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HONORING OUR HISTORY: THE BENCH AND THE BAR AS LEGAL EDUCATORS AND THE RESURRECTION OF LEGAL APPRENTICESHIPS

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In early American history, legal education was dependent upon the dedication of judges and practitioners to imparting knowledge and providing training to burgeoning attorneys. From colonial and post-Revolutionary War America until the early 20th century, legal education in the United States was comprised of a traditional college education followed by an apprenticeship in a lawyer's office.² Resurrecting the apprenticeship model would foster closer connections among the bench, bar, and soon-to-be attorneys, and would prove successful in preparing attorneys for today's complex practice world.

The United States long ago abandoned the apprenticeship model that remains part and parcel of legal preparation in other parts of the world. The modern day lecture-style classroom was the answer to an apprenticeship format that, according to some, was broken, and criticized by others for not producing much needed lawyers quickly enough to meet market needs. "[L]aw schools supplanted apprenticeships because law schools were able to teach law in a more systematic way, not being dependent on the vagaries of an individual lawyer's

¹ Assistant Professor of Law and Director of Academic and Bar Support, Elon University School of Law. Special thanks to Jessica E. Chong for excellent legal research assistance.

² MARGARET Z. JOHNS & REX R. PERSCHBACHER, *THE UNITED STATES LEGAL SYSTEM: AN INTRODUCTION* 3-5 (4th ed. 2016).

caseload or pedagogical inclination.”³ Yet the benefits of such a model continue to be widely recognized in a great many parts of the world. Many countries continue to mandate this critical practice component as a condition of licensing.⁴ From Angola and South Africa to Chile and Malaysia, compulsory apprenticeship components are credited for the enhanced readiness of newly graduated attorneys to deal effectively with client issues, and members of the bar play an integral part in preparing graduates for the demands of practicing law. Bar organizations around the world recognize that “making students practice ready involves more than substantive analysis, especially considering the increasing diversity and complexity of the legal world that graduates enter—the international intersections, the varied practice forums, economic sustainability, and recognition of bias within the law and its application.”⁵ Members of our bench and bar can provide high-quality training on navigating contemporary practice challenges, and we might consider significant dedicated time with them to be an indispensable part of the Juris Doctor curriculum.

Imagine a curriculum similar to that employed in the early Inns of Court in England where the standard methods of instruction combined formal lecture, repeated practice, and obligatory observation of skilled barristers. This type of education established the Inns as institutions of quality education. As Sir D. Plunket Barton wrote, “[t]he Inns of Court are alive to the responsibilities which are cast upon them as the keepers of the keys, and the guardians of the honour, of the English Bar. It is their common aim to serve their countrymen by rendering their profession a polished and efficient instrument for the ascertainment of the truth.”⁶

Our American legal education system is by and large exemplary at lecture. Even during the times when an apprenticeship marked the entryway to official practice, skilled lawyers and judges began to deliver expert lectures in law—and hence the birth of the Socratic classroom. The first recognized law school in the United States was in Litchfield, Connecticut set up by Judge Tapping Reeve in 1784.⁷ The school remained open until 1833 and an estimated 1,000 lawyers

³ Alfred S. Konefsky & Barry Sullivan, *In This, the Winter of Our Discontent: Legal Practice, Legal Education, and the Culture of Distrust*, 62 BUFF. L. REV. 659, 711 (2014).

⁴ RUSSELL W. DOMBROW ET AL., *THE ABA GUIDE TO INTERNATIONAL BAR ADMISSIONS* 5 (Russell W. Dombrow et al. eds., 2012).

⁵ *Id.* at 250.

⁶ SIR D. PLUNKET BARTON ET AL., *THE STORY OF THE INNS OF COURT* 12-14, 27 (1986); Anton-Hermann Chroust, *The Beginning, Flourishing and Decline of the Inns of Court: The Consolidation of the English Legal Profession After 1400*, 10 VAND. L. REV. 80 (1956).

⁷ BARTON, *supra* note 6..

followed a fourteen-month course of lectures based on *Blackstone's Commentaries on the Laws of England*. The four-volume *Commentaries* were a compilation of lectures delivered by William Blackstone, the first lecturer of law at Oxford. Judge Reeve was a “gifted teacher; his lectures organized the law methodically and outlined its primary features to provide an overview of the substantive law of England” administrating the school like a law practice with students drafting pleadings and conveyances.⁸ Litchfield graduates achieved great success including “twenty-eight United States senators, 101 members of Congress, thirty-four state supreme court justices, fourteen state governors, ten state lieutenant governors, six members of the Cabinet, three vice presidents of the United States, and three United States Supreme Court Justices.”⁹ The delivery of essential legal concepts from a member of the bar (who understood how to effectuate their successful application) transported the lecture from the insulated world of academia across the illustrious “bridge to practice.”

The early American system of legal education recognized the importance and the necessity of teaching lawyers how to apply the law in a way that was up-to-date and germane to successful practice at that time. Educators understood that a practitioner needed *training*, not simply knowledge, and recognized that well regarded members of the bench and bar were best suited to imparting significant lessons. “There is consensus that carefully screened and monitored adjuncts contribute greatly to the expansiveness of legal education. When adjuncts are conscientious and demonstrate effective teaching techniques, they strengthen the legal education process both by broadening the curriculum and by teaching from unique vantage points.”¹⁰ “Adjuncts also give “students supplemental perspectives and insights into legal reasoning, critical thinking, and crafting legal arguments, as well as into the subject matter of the particular course.”¹¹ “[Judges, practitioners, and legal professionals brought] their understanding of the demands of the practice of law into the classroom and into the halls of the academy, sensitizing both students and other faculty members to these demands and helping both develop ways to meet them.”¹²

As a body of educated lawyers in the U.S. developed, the need for regulation was great and the “first major departure from the

⁸ *Id.*

⁹ *Id.* at 5.

¹⁰ David A. Lander, *Are Adjuncts A Benefit or A Detriment?*, 33 U. DAYTON L. REV. 285, 289 (2008).

¹¹ *Id.*

¹² *Id.*

English system” occurred in 1739 with the provincial supreme court of New York mandating a seven-year clerkship.¹³ In 1756, the New York City bar established strict standards for admission to practice requiring “four years of college or university, culminating in a bachelor’s degree, five years clerking, the passing of an examination and recommendation by six attorneys. The four years of college were reduced to two in 1756, the degree requirement was dropped, and a five-year clerkship required,”¹⁴ an official recognition of the benefit and necessity of training administered by those fully immersed in the practice world.

Each academic year, thousands of students visit law firms, and county, state and federal courts to watch lawyers, jurists, and the judicial process at work. In some instances students assist with basic legal tasks that give them limited and shielded exposure to the real-world, and to the risk-filled application of the law. While these experiences are not without merit, preparing our students to be effective professionals means providing them meaningful and significant opportunities to practice. Why not bring more of our esteemed colleagues into the classroom? In those countries that have preserved the apprenticeship model, “meaningful” means more than a summer placement or short term stay. Italy, for example, mandates the duration of apprenticeships at a six month minimum and allows for a three-year maximum. Singapore requires a six month practice training period before one can seek full admission to the bar. When a Dutch law degree holder is sworn in as an advocate, the admittance is on a conditional basis pending completion of a three year traineeship. In Russia, an individual seeking to become an attorney must either have two years of experience in the legal profession or complete a one to two year traineeship in an advocate’s organization. In Switzerland, a trainee lawyer must serve as an apprentice in the courts or with a lawyer or law firm for one to two years and subsequently pass the cantonal bar examination before becoming a practitioner. Many other countries have similar practical preconditions to becoming a bona fide attorney.¹⁵ Most establish close ties between the “real-world” and the classroom by inviting these same professionals into their institutions. “Employment of practicing lawyers and judges as adjunct faculty can help law schools” in order to “improve the readiness of graduates for the practical and ethical difficulties of practicing law, the demands for

¹³ *Id.* at 439.

¹⁴ *Id.*

¹⁵ DOBROW ET AL., *supra* note 4, at 5.

diversification of law faculties, and the need for cost control.”¹⁶ Employing the bench and bar as legal educators ensures not only continuity in the legal profession, but a greater readiness in burgeoning attorneys to apply what they have learned to authentic practice issues of their time.

Much like the protagonist in the German poet Goethe’s 1797 poem, *Der Zauberlehrling*, apprentices learn the trade through observation, emulation, practice, and rehearsal. Essentially, they do what they will be expected to do when they are no longer working under the close supervision of a master teacher. “Externships immerse students in the life of legal enterprises outside of the school, including judicial chambers, government offices, non-profit organizations, corporate offices, and private firms. The goal is for students to have substantive experiences working alongside practicing lawyers or judges, to understand how law is practiced in these settings, and to benefit from the opportunities to reflect on the experience with a faculty member . . . These experiences connect aspiring professionals to their chosen profession in ways that exploring doctrine cannot achieve.”¹⁷ They have real-world encounters and have an opportunity to bypass that intimidating first year of practice where every moment and every client meeting is a new, eye-opening, and often disquieting experience. In early American models, the time requirements varied, but generally clerks were required to perform duties set forth by the attorney including “nonlegal but necessary duties such as starting the fire in the morning, through copying legal papers to aiding in the presentation of a case. The student was also expected to read the classic treatises.”¹⁸ Clerk’s training was “essentially akin to the training of the blacksmith’s apprentice; it was practical rather than theoretical,”¹⁹ tempering some of the glitter and gold with a realistic perception of the profession.

The apprenticeship model cannot be revived without skilled members of the bench and bar willing and dedicated to fortifying the education of future attorneys. Lawyers, judges, and governmental officials can “serve as role models and examples of responsible lawyers giving back to society through their teaching. Their efforts can open doors to job opportunities for students and graduates and their

¹⁶ Marcia Gelpe, *Professional Training, Diversity in Legal Education, and Cost Control: Selection, Training and Peer Review for Adjunct Professors*, 25 WM. MITCHELL L. REV. 193, 194 (1999).

¹⁷ Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C.J.L. & SOC. JUST. 247, 253 (2012).

¹⁸ *Id.* at 440.

¹⁹ *Id.* at 445.

input can help insure that the law school's programs and curriculum remain relevant to modern law practice."²⁰ Mentoring programs with practicing attorneys can "assist new lawyers in gaining valuable insights through discussion of specified topics and by participating in certain practice-based, substantive, and procedural legal experiences."²¹

But more is needed. "[C]linical and simulation skills courses and externship are an antidote to the boredom and endemic lack of preparation reported regularly during the final year of school and . . . are pointing to renewed attention to apprenticeships."²² Traineeship is a means for the simultaneous development of the intellectual, social, and professional skills critical to competent, trustworthy performance. Apprentices are treated as novice attorneys. They are expected to apply what they've already learned, and to acquire new knowledge and skills on a daily basis. This kind of training is far removed from the insulated safety of the classroom, and even of a summer internship stint. The apprenticeship component of their legal training is the very best that experiential education has to offer. They will have had the benefit of classic classroom instruction, and a genuine opportunity to apply knowledge, practice skills, and evaluate and refine their ability to become effective lawyers, all while relentlessly comforting the day-to-day demands of the profession. And they will have accomplished this under the close supervision of well-regarded and experienced professionals in their community.

Of course, there are challenges to overcome in resurrecting such a model. If we endeavor to mirror the early Inns of Court, we have two of the three essential components well-established: classroom lecture and observation. However it is the third element—the distinctive long-term work experience—that would require a restructuring of the current American system. There exist a good many law schools that have instituted internships or externship components as part of their curriculum. While this provides students with some meaningful experience, many employer-sponsors do not view their role as that of master teacher, and these experiences are usually part-time or completed over a summer or a single semester. In order to develop a true apprenticeship program, a new relationship between the university and other professionals in the community must be established. One of the reasons the Inns worked so well was because of the affiliation they

²⁰ Douglas E. Ray, *The Care and Appreciation of Adjunct Faculty*, 37 U. TOL. L. REV. 135 (2005).

²¹ James Backman, *Externships and New Lawyer Mentoring: The Practicing Lawyer's Role in Educating New Lawyers*, 24 BYU J. PUB. L. 65, 69 (2009).

²² *Id.* at 72.

established with the legal community. Professionals appreciated the opportunity to train individuals for future employment while promising lawyers valued the individualized, personal instruction. The concept of a “legal community” was more than jargon; the community was real, tangible, and genuine. Without a valuable association, a future practitioner would effectively be precluded from swift entry into the profession. Exceptional performance was the goal of both apprentice and master. And is that not what seasoned practitioners hope for in their successors? Exceptionality? They are not interested in someone who simply checked classes off the “required courses” list and donned a suit for the court house selfie. Many of us would welcome the opportunity to be a part of developing thoughtful, attentive, well-equipped, and well-practiced young lawyers.

This outlook remains energetically active in other parts of the globe. Members of the bar and bench invest their time and energy into creating competent, knowledgeable, and skilled attorneys in ways not unlike what some of our dedicated judges and attorneys do here. But the methodology in those places is systematic and is embedded into the very requirements of licensure. Critics of the apprenticeship model point out, though, that participating employers are sometimes criticized for exploiting apprentices as they provide a thoroughly inclusive and rigorously detailed experience—one in which student-apprentices do some of the very same heavy lifting expected of their full-fledged colleagues. Some firms, after devoting time and resources to personalized training of their pupils, have been accused of capriciously lengthening an apprentice’s training period to take advantage of inexpensive, well-trained labor.²³ This issue has been addressed in a variety of ways by countries that employ the apprenticeship model. And while there is concern that the talents of our law students may be taken advantage of, this issue is itself indicative of a system that produces highly capable, accomplished individuals who are wholly prepared to enter the job market.²⁴

²³ Most apprenticeships within the European Union are paid positions based on either collective bargaining or legislation. Amounts and benefits vary. Some countries pay up to a third of the master’s pay, while others pay the apprentice an allowance which takes into account the costs and benefits for the individual and the employer. *Ecorys IRSCORYS IRS*, ISTITUTO PER LA RICERCA SOCIALE, <http://www.irsonline.it/it>; *European Alliance for Apprenticeships*, EUROPEAN COMMISSION, http://ec.europa.eu/education/policy/vocational-policy/alliance_en.htm.

²⁴ In some European countries, should a firm wish to hire an apprentice, it must have a record of hiring at least 50% of those it has trained in the past. This regulation was put into place to help prevent these types of abuses. In this way, companies can tap into the skills pool only if they have already put something into it.

While the issues of remuneration and fairness in the workplace need to be addressed, it is the time requirement that poses the greatest challenge to most law schools. When bar examination results are a critical element in the ranking of law schools, preparing students for the bar examination becomes—whether we like it or not—a crucial component of most law school programs. Trying to embed a year or more of full time work into a three year time frame will present significant challenges. Could we consider extending the traditional term for obtaining a Juris Doctor? With effective teaching, a full year of intensive work experience outside of the foundational curriculum can become the new model of legal education. Like the teacher licensure model, teachers who have completed their educational requirements are often issued preliminary credentials. It's not until they have logged the requisite term of closely supervised classroom teaching that they are issued a "clear" credential.

Like the Inns of Court, U.S. law schools might reinvent themselves as pipelines to specific areas of practice—training students to enter specialized fields of law and maintaining connections with successful lawyers who practice in those areas. Students would reap the benefit of the opportunity to create a more permanent placement for themselves—not to mention the added benefit of understanding the real-world application of law and having an opportunity to learn practical lessons before their first day on the job. Attorneys who assume the role of master teacher will have the benefit of a steady stream of well-prepared, strategically trained individuals who are equipped to further refine their craft and who are ready to dedicate themselves to intensive, meaningful training. Of course, there is the greater satisfaction of ensuring the quality of the profession.

The American legal education model is nothing if not adaptive. In a system renowned for invention there is even greater promise in its capacity for reinvention. As Martin Katz so thoughtfully puts it, "[i]f law schools provide high-quality supervision from skilled teachers and mentors, law students will learn from these experiences how to be good lawyers. Such students will be far more likely to emerge from law school ready to practice law and ready to compete for good legal jobs."²⁵

With renewed interest in producing practice-ready graduates and in providing a more pervasive practical component to legal education, the apprenticeship model that defined this nation's early education of attorneys may be a methodology worthy of further consideration. It is

²⁵ Martin J. Katz, *Facilitating Better Law Teaching-Now*, 62 EMORY L.J. 823, 827-28 (2013).

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certainly a trusted process for effectively and conscientiously transforming “outsiders” into “insiders” and for creating future lawyers that understand the law and its day-to-day application.