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# Integrating Practical Training and Professional Legal Education: Three Questions for Three Systems

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## **Integrating Practical Training and Professional Legal Education: Three Questions for Three Systems**

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### **INTRODUCTION**

Reform of legal education is a hot topic. Talk today focuses on practical training. While I am interested in developments worldwide, I am going to talk principally about the three systems of legal education that I know best: the U.S., the German and the Japanese. The problem I am addressing is often considered as the problem of integrating theory and practice in professional education.

Only three months ago in the *United States* the Carnegie Foundation for the Advancement of Teaching released a study, *Educating Lawyers: Preparation for the Profession of Law*. The Foundation castigates American legal education for paying “relatively little attention to direct training in professional practice”<sup>1</sup> and contrasts it to American medical education where there is “growing recognition that medical science is best taught in the context of medical practice ....”<sup>2</sup>

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<sup>1</sup> WILLIAM M. SULLIVAN, *ET AL.*, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 188 (2007). See generally James R. Maxeiner, *Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method*, forthcoming in 35 INT’L J. LEGAL INFO. (2007). See also JOSEF REDLICH, *THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING*, BULLETIN NO. 8 (1914).

<sup>2</sup> SULLIVAN, *supra* note 1, at 192.

Only six months ago in *Germany* the German Lawyers' Association proposed a new legal education law that would completely overhaul post-university legal education there<sup>3</sup> in order to bring about "practical lawyer-training" (*praktische Anwaltsausbildung*).<sup>4</sup>

Just three years ago *Japan* actually did completely overhaul its system of legal education. But it *reduced* the practical internship to one year from two years and introduced two-to-three years of law school education between historic undergraduate legal education and practical training.<sup>5</sup>

In all three of these countries legal education, and in particular the practical component of legal education, had been stable for a long time: for a half century in Japan, nearly a century in the U.S., and a century-and-a-half in Germany. But stability is about the only trait that the three systems shared. In particular, the practice component varied.

Practical training is an issue in legal education because legal education does more than convey legal knowledge: it prepares students for professional practice. Knowledge of law is essential to becoming a jurist. Yet knowledge of law alone is not enough; becoming a lawyer, judge or other legal professional also requires professional skills. Learning substantive knowledge of the law is usually denominated "education," while acquiring practical skills is ordinarily called "training." Legal educators ponder the proper proportions and proper places for legal education and for practical training in the preparation of legal professionals.

In the United States, by the twentieth century a system of purely professional law school studies replaced a system of pure practice apprenticeship that had prevailed in the first part of the nineteenth century. In twentieth century Germany, even the Nazi dictatorship did not displace the nineteenth century Prussian system of university study followed by practical court-supervised training in the courts, other government offices and law firms. In Japan, until 2004, the system followed a modified German model.<sup>6</sup> Then Japan moved in the direction

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<sup>3</sup> *Entwurf eines Gesetzes zur Einführung einer Spartenausbildung in der juristenausbildung: Gesetzentwurf des Deutschen Anwaltvereins (DAV)*, 2007 ANWALTSBLATT 45.

<sup>4</sup> Hartmut Kilger, *Wie der angehende Anwalt ausgebildet sein muss*, 2007 ANWALTSBLATT 1, 3.

<sup>5</sup> See James R. Maxeiner and Keiichi Yamanaka, *The New Japanese Law Schools: Putting the Professional Into Legal Education*, 13 PAC. RIM L. & POLICY J. 303 (2004).

<sup>6</sup> The old Japanese system had its origin in adaptation of the corresponding German system of the late nineteenth century. Jiro Matsuda, *The Japanese Legal Training and Research Institute*, 7 AM. J. COMP. L. 366, 368 n.7 (1958). Similarities to the German system remain substantial. Cf. Luke Nottage, *Reformist Conservatism and Failures of Imagination in Japanese Legal Education*, ZEITSCHRIFT FÜR JAPANISCHES RECHT, No. 9, 23, 27 n.11 (2000). In both systems, aspiring lawyers typically study law at a university for four years after completing sec-

of the contemporary American model, reduced practical training from two years to one, and introduced professional law school study between university study and practical training.

Today's models of legal education in Germany and the United States may now change just as the historic model in Japan recently has. In the United States the Carnegie Foundation, which has proposed changes, has an impressive history of catalyzing change in medical education.<sup>7</sup> In Germany legal education is changing in any case to accommodate the harmonizing Bologna model of the European Union.<sup>8</sup>

### ***Reasons for comparative study of legal education***

So why am I telling you about practical training in various legal systems today? In just about any other group of jurists I might immediately hear the objection: systems of legal education are at least as parochial as the legal systems in which they operate. Fortunately, I am not apt to hear that in our group: we are a bunch of jurists as open to foreign and comparative study as any. We all instinctively know that study of foreign systems both helps us understand the jurists with whom we work as well as better to understand our own systems of law and legal education.

Still, we should be the first to recognize that legal education is as culturally-determined as any field of professional study. If we didn't know that already, the experiences of the World War II generation of refugee professionals made it clear. I am old enough to have known refugees from the professions of law, medicine and engineering. It is no coincidence that refugee physicians and engineers had more portable careers than did their legal counterparts. The former needed only minor retooling; the latter began the study of their discipline completely anew.

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ondary (high) school. They then take an examination and, if successful, are admitted to a practical training program to become qualified as judges. Practical training begins with classroom-type instruction in the skills of a judge and continues with several-month apprenticeships at the courts and other legal institutions. Following completion of this practical training period, students take a second bar examination. Those who pass with few exceptions become judges, prosecutors or private attorneys. JOHN OWEN HALEY, *THE SPIRIT OF JAPANESE LAW* 50 (1998). There is, however, one crucial difference between the systems of lawyer training in Japan and Germany: in Japan the number of candidates admitted to practical training is severely limited

<sup>7</sup> See Molly Cooke, David M. Irby, William Sullivan & Kenneth M. Ludmerer, *American Medical Education 100 Years after the Flexner Report*, 2006 N. ENGL. J. MED. 355: 1339.

<sup>8</sup> For the Bologna program and German legal education generally, see DER BOLOGNA-PROZESS AN DEN JURISTISCHEN FAKULTÄTEN (Gerfried Fischer & Thoma Wünsch, eds., 2006). For another view of current developments in the same three systems, see Martin Kellner, *Legal Education in Japan, Germany, and the United States: Recent Developments and Future Perspectives*, 12 ZEITSCHRIFT FÜR JAPANISCHES RECHT 195 (2007).

Notwithstanding the national focus of legal education, an understanding of its varied offerings throughout the world today helps us contemplate the options available to each system. I recognize that differences in legal and educational systems are so profound that anything resembling a transplant is unlikely. But ideas travel more easily than institutions, so that I think that perspective alone is not the only outcome of comparative study. Hence it is worthwhile to look at professional legal education comparatively.

Today I have a modest goal: identification—against the perspective of three different legal systems—of three key questions implicated in the integration of legal practice and legal education. Time does not permit more than the most rudimentary discussion of them or discussion of others.<sup>9</sup> These questions implicate a host of other issues. They are:

1. Which type of legal professional is being trained?
2. Which skills should practical training teach?
3. Does practical training require apprentice practice?

## II.

### THREE QUESTIONS ABOUT PRACTICAL TRAINING

#### *1. Which kind of legal professional is being trained?*

Fundamental to integrating theory and practice in legal education is deciding which kind of legal professional is to be trained. The answer to this question influences or even determines what constitutes practical training and who should control it.

It is not a question that we think about often in the United States, where we train all students to be lawyers and by tradition our students are not judges until they have been lawyers for years. In Germany one thinks about it more, since in Germany all students are trained to qualify as judges, even if most become lawyers. The situation in Japan has been similar to that in Germany, but in Japan there is great demand for *more* lawyers.

All three systems of legal education share the attribute that their end product is a single type of jurist, potentially suitable for all applications, although trained principally for one.

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<sup>9</sup> Of particular interest are the political and social questions that accompany decisions about practical training, e.g., regarding access to the bar and funding. In Germany, trainees are paid for the period of practical training. In Japan, under the old system that was the case, but now, they must pay for law school. In common law countries, trainees pay for practical courses that precede apprenticeship “articling” where they are paid. Similarly of great interest is how practical training requirements can be used to restrict access to the bar.

The German language even has a term for it: *Einheitsjurist* or “unitary jurist.”<sup>10</sup> None of these systems produces different classes of legal professionals, say judges, lawyers, prosecutors and so on. Nor do they produce lawyers specialized in particular areas such as in criminal law, civil law, intellectual property law, etc., although the German system does offer some possibilities for specialization in studies.

The choice of which type of jurist on which to orient legal education has importance beyond the pedagogic. It permeates legal life. In the United States, where all persons who wish to become legal professionals, whether as lawyers or as judges or otherwise, are trained as lawyers, the image of the lawyer-advocate is the ideal-type of legal professional. In Germany, where all persons who wish to become legal professionals, whether as lawyers or as judges or otherwise, are trained as judges, the image of the judge is the ideal-type of legal professional.<sup>11</sup>

A unitary approach is not, however, essential to legal education. While the German system has long educated all jurists to be judges, the old communist East German system provided not only separate practical training, but also separate university training for lawyers, judges, prosecutors and government lawyers.<sup>12</sup> Until 1947 the Japanese system trained lawyers separately from prosecutors and judges.<sup>13</sup>

Medical education in the United States, which the Carnegie Foundation Report holds up as *the* model for integrating theory and practice, provides highly specialized training. While all American physicians have four years of medical school education in common, they have separate periods of “residency,” i.e., practical training, of three or more years, in more than thirty different career paths, where they train to become surgeons, oncologists, gynecologists, etc.

## 2. *The dilemma of practical training: on which skills should it focus?*

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<sup>10</sup> See Annette Keilmann, *The Einheitsjurist: A German Phenomenon*, 7 GERMAN L.J. 293 (2006).

<sup>11</sup> See Thomas Raiser, *Reform der Juristenausbildung—Förderung von Beratungs- und Gestaltungsaufgaben als Ziel der Juristenausbildung*, 2001 ZEITSCHRIFT FÜR RECHTSPOLITIK 418, 422 (observing that German judges are seen to stand above the parties, to be neutral, to not work for money, but selflessly for truth and justice, while attorneys have a more complicated role that requires that they both work in their clients’ interests and yet also for justice).

<sup>12</sup> DANIEL J. MEADOR, IMPRESSIONS OF LAW IN EAST GERMANY: LEGAL EDUCATION AND LEGAL SYSTEMS IN THE GERMAN DEMOCRATIC REPUBLIC (1987).

<sup>13</sup> Maxeiner, *The New Japanese Law Schools*, *supra* note 5, at 315 n. 48.

The dilemma is this: the more practical training becomes, the less general application it has. While every legal position requires practical skills, those skills are not always the same. Practical training that is useful for one trainee, may be useless for another, who pursues a different career path.

American medical education deals with this dilemma by providing more than thirty different courses of practical training. Since these paths are very long—three to seven years—and follow four years of medical school, integral to their success is the perception of participants and the reality that jobs at the end are practically guaranteed.

Unless legal education is able to provide similar guarantees, it should be short in duration and general in scope. Training of short duration minimizes the opportunity costs of the trainees; training that is general in scope maximizes the chances that what they learn in training will be useful in professional practice.

An oft-cited American report on legal education, the “MacCrate Report,” lists ten “Fundamental Lawyering Skills” for future American lawyers. In short form these are:

- 1) Problem solving
- 2) Legal analysis
- 3) Legal research
- 4) Factual investigation
- 5) Communication
- 6) Counseling
- 7) Negotiation
- 8) Litigation and Alternative Dispute Resolution
- 9) Administrative skills necessary to organize and manage legal work
- 10) Recognizing and resolving ethical dilemmas.

The MacCrate Report describes these as skills for lawyers and not as skills for other legal professionals, such as judges. In view of the limited time available, I will use them as a stand-in as skills for all jurists, recognizing, however, that that is an oversimplification of practical skills for jurists.

While the MacCrate Report states these skills in general terms, not all of them are equally *transferable*. Some of them, such as communication, counseling and negotiation, and even factual investigation, obviously are highly dependent upon the people for whom they are

exercised. Do you speak their language (literally)? Do you understand their business relationships? Do you understand the science or craft that underlies their business? Others, such as problem solving, legal research and litigation, become ever easier the more a trainee or later professional is familiar with the fields of activity concerned. How well can you do transactions of particular importance to these persons? Study of the hiring of experienced lawyers (*i.e.*, lateral hiring) demonstrates the diversity of skills sought in the practice of law. In my experience, lawyer recruiters look less for the best performers among all candidates, as they look for very good lawyers with unusual skill sets that fit specific employers well. These skill sets usually include experience with the industry or with specific technical tasks. They often have nothing to do with law.

Of the ten skills just mentioned, the one that is most transferable, the one that is most useful to all jurists, is what Americans term “legal analysis” or “thinking like a lawyer,” what Japanese call the “legal mind”<sup>14</sup> and what Germans refer to as “legal thinking.” Legal analysis combines theory and practice. It is the teaching and learning of legal methods. I use here the term legal methods in a broad sense to include devices used to relate abstract legal rules to factual situations in order to decide concrete cases.<sup>15</sup> They include creating as well as implementing legal rules.<sup>16</sup> They are: lawmaking, law-finding, and law-applying.<sup>17</sup>

Legal methods are different in different legal systems. Within those systems they are taught in different ways and in different places. Whether legal methods count to the theory or to the practice of law is subject to contrary conclusions.

In the United States legal methods are taught principally in the first year of professional law school. In Germany legal methods achieve their greatest importance in the first year of training at the courts. In Japan, under the old system, legal methods were taught at the Legal Research and Training Institute in Tokyo; it remains to be seen where they will be taught in the new system.

When and where should learning to think like a lawyer be taught? In 1914, an Austrian law professor, Josef Redlich, on behalf of the Carnegie Foundation surveyed American

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<sup>14</sup> HALEY, *supra* note 5 at 91.

<sup>15</sup> 1 WOLFGANG FIKENTSCHER, *METHODEN DES RECHTS IN VERGLEICHENDER DARSTELLUNG* 13-15 (1975).

<sup>16</sup> *Cf.* JAN SCHAPP, *HAUPTPROBLEME DER JURISTISCHEN METHODENLEHRE* (1983) (relating statute, case, and judicial decision).

<sup>17</sup> *Cf.* HART, *CONCEPT OF LAW* 61 (2<sup>nd</sup> ed. 1994). Richard B. Cappalli, *The Disappearance of Legal Method*, 70 *TEMP. L. REV.* 393, 398 (1997).

legal education. He concluded that American university law schools had succeeded in incorporating into their curricula one of the most important of practical skills. Redlich asserted that teaching the case method itself constitutes “methodical preparation for the practical calling of law.”<sup>18</sup> As proof of the success of the case method, he observed that the best law offices preferred to hire case method trained applicants over all others.<sup>19</sup>

Ironically, so successful were the law schools in bringing legal methods into law school instruction, that 93 years later, the current Carnegie Foundation Report, with no reference to Redlich’s report, sees the case method as part of theory rather than as part of practice of law.<sup>20</sup>

In Germany it is frequently urged that since 80% of law graduates become lawyers, it is foolish that they are all trained to be judges.<sup>21</sup> Yet it is in the trainee stage in Germany that legal methods are inculcated into students. During the internship period, they learn the *Relationstechnik* of relating facts to law and of crafting judgments. Judges as classroom teachers didactically teach classes that lay out the fundamentals of this technique, while individual judges, at least in theory, tutor the aspiring legal professionals, the trainees, as apprentice judges. The interns learn how to take the substance of the law they learned at the university, how to conduct legal proceedings to determine facts, and how to justify in legal judgments their correct determinations of how law applies to particular cases.<sup>22</sup> In short, they learn to do what a judge has to do in applying the law. And it is the mastery of the techniques of applying law to facts (*Relationstechnik*) that defines the judge.<sup>23</sup>

The German bar is now urging separate tracks for practical training. It sees the training for the profession of judge as apart from training for the profession of lawyer. I am not sure that the German is right. The *Relationstechnik*, the most important feature of practical German legal education, seems to me to be a skill of utmost importance in the daily life of every type of legal professional. I submit that mastery of this techniques helps account for the high regard in which German jurists are held the world over. I suspect—but dare here only

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<sup>18</sup> REDLICH, *supra* note 1, at 35.

<sup>19</sup> ID.

<sup>20</sup> SULLIVAN, *supra* note 1.

<sup>21</sup> German law requires that to become lawyers, candidates must establish their suitability to be judges (*Befähigung zum Richteramt*).

<sup>22</sup> See Wolfgang Fikentscher, *The Evolutionary and Cultural Origins of Heuristics That Influence Lawmaking*, in *HEURISTICS AND THE LAW* 207, 216-19 (G. Gigerenzer and C. Engel, eds., 2006).

<sup>23</sup> *Accord*, ALFRED RINKEN, *EINFÜHRUNG IN DAS JURISTISCHE STUDIUM* 135 (1977).

raise the suggestion—that it helps contribute material to German legal science. The drafters of German laws are all masters of the *Relationstechnik*.

### 3. *Does practical training require apprentice practice?*

The most practical of practical training seems to be, do as a trainee under supervision what one does later as a professional. The Carnegie Foundation Report points to medical education as proving that practice “*comes alive most effectively*” when students personally experience the responsibilities of the profession.<sup>24</sup> In Germany the system of practical training anticipates that trainees, as much as possible, act in their own responsibility.<sup>25</sup>

Pure learning by doing—even after education in theory—however, creates problems of *pedagogy* and of *feasibility*.

The *pedagogic problem* is that professional education should be comprehensive. It should enable trainees to deal with the complete range of problems, at least within a specific field, even if they will never see some of these are problems in practice. Professional practice, on the other hand, mirrors the vagaries of life. It is not comprehensive, but spotty. Not all problems arise. If practical training were to rely on practice experience, it would miss some problems.

One way that practical training programs deal with this pedagogic problem is to include a classroom component. In Bavaria, where there is mandatory practical training, and probably elsewhere in Germany, each step in that practical training includes an introductory classroom component.<sup>26</sup> In Japan, one function of the new professional law schools is to provide this classroom component that previously the Institute conducted. In England, where admission to legal practice requires a two-year practical training period of “*articling*,” the Law Society requires between university education and *articling* a one year “*Legal Practice Course*.”<sup>27</sup> In the United States, where there is no mandatory practical training for admission to practice, there is mandatory continuing legal education or “*CLE*”. It takes place almost exclusively in classroom settings.

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<sup>24</sup> SULLIVAN, *supra* note 1 at 197.

<sup>25</sup> Ausbildungs- und Prüfungsordnung für Juristen (JAPO) § 44(2), 2003 BAYERISCHES GESETZ- UND VERORDNUNGSBLATT 758, 770, available at [http://www4.justiz.bayern.de/ljpa/japo/JAPO\\_2003\\_Bayern.pdf](http://www4.justiz.bayern.de/ljpa/japo/JAPO_2003_Bayern.pdf). [hereinafter JAPO].

<sup>26</sup> JAPO § 50(1).

<sup>27</sup> Legal Practice Course Written Standards, available at <http://www.lawsociety.org.uk/documents/downloads/becominglpcstandards.pdf>.

The *feasibility problem* is that there must be productive work for trainees to do, it must be work that they are capable of doing, and it should be work that they later will do as professionals. To solve this problem American medical education brings trainees inside the hospital, where it provides plenty of menial work for even the least-experienced among them, and then gradually, through the system of residency, provides them with ever more challenging work under ever less supervision, which is work that they later will do as professionals.

Do the systems of legal education that we are discussing share the effectiveness of American medical education? The American does not. I am not sure about the German and Japanese systems.

In the United States formal law office training disappeared when law offices, thanks to nineteenth century innovations in office technology such as the typewriter, no longer had copying work for clerks to do.<sup>28</sup> While informal training, *i.e.*, non-mandatory training provided by law firms to their own associates, continues, it is under ever-greater cost pressures to dispense with training. Only the strongest of law firms have high value work, such as “due diligence” and “discovery,” that can be done by bright, but inexperienced trainees. Even still, while this work is useful, one wonders how relevant that work is for the later work of professionals.<sup>29</sup>

Since the disappearance of formal law office training, American law schools have tried to fill the gap. They use legal clinics to give trainees work in a practice setting. While they have not moved the law school into the courthouse, they have brought clients into the law school.<sup>30</sup> Law school clinics provide legal services to people who would not otherwise receive legal services employing law students under the supervision of lawyers. While this is not dissimilar to medical education, there are two major differences.

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<sup>28</sup> See, e.g., *Untitled Note*, 43 ALBANY L.J. 490 (1891) (“The law clerk gets but little law in this busy age, especially since the introduction of those labor-saving devices, the stenographer, typewriter and phonograph.”); William V. Rowe, *Legal Clinics and Better Trained lawyers—A Necessity*, 11 ILL. R. REV. 591, 600 (1917) (“The general introduction, since 1880, of telephones, stenographers, typewriters, dictating and copying devices, and improvements in printing ... has made students not only unnecessary but also undesirable in most of the active law offices.”)

<sup>29</sup> A similar trend is noted in training of medical residents: as medical treatment has become more specialized and hospital stays shorter, residents have less opportunity to learn. See INSTITUTE OF MEDICINE, *ACADEMIC HEALTH CENTERS: LEADING CHANGE IN THE 21<sup>ST</sup> CENTURY* (2003) at 82, available at [www.iom.edu](http://www.iom.edu).

<sup>30</sup> See, e.g., E.M. Morgan, *The Legal Clinic*, 4 AM. L. SCHOOL REV. 255 (1917); Rowe, *supra* note 28. Compare *Law Apprenticeships*, 5 ALB. L.J. 97 (1872).

One difference is that public money pays for the medical, but not for legal treatment, of the subjects of service. In academic health centers clinical medical education funds itself; it does not take resources from the classroom. In law schools, on the other hand, not only does clinical legal education not fund itself, it disproportionately takes resources from the classroom, for it is much more labor intensive than traditional instruction.

Another difference is relevancy. When medical trainees treat those who would otherwise not receive services, they are doing as trainees the tasks that they later will do as professionals. Only the particular patients, but not the tasks, will change. When legal trainees, on the other hand, provide legal services to those who otherwise cannot afford them, they are not providing the same services that most trainees later will provide as professionals. Their clients as professionals will not just be different people, they won't be natural people at all: they will be legal persons. Legal persons have different legal problems and require different legal services than do natural persons. Already in 1917 one skeptic of legal clinics claimed: "The instruction cannot . . . be skilled instruction. It prepares a student only for a petty practice, and lays no foundations other than technical ones. It is very wasteful of the student's time."<sup>31</sup> One need not accept the characterization of clinical work as "petty" to recognize that its relevance for work in other practice areas is less than its medical counterpart. No wonder that few law schools have ever made clinical legal work mandatory, while medical schools all require clinical experience.

In Germany and in Japan practical legal training more closely approaches the model of American medical education. Much as American academic health centers provide practical medical training, German and Japanese "law centers," *i.e.*, the courts, provide practical legal training. In Japan, where numbers of trainees are low, I assume that finding work has not been issue. In Germany, until recently, it may not have been either. I recall that twenty-five years ago I saw trainees patiently taking down protocols of court sessions. One question that I am asking German colleagues these days, is whether this level of usefulness can be maintained in the face of the dual challenges of improved office technology and ever more trainees. Today I see judges talking into Dictaphones and entering data into personal computers. All the while, the number of trainees has increased substantially.

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<sup>31</sup> O.L. McCaskill, *Methods of Teaching Practice*, 2 CORNELL L.Q. 299, 312 (1917). See Maxeiner, *Educating Lawyers*, *supra* note 1, text at notes 130-132.

Another advantage that German and Japanese practical legal training share with American medical training is institutional. Ministries of justice and academic health centers, i.e., hospitals, are relatively large bureaucratic entities. They are in positions to set and enforce standards of trainee instructions. They can dedicate personnel to trainee instruction. When practical training is the province of the bar, maintenance of standards inherently is more difficult. Practical training is likely to be more uneven in quality. Indeed, I believe that uneven quality is problem in Germany already with respect to the law office side of existing practical training.

Even if the German system can continue to find enough useful work for trainees to do to justify the public funding of their modest stipends, can the system provide work that is relevant to their later activity as professionals? A focus of present day criticisms of German practical education is that it is not sufficiently directed to the requirements of legal practice. That argument, of course, assumes that judicial training is not relevant to practice as a lawyer. The correctness of that assumption depends upon which skills are taught to trainees.

### III.

#### CONCLUSION

We are all prisoners of our experiences. I am no less so than others. I had no formal practical training, so perhaps I am inclined to see its limits.

First, the positive. I am an admirer to the first year of German practical training. I think that the *Relationstechnik*, although regarded by some in Germany as merely a workmanlike skill, makes German legal science possible. Moreover, the Bavarian Ministry of Justice seems to do a good job of conveying this valuable skill to all German jurists. While I am not quite such a fan of the first year of American law school teaching, I do see that it has many benefits, among which is a providing pretty good crash-course introduction to American legal methods. Whether these skills with legal methods are denominated theory or practice, they are essential to the legal enterprise and to every professional jurist of whatever type.

Second, the limits. I am skeptical of how much more beyond that formal practical training can do. What seems to me the greatest value of medical practical training is that trainees do actually learn by doing. But that system more-or-less presupposes that the trainees

who learn by doing end up as professionals doing the same things. It expects a degree of specialization that is yet to be found in at least American law practice.

We do definitely learn by doing. I know that I did in practice. And my practice was long and varied: ranging from government prosecutor, to litigation law firm associate, to in house counsel. There were many practical skills that I needed in practice that I did not learn in law school. Many of these skills I learned before I went to law school; many I learned after law school while in practice. I spent more than 14 of those years working for just four legal persons. Had I only known in law school that I would do that, I could have made study plans accordingly. But I knew then neither that I would be working for these four persons nor what I would be doing for them. Had I prepared myself more for them, that preparation would have been largely wasted had I worked for almost any other employer. Upon reflection, I am hard-pressed to identify practice skills that I could reasonably have learned in a practical training setting that I did not learn in the six hours of practice courses that I had.

Accordingly I think that I would restate the question. I do not think there is so much an issue of integrating theory and practice. I think that the more difficult issue is integrating practical training and practice. The aspiring professional is going to learn by doing in any case. The only issue is whether that learning by doing is formal or informal. The aspiring professional will be disappointed and bored if it is not directly related to what he or she later does in practice. If the legal education system is unable to promise a position at the end of the practical training, as its medical counterpart is, from the standpoint of the aspiring professional it should not demand formal training.

Formal training, however, presumably serves another important function: protection of the public from unqualified practitioners. I am left to wonder, however, whether that interest might be protected in another way. For example, in the United States, a license as a professional engineer typically requires an engineering degree, passage of state examinations and four years of qualifying engineering experience.<sup>32</sup>

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<sup>32</sup> See NATIONAL COUNCIL OF EXAMINERS FOR ENGINEERING AND SURVEYING, LICENSURE FOR ENGINEERS, [http://www.ncees.org/licensure/licensure\\_for\\_engineers/](http://www.ncees.org/licensure/licensure_for_engineers/). See also the internet site of the National Society of Professional Engineers, <http://www.nspe.org/lc1-faqs.asp>.