American Legal Education: Some Advice from Abroad

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This Comment proceeds from the premise that American legal education is in need of improvement. It began with a desire to find out if any legal educational institutions in foreign countries use curriculum schemes or educational techniques worth incorporating into our own educational system. Two conclusions may be drawn from research. First, a comparative study of legal education underscores the deficiencies of American legal education. Second, techniques are being used by foreign educators that merit our attention.

If one starts with the hypothesis that legal education should "strike a balance between cultural training . . . and vocational training," it becomes possible to characterize a country's philosophical approach to legal education by determining how it "tips" this balance. In American legal education, the balance is tipped completely in favor of vocational training. American educators like to believe that they train people to go out and practice law. They think that this is accomplished by using the case method of instruction and by emphasizing substantive law courses. In actuality, professors wind up sending out our law graduates unprepared for practice since the time is never found to train them in the researching and writing of legal documents or how to handle themselves with clients or in a courtroom. Also, our educators totally ignore the fact that while some law students will become practitioners, a great many others will pursue careers as legislators, administrators and legal advisors to the business community. Thus despite a self-perceived vocational orientation, in actuality no "practical skills" are taught.

On the other hand, the "cultural training" aspect of legal education is almost totally neglected. Such training is felt to be a waste of time and unessential for an American practitioner. This attitude fails to recognize that law students need a broader academic background

1. Angus Campbell defines cultural training in the sense of training the student's mind, making him conscious of the deeper philosophical problems of law, and giving him social, economic and general "cultural" knowledge. Vocational training refers to instruction in positive law and the teaching of practical skills. Campbell, Comparison of Educational Methods and Institutions, 4 J. LEGAL ED. 25, 28 (1951) (emphasis in original).
than they are receiving to appreciate the social, economic and political ramifications of law and the legal process on our society.

Comparative study indicates that many foreign countries have managed to strike a fairly even balance between the "cultural" and "vocational" aspects of law training. In the first part of their training, foreign law students get a culturally broadening education as well as an adequate substantive one. In the second part, they receive very complete apprenticeship-type experience where they acquire research, writing and drafting skills as well as courtroom skills. Admittedly, the process takes longer than three years but the reward is a truly balanced education.

Even though there are differences between the American legal system and those found in other countries, these differences are not so overwhelming that a comparative study of foreign educational approaches can not provide some interesting suggestions as to how American law schools could better prepare their students for careers in law and law related fields.

I. THE LEGAL SETTING FOR A COMPARATIVE STUDY

There are three major types of legal systems in the world: the common law, the civil law, and the socialist. The United States, England, and the commonwealth nations live under common law, the Soviet Union and her satellites under socialist, and with a few minor exceptions, the rest of the world under the civil system. It is often said that the United States can learn nothing from other systems as far as legal education is concerned because of very fundamental differences between each system with regard to: (1) the legal suprastructure and the sources of the law; (2) the role of the lawyer in society; (3) the purposes of legal education (seen as a function of the role of lawyers); and (4) the basic contours of the legal educational process in each system.

In common law countries law is seen as being judicially legislated, and the actual statutes on the books are almost irrelevant, since in order to find what the law is one must go to the cases. In this respect the process is seen as being inductive; one starts with a set of facts and induces a rule of law for each situation. In the civil law countries, the law is codified and the codes represent a conscious at-

tempt on the part of the legislature to set down a complete, definitive statement of the law. The judges therefore have a very passive, deductive role to play in the system since the rules of law are theoretically already established and they only have to apply them to a set of facts. Any interpretative commentary work done on the codes is done by jurists who are university professors. These men wield a lot of influence on the judges, their former pupils. In the Soviet system there is also codification, but every aspect of the law is colored by the communist economic-political philosophy. The law is seen as a means of making sure that the political will of the state is imposed on society.

The role of the lawyer in the common law system has been traditionally thought of in terms of the legal practitioner. The lawyer's role is conceived of only in the context of litigation, or litigation avoidance through negotiation of private out-of-court settlements. This picture is in reality misleading, since it is well documented that lawyers, at least in the United States, form a substantial part of the legislative and administrative branches of government. In civil law countries, some lawyers enter the judiciary, but a majority of them become civil servants or businessmen. In socialist countries, 80 percent of all lawyers work in the judiciary; almost all the rest work in administrative agencies, and only a minute percentage have private practices.

Legal education in common law countries has been traditionally oriented toward training legal practitioners. In law school, students are supposed to learn: how to think like lawyers, how to find the law, and to a certain extent, to know what the law is. In civil law countries the academic part of legal education aims at giving the law student a "cultural" background, and treats law as a science in relation to other sciences. The law degree is conceived of as just another liberal arts degree with what might be thought of as a minor in legal education.

5. E. Schweinburg, Law Training in Continental Europe 121 (1945); Rheinstein, Integration of Matter Not Strictly Legal in European Legal Education, 8 AM. L. SCH. Rev. 718 (1937).
7. E. Schweinburg, supra note 5, at 10.
subjects. Law schools recognize that they are training people many of whom will not become lawyers in the American sense of the word. In the socialist countries legal education combines the Anglo-American educators' goal of practicality and the civilian educators' idea of giving the student cultural legal background. This is evidenced by the number of required courses a law student takes. He is expected to take all the subjects traditionally taught in American law schools, plus all of the more theoretical legal and non-legal subjects required in the civil law countries.\(^8\)

Within the common law countries a basic structural dichotomy exists between legal education in the United States and that of all the other countries. The American law schools try to teach their academic courses in a "practical" manner by use of the case method, but the student receives no apprenticeship training in a law office or agency unless he happens to clerk on his own or takes a clinical course. In all other commonwealth countries at least one year following the academic degree is required before taking the bar examination. This practical training is under the supervision of the legal profession, and is rigidly structured. In addition, only the United States and Canada require an undergraduate degree before entering law school. In the European civil law countries the pattern is basically the English one except that the academic training is reputed to be more culturally oriented than in England, and the practical training is much more thorough. In Latin American countries the students go to law school for five years part-time. They all also work part-time in government agencies or law offices and the faculty is almost completely part-time teachers who are practicing lawyers.\(^9\) In Soviet countries the undergraduate course is four years with a fifth year of practical training.\(^10\)

While the author acknowledges these differences between the three systems, she feels that they don't prevent our common law educators from using foreign educational techniques. The differences between the roles that lawyers play in their respective societies, and the basic formal structure of each system's laws are overstated. Even though American legal educators fail to recognize that law graduates do more

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than try cases, the fact remains that American lawyers do work in legislative, administrative and business capacities as well. So too, the supposed dichotomy between judge-made law and codified law is much less distinct than is traditionally acknowledged. In the civil law and socialist countries the judges often have to interpret statutes, and in the common law countries the trend has been to organize and simplify the common law by enacting statutory bodies of law. Thus, even if one sees the aims and the structure of legal education as functions of the role of lawyers and the types of law found in each society, the rationale for not looking to other systems for educational suggestions is weakened.

On the other hand, even assuming that the differences are truly legion, this does not mean that American legal education cannot benefit from selected foreign approaches and techniques. Even if the underlying purposes for which foreign methods are used differ from our own, they may still be of great practical value to us in developing certain legal skills in our own students.

Finally, perhaps it is time for our legal educators to try to come to some consensus as to what the true objectives of legal education really are. There is great value in looking at other systems to get a clearer perception of what we want our own to be. As Eric Schweinburg observed almost 30 years ago:

[N]othing would be more unfortunate than to assume that countries which have had several centuries of experience in grappling with a philosophy and methodology of legal education have nothing constructive to contribute in helping America to make its law school a more effective instrumentality than it is today. Anyone who has been reared to consider comparative studies an indispensable basic tool for the building of a social structure or educational institution is convinced that such studies almost always yield important results, if only in pointing to pitfalls that should be avoided.

II. SUGGESTIONS FOR ADDITIONS TO THE AMERICAN LAW CURRICULUM

A comparison of American law curricula with those of all other foreign countries for which curriculum data was available indicates

13. Australia, Austria, Belgium, Brazil, Canada, Denmark, England, Egypt, France, Germany, India, Italy, Japan, Lebanon, Mexico, The Netherlands, New Zealand, Nigeria, Norway, Scotland, South Africa, Soviet Union, Sweden and Yugoslavia.
that the law schools in the United States noticeably lack course offer-
ings in comparative law, Roman law, jurisprudence, and non-legal
social science courses. A 1968 survey\textsuperscript{14} of American law schools shows
that of 115 schools comparative law courses are required at one
school and are offered as electives at 59 schools; Roman law is
required at two schools, and available as an elective at six schools; juris-
prudence is required at 22 schools, and is an elective at 72 schools;
and social science courses are not taught at all as part of the law cur-
riculum (although accounting is required at eight schools, and is an
elective at 71 schools). These statistics contrast sharply with the fact
that in most of the other countries surveyed, not only are these four
types of courses uniformly offered, but they are \textit{required} courses.\textsuperscript{15}
In addition, this divergence can not be explained by the fact that
the United States is a common law country\textsuperscript{16} since, for example, of
England’s 30 law schools, 24 require jurisprudence, and 18 at least
offer Roman law,\textsuperscript{17} which until recently was a required course for the
bar examination.

The uniqueness of the American curriculum can, of course, be
explained by our vocational attitude toward legal education; any-
thing that is not directly applicable to practice is considered a waste of
time. However a strong case can be made for including all of these
types of courses in our curricula, and for reasons that even the most
hard-core advocates of the “trade school” ethic would approve. In other
words, the teaching of comparative law, Roman law, jurisprudence,
and the social sciences is of practical utility to our future lawyers and
therefore cannot be dismissed as appropriate for only those legal edu-
cational systems where law is taught as a science.

\textsuperscript{14} Del Duca, \textit{Continuing Evaluation of Law School Curricula—An Initial Sur-

\textsuperscript{15} C. Eisenmann, \textit{The University Teaching of Social Sciences: Law}
(UNESCO 1954); \textit{Report of the Committee on Legal Education, CMND. No.}
4595 App. D (1971); Cormack, \textit{Notes on Legal Education in Mexico}, 4 J. Legal Ed.
329 (1951); Dainow, \textit{Revision of Legal Education in France: A Four-Year Law Pro-
gram}, 7 J. Legal Ed. 495 (1955); Gray, \textit{supra} note 6, at 742; Kohler, \textit{The Study and}
Practice of Law in Germany}, 54 A.B.A.J. 992 (1968); Lukic, \textit{Teaching Reform at the}
Faculty of Law in Beograd}, 10 New Yugo. L. 34 (1959); Orfield, \textit{A Visit to the}
Scandinavian University Law Schools}, 11 J. Legal Ed. 534, 536 (1959); Rosem, \textit{The}
Reform of Legal Education in Brazil}, 21 J. Legal Ed. 251, 269-70 (1969); Takayanagi,

\textsuperscript{16} Social science courses are an exception since the common law countries uni-
formly do not teach social science courses, whereas they \textit{are} taught in civil law and
socialist countries.

\textsuperscript{17} \textit{Report of the Committee on Legal Education, supra} note 15, Apps.
B & C.
A. The Argument for Teaching Comparative Law Courses

Before the utility of comparative law courses can be discussed, it must be pointed out that there is a disagreement among law professors teaching such courses as to what these courses should encompass. Some feel that comparative law courses should be designed merely to give students information about other legal systems, while others see the teaching of such courses as a "method of study and research by which rules and institutions of different systems are compared." If one sees the purpose of these courses as being informative, there are two reasons to teach them. First, increased mobility among the peoples of the world and the "position that the United States has suddenly come to occupy in world affairs" have created a greater need for us to understand the legal structure of other nations and the legal mentality of those people who represent these nations on the diplomatic scene. The civil law system alone governs three-fourths of the world and the socialist system dominates in two of our most formidable "enemies," Russia and China. We can no longer afford the luxury of being ignorant of these other systems. A specific example of such a need arising would be in an international conflict of laws case in which it has been determined that foreign law is applicable. Effective examination and cross-examination of expert witnesses presumes at least a minimal acquaintance with the laws and techniques of the foreign country in question. Second, because of increased international trade, American lawyers are often retained by foreign clients or by American businessmen trading overseas. It is essential for our lawyers to have an understanding of foreign laws and legal attitudes in order to avoid misunderstandings and to be able to deal efficiently in such capacities.

If, on the other hand, one sees comparative courses as being "methods" courses, there are other reasons for teaching them. By contrasting the problems and approaches of other systems with our own, the law student gains a deeper understanding of his own system. The comparative approach puts the American legal system in perspective.

21. Stevenson, supra note 18, at 616.
22. Id.
and enables the student to evaluate it more critically.\textsuperscript{23} It has been said that "there is no type of legal study that will strengthen the muscles of the mind like the comparative study of ... great legal systems."\textsuperscript{24}

Secondly, the comparative method can be of great practical importance in the area of legislative reform. If we had a greater working knowledge of foreign approaches to similar problems, we would be better equipped to legislate in such areas. While it is common practice for a state legislature to look at what other American states are doing, Americans seldom look beyond the borders of the United States for suggestions. As Clarence Morrow stated the problem, "in so far as we do not consider foreign law because we are unfamiliar with it—we are confronted with an indictment of our whole system of legal education."\textsuperscript{25}

Lastly, in our process of judicial legislation a judge is free to adopt a foreign legal approach where the legal situation is one of first impression in the United States.\textsuperscript{26} A similar situation may arise where the judge wishes to depart from a well-established principle and finds that the proposed rule has been adopted abroad.\textsuperscript{27}

The division among academicians as to whether comparative law courses should be taught for information's sake or for "method" value has ramifications for any consideration of how such courses should be taught. Some teachers believe that the student should become acquainted with the legal systems of as many countries as possible,\textsuperscript{28} while others would rather concentrate on comparing the way each of just two countries would handle similar legal problems.\textsuperscript{29} A composite of these two approaches might yield the best results. As an introduction to the comparative method, such a course could begin with

\textsuperscript{25} Morrow, \textit{Comparative Law in Action}, 3 J. LEGAL ED. 403, 404 (1951).
\textsuperscript{26} Stevenson, \textit{supra} note 18, at 616.
\textsuperscript{27} Wolff, \textit{The Utility of Foreign Law to the Practicing Lawyer}, 27 A.B.A.J. 253, 254 (1941).
\textsuperscript{28} For example, in France, Professor Rene David acquaints his students with the legal systems of the French, Latin and Germanic countries of Europe, as well as those of Latin America, England, the United States, Louisiana, Quebec, Scotland and South Africa. He also considers the Soviet, Mohammedan, Hindu, and Chinese legal systems. Dainow, \textit{Teaching Methods for Comparative Law}, 3 J. LEGAL ED. 388, 399 (1951).
\textsuperscript{29} Max Rheinstein of the University of Chicago favored this approach. \textit{Id.} at 391.
taking a legal problem and showing how it would be treated in a
civil law country, a common law country (the United States), and a
socialist country. The rest of the course could be more oriented
towards the “informative model” but always tying our own legal ap-
proach into the discussion.

B. Roman Law as an Object of Comparative Study

The reasons for teaching Roman law are similar to the reasons
for teaching comparative law. The civil law system evolved from
Roman law; only in comparatively recent times did European coun-
tries break away from Roman law and codify their laws. Before codi-
fication, Roman law, with some overlay of local “custom” and the
influence of canon law, was the law of western and central Europe.
Thus, a knowledge of Roman law is the key to understanding the
civil law in Europe, Central and South America, and Africa as well as
in such countries as Japan and Turkey which adopted civil law codes.
Roman law is especially well suited to be an object of comparative
study because “Roman law . . . is a closed system, no longer in the
organic process of change common to all living legal systems; we are
thus not catching a river in flux, but have time for calm study of a
quiet pond.” Also there is particular virtue in using Roman law as
an object of comparative study in order to give the common law stu-
dent a better perspective of his own system. This idea has been best
expressed by James Bryce:

The number of dominant [Roman law] conceptions which it is neces-
sary to acquire is so small, and these conceptions so rational and
. . . natural, that it does not take long to obtain a general view
of the whole, and discern the harmonious relation of its parts. . . .
He learns to regard law as a science, closely related to ethics. . . .
And thus when he passes on to the study of our [common] law, he finds
himself the better able to grapple with its bulk and its want of ar-
rangement . . . . So valuable is this experience, that I dare affirm that
a youth who spends some eight months in the study of the Civil Law,
and then proceeds to that of [common] law, will, when at the end of
three years he is measured against his contemporary who has given
the same amount of time and pains to the [common] law alone,

30. For example, Germany did not codify her laws until 1900, although Prussia,
France and Austria codified in the early nineteenth century. F. Lawson, supra note 11,
at 34, 48.
prove to be not only a better jurist, but as good [a common-law]
lawyer.\textsuperscript{32}

Another reason for studying Roman law is that it is felt by many
to have had a great influence on the common law itself. The more
general of these theories is that natural law was an outgrowth of
Roman law and that our common law conceptions of justice are
rooted in natural law:

English law, from which the legal order of Anglo-America arises,
and Roman law, from which the legal systems of Latin America
stem, have a common origin in so far as they are implementations
of an objective natural law. This accounts for the similarity of the
moral ideal in the two bodies of law—an ideal that finds expression
in the concept that the primary purpose of positive law is the promo-
tion of justice based on the equality and the sacredness of human
personality.\textsuperscript{33}

Other theories concern the direct influence of Roman law on specific
subject areas of the common law. Charles Sherman, for one, feels that
we derive “our basic principles of Admiralty, Wills, Successions, Obli-
gations, Contracts, Easements, Liens, Mortgages, Adverse Possession,
Corporations, Judgments, and Evidence from survival or revival of
Roman law in English law.”\textsuperscript{34} Sherman also feels the rights to habeas
corpus and trial by jury, as well as some tort principles are outgrowths
of Roman law. On the other hand, other scholars think that Roman
law has had little influence on our legal principles.\textsuperscript{35} In any case, as
F. H. Lawson points out, “[s]ometimes . . . even in the last hundred
years, even in this twentieth century, and even in common law juris-
dictions, the ghost [Roman law] walks and sometimes talks. Obvi-
ously that must happen when a court has to apply a foreign law
founded on the civil law.”\textsuperscript{36} He gives two examples of situations where
Roman law was used in common law jurisdictions to decide cases in-
volving international disputes.\textsuperscript{37} Lawson also points out that decisions

\textsuperscript{32} F. Lawson, The Roman Law Reader 226 (1969), \emph{quoting} Bryce, Inaugural
Lecture: The Academic Study of the Civil Law, in 2 \emph{Studies in History and Juris-
prudence} 492 (1871).
\textsuperscript{33} Brown, \emph{supra} note 2, at 339.
\textsuperscript{34} Kessler, \emph{supra} note 23, at 385, \emph{quoting} C. Sherman, Roman Law in The
Modern World 387 (1924).
\textsuperscript{35} Kessler, \emph{supra} note 23.
\textsuperscript{36} F. Lawson, \emph{supra} note 32, at 207.
\textsuperscript{37} \emph{See} National Bank of Greece, S.A. v. Metliss, [1957] 3 W.L.R. 1056; Case of
the Singapore Oil Stocks (App. Bd. of the War Damage Comm’n 1955).

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in England in the eighteenth and nineteenth centuries made much use of Roman law:

[T]he reports of a number of English cases contain many references to the Roman law sources and to the works of European civilians. The Roman texts are examined with considerable care and in great detail. Sometimes the Roman rule is followed; but even where it is not followed, both judges and counsel often take great pains in giving reasons for distinguishing between the principles of the two systems or in showing why the Roman principle cannot be adapted to the circumstances before the English court.\[38\]

Although the courts have shown less inclination to borrow from Roman law sources in the twentieth century, the earlier use of these sources shows that the common law is certainly not completely divorced from Roman law.

Another argument for teaching Roman law is that many of the drafters of our federal constitution were trained in the civil law, or at the very least, were profoundly influenced by European philosophy which had strong Roman law underpinnings.\[39\] Thus, a knowledge of Roman law is an aid to understanding the founders' intent.

Lastly, while there is great intellectual value in learning about Roman law merely because it is perhaps the greatest single legal system in the history of man, there is also great value in becoming acquainted with Roman law as an introduction to the science of law, or jurisprudence. "For many centuries the science of law was Roman Law . . . ."\[40\]

C. Jurisprudence as an Integrative Tool

The argument for teaching jurisprudence\[41\] as a required part of the curriculum is that as a result of our use of the case method of instruction, American law students are never given a picture of their legal system as an integrated whole. Also as a result of law professors

\[38\] F. Lawson, supra note 32, at 212-13.


\[41\] There is major disagreement among writers concerning the proper definition of the term "jurisprudence." For purposes of this discussion the word is used in the sense of a particular country's conception of justice as expressed by its legal philosophers, and more generally to refer to the composite of its fundamental legal concepts.
stressing an overly analytical approach to the law, students lose a sense of the principles of justice that underlie our laws. As Edward Hogan, Jr. observed, there is

a weakness in our educational system which is as serious in the law schools as it is in the colleges. Our glorification of the concrete case at the expense of ideal justice, of stare decisis in place of the just result, our attempt to master detail while sacrificing principle has produced a dichotomy between law and wisdom. . . . As one of my students once explained it, the case method came into being when Christopher Columbus Langdell mistook a telescope for a microscope and started looking at law from the wrong end of the glass.42

The ramifications of this weakness are enormous since it is our law students who in later life will be called upon to create new legislation and, in a judicial capacity, will be interpreting and molding our laws. It is estimated that in 1950, less than 15 percent of American law students elected to take jurisprudence,43 while in most other countries of the world jurisprudence is a required third-year course. Perhaps we should take a hint from these statistics.

There is disagreement among writers as to how jurisprudence should be introduced into the law curriculum. Some believe that it should be taught as a separate course while others believe that law professors could infuse jurisprudential concepts into their presentations of regular course material.44 Probably both should be done. The works of the great legal philosophers could be taught in a separate course, but the jurisprudential concepts that underlie our laws should also be stressed as each subject area is covered.

D. The Supportive Function of Social Science Courses

In all of the civil law and socialist countries whose curricula were examined, social science courses such as sociology, political science, psychology, economics, and political-economy were required courses in the law schools. The absence of these courses in the American law school curriculum is usually explained by writers by pointing out

44. Friedman, Vitalizing the Teaching of Jurisprudence, 4 J. LEGAL ED. 392, 396 (1952); see Cowan, Jurisprudence in the Teaching of Torts, 9 J. LEGAL ED. 444 (1956).
that in all other nations a separate undergraduate degree is not a prerequiste to entering law school. Thus the foreign law schools are responsible for filling in the resulting gaps in knowledge.45

Unfortunately, the number and types of social science courses that an American undergraduate student takes is purely a matter of personal preference. If the student majors in a particular social science, he is likely to get a good background in that one subject but will usually elect to take no more than introductory-level courses in any of the other social sciences. A non-social science major is even less prepared. Thus, it is untrue that an undergraduate education in the United States is an adequate substitute for required courses in a law curriculum.

If a social science background is thought of in purely “cultural” terms, as merely providing our students with a liberal pre-law education, then we are justified in remaining satisfied with the educational equipment of freshmen entering law school. However, if a realistic look is taken at the role of the lawyer in American society, it is apparent that our lawyers are in dire need of a better social science background. Even if it is assumed that the only function of American law schools is to train future practitioners in the judicial branch (whether as advocates, prosecutors or judges) it is still essential that judges and lawyers appreciate the social, economic and political ramifications of “judicial legislation.”

Esther Brown, in her book Lawyers, Law Schools, and the Public Service, quotes Charles R. Henderson as noting “the humiliating and discouraging decisions of some courts which set aside laws made to meet contemporary conditions by appeals to precedent drawn from ancient history. . . . One can hardly escape from the conclusion that a lawyer who has not studied economics and sociology is very apt to become a public enemy. . . .”46

However, it is much more realistic to assume that lawyers also go on to become politicians, and more specifically, legislators, legislative advisors and administrators, as well as becoming business and economic advisors.47 In these capacities it is absolutely necessary that future lawyers receive not only a sound legal background, but also

45. Campbell, supra note 1, at 33.
knowledge of both the theories and techniques of the social sciences. Examples of specific areas to which such knowledge is directly applicable are: criminal law—the psychological effect of punishment on human attitudes and behavior; taxation—the ramifications of economic policy on our tax structure; torts—the sociological and economic impact of no-fault insurance on our society. Without some appreciation of the interplay of law and the social sciences, we are adjudicating, legislating and administrating mindlessly. 48

There is, in addition, a more mundane reason for requiring a social science background. It is easier to study law if one has a grasp of psychological, political, sociological, economic, and commercial concepts. Anyone who has studied tax knows how much easier the task is if the student has already had economics and accounting.

While it is not difficult to see the need for studying social sciences, it is quite another matter to determine when and how this should be done. A look at various countries provides some interesting suggestions. In Belgium, prospective law students are required to take two years of prelegal courses prescribed by the law schools. 49 Another approach was that taken in the Austrian law schools in the 1930's: the students spent their last year of law school taking social science courses. 50 In some countries a few social science courses are taught in the first two years of law school, but the bulk are taught during the last part of the curriculum in specialized units which are chosen by the students. For example, in Yugoslavia, the student specializes in one of the following groups of courses: political, economic, international law, sociological, or judicial depending on what area of the law he intends to practice. 51 In France, the student picks from three groups: private law (for all phases of the traditional legal profession), public law and political science (government service), and economics (business). 52 Thus in these two countries, while the student can select a traditional curriculum, he can also specialize. All the other countries examined simply intersperse social science courses throughout the law school years.

48. For a discussion of specific ways in which social science methods could be used in the legislative process, see Gibbons, Law in an Age of Social Change, 57 A.B.A.J. 151 (1971).
49. Shartel, supra note 3, at 433.
50. E. Schweinburg, supra note 5, at 43.
51. Lukic, supra note 15, at 35.
52. Dainow, supra note 15, at 499.
The French system has some exciting possibilities, but its implementation in the United States would be dependent on the possibility of recruiting adequately trained teachers. It might not be sufficient simply to borrow social science people with no legal training for such a program. Also, American students are accustomed to having the job market dictate their career opportunities rather than pre-planning, so that specialization might not be feasible.

In contrast the Belgian plan seems to be more readily transplantable. Law schools should at least strongly recommend that particular social science courses and accounting be taken as part of the undergraduate curriculum for pre-law students. Ideally, a "pre-law major" could be created whereby a student would take vertical progressions of courses in psychology, sociology, political science, economics, social science research techniques, and some basic business courses such as accounting. This conglomerate major would take the place of a traditional major.53

III. Practical Training: The Case for a Shift in Emphasis

As was pointed out in the preceding curriculum section, American law schools fail to teach many courses because they are not felt to be essential to the legal practitioner. Our students spend only three years in law school, and in this time the faculty is responsible for turning out people who are immediately prepared to practice law. There is felt to be no time to teach "culturally broadening" courses, since to do so would diminish the time available for more "substantive" courses. These curriculum restrictions are symptomatic of the awesome task of producing full-fledged lawyers that the law schools have assigned to themselves. In comparison,

53. At one time many law schools required several pre-law undergraduate courses such as accounting for admission. These requirements were subsequently dropped presumably because they were too hard to enforce. However, this should not prevent the law schools from at least publicizing a list of suggested undergraduate courses that are felt to be important.

The apprenticeship programs are closely supervised by the state, and are conducted under the direction of the profession, not the universities. Accordingly, European law teachers are relieved from "all sorts of pressures [and] of almost all responsibility for what their pupils do after they leave their hands." It is therefore easy to see why they are at leisure to teach Roman law, comparative courses, jurisprudence, and the social sciences. This pattern is not unique to European law schools. The socialist countries, and almost all of the other common law countries are also characterized by this "split" pattern of legal education.

Although American law schools have assumed the burden of training practitioners, they have in actuality failed to carry it very far. The traditional reputation that our law schools have enjoyed among foreign commentators for being "practical" is derived from our teaching of purely legal courses, extensive use of the case method, student organizations such as law review and moot court, and more recently the increasing use of clinical education. However, this reputation was really fostered by comparison with only the first phase of legal education in other countries. If one looks to the whole process of legal education in these countries it is hard not to feel that we appear to be running a poor "second."

Presently the benefits of law review, moot court and even clinical experience reach an exceedingly small percentage of American law students. Law review and moot court are self-selecting; and students often feel that they can not spare the time from "bar courses" to take clinical courses. For the majority of students then, the case method and a very small amount of legal writing bear the entire burden of providing an adequate preparation for immediate practice. As was pointed out in an English summary of American legal education,

criticism from some quarters of the Bar persist that law school graduates are not adequately prepared to discharge the responsibilities of law practice to which they are admitted upon passing the State Bar examinations soon after graduation. Their clients are said to be sacrificed while the young lawyers learn by trial and error.

56. For the virtues of the case method of instruction in the training of future practitioners, see J. REDLICH, THE COMMON LAW AND THE CASE METHOD IN AMERICAN LAW SCHOOLS (1914).
57. While some schools have a mandatory first year moot court requirement, many others do not.
58. REPORT OF THE COMMITTEE ON LEGAL EDUCATION, supra note 15, App. D, at
In a recent speech at the Fordham Law School, Chief Justice Burger expressed this same sentiment in no uncertain terms. He maintained that one-third to one-half of the lawyers who go to court are inadequately experienced or trained, and he attacked the "assumption that every graduate of a law school is, by virtue of that fact, qualified for the ultimate confrontation in a courtroom." He charged that "no other profession is as casual or heedless of reality as ours." In addition, those few students who decide to clerk part-time while still attending school, or over the summer vacation are not getting the kind of training that their foreign counterparts receive. "What employment with law firms young attorneys in the United States are in the habit of taking . . . does not constitute education proper; it is not mandatory, and is completely fortuitous in its content."

A striking example of an extremely thorough post-university apprenticeship program is that conducted in West Germany. All students are given training to prepare them for judicial functions. Even if the trainee intends to become a state attorney, an administrator or a private practitioner, he still must meet the same standards as those who intend to become judges. The student spends five months at a magistrate's court, four months at a county court, four months at one of the courts of appeal, four months in a solicitor's and notary public's offices, three months with the public prosecutor, eight months in public administration, and two optional months with the legal department of a bank, industrial corporation, or insurance company. During the time the student works in the various courts he takes part in the sittings and deliberations of the judges, and he drafts written judgments. While working in the solicitor's office he might appear and plead before local courts. His work in public administration will deal with taxes, town planning or police functions. When the student, or Referendar, finishes his apprenticeship he must take a qualifying exam just as he did upon completing his university education.

176. This summary was based on D. Cavers, Legal Education in the United States (1969).
59. N.Y. Times, Nov. 27, 1973, at 1, col. 3.
60. Id. at 15, col. 1.
61. E. Schweinburg, supra note 5, at 9.
62. Shartel, supra note 3, at 428.
This two-staged approach to legal education, as practiced in West Germany, is in part only possible logistically because there, as in most foreign countries, the percentage of law students who actually go on to practice law in the American fashion is very small.\textsuperscript{65} In comparison, it would be unrealistic to expect the American legal profession to undertake such an apprenticeship program. Also, to some extent the large law firms train new lawyers while paying them a salary, a practice which students find desirable since they would rather begin earning a living immediately after law school.\textsuperscript{66}

Perhaps it would be preferable to require a vocational semester "to bridge the gap between the academic study and the practical application of the law."\textsuperscript{67} This idea was suggested in a comprehensive English study done on legal education in 1971, popularly known as the Ormrod Report.\textsuperscript{68} Of particular interest are the practical exercises suggested in the Report. These would be conducted under the auspices of the law schools and their object would be to train students by having them work in simulated legal situations under the supervision of law teachers and practitioners. The students would be divided into several small teams, each representing one of the parties involved. These exercises could include dealing with a criminal case from the initial arrest to the final determination, and civil litigation such as personal injuries, landlord and tenant and domestic relations. Other exercises might include administering a deceased's estate, the sale and purchase of a house on mortgage, and the negotiation of a commercial association involving its evolution through the partnership, private company and public company stages. In all of the exercises, emphasis would be placed on tax and estate duty considerations, and problems on professional ethics and etiquette would be introduced. The teams of students would negotiate and exchange drafts with each other.\textsuperscript{69} In addition, visits to courts, prisons, business offices,

\textsuperscript{65} Vernon, \textit{Legal Education in Germany}, 12 ALA. L. REV. 140, 141 (1959). As another example, in England in 1961-62, of 2,343 law students only 559 were known to have joined the legal profession. \textit{REPORT OF THE COMMITTEE ON SOCIAL STUDIES}, CMND. No. 2600, App. 5, Table 2 (1965).

\textsuperscript{66} Griswold, \textit{English and American Legal Education}, 10 J. LEGAL ED. 429, 435 (1958). Perhaps in response to these monetary pressures, the German system itself may soon be changed so that the Referendar period will be only 21 months. \textit{REPORT OF THE COMMITTEE ON LEGAL EDUCATION}, supra note 15, App. D, at 163.


\textsuperscript{68} The report was named after its chairman, the Honorable Justice Ormrod.

\textsuperscript{69} \textit{REPORT OF THE COMMITTEE ON LEGAL EDUCATION}, supra note 15, at 162-63.
stock exchanges, and trade union offices would be organized. It was recommended that the practical exercises be conducted in conjunction with clinics so that students could gain experience in interviewing clients. This program would be in addition to the traditional apprenticeship requirement.

The English model is obviously an ambitious program and is one which would be expensive to implement. However, the fact that students would be working in teams would diminish the written work to be evaluated, and since simulated situations would normally be involved, each set of problems could be uniform for all the students participating.

Another example of a foreign practical training program is the Soviet one. In the Soviet Union, the second year students are required to take supervised field trips to observe court proceedings, in addition to their regular course work. They also do some clerking in the prosecutor's office or in small circuit courts. Summer vacations and the entire final year of university study are devoted to practical training of the true apprenticeship type.

Although the Soviet approach would pose some of the same logistics problems in the United States as were discussed above, the field trip concept is worth considering because it serves as a good example of practical training being interspersed with, and enriching, academic study.

IV. SUGGESTIONS FOR IMPROVING TEACHING METHODS

Any discussion of teaching methods must begin with a consideration of the Socratic or case method. It is interesting to note that many of the articles about legal education that have been written by foreign educators are full of praise for the case method and recommend that it be utilized in some fashion in their own countries. The method is recognized as being ideally suited to the study of the common law since as Josef Redlich observed in 1914, "common law is case law and

70. Id. at 162.
72. Hager, supra note 4, at 147; Morris, supra note 10, at 311.
73. See Shartel, supra note 3, at 456. Shartel makes the suggestion that this field trip idea be used in Germany.
nothing else than case law.” The student is seen as learning by inductive reasoning in the very fashion that he will have to employ in preparing for litigation. Thus, by learning to induce the law from the case reports the student is learning to think like a lawyer. This is all undoubtedly true, but this is not to say that the case method is flawless or that it should be the only method of instruction.

Despite the praise that foreign commentators have for the American method of instruction, they realize that it can not be readily assimilated by legal systems that are based on codification of the law. However, this does not mean that the codification-case law dichotomy is so overwhelming that American legal educators cannot borrow ideas about teaching methods from other systems. In fact, one writer, in comparing the lecture method used in France, and indeed most foreign countries, and the case method has postulated that

[...]his fundamental difference . . . is not made necessary by the difference in legal systems used by the two countries, for they tend to approach a common level; i.e., the common law tends to crystallize into set rules, which give at least the flavor of code law, while the code law tends to yield gradually to social pressure to such an extent that common law methods are resorted to—actually, if not theoretically. It would certainly be as feasible to study French code law by the case system as by the method actually used, and on the other hand American law might be studied by the French system, thus the difference is in no way inherent in the law of the countries . . . . [T]he divergence is due to the difference in historical background and in the manner of approach to the law.

The case method has been used to some extent in the Scandinavian countries and many Scandinavian teachers are quite impressed with it. Others, however, have reservations. “They [point] out that the Socratic method is admirable in the hands of a master, but may be much feebler than the lecture method in the hands of others. The Socratic method is time-consuming in an area where more courses must be taught. It does not work as well where the law is largely statutory.”

The Scandinavian comment about the inappropriateness of the case method in subject areas where the law is largely statutory can also be directed at the American situation. In a way, our use of the case method causes us to ignore statutory law to such an extent that

74. J. REDLICH, supra note 56, at 35 (emphasis in original).
75. Bullington, Legal Education in France, 4 Texas L. Rev. 461, 466 (1925).
76. Orfield, supra note 15, at 534, 539.
American law students for the most part "lack the ability to work with legislative material." As Burke Shartel observed:

Even in states where the codification has been relatively complete, as in New York and California, the starting point of academic instruction and the primary matter of attention is the body of the case or common law. Statutes ordinarily enter the picture of the law as it is presented to the student only in the sense that they are used to show changes that have been made in the prior prevailing case law. This means that the enacted law is the secondary rather than the primary object of consideration.

The complexity of our society is such that we have an increasing need for organizing our laws. The numerous attempts at restatements, uniform codes, and increasing enactments of federal and state statutory laws in regulatory areas are evidence of a creeping American codification process. This is not to say that judicial legislation or interpretation will cease to take place, but it does mean that American law students must learn to interpret statutory material. The problem is even more serious when it is realized that it is the lawyers in our society who are called upon to either advise legislators in creating and amending statutory law, or to act as legislators themselves.

We would do well to pay attention to foreign approaches to code analysis. For example, in West Germany, "legal instruction devotes a relatively large place to the treatment of methods of construing enactments. . . . Great emphasis is placed on the history of legislation, on the situation that evoked it, and on the presumed purpose that the legislation is intended to serve." The students are not expected to memorize the codes, but are expected to learn to interpret and apply them. Practical exercises in working with the codes are required and the students are asked to discover which is the authoritative interpretation of the statute.

The Scandinavian observation that the case method is a cumbersome way of imparting information is one that is echoed in most other countries. As a result, even in other common law countries, a modified

77. Shartel, supra note 3, at 452.  
78. Id. at 499.  
79. Despite the fact that lawyers comprise only one percent of the total American population, they account for over 50 percent of all federal legislators, and approximately 30 percent of all state legislators. H. EULAU & J. SPRAGUE, supra note 47, at 12, 18.  
80. Shartel, supra note 3, at 450.  
lecture system is used. The professor lectures on the broad issues and concepts involved in the subject area, but examination of the cases and statutes is done in smaller discussion groups or in tutorials. It is felt that material can be covered more rapidly, since the teacher is laying bare the legal principles that the American student would have to read dozens of cases to ferret out for himself. In addition, the teacher is able to give his students a more comprehensive picture of an area of law because the cases are only used as illustrations. The student is not left to discern the contours of the law entirely from individual case situations as is his American counterpart.

While the lecture-discussion model has its advantages it also has two disadvantages that would make its implementation difficult on a large scale. First, it would be more expensive because more instructors would be needed to head the discussion groups. In contrast, the case method can be used while maintaining extremely large student to faculty ratios. Also, students become bored to a greater extent by excessive use of the lecture method than when the case method is used. Accordingly, while the foreign approach can be useful in limited doses after the first year, it could never be a substitute for the American case method.

Another criticism of the case method that was touched upon in the curriculum section was that students who study law via the case method receive a very truncated view of the legal process. Because the students are constantly reading appellate cases, they are merely being exposed to the final stage of the legal process. It would be extremely helpful if the student could study a few cases where he would be made “to read and analyze not merely the judicial opinion, but the complete record of each case beginning with the filing of the first papers, through the trial in the trial court and through the upper courts.”

When Josef Redlich, an Austrian law professor, did a study of the case method in the United States he was concerned about first year students being expected to plunge into the reading of cases with no introduction to the study of law.

84. Campbell, supra note 1, at 34, quoting J. Frank, Courts on Trial (1949).
85. The 1914 study was done as a report to the Carnegie Foundation for the Advancement of Teaching.
In response to my repeated question as to how the beginners secured that elementary knowledge of law without which even the simplest case cannot be understood, I was always informed that this need was met partly by the broad introductory lectures, partly through references dictated by the professors. It is expected also that the students will get for themselves this elementary knowledge of the law, as for example the meaning of the current legal concepts and technical terms, out of law dictionaries and encyclopedias. . . . [I]n my opinion a great deal—I fear too much—is demanded and expected of a novice in the law school. 86

If the introductory lectures referred to in the above quotation are given now, sixty years later, this author is unaware of it. Presently, formal introductory courses are offered in only 29 of 115 American law schools. 87 In comparison, such courses are taught in most of the foreign countries for which data was available. For example, in England and West Germany, first year students are required to take a course such as General Introduction to Law which is comprised of some legal history, information about court organization and the legal profession, and a dogmatic exposition of the sources of legal rules and fundamental legal concepts. 88 An introductory course might also be a good place to start introducing some elementary concepts of jurisprudence. Such a course would go far towards shortening the long period of time it now takes students to understand what it is that is being required of them. 89

In 1937 Stefan Riesenfeld claimed that "[t]he continental student is much better trained to present written arguments and to criticize legal propositions in a methodical manner than his American colleague." 90 He apparently felt this way because of the continent's widespread use of the problem-case method. This method was developed in Vienna by Rudolph von Jhering around the same time Langdell founded the case method in America. As Max Rheinstein explained, the problem-case does not replace the lecture, but rather supplements it. Wherever a field of law has been covered in a lecture course, it is reworked in a different method in the following semester. The students are to apply what they learned before in theory. They have to solve problem cases

86. J. Redlich, supra note 56, at 30.
87. Del Duca, supra note 14.
88. Campbell, supra note 1, at 36.
89. J. Redlich, supra note 56, at 29.
in classroom discussions as well as papers, which are worked out in the library, within two weeks. The students have to consult all the materials that are available. The papers are graded by the teacher so as to indicate the mistakes that were made, and then they are discussed in class. Usually, the professor will outline the solution he favors, and then the class will discuss the other alternatives. Rheinstein found the method to be extremely successful because the students enjoyed getting the opportunity to apply their knowledge to a concrete situation, seemed better able to retain what they learned, and developed their research and writing skills to a high level of competency.

In the Soviet Union, a modified version of this technique is used. Printed accounts of the facts of actual court cases are distributed to the students. These are arranged by subject matter in accordance with the relevant articles of the code, but the students are not told the final outcome of the case. The students do the legal research and then write their own opinions. This is felt to be a better approach than using purely hypothetical cases because the students can later compare their solutions with those of the judges.

Both these methods offer some suggestions on ways to structure legal research and writing courses. However, the Austrian plan (for such a course to follow every regular substantive course) could not possibly be implemented in American law schools; we perhaps have neither the resources nor the time to accomplish this. In fact, the only reason such a program is possible abroad is that these students take a full load of lecture courses in addition to their problem courses, and are not expected to do much outside class preparation for the lectures. Exams are based predominantly on the content of the lectures.

It would be more feasible to institute the problem-case method in American law schools as a single second semester writing and research course for first year students. The problems should be based on the substantive content of their four or five first semester courses. Classes would meet merely to discuss the writing problems. There would be no reading assignments except for the legal research sources, but papers would be due every two or three weeks.

The technique could also be used as a substitute for a case method upper level course. The substantive materials of the course

92. Campbell, supra note 1, at 48.
could be taught in lectures and the course work would consist of research assignments coordinated with the subject area being presented in the lectures. This type of course in the second and third year might go far towards stemming the wave of boredom that usually sweeps over law students after their second year. David Robertson, in his study on student boredom in American and English law schools, observed that in the first year of school American students are challenged by the struggle to master the case method. However, "[a]fter the first year the emphasis shifts, almost imperceptively, from the acquisition of habits and skills of thought to the acquisition of information about the content of legal doctrine. [Then,] student interest flags."\textsuperscript{93} He suggests that "a necessary reform is to provide advanced law students with an equally difficult and perplexing situation."\textsuperscript{94} Perhaps the problem-case presents such a situation.

**Conclusion**

The suggestions that I have posed for changing legal education in American law schools would necessitate structural modifications in both the undergraduate and law curricula. Basically a three year-four year plan would be required so that the total time commitment after high school would still be seven years. The law schools should recommend a pre-law, three year undergraduate major consisting of required groups of social sciences courses. This would give the student a minimum level of proficiency in most of the needed areas by providing him with the time to take intermediate level courses in more than one subject. Only three years would be necessary to accomplish this because the student could dispense with the usual one subject major requirements. After the first year of law school the student would be awarded his bachelor's degree. The extra undergraduate year would be used to increase the law school program to four years. This would create additional time in which to add such courses as Roman law, comparative law, introduction to law, a full-semester research and writing skills course, and a mandatory course in jurisprudence. There would also be room for a required vocational-clinical semester while still leaving three full years for substantive, bar examination type courses.

\textsuperscript{93} Robertson, *supra* note 83, at 287.
\textsuperscript{94} *Id.* at 288.
As was pointed out by Robert Stevens in an historical study of American legal education, our prevailing four year-three year pattern is more the result of pressures from the American Bar Association, and the American Association of Law Schools to improve and unify certification standards among the 50 state bars over the twentieth century, than any well-reasoned decision that the best lawyers are the product of four years of undergraduate school and three years of law school.\footnote{Stevens, Two Cheers for 1870: The American Law School, in 5 Perspectives in American History 493-511 (D. Fleming & B. Bailyn eds. 1971).}

The idea of a four year law program has been tried at various times by a few American law schools.\footnote{Id. at 485.} A notable example of this was the University of Minnesota's two year-four year plan that was operative from 1930 through 1958. The undergraduate program was only two years but students were required to take economics, political science, logic, ethics, accounting, humanities, English literature, and English composition. During the law school years the students were required to take courses in judicial administration, legislature, drafting, social legislation, trial and appellate technique, research and writing skills and judicial remedies. Most of the substantive courses were electives.

Students choosing to attend the University of Minnesota law school after having already completed a normal four year undergraduate program were allowed to elect an alternative three year law program. However,

[the Minnesota post-war experience with this alternative three-year program . . . has confirmed the earlier faculty conviction that three years of law study is simply not adequate to prepare these students for the broad demands of modern practice or for their public responsibilities as lawyers. The courses designed to place special emphasis on preparation for leadership in public affairs and a creation of a sense of responsibility for improvement of the law and its administration are crowded out by indispensable vocational courses.\footnote{Lockhart, The Minnesota Program of Legal Education—The Four-Year Plan, 3 J. Legal Ed. 234, 255 (1950).}

One reason why such experiments have been comparatively short lived is that as long as the three year law program is the national norm, schools with four-year plans will be competing for students.
In 1968, David Robertson observed that "[t]he incidence and diversity of illness in American legal education [are] well publicized." So well publicized, one might add, that many legal educators are tired of reading about them. For example, as Professors Cramton and Boyer remark in their recent work, Legal Education Today: An Agenda for Research and Reform, "[a] striking as well as depressing aspect of the current debates over the future shape of the law school curriculum is the ancient lineage of many of the major issues, and their cyclical reappearance in the literature of legal education."

Accordingly, any analysis of American legal education assumes the added dimension of becoming further evidence of the inability of our law schools to cope with their problems despite an acute awareness of the deficiencies. In a sense, all that a comparative study of legal education can accomplish is to unearth yet another set of reasons why American legal education is incomplete, and to suggest some new solutions as well as to reiterate some older ones that have thus far been ignored.

However, even if comparison yields some of the same conclusions as introspection, it is still valuable as a synthesizing tool. In the United States there is major disagreement over what legal education should accomplish. The traditional approach has been one of the trade school ethic; in other words, teach only substantive law courses. Clinical education is probably an outgrowth of this approach, since it purports to help law students to become better practitioners. Another approach has been to consider what people are going to do with a law school education, and try to equip them to be policy makers in their future roles in the three traditional branches of government and in the business world. A third is the scientific intellectual approach in which people are taught to be jurists. In this context, the advantage of both the civil law and socialist approaches to legal education lies in the recognition that none of these philosophical threads are mutually exclusive; every good lawyer should be an able practitioner, an effective policy maker, and a jurist interested in improving the scientific quality of law.

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98. Robertson, supra note 83, at 278.