and comprehensive treatment of externship programs, see James Backman, *Externships and New Lawyer Mentoring: The Practicing Lawyer's Role in Educating New Lawyers*, 24 *BYU J. Pub. L.* 65 (2009). As noted above, other significant works on externships can be found in the Ogilvy and Czapanskiy bibliography, *id.*

⁵⁶ Voyvodic, *supra*, n. 47, at 126; internal quote from Boone, Jeeves & Macfarlane, *supra*, n. 53, at 68.

⁵⁷ *Id.* at 122.

Another effort at defining clinical education, this time British, calls for five essential elements: (1) active participation; (2) interaction in role; (3) dynamic nature of the problem; (4) student responsibility for outcome; and (5) relation to the curriculum.⁵⁸

Elsewhere, I have defined a legal clinic as ideally having the following five components: (1) academic credit for participation, within the law school curriculum; (2) students provide legal services to actual clients with real legal problems, within a framework permitted by local statute, bar or court rules permitting limited student practice, advice or other legal services;⁵⁹ (3) clients served by the program are legally indigent; they generally cannot afford the cost of legal representation or come from traditionally disadvantaged, marginal or other underserved communities; (4) students are closely supervised by an attorney licensed to practice law in the relevant jurisdiction; and (5) case-work by students is preceded or accompanied by a law school course, for credit, on the skills, ethics and values of law practice, as well as the necessary predicate doctrinal knowledge needed for the cases or matters to be handled by the clinic.⁶⁰ All of these elements may not be present in every law school clinic, but, as noted, they represent an ideal. My definition elaborates on that used in the first comprehensive report on what American clinical teachers call the “live-client, in-house clinic,” within law schools. That report defined “clinical education” as

first and foremost a method of teaching. Among the principal aspects of that

⁵⁸ Boone, Jeeves & Macfarlane, *supra*, n. 53, at 65.

⁵⁹ Within the U.S. clinical movement, an increasing number of clinics are involved in project-based work, without representation of individual clients. This is sometimes referred to as cause-based work, and may involve long or short-term work on a specific legal issue such as, e.g., prolonged and unfair detention of immigrant populations or the growing problem of gang-related violence in urban communities.

⁶⁰ Wilson, *supra* n. 6, at 829-830.

method are these features: students are confronted with problem situations of the sort that lawyers confront in practice; the students deal with the problem in role; the students are required to interact with others in attempts to identify and solve the problem; and, perhaps most critically, the student performance is subjected to intensive critical review. . . . If these characteristics define clinical teaching, then the live-client clinic adds to the definition the requirement that at least some of the interaction in role be in real situations rather than in make-believe ones.⁶¹

There is one way in which I fundamentally disagree with the last definition and the ones offered by the Canadian and British scholars. Clinical education is, at once, much more than a powerful instructional method. It is, as well, a learning context immersed in society, as well as a stance before the law. It cannot be done individually, and must be done with an awareness of issues of justice and equality; its fundamental democratic elements are central to its mission. As element four of my definition above notes, true clinical work privileges a focus on the poor, the disadvantaged and the marginalized – vast populations which simply are not served by the majority of the legal profession. This unique role of clinics, with its opportunities to make clinical students “provocateurs for justice,” marks perhaps its greatest divergence from the dominant pedagogies in legal education.⁶²

With those preliminary matters out of the way, the report will proceed to its substantive analysis.

II. The Paradigms of Practice in Legal Education: The National Reports and Beyond

A. The Prevailing Paradigm in the National Reports

⁶¹ Report of the Subcommittee on Pedagogical Goals of In-House, Live-Client Clinics, *Report of the Committee on the Future of the In-House Clinic*, 42 J. Legal Educ. 511 (1992)

⁶² See, e.g., Jane H. Aiken, *Provocateurs for Justice*, 7 Clinical L. Rev. 287 (2001); Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 Fordham L. Rev. 1929 (2002); Lucie E. White, *The Transformative Potential of Clinical Legal Education*, 35 Osgoode Hall L.J. 635 (1997).

If one were to generalize about the structure of legal education, as represented in the national reports, one would be looking at the universe of legal education in the civil law tradition, mostly in continental Western Europe. There, legal education is mostly public, generally accessible and inexpensive as a field of undergraduate study. Costs for legal education run from a low of no tuition or fees to a cost of no more than €2,000 per year. Many national reports from those countries indicate that either state or local governments provide additional direct support to students through expense stipends. The Greek report indicates that the state "provides for books, access to libraries, food discounts for public transportation, as well as housing for economically deprived students."⁶³ Germany provides a government stipend to anyone in the apprenticeship stage of training. Private schools in the civil law countries are considerably more expensive, with tuitions up to the €9-10,000 range, but still far less than private legal education in the common law countries.

The prevailing paradigm is taught in a highly structured curriculum, with mandatory courses making up the majority of offerings. Teachers are generally full-time, hold doctoral degrees in law, and practice law only rarely outside of the academy. They are scholars first.⁶⁴ While there is little trend data requested in the questionnaire, there is a strong suggestion that the number of law students, and the size of the national bar commensurately, has grown dramatically over recent decades. This seems most evident outside of Europe, where, for example, the total number of law schools has expanded by 28 in Taiwan since 2000, or in Venezuela, where some 13 law schools have come into

⁶³ Greek Report, at 4.

⁶⁴ The Belgian report suggests an economic disincentive to practice, that being the need for the law professor practitioner to carry malpractice insurance, an additional expense that inclines universities "not [to] tend to promote real counseling." Belgium Report, at 14.

existence since 1990. Many of these schools are private, exclusive (requiring entrance exams or merit-based screening) and a good deal more expensive than public law schools.

The prevailing paradigm reveals that the structure of legal education has changed dramatically in Western Europe in the last decade, with many law schools moving toward the uniform structure suggested by the Bologna Process. Forty-six participating countries, including the entire European Union membership, signed onto the 1998 Sorbonne Declaration and the 1999 Bologna Declaration, along with several additional communiqués over the past decade, all collectively referred to today as the Bologna Process, with a goal to create a so-called European Higher Education Area (EHEA) by the year 2010.⁶⁵ Seven of the reporting countries⁶⁶ have adopted the two-tiered system of legal study recommended by Bologna, with a first, general and undergraduate term of law studies of three years followed by a focused masters program of one to two years duration. Only after taking the second degree may the student move on to formal licensure.⁶⁷

One more aspect of the national reports from civil law countries, not revealed in the Tables, is the extent to which curricula in these schools have been internationalized. This move to the globalization of legal education has been much-examined in the literature, and is one of the few aspects of the field to which significant scholarship has been devoted. As the Italian report put it so nicely, "something is moving in Italy, and more generally in

⁶⁵ Laurel S. Terry, *The Bologna Process and Its Impact in Europe: It's So Much More than Degree Changes*, 41 VANDERBILT JOURNAL OF TRANSNATIONAL LAW 107, 113-114 (2008).

⁶⁶ Belgium, Czech Republic, England and Wales, France, Ireland, Italy, Switzerland. The common law jurisdictions also have other variants to legal study, including both post-graduate and traditional apprenticeship routes involving no formal instruction at all.

⁶⁷ Some have argued that this structure makes European legal education more like that of the United States, with nearly our nearly uniform practice of four years of undergraduate study, followed by three years of law. The analogy is strained, I believe, because in Europe, even the first three years are within the field of law, albeit general subjects, while undergraduate education in the United States is in the liberal arts or sciences, so entering law students may have a degree in engineering, math, physics or even music.

Europe."⁶⁸ There, as in many other European countries, there is an active and well-established program of student exchange through programs such as ERASMUS and Socrates, founded in 1987.⁶⁹ The Italian report notes a number of student exchange programs outside of Europe, with shared or joint degree programs with "American Schools, Latin American Schools or Law Schools of China, Japan and Australia."⁷⁰ This was typical of many reports. More and more schools offer required courses in EU law, as is true in Ireland, while in Belgium some schools make International or European Law required courses at the Masters level. The Greek report notes that the "internationalization of legal studies" has "blurred the dividing line between the two legal education traditions" of the common and civil law.⁷¹ A second aspect of internationalization is technological. Several of the national reports include reference to distance-learning legal education, including Italy's report of a total of eight "e-learning" law schools in the country, with Switzerland and the Netherlands (see section that follows) each reporting one such school. (See Table 1, column marked "Number LS" and accompanying notes) England, for example, also reports an increase in the use of "e-learning simulation software" for use in particular courses,⁷² while Switzerland notes that a private organization has made a business of offering training in legal uses of the internet.⁷³

All of the reporting countries here require a period of apprenticeship for licensure after academic study, usually organized by the legal profession, but sometimes by the law schools or the courts. That apprenticeship varies in length from 18 weeks, in New Zealand,

⁶⁸ Italian Report, at 6.

⁶⁹ More information on the Erasmus program can be found at http://ec.europa.eu/education/lifelong-learning-programme/doc80_en.htm, visited on May 25, 2010.

⁷⁰ Italian Report, at 6.

⁷¹ Greek Report, at 3.

⁷² England & Wales Report, at 19.

⁷³ Switzerland Report, at 7.

to three years in several countries, and it is usually organized and run by the nationally organized and unified bar. This apprenticeship almost always includes some period of time devoted to practical courses and exams, either on the individual subjects or more broadly through a general bar examination. Only Turkey reports no requirement for a final bar examination before entry into the profession, while Taiwan puts its extremely rigorous bar examination after graduation and before entry into the apprenticeship. Another country with rigorous entry requirements is Germany, with two formal state examinations, one after law school and another after completion of the *Referendariat*, or apprenticeship. The second exam is designed to establish one's qualifications as a judge, the most demanding branch of legal study.⁷⁴ That same trend is reflected in the shift to English-language courses and degrees, noted above.

Given the dominant paradigm of Western European legal education, together with the prevalence of the apprenticeship period, it is easy to see why there are so few reported practice elements within the curricula of these countries. What is most surprising, in this reporter's view, is the absence of even the most fundamental courses in legal research or legal writing and oral advocacy that have become so much a mainstay in the common law tradition. If one examines the columns on "Research" and "Rhetoric/Writing" in Table 2, one can see that only Switzerland and Germany (and Venezuela, outside of Europe) require either of both within the civil law tradition.

Again, looking within the prevailing paradigm here, one sees virtually no situation in which any element of practice, or any methodology focused on practice, is made mandatory. Only Belgium and Quebec's civil law faculties make the teaching of legal ethics

⁷⁴ German Report, at 3.

mandatory, among the many options. In fact, the teaching of ethics, either as a doctrinal subject or within other doctrinal coverage, appears to be one of the most frequent practical subjects taught, at least among those that are listed here. Only the reports of Greece and Turkey indicate that the subject is not taught at all, of those reports that address that subject. (See Table 2, column headed "Ethics") On the methodological end, several of the civil law jurisdictions use moots or externships for their students. In fact, the popularity of international moot court competitions in Europe, starting with the historic Jessup International Law moot court competition, seem to be another element in the globalization of law phenomenon noted above.

Finally, clinical legal education is conspicuous by its absence in the Western European countries. Only one private law school in Germany offers a legal clinic; Belgium and Switzerland offer volunteer clinical work, usually organized by students themselves and without law school credit. Outside of continental Europe, the picture changes rapidly. Venezuela makes clinical legal education a requirement prior to graduation, through a national program of *Práctica Jurídica*, or Legal Practice. In the "new" Europe, clinics can be noted in the Czech Republic and Hungary. Turkey, riding the intersection of Europe and Asia, also offers clinical legal education at its private law schools. Clinics also operate in Quebec, probably due to the presence of clinical programs at other law schools in Canada.⁷⁵

The extent to which student practice in court is permitted within a jurisdiction is also not found in the Tables, but it was mentioned in several reports. The range was incredibly broad, from the general rule that students could not appear at all in court until licensed, through countries where law school graduates can appear provisionally in court

⁷⁵ Clinics had a presence in Canada in 1987, although it had "not yet become a significant element in Canadian law schools." James C. Hathaway, *Clinical Legal Education*, 25 Osgoode Hall L.J. 239, 240 (1987).

during the apprenticeship phase of training, to countries where there are no limitations on popular access to the courts, thus permitting students to appear in any case.

On the whole, then, practice is largely absent from undergraduate legal training in the prevailing paradigm, as summarized in Table 2. Narrative statements support this conclusion. The Belgian report notes that "the focus on legal practice is substantially higher in the Master curriculum than in the Bachelor curriculum. This is due to a more generous staffing in the Master curriculum and to a smaller number of students."⁷⁶ Later, the same report notes that while universities stress importance of teaching practice in legal education, "few advertise a clear concept, which suggests that a lot depends on individual professors to integrate practice in their courses."⁷⁷ The report also suggests that more practice elements of cooperative or collaborative work by students are not included in the regular curriculum because of "the problem of fair evaluation of the results."⁷⁸

The German report suggests that its *Referendariat*, or apprenticeship period, "shares the key characteristics of clinical legal education" as set out by the author above.⁷⁹ The report goes on note that elements of practice in German law schools have "gained a growing importance within the last years and nowadays [are] mandatorily offered to a minor extent." It further suggests that the civil law tradition in general "pays a higher attention to written documents than to oral presentations (no 'jury system!')." ⁸⁰ This is presumably suggested as a reason why there is less focus on the teaching of trial practice skills within the academy there.

⁷⁶ Belgium Report, at 8.

⁷⁷ Id. at 10-11.

⁷⁸ Id. at 12.

⁷⁹ German Report, at 12.

⁸⁰ Id. at 18.

The Hungarian report indicates that because the state controls legal education's content, "the current regime of governmental regulations barely deals with the role of practice in legal education," with the only exception being the apprenticeship period.⁸¹ The same report closes by noting a 2002 empirical study taken among students at the University of Szeged Faculty of Law. The student poll identified problems with teaching methods among the three most serious defects of legal education. (The other two were the number of students and the subjectivity of exams). Some 54% of the students said that "the lack of practical legal education" was a serious defect in their educations.⁸² Italy's report, too, notes that "practical aspects of legal education, notwithstanding the most recent reforms, have not become part of our system."⁸³ Although the teaching of practice is "permitted by the regulations, it is not yet common in the ordinary curriculum of the law student," by virtue of a traditional and structured approach to the curriculum.⁸⁴ As a result, "elements of practice are almost totally absent in the teaching of law in Italy."⁸⁵

The Swiss report notes the historical roots of university legal education as far back as the 16th century, thus making modern law schools "embedded" in a "tradition and culture with rather little contact to legal practice."⁸⁶ Optimistically, the report notes, "practice elements are however gaining importance," and reasons for this may include "decline of esteem for pure academic [study] and pressure on law schools to 'be useful,'

⁸¹ Hungary Report, at 5.

⁸² *Id.* at 10.

⁸³ Italy Report, at 6.

⁸⁴ *Id.* at 8.

⁸⁵ *Id.* at 9.

⁸⁶ Switzerland Report, at 5.

[and] increased sense of competition between law schools, demands from students and lawyers."⁸⁷

B. Beyond the National Reports: A Sketch of Data on Practice in Legal Education in the United States and the Netherlands

There were no national reports from either the United States or the Netherlands on this topic. As the general reporter comes from the United States, I will offer a brief sketch of legal education and the role of practice here. In addition, during the fall semester of 2009, I spent a semester in residence at the University of Utrecht in the Netherlands. Part of my research there had to do with the presence and role of clinical legal education there, and I have written for publication on the topic since returning to the United States. This section will therefore offer a short sketch of each.

Practice in Legal Education in the United States

In 2009, the United States had a population of about 309 million people, with a bar of about 1.18 million lawyers and law school graduates numbering 43,588 the same year.⁸⁸ The United States has a total of exactly 200 accredited law schools today, with 70 public and 130 private law schools, thus reversing the paradigm in Western Europe, where public legal education prevails. Private school tuitions averaged just over \$34,000 during 2008, and \$16,800 for in-state residents at public schools.⁸⁹ Again, even at public law schools, legal education is a good deal more expensive in the U.S. than is generally the case in European public law schools, even for non-residents. In the United States, the phenomenon

⁸⁷ Ibid.

⁸⁸ American Bar Association, *National Lawyer Population by State* (2009), at <http://abanet.org/marketresearch/resource.html>, visited on May 24, 2010.

⁸⁹ National Association of Legal Career Professionals, *Law School Tuition 1985-2008*.

of rising private school tuitions, particularly at elite and top-ranked law schools, pushes students toward higher paying jobs with large law firms and away from public service jobs.⁹⁰ The U.S. Congress recently made public service jobs more attractive by adopting loan forgiveness legislation for those with publically-financed debt who work in the public sector for a ten-year period.⁹¹

Control of legal education is largely in the hands of state legislatures bar associations, and the American Bar Association, which holds the all-powerful law school accreditation authority, although it is a voluntary membership organization representing less than half of all licensed lawyers in the U.S. State bar associations, state supreme courts, and occasionally state law control lawyer admission and discipline on a local basis, and licensure is good only in the state in which the graduate takes a bar examination, although some elements of the exam may be transferable. While reciprocity between state bars is generally open, there are some desirable states with no reciprocity, due to high lawyer populations, so admission to practice in those states can only be through taking a bar examination. Examples include California, Florida and Washington state.

The number of lawyers going into the private practice of law in the United States has dropped over the past few years. As of February, 2010, about 60% of graduates were going into private practice at a law firm. Because another 13.5% went to work in business as in-house counsel, and 5.7% went into public interest practice, the total in the practice of law is still nearly 80% in all. Another 10% of graduates went to work in government, while 8.7%

⁹⁰ See, e.g., ABA COMMISSION ON LOAN REPAYMENT AND FORGIVENESS, LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE (2003).

⁹¹ Philip G. Schrag, *Federal Student Loan Repayment Assistance for Public Interest Lawyers and Other Employees of Governments and Nonprofit Organizations*, 36 Hofstra L. Rev. 27 (2007).

took clerkships with judges, assisting in writing decisions and orders in courts. Finally, about 3.5% take academic positions, while 1.3% took legal jobs in the military.⁹²

As noted above, law school is a graduate course of study, after a four year liberal arts or sciences degree. Law school is normally three years in duration, and is normally required before one can sit for the bar examination.⁹³ Admission to law school is uniformly controlled by the law schools themselves, although selection of a law school is a complex interaction of factors for both applicant and school. All law school applicants take the Law School Aptitude Test (LSAT), and applications are reviewed based on test scores, undergraduate grade averages and other factors.⁹⁴

Legal education is generally elective after the first year, unlike its European counterparts. During their first year, students uniformly take doctrinal courses familiar to the civil law tradition - Property, Contracts, Torts, Civil Procedure, Constitutional Law and Criminal Law and Procedure - but law school courses after these are almost uniformly elective. In addition to the doctrinal offerings, however, all law schools include a mandatory first year program in Legal Writing or Legal Rhetoric, usually in both semesters. Such programs normally include components on legal research and writing in various legal contexts, including appellate brief-writing. In the second semester, most such courses add an element of oral advocacy in a moot court exercise that combines written and oral

⁹² National Association of Legal Career Professionals, *Market for Law Graduates Changes with Recession: Class of 2009 Faced New Challenges* (2010), at 2.

⁹³ Remarkably, a number of states still permit law office study as a means of legal education, but state bar examiners have made reciprocity for such degrees quite difficult, and such programs are nearly moribund. See, e.g., *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) (refusing to review, on constitutional grounds, a decision by the District of Columbia bar not to seat applicant, who read law in Virginia and therefore did not graduate from an ABA accredited law school, a threshold requirement for bar application in the District).

⁹⁴ A recent Supreme Court ruling allows narrow consideration of race as a factor in law school admission, permitting a form of accommodation for historic discrimination against minorities. *Grutter v. Bollinger*, 539 U.S. 306 (2003).

advocacy. A strong driving force in course selection beyond required courses are the so-called "bar" courses: material will be included in any bar examination. These include such subjects as Evidence, Corporations, Tax and other private law subjects.

Faculty at U.S. law schools are generally full-time, if hired on a tenured or tenure-track basis. Private practice is permitted on a limited and often pro bono basis, but few law teachers other than clinicians engage in practice outside of law school. Tenure, a concept best known in U.S. and Canadian universities, allows professors to hold their positions after a qualifying term, usually 4 or 6 years of service, with a proven record in teaching, scholarship and service. After a grant of tenure, removal from a professorial position can be accomplished only for cause.⁹⁵ The use of tenure outside of law schools has been in constant decline since the early 1970s, and even within legal education, many faculty positions are now contractual or adjunct positions, providing for the teaching of a single course. A recent report on clinical legal education indicates that about 20% of all clinical teachers are tenured or tenure-track, with another 13.1% holding positions of "clinical tenure," usually a lesser status within law faculties than full tenure. More than 20% hold positions under long-term contracts that are routinely renewed.⁹⁶

During the last two years of law school, students may but are not generally required to take courses relating to practice. A growing number of U.S. law schools have adopted some form of mandatory experiential learning, and a very few have mandatory clinical

⁹⁵ In 1972, the U.S. Supreme Court held that tenure is a vested property interest for its recipient, and that removal of tenure must be accompanied by due process protections. *Perry v. Sindermann*, 408 U.S. 593 (1972).

⁹⁶ David A. Santacrose & Robert R. Kuehn, *Survey of Applied Legal Education (Center for Applied Legal Education), Report on the 2007-2008 Survey*, available at <http://ssrn.com/abstract=1586009>, at 15.

programs.⁹⁷ Virtually every law school publishes a student-edited law review periodical, and many schools have several such reviews, to which admission is limited to those with high grades or demonstrated research and writing abilities. Every school offers participation in a wide array of moot court competitions, including some that go beyond appellate advocacy and into such areas as client counseling and mediation. Almost every school also offers some form of experiential learning through simulations or role-plays, either throughout entire courses or as an element of a doctrinal course. Externships or other clinical offerings are available at almost every school on an elective basis. The most recent report on clinical legal education found that 131 reporting schools offered a total of 809 distinct in-house, live-client clinics, for an average of 6.2 clinics per school.⁹⁸ The same report indicated that the reporting schools had a total of 895 distinct field placement programs, for an average of 6.8 per reporting school.⁹⁹

The role of practice in legal education has been an issue for the legal academy since U.S. Supreme Court Chief Justice Warren Burger publically criticized law schools for failing to adequately prepare lawyers for practice.¹⁰⁰ Several influential reports shifted the terrain of legal education towards a greater role for the teaching of practice, beginning with the so-called "MacCrate Report," named for Robert MacCrate, the chair of an American Bar Association committee charged with reform. The ABA's *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, published in 1992, began a steady march towards the inclusion of requirements in law school accreditation criteria dealing with the

⁹⁷ An admittedly anecdotal list of some 30 law schools that have mandatory participation in an experiential course, or mandatory pro bono service by students, can be found at http://www.albanylaw.edu/sub.php?navigation_id=1737, visited on May 25, 2010. Of the listed programs, eight require participation in a clinic.

⁹⁸ Santacroce & Kuehn, *supra* n. 82, at 8.

⁹⁹ *Id.* at 9.

¹⁰⁰ See, e.g., Warren R. Burger, *Some Further Reflections on the Problem of Adequacy of Trial Counsel*, 49 *Fordham L. Rev.* 1 (1980).

teaching of practice - skills, ethics and values - as recommended in the MacCrate Report, as well as standards dealing with the status of clinical teachers within the law school academic hierarchy. More recent reports continue that momentum, including the above-mentioned report of the Carnegie Foundation, *Educating Lawyers*, published in 2007, as well as the report of the Clinical Legal Education Association (CLEA) report on *Best Practices for Legal Education: A Vision and A Road Map*, authored by Prof. Roy Stuckey and others, and published in the same year. These newer reports promise to keep the role of practice central to the mission of legal education in the United States.

Practice in Legal Education in the Netherlands¹⁰¹

The population of the Netherlands in 2009 was about 16.6 million, with a small national bar numbering only about 15,500 lawyers. Legal education in the Netherlands is all public, with nine law schools ranging in size from large (Leiden, Utrecht and Amsterdam), and medium (Tilburg, Rotterdam and Groningen), to small (Maastricht, Nijmegen and the Free University of Amsterdam, a distance-learning school). Like other continental countries, legal education is inexpensive, with tuitions costing a net of about €2,000 per year. Placement in law schools is after high-school qualification for university, and is controlled by a central government authority; law schools have no direct role in the selection of their students. The program of study for all Dutch law schools has moved to the Bologna standard of three years of undergraduate study and one year of Masters specialization, with both degrees being required for the graduate to move on to the apprenticeship. A special "Togamaster" program is offered at the Masters level for lawyers

¹⁰¹ All data from this section can be found in Richard J. Wilson, *The Public Interest Mission of Law School Clinics in Dutch Legal Culture: Rare Birds in the Formalist Tradition of European Legal Education*, a paper delivered to the Law and Society Association Annual Meeting, Chicago, Illinois, May 27, 2010 (unpublished manuscript on file with the author).

wishing to focus on national law practice. No comprehensive graduation exam is required, but most law schools require a Masters thesis for graduation.

Data from 1995 indicate that only about 45% of those who start law school finish, and there are less than 1,000 graduates leaving Dutch law schools each year for formal training. Many lawyers noted the dramatic increase in the number of women lawyers and law students, with a current enrollment of about 65% women. The apprenticeship period is three years with a nine-month course of study in the first year organized by local bars in the area where new graduates will practice. These courses vary slightly, but include an element of simulated trial practice, including oral advocacy, and all are accompanied by examinations, though no comprehensive national bar exam is given. The number of graduates moving into the training period after law school graduation is on the decline, with estimates that only 20 to 33% of all graduates go on for formal licensure. Jurists without licensure may still appear in most court proceedings, as licensure is not required for practice in many Dutch national courts. One of the most interesting developments in the Netherlands, in parallel with the apprenticeship program, is the commencement of what is called, in English, the Law Firm School (LFS). The School was created in 2009 by 14 of the largest law firms in Amsterdam, in the belief that an organized curriculum on business-related subjects, together with more focus on skills, will better prepare new associates for their roles within these international firms. The LFS has gone through three cycles of training, with some 80-90 trainees per session, and a pass rate of 80% for the combination of bar and LFS courses was largely due to the performance aspects of the Litigation course, in which trainees use a simulated case file to prepare for trial and make preliminary arguments.

The professoriate in the Netherlands is generally full-time professionals, although private practice is permitted and common for many faculty members. The program of study in law school is generally highly structured and required, much like the rest of Europe, with the lecture predominating as the method of instruction. Unlike other European countries, it is not unusual for senior academics or practitioners to move into judicial positions after significant practice experience.

Unlike many other countries in continental Europe, clinical legal education shows a stronger presence in the Netherlands. For historic reasons, the traditional *rechtswinkels*, or law shops, continue to operate, often for university credit. Begun during the social movements of the 1960s, these clinical programs peaked at some 90 offices during the 1970s, some affiliated with law schools and some based in the surrounding communities. They were and are usually operated by volunteer student organizations with little faculty oversight, and their numbers have gradually declined over the years. As the national program of legal aid grew and strengthened, many of the law shops were taken over by the government-funded program. Today, four law schools provide law school credit for student participation in law shops.

Another domestic law clinic of relatively long standing is the Legal Clinic at Maastricht, which opened in 1988, six years after the law faculty itself opened. It continues to operate today with five non-faculty advocates on staff, all women, and a male office program director of faculty rank. The clinic has its own building, with a separate entrance for clients, and provides space for meetings, files, support staff and participating students, who sit communally in an area known as "the garden." Four to 13 undergraduate law students participate in clinic at any time, and provide legal services across a broad range of

civil and criminal cases during an immersion period of 8 weeks, or one-half of a semester. Because they are well-known in the community, and because of liberal practice rules, clinic students often appear in the local courts, although faculty may make more difficult arguments or take cases with protracted trials. Before entry into the clinic, the students take a number of required pre-requisite courses, including Communications, Evidence and other substantive courses. The clinic charges for its services in order to offset costs, and it recoups much of its operating cost through fees charged directly to clients or to the national legal aid program.

The two newest clinics in the Netherlands are both international in scope. The Amsterdam International Law Clinic has operated for about ten years, having been founded by a senior Dutch faculty member who returned from a visiting faculty position in the United States during which he learned much about clinical legal education and watched clinics work. The clinic takes only LLM students who can speak English, and English is the common language for clinic work-product and operation. Twelve students participate in the clinic each semester, with project work being done for local law firms, NGOs and other organizations, all having to do with issues of international law. The clinic does limited legal work on litigation matters, mostly providing policy or legal analysis of an issue for law firms or NGOs. Oversight of student work is provided by a part-time clinical director and the founding professor, with additional voluntary assistance provided by faculty within the international law department in their areas of specialty. Most student time is spent on case-work in clinic, but the group sometimes meets for discussion of organizational and ethical issues. The clinic has a small office of its own, and has posted some of its work on a public

web-site.¹⁰² Like the Maastricht clinic, the Amsterdam clinic charges fees for its services, with a base rate of €1,500 per case. Fees have been waived in some instances and have been as high as €3,000 in others.

The newest clinic in the Netherlands is at the law faculty of the University of Utrecht, where a new Clinic on Conflict, Human Rights and International Justice opened in the fall of 2009. The clinic was founded by two senior members of the faculty, one from the field of human rights and one from international criminal law. The clinic works on international cases and matters, with a total current enrollment of 18 LLM students working in teams of six, either at international justice institutions in The Hague or for the Inter-American Court of Human Rights in San José, Costa Rica. Student team work is overseen by the senior faculty and by doctoral students who supervise clinic teams. As set up, the clinic permits students to sign up for either one semester or two, and it also includes an externship component at the Hague international justice institutions for students not participating in the clinic. This range of clinical opportunities puts the Netherlands far ahead of other continental European countries in clinical offerings.

C. The Minority Paradigm: National Reports and the United States

It should not surprise readers of this report that the "minority paradigm" presented in the national reports - the clustering of common issues that are found in a congruent group of reports - includes the reporting common law jurisdictions. This section, then,

¹⁰² A number of the Amsterdam clinic's reports can be found at <http://www.jur.uva.nl/ailc/object.cfm/objectid=DAB99ACD-19B3-4DF6-975BC275A03C2DDB>, visited on May 26, 2010.

provides a kind of profile of legal education, and the role of practice therein, in five jurisdictions: Australia, England & Wales, Ireland, New Zealand and the United States.¹⁰³

Legal education in the minority paradigm tends to include a greater number of private institutions for law teaching, with a commensurate rise in costs of legal education. While legal education can be obtained somewhat less expensively at some public law schools in these jurisdictions, at costs varying from US\$3,600 per year in the all-public law schools of New Zealand, to up to US\$82,000 per year in British schools. (See Table 1, Column headed "Cost/yr US\$/€") The U.S., too, has high costs for private legal education, with tuitions averaging just over \$34,000 in 2008. These costs compare quite unfavorably with the generally lower, and publically subsidized, costs of public legal education in continental Europe, and cause one to speculate whether the private market provides a qualitative product that is measurably superior to that of the public institutions. Privatized legal education also tends to be more selective, with either national or local entry examinations (See Table 1, Column headed "Nat. Entry Exam"), and commensurately smaller classes with lower student/faculty ratios (although this information is anecdotal and not reported in national reports here). The Australian report offers a useful construct in noting the "gatekeeper" function for access to the legal profession through examinations, which, in its report, refers to the examinations at the close of legal education or on entry into the bar. In its analysis, the Australian report suggests that the bar plays a much greater role in deciding on admission in the common law jurisdictions, as compared with the state's more prominent role in civil law jurisdictions such as Germany and Japan. The report also notes the implicit gate-keeping role of the market in deciding access, which

¹⁰³ Canada might have been included in this group if the provinces other than Quebec had submitted a report. As noted above, the primary focus of the Quebec report was on civil law aspects of that jurisdiction.

certainly seems to be true in the roll-backs in big firm hiring discussed in the U.S. section above.¹⁰⁴

The Australian civil and common law construct seems less true across the range of entry controls now used, where the national reports here indicate roles for the bar, the state and the law schools themselves in designing and administering a virtual phalanx of tests for entry into and graduation from law school, through apprenticeship course exams, and on to a possible final bar exam before full licensure. Testing seems to have emerged as a common factor in both the prevailing and minority paradigms for supply control of the practicing bar. The professoriate in these countries, all lying within the developed world, tends toward full-time employment for a core or majority of teachers, with little information reported on the extent to which professors are permitted to practice outside of their teaching responsibilities. (See Table 1, Columns headed "Professoriate")

The length of law school seems to vary widely within the minority paradigm. In this reporter's view, this may lie within the deeply embedded history of the Inns of Court in England, the traditional route into the bar in that country since the Middle Ages, by contrast with continental entry through the university that developed in the same time period.¹⁰⁵ One route lay through practice, the other through theory. Thus, today the common law jurisdictions, which only "recently" (within the last 100 years!) moved into the university, provide a greater array of options for entry, and across widely varying periods of from no formal schooling at all (the reader, or apprentice, in a law firm only - still an option in England, and at least in theory, in a few states of the United States); a five

¹⁰⁴ Australia Report, at 2-3.

¹⁰⁵ H.D. Hazeltine, *Ancient and Mediaeval Legal Profession and Legal Education*, in *ENCYCLOPEDIA OF THE SOCIAL SCIENCES* 324 329-333 (Edwin R.A. Seligman & Alvin Johnson eds. 1933).

year undergraduate career in Australia; the standard Bologna formulation of 3 plus 1-3 in Ireland (See Table 1, Column headed "Degree/years"); and a seven year period of combined undergraduate study (4 years) and graduate study in law (3 years) in the U.S. England too offers law as a form of graduate study, as one of many options.

It is within the realm of the role of practice in legal education that the real differences appear in the minority paradigm, by contrast with the prevailing paradigm in these reports. In all five of the common law jurisdictions, the teaching of practice performs a core function within legal education. One need only glance at Table 2 to see the differences between the number of required courses and active methods used in the common law jurisdictions reporting here. All include some element of required research, rhetoric or drafting, and all require a course on ethics. (See Table 2, columns with those headings) Similarly, the use of active teaching methods such as simulation, moot courts, externships and clinics seem significantly higher in each of the four common law reports, as well as in the United States. One explanation for this difference may well lie in the distinct cultural histories mentioned in the previous paragraph. Another may lie in the economies of scale between private versus public legal education; smaller schools with more resources can afford to provide more focused and individualized training than schools with hundreds of students in a lecture hall for the majority of their classes. And yet some data militate against this conclusion. In Australia and New Zealand, for example, public legal education dominates, and both countries require a period of apprenticeship or pupillage, and yet both countries provide a rich array of practice offerings within law school. Australia's report indicates that clinics are "generally not mandatory," and that there are

"some optional programs" including externships.¹⁰⁶ However, a supplemental submission from one of the Australian national reporters indicates that there is shared commitment to a goal, by 2011, "to have all 31 of Australia's law schools making available to students at least one clinical education or pro bono program to help them develop professionalism and to understand the responsibility of lawyers to the broader community." The same author notes that as of 2004, 23 Australian universities had "some type of clinical program, many in conjunction with the communities close to the university."¹⁰⁷ This seems more than "some" schools!

One aspect of legal education that remains largely unexplored in most national reports, whether in common law or civil law jurisdictions, is that of outcome or benchmark measures as assessment tools. These are elaborated in greatest detail in the text and Annexes to the national report of England & Wales. There, benchmark statements have been widely adopted by higher education institutions in general. Such statements are designed, as for example in the case of the Quality Assurance Agency, to "set out the minimum achievement which a student should demonstrate before they are awarded an honours degree in law."¹⁰⁸ The benchmarks are set out in terms of skills that the student should be able to demonstrate before graduating, such as basic knowledge of legal principles, application of principles to problem-solving, research and manipulation of legal sources, critical judgment, autonomy and ability to learn, written and oral communication, and numeracy skills such as statistics, the internet and email. Similar benchmarks are set

¹⁰⁶ Australia Report, at 18.

¹⁰⁷ The Hon. Michael Kirby AC CMG, *Foreword*, in COMMUNITY ENGAGEMENT IN CONTEMPORARY LEGAL EDUCATION: PRO BONO, CLINICAL LEGAL EDUCATION AND SERVICE-LEARNING ii, iv (2009).

¹⁰⁸ England & Wales Report, at Annex 3, Section 2.1.

out for training barristers and trainee solicitors.¹⁰⁹ Similar efforts are now under way in the United States, where basic lawyering competencies have been identified, and efforts have moved toward more formative rather than summative assessment. In summative assessment, the typical assessment method in most law schools, a single exam is given at the end of a course to test students' comprehension of course material. Formative assessment provides feedback and assessment during the process, all along the way, and experiential learning provides an ideal context for such work.¹¹⁰

Despite the level of practice teaching now offered, some country reports in the minority paradigm seem apologetic for not having more. The Irish national report, for example, states that "more advanced law practice skills (e.g., law office management, client interviewing, etc.) are largely absent from the curriculum."¹¹¹ Later in its report, it notes that historically, Ireland and other common law jurisdictions offered legal education that was "theory-based and took place exclusively in lecture halls. Law, however, is a quasi-academic and quasi-vocational discipline." The author nonetheless concludes that Ireland "still lags far behind" in offering practice training in the academy.¹¹² Similarly, although legal clinics internships are offered at a number of schools in England and Wales, as are the required courses in basic research, writing and ethics, the British report concludes that issues of "legal practice are tackled primarily at the post academic stages of training."¹¹³ The same report concludes that the teaching of practice is "emerging primarily as a

¹⁰⁹ Id. at Annexes 4A and 4B, 5.

¹¹⁰ See the Carnegie Foundation report, *supra*, n. 39, at Chapter 5, *Assessment and How to Make it Work*, p. 162, 172.

¹¹¹ Ireland Report, at 9.

¹¹² Ireland Report, at 13.

¹¹³ England & Wales Report, at 16.

voluntary additional activity rather than a core component" of the law schools' curricula.¹¹⁴

At bottom, then, many of the reporting countries, whether within the prevailing or minority paradigm, call for a greater role of the teaching of practice within legal education.

III. Other Noteworthy Aspects of Legal Education from the National Reports

Relationship of Population to Bar Size, and Bar Size to Law Graduates. There appears to be little relationship in these reports between national populations and the size of the bar, or between the size of the bar and the number of law schools and law graduates, other than the trend toward growth of the legal profession noted above. Some jurisdictions of relatively similar size have vastly different lawyer populations and law schools. The United States, for example, is assumed to have one of the largest per capita lawyer populations in the world. In 2009, the estimated U.S. population was 309.3 million, and the number of practicing lawyers stood at 1.18 million,¹¹⁵ yielding 1 lawyer for around every 260 persons in the country. France, England & Wales, and Italy, with relatively equal populations of just over 60 million, yield per capita lawyer populations of 1:1373, 1:476 and 1:301 respectively,¹¹⁶ while Germany, with a total population of just over 80 million, has more than three times the licensed lawyers as neighboring France, for a ratio of 1:505. Venezuela has the highest ratio with 1 lawyer for every 200 persons, while Taiwan seems to have the lowest, with 1 lawyer for every 4600 persons. Can we say that there are too many or too few lawyers in any of these countries? Using raw data such as this often leads to false conclusions. We can say that bar size is increasing, or that enrollments in law

¹¹⁴ *Id.*, at 19.

¹¹⁵ ABA data, at n. 74, *supra*.

¹¹⁶ Data extrapolated by dividing size of bar, in thousands (Table 1, Column headed "Bar Size (Th)") into total population, in millions (Table 1, first Column headed "Pop. (M)").

schools have trended upwards over time (as the Abel & Lewis study also notes¹¹⁷) but because this report gathers no trend data, such conclusions are anecdotal at best.

One data set that is useful in that cluster is that comparing the number of graduates per year with the overall size of the bar. (Table 1, column headed "Grads/yr") In the case of some of the larger bars, there is a corresponding large number of recent graduates, as in England and Wales, with 13,800 graduates in the last recorded year, and Italy, with 15, 448 graduates. These numbers contribute to the high per capita population of lawyers in those countries. Taiwan seems, at first glance, to have a similarly high number of graduates, at 3,000, until one accounts for the dramatically low bar passage rate, which *rose* to 22% in a recent year, yielding newly admitted lawyers totaling only 494. (see n. 22 to Table 1) Similarly, Germany appears to be controlling the supply end of the lawyer population by having limited the number of lawyers who pass the first state exam to 6,300 in the last reported year, a number that seems low compared to total lawyer population in that country. In the United States, by contrast, there were 43,588 J.D. degrees awarded in 2009.¹¹⁸ This continues a long upward trend in new lawyers, but seems roughly proportional to the total and lawyer populations. These graduates, of course, face a different employment market than in prior years with the global recession, something that has yet to be fully felt in Europe, but was noted in some reports.¹¹⁹

Demographics and Legal Education. Only one national report made mention of the gender demographic within the bar: the Quebec report notes that 47% of the province's

¹¹⁷ Abel, *Lawyers in the Civil Law World*, supra n. 10, at 31-35.

¹¹⁸ American Bar Association, *Enrollment and Degrees Awarded: 1963 - 2008*, at <http://www.abanet.org/legaled/statistics/charts/stats%20-%201.pdf>, visited on May 25, 2010.

¹¹⁹ National Association of Legal Career Professionals, *Market for Law Graduates Changes with Recession: Class of 2009 Faced New Challenges* (2010) (finding the job market "significantly harder" for 2009 graduates than for classes in immediately preceding years), available at www.nalp.org.

23,000 practicing advocates are female.¹²⁰ I also noted a dramatic rise in women in the legal profession and law schools in my summary of the situation in the Netherlands, a phenomenon universally noted by bar and legal education leaders. Again, I did not request demographic data as to gender, racial or ethnic composition of legal education, but this single data point summarizes, in a nutshell, a phenomenon that has been analyzed extensively in *Lawyers in Society*, written in 1995,¹²¹ and its "sequel," a 2005 study that calls the feminization of the bar the "most important change" in the nature of the legal profession worldwide. It calls the "single most important dimension of that change" the fact that "women have a more difficult time achieving career goals than men."¹²² The Menkel-Meadow study cited here offers extensive theoretical explanations for both the phenomenon and its implications. The Ireland report notes special entrance provisions for "mature" students (over 23),¹²³ and the New Zealand national report noted that some of its law schools give "equity considerations" to particular cohorts, such as Maori and Pacific Island students.¹²⁴

Near-Elimination of Numerus Clausus Provisions. In *Lawyers in Society*, the lawyers noted the decline in but persistence of *numerus clausus*, or admission quotas imposed by law or rule, as one of the ways in which the supply end of the legal profession was controlled.¹²⁵ Notably, only one report, that of Greece, notes a *numerus clausus* for the bar

¹²⁰ The report also notes that 53% of Quebec's notaries are women. Canada (Quebec) Report, at 14.

¹²¹ Carrie Menkel-Meadow, *Feminization of the Legal Profession: The Comparative Sociology of Women Lawyers*, in *LAWYERS IN SOCIETY: AN OVERVIEW* 221 (Richard L. Abel & Philip S.C. Lewis eds. 1995).

¹²² William L.F. Felsteiner, Introduction, in *REORGANIZATION AND RESISTANCE*, supra, n. 15, at 1,7. Perhaps not coincidentally, Felsteiner notes that the study that elaborates most on women lawyers is that on Canada. *Ibid.*

¹²³ Ireland Report, at 4.

¹²⁴ New Zealand Report, at 6.

¹²⁵ Richard L. Abel, *Lawyers in the Civil Law World*, supra, n. 30, at 10-11.

there, although some reports in civil law jurisdictions indicate limits on other elements of the legal professions such as notaries.

Practice-Related Issues on the National Bar Examination. As an ultimate observation, the general reporter notes that a number of national reports include mention of practice questions on the final bar examination for aspiring advocates. Italy's exam, for example, includes "the drafting of two attorney's opinions" on interpretation of code provisions,¹²⁶ while the Hungarian bar includes resolution of hypothetical questions in both the written and oral phases of the bar exam.¹²⁷ In Greece, practical questions may include "drafting a law suit or preparing arguments for a hypothetical case."¹²⁸ These steps replicate a phenomenon that also occurs in the Netherlands, as noted above, and in the United States, where an increasing number of states include practice-related hypothetical "case files" on their bar examination. Such tests recognize the importance of the resolution by lawyers of real-world problems, and not merely abstract knowledge of rules without context.

IV. The Pedagogy of Practice in the Rest of the World

It is neither possible nor appropriate for a report of this nature to fully document the extent to which practice can be found in legal education in the some 180 countries of the world not covered by this report. Instead, I will provide a "lightning round" tour of new developments worthy of note, mostly on a regional basis, but noting particular developments within individual countries. I might remind readers here of the immense on-

¹²⁶ Italy Report, at 11.

¹²⁷ Hungary Report, at 3.

¹²⁸ Greece Report, at 7.

line bibliography on clinical legal education mentioned previously, which includes a section on "Non-U.S. Clinical Programs,"¹²⁹ and note at the outset that a new book is scheduled for publication later this year that broadly covers the global reach of clinical legal education.¹³⁰

Central and South America

The tradition of required or optional practical training as part of legal education is deeply ingrained in Latin American legal culture, where clinics have existed in Chile and some other countries of the Southern Cone since the late 1960s and early '70s.¹³¹ Clinics became mandatory in Colombia in 1971 by virtue of government decree. A similar decree governs mandatory clinical participation in Nicaragua and other Central American countries.¹³² A clinical experience was designed to "familiarize the student with the exercise of professional skills before judicial functionaries."¹³³ As early as 1961, law professors meeting in Lima, Peru adopted a conference resolution calling for law teaching to be "'active'; there should be 'an intimate copenetration between doctrinal and practical teaching, the latter meaning various aspects of professional formation, not merely procedural techniques.'" Practical teaching was to include "solution of practical cases and problems, and legal aid clinic work."¹³⁴ In 1999, clinical students from the Public Interest Clinic at the Center for Investigation and Economic Studies (Spanish acronym "CIDE") in Mexico City won an appeal in a criminal case involving the false accusation and conviction

¹²⁹ See, Ogilvy and Czapanskiy, *supra* n. 46.

¹³⁰ THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE (Frank Bloch ed. forthcoming from Oxford University Press, 2010).

¹³¹ Richard J. Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 *Clinical L. Rev.* 801 (2002).

¹³² Richard J. Wilson, *Criminal Justice in Revolutionary Nicaragua: Intimations of the Adversarial in Socialist and Civil Law Traditions*, 23 *U. Miami Inter-American L. Rev.* 269, 340-341 (1991-1992).

¹³³ Richard J. Wilson, *The New Legal Education in North and South America*, 25 *Stanford J. Int'l L.* 375, 384, n. 29 (1989).

¹³⁴ Quoted in *Id.*, at 394.

for murder of 22 indigenous persons in the village of Acteal, in remote Chiapas State.¹³⁵ This tradition of commitment to what is called *Práctica Jurídica* (Law Practice) in our Venezuelan national report, *Consultorios Jurídicos* (Law Clinics) in other Latin American countries, and *Bufetes Populares* (People's Law Firms) in Nicaragua and Cuba, have a long-standing tradition within the last two years of the largely required legal education curriculum, normally of five years in duration. There is a growing literature on clinical legal education in Spanish, much of it arising from the Public Interest Law clinics established with Ford Foundation donations in the 1990s.¹³⁶ Another more recent anthology was published in Mexico in 2007.¹³⁷

Central and Eastern Europe and Russia

A similar trend can be noted in Central and Eastern Europe, where clinical legal education emerged strongly after the fall of the Soviet Union. The destabilization of the old guard in legal education, coupled with a desire for European integration and donor focus on clinical legal education, led to the rapid growth of clinical legal education offerings in such countries as Hungary, the Czech Republic and Turkey, among our nationally reporting countries.¹³⁸ Perhaps no other country has a more developed infrastructure for clinics than Poland, which began its first clinical programs at Jagiellonian University of Krakow in 1997,

¹³⁵ Marc Lacey, *Mexico Court Orders 22 Tied to '97 Killings Freed*, New York Times, Aug. 12, 2009; José Antonio Caballero, *Acteal y la Enseñaza del Derecho (Acteal and Law Teaching)*, El Universal.com, 13 Aug. 2009 (in Spanish).

¹³⁶ See, e.g., *DEFENSA JURÍDICA DEL INTERÉS PÚBLICO: ENSEÑAZA, ESTRATEGIAS, EXPERIENCIAS (JUDICIAL DEFENSE OF THE PUBLIC INTEREST: TEACHING, STRATEGIES, EXPERIENCES)* (Felipe González and Felipe Viveros eds. 1999) (there are now five or six volumes in this series).

¹³⁷ *ENSEÑAZA CLÍNICA DEL DERECHO: UNA ALTERNATIVA A LOS MÉTODOS TRADICIONALES DE FORMACIÓN DE ABOGADOS (CLINICAL TEACHING IN LAW: AN ALTERNATIVE TO TRADITIONAL METHODS FOR TRAINING LAWYERS)* (Marta Villareal & Christian Courtis eds. 2007).

¹³⁸ See generally, Richard J. Wilson, *Training for Justice: The Global Growth of Clinical Legal Education*, 22 Penn. St. Int'l L. Rev. 421 (2004) (noting donor activity in the region from the American Bar Association and the Soros Foundation, among others).

with money from the Ford Foundation, then rapidly spread throughout the nation. Today, the Polish clinics have a sophisticated national network of 25 clinical programs with their own website.¹³⁹ Enthusiasm for clinics has flowed into neighboring Ukraine, which has a similar website and network of 14 clinics.¹⁴⁰ Perhaps the greatest achievement, however, is the widespread acceptance of clinical legal education in Russia. Although their national website is in Russia, the U.S. development group, the Agency for International Development (AID) indicates that Russia has implemented over 160 clinical programs, with "informal associations of specialized law school clinics providing free assistance to juveniles, refugees and prisoners."¹⁴¹

Asia, Africa and the Middle East

Asia and Africa remain the biggest challenges for new methodologies in legal education, both because theirs are radically different legal cultures, often with colonial traditions that persist today, and in the case of Africa, serious economic underdevelopment. In Oceania, nearby Asia, the longest running programs have been in common law jurisdictions, such as the reports we have here from Australia and New Zealand. Within Asia itself, the oldest established program is that of India, a common law jurisdiction with strong clinical roots. The first clinical program began at Delhi University as early as 1969, when the Delhi Legal Aid Clinic came into being, and clinics have thrived there ever since.¹⁴² In neighboring China, clinics have developed quickly as part of a general reform of

¹³⁹ *Legal Clinics in Poland: Legal Clinics Foundation*, at http://www.fupp.org.pl/index_eng.php, visited on May 29, 2010.

¹⁴⁰ *Ukrainian Association of Legal Clinics*, at <http://www.legalclinics.org.ua/eng/clinics/liga.php>, visited on May 29, 2010.

¹⁴¹ *Rule of Law and Human Rights Projects*, U.S. AID/Russia, at http://russia.usaid.gov/programs/democratic_dev/rule_of_law_and_human_rights/, visited on May 29, 2010.

¹⁴² N.R. Madhava Menon, *Clinical Legal Education: Concept and Concerns*, in A HANDBOOK OF CLINICAL LEGAL EDUCATION 1, 18-19 (Dr. N.R. Madhava Menon ed. 1998).

legal education and the native legal profession there within the past decade. According to one local source, nearly 90 law schools had established clinical programs as of 2008.¹⁴³ Clinics have withstood the test of time and sustainability in several Asian countries that have survived prolonged conflicts or radically conservative traditions: Cambodia,¹⁴⁴ Japan,¹⁴⁵ and even war-torn Afghanistan.¹⁴⁶

In sub-Saharan Africa, the strongest clinical programs are in South Africa and Nigeria. The South African experience with legal aid clinics predates the end of apartheid, and clinics are thriving throughout the country today.¹⁴⁷ In Nigeria, the most populous of the African countries, clinical legal education has a later start but is gaining a strong foothold, with a nationwide network of law school clinics already established.¹⁴⁸ In the Middle East region, Israel has always had a strong clinical history,¹⁴⁹ while neighboring

¹⁴³ Zhen Zhen, *Clinical Legal Education in China - Current Situation and its Future of China's Clinical Legal Education* (2008), conference paper published at http://www.mcgeorge.edu/Experiential_Education_in_China/Published_Resources.htm, visited on May 30, 2010.

¹⁴⁴ *Student Legal Clinics*, Open Society Justice Initiative, at http://www.soros.org/initiatives/justice/focus/legal_capacity/projects/legal-clinics, visited on June 2, 2010 (mentioning a legal clinic established in Cambodia).

¹⁴⁵ Peter A. Joy et al., *Building Clinical Legal Education Programs in a Country without a Tradition of Graduate Professional Legal Education: Japan Educational Reform as a Case Study*, 13 *Clinical L. Rev.* 417 (2006-2007).

¹⁴⁶ Ele Pawelski, *Defining Justice in Afghanistan: Development of a National Legal Aid System*, 27 *Windsor Rev. Legal & Soc. Issues* 185, 206, n. 98 (2009) (describing an established legal clinic at Herat University).

¹⁴⁷ Willem De Klerk, *University Law Clinics in South Africa*, 122 *S. African L. J.* 929 (2005); David McQuoid-Mason, *Street Law as a Clinical Program: The South African Experience with Particular Reference to the University of KwaZulu Natal*, 17 *Griffith L. Rev.* 27 (2008).

¹⁴⁸ Olugbenga Oke-Samuel, *Clinical Legal Education in Nigeria: Developments and Challenges*, 17 *Griffith L. Rev.* 139, 144 (2008) (noting clinics at 8 law schools in Nigeria); the national network is NULAI, or the Network of University Legal Aid Institutions, with participating clinical programs at http://www.nulainigeria.org/law_clinic.htm, visited on June 2, 2010.

¹⁴⁹ Yuval Elbasha, *Teaching Justice, Creating Law - The Legal Clinic as Laboratory*, paper presented at the UCLA/IALS Sixth International Clinical Conference (October 2005) (Elbasha is director of the legal clinic at Hebrew University of Jerusalem).

Lebanon has just opened its first clinic,¹⁵⁰ and again, as in Afghanistan, Iraq is introducing the concept of clinical legal education into its universities.¹⁵¹

V. Conclusion: A Global Role for a Pedagogy of Practice?

While many lessons can be drawn from the quick sketch of a pedagogy of practice around the world today, there are several significant lessons that stand out by contrasting these countries with those reporting here, particularly for those who are skeptics as to the teaching of skills within a law school. First, although the reports here, by virtue of their geographic distribution, put the civil law countries of the European continent into the prevailing paradigm with stunted programs of practice in legal education, there is no inherent aversion to the teaching of practice skills within the civil law tradition more broadly. Virtually all of the programs examined here are jurisdictions with deep historical links to the civil law, and yet clinical legal education is thriving.¹⁵² There is no inherent common law "preference" for clinical legal education. Second, undergraduate students are not too young to assume responsibility for real cases with real clients. In most of the countries examined here, the students involved in providing legal services to real clients are in their third to fifth year of undergraduate legal education, making them somewhere between 20 and 23 years old, assuming they have attended school continuously, which is often not the case. They are, for pedagogical purposes, adult learners.¹⁵³

¹⁵⁰ See *Student Legal Clinics*, supra n. 130, noting establishment of a clinic in Lebanon.

¹⁵¹ Haider Ala Hamoudi, *Toward a Rule of Law Society in Iraq: Introducing Clinical Legal Education into Iraqi Law Schools*, 23 Berkeley J. Int'l L. 112 (2005).

¹⁵² The fine work of Prof. Philip Genty, from Columbia University in the U.S., does not suggest otherwise, although it astutely notes that the approach to clinical legal education must be different, and culturally sensitive, in countries of the civil law tradition. Philip M. Genty, *Overcoming Cultural Blindness in International Clinical Collaboration: The Divide Between Civil and Common Law Cultures and its Implications for Clinical Education*, 15 Clinical L. Rev. 131 (2008-2009).

¹⁵³ See Wilson, *Three Law School Clinics in Chile*, supra n. 117, at 569-573 (arguing that adult learning theory applies to students in the 20-25 year age range, based on empirical study).

Third, one cannot ignore the close connection between the increased use of clinical programs in the developing world and the absence of an effective state-funded legal aid system in these countries. Because of the economic disincentives for the bar to handle legal aid cases on a pro bono basis, a credible argument can be made that the provision of legal services was moved into the law schools so that the most rudimentary legal needs of the poor could be met. The German report notes this connection, arguing that one of the reasons it does not have clinical offerings is that Germany enjoys "a very elaborate system of legal aid (*Prozesskostenhilfe*) providing for a relatively easy and cheap access to justice for everybody."¹⁵⁴ A similar historical connection is noted in a forthcoming book.¹⁵⁵ However, neither the historical connection of the two themes nor the existence of a strong legal aid program offer convincing arguments against a stronger role for a pedagogy of practice within the academy. The primary purpose of a clinical program is, or should be, pedagogical, not the provision of basic legal services. When clinics take on excessive case loads, as they inevitably will when they become the primary legal services provider for the poor, they put at risk both their essential pedagogical mission and their obligations of competent service to clients. Students simply cannot be adequately supervised except in the most routine clerical tasks in legal services provision, and their bad habits may well carry over into practice, while clients may be ill-served by unsupervised neophyte lawyers. The bar and the state both abdicate their responsibilities to equal access to justice by foisting the justice mission on law schools alone. Moreover, law clinics, as noted in the U.S. summary, provide legal services across a wide range of subjects; their scope of services

¹⁵⁴ German Report, at 25.

¹⁵⁵ Frank S. Bloch & Mary Anne Noone, *Legal Aid Origins of Clinical Legal Education*, in THE GLOBAL CLINICAL MOVEMENT, *supra*, n. 116.

vastly exceeds the fundamental legal aid mission. Clinics can and do make significant contributions to justice around the world, and those accomplishments are often attributable to creative lawyering by passionate and committed young advocates in law schools. That achievement of justice is one of the many positive effects of experiential learning, but it is not, in this author's view, the primary purpose or pedagogical mission of a pedagogy of practice within legal education.

Fourth, many of the global changes in the direction of a pedagogy of practice are the result of donor efforts from the developed north, the so-called western world.¹⁵⁶ This does not mean that clinical legal education is an exclusively American export. Many of the national reports note -- some with enthusiasm or admiration and others with open hostility or simple resignation -- a tendency in their jurisdiction toward the "Americanization" of legal education. This observation, however, is hardly limited to clinical legal education or even to more active methods generally. As the preceding section shows, clinics have taken on a momentum of their own, and many of the reforms in the pedagogy of practice come from "South-South" exchanges, such as South Africa to Nigeria, Chile to Mexico, or Hungary to China. This is not, in my view, American legal imperialism,¹⁵⁷ but native common sense.

Finally, legal clinics need not be expensive. The experience of the rest of the world, mostly from the global South, demonstrates that while donor funds may be required to begin a clinical program in the developing world, the programs are often, indeed usually, self-sustaining within law schools after foreign donors withdraw, with indigenous

¹⁵⁶ See Wilson, *Training for Justice*, supra, n. 124.

¹⁵⁷ This is not to suggest that the U.S. does not engage in legal imperialism on some fronts. As noted at the outset, the emergence of big law may represent some elements of market-controlled imperialism directed almost entirely from the United States and the U.K. beginning with the Reagan-Thatcher connection and continuing with law and economics theories. See, e.g., Ugo Mattei, *A Theory of Imperial Law: A Study of U.S. Hegemony and the Latin Resistance*, 10 Ind. J. Global Legal Stud. 383 (2003).

resources and support, along with strong student and faculty backing, providing the continued momentum for practical education. If this is true in the countries of the global South, it can be no less true in the affluent north, particularly in the G-20 countries, where relatively, resources abound.

It is not my purpose, after all of this focus on clinical legal education, to suggest that learning by doing through actual practice is the *only* answer to the reform of legal education, but it certainly is *an* answer, and one that has been widely, indeed universally, adopted. Clinical legal education is also a powerful bellwether, a portent of a future for legal education that is very different from its traditional past. Indeed, some continue to argue that learning “substantive knowledge of the law is usually denominated ‘education,’ while acquiring practical skills is ordinarily called ‘training’.”¹⁵⁸ Clinical legal education is one of a spectrum of subjects and methods that involve learning by doing, experiential learning that lies at the theoretical core of adult learning, or andragogy, a subject almost completely absent from theoretical study among legal educators.¹⁵⁹ We would all be better teachers if we knew studied andragogy more closely. Experiential learning has as legitimate a place in the pantheon of education as doctrine itself, and the role of practice in legal education is growing around the world every day, as well it should.

¹⁵⁸ Maxeiner, *supra*, n. 1, at 38.

¹⁵⁹ MALCOLM S. KNOWLES, ELWOOD F. HOLTON III & RICHARD A. SWANSON, *THE ADULT LEARNER* (5th ed. 1998); Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 *Vand. L. Rev.* 321 (1982).

Table 1 - General Structure of Legal Education

Country	Pop. (M)	Number LS		Bar Size (Th)	Grads/ Yr	Grad % prac	Control	Cost/yr US\$/€	Nat. Entry Exam	Degrees/years		Comp Grad Exam	Apprenticeship			Professoriate			Future
		Pub	Priv							1st (af.H.S.)	2d		Term	Course	Exam	FT	PT	FT PrPr	
Australia	22.3	28 ¹	2	3.8B 34.5S	?	Most	Local	\$8,000- 35,000	yes	5 or 2-3gr		yes	1yr reader	PLT/ 1mo (L.S.)	yes	Most	growing	---	Strong/ American- ized
Belgium	10.8	12	0	15.8	1600	Minority	Local	€80- 837	No	3	2	No	3yr ²	Yes (L.S.)	Yes	Most	growing	Yes	---
Canada (Quebec)	7.8	6 (civ)	0	23 ³	800	?	Leg.	\$ 1200- 1800	Fr.	---	---	---	6mo	Yes	Yes	Most	Yes	Yes	---
Czech Rep.	10.5	4	9	---	1479 (pub)	65	Min. Ed.	\$ 2500- 3000	Yes/ Priv.	3	2	Yes ⁴	3yr	---	Yes	55%	45%	---	More practice
England/ Wales	62 (UK)	103 ⁵		15B 115S	13,800	60	Bar, Univ.	\$ 5300- 16,400	U/ LNAT	3 (1-4 grad) ⁶	--	---	12mo+ pupilage	BPTC LPC	No ⁷	Most	---	---	Increasing, E, not R
France	65.5	< 50	<10 ⁸	47.7 ⁹	?	?	State	€8970 ¹⁰	---	3	1-2	CAPA	18mo	---	---	100	---	Yes	---
Germany	81.7	42	1	147	6300 1st ex.	50	Local/ Univ.	€100Pu 9900Pri	Priv.	4	---	Yes	2yr ¹¹	Yes	Yes (Cts)	100	---	Rare	---
Greece	11.3	3	0	>89 ¹²	1500	---	State	-0-	---	4	---	---	18mo	---	yes ¹³	100	---	Yes	Legal aid by bar
Hungary	10	6 ¹⁴	2	---	3190	Majority	Leg.	\$ 700- 1000	yes	5	---	---	3yr	---	yes ¹⁵	Most	growing	Some	Needs refining
Ireland	4.5	12 ¹⁶	7 ¹⁷	2B 8S	1500	66-73	HEA/ Bar	€22000 ¹⁸	yes	3	1-3	yes ¹⁹	1yr ²⁰	1yr	Yes (Bar)	Most	---	---	More - Increasing
Italy	60.3	47	8+8 ²¹	200	15,448	Minority	State/ courts	€1320- 10,000	Priv/ Self/pub	3	2	Dissert.	2yr	Yes (L.S.)	yes	---	Most	Yes	More in LLM stage
New Zealand	4.3	6	0	10.5	1400 ²²	? ²³	CLE	\$ 3600	NCEA (2002)	4	---	1st yr & yes	18wks	PLSC	yes	Core	Contract	---	---
Portugal	10.6	5	6	26	1500	70	Leg.	€1000- 4000	H.S. Exam	4		no	2yr	Yes 6 mo.	yes	10%	most	yes	Not needed
Switz.	7.7	9	1 DL	8	1400	70	Local Coord.	€700- 1400	H.S. Exam	3	1-2		1yr	yes	yes	Core	lecture	yes	---
Taiwan	23	17	19 ²⁴	5	3000 ²⁵	Most 70%	Min. Ed.	\$ 1460- 2830	yes	4-5	[3-4]	Yes ²⁶	5mo	1mo	no	41%	59%	no	More prac/ Not like American
Turkey	72.5	17	27	---	4200	Most 76%	state	\$ 200	yes	4		no	1yr	yes	some	Most	---	---	---
Venez.	28.7	7	>13 ²⁷	143	7000	---	state	\$ -0 - 3,700	Yes/ Vol.	5		Comp/ Univ.	3mo ²⁸	---	---	---	---	---	More in future

Table 1 - General Structure of Legal Education

-
- ¹ 14 of these schools have been founded since 1989.
 - ² Includes pro deo obligation to accept legal aid cases.
 - ³ 47% of the bar is female.
 - ⁴ Includes diploma paper.
 - ⁵ No public/private distinction noted. All schools listed in appendix to national report.
 - ⁶ Also includes option to read law without attending law school.
 - ⁷ Entry is competitive.
 - ⁸ This is a reference to combined business and law schools with a commercial focus.
 - ⁹ Not from this report; from report of Italy, at 11.
 - ¹⁰ Estimated average total cost.
 - ¹¹ Supported by state stipend.
 - ¹² Actual number significantly smaller.
 - ¹³ Written and oral stages.
 - ¹⁴ Four new schools between 1995-2002.
 - ¹⁵ Administered by government, not bar.
 - ¹⁶ Seven Universities and 5 institutes of technology
 - ¹⁷ Five colleges and 2 professional legal bodies
 - ¹⁸ Estimated total cost.
 - ¹⁹ often preceded by "grind" preparation course.
 - ²⁰ called pupillage or "deviling".
 - ²¹ Includes 8 "e-schools" by distance learning.
 - ²² 28% increase from 2002-06.
 - ²³ Decreasing percentage as enrollment rises, due to wide choice of career options.
 - ²⁴ Increase in total schools by 28 since 2000.
 - ²⁵ Only 494 passed bar - see next note.
 - ²⁶ Very low pass rate - estimated at 8%, rising to 22% in recent year.
 - ²⁷ many schools founded since 1990.
 - ²⁸ done as Community Service.

Table 1 - General Structure of Legal Education Explanation of Data

Table 1 displays data from the reports on Section A of the questionnaire, asking about the general structure of legal education.

Entry Key:

Yes or no = responded generally.

--- = general reporter did not find responsive data in the report.

? = national reporter does not have the data.

Acronyms used in the Table come from the national reports.

Column Explanations:

Column 1 - "Pop (M)" - National population, in millions. I did not ask for national populations. All population figures are taken from estimates by the Population Division of the United Nations Department of Economic and Social Affairs, as of July of 2009.

Columns 2-3 - "Number LS" - number of law schools, public and private.

Column 4 - "Bar Size (Th)" - Size of bar, including all practicing members, at last count, in thousands.

Column 5 - "Grads/Yr" - Grads in last recorded year.

Column 6 - "Grad % prac." - estimated percentage of graduates who will engage in practice as an advocate.

Column 7 - "Control" - refers to who controls or governs legal education generally: legislature, courts, etc., as well as the level at which that authority is exercised: national or local.

Column 8 - "Cost yr, US\$/€" - estimated cost of enrollment per year. Some reporters gave estimated total cost. In all countries with state control and support of legal education, the state, nationally or locally, subsidizes the cost of legal education, either to the university or directly to the student.

Column 9 - "Nat. Entry Exam" - whether there is some other requirement beyond graduation from secondary school or undergraduate school, excluding national graduation exams within those levels.

Columns 10-11 - "Degrees/years" - this refers to the number of years of schooling required for basic admission to practice law as an advocate. The first degree is, almost without exception, taken after completion of secondary education, not after a general undergraduate B.A. or B.S. The second degree is a masters degree, but may be required for practice, particularly in Bologna process countries.

Column 12 - "Comp Grad Exam" - whether there is some comprehensive examination prior to or following graduation from law school.

Columns 13 -15 - "Apprenticeship" - this cluster tells the term of an apprenticeship or trainee period, whether some course of study is required during that period, and whether there is some form of examination during or after the traineeship. The apprenticeship is managed by the bar unless otherwise indicated.

Columns 16 -18 - "Professoriate" - this group discusses full-time (FT) and part-time (PT) professors, and whether the full-time faculty can engage in the private practice of law while employed by the university (PrPr).

Column 19 - "Future" is a column to give one of two pithy words of summary from the national reports on the future of practice in the academy.

NOTE - Due to the complexity of national curricula, no column indicates that information. As a general conclusion, however, one notes that much of the curriculum is more required than elective, and that required courses are often designated by a body outside of the law schools themselves, such as national legislation or a national regulatory agency. Nor did I include reference to rules regarding student practice of law, as such rules were both rare or non-existent.

Table 2 - Practice in Legal Education - Courses and Methods
 AMENDED Draft of October 19, 2010

Country	Foreign Language	Research	Rhetoric/ Writing	Drafting	Ethics	Cases	PBL	Seminars	Simulation	Moots	Extern Intern	Clinic ¹
Australia	---	R	---	E	R	---	---	E	E	E	E	Some
Belgium	English (LLM)	E	E	E	R/E	Yes	E	E	E	E	E	V/law shops
Canada (Quebec)	English expected	---	---	---	R	---	---	---	E	E	E	E/V Pro Bono
Czech Rep.	YES	---	N	---	E	---	---	E	---	---	---	1 ¹ /E
England/Wales	No	R	R	E	R (B)/E	R	E	E	E	E	E	Many/E
France	English - E (business)	No	---	---	---	---	---	---	---	---	---	No/V ²
Germany	One	"legal methods"	E	E	E	Yes-exams	---	E	E	E	R (3 mo)	1 ³ /E
Greece	---	---	---	---	No	---	Yes	Yes	---	E	E	No
Hungary	English/Some German	---	2-E	---	Yes	Yes	---	E	---	Yes/E	R (6-8 wks)	5 ⁴ /E
Ireland	No	R	R	R	Yes	R	---	R	E	E	E	2/E
Italy	Yes/English	---	---	---	---	---	---	---	---	No	20%	No
New Zealand	---	R	R	R	R	---	E	---	E	E	2/E	1/E
Portugal	---	---	---	---	E	Yes	---	---	---	---	No	No
Switz.	Yes/English	R	R Oral - E	---	E	Yes	---	No	E	E	R/LLM V/St.	V/St. run
Taiwan	No	E	---	E	Yes	---	---	---	Trial Process	Yes	Yes/Ct & Pros.	Legal Aid/V
Turkey	---	---	---	---	No	Yes	Yes	Yes/E	---	Yes/Virtual	Visits	Yes/Private
Venez.	No	R	E	---	Yes	Yes	---	---	---	---	R	Práctica Jur -R

¹ No column included on student practice - ranges from absolute bar to no limitations at all.

Table 2 - Practice in Legal Education - Courses and Methods
AMENDED Draft of October 19, 2010

¹ Charles University Refugee Clinic, not mentioned in report.

² But see Wilson, Western Europe

³ Wilson,

⁴ Some of the five schools have multiple clinical offerings.

Key:

R - Required

E - Elective

B - Bar or Professional Requirement before admission to practice; not an academic offering

Yes or No - Mentioned in report

--- - Not mentioned in report

Numbers indicate number of schools identified as using course or method



**18^e CONGRES INTERNATIONAL DE DROIT COMPARE
18th INTERNATIONAL CONGRESS ON COMPARATIVE LAW**

Washington 2010

Topic I D. Formation juridique / Legal education

Sujet/Subject : Le rôle de la pratique dans la formation des juristes / The Role of Practice in Legal Education

Guidelines for National Reporters

I. Major Aims of the Session

The major aims of this session on the role of practice in legal education are:

1. To obtain a broad profile of national legal education,
2. To determine the extent to which law schools provide curricular offerings, through courses or components of courses, with a primary focus on the practice of law,
3. To assess what practice skills, ethics and values are taught within the law school,
4. To determine if, prior to licensure as a practicing attorney, students or law school graduates must complete a period of apprenticeship or other practical training,
5. To assess whether legal education should take a greater or lesser role in offering practice-related courses or course components as a formal part of legal education

II. Questions to be addressed by the national reporters

In your report, please address each of the following questions, related to the above objectives:

A. General Structure of Legal Education (This section provides a framework for the subsequent discussion on practice, which is the core component of this session, so these preliminary questions do not require extensive or nuanced answers)

1. How many law schools are there in your country, and what are the requirements, if any, for accreditation or licensing of law schools?

2. What are the approximate costs of legal education in your country, estimated either by year or across the course of law school study? If costs differ significantly between public and private law schools, please indicate how.
3. What are the requirements for entry into law school in your country? Is there an entrance exam, either nationally or by certain schools?
4. How many students graduate from law schools in your country in any given year, and how many lawyers do you estimate to be licensed to practice law in your country at this time?
5. What is the standard course of study for law school students in your country – number of years of study and educational level that must be attained in order to enter law school?
6. Are there general requirements for graduation from law school, and who imposes these requirements?
7. How much of the law school curriculum is mandatory, and how much consists of optional elective courses that permit students to choose? Who decides the proportion of mandatory versus elective courses at any given law school?
8. What additional requirements are imposed by law, rule or regulation, before or after graduation from law school, and prior to licensure as a practicing attorney? Is there an examination for entry into the bar, and if so, who administers it? Briefly describe the bar examination, particularly if it contains any component that measures practice skills, ethics or values, as discussed below. What percentage of aspirants pass the bar examination each time it is administered?
9. Can you estimate what percentage of law school graduates in your country who go on to enter into the practice of law, not only as advocates, but as prosecutors or in government service? If there are other categories of “lawyers” who engage in law practice, other than those set out here, please describe them.
10. Is the professoriate within law schools in your country made up of full or part-time teachers, and in what percentage for each? May law school professors in your country engage in the private practice of law while employed as a professor? Under what circumstances? If law schools in your country do offer “practice” components, as discussed below, are the faculty who teach “practice” courses given status equal to or commensurate with those who teach in the classroom only?

B. Practice elements within the law school curriculum or otherwise, prior to licensure

1. “Practice” within law school courses or curricula can encompass many elements. Please describe broadly what courses or elements of courses within your country’s law school curricula contain an element of “practice.” Please do not limit your answer to legal analysis and reasoning, or to general theories regarding law or legal science. Examples of “practice” include both skills training and methods of instruction. Examples of skills training include the preparation and conduct of interviews with possible or present clients; fact investigation; development of case theory; counseling; selection of expert witnesses; negotiation, mediation or other alternative dispute resolution processes; problem solving; legal research; written or oral communication and persuasion skills; trial

- or appellate advocacy skills, organization and management of legal work within a law office, etc. Methods of instruction for the teaching of “practice” are generally experiential (the student plans, does and reflects on some lawyering activity), and might include the professor’s use of legal or fact pattern problems, simulations, role plays, games, moot courts, structured and supervised internships or externships with practitioners or judges, clinical programs offering legal services to real clients under faculty supervision for credit, etc. If these elements are not present within law school curricula, is there some other required component of preparation for the practice of law, such as a required period of apprenticeship, that assures that the aspiring lawyer will acquire this training prior to becoming a licensed attorney?
2. Is there a legal, regulatory or internal administrative regime which mandates, regulates, permits or proscribes practice as part of legal education? If so, please briefly identify it and its major components.
 3. Practice-related courses are often focused on the teaching of the basic skills necessary to function as a practicing attorney. However, the teaching of “practice” within a law school might also be said to include elements of ethics or professional responsibility, as well as values relating to the practice of law. To what extent do law schools in your country offer courses or components of courses, either required or optional, on ethics or professional responsibility? On promoting justice, fairness and equality within the legal system? On professional obligations to improve the legal profession and to enhance the likelihood that law and legal institutions will do justice? On assuring that the legal profession does not engage in discrimination based on gender, race or ethnicity, religion, sexual orientation, disability or other grounds? If these elements are not present within law school curricula, is there some other required component of preparation for the practice of law, such as a required period of apprenticeship, that assures that the aspiring lawyer will acquire this training prior to becoming a licensed attorney?
 4. Is the provision of legal services by law students – “student practice” – permitted under the law of your country, and if so, under what circumstances?
 5. Do law schools in your country offer mandatory or optional clinical legal education courses? In this context, “clinical legal education” means a course within the law school, for credit, in which the student provides legal advice or other services to persons who could not otherwise afford counsel. If law schools offer clinical legal education, what is the nature and extent of faculty or practicing lawyer supervision of student work product? Do teachers or students accompany students to court for court appearances or filings? How is credit awarded for participation in a clinical program, and during what year in the course of study is clinic made available or required? Are there prerequisite or co-requisite courses required before enrollment in a clinical program? Is there a prior or parallel seminar conducted in conjunction with participation in a clinical program, and if so, what does that seminar cover?
 6. Do law schools in your country require or offer internships or externships with a law office, government agency or court, outside of the law school? If so, how are these programs supervised or overseen within the law school? Is there a seminar,

- either in parallel or separate from internships, to discuss issues arising from the external experience, such as professional role, legal institutions, etc.?
7. What specialized components of training for the practice of law exist outside of or beyond the required course of law school study, or as an alternative to it, to prepare a student or law school graduate for either the general practice of law, or for a specialized area of practice such as that of a prosecutor or judge? Describe these programs, please, and by whom they are administered.

C. Possible future elements of practice in legal education

If legal education in your country does NOT include an element of practice, please provide an opinion as to whether or not law schools should provide more or less practice-related components, and why.