Acquiring Lawyering Skills in the United States and France: A Comparative Study

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> *[T]he United States may be the only country claiming to be governed by law that turns an unskilled, law graduate loose on some unsuspecting client whose life, liberty or property may be at risk.*[1]

I. INTRODUCTION

The current attention within the legal system on the need for lawyers entering the profession to be "practice ready" has resulted in an increase (mostly unwanted) in the attention paid to the role that American law schools play in the credentialing process.[2] The concerns raised in connection with the education and training of American lawyers are the same concerns that were first raised more than a century ago.[3] These concerns stem from the dominance of the Langdellian instructional paradigm throughout the twentieth century and into the present century.[4] During this time, the law school establishment was largely impervious to calls for reform, which mainly came from within.[5] Currently, pressure to reform has been coming from outside the legal academy: from courts, state bars, and other policymakers. Ignoring these calls for reform entails a non-trivial risk that the dominant role law schools have played in the education and training of lawyers will be diminished significantly.[6] This increases the likelihood that the law school establishment will be receptive to sensible reform proposals and engage in a good faith effort to put meaningful changes into effect.[7]

The desire for reform does not necessarily mean that reform will come about. Ideas are also essential. Comparative studies have always been useful in providing scholars and policymakers with ideas, in exploring other ways of doing things, and seeing what else is possible.[8] Most countries in the world that adhere to the rule of law face exactly the same task that is faced by the United States: effectively educating and training lawyers to carry out the essential roles they perform in the legal system. Exploring how these other countries undertake this task provides an array of concrete examples of approaches that might be adopted in the

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1. John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 334 (2007).
2. *See, e.g.*, Robert J. Condlin, *"Practice Ready Graduates": A Millennialist Fantasy*, 31 TOURO L. REV. 75, 75-76 (2015).
3. Sonsteng et al., *supra* note 1, at 472.
4. *Id.*
5. *Id.* at 320.
6. *See id.* at 363.
7. *Id.*
8. *See generally* Sue Farran & Esin Orucu, *The Continuing Relevance of Comparative Law and Comparative Legal Studies*, 6 J. INT'L & COMP. L. 171 (2019).

United States to improve the process. The purpose of this Article is to critically evaluate the American system of legal education and training and compare it to the system that has been established in France, a country that is often looked to as the preeminent example of a civil law system. In pursuit of this goal, this Article (1) provides a critical overview of the Langdellian model that dominates American legal education today; (2) discusses and assesses the efficacy of the major reform efforts over the last century; (3) provides an overview of the French system of legal education and training; (4) provides a comparative assessment of these two models, arguing that the French system has some useful features that could be adopted in the United States in order to bring about significant improvements in the preparation of young lawyers who enter the profession; and (5) concludes that major reform is needed and that the continued failure to bring about such reform may carry an existential risk for the law school establishment.

II. LANGDELL'S LEGACY

Before the Civil War, legal education in the United States was primarily through apprenticeship arrangements.[9] This was necessitated by the conditions of colonial America and, in particular, the near complete absence of law schools.[10] To be sure, the Inns of Court in London had been training English lawyers for several centuries and some American lawyers received their training in one of these, but for an overwhelming number of Americans, traveling to London and living there for the duration of law study would be prohibitively expensive.[11] For the most part, the apprentice method was satisfactory in training enough lawyers to meet the modest demands for legal services in the colonial and antebellum periods.[12]

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9. LAWRENCE M. FRIEDMAN, AMERICAN LAW IN THE TWENTIETH CENTURY 33 (2002) [hereinafter FRIEDMAN, TWENTIETH CENTURY]. Friedman notes that many lawyers were self-taught. *Id*. at 33 n.4. On the history of legal education in the United States, see generally Sonsteng et al., *supra* note (1), at 321.

10. During the antebellum period, there were just a handful of law schools in America. The first and one of the very few law schools in existence during the early nineteenth century was the Litchfield Law School, which was founded in 1773 in Litchfield, Connecticut, by Taping Reeve. It closed in 1833. LAWRENCE M. FRIEDMAN**,** A HISTORY OF AMERICAN LAW 239-40, 463 (3d ed. 2005) [hereinafter FRIEDMAN, HISTORY]. The other law schools founded prior to the Civil War are Harvard Law School (1817), William and Mary Law School (1779, but closed due to the Civil War), University of Maryland Law School (classes began in 1824, but closed due to the Civil War), and the University of Michigan Law School (1859).

11. JUDE M. PFISTER, THE CREATION OF AMERICAN LAW: JOHN JAY, OLIVER ELLSWORTH, AND THE 1790S SUPREME COURT 20 (2019).

12. Sonsteng et al., *supra* note 1, at 321.

The decades following the Civil War saw a significant expansion of the American economy.[13] Rail and canal transportation, telegraphic communication, manufacturing, the rise of business corporations, and an expanding population all promoted the growth of American business, which, in turn, increased the demand for legal services beyond the reasonable capacity of the apprentice system and the small number of law schools that were in existence.[14] In order to meet this increasing demand, a significant number of law schools were founded during the second half of the nineteenth century and the early twentieth century.[15] While some university affiliated law schools came into existence during this time,[16] many of these newly established law schools were modeled after the Litchfield School, which was founded in 1773.[17] They were small, proprietary institutions, not affiliated with any college or university.[18] Prior to the last quarter of the nineteenth century, *all* of these schools, both the university affiliated ones and the proprietary ones, adopted the "lecture method" of instruction.[19] Under this method, faculty, who were practicing lawyers and judges[20]—sometimes distinguished—lectured to the students on a variety of legal topics.[21] This instructional method dominated American law schools until the last quarter of the nineteenth century, at which time a revolution in legal education began at Harvard Law School under the leadership of Christopher Columbus Langdell, who was dean from 1870 to 1895.[22] This revolution, which radically changed the nature

13. KERMIT L. HALL, THE MAGIC MIRROR: LAW IN AMERICAN HISTORY 211 (1989).

14. Sonsteng et al., *supra* note 1, at 323.

15. *Id.*

16. The first university affiliated law school was Harvard Law School, founded in 1817. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 33; FRIEDMAN, HISTORY, *supra* note 10, at 240-41, 466. Three other universities established law schools before the Civil War.

17. FRIEDMAN, HISTORY, *supra* note 10, at 240-41.

18. These proprietary law schools grew out of "law offices that employed several apprentices at one time." Sonsteng et al., *supra* note 1, at 322.

19. *Id.* at 323.

20. *Id.* at 324.

21. *Id.* at 325. Propriety law schools included a practice component while university affiliated law schools "operated under the assumption that skills training would take place in practice" following law school.

22. Christopher Columbus Langdell (1826-1906) studied law at Harvard from 1851 to 1854. He then practiced law in New York City until 1870 when he returned to Harvard as a faculty member and dean. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 33-34; *see also* Thomas C. Grey, *Langdell's Orthodoxy*, 45 U. PITT. L. REV. 1 (1983) [hereinafter Grey, *Orthodoxy*]. *See generally* FRIEDMAN, HISTORY, *supra* note 10, at 467-73.

of legal education at Harvard and law schools throughout the country,[23] will be looked at next.

Establishing a law school as part of a university's curriculum was problematic.[24] Such a move did not enjoy overwhelming support from university faculty and administrators.[25] The task of those who wished to see a law school established on campus was to convince the faculty and administration that law was an appropriate academic subject for a college curriculum.[26] The problem most related to the subject matter of this Article was that law was perceived to be a practice—a trade—and not an academic subject suitable for a college curriculum.[27] It was traditionally learned through an apprentice system, similar to the way in which other trades such as carpentry, masonry, and animal husbandry were learned.[28] Although Harvard Law School was over half a century old when Langdell was appointed dean, he began a sustained effort to enhance the academic stature of law study and promote its acceptance on the part of Harvard's faculty and administration.[29]

In order to enhance the academic stature of law, Langdell endeavored to sever legal education from its apprenticeship roots in order to promote it as a legitimate subject of higher education.[30] He did this in two ways: (1) by stripping legal education of any vestiges of those roots and (2) promoting the idea of *legal science*, also referred to as *the science of law*.[31] Legal science is a complex concept and one that leads us to question whether it is appropriate to use the word *science* in this situation.[32] While a thorough discussion of legal science is beyond the scope of this Article, some basic ideas should be considered. Langdell did not discover or invent legal science; it was developed in England earlier in the century and

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23. For sources regarding the influence that Harvard Law School had on legal education throughout the country, see *infra* notes 106-110 and accompanying text.

24. Sonsteng et al. also note that law schools were struggling to compete with the apprentice system for students. Sonsteng et al., *supra* note 1, at 323.

25. *See* FRIEDMAN, HISTORY, *supra* note 10, at 465.

26. *Id.*

27. Sonsteng et al., *supra* note 1, at 325.

28. *Id.* at 322.

29. FRIEDMAN, HISTORY, *supra* note 10, at 467-68; Sonsteng et al., *supra* note 1, at 324.

30. Langdell and Harvard's President Elliot endeavored to "segregate legal education from lawyers and the practice of law." JOHN O. SONSTENG, A LEGAL EDUCATION RENAISSANCE: A PRACTICAL APPROACH FOR THE TWENTY-FIRST CENTURY 21 (2008) (quoting William R. Trail & William D. Underwood, *The Decline of Professional Legal Training and a Proposal for Its Revitalization in Professional Law Schools*, 49 BAYLOR L. REV. 201, 207 (1996)); Sonsteng et al., *supra* note 1, at 325.

31. Sonsteng et al., *supra* note 1, at 325.

32. *See generally* HUNTINGTON CAIRNS, THE THEORY OF LEGAL SCIENCE (1941).

became an influential perspective in the United States on the common law during this time.[33] Under this idea, the common law consisted of an enduring (i.e., slowly evolving or, for some, eternal) array of broad principles.[34] These principles and the specific doctrines that were derived from these principles were "all interconnected and logically consistent."[35] Langdell saw legal science as a means to imbue the study of law with the intellectual gravitas and academic legitimacy that natural science had enjoyed for well over a century and social sciences were beginning to enjoy and the end of the nineteenth century.[36] Writing in 1892, Professor Edward J. Phelps of Yale Law School wrote of the need for law students to learn "those *unchangeable* principles of the common law which underlie and permeate its whole structure, and which control all its details, its consequences, its application to human affairs."[37] Langdell wrote in his casebook on contract law: "[T]he number of fundamental legal doctrines

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33. A. W. Brian Simpson wrote that:

> In the nineteenth century, both in England and the United States, it was usual for common lawyers to believe, as they had believed in the past, that the law consisted in principles, whose application in specific circumstances was exemplified in law reports. It became common to apply the term "science" to the knowledge and understanding of these principles.

A.W. BRIAN SIMPSON, LEADING CASES IN THE COMMON LAW 4-7 (1995) [hereinafter SIMPSON, LEADING CASES]. He also noted that "the belief in a set of inner principles of the common law became widespread" during the sixteenth century. A.W. BRIAN SIMPSON, LEGAL THEORY AND LEGAL HISTORY: ESSAYS IN THE COMMON LAW 283 (1987) [hereinafter SIMPSON, THEORY]. *See generally* GRANT GILMORE, THE AGES OF AMERICAN LAW 42-48 (1977); HALL, *supra* note 13, at 220; NICHOLAS MERCURO & STEVEN G. MEDEMA, ECONOMICS AND THE LAW: FROM POSNER TO POST-MODERNISM 7 (1997); Steven B. Dow, *Rethinking Legal Research: Preparing Law Students for Using Empirical Data*, 2011 MICH. ST. L. REV. 523, 526-27 (2011); Grey, *Orthodoxy*, *supra* note 22, at 1, 2, 5; Frederick Schauer, *Formalism*, 97 YALE L.J. 509 (1988); A.W. Brian Simpson, *Legal Iconoclasts and Legal Ideals*, 58 U. CIN. L. REV. 819, 832-39 (1990) [hereinafter Simpson, *Legal Iconoclasts*]; Steve L. Winter, *John Robert's Formalist Nightmare*, 63 MIAMI L. REV. 549 (2009).

34. Steven B. Dow, *There's Madness in the Method: A Commentary on Law, Statistics, and the Nature of Legal Education*, 57 OKLA. L. REV. 579, 581 (2004) [hereinafter Dow, *Madness*]; GILMORE, *supra* note 33, at 43, 62; HALL, *supra* note 13, at 220; ROBERT POST, LAW AND THE ORDER OF CULTURE, at vii (1991) (quoting Joseph Vining's observation that this view was "projecting an image of law as a set of rules outside, a grid that, could you only tap it with your fingernail, would give out a hard metallic ring"); SIMPSON, LEADING CASES, *supra* note 33, at 1, 4-7; SIMPSON, THEORY, *supra* note 33, at 284; Thomas C. Grey, *Modern American Legal Thought*, 106 YALE L.J. 493, 495-96 (1996) (reviewing NEIL DUXBURY, PATTERNS OF AMERICAN JURISPRUDENCE (1995)) [hereinafter Grey, *Book Review*]; Grey, *Orthodoxy*, *supra* note 22, at 5, 6-7, 11-13, 19; Simpson, *Legal Iconoclasts*, *supra* note 33, at 835-39; Sonsteng et al., *supra* note 1, at 325.

35. Grey, *Orthodoxy*, *supra* note 22, at 5.

36. *See* Sonsteng et al., *supra* note 1, at 325.

37. Edward J. Phelps, *Methods of Legal Education*, 1 YALE L.J. 139, 140 (1892) (emphasis added) (quoted in SIMPSON, LEADING CASES, *supra* note 33, at 4).

is much less than is commonly supposed; the many different guises in which the same doctrine is constantly making its appearance, and the great extent to which legal treatises are a repetition of each other, being the cause of much misapprehension."[38] The study of law was the process of acquiring both the knowledge and understanding of these principles and the skill of applying them to legal disputes.[39] This knowledge and understanding was the "common learning of the legal profession."[40]

These principles were discovered by judges and lawyers (and law students) through a careful study of judicial decisions (i.e., cases) in the law reports[41] and were applied by judges to resolve legal disputes presented to the courts.[42] Law study was "learning how to tease out the principles from these cases."[43] Through this careful study of cases, students could acquire "knowledge and understanding of the law, and skill in applying it to the myriad circumstances of life."[44] This put cases (i.e., reported judicial decisions) at the center of Langdell's legal science.[45] The *case method*, the study of cases from the law reports, was the method of instruction.[46] This explains Langdell's focus on the law library as the "workshop" of legal science.[47] It is the law library where law reports are collected and housed.[48] In one of his speeches, Langdell implied that law was like a natural science and the law library was its laboratory.[49] He remarked:

> We have also constantly inculcated the idea that the library is the proper workshop of [law] professors and students alike; that it is to us all that the laboratories of the university are to the chemists and physicists, all that the

38. SIMPSON, LEADING CASES, *supra* note 33, at 5 (quoting C.C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS, at vi-vii (1871)); *see also* GILMORE, *supra* note 33, at 43.

39. SIMPSON, LEADING CASES, *supra* note 33, at 3-7.

40. *Id.* at 3.

41. The practice of publishing (reporting) judicial decisions originated in England in the fourteenth century. *See generally id.* at 1-5.

42. EDGAR BODENHEIMER, JURISPRUDENCE: THE PHILOSOPHY AND METHOD OF THE LAW 95 (1974); MERCURO & MEDEMA, *supra* note 33, at 7-8; SIMPSON, LEADING CASES, *supra* note 33, at 3-5; Sonsteng et al., *supra* note 1, at 325.

43. *See generally* SIMPSON, LEADING CASES, *supra* note 33, at 1-5; *see also* GILMORE, *supra* note 33, at 62; SIMPSON, THEORY, *supra* note 33, at 315; Grey, *Orthodoxy*, *supra* note 22, at 19; Simpson, *Legal Iconoclasts*, *supra* note 33, at 835-36.

44. SIMPSON, LEADING CASES, *supra* note 33, at 3, 5.

45. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 34.

46. *Id.*; Sonsteng et al., *supra* note 1, at 325.

47. WILLIAM L. TWINING, KARL LLEWELLYN AND THE REALIST MOVEMENT 12 (1973) (quoting Langdell).

48. *Id.*

49. *Id.*

> museum of natural history is to the zoologists, all that the botanical garden is to the botanists.[50]

At this point it is important to emphasize the radical change in legal education that Langdell endeavored to bring about.[51] In his system, the study of law had been removed from the courtroom and the lawyer's office and restricted to the law library (and, as we will see, the law school classroom).[52] With this move, the focus of law study became exclusively the study of reported cases, learning legal principles and how they had been applied in legal disputes.[53] All other aspects of law practice and the workings of the legal system had been banished from the curriculum.[54]

Closely connected to the study of cases was another key component of Langdell's system: casebooks.[55] These became the primary instructional material for the various courses at Harvard.[56] A casebook contained selected reported decisions on a particular doctrinal subject, such as property law and contract law, arranged in chronological order.[57] The *method of selecting the cases* nicely "illuminates the essence of Langdell's instructional paradigm."[58] In Langdell's day, the practice of publishing law reports was over 700 years old with respect to English courts and over a century old for American courts, resulting in an enormous mass of cases that made a comprehensive study of them impossible.[59] Under the legal science paradigm, the selection of cases from this mass was not based on what generally would be considered (even under contemporary standards) scientific analysis of court decisions.[60] Instead of a perceived need to read every case on a particular topic, the

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50. *Id.*; *see also* GILMORE, *supra* note 33, at 47. This focus on the law library continued throughout the twentieth century. JOHN HENRY SCHLEGEL, AMERICAN LEGAL REALISM AND EMPIRICAL SOCIAL SCIENCE 212 (1995); Grey, *Orthodoxy*, *supra* note 22, at 20; Sonsteng et al., *supra* note 1, at 325.

51. See GILMORE, *supra* note 33, at 47-48.

52. Id.

53. HALL, *supra* note 13, at 220.

54. Id.

55. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 34.

56. *Id.*; HALL, *supra* note 13, at 220; MERCURO & MEDEMA, *supra* note 33, at 7. Although Langdell was instrumental in promoting casebooks as the primary instructional material at Harvard and in American legal education generally, he was not the first person to create one. A.W. Brian Simpson states that the first casebook was created by Samuel Warren and published in 1835. SIMPSON, LEADING CASES, *supra* note 33, at 1, 5 (citing SAMUEL WARREN, A POPULAR AND PRACTICAL INTRODUCTION TO LAW STUDIES (1835)).

57. SIMPSON, LEADING CASES, *supra* note 33, at 4-7.

58. Dow, *supra* note 33, at 529.

59. SIMPSON, LEADING CASES, *supra* note 33, at 3.

60. TWINING, *supra* note 47, at 12.

solution was to study only the "leading cases" on that topic.[61] The cases designated as leading cases on a particular topic were collected in the casebook for that topic.[62] These leading cases were few in number.[63] Langdell stated in his casebook on contracts that the cases worth studying were "an exceedingly small proportion of all that have been reported."[64] He added that the rest "were useless, and worse than useless."[65]

The process of selecting the few leading cases from the "useless" mass of reported cases in an area of law lies at the heart of Langdell's legal science.[66] The process was not based on any method of *sampling* that produced a statistically valid data set by today's standards of empirical research (or even by contemporary standards).[67] Instead, the leading cases were those that best exemplified the fundamental principles of the common law and how such principles were to be applied to legal disputes.[68] These few cases were primarily English cases.[69] Over half of the cases that Langdell selected for his casebook on contract law were English.[70] And there was a bias toward older cases.[71] In Langdell's casebook on equity pleading, for example, the most recent case was fifty years old.[72] The bias toward older English cases was not due to a dearth of American cases.[73] Instead, it was the result of Langdell's belief that "English judges did a better job than American judges of articulating the fundamental principles and doctrines of the common law and illustrating how these apply in resolving legal disputes."[74] The cases that did not

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61. The concept of leading cases can be traced back to the seventeenth century and perhaps earlier. SIMPSON, LEADING CASES, *supra* note 33, at 4-7.

62. *Id.*

63. *Id.*

64. C.C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS, at vi (1871).

65. *Id.*; *see also* GILMORE, *supra* note 33, at 47. Samuel Warren, who was the first person to compile leading cases in a casebook, suggested that the number of cases on a topic that would be considered leading was "[f]ifty or sixty." SIMPSON, LEADING CASES, *supra* note 33, at 6; *see also* SIMPSON, THEORY, *supra* note 33, at 318; Simpson, *Legal Iconoclasts*, *supra* note 33, at 837-39.

It is not entirely clear what Langdell meant by "worse than useless." Presumably he was suggesting that not only was there no benefit from reading these cases, but that doing so would actually be harmful in the sense causing one to be confused or misled.

66. *See supra* text accompanying note 65.

67. *See generally* ROYCE A. SINGLETON & BRUCE C. STRAITS, APPROACHES TO SOCIAL RESEARCH (6th ed. 2017) (highlighting Chap. 6, which deals with sampling).

68. Dow, *supra* note 33, at 530.

69. GILMORE, *supra* note 33, at 59; HALL, *supra* note 13, at 220.

70. *See* GILMORE, *supra* note 33, at 47-48.

71. *Id.*

72. *See generally* CHRISTOPHER C. LANGDELL, CASES IN EQUITY PLEADING (1878).

73. *See* SIMPSON, LEADING CASES, *supra* note 33, at 3.

74. Dow, *supra* note 33, at 530.

reflect or help to illuminate the common law, which were a substantial majority of cases, were labeled as "useless" or worse and left out of the instructional process.[75] Grant Gilmore captured the absurdity of this method when he wrote that for Langdell, "[t]he doctrine tests the cases, not the other way around."[76] Thus, with casebooks and the case method, American law students were to study only these common law principles and doctrines that the casebook writer believed were worthy of study, "not the principles and doctrines that American judges *actually* employed in their decision-making."[77] Langdell's method prompted Oliver Wendell Holmes to refer to Langdell as "the greatest living legal theologian,"[78] and to offer his own conception of law as "[t]he prophecies of what the courts will do in fact, and nothing more pretentious."[79]

Another significant feature of Langdell's legal science, which further separated legal education from the practice of law, was its disregard for the fact-finding process.[80] Traditionally, courts had engaged in fact-finding as part of the adjudication process.[81] Indeed, the central purpose of the jury trial is to facilitate the jury's role of determining the facts of a case.[82] Under the case method, the students would study how the legal principle was applied to the facts of the case (appearing in the casebook), but the "facts" of the case were those "posited in a summary fashion by the judge who wrote the opinion, regardless of the extent to which, or even whether, they corresponded with reality."[83] John Chipman Gray, one of Langdell's critics

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75. GILMORE, *supra* note 33, at 47.

76. *Id. Absurdity* is an appropriate word when we evaluate Langdell's method under the accepted standards of empirical research. It is the equivalent of a research project in which 1000 observations are assessed by the researcher who concludes that 975 of them should be ignored because they are "wrong" based on their failure to conform to some principle derived *a priori* from some other principle.

77. Dow, *supra* note 33, at 530.

78. RICHARD A. POSNER, THE PROBLEMS OF JURISPRUDENCE 424 n.2 (1990) (quoting 14 AM. L. REV. 233, 234 (1880)).

79. Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 461 (1897). Holmes believed that the pursuit of abstract legal principles under Langdell's system was misguided. AMERICAN LEGAL REALISM 4 (William W. Fisher et al. eds., 1993); Grey, *Orthodoxy*, *supra* note 22, at 41-47. Holmes's view on the nature of law foreshadowed the development of American legal realism, which started in the 1920s. For this reason, Holmes is often characterized as a *proto-legal realist*.

80. Dow, *supra* note 33, at 531.

81. *Id.*

82. *Id.*; Leonard Leigh Finz, *The Jury's Fact-Finding Role*, 56 JUDICATURE 245 (1973).

83. Dow, *supra* note 33, at 531. With respect to whether the facts reported in the opinion correspond to reality, see JOHN T. NOONAN, JR., PERSONS AND MASKS OF THE LAW: CARDOZO, HOLMES, JEFFERSON, AND WYTHE AS MAKERS OF THE MASKS 111-51 (1976); SIMPSON, LEADING CASES, *supra* note 33, at 11.

at Harvard, complained that ignoring the fact-finding process was especially misguided.[84] He wrote that a:

> substitute for the facts may be much better material for intellectual gymnastics than the facts themselves and may call forth more enthusiasm in the pupils, but a school where the majority of the professors shuns and despises the contact with actual facts, has got the seeds of ruin in it and will and ought to go to the devil.[85]

Ignoring the fact-finding process, the case method also ignored the social or economic facts that might be present in the case[86] as well as the empirical methods that are used to gather and analyze relevant data.[87] This is important because beginning in the last third of the nineteenth century, the same time that Langdell's system was being established, it became more and more common for courts to rely on empirical data in ruling on the validity of health and labor legislation.[88] Langdell's instructional method was going in the opposite direction, leaving law students totally unprepared to deal with this increasingly important judicial phenomenon.[89]

We have seen how under Langdell's model, legal education had become largely divorced from the practice of law.[90] It was promoted as a "science" that was studied in casebooks and in the law library, devoid of all aspects of law practice other than the knowledge of legal rules and principles articulated by (mainly English) judges in a very small number of leading cases that typically did not reflect the rules and principles which

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84. TWINING, *supra* note 47, at 20.

85. *Id.* (quoting a letter from John Chipman Gray to Charles William Elliot, President, Harvard University (Jan. 8, 1883) (emphasis omitted)); Sonsteng et al., *supra* note 1, at 14.

86. The dispute typically was presented as involving the individual parties (e.g., "A" and "B"), and excluded the social, economic, and political aspects of the case. GILMORE, *supra* note 33, at 46-47; MERCURO & MEDEMA, *supra* note 33, at 8.

87. MERCURO & MEDEMA, *supra* note 33, at 8.

88. The long-held conventional view is that this development began in the early twentieth century with the Supreme Court's decision in *Muller v. Oregon*, 208 U.S. 412 (1908). *See*, *e.g.*, ROSEMARY J. ERICKON & RITA J. SIMON, THE USE OF SOCIAL SCIENCE DATA IN SUPREME COURT DECISIONS 14-15 (1998). More recent research shows that this trend began much earlier, during the last third of the nineteenth century. Noga Morag-Levine, *Formalism, Facts, and the Brandeis Brief: The Origins of a Myth*, 2013 U. ILL. L. REV. 59, 60 (2013). The increasing attention given to empirical data by American courts (and in American public policy-making generally) prompted Holmes to predict that the lawyer of the present is the "black-letter man." The lawyer of the future will be a "man of statistics." Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897); *see also* TWINING, *supra* note 47, at 13 (discussing the skills that lawyers of the future will possess).

89. On the critically important question of whether this significant defect in American legal education has been rectified, *see infra* notes 98-105 and accompanying text.

90. Dow, *supra* note 33, at 529-31.

were employed by American judges. Langdell's model also was devoid of instruction in the empirical research skills that were quickly becoming central to policy-making both inside and outside American courts.[91] This raises the question of who was qualified to teach this legal science. Under the apprentice system, the law was "taught" by practicing lawyers.[92] Once law schools were established, but prior to Langdell, law faculty typically were legal practitioners.[93] For Langdell, the only people qualified to teach the science of law were *legal scientists who themselves had studied legal science under Langdell's system*.[94] Lawyers with practical experience were not suitable teachers of legal science and were purged from the faculty,[95] severing an important link with the practice of law. Under Langdell's system, the role model for law students was not a practicing lawyer or judge.[96] It was not someone with extensive experience in the field of law. It was the law professor, a legal scientist.[97]

Langdell also endeavored to purge from the faculty anyone who had an interest in other academic disciplines,[98] particularly the social sciences—economics, psychology, political science, and sociology—that were developing as disciplines during this period.[99] As a result, the law school became an academic island, with students and faculty isolated from the main currents of American intellectual life.[100] However, Langdell did not see this as a disadvantage because under his conception of legal science, the law was "'self-contained' in the sense that it contained the answers for all legal questions, answers that could be uncovered through careful study of the common law."[101] In his mind, there was no need to give any attention to "the array of social, economic, and political forces"

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91. *Id.*

92. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 33.

93. *Id.* at 34; SIMPSON, THEORY, *supra* note 33, at 311.

94. GILMORE, *supra* note 33, at 57; Sonsteng et al., *supra* note 1, at 325.

95. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 34; Sonsteng et al., *supra* note 1, at 21; SIMPSON, LEGAL THEORY, *supra* note 33, at 311.

96. FRIEDMAN, HISTORY, *supra* note 10, at 466.

97. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 34.

98. HALL, *supra* note 13, at 220.

99. FRIEDMAN, HISTORY, *supra* note 10, at 322; MERCURO & MEDEMA, *supra* note 33, at 8. For a discussion on the development of modern American social sciences, see Dorothy Ross, *The Development of Social Sciences*, *in* DISCIPLINE AND HISTORY: POLITICAL SCIENCE IN THE UNITED STATES 81 (James Farr & Raymond Seidelman eds., 1993).

100. This isolation would continue over the next century and up to the present day. *See* Dow, *supra* note 33, at 536-38.

101. *Id.* at 532; *see also* MERCURO & MEDEMA, *supra* note 33, at 7-8; POSNER, *supra* note 78, at 30.

that shaped the law.[102] As with other aspects of legal science, this isolation had its critics. Ephraim Gurney, dean of faculty at Harvard, remarked that Langdell's system was "breeding within itself."[103] Roscoe Pound, who would later become dean of Harvard Law School,[104] "was especially critical of Langdell's approach to [legal] education and his erroneous characterization of his method as 'scientific.'"[105]

Despite these profound flaws in Langdell's system, it not only became "firmly established" at Harvard Law School by the midpoint of his tenure as dean,[106] "every major and most minor law schools" throughout the country adopted Langdell's model at Harvard with respect to curriculum and instructional method,[107] so that by 1920 it totally dominated American legal education[108] and eventually supplanted the apprentice method.[109] Langdell had succeeded in enhancing the academic

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102. MERCURO & MEDEMA, *supra* note 33, at 8; FRIEDMAN, HISTORY, *supra* note 10, at 322.

103. Grey, *Orthodoxy*, *supra* note 22, at 2.

104. Pound, who held a doctorate in botany, was dean from 1916 to 1936. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 489-90; HALL, *supra* note 13, at 224.

105. Dow, *supra* note 33, at 533; *see also* DUXBURY, *supra* note 34 at 54-56; HALL, *supra* note 13, at 224. This is not to suggest that Pound was part of the legal realism movement that offered a comprehensive critique of the Langdellian model. In fact, Pound was a critic of legal realism—an "antirealist." FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 490.

106. TWINING, *supra* note 47, at 13; Sonsteng et al., *supra* note 1, at 326.

107. Some of this development was the result of Harvard-trained lawyers obtaining teaching positions at other law schools. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 34-35. Friedman writes that Harvard-trained lawyers were, in effect, "missionaries who went into the hinterlands to preach the One True Method." *Id*. at 35. In addition to Harvard, other elite law schools now fill this role. Friedman reports that even today, sixty percent of law professors in the country received their law degrees from a top twenty law school. *Id*. at 484. Of course, there were some law schools, e.g., John Marshall Law School in Chicago, that rejected the case method and felt that lawyers with practice experience were the only suitable law teachers. *Id*. at 37.

108. *Id.* at 34; HALL, *supra* note 13, at 219-20; Sonsteng et al., *supra* note 1, at 25; *see also* Grey, *Book Review*, *supra* note 34 at 494; Grey, *Orthodoxy*, *supra* note 22, at 2, 5; SIMPSON, LEADING CASES, *supra* note 33, at 5; TWINING, *supra* note 47, at 10; Dow, *supra* note 33, at 526. The rapid increase in the number of law schools during this period contributed to the spread of the Langdellian instructional model. By 1910 there were seventy-nine full-time "day schools" and forty-five night law schools. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 36. Sonsteng et al. suggest that the adoption by the A.B.A. of legal education requirements that reflected Langdell's system was partly responsible for the dominance of that system throughout the United States. Sonsteng et al., *supra* note 1, at 328-29.

109. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 35. Friedman notes, "In 1870 only one out of four of those admitted to the bar had gone to law school . . . ." *Id.* In 1922, 634 out of 643 who took the New York state bar exam had gone to law school. *Id*. By the middle of the twentieth century "to all intents and purposes, apprenticeship was dead." *Id*. at 480. Of course, one major consequence of the demise of the apprentice system was that students did not learn how to practice law. Instead, they had to learn these skills "on the job." *Id*. This will be discussed *infra* notes 137-208 and accompanying text. A few states still allow an apprentice, without a law degree, to sit for the bar exam, but the number who take this path is extremely small. Sonsteng et al., *supra* note 1, at 326, 417-18.

legitimacy of professional legal education *because* of his success in isolating it from the practice of law and *in spite of* his success in isolating it from all of the mainstream academic disciplines.[110] In light of the deeply flawed nature of the Langdellian model of legal education, one would expect at least some attempts at reform to come about. The first and most significant of such attempts came about in the first half of the twentieth century when the *legal realists* developed a critique of American legal education.[111] This critique and the reform efforts that came out of it are the subject of the next section.

III. THE REALIST ATTEMPT AT REFORM

The Legal Realists[112] were a small, varied group of law faculty from a very small number of elite American law schools. They were understandably appalled at the state of American legal education. During the 1920s and 1930s they sought to promote a new understanding of law and bring about various reforms in legal education.[113] Their reform proposals focused on two different issues: knowledge of social science and its methods, and practical skills training.[114] Both of these will be discussed in this Part.

A. Integration of Social Science into the Curriculum

First, the realists wanted to integrate modern social science into the law school curriculum in order to make it better reflect mainstream American intellectual life and culture, and, more importantly, better reflect what American courts were doing during this period.[115] They thought that the curriculum was far too overloaded with doctrinal courses and that introducing social science and its methods into law school curriculum would result in students acquiring a richer understanding of law and courts.[116] Studying social sciences and social science methods would

110. Grey, *Orthodoxy*, *supra* note 22, at 36-39.

111. *See generally* AMERICAN LEGAL REALISM, *supra* note 79.

112. *Id.*; FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 490-93; MERCURO & MEDEMA, *supra* note 33, at 10; Grey, *Book Review*, supra note 34 at 500; Michael Heise, *The Past, Present, and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, 2002 U. ILL. L. REV. 819 (2002). Some scholars have suggested that some of the ideas espoused by the realists had been expressed earlier by some judges or legal theorists. Simpson, *Legal Iconoclasts*, *supra* note 33, at 828 (English judges as early as the middle of the fourteenth century). *See generally* TWINING, *supra* note 47.

113. Dow, *Madness*, *supra* note 34, at 587.

114. *Id.*

115. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 490.

116. *Id.*; Grey, *Book Review*, *supra* note 34, at 500-01.

better prepare students for law practice, including the fact-finding process.[117]

With respect to law school curricula and instructional materials, the realist reform proposals unfortunately had a negligible impact.[118] In fact, even at its height in the 1930s, the legal realist movement "was never embraced by more than a small minority of law school faculty."[119] It eventually faded from American law schools, leaving a very minor legacy as the fundamentals of the Langdellian model were reestablished.[120] To be sure, today's law students no longer study the transcendent rules of Langdell's legal science, but they continue primarily—to this day—"to study judicial opinions in casebooks, and, for the most part, study them to learn legal principles and doctrine."[121] That is, three years of doctrinal courses using the case method, taught by instructors who themselves had been taught by this method, continues to be the standard.[122] A survey of law school web sites in 2011 showed that approximately ten percent of American law schools offered a course in statistics and empirical research

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117. *See* Cornell W. Clayton, *The Supreme Court and Political Jurisprudence: New and Old Institutionalisms*, *in* SUPREME COURT DECISION-MAKING: NEW INSTITUTIONALIST APPROACHES 16 (Cornell W. Clayton & Howard Gillman eds., 1999); MERCURO & MEDEMA, *supra* note 33, at 11; Craig A. Nard, *Empirical Legal Scholarship: Reestablishing a Dialogue Between the Academy and Profession*, 30 WAKE FOREST L. REV. 347, 357-59 (1995); David M. Trubeck, *Where the Action Is: Critical Legal Studies and Empiricism*, 36 STAN. L. REV. 575, 583-84 (1984). *See generally* JEROME FRANK, COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE (1973). A few realists actually did empirical research. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 490.

118. Dow, *supra* note 33, at 535.

119. *Id.*

120. There is some debate over the extent of that legacy, but the overwhelming weight of authority among scholars is that it was minimal. Clayton, *supra* note 117, at 17-20 (discusses reasons that the realist movement had very little impact on American legal education); MERCURO & MEDEMA, *supra* note 33, at 12; HALL, *supra* note 13, at 220; SCHLEGEL, *supra* note 50, at 243, 250-51; Grey, *Book Review*, *supra* note 34, at 503-05; Grey, *Orthodoxy*, *supra* note 22, at 50; Heise, *supra* note 112, at 822-24. Friedman notes that although the belief in legal science faded in the twentieth century, Langdell's instructional model lived on and, if fact, "got stronger and stronger." FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 36.

121. Dow, *supra* note 33, at 536; *see also* FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 36 ("The faith in 'legal science' ebbed in the twentieth century."). Freidman offers the following idea on what students learn in these courses. "[T]hey learn 'law'—they learn about rules, about doctrine, and how to manipulate it; and they also learn to 'think like a lawyer' (whatever that means)." *Id*. at 486; *see also* Gerald P. Lopez, *Transform—Don't Just Tinker with—Legal Education (Part III)*, 24 CLINICAL L. REV. 247, 250 (2018) (arguing that the basic approach to legal education introduced in the 1870s still dominates today and suggests that it damages law students.). It should be added that interest in transcendent legal principles is not dead. Brian Simpson observed that "the belief in legal science, in the deep principles of the common law, which underlies the conception of the leading case remains, as I have said, very influential today." SIMPSON, LEADING CASES, *supra* note 33, at 7.

122. *See* Lopez, *supra* note 121, at 250.

methods, but in *none* of these schools was that course required.[123] Anecdotal evidence indicates that only *one* accredited American law school currently requires such a course.[124] This hardly marks the dawn of a new legal realism in American law schools.

To be sure, casebooks used in law school courses have changed to some extent over the years since the realist movement came to an end.[125] They contain an array of materials other than edited appellate opinions.[126] Lawrence Friedman noted that "generally speaking, the casebooks of the 1990s included a lot more than cases.[127] Typically, they bristled with notes and questions; they sometimes included excerpts from law review articles and, occasionally, historical, philosophical, economic, or sociological material."[128] However, this hardly presents a reason to celebrate the dawn of a new instructional paradigm. Friedman added:

> Still, to be honest, the bulk of the material in almost all casebooks remained highly traditional; and the students probably do little more than skim the "other stuff." Why pay much attention to it, if it isn't really "law"? Why read it if there is no chance it will be on the exam?[129]

In concluding that the current law school paradigm is "bankrupt,"[130] Judge Richard Posner observed in 1990 that "law professors . . . with only a few exceptions, believed that the only thing law students needed to study was authoritative legal texts . . . because the only essential preparation for a legal scholar . . . was knowledge of what was in those texts."[131]

There is another, more significant problem with the existing instructional materials. The version of those authoritative texts (the cases) in the casebooks that students study have been "sanitized" in a way that largely obscures the ways in which courts have integrated social science into their decision-making.[132] "[O]ver the last several decades [casebook

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123. Nard, *supra* note 117, at 357-59; *see also* Anne M. Corbin & Steven B. Dow, *Breaking the Cycle: Scientific Discourse in Legal Education*, 26 TEMPLE J. SCI. TECH. & ENVTL. L. 191 (2007).

124. It appears that there are no data that are more recent than 2011. *See also* Sonsteng et al., *supra* note 1, at 333, 401-02 and accompanying text.

125. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 489.

126. This is reflected in the changes in the titles of casebooks. Instead of "Cases on _____," they are often entitled "Cases and Materials on _____ ." *See, e.g.*, FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 489.

127. *Id.*

128. *Id.*

129. *Id.*

130. POSNER, *supra* note 78, at 433.

131. *Id.* at 425.

132. *See* Corbin & Dow, *supra* note 123, at 192.

editors] have systemically deleted the discussions of scientific [and social science] data. This pattern has not changed, even as courts' use of such data has become more frequent."[133] This practice results in law students being incapable of understanding and participating in an important trend in judicial decision making, a trend that has been underway since at least the early twentieth century and perhaps as early as Langdell's tenure as dean at Harvard Law School.[134] While a very small number of law schools in recent years have made a modest effort to incorporate social science into the curriculum, it remains safe to say that the realist legacy in this regard has, at best, been minimal.[135] Clearly, Sonsteng and his colleagues were correct when they observed that in spite of the criticism and attempted reform, "[m]odern legal education closely mirrors that of the 1870s."[136]

B. The Integration of Skills Training into the Curriculum

The second realist reform proposal was the need to refocus legal education on practical skills, something that had been lost when the apprentice method was largely abandoned.[137] Using modern medical school clinical education as a model, some realists proposed something that was a radical departure from the Langdellian instructional model: the integration of "clinical" education into the law school curriculum.[138] This was an attempt to remedy law students' lack of practical lawyering skills.[139] In these legal clinics, which would be akin to medical school clinics, law students would acquire an array of important practice skills by working on an actual case under the supervision of an actual lawyer.[140] These same ideas were embodied in the *Reed Report*, published in 1921, which was the first in a series of commissioned reports issued over the

133. *Id.*

134. A strong case has been made that courts' reliance on statistical data began during the last third of the nineteenth century. *See* Morag-Levine, *supra* note 88, at 71.

135. Corbin & Dow, *supra* note 123, at 215.

136. Sonsteng et al., *supra* note 1, at 335; *see also id.* at 1, at 333 ("The history of the legal education system shows that in spite of criticism and attempts at reform, the system remains similar to that of the late 1800s.").

137. *Id.* at 330.

138. Jerome Frank was an early and enthusiastic promoter of clinical education. Jerome Frank, *Why Not a Clinical-Lawyer School*, 81 U. PA. L. REV. 907 (1933); *see also* Sonsteng et al., *supra* note 1, at 402; FRANK, *supra* note 117, at 234-39.

139. Sonsteng et al., *supra* note 1, at 402.

140. *Id.*

course of the twentieth century. Practical skills were one of the three components of legal education recommended in the report.[141]

With respect to implementation of these ideas, the clinical movement got off to a *very* slow start in the early part of the twentieth century.[142] From the start, these clinics were electives for which students received no credit.[143] Some of these were organized by the students themselves! By the middle of the century, "only a handful of law schools instituted in-house clinical courses."[144] From the 1960s through the 1990s, there was a substantial increase in the number of law schools that offered clinical courses and in the number of instructors teaching such courses.[145] By the end of the century, 183 American law schools offered at least one clinical course.[146] A very recent survey of American law school web sites shows that nearly all law schools offer at least one clinic.[147] Some have only one, with a median of seven clinics per school.[148]

C. The Shortcomings of Clinical Education

Although the addition of clinical courses in American law schools has been a positive development in law students acquiring practical skills, a closer look at the current status of such courses shows that they fall far short of the realist's original goal.[149] First, because the mean number of clinics offered by law schools is seven, and the median enrollment in each clinic is 7-8 students, such courses do not have the capacity to accommodate more than a small proportion of law students who might want such an educational experience.[150] Second, the array of subjects that

141. *Id.* at 364.
142. *Id.* at 365.
143. *Id.* at 330.
144. *Id.* at 331.
145. *Id.* The increase was aided by substantial grants from the Ford Foundation and the Council on Legal Education for Professional Responsibility, Inc. (CLEPR).
146. *Id.*
147. *Id.* at 371. A survey conducted in 2016-17 by the Center for the Study of Applied Legal Education found that all but four law schools surveyed offered at least one law clinic (n=187). ROBERT R. KUEHN ET AL., CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION (CSALE), THE 2016-17 SURVEY OF APPLIED LEGAL EDUCATION 8 (2017) [hereinafter CSALE SURVEY], https://www.cleaweb.org/resources/Documents/CSALE%20Report%202016-17.pdf.
148. CSALE SURVEY, *supra* note 147, at 8; *see also* Sonsteng et al., *supra* note 1, at 331.
149. Sonsteng et al., *supra* note 1, at 333.
150. CSALE SURVEY, *supra* note 147, at 8, 19. The same survey also found an increase in student demand for clinics. *Id*. at 20; *see also* Survey conducted in 2019 by Hannah Jones, J.D. candidate, The George Washington School of Law. (Data available from the first author); notes 147-148 and accompanying text.

clinical courses offer is somewhat limited.[151] This is because the typical clients served by the clinics are in lower socio-economic groups in need of free legal services.[152] To be sure, this is a valuable service for these clients, but it means that the areas of law that are typically the focus of a clinic tend to relate to the legal problems of these groups.[153] The needs of students who are interested in a clinical experience in some other areas of law typically are unmet.[154] Third, traditionally, American law schools did not require students to take a clinical course.[155] A survey in 2019 found that only *three* law schools require their students to take a clinical course to graduate.[156] This is an important beginning, at least symbolically, but hardly constitutes a sea change in the nature of American legal education. There is no doubt that an important factor in so few law schools requiring a clinical course is that while the American Bar Association recently imposed a requirement of six hours of experiential learning, it still does not require law schools to mandate a clinical course as a requirement for

151. Corbin & Dow, *supra* note 123, at 195. The CSALE survey lists thirty-seven different substantive areas of law that are the focus of clinics. The six most common areas are criminal defense, immigration, children and the law, civil litigation, family law, and mediation/ADR. CSALE SURVEY, *supra* note 147, at 8-9.

152. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 486.

153. Because many, if not most, corporations and other business associations, and wealthy clients, would not seek out the legal services of inexperienced students (even supervised by a clinical instructor) for matters such as mergers and acquisitions, entertainment contracts, professional athlete representation, labor relations, etc., it is not common for a law school to offer a clinic on such a topic. The CSALE Survey reports that only seven percent of law schools offer a clinic in securities law. See CSALE SURVEY, *supra* note 147, at 8-9. No schools report offering a clinic in mergers and acquisitions, entertainment law, professional athlete representation, or labor law. *Id*.

154. *Id*.; *see also* Corbin & Dow, *supra* note 123, at 195.

155. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 486.

156. Survey conducted by Hannah Jones in 2019. Data available from the first author. The survey (n=146) found that only three law schools *required* a clinical course as a requirement for graduation. *See infra* note 157 and accompanying text.

Recently the A.B.A. promulgated a rule that requires law students to undergo six hours of "experiential learning." A clinical course is one way to satisfy this requirement. The other ways are "simulation" courses and "field placements." According to A.B.A. Standard 304, a "law clinic provides substantial lawyering experience that . . . involves advising or representing one or more *actual clients*." Standard 304(b). "A simulation course provides substantial experience not involving an actual client, that . . . is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks . . . ." Standard 304(a), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_standards_chapter3.authcheckdam.pdf. In the absence of well-designed, empirical studies on simulation courses, it is impossible to know whether and to what extent they actually enhance lawyering skills. A discussion of such courses is beyond the scope of this Article; however, it is submitted that for a variety of reasons, simulation courses should not be treated like clinical courses and will not be considered in this Article's analysis.

A.B.A. accreditation.[157] Fourth, clinical courses in American law schools traditionally were not graded.[158] Given the emphasis students place on grades in law school, this sent a strong signal to students that clinics are not an important part of their legal education.[159] As a result of these factors, relatively few students enrolled in law clinics.[160] In Scot Turrow's book *One-L*, a widely read account of his first year at Harvard Law School, he referred to clinics as "mere practice" and noted that most students avoided them.[161] Fortunately, the situation today has improved. A recent survey found that the median participation in law clinics was 46-50% for graduating students.[162]

It is important to acknowledge the relatively few law schools that now require a clinical course. This constitutes significant steps toward the Realist's vision of legal education.[163] This and other reforms relating to clinical courses are a few rays of light in the otherwise gloomy forest of American legal education.[164] While giving due credit to those law schools that have put such reforms in place, the overall picture relating to clinical education compels us to conclude that the law school curriculum barely attempts—and clearly does not succeed—at teaching the array of practical skills needed to practice law.[165] Compared to medical school, clinical courses in law school constitute a very small proportion of the curriculum, even in those schools that require such a course.[166] This leaves students mainly with the study of legal doctrine through the case method. To be sure, law students learn through the case method some of what they need

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157. Sonsteng et al., *supra* note 1, at 367, 370. Law schools are not required to mandate a clinical course or courses because this type of course is not the only way to satisfy the experiential learning requirement. With respect to the A.B.A. requirement on experiential learning, see *supra* note 156 and accompanying text. The A.B.A.'s position on this matter is surprising when we consider that the parade of reports, from the earliest (Reed Report) to the more recent (MacCrate Report), emphasize practical skills as one of the important components of legal education. Even assuming that the experiential learning requirement promotes the development of practical lawyering skills, it constitutes a minute portion of the overall curriculum in the J.D. program, leaving it bloated with traditional doctrinal courses.

158. *See* Sonsteng et al., *supra* note 1, at 340-48.

159. *Id.*

160. *Id.*

161. SCOTT TUROW, ONE L (1977).

162. CSALE SURVEY, *supra* note 147, at 11. The survey also found that currently a majority of clinical courses are graded with a letter or number grade. *Id*. at 27.

163. Sonsteng et al., *supra* note 1, at 417-22; *see supra* notes 156-157 and accompanying text.

164. Sonsteng et al., *supra* note 1, at 417-22.

165. *See, e.g., id.* at 334 ("The legal education system does not . . . require curriculum aimed at teaching the basic skills necessary to practice law. . . ." (citation omitted)).

166. *Id.* at 429-31; *see supra* note 157 and accompanying text.

to know to practice law.[167] However, this method "only provides a [small] fraction of what is required for graduates to be competent lawyers."[168] One commentator who surveyed practicing lawyers echoed the view of Judge Jerome Frank when he concluded that "[t]he required curriculum at many, if not most, American law schools virtually ignores at least half of the fundamental skills every lawyer should have."[169]

This is not to suggest that recent law school graduates have absolutely no practical skills. On the contrary, they "report having learned many important lawyering skills *in places other than law school* [e.g., summer internships] and in many cases, *after they graduate*."[170] Although internships traditionally are not required as part of J.D. programs, summer clerkships (and similar kinds of internships) are very common.[171] Freidman characterizes them as now "standard."[172] A few law schools have recently imposed a requirement that students undertake an internship in order to graduate, and a few other schools require students to take *either* a clinical course *or* an internship in order to graduate.[173] At least one state requires the completion of some type of internship in order to obtain a license to practice law.[174] It is reasonable to expect that the recent A.B.A. requirement on experiential learning (which may be satisfied with a "field placement," among other things) will prompt more states and law schools to require an internship.[175] However, unless an internship is *required* by the law school or the state licensing requirements, there will be some students who do not undertake one because the A.B.A. standards permit a student to satisfy the experiential learning requirement with simulation courses (and/or clinical courses) *instead* of a field placement. These recent

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167. *Id.* at 332.

168. *Id.* at 335-36.

169. *Id.* at 342 (quoting Professor John Berman).

170. *Id.* at 334. The term "internship" is intended to include any paid or unpaid arrangement outside of the law school in which a law student works with one or more legal professionals doing the kind of tasks that a legal professional does. This work could take place in a law firm, prosecutor's or public defender's office, governmental agency, judge or magistrate's office, legal nonprofit, etc.

171. FRIEDMAN, TWENTIETH CENTURY, *supra* note 9, at 486.

172. *Id.*

173. *See supra* note 156 (regarding the survey by Hannah Jones); Songsteng et al., *supra* note 1, at 417-22; *see also* CSALE SURVEY, *supra* note 147, at 11. The survey reports that 20% of responding schools require a "clinical law course (law clinic or externship)" in order to graduate. *Id*. The CSALE Survey reports that a large percentage of schools offer "field placement courses" in which students obtain academic credit for participation in an internship. *Id.* at 10. The median percentage of students participating in such a course before graduation was 51-55%. *Id*. at 12.

174. *See* Sonsteng et al*., supra* note 1, at 417-22.

175. *See generally supra* notes 156-157 and accompanying text.

innovations in graduation and licensing requirements, while notable, impact only a small portion of a law student's formal training and, therefore, do not fundamentally change the overall assessment of the ossified nature of American legal education.[176]

Even under the best of circumstances, summer clerkships (and other types of internships), which echo the apprentice method from the eighteenth and nineteenth centuries, do not impart all the practice skills that should be, but are not taught in the law schools.[177] Internship training is very uneven,[178] often lacks supervision and effective feedback,[179] which greatly prolongs the time needed to acquire the necessary skills. The foregoing is no hidden secret, although many law students are understandably unaware of the gaping holes in their legal knowledge and skills.[180] Lawyers are aware of the flawed nature of legal education.[181] Surveys show an increase in the perceived importance of legal practice skills;[182] however, a majority of lawyers surveyed acknowledge that they received *no prior training* in some key tasks.[183] Not having obtained the necessary practical skills in law school, most lawyers have no choice but to acquire these skills after they graduate and have begun practicing law.[184] This amounts to on-the-job-training, largely through trial and error. As is the case with summer internships, post-graduate on-the-job training will be very uneven in its effectiveness.[185] In the worst cases, lawyers working

176. *See supra* notes 156-174 and accompanying text.

177. Sonsteng et al., *supra* note 1, at 319, 21.

178. One of the criticisms of the apprentice system of legal training was that it was very uneven. Some apprentices would acquire more legal knowledge and skills while other apprentices acquired less of these, depending on who the master (mentor) was and the nature of the relationship between the two. The lack of practical skills training in law schools has resulted in a replication of the apprentice system during the summer while in law school and after graduation.

179. The larger firms will have the resources (and skills) to carefully mentor new hires. The smaller firms will lack the first of these. Public defender offices typically will lack resources and time to undertake anything beyond a minimal amount of mentoring. Sonsteng et al., *supra* note 1, at 334-45. The new A.B.A. standards (Standard 304(c)), call for supervision, monitoring, feedback, and evaluation by site supervisors and a faculty member. It remains to be seen whether this will remedy the problems encountered with internships in the past. It is likely that law schools will begin to charge tuition at some level to students who undertake an internship with the expectation that it would "count" as experiential learning.

180. *Id.*

181. *Id.* at 373.

182. *Id.*

183. *Id.* at 386 (discussing survey by Binder and Bergman).

184. *See supra* notes 156-183, *infra* note 442 and accompanying text.

185. *See supra* notes 177-179 and accompanying text.

with little or no supervision or effective feedback may inflict untold damage to their clients from the "errors."[186]

The impact that the failure of American legal education has on the American legal system generally and individual clients specifically is monumental, especially in the criminal justice system.[187] Sonsteng and his colleagues observe that "the United States may be the only country claiming to be governed by law that turns an unskilled, law graduate loose on some unsuspecting client whose life, liberty or property may be at risk."[188] They offer an overall grim assessment of American legal training in the context of other professional training.[189]

> In the United States, doctors, nurses, teachers, and certified public accountants must complete supervised internships prior to receiving certification or licensing. Ironically, a lawyer often holds not only a client's health, education, and finances at risk but also his very liberty, yet a lawyer is able to practice law merely by passing a series of examinations that largely ignore the practical application of the law to real cases.[190]

If one were to remove the word "lawyer" in the quoted passage and replace it with the word "physician," it would generate widespread alarm, if not outright panic, at the imminent danger to the public.[191] The current state of legal education triggers little, if any, alarm among most law school faculty and administrators.[192]

We are left to ponder the possible explanations for this situation. It is not for lack of awareness on the part of the law school faculty and administrators.[193] On the contrary, this problem has been highlighted from time to time over the last century, with scrutiny intensifying recently.[194] As far back as the 1920s a series of commissioned "reports" has been written.[195] Each one pointed to an array of failings of the legal education

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186. Sonsteng et al., *supra* note 1, at 334.

187. Id.; see also James D. Bethke, *Rich or Poor: The Right to a Fair Trial Requires A Good Lawyer*, 69 TEX. BAR J. 238 (2006).

188. Sonsteng et al., *supra* note 1, at 334.

189. *Id.* at 334 n.148.

190. *Id.*

191. *Id.*

192. *Id.* at 336-37.

193. *Id.*

194. *Id.* at 354, 368.

195. The *Reed Report* was written by Alfred Z. Reed and published in 1921. Sonsteng and his colleagues note that the American Bar Association was unhappy with its conclusions and largely ignored them. Instead it published another report with different recommendations. The *Cramton Report* was written by Roger Cramton and published in 1979. Its critique and recommendations were largely ignored. The A.B.A. commissioned another study in the late 1980s. Its results, the *MacCrate Report*, were published in 1992. Sonsteng and his colleagues suggested

system and recommended substantial reforms. Each has been largely ignored.[196]

The adherence to a flawed, outmoded instructional paradigm is most likely the result of multiple, complex factors. Although a detailed examination of this matter is beyond the scope of this Article,[197] a few comments are useful here. Clinical instruction is more expensive than traditional lecture courses, so a significant shift toward clinical instruction, especially in times of declining enrollments and financial retrenchment (like the present), would be very difficult to bring about.[198] But even if cost were not a factor, such a shift would be highly problematic because most faculty see clinical instruction as less "analytically rigorous" and less prestigious.[199] The lower status and pay of clinical instructors is the subject of a current debate within the legal academy.[200] Fear is a major factor in faculty resistance to a shift toward clinical instruction.[201] Most faculty have little, if any, experience in the practice of law.[202] They obtained the positions they have by excelling in the traditional classroom, not the courtroom or the office of corporate counsel.[203] They also typically lack knowledge in cognitive science,[204] which makes it difficult for them to effectively teach in a clinical setting. Being required to teach clinical courses likely would instill fear, if not terror, in most of them.[205] Finally,

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that it was acknowledged and discussed, but very little movement toward reform was undertaken. The latest report, *Educating Lawyers*, issued in 2007 by the Carnegie Foundation for the Advancement of Teaching, suggested that the system remained desperately in need of reform. Sonsteng et al. discuss the series of reports. *Id.* at 364, 365, 368.

196. *Id.* at 365, 368, 370.

197. The focus of this section is to argue that the instructional paradigm *is* flawed and outmoded, not *why* it is flawed and outmoded, because far too many law faculty fail to acknowledge the basic problem. Overcoming that failure is the important first step.

198. Sonsteng et al., *supra* note 1, at 340.

199. *Id.*

200. *See* the literature appearing in *The Clinical Law Review*. e.g., Warren Binford, *25th Anniversary of the* Clinical Law Review*: Reflections on Clinical Scholarship: The Death of a Clinic*, 26 CLINICAL L. REV. 99, 104 n.12 (2019). At the risk of incurring the wrath of law school faculty to an even greater extent, the authors suggest that because effective teaching of a clinical course requires a broader knowledge base and a much larger skill set than teaching a traditional doctrinal course, clinical faculty should have *higher* status and *higher* pay than non-clinical faculty. Sonsteng et al., *supra* note 1, at 340.

201. Sonsteng et al., *supra* note 1, at 336.

202. He characterizes this as "one of the most prevalent criticisms of law school faculty." *Id*. at 352-53.

203. *Id.* at 352. This is one of the key features of the Langdellian system and has been from its beginning.

204. For a discussion on cognitive science and the failure of law schools to integrate it into their instructional model, *see id.* at 389-411.

205. *Id.* at 336.

there is also basic inertia, adherence to tradition.[206] Much of this is captured in the following quotation from Sonsteng and his colleagues:

> Faculty may conform to the Langdellian method because we do not want to appear stupid, unfit, and because we are afraid to challenge the collective judgment about how best to teach. Thus, we carry the current paradigm of law school teaching on through sheer momentum; while, like the emperor without clothes, we persist in pretending that all is well.[207]

As a result, they observe that in spite of the sustained criticism and occasional attempts at reform, "[m]odern legal education closely mirrors that of the 1870s."[208]

D. Looking Outward

In looking at the much needed reform of American legal education, convenient alternative models can be found in other professions that have well-established practices in place which can be adapted to legal education.[209] Professional medical education perhaps is the most obvious example—one that has been looked to for guidance since the Legal Realist movement.[210] At the same time, however, there are other models of professional legal education that are convenient and readily available for study: legal education in other developed countries.[211] The need for effective training of lawyers is the same in other developed countries as it is in the United States.[212] Exploring how these other countries undertake that task provides an array of concrete examples of approaches to legal education that might be adopted in the United States.[213] In order to keep this manageable, legal education in France is discussed in some detail in the next part of this Article.[214] France is a developed country with a modern economy, has a sophisticated legal system with deep historical roots, and

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206. *Id.*

207. *Id.*

208. *Id.* at 335. A survey of sixty law schools showed that "[t]he required course work remains much the same as in Langdell's time." *Id.* at 401-02. "[T]he history of the legal education system shows that in spite of criticism and attempts at reform, the system remains similar to that of the late 1800s . . . ." *Id*. at 333.

209. *Id.* at 429.

210. *Id.*; *see* Edward J. Phelps, *Methods of Legal Education*, 1 YALE L.J. 139, 156 (1892).

211. *See* Thomas E. Carbonneau, *The French Legal Studies Curriculum: Its History and Relevance as a Model for Reform*, 25 MCGILL L.J. 445 (1980).

212. *Id.* at 254.

213. *Id.*

214. For an overview of French law, see RENE H. DAVID, FRENCH LAW: ITS STRUCTURE, SOURCES, AND METHODOLOGY (1986). In this article, all translations from French are by Louise Fontaine. Citations to French language sources are provided where appropriate.

adheres to the rule of law.[215] France is often looked to as the preeminent example of a civil law system because it was at the center of civil law reforms after the revolutions at the end of the eighteenth century.[216] This next Part of the Article will discuss legal education and training in the French system. This discussion of French legal training is not offered with the expectation that it could be or would be successfully adopted wholesale in the United States. It would be foolish to adopt an institutionalized system from a foreign country simply because it is foreign. It is, however, equally foolish to dismiss out of hand the usefulness of a foreign institutionalized system as a model for American reform simply because it is foreign or because it is a civil law system rather than a common law system. It is submitted that for purposes of reform, foreign legal education and training offers models for the United States that are more suitable than American medical education.

IV. THE FRENCH MODEL OF LEGAL EDUCATION AND TRAINING

A. French Educational System at the Pre-University Level

In order to fully understand professional education in France, it is necessary to have a basic understanding of the French educational system at the pre-university level. In France, education is mandatory up until the age of sixteen[217] and can be pursued either through institutional education (in public or private schools) or through home education by family or any other person.[218] High school in France is composed of three different grades: "*Seconde,*" "*Première*," and "*Terminale*," which basically are

215. *See generally* RICHARD J. TERRILL, WORLD CRIMINAL JUSTICE SYSTEMS: A SURVEY (7th ed. 2009).

216. The study of law in France and other civil law countries has its roots in the University of Bologna (Italy) during the twelfth century when the study of Roman law was revived. *Id.* at 153. For an excellent overview of the civil law tradition, see generally JOHN H. MERRYMAN & ROGELIO PEREZ-PERDOMO, THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF EUROPE AND LATIN AMERICA 95 (3d ed. 2007) [hereinafter THE CIVIL LAW TRADITION]. For a brief overview of the French system of law, courts, criminal justice, and the legal profession, *see generally* TERRILL, *supra* note 215. The fact that France is a civil law country should not give anyone reason to dismiss it out of hand as an exemplar of legal education. There is a long history of common law systems borrowing from civil law. And, as comparative law scholars point out, the differences between common law and civil law have been diminishing to a significant degree over the years. THE CIVIL LAW TRADITION, *supra* at 155.

217. CODE DE L'ÉDUCATION [EDUCATION CODE] art. L131-1 (Fr.).

218. *Id.* art. L131-2 (Fr.).

parallel to sophomore, junior, and senior years in an American high school.[219]

There are three types of high school education: general, technological, and professional.[220] The first one focuses on education and general training, and the last one focuses on professional training of students.[221] The technological education is in between the other two.[222] A large portion of high school students go through the general path, which is presumed to be the most appropriate for further studies beyond high school.[223] So, if a teenager knows he or she wants to go to law school, they most likely will follow the general path.[224] The general path itself is divided into three specialties: economics and social studies, scientific studies, and literature studies.[225] Students all attend the same classes during the first year (*Seconde Générale*) and then they pick their specialty before entering in the next grade.[226] All students within the same specialty take the same, uniform set of courses because the curriculum for each specialty is established at the national level.[227] Classes for the economics and social studies specialty in *Première* (junior) are history and geography, mathematics, French literature, sociology, economics, and physical education.[228]

There is no legal education in high school, except for one optional course that might be picked by a few students, but it is only available to students in the literature specialty.[229] Those studying economics and social science do not have a course on the basic principles of law.[230]

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219. *Upper Secondary School: Le Lycée*, ÉDUSCOL (July 05, 2018), https://eduscol.education.fr/cid61053/upper-secondary-school-le-lycee.html.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. CODE DE L'ÉDUCATION [EDUCATION CODE] art. L133-1 (Fr.); *Upper Secondary School: Le Lycée*, *supra* note 219.

228. Certification for high school teaching in France is regulated on a national level. The main requirement to be a high school teacher is to have graduated from a Master's degree in education (called the MEEF: *Métiers de l'éducation, de l'enseignement et de la formation*).

228. After graduating, aspiring teachers have to take a specific national exam to be able to teach in high school. This competitive exam is called "*Certificat d'Aptitude au Professorat de l'Enseignement du Second degré*," which is a secondary-school teaching certificate. *Upper Secondary School: Le Lycée*, *supra* note 219.

229. *Id.*

230. *Id.*

B. French Law School at the Undergraduate Level

In France, higher education (i.e., post-high school) is divided into three "cycles."[231] More specifically, law studies start with an undergraduate three-year degree in a public university.[232] At the University of Tours, for example,[233] the first and second years of a three-year bachelor's program are general and cover major legal fields: civil, criminal, constitutional, administrative, European, and international, etc.[234] Students are required to learn the basic principles of each area of law.[235] Courses at the University of Tours are organized as follows: civil law (i.e., private law), constitutional law, administrative law, historical law, commercial/business law, political science, tax law, and comparative law (*Droit civil, Droit constitutionnel, Droit administratif, Histoire du droit, Droit commercial, Science politique, Droit fiscal, Droit comparé*).[236] The courses are taken in the following sequence:[237]

(1) First semester: Civil law (legal reasoning and persons), jurisdictional institutions, constitutional law, historical introduction to law.
(2) Second semester: Civil law (family law), historical introduction to law, constitutional law, administrative institutions.
(3) Third semester: Civil law (tort law), criminal law (general criminal law), administrative law, public finances, history of law, political science and commercial law.
(4) Fourth semester: Civil law (contract law), criminal law (special criminal law), administrative law, European institutions, history of law, comparative law and tax law.

In addition to these courses, students have a two-hour language class each week during their entire program, as well as modules designed to orient them to entering and working in the various areas of law.[238]

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231. CODE DE L'ÉDUCATION [EDUCATION CODE] art. L717-1 (Fr.).
232. *Parcours Droit Privé: Licence*, UNIVERSITE DE TOURS, https://www.univ-tours.fr/formations/formations-2/nos-formations/licence-droit-economie-gestion-mention-droit-parcours-droit-prive-596647.kjsp?RH=1512571302602 (last visited Mar. 29, 2020).
233. *Id.*
234. *Id.*
235. *Id.*
236. *Id.*
237. *Id.*
238. *Id.*

The first two years of law school are usually considered to be the hardest years for students.[239] The first year is difficult because the materials and the legal reasoning are completely unknown to all of the students.[240] The second year can be difficult because some materials are very technical (such as administrative or tax law).[241] Even though a degree should be obtained in three years, a lot of students actually repeat a year or even two.[242] For example, at the University of Tours, success rates from year to year are 49.8% (first year), 74.5% (second year), 88.3% (third year).[243]

After two years, students may start to specialize to some degree.[244] They do not specialize in one subfield of law.[245] Instead, they basically decide at that point whether they want to go towards public law or private law.[246] This choice does not exist at some smaller universities.[247] In these institutions, all students follow the path that has been established by their university (i.e., private law, public law, or general legal studies).[248]

During the undergraduate program, some law students start doing short internships.[249] Internships are only available through conventions (contracts) signed by three parties: the student, the company/professional, and the university.[250] Although it is rather rare to find an internship as a first-year or even second-year student without personal connections in the field, firms may decide to take students in for short-term internships.[251] Internship conditions and rules are very different from a contract of employment and can vary from one field of law to another.[252] For example,

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239. Sue Wall, *Legal Education in France*, 26 LAW TCHR. 208, 209 (1992).

240. *Parcours Droit Privé: Licence*, *supra* note 232.

241. *Id.*

242. Wall, *supra* note 239, at 209.

243. *Parcours Droit Privé*, UNIVERSITE DE TOURS, https://www.univ-tours.fr/formations/formations-2/nos-formations/licence-droit-economie-gestion-mention-droit-parcours-droit-prive-596647.kjsp?RH=1512575602735 (last visited Mar. 29, 2020).

244. Wall, *supra* note 239, at 211.

245. *Id.*

246. *Id.* The public law—private law distinction, which has little significance in Anglo-American law, is very important in civil law countries. For a discussion of the distinction in civil law, see Chapter XIV in THE CIVIL LAW TRADITION, *supra* note 216, at 94.

247. Wall, *supra* note 239, at 211.

248. *Id.*

249. CODE DE L'ÉDUCATION [EDUCATION CODE] art. L124-1 (Fr.).

250. *Id.* art. L124-11 (Fr.).

251. Because students only start to familiarize themselves with the legal system and its functioning, they do not know how, for example, a law firm really works and they are not able to write legal briefs. Usually, internships at the first and second-year level are short because it is the opportunity for the student to get to know one particular job in the field. Employers usually cannot task them with important tasks, however, so they tend to look for more advanced interns.

252. Internship conventions are not employment contracts. Indeed, the main aim of the internship is not for the employer to fill up a working position, but for the student to "gain

internships in law firms have a specific status and professionals in the firm who mentor the students have to abide by specific rules.[253] In all cases, one internship cannot last more than six months.[254]

During the third year of law school, students specialize in private law or public law.[255] The courses from which they select will differ depending on which specialization they choose. Students choosing the private law specialization may study private property law, specialized contract law, company law, labor law, the law of obligations, and civil procedure.[256] Students choosing the public law specialization may choose to study administrative law, public international law, European Union law, and labor law.[257] Students in both the private law specialization and the public law specialization continue to study languages during the third year.[258]

Undergraduate legal studies focus mostly on general rules and principles, as well as legal methodology.[259] Students learn the material and become familiar with legal writing, framing a dispute as a legal dispute, solving practical questions, thinking about major doctrinal issues, and interpreting legal rulings.[260] It is obvious that there is a fundamental difference between the American model and the French model of the first three years of legal education. That fundamental difference is that the first three years in France are at the undergraduate level; in the United States the first three years are at the graduate level.[261] At the undergraduate level, French students learn the basics of substantive and procedural law, private law and public law, and political science, as well as an array of related skills such as legal research and writing, and legal problem solving.[262] In

professional skills and make use of what they learned during their university training, in order to obtain a diploma or a certification and to facilitate their professional integration." *See* CODE DE L'ÉDUCATION [EDUCATION CODE] art. L124-1 (Fr.).

253. Accord Professionnel Du 19 Janvier 2007 Relatif Aux Stagiaires Des Cabinets D'Avocats (Fr.): professional agreement of January 19th of 2007 regarding law firm interns.

254. CODE DE L'ÉDUCATION [EDUCATION CODE] art. L124-5 (Fr.).

255. Wall, *supra* note 239, at 211; *Parcours Droit Public*, UNIVERSITE DE TOURS, https://www.univ-tours.fr/formations/formations-2/nos-formations/licence-droit-economie-gestion-mention-droit-parcours-droit-public-596648.kjsp?RH=1512571302602 (last visited Mar. 29, 2020).

256. Wall, *supra* note 239, at 211; *Parcours Droit Privé: Licence*, *supra* note 232.

257. *Parcours Droit Public*, *supra* note 255.

258. Wall, *supra* note 239, at 210.

259. *Parcours Droit Privé: Licence*, *supra* note 232.

260. *Id.*

261. John P. Bullington, *Legal Education in France*, 4 TEX. L. REV. 461, 463-64 (1925-1926); Sonsteng et al., *supra* note 1, at 325.

262. Morgane Taquet & Amélie Petitdemange, *'Licence de droit: ce qui vous attend vraiment en première année,'* LETUDIANT, https://www.letudiant.fr/etudes/fac/licence-de-droit-ce-qui-vous-attend-vraiment-en-premiere-annee.html (last updated July 25, 2019).

addition, many of these undergraduates have at least one internship experience.[263]

After an undergraduate degree in law, French students are expected to[264]:

- "Be able to master written and oral expression skills;"
- "Be able to understand, analyze and synthesize a legal text;"
- "Master logic and conceptual reasoning;"
- "Study in autonomy and be able to organize one's own work;"
- "Be open to the world and master linguistic skills;"
- "Be interested in historical, societal and political issues."

The undergraduate legal education that the French students undergo is basically the same as that which American students experience in law school, which is at the graduate level.[265] By the time the French students have completed their undergraduate (three-year) degree, they have completed what the American students are just starting to learn as they begin law school.[266] Put another way, French students are accomplishing as undergraduates the basic legal education that American students accomplish at the graduate level in law school.[267] The American students are learning the basics of law for the first time at the graduate level.[268] This obviously opens the way for graduate-level legal training in France to be very different from what it is in the United States.[269] American law schools

263. *See, e.g.*, CODE DE L'ÉDUCATION [EDUCATION CODE] art. L124-2 (Fr.) (the code provisions specifically dedicated to internships for French college students); *see also supra* note 251 and accompanying text. Although there is no national requirement that students in France undertake an internship during law school, an internship is required in specific programs at specific universities. There is survey data showing that 48% of undergraduate students and 70% of master's students have done an internship; however, these data are not limited to law students. "Selon l'observatoire de la vie étudiante, 70% des étudiants en master ont effectué un stage. Ils sont près de 48% en licence et 40% en doctorat.", *Les stages dans l'enseignement supérieur*, ONISEP (Feb. 13, 2018), http://www.onisep.fr/Cap-vers-l-emploi/Stages-en-entreprises/Les-stages-par-niveau-d-etudes/Les-stages-dans-l-enseignement-superieur. (Translation= According to the observatory of Student life, 70% of master's students have done an internship (during the course of the master's programme. The percentage is at 48% at the undergraduate level (licence) and 40% at the PhD level (doctorat).) It is the second author's impression that in France many undergraduate law students have undertaken an internship.

264. The following learning goals are found in *Licence De Droit*, ONISEP, http://www.onisep.fr/Ressources/Univers-Formation/Formations/Post-bac/Licence-droit (last visited Mar. 29, 2020).

265. Francis Deak, *French Legal Education and Some Reflections on Legal Education in the United States*, 1939 WIS. L. REV. 473, 476 (1939).

266. *Id.* at 476-80.

267. *Id.*

268. *Id.*

269. *Id.*

focus on introducing students to law for the first time and learning the basics of legal doctrine and legal reasoning.[270] French students complete this during their three-year undergraduate program in law.[271]

C. Instructors in the French Undergraduate Law School

One important thing about classes in French law schools is the difference between lectures and class discussions. Lectures (*cours magistraux*) are classes given by law professors, usually in large groups.[272] Class discussions are classes given by either law professors or other professionals, generally in smaller groups, and go into class materials in depth.[273] While law professors teach lectures and class discussions, class discussions can also be taught by people with other qualifications, such as a doctoral student or practicing professional such as a lawyer, notary, judge, or banker.[274]

To become a law professor, one must obtain a Ph.D. in any legal field.[275] In France, there are two types of law professors: *professeur d'université* and *maître de conference*.[276] Both entail teaching and research, but they are not of the same rank in the teaching hierarchy at the university.[277] In the educational hierarchy, the *professeur d'université* has

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270. Sonsteng et al., *supra* note 1, at 325.

271. Deak, *supra* note 265, at 478.

272. Martin A. Rogoff, *A Comparison of Constitutionalism in France and the United States*, 49 ME. L. REV. 21, 82-83 (1997).

273. *Id.*

274. Carbonneau, *supra* note 211, at 475.

275. Décret n°84-431 du 6 juin 1984 fixant les dispositions statutaires communes applicables aux enseignants-chercheurs et portant statut particulier du corps des professeurs des universités et du corps des maîtres de conférences [Decree of June 6, 1984 establishing the common statutory provisions for research and teaching staff, and the specific status of the body of university professors and lecturers], JOURNAL OFFICIEL DE LA REPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], art. 44. To be able to become a *professeur des universités*, one must meet one of the requirements laid out in article 44. The first requirement is to have the habilitation à *diriger des recherches* (ability to direct research, i.e., be a thesis director, also translated as Professorial Thesis), which can be obtained directly or through a PhD. "The State PhD (doctorat d''Etat) is admitted as an equivalent to the professorial thesis." The second to fifth (alternative) requirements are to have some sort of professional or research experience.

276. Information issued for the *CIDJ* (*Centre d'information et de documentation jeunesse*—Center for information and documentation for youths) website. *Les Enseignants-Chercheurs*, MINISTERE DE L'ENSEIGNEMENT SUPERIEUR DE LA RECHERCHE ET DE L'INNOVATION (May 6, 2015), https://www.enseignementsup-recherche.gouv.fr/pid24530/les-enseignants-chercheurs.html.

277. Décret n°84-431 du 6 juin 1984 fixant les dispositions statutaires communes applicables aux enseignants-chercheurs et portant statut particulier du corps des professeurs des universités et du corps des maîtres de conférences [Decree of June 6, 1984 establishing the common statutory provisions for research and teaching staff, and the specific status of the body of university professors and lecturers], J.O., art. 48.

a higher rank than the *maître de conference*.[278] The first of these can be translated simply as "law professor," and the second one can be translated as "class lecturer."[279] A *maître de conference* could also be compared to an American associate professor, whereas the *professeur d'université* would be a full professor.[280] Basically, one becomes a *professor des universités* either by teaching for ten years as a *maître de conferences* or after obtaining the *agrégation*, a credential that is very difficult to obtain.[281] In France, the *agrégation* is "a civil service competitive examination for certain posts in France's education system."[282]

French Master's Level Legal Education: The Second Cycle. Once a French student has graduated from law school with a bachelor's degree, their legal education is not complete.[283] In order to join the ranks of the legal profession a student must successfully go through an advanced training program.[284] In order to be able to sit for the competitive exam to enter that program, students need at least one year of university legal studies post-bachelor.[285] In order to accomplish this, most students who have completed the bachelor's degree choose to enter a master's degree program.[286] The master's program is considered to be the second cycle in higher education.[287] In France, a master's degree in law is divided into two years.[288]

Currently, students should be accepted into the first year of the program (Master 1) if they obtained their bachelor's degree with sufficient

278. *Id.*
279. *Id.*
280. *Id.*
281. They are both *enseignants*-chercheurs, but not exactly at the same level. For the difference between *maître de conférence* and *professeur d'université*, *see* the definitions in CODE DE L'ÉDUCATION [EDUCATION CODE] art. L952-1 (Fr.).
282. *Agrégation*, WORDREFERENCE.COM, https://www.wordreference.com/fren/agr%C3%A9gation (last visited Mar. 29, 2020).
283. Wall, *supra* note 239, at 211.
284. *Id.*
285. *Id.*
286. *Id.*
287. *Id.*
288. *Fields and Levels of Studies*, UNIVERSITÉ PARIS I PANTHÉON SORBONNE, https://www.pantheonsorbonne.fr/international/foreign-students/fields-and-levels-of-studies/ (last visited Mar. 28, 2020).

grades.[289] The first year is specialized.[290] At this stage, students have to decide which branch of law interests them the most, although this choice is not binding on the students' career path.[291] Branches of law in this context include criminal law, contract law, administrative law, international and European law, and company law.[292]

Admission into the second year of the master's degree is not automatic.[293] Students have to apply for the programs they want and they have to be accepted by the program's director(s).[294] At this point, acceptance is not just a matter of sufficient grades.[295] Students have to prove they are highly motivated and that they have the appropriate profile for the program.[296] Usually, students apply to several programs to be certain to end up being accepted in at least one of them.[297]

The second year of the master's degree is the most specialized one.[298] It focuses on one or two major legal topics, e.g., Human Rights Law or Intellectual Property Law.[299] The first semester of the second year consists of taking courses.[300] Then, students usually face a choice for the second semester: either to write a research master's thesis or to do an internship.[301] Even if they chose the internship option, students will still have to write a master's thesis in the form of an internship report.[302] The first option is appropriate for students who wish to focus on research and continue toward earning a Ph.D., while the second option is for students who wish

289. Wall, *supra* note 239, at 211. The typical French grading system (used at the university level and high school level) is based on a 20-point scale, with 0 being the lowest possible grade and 20 being the highest possible grade. For comparison purposes, and 18/20 would be the equivalent of a 4.0/4.0 in an American university. The phrase in the text, "sufficient grades," means at least a 10/20.

290. *Id.*

291. *Id.*

292. *Id.*

293. *Id.* at 209.

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.*

298. The first year, and even the following years, are very general and the students will not get to be specialized in a particular legal field until the fourth or even fifth year. Taquet & Petitdemange, *supra* note 262.

299. *Contrat Pédagogique*, UNIVERSITE PARIS I PANTHEON SORBONNE, http://www.pantheonsorbonne.fr/diplomes/master-2-pro-droit-et-fiscalite-de-lingenierie-societaire-et-patrimoniale/formation/contrat-pedagogique/ (last visited Mar. 28, 2020).

300. *Id.*

301. *Fields and Levels of Studies*, *supra* note 288.

302. *Contrat Pédagogique*, *supra* note 299.

to get practical training before taking a professional training program entrance exam.[303]

Thus, by combining the three-year bachelor's degree with the two-year master's degree, French students can get a graduate degree after five years of law school.[304] Although most entrance exams for the professional training programs are available after four years of legal studies (three at the bachelor's level and one at the post-bachelor's level), students can decide to continue for one more year, finishing the second year, so they can obtain a graduate diploma, i.e., a master's degree.[305] Students who complete the master's degree will have five years of legal studies at the university level before beginning their professional training program.[306]

D. French Doctoral-Level Legal Education

A doctoral degree can be pursued after graduating from a master's degree program in law.[307] Specifics vary from one university to another, but the general rule for Ph.D. students is that they are mentored by a professor who guides them along the entire process.[308] First, together they have to determine the subject of the doctorate thesis and what will be the main field studied.[309] Usually, they eventually come up with a very precise subject and a legal problem to answer with the thesis.[310] A Ph.D. thesis generally takes between three and five years—usually closer to five years—to complete and is several hundred pages long, occasionally as long as 1000 pages.[311] Again, the whole research and writing process is closely supervised by the mentoring professor.[312] After a student finishes their thesis, they send it to a jury and will be required to orally defend the thesis.[313] If the thesis and defense are judged to be satisfactory, students are then declared "doctors in law" and can begin a career as a legal researcher and teacher.[314] During the course of their doctoral program (i.e., researching and writing the thesis), some students engage in teaching, but,

303. *Fields and Levels of Studies*, *supra* note 288.
304. *Id.* "Law school" consists of the three-year bachelor's degree and the two-year master's degree.
305. *Id.*
306. *Id.*
307. *Id.*
308. Bullington, *supra* note 261, at 466.
309. *Id.*
310. *Id.*
311. *Id.*
312. *Id.*
313. *Id.*
314. *Id.*

as indicted above, at this point they are only qualified to lead class discussions as a *chargés d'enseignement*.[315]

E. Advanced Professional Training for Aspiring French Attorneys

A key feature of civil law systems is the structure of legal career paths.[316] In the American legal profession, obtaining a law degree and passing the bar qualifies one for an array of different types of legal careers (e.g., judge, prosecutor, defense lawyer, administrative lawyer), and it is not unusual for a lawyer to move from one to another during their career. By contrast, civil law countries have specialized bars.[317] Advocate, judge, prosecutor, administrative lawyer, notary, etc. typically are separate career paths, with separate training programs.[318] Students decide toward the end of their academic training which career path to follow.[319] They then must pass a separate entrance exam for each type of training program.[320] If admitted, they go through a training program for a specific type of law practice.[321] If they pass the exit exam, they embark on a career in that type of practice.[322] Each type of practice has its own route for advancement and its own professional association.[323] It would be rare for a lawyer in one type of law practice to move to a different type of law practice.[324] This describes the basic system in France, except that French prosecutors and judges undergo the same advanced training and both are considered to be magistrates,[325] and it is relatively common for a prosecutor to move into a judicial position.[326]

Law students start specializing towards specific legal paths after four or five years of general and specialized legal education at the university level.[327] There are several ways to become an attorney, including during

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315. *French Academic Job Titles Explained—Academic Positions*, ACAD. MEDIA GROUP INT'L A.B., https://academicpositions.com/career-advice/french-academic-job-titles-explained (last visited Mar. 28, 2020); see Article L952-1 of the Code of education. Ask author if both cites should be here or just the Code of education- also is it cited previously?

316. The following discussion is based on THE CIVIL LAW TRADITION, *supra* note 216, at 104.

317. Wall, *supra* note 239, at 212-13.

318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.*

323. *Id.*

324. *Id.*

325. *Id.*

326. TERRILL, *supra* note 215, at 151, 153.

327. Taquet & Petitdemange, *supra* note 262.

the course of a different career, but this overview will focus on how students who have obtained a master's degree in law become an *avocat,* become a prosecutor or judge, or become a police officer or notary.[328]

The entry examination for advanced professional training is given only once a year.[329] It is called the "CRFPA," which stands for "*Centre regional de formation à la profession d'avocat,*" which is a regional vocational training center for attorneys.[330] The registration for the entry exam has to be done before December 31 of the year prior to the exam.[331] That is to say, if a student wants to take the entry exam in September 2020, they will need to register for the exam before December 31 of 2019.[332] The entry exam is open for students with at least sixty credits in a master's program, which corresponds to a first year (the entire master's degree is composed of 120 credits).[333] This means that students can register during their first year of master's degree (Master 1), or during their second year of master's degree (Master 2), or after completing master's degree.[334]

The entry examination is composed of two parts: an admissibility part and an admission part.[335] The first takes place in the first week of September, and the second takes place in the first two weeks of November.[336] Only those students who have been declared admissible can take the second part of the examination.[337] The exam is available on a national level, which means that the exam questions and instructions are the same for all taking the exam.[338] However, the way of grading may vary from one instructor to another.[339] Recently graduated attorneys usually

328. Wall, *supra* note 239, at 212.

329. Arrêté du 17 octobre 2016 fixant le programme et les modalités de l'examen d'acces au centre régional de formation professionnell d'avocats [Order of October 17, 2016 Setting the Program Terms of the Access Examination to the Regional Professional Training Center for Lawyers], J.O. art. 1 (Fr.)

330. *Id.* art. 2.

331. *Id.*

332. *Id.*

333. *Id.*

334. *Id.*

335. *Id.* art. 9.

336. *Id.* art. 1.

337. *Id.* art. 7.

338. *Id,* art. 10.

339. The first part of the exam (the written part) is anonymous, according to article 6 of the Arrêté du 17 octobre 2016 fixant le programme et les modalités de l'examen d'accès au centre régional de formation professionnelle d'avocats. However, some authors have noted important differences in grading among the instructors, because the grading guidelines are just informative and not mandatory. This leaves the instructor with a discretionary power regarding the appreciation of the legal reasoning and practical solution (Laurent Dargent et Marine Babonneau, '*Examen*

advise students who contemplate taking the entry exam to take the exam in the university in which they studied for their undergraduate degree and/or master's degree, because they are "used to" the way instructors at the university grade and their expectations for one particular course.[340]

The admissibility part of the examination is divided into four tests:[341]

(1) A summary, called "*note de synthèse*" from documents related to legal aspects of social, political, economic and cultural issues of the contemporary world.
(2) A test on law of obligations (contractual and non-contractual).
(3) Practical case(s) in a chosen legal discipline. The choice of the discipline is made by the students before the examination and no later than April 30. Students can choose from civil law, business law, labor law, criminal law, administrative law, European and international law, or tax law.
(4) A test on procedure designed to "verify the candidate's ability to solve one or several practical cases or to write one or several legal consultations." Again, students face a choice for this test: civil procedure, administrative procedure, or criminal procedure. The discipline for the procedure test depends on the discipline that the student chose for the practical case test.[342]

Épreuve écrite de procédure	Candidats concernés selon leur choix de l'épreuve mentionnée au 3°
Procédure civile, modes amiables de résolution des différends et modes alternatifs de règlement des différends	Candidats ayant choisi la matière droit civil, droit des affaires ou droit social
Procédure pénale	Candidats ayant choisi la matière droit pénal
Procédure administrative et modes amiables de résolution des différends	Candidats ayant choisi la matière droit administratif
Procédure civile, modes amiables de résolution des différends et modes alternatifs de règlement des différends ou Procédure administrative et modes amiables de résolution des différends	Candidats ayant choisi la matière droit international et européen ou droit fiscal

national d'entrée aux CRFPA: rapport 2017,' DALLOZ ACTUALITÉS (Mar. 7, 2018), https://www.dalloz-actualite.fr/flash/examen-national-d-entree-aux-crfpa-rapport-2017#.XshDYWhKjIU.)

340. Phone interview of a member (anonymous) of "*Objectif Barreau*" (a private organization that provides students with an intensive preparation to the entry exam) (Sept. 19, 2019). Notes of interview available from Louise Fontaine.

341. Arrêté du 17 octobre 2016 fixant le programme et les modalités de l'examen d'accès au centre régional de formation professionnelle d'avocats [Order of October 17, 2016 Setting the Program Terms of the Access Examination to the Regional Professional Training Center for Lawyers], J.O. art. 5 (Fr.)

342. *Id.*

This can be translated and explained as follows:

Third Test: Practical Case	**Fourth Test: Procedure**
Civil law	Civil procedure
Business law	
Labor law	
Criminal law	Criminal procedure
Administrative law	Administrative procedure
European and international law	Civil procedure OR Administrative procedure
Tax law	

The admission part of the entry examination is composed of two oral tests[343]:

(1) One fifteen-minute oral presentation on fundamental rights and liberties (with one-hour preparation) followed by a thirty-minute interview. This interview aims to "appreciate the candidate's knowledge, legal culture, and ability to present a convincing argument."
(2) An oral language test. At the registration stage, students can choose the language on which they wish to be tested. Languages available vary from one examination center to another. For example, at the University of Tours,[344] for 2019, languages available are English, Spanish, German, Arab, Mandarin (Chinese), Hebrew, Italian, Japanese, Portuguese, and Russian. After the 2020 exam session, the only language available in all universities will be English.[345]

Candidates who have taken all oral exams have to wait until December 1 (or the next working day) to learn the results.[346] If admitted, they then enter one of the twelve training centers for lawyers-to-be.[347] If they are not admitted, they can retake the entry examination the following year.[348] Students can only take the entry exam three times.[349] If they fail

343. *Id.* art. 7.
344. *Id.* art. 12.
345. *See id.* art. 7.
346. *L'Examen D'Entrée Au CRFPA*, CONSEIL NATIONAL DES BARREAUX, https://www.cnb.avocat.fr/fr/lexamen-dentree-au-crfpa (last visited Mar. 29, 2020).
347. *Id.*
348. *Accessing the Legal Profession in France*, CONSEIL NATIONAL DES BARREAUX, https://www.cnb.avocat.fr/en/accessing-legal-profession-france (last visited Mar. 28, 2020).
349. *Id.*

three times, they cannot take the entry exam a fourth time.[350] However, this does not mean they can never be a lawyer; they can practice as legal counselor, essentially an in-house counsel who cannot represent clients in court or do certain other tasks that an attorney is permitted to do,[351] for eight years (or practice another profession for a certain period of time) and then apply for an admission to the Bar.[352]

Students who are admitted enter one of the vocational training centers in France and become "*élèves-avocats,*" which means "training lawyers" or "students-lawyers."[353] The instructors in the educational training centers are mostly law professors and practicing attorneys.[354] The students' training lasts for eighteen months (a year and a half) and is divided into three six-month periods.[355] In the first period they receive a common education in school, based on professional status and ethics (*déontologie*), legal writing, pleas and defense speeches, oral debates, procedural rules, law firm management, and a foreign language, this time chosen by the training center.[356] The second and third periods are more focused on practical training and aim to provide the training lawyers with the professional skills necessary to successfully practice and manage a firm.[357]

The second training period is "dedicated to a personal educational project" and is a professional internship related to the legal field.[358] However, this internship cannot be done in a law firm because its main goal is to open the students' perspectives to other professional areas of the law and to "reinforce (or not) their desire to become an attorney."[359] The

350. *Id.*

351. *Id.*; Décret No. 91-1197 du 27 novembre 1991 organisant la profession d'avocat [Decree No. 91-1197 of November 27, 1991 organizing the legal profession] J.O. art. 98 (Fr.). The legal counselor (*jurist*) has greater authority and higher status than a paralegal. They are legal practitioners who have a master's degree in law but did not take or pass the bar exam and, thus, some limits are imposed on the range of services they are permitted to perform. They usually are employed by companies or associations to provide legal advice and perform certain legal services. For example, they write briefs on specific legal questions and can advise companies on appropriate strategies.

352. *See* Décret No. 91-1197 du 27 novembre 1991 organisant la profession d'avocat [Decree No. 91-1197 of November 27, 1991 organizing the legal profession] J.O. art. 98 (Fr.).

353. *Id.*

354. *Id.*

355. *Id.* art. 57.

356. *Id.*

357. *Id.*

358. *Id.*

359. Interview of Maître Adeline AUGU, French Lawyer (Barreau de Tours), practicing as an associate lawyer in OMNIA LEGIS (Tours, France) (Feb. 13, 2019). Notes from the interview are available from Louise Fontaine.

third and last training period is a six-month internship in a law firm, where students get deeply involved in the daily life of an actual law firm and can learn to take part in important activities such as client meetings and preparation of pleadings.[360]

F. Final Examination for Aspiring French Attorneys

After spending eighteen months studying in a training center and undergoing their internships, aspiring attorneys must take a final examination: le *Certificat d'Aptitude à la Profession d'Avocat*.[361] This exam is commonly perceived as being less difficult than the entry examination.[362] If successful on the exam and admitted, they obtain the title and status of attorney, as well as all rights conferred to French attorneys.[363] This exam is taken by students in the vocational training center in which they registered and studied.[364]

G. The Organization of French Attorneys

Attorneys are registered to a bar.[365] All bars are directed by a national body called "*l'Ordre des avocats,*" which is basically a disciplinary body for lawyers.[366] The *Batônnier* is at the head of the *Ordre des avocats*.[367] French attorneys, as a group, are represented by a national bar association called the "*Conseil national des barreaux*" (C.N.B.), which was created in 1990.[368] This professional association has several aims: to establish professional rules and usages, to create rules on initial and ongoing educational training, and to rule on the admission of foreign lawyers to a French bar.[369] This body can be described as "a representative institution that can speak in the name of the entire profession, which succeeded in

360. Décret No. 91-1197 du 27 novembre 1991 organisant la profession d'avocat [Decree No. 91-1197 of November 27, 1991 organizing the legal profession] J.O. art. 57-8 (Fr.).

361. *Id.* art. 68.

362. Interview of Maître Adeline AUGU, *supra* note 359.

363. Décret No. 91-1197 du 27 novembre 1991 organisant la profession d'avocat [Decree No. 91-1197 of November 27, 1991 organizing the legal profession] J.O. art. 68 (Fr.).

364. *Id.*

365. *Id.*

366. *Id.* art. 87.

367. *Id.* art. 91; Loi No. 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques [Law No. 71-1130 of December 31, 1971 reforming certain judicial and legal professions] J.O. art. 15 (Fr.).

368. *Mandates of the Conseil National Des Barreaux*, CONSEIL NATIONAL DES BARREAUX, https://www.cnb.avocat.fr/en/mandates-conseil-national-des-barreaux (last visited Mar. 28, 2020); Décret No. 91-1197 du 27 novembre 1991 organisant la profession d'avocat [Decree No. 91-1197 of November 27, 1991 organizing the legal profession] J.O. art. 91 (Fr.).

369. *Mandates of the Conseil National Des Barreaux*, *supra* note 368.

providing the French Bar with common rule, which represents it in front of international bodies, and which takes on a determinant role in professional education."[370]

Practicing attorneys are required to follow mandatory training throughout their career.[371] More specifically, they must undergo either twenty hours of training every year or forty hours of training over two years.[372] During their two first years of practice, attorneys must additionally undergo ten hours of ethics training.[373]

Attorneys are supposed to be able to deal with any type of case, but they usually decide to choose a branch of law in which to specialize.[374] However, attorneys cannot hold themselves out as specializing in criminal law or specializing in family law unless they have been granted a specific "certificate" for that specialization.[375] In this case, attorneys can apply to obtain such specialization after four years of practice.[376] At that point, they need to file an application that will be reviewed by the C.N.B. board.[377] In the current version of the program,[378] there are twenty-six specializations available to practicing lawyers and the application fee is 960 euros (which is approximately $1065 in U.S. dollars).[379] Those who were granted a specialization certificate must dedicate at least half of their continuing professional education to materials relating to their specialization.[380]

H. Advanced Professional Training for Aspiring French Judges and Prosecutors

While both French judges and French prosecutors are "magistrats," there is an important distinction between "*magistrats du siège*" (seating

370. *Id.*

371. Loi No. 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques [Law No. 71-1130 of December 31, 1971 reforming certain judicial and legal professions] J.O. art. 14-2 (Fr.).

372. *Id.*

373. Décision Du 20 Juillet 2018 Déterminant Les Modalités D'Application De La Formation Continue Des Avocats, art. 9 (Fr.).

374. Décret No. 91-1197 du 27 novembre 1991 organisant la profession d'avocat [Decree No. 91-1197 of November 27, 1991 organizing the legal profession] J.O. art. 88 (Fr.).

375. *Id.* art. 265-7.

376. *Id.*

377. *Id.*

378. *Guide Pratique Candidat: Commission De La Formation Professionnelle*, CONSEIL NATIONAL DES BARREAUX, https://www.cnb.avocat.fr/sites/default/files/3.cnb_for_guide_pratique_candidat_-_2019-07-05.pdf (last visited Mar. 29, 2020).

379. *Id.*

380. Décret No. 91-1197 du 27 novembre 1991 organisant la profession d'avocat [Decree No. 91-1197 of November 27, 1991 organizing the legal profession] J.O. art. 265-7 (Fr.).

judges), who have a judicial function, and "*magistrats du parquets*" (standing judges), who have a prosecutorial function. Judges cannot be removed from office[381] unless they fail in their professional duties as judges or fail to maintain the honor, finesse, and dignity of their office.[382] Judges are under the disciplinary authority of the Conseil Supérieur de la Magistrature, which can impose sanctions on a judge when appropriate.[383]

Prosecutors, on the other hand, are under the "direction and control" of prosecutors at all levels above them in the organizational hierarchy.[384] They are also under the authority of the Minister for Justice (*Garde des Sceaux, Minstre de la Justice*),[385] which is advised in matters of prosecutorial discipline by the *Conseil Supérieur de la Magistrature*.[386] Before embarking on a career as a professional judge or prosecutor, students must compete a thirty-one-month period of vocational training,[387] combining formal courses and professional internships. During this time, they are called "*auditeurs de justice*" and they undergo this training at a national-based school called *l'Ecole Nationale de la Magistrature* (ENM).[388]

In order to qualify for admission to this training program, candidates must meet certain requirements in order to sit for the entry ENM.[389] These candidates are required:

- To have French nationality;
- To not have had any of their legal rights curtailed due to a criminal conviction and be "of good morals";
- To have fulfilled all of their national service obligations;

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381. Article 64 of the French Constitution (October 4th 1958) provides: "The President of the Republic is responsible for the independence of the judicial authority, he is assisted by the *Conseil National de la Magistrature*, . . . seating judges are inamovible." ("Le Président de la République est garant de l'indépendance de l'autorité judiciaire, il est assisté par le conseil supérieur de la magistrature, . . . les magistrats du siège sont inamovibles.") 1958 CONST. VIII (Fr.).

382. Ordonnance no. 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature [Ordinance No. 58-1270 of December 22, 1958 on the Organic Law Relating to the Status of the Judiciary] J.O. arts. 43, 45 (Fr.).

383. *Id.* art. 48.

384. *Id.*

385. *Id.*

386. *Id.*

387. Décret no. 72-355 du 4 mai 1972 relatif à l'Ecole nationale de la magistrature [Decree No. 72-355 of May 4, 1972 relating to the National School of Magistrates] J.O. art. 40 (Fr.).

388. *Id.*

389. *Les Concours D'Acces A L'Ecole Nationale De La Magistrature*, ECOLE NATIONAL DE LA MAGISTRATURE (Jan. 2020), https://www.enm.justice.fr/sites/default/files/enm_concours_acces_programme_epreuves_a_partir_2020.pdf.

- To meet physical condition requirements.[390]

There are three types of entry exams to enter the ENM.[391] The focus here will be on the "first" entry exam, which is for students who are less than thirty-one years old and have at least a Master 1.[392] Like the entry exam for aspiring attorneys, the entry exam for *magistrats* is divided into an admissibility part (taken in June) and an admission part (taken in September to December).[393] The admissibility part of the exam entails several portions:[394]

- Knowledge and comprehension of the contemporary world;
- Dissertation on a societal issue in its judicial, legal, social, political, historical, economic, philosophical, and cultural dimensions;
- Practical cases in civil substantive and procedural law OR criminal substantive and procedural law;
- "*Note de synthèse*": summary from a corpus of documents related to judicial, legal or administrative issues;
- Public law: two essay-type questions.

Students who pass the admissibility exam still have to take the second part of the entry exam, i.e., the admission part.[395] Like the admissibility exam, the admission exam includes several parts:[396]

- One summary (*note de synthèse*) on judicial, legal, and administrative issues;
- One oral English test: summary of a document and conversation;
- One oral test on European and private international law;
- One oral test on labor and commercial law;
- One role-playing test followed by an interview with the jury.

Once definitively admitted, students enter the ENM and undergo training for a total period of thirty-one months.[397] At the end, students obtain different grades, both on their theoretical knowledge and on their

390. *Id.*
391. Décret no. 72-355 du 4 mai 1972 relatif à l'Ecole nationale de la magistrature [Decree No. 72-355 of May 4, 1972 relating to the National School of Magistrates] J.O. art. 16 (Fr.).
392. *Id.* art. 17.
393. *Id.* art. 18.
394. *Id.*
395. *Id.*
396. *Id.*
397. *Id.* art. 40.

practical skills acquired during their internship in professional work environments.[398]

With respect to internships, the mandatory ones are:

- One week in a first instance jurisdiction (Tribunal de Grande Instance) (i.e., a trial court);
- Three months with an attorney;
- Two weeks within a penitentiary facility;
- Thirty-eight weeks (nine months) in various jurisdictions (civil, criminal, youth, and administrative office);
- One week in an appellate court;
- Three weeks with other professionals, such as court bailiffs[399]

The theoretical education lasts for thirty-two weeks (eight months).[400]

The first two years of students' training (theoretical and practical) is general, but for the last seven months, students will only follow courses and internships in a specific field.[401] That is point when students typically decide whether they wish to be judges or prosecutors.[402]

The final ENM examination leads to an official ranking of the students.[403] The highest-ranked students can choose their preferred geographic location for the first professional assignment.[404] Finally, at this point, they are declared officially *magistrats*.[405]

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398. *Id.* art. 46.

399. *Id.* art. 49-1.

400. *Id.*

401. *Id.*

402. *Des fonctions variées*, ECOLE NATIONALE DE LA MAGISTRATURE, https://www.enm.justice.fr/devenir-magistrat/decouvrir-le-metier/des-fonctions-variees-0 (last visited Apr. 14, 2020).

403. Décret no. 72-355 du 4 mai 1972 relatif à l'Ecole nationale de la magistrature [Decree No. 72-355 of May 4, 1972 relating to the National School of Magistrates] J.O. art. 46 (Fr.).

404. Ordonnance n 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature [Ordinance No. 58-1270 of December 22, 1958 on the Organic Law Relating to the Status of the Judiciary] J.O. [Official Gazette of France], art. 21. ("students are ranked by the jury of their final examination"); *Formation intiale,* ECOLE NATIONALE DE LA MAGISTRATURE, https://www.enm.justice.fr/formation-initiale-francais (last visited on Apr. 13, 2020) ("The higher a student ranks, the more likely it will be for them to be accepted where they wanted to start their first professional assignment."). After passing the final examination, standing judges (*magistrats du siege)* and seating judges/prosecutors (*magistrats du parquet)* are nominated by the President of the Republic through a degree. *See* Ordonnance n 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature [Ordinance No. 58-1270 of December 22, 1958 on the Organic Law Relating to the Status of the Judiciary], J.O. [Official Gazette of France] art. 26 (for the judges); *see also id.* (for the prosecutors).

405. After being nominated, future judges and prosecutors take an oath during an official ceremony. Ordonnance n 58-1270 du 22 décembre 1958 portant loi organique relative au statut de

Like attorneys, *magistrats* must attend mandatory ongoing professional training, organized by the national school for *magistrats*.[406] At least five days of professional training are required each year.[407]

I. Other Professional Careers Following Law School

Students with an undergraduate degree in law may pursue careers other than attorney or *magistrate* (judge or prosecutor). Students can become police officers (*officier de police*).[408] With a master's degree (five years), students may choose to enter the police force to become police captain (*commissaire de police*).[409] In both cases, aspiring police officers and aspiring captains must take a competitive examination, which entails a physical examination, moral and psychological tests, as well as a test on legal and cultural knowledge.[410]

Another law-related career in France is that of *notary*.[411] The French notary status is governed by the Order of the 2nd of November 1945 relating to the status of the *Notariat* and the Decree adopted for its application of the 19th of December 1945 with all the amendments that have been made.[412] The function of a notary in the French system is very different from that in the United States.[413] Article 1 establishes that "French *Notaires* are public officers established to receive the acts and contracts to which the parties must or wish to give the authenticity attached to acts of the public authority, and to ensure the date, ensure their conservation, and deliver decisions and legal acts."[414]

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la magistrature [Order n°58-1270 of 22 december 1958 on the law related to the status of magistrates] J.O. [OFFICIAL GAZETTE OF FRANCE] art. 6.

406. Ordonnance no. 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature [Ordinance No. 58-1270 of December 22, 1958 on the Organic Law Relating to the Status of the Judiciary] J.O. art. 57-1 (Fr.); Décret no. 72-355 du 4 mai 1972 relatif à l'Ecole nationale de la magistrature [Decree No. 72-355 of May 4, 1972 relating to the National School of Magistrates] J.O. art. 50 (Fr.).

407. Décret no. 72-355 du 4 mai 1972 relatif à l'Ecole nationale de la magistrature [Decree No. 72-355 of May 4, 1972 relating to the National School of Magistrates] J.O. art. 50 (Fr.).

408. Josée Lesparre, *Lieutenant de Police*, CIDJ.COM (Feb. 2020), https://www.cidj.com/metiers/lieutenant-de-police.

409. Josée Lesparre, *Commissaire de Police*, CIDJ.COM (Mar. 2020), https://www.cidj.com/metiers/commissaire-de-police.

410. *Lieutenant de Police*, *supra* note 408; *Commissaire de Police*, *supra* note 409.

411. Ordonnance no. 45-2590 du 2 novembre 1945 relative au statut du notariat [Ordinance No. 45-2590 of November 2, 1945 Relating to the Status of Notaries] J.O. (Fr.).

412. *Id.*

413. *See generally* THE CIVIL LAW TRADITION, *supra* note 216, at 109.

414. Ordonnance no. 45-2590 du 2 novembre 1945 relative au statut du notariat [Ordinance No. 45-2590 of November 2, 1945 Relating to the Status of Notaries] J.O. (Fr.).

> The French notary is a public officer appointed by the Minister of Justice that the State commissions for a public service mission. For the execution of its mission, the State delegates to the French notary a part of its public authority: The French notary ensures the public service of authenticity. This means that he/she has genuine prerogatives of public power that he/she receives from the State.[415]

To be a notary in France,[416] seven years of studies after high school are necessary. In the United States, by contrast, it takes between four and nine *weeks* to become a notary, including the processing of the application, background check, etc.[417] In France, for the first four years, the notary program is the same as students aspiring to be lawyers or judges.[418] After obtaining a Master 1 in Law, aspiring notaries have to integrate a professional Master 2 specialized in Notarial Law.[419] After these five years in a public university, students will enter into a professional notarial office for a two-year training period.[420] This training period is actually a cooperative training course: half the time, students are interning in a notarial office and, for the other half, they attend classes at the National Center for vocational notarial education (*Centre national d'enseignement professionnel notarial*).[421] After two years of this training course, aspiring notaries will take—and hopefully pass—a national examination to obtain a "superior diploma" (*Diplôme supérieur de notariat*).[422] If admitted, students become assistant notaries.[423]

V. A COMPARATIVE PERSPECTIVE

This overview of the French and American systems of legal education makes it abundantly clear that the French model is very different from the Langdellian model, which continues to dominate American law schools.[424] Unlike the United States, legal education in France begins at

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415. *The Role of Notary*, Notaires de France, NOTAIRES.FR (Nov. 23, 2017), https://www.notaires.fr/en/notaire/role-notaire-and-his-principal-activities/role-notaire.

416. *Fiche Métier: Notaire*, LE PARISIEN ÉTUDIANT, http://etudiant.aujourdhui.fr/etudiant/metiers/fiche-metier/notaire.html (last visited Mar. 28, 2020).

417. *How to Become a Notary Public*, NAT. NOTARY ASS'N, https://www.nationalnotary.org/knowledge-center/about-notaries/how-to-become-a-notary-public (last visited Mar. 28, 2020).

418. *Devenir Notaire*, NOTAIRES DE FRANCE (Feb. 04, 2020), https://www.notaires.fr/en/trainings-jobs-notaires/n%C2%ADotaire.

419. *Id.*

420. *Id.*

421. *Id.*

422. *Id.*

423. *Id.*

424. *See* Sonsteng et al., *supra* note 1, at 402; Wall, *supra* note 239.

the undergraduate level—a practice which is nearly universal around the world—and continues through two years at the master's level.[425] At the undergraduate level, French students learn the basics of substantive and procedural law, private law and public law, and political science, as well as an array of related skills such as legal research and writing, and legal problem solving.[426] The undergraduate legal education that the French students undergo is basically the same as that which American students experience in law school (at the graduate level).[427] By the time the French students have completed their undergraduate (three-year) degree, they have completed what the American students are just starting to learn as they begin law school.[428] Put another way, French students are accomplishing as undergraduates the basic legal education that American students accomplish at the graduate level in law school.[429] This obviously makes it possible for graduate-level legal training in France to be very different from what it is in the United States.[430] The American students are learning the basics of law for the first time at the graduate level.[431]

While American law schools focus on introducing students to law for the first time and teaching the basics of legal doctrine and legal reasoning (topics that French students learn during their three-year undergraduate program in law), French students undergo a master's program.[432] In the first year of the master's program they begin to specialize in an area of law.[433] For those students admitted into the second year, the first semester consists of courses in a more highly specialized area of law and the second semester typically consists of an internship and a master's thesis.[434]

Finally, while American law students are graduating and leaving law school to start practicing law—long on legal doctrine and short on nearly everything else needed to practice law—French students are embarking on a professional program designed to impart the practical skills they will need to start a career in a specific type of practice.[435] When French lawyers begin their careers, they typically have completed five years of law

425. Sonsteng et al., *supra* note 1, at 325; Wall, *supra* note 239, at 211.
426. Wall, *supra* note 239, at 209.
427. Sonsteng et al., *supra* note 1, at 325; Wall, *supra* note 239, at 211.
428. Sonsteng et al., *supra* note 1, at 325; Wall, *supra* note 239, at 211.
429. Sonsteng et al., *supra* note 1, at 325; Wall, *supra* note 239, at 211.
430. Sonsteng et al., *supra* note 1, at 325; Wall, *supra* note 239, at 211.
431. Sonsteng et al., *supra* note 1, at 325.
432. *Id.* at 310; Wall, *supra* note 239, at 211; *see also supra* notes 360-362; 389-400 and accompanying text.
433. Wall, *supra* note 239, at 211.
434. *Contrat Pédagogique*, *supra* note 299.
435. Sonsteng et al., *supra* note 1, at 334; Wall, *supra* note 239, at 211.

school—three at the undergraduate level and two at the master's level—often including at least one internship, and then, in the case of *avocats*, undergone an eighteen-month advanced training program, taught by legal practitioners.[436] This professional training program for *avocats* lasts fully one half of the entire time that American students spend in law school.[437] The professional training program for magistrates (judges and prosecutors) is thirty-one months, lasting more than two thirds of the time it normally takes to obtain a law degree from an American law school.[438] In these programs the French students are getting the skills training that the Legal Realists pushed for but failed to achieve in American law schools.[439]

Looking at the French system in its entirety, we see that preparing students for law practice entails five years of law school at a university (three years at the undergraduate level and two years at the master's level) plus advanced training for between eighteen months (for *avocats*) and thirty-one months (for prosecutors and judges), including required internships.[440] American lawyers, by contrast, begin their careers after they have completed three years of mostly doctrinal study.[441] Although a substantial majority of American law students have taken *either* a clinical course *or* a field placement course by the time they graduate, most will graduate and embark on their careers with very little practical skills' training other than what they have managed to acquire on their own outside of the law school, and this process is far from uniform and has little quality control.[442] Making value judgments in the context of comparative law is always fraught with difficulties and calls for a higher than normal amount of caution, but when we compare the two models of legal education and training—French and American—in the context of creating "practice ready" lawyers (using the current terminology), no one could seriously contend that the American model comes even close to the French model with respect to producing competent lawyers as they enter the

436. Wall, *supra* note 239, at 211.

437. Sonsteng et al., *supra* note 1, at 325; Wall, *supra* note 239, at 212.

438. GEORGE C. THOMAS III, THE SUPREME COURT ON TRIAL: HOW THE AMERICAN JUSTICE SYSTEM SACRIFICES INNOCENT DEFENDANTS 178 (2010).

439. Sonsteng et al., *supra* note 1, at 364; Wall, *supra* note 239, at 212.

440. Wall, *supra* note 239, at 212.

441. Sonsteng et al., *supra* note 1, at 370, 388; *see supra* notes 149-176 and accompanying text.

442. *See* CSALE SURVEY, *supra* note 147, at 12 ("The median estimated percentage of students that graduated having participated in a law clinic or a field placement course in the 2016-17 Survey was 76-80%."); *supra* notes 147-188; Sonsteng et al., *supra* note 1, at 370.

profession.[443] Young French lawyers (and judges) are far more prepared to practice in the field of law in which they begin their careers than young American lawyers.[444] When we consider that the French system of legal education and training is representative of civil law countries, especially those in Western Europe, we are confronted with a situation in which the concept of *American Exceptionalism*[445] is turned on its head. In other words, with respect to legal education and training, the United States *is* exceptional, but not in a good way.[446] This same idea was expressed in a different manner by Sonsteng and his colleagues, who observed that "the United States may be the only country claiming to be governed by law that turns an unskilled, law graduate loose on some unsuspecting client whose life, liberty or property may be at risk."[447]

VI. CONCLUSION

Commentators at least as far back in time as de Tocqueville have noted the importance of law in America.[448] In light of the fundamentally important role that law plays in so many aspects of American life, it is truly difficult to understand how the American system of legal education could have become so deeply flawed and continue that way over decades, largely impervious to the occasional attempts at reform.[449] It has already been suggested that the adherence to a flawed, outmoded instructional paradigm is most likely the result of multiple, complex factors.[450] Langdell's effort to separate university legal education from its apprentice roots, and university administrators who readily embraced his vision, started American law schools down the path that led them to where we are today.[451] The rise of the clinical movement (and other reform efforts of the Legal Realists) early in the twentieth century presented law schools with an opportunity for a significant course correction.[452] The early and continuing resistance to clinical instruction on the part of the law school establishment shows that the opportunity was squandered, although

443. Condlin, *supra* note 2, at 75-76.
444. *See* Wall, *supra* note 239; Sonsteng et al., *supra* note 1, at 334.
445. *See generally* KEVIN R. REITZ, AMERICAN EXCEPTIONALISM IN CRIME AND PUNISHMENT (2018); Byron E. Shafer, *American Exceptionalism*, 2 ANN. REV. POLI. SCI. 445 (1999).
446. REITZ, *supra* note 445.
447. Sonsteng et al., *supra* note 1, at 334.
448. ALEX DE TOCQUEVILLE, DEMOCRACY IN AMERICA (Henry Reeve trans., 1899).
449. Sonsteng et al., *supra* note 1, at 335; *see supra* notes 112-208 and accompanying text.
450. Sonsteng et al., *supra* note 1, at 334. *see supra* notes 193-208 and accompanying text.
451. Sonsteng et al., *supra* note 1, at 325. *see supra* notes 9-111 and accompanying text.
452. Sonsteng et al., *supra* note 1, at 325; *see supra* notes 137-169 and accompanying text.

perusing the articles in *The Clinical Law Review* reveals that the issue is far from settled within the walls of American law schools.[453] The gradual shift over the course of the twentieth century of law school from an undergraduate program to a graduate program made it more difficult for law schools to integrate practical skills training into the curriculum, even if the faculty had been inclined to do so.[454] Introducing students to law and teaching them the basics of legal doctrine and legal reasoning leaves relatively little room in a three-year program for practical skills training.[455] To make matters worse, what room there might be for skills training is, instead, filled mostly with additional doctrinal courses mainly because that is what a large majority of law faculty teach and believe is needed.[456] If American students began the study of law at the undergraduate level, as they do in virtually all other countries in the world, legal education at the graduate level could be balanced between advanced doctrinal courses, clinical courses, and other aspects of practical skills training.[457]

The concept of *path dependence*[458] teaches that change at this late stage is going to be extremely difficult and, in some respects, impossible. However, if law schools continue to resist undertaking the necessary reforms, such reforms will be imposed eventually by other institutional stakeholders such as state courts and state bars.[459] The current push by the bar of many states for lawyers entering the field to be "practice ready" is just the beginning of this trend.[460] This may end very badly for law schools by drastically reducing the role that they play in the credentialing process and shifting a significant portion of that responsibility to separate, professional training programs—similar to the French training

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453. *See, e.g.*, Binford, *supra* note 200, at 104-05. The CSALE Survey reports that in some law schools there continues to be a lack of support and failure to promote clinics, and that some law faculty discourage students from taking clinics! CSALE SURVEY, *supra* note 147, at 14. The recent A.B.A. Standards, which require students to have six hours of experiential learning in order to graduate, and the significant increase in the number of students who take a clinical course or field placement course are small, but meaningful steps. *See supra* notes 147-178 and accompanying text.

454. Sonsteng et al., *supra* note 1, at 365.

455. *Id.* at 308.

456. *Id.* at 340.

457. *Id.* at 324.

458. *See generally* Paul A. David, *Path Dependence: A Foundational Concept for Historical Social Science*, 1 CLIOMETRICA 91 (2007); Mark Benton, *"Just the Way Things Are Around Here:" Racial Segregation, Critical Junctures, and Path Dependence in Saint Louis*, 44 J. URBAN HIST. 1113 (2017).

459. Sonsteng et al., *supra* note 1, at 363.

460. Condlin, *supra* note 2, at 75-76.

programs—run by a state bar or other organization.[461] It is conceivable that the bar in some states may alter their licensing requirements to eliminate a law degree and, instead, call for a year of doctrinal courses at a law school followed by a twelve- or eighteen-month training program taught by legal practitioners, plus a supervised internship, in order to obtain a law license.[462] In such a scenario, it is difficult to believe that more than a very small number of students would spend the time and money to continue in law school beyond that first year in order to obtain an unnecessary credential: a Juris Doctor degree.[463] A less drastic (and for law schools a much more palatable) reform is to require a third or more of law school credits to be devoted to clinical courses taught by instructors with significant practice experience.[464] That, along with a required internship that is supervised and monitored for quality control, would constitute a sensible move toward the place where French legal education is now and American legal education should be.[465] The recent A.B.A. Standards, which require law students to have six hours of experiential learning in order to graduate, and the curricular changes implemented by law schools to comply with the standards, are small but meaningful initial steps in that direction.[466] If American law schools hope to continue to have a central role in educating and training American lawyers, law faculty, clinical faculty, and administrators must work with other stakeholders to bring about significant reforms that for the first time will allow American legal education to move past the Langdellian legacy.[467]

461. Sonsteng et al., *supra* note 1, at 388.
462. *Id.* at 370.
463. *Id.*
464. *Id.* at 422.
465. *Id.* at 313.
466. *See supra* notes 147-178 and accompanying text.
467. *Id.* at 363.