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Writing Lessons from Abroad: A Comparative Perspective on the Teaching of Legal Writing

Adam G. Todd*

I. INTRODUCTION

With a few exceptions, American legal writing pedagogy has not been adopted in any meaningful way in foreign countries. At most, it has garnered some attention in Legal English courses, but has otherwise received scant reception in foreign universities and little academic interest by continental and other civil law academics.

The reason transplantation, or “borrowing,” of American legal writing pedagogy has not occurred is due to the deep structural differences between the American legal education system and the education system found in most other countries, especially civil law countries. For example, many law schools in Western Europe require up to three years of apprentice experience before admitting a person into the practice of law.

* Associate Professor of Lawyering Skills, University of Dayton School of Law. This Article comes out of presentations and conversations I had at the following conferences: Preparing for Practice: A Conference on Legal Skills Training in Central and Eastern Europe, Prague, Czech Republic, May 19, 2005; Conference on Legal Writing Pedagogy in East Africa, sponsored by LWI & ALWD, Nairobi, Kenya, March 15, 2007; and Global Legal Skills Conference, San Jose, Costa Rica, May 14, 2012. The author thanks John Lyle for his work as research assistant as well as the support of Cynthia Richards and Lily and Samuel Todd.


2. This Article uses the term “civil law” very broadly to identify the legal systems that stem from Roman and Germanic law, which is found in the vast majority of legal systems. Comparative law scholars have categorized legal systems into traditions or families. The three main categories are the civil law systems, common law, and socialist. William Tetley, Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified), 60 LA. L. REV. 677, 683 (2000); see also N. Stephan Kinsella, A Civil Law to Common Law Dictionary, 54 LA. L. REV. 1265, 1266 (1994).

3. This issue has been noted by professors examining the (limited) transplantation of clinical education abroad. See Philip M. Genty, Overcoming Cultural Blindness in International Clinical Collaboration: The Divide between Civil and Common Law Cultures and Its Implications for Clinical Education, 15 CLINICAL L. REV. 131, 139 (2008); David M. Siegel, The Ambivalent Role of Experiential Learning in American Legal Education and the Problem of Legal Culture, 10 GERMAN L.J. 815, 819 (2009); Richard J. Wilson, Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education, 10 GERMAN L.J. 823, 828 (2009).


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requirement is in stark contrast to the general absence of any apprentice or internship requirements in the United States prior to being admitted to the practice of law as an attorney.\textsuperscript{6} This lack of an apprentice period in the United States’s legal education system gives a greater urgency to the teaching of legal skills—particularly legal writing—\textsuperscript{7} in American law schools.\textsuperscript{8} In addition, the market-based system of legal education found in the United States has shifted the cost of teaching legal writing from law firms and other legal employers to law schools, in contrast to most continental legal systems where employers (or government subsidies) provide such training.\textsuperscript{9} The fact that legal education in most civil law countries combines undergraduate and professional education and urges students to specialize in their legal education for particular careers (be it in the judiciary, academia, prosecutors’ offices, or general practice) also makes the American-style legal writing program less compelling to these countries.\textsuperscript{10} Generally speaking, continental legal education begins earlier for most students (usually age nineteen or earlier), runs longer (usually five years), and provides foundational courses such as history and philosophy in the initial years of study.\textsuperscript{11} In contrast, American law students come to law school with a variety of backgrounds and training, and the American legal writing classes found in its law schools provide a remedial and leveling function for American law students whose undergraduate training did not provide for skills needed for law studies.\textsuperscript{12} This Article does not argue that it is impossible, impractical, or unimportant to try to transplant legal educational methods from one system to the other. Quite the contrary, law schools in the United States and civil law countries share the same basic pedagogical goal, which is to train skilled lawyers and legal professionals.\textsuperscript{13} As a consequence, the teaching of skills

\textsuperscript{7} The “legal writing” class in American law schools is not simply a class in writing. A typical legal writing class includes legal analysis, reasoning, rhetoric, legal methods, use of sources of law, research, negotiations, role playing, oral advocacy, and more. The teaching about the form of written legal documents is only a small part of the course. See Joseph Kimble, On Legal-Writing Programs, 2 PERSP. 43, 44 (1994); Suzanne E. Rowe, Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice, 29 STETSON L. REV. 1193, 1194 (2000); see also Adam Todd, Neither Dead Nor Dangerous: Postmodernism and the Teaching of Legal Writing, 58 BAYLOR L. REV. 893, 910 (2006).
\textsuperscript{8} Katcher, supra note 6, at 364.
\textsuperscript{9} WILSON, supra note 5, at 26.
\textsuperscript{10} See John H. Merryman, Legal Education There and Here: A Comparison, 27 STAN. L. REV. 859, 865 (1975).
\textsuperscript{11} Id. at 866; Juergen R. Ostertag, Legal Education in Germany and the United States, 26 VAND. J. TRANSNAT'L L. 301, 339 (1993).
\textsuperscript{12} Abigail Salisbury, Skills Without Stigma: Using the JURIST Method to Teach Legal Research And Writing, 59 J. LEGAL EDUC. 173, 177 (2009); see also AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO BAR, SOURCEBOOK ON LEGAL WRITING PROGRAMS 98 (Eric Easton et al. ed., 2d ed. 2006) [hereinafter AM. BAR ASS'N SOURCEBOOK].
\textsuperscript{13} WILSON, supra note 5, at 14–15; see also Kirsten A. Dauphinais, Training a Countervailing Elite: The Necessity of an Effective Lawyering Skills Pedagogy for a Sustainable Rule of Law Revival in East Africa, 85 N.D. L. REV. 53, 88 (2009); Andras Jakab, Dilemmas of Legal Education: A Comparative
such as legal writing should be a high priority in both education systems.\textsuperscript{14} The structural differences, however, cause each system to have varying strengths and weaknesses in the teaching of skills, particularly in the field of legal writing. An examination of these differences provides a useful point for learning and profiting from the other’s experiences.\textsuperscript{15}

II. THE PERILS AND PROMISES OF THE COMPARATIVE PROCESS

Because this Article engages in the comparative law process, a caveat is needed.\textsuperscript{16} Comparative law is a tricky enterprise.\textsuperscript{17} The comparative process usually requires generalizations about the legal systems being compared.\textsuperscript{18} Furthermore, the methodology of the comparative process remains rather incoherent.\textsuperscript{19} But, paradoxically, comparative law has recently grown in its prominence and has generated significant literature and data on the interplay of foreign legal systems.\textsuperscript{20} Indeed, globalization, particularly through the use of technology and the internet, compels the study of foreign law and legal systems.\textsuperscript{21} Thus, though comparative process has shortcomings, it provides the normative benefits of promoting international understanding and trade as well as a greater understanding of our own legal system and traditions.\textsuperscript{22}

When comparing the legal systems of two or more countries, scholars of


comparative law use a variety of terms to describe the movement of laws and legal institutions between states. The term “transplant” is most often used to mean “the moving of a rule or system of law from one country to another.” A similar term, “borrowing,” is often used synonymously and is done so in this Article. For example, it is widely acknowledged that much of American law is based on transplanted, or borrowed, British law.

The study or tracking of the transplantation of a foreign law or aspects of foreign legal system into another is a perilous undertaking. Its study has engendered debate regarding how, when, and to what extent transplantation occurs. Some scholars, such as Alan Watson, identified legal borrowing as ubiquitous; indeed, examples of borrowing are easily identified in Japan’s reception of German law in its Civil Code or the Latin American adoption of French and Spanish corporate law. Yet subsequent writers have been more circumspect or even outright hostile to the notion of legal transplants playing a significant role in the formation of legal systems. For example, Otto Kahn-Freund, writing around the same time as Professor Watson, was more skeptical about the idea of transplants because laws and legal institutions are reflections of a given society’s values.

Borrowing is often used primarily as a verb or adjective when describing the process of the movement of law compared to “transplant,” which is used as a noun. See, e.g., Jonathan B. Wiener, Something Borrowed for Something Blue: Legal Transplants and the Evolution of Global Environmental Law, 27 Ecology L.Q. 1295, 1297 (2001).


25. Borrowing is often used primarily as a verb or adjective when describing the process of the movement of law compared to “transplant,” which is used as a noun. See, e.g., Jonathan B. Wiener, Something Borrowed for Something Blue: Legal Transplants and the Evolution of Global Environmental Law, 27 Ecology L.Q. 1295, 1297 (2001).


33. Id. These words are a variation of the words written by Montesquieu that “[l]aws should be so appropriate to the people for whom they are made that it is very unlikely that the laws of one nation can suit another.” Weiner, supra note 25, at 1353 n.217 (quoting CHARLES-LOUIS DE SECONDAT DE MONTESQUIEU,
This notion is consistent with a class of theories that William Ewald identifies as arguing that the law in a given society is a “mirror” of that society. These scholars see “every aspect of the law . . . molded by economy and society.” Upon close examination, some scholars have found that a law “that looks like a transplant may, in fact, be homegrown.”

Taken further, some scholars argue that legal transplantation is an impossible enterprise because a law does not remain the same once it is transplanted into a foreign system. Although this proposition is correct on a strict hermeneutic basis, the process of viewing a law or legal institution as borrowed from a foreign jurisdiction is “not impossible,” particularly when viewed on a historical or sociological basis. The identification of borrowed law is a useful and rather conventional device that can track the movement and development of ideas and institutions. Although the transplanted law may be different in form or function, this difference does not extinguish the fact that it was borrowed from another context. As one scholar noted, “transplants always involve a degree of cultural adaptation.” Such adaptation, though important to understand, does not diminish the origins of the borrowed law and insight into the law creation process in the borrowing country. Furthermore, the comparative exercise provides significant benefits to both of the legal systems involved in the comparative process when the normatively positive experience of one country’s system can be replicated, adapted, and enhanced by the other.

It is with skepticism of the limitations of the comparative exercise—and with the above caveat in mind—that this Article posits that there are aspects of the American legal education system involving the instruction of legal writing that could be productively borrowed by foreign legal education systems. Likewise, the American legal education system can profitably...
borrow from its civil law counterparts in ways that might improve legal writing instruction in the United States. Using the lens of comparative law, this Article first describes how legal writing is taught in the United States and the unique circumstances surrounding its prominence in the American legal education curriculum. Then, continuing the comparative exercise, it examines how legal writing is taught in foreign legal education systems—particularly civil law jurisdictions. This Article concludes with an examination of ways foreign educational systems may want to borrow aspects of American legal writing pedagogy and, concomitantly, how American law schools might profit from foreign legal educational methods.

III. THE UNIQUE DEVELOPMENT OF LEGAL WRITING AS A DISCIPLINE IN THE UNITED STATES

Although there is no uniform model of legal education in civil law countries, some broad generalizations can be made about how their legal education is delivered. The International Congress on Comparative Law recently issued a report entitled The Role of Practice in Legal Education. This report, based on a survey of members from seventeen countries, examined the teaching of legal skills or “practical lawyer-training” in these various countries’ systems of legal education. It confirmed what others had observed when comparing the way legal writing is taught in the United States to the way it is done in other countries: the United States is quite different in its approach to and emphasis on the teaching of legal writing as part of university instruction.

Legal writing as an established and recognized discipline within legal education is a relatively recent and primarily American phenomenon. Up until about twenty-five years ago, no formal legal writing programs existed in either civil law or common law (including the United States) law schools. Writing, if taught at all, might have been provided as a course in

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44. Merryman, supra note 10, at 859.
45. WILSON, supra note 5, at 1.
46. See, e.g., Su Li Zhu, An Institutional Inquiry into Legal Skills Education in China, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 75, 85 (2009). “Although the course of ‘legal instruments and legal writing’ is also offered by some Chinese law schools, it has little strength to inspire students because they find it not intellectually challenging due to its overemphasis on highly formatted legal instruments and lack of orientation to practical legal issues.” Id.; see also Dauphinais, supra note 13, at 53–54 (noting the weakness in skill instruction in East African legal education but also recent growth in legal writing instruction).
47. There are notable exceptions. Common law countries such as England, Ireland, and New Zealand require legal writing courses in their law schools. Wilson, supra note 5, at Table 2. Richard J. Wilson points out that skills training is “deeply ingrained in Latin American legal culture and countries such as Peru, Columbia, and Nicaragua emphasize “active learning.” Id. at 52.
48. Id. at 29
bibliography,\textsuperscript{50} as a remedial course focusing on legal methods,\textsuperscript{51} or as extra instruction in conjunction with doctrinal law classes.\textsuperscript{52} The pedagogy related to legal writing in this earlier period emanated from false notions about the nature of the teaching of writing, such as the perception that writing was “unteachable” or “inherent.”\textsuperscript{53} These beliefs were subsequently and quite significantly revised; today, such beliefs are inconsistent with current pedagogy and practice in the instruction of legal writing.\textsuperscript{54} Concomitant with these changes in pedagogy, law schools encountered pressure to revise their curriculums to include more skills and to make students “practice ready” by the time they graduate from law school. The unique combination of these curricular, economic, and pedagogical pressures in the United States helped build a robust legal writing pedagogy not found in most other systems of legal education.

\textbf{A. Administrative and Curricular Pressures in the Development of the American Legal Writing Course}

The emergence of legal writing as a separate discipline in American law schools came about due to some particularities of the American legal education system not found in other countries.\textsuperscript{55} The causes were a combination of economic and social pressures, which coincided with breakthroughs in the study and understanding of the process of writing, how writing is learned, and consequently how it can best be taught.\textsuperscript{56}

In the beginning of the 1980s, law schools in the United States began to offer formal legal writing classes and develop legal writing programs.\textsuperscript{57} Legal writing emerged during this period as a separate discipline.\textsuperscript{58} Today, the most recent survey by the Association of Legal Writing Directors shows

\begin{itemize}
  \item \textsuperscript{50} Marjorie D. Rombauer, \textit{First-Year Legal Research and Writing: Then and Now}, 25 J. LEGAL EDUC. 538, 539–40 (1972).
  \item \textsuperscript{51} Id.; see also Kristen K. Robbins-Tisceone, \textit{A Call To Combine Rhetorical Theory and Practice in the Legal Writing Classroom}, 50 WASHBURN L.J. 319, 321 (2011).
  \item \textsuperscript{52} Rombauer, supra note 50, at 539–40; see also Comm. on Curriculum, Ass’n of Am. Law Sch., \textit{The Place of Skills in Legal Education}, 45 COLUM. L. REV. 345, 374–75 (1945); Karl Llewellyn, \textit{On What Is Wrong with So-Called Legal Education}, 35 COLUM. L. REV. 651, 653 (1935); Karl Llewellyn, \textit{The Current Crisis in Legal Education}, 1 J. LEGAL EDUC. 211, 217 (1948).
  \item \textsuperscript{54} Durako, supra note 53, at 100; Pollman, supra note 49, at 894–96.
  \item \textsuperscript{55} See ROBERT STEVENS, \textit{Law School: Legal Education in America from the 1850s to the 1980s} (1983) (providing an account of the development of the American legal educational system).
  \item \textsuperscript{56} See discussion infra Part III.B–C.
  \item \textsuperscript{57} Arrigo, supra note 49, at 123–30; Peter Brandon Bayer, \textit{A Plea for Rationality and Decency: The Disparate Treatment of Legal Writing Faculties As a Violation of Both Equal Protection and Professional Ethics}, 39 DUQ. L. REV. 329, 331 (2001); Pollman, supra note 49, at 894.
  \item \textsuperscript{58} Linda L. Berger et al., \textit{The Past, Presence, And Future Of Legal Writing Scholarship: Rhetoric, Voice, and Community}, 16 J. LEGAL WRITING INST. 521, 531 (2010).
\end{itemize}
that 196 law schools report having some form of legal writing program.\textsuperscript{59} About ninety percent of these schools require at least two semesters of legal writing classes for students during their first year of study.\textsuperscript{60}

In contrast, civil law countries’ law schools generally do not offer legal writing instruction.\textsuperscript{61} If taught at all, those law schools teaching legal writing do so in a manner similar to American schools over twenty-five years ago, in which a doctrinal professor may ask his students to draft a particular legal instrument as part of the doctrinal instruction of the course.\textsuperscript{62}

One significant factor in the rise of American legal writing programs was a concern expressed by members of the legal academy about the poor state of entering law students’ writing abilities, and concomitant concerns expressed by members of the legal profession about the legal skills of graduating law students. This distress was reflected in the American Bar Association’s 1992 MacCrate Report, which urged greater attention to practical training in communication for law students.\textsuperscript{63} These concerns then contributed to the development of legal writing classes and programs in American law schools.\textsuperscript{64}

The concern about “poor legal writing ability,” though not a uniquely American phenomenon, would be approached differently by law schools in other countries. In most other countries and particularly in civil law countries, law school or legal education begins for students at age eighteen or nineteen and combines the American undergraduate and graduate schooling.\textsuperscript{65} These countries’ legal education systems get students earlier and generally provide a longer period of legal instruction.\textsuperscript{66} As a result, they have more control over students and can address some of the academic weaknesses in skills needed for law practice at an earlier stage of a student’s education.

In contrast, American law students enter law school after four years of undergraduate study in a variety of fields.\textsuperscript{67} As a result, United States law

\textsuperscript{60} Id. at iv; Durako, supra note 53, at 115; Levine, supra note 53, at 57; Ramsfield, supra note 53, at 127.
\textsuperscript{61} Wilson, supra note 5, at 29.
\textsuperscript{62} Id. at 35.
\textsuperscript{64} Pollman, supra note 49, at 896.
\textsuperscript{65} Merryman, supra note 10, at 863; see, e.g., Vladimir Balas, Problems of Legal Education in the Czech Republic, 43 S. TEX. L. REV. 323, 328 (2002).
\textsuperscript{66} Merryman, supra note 10, at 869–71.
schools have a greater need to norm incoming graduate students, some of whom may have weak academic or social science writing backgrounds. The legal writing class assists in the norming process by providing necessary foundational instruction that students in most other countries receive during early undergraduate education.

For example, a student in the United States entering law school may have studied music for four years as an undergraduate and received a B.A. in music before beginning legal studies. Such a student would likely have written fewer social science papers as an undergraduate than a student who studied political science or economics (or a “pre-law” major offered by some American colleges) and wrote extensively in these law-related fields. The differing educational background between these two students, particularly if they are from different regions or socio-economic situations, push American law schools to provide a mechanism to norm students in their first year of study.

So, in addition to formal writing instruction, American legal writing courses often begin with instruction about the structure of the American legal system, the sources that make up the law, and the basic analytical process involved in determining the law. Students with larger deficits in their past academic training are often provided with one-on-one instruction and additional resources to get them on par with their fellow students.

This normalization function played by legal writing courses in American law schools is connected to concepts of social and professional mobility found in the United States education system. Students in the United States are not necessarily encouraged to specialize in their undergraduate studies.

68. Mary S. Lawrence et al., A Review from Three Perspectives: Writing and Analysis in the Law, Helene S. Shapo, Marilyn R. Walter and Elizabeth Fajans, 55 BROOK. L. REV. 1301, 1301 (1990); Carol M. Parker, A Liberal Education in Law: Engaging the Legal Imagination Through Research and Writing Beyond the Curriculum, 1 J. ASS’N LEGAL WRITING DIRECTORS 130, 138 (2002). “Directors of legal writing programs choose first year textbooks for entire entering classes consisting of students of dissimilar backgrounds and diverse abilities.” Lawrence, supra, at 1301.


72. AM. BAR ASS’N SOURCEBOOK, supra note 12, at chpt. II.


many law schools encourage students to simply pursue a “well-rounded” liberal arts education rather than focusing on legal studies in their undergraduate education. Professional mobility is less flexible under the educational systems found in many other countries, where students specialize in their chosen fields at a much earlier age. Thus, because students begin their law studies much earlier under the legal education systems in these countries, they do not have the need for a “norming” course such as those found in the American legal education system.

B. Economic Pressures in the Development of American Legal Writing Courses

In the 1980s, economic pressures from the changing nature of law firms and the competitive nature of American law schools caused a rise in writing programs in the United States. Law firms—particularly large firms—began to charge higher fees and offer higher salaries. As a result, the time and cost of training their new employees became more expensive and they began to favor hiring students who were already trained in legal skills such as legal writing. It was believed that newly-hired attorneys with training in these legal skills required less on-the-job training and could begin generating fees more quickly.

Law schools responded to these market pressures by offering more direct training in skills that make their students more competitive for these jobs. The schools believed that their students would be more likely to be hired by a law firm upon graduation if they were trained in legal writing. Thus, law schools allocated more resources toward such training.

76. Pre-Law Committee of the ABA Section of Legal Education and Admissions to the Bar, supra note 70.
83. Kristen A. Dauphinais, Sea Change: The Seismic Shift in the Legal Profession and How Legal Writing Professors Will Keep Legal Education Afloat in Its Wake, 10 SEATTLE J. SOC. JUST. 49, 123–24 (2011); Thies, supra note 81, at 599.
Connected to the economic pressures coming from the hiring market, economic pressures also came from rising undergraduate and law school tuition rates in the United States. Tuition for one year of law school in 2012 was around $35,000 and, for a number of schools, it was more than $40,000. Total legal education—including books, special bar exam courses, and costs for bar examinations—often totaled over $100,000 for most students. These figures do not include lost opportunity costs (lost earnings) during the three years of law study. Moreover, since the mid-1980s the tuition at private law schools has increased by approximately 156 percent in real terms, while tuition for state residents at public law schools has increased by more than 400 percent.

As costs have risen, so too has the need to get good-paying employment right out of law school in order to pay off tuition loans. Concurrently, to secure these high-paying jobs, there was demand by students for marketable skills to be taught in law school. Thus, higher tuitions spurred student demand as “consumers” of legal education for more skills classes like legal writing, and the law school market responded by offering legal writing and other skills courses. Competing for tuition-paying students and jobs for their graduates, law schools expanded and enhanced legal writing instruction, particularly in the first year of instruction.

87. See Schwarzschild, supra note 86, at 5; Thies, supra note 81, at 599.
88. See John R. Kramer, Will Legal Education Remain Affordable, by Whom, and How?, 1987 DUKE L.J. 240, 245–46. “The lost economic opportunity of full-time employment for three years is, perhaps, as large a deterrent to applying to law school as the expected cash outlays.” Id.
90. Professor Campos adjusted the nominal dollar figures for inflation himself. Id. at 178 n.3.
This historical trend has unfortunately led to a false correlation by some between the increase in the teaching of legal writing in law schools and higher costs of legal education in the United States. Such suppositions have been based on overly reductive conclusions or anecdotal evidence. For example, the Government Accounting Office reported that “more hands-on, resource-intensive” courses were a cause of increased tuition in American law schools. Yet although this finding was based on conversations with law school officials, these officials also pointed out what they believed to be other significant causes of higher tuition: “increased diversity of course offerings—e.g., international law and environmental law; and . . . increased student support—e.g., academic support, career services, and admissions support.” In addition, officials highlighted costs associated with the competition to attract students and faculty—including increased faculty salaries and measures to increase U.S. News and World Report ranking—as significant cost drivers. However, considering that most legal writing courses are taught by non-tenure track faculty, who are paid significantly lower salaries, undercuts the idea that such courses played a significant role in higher tuitions.

Indeed, many of the causes of increased law school tuition mirror increases in the cost of higher education in general in the United States; they have nothing to do with the curricular changes in American law schools that have established and expanded legal writing courses. In fact, comprehensive examinations of the high cost of current legal education find numerous causes. The growth of skills courses is not identified as a

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AALS Survey, 47 J. LEGAL EDUC. 524, 534 (1997).
96. See, e.g., Jennifer S. Bard, “Practicing Medicine and Studying Law”: How Medical Schools Used to Have the Same Problems We Do and What We Can Learn from Their Efforts to Solve Them, 10 SEATTLE J. FOR SOC. JUST. 135, 188 (2011). “Given the reality of a tenured faculty without current legal skills, the question of who will—or should—teach skills is a difficult and expensive one.” Id.
98. Id. at 20.
99. Id.
100. Jan M. Levine & Kathryn M. Stanchi, Women, Writing & Wages: Breaking the Last Taboo, 7 WM. & MARY J. WOMEN & L. 551, 577 (2001). “In adjusted dollars, in 1998, legal writing professors earned, on average, fifty-seven percent of the median salaries of assistant, tenure-track professors of doctrinal subjects, fifty-one percent of the median salaries of associate professors, and forty percent of the median salaries of full professors.” Id.; see also David Segal, What They Don’t Teach Law Students: Lawyering, N.Y. TIMES, Nov. 20, 2011, at A1 (“about half of a law school’s budget is spent on faculty salary and benefits, and . . . tenure-track faculty members consume about 80 percent of the faculty budget”).
significant factor in these empirical studies. For example, a study in 2002 attributed the high cost of law school tuition to: (1) increases in student financial aid; (2) other law school operations such as travel, technology, publications, and co-curricular activities; and (3) increase in expenditures for administrative salaries. The addition of skill-related courses was identified as only a minor factor at best. These findings were also reflected in a study published by the Law School Admission Council.

The economic pressures that encouraged legal writing in the law school curriculum in the United States are not found in many foreign countries. Law schools in many other countries are free to many students or have very low tuition compared to U.S. law schools. Costs in civil law legal educational systems are low. According to one recent study, “[c]osts for legal education run from a low of no tuition or fees to a cost of no more than €2,000 per year.”

Many countries also provide law students with additional subsidies for living expenses. As a result, law schools in many countries are immune from the type of market pressures exerted by students and employers in the United States. A student graduating with little or no debt has less urgency to secure a high paying job. This frees the student and the employer to provide more of the training in legal skills during, rather than prior to, employment. As a result, the cost of legal skills training can be borne by the employer and employee during the employee’s job training rather than by the student during law

103. Sebert, supra note 102, at 524.
104. Id.
105. Id.
107. WILSON, supra note 5, at tbl. 1 (showing that some countries, such as Greece and Turkey, charge negligible tuition); see also Hugg, supra note 71, at 68.
108. WILSON, supra note 5, at 26. Table 1 shows a number of countries with annual tuition under $1000 (Belgium, Hungary, and Switzerland) and most others under €10,000 (Czech Republic, France, Germany, Italy, New Zealand, Portugal, Taiwan, and Venezuela). Id. (noting that continental Europe has lower and publicly-subsidized legal education).
109. Id.
110. Id. “The Greek report indicates that the state ‘provides for books, access to libraries, food discounts for public transportation, as well as housing for economically deprived students.’ Germany provides a government stipend to anyone in the apprenticeship stage of training.” Id.; see, e.g., Balas, supra note 65, at 323–24.
school studies.112

Not surprisingly, the economics of the legal education system have an effect on law school curriculum. In many civil law nations, private universities play a minor role in the higher education system113; “[i]nstead, universities are maintained and are subject to control by the state, usually through the same ministry that has the responsibility for public elementary and secondary education.”114 The United States in contrast has a rather robust private higher education market that competes with public universities. Private universities drive the standards in United States education.115 Many countries do not have these competitive market forces, and issues of enrollment and curriculum are instead controlled or regulated by agencies like the Ministry of Education.116 Thus, curricular decisions, such as those instituting legal writing courses or programs, emanate from the state based on a different set of pressures than in the United States.117

C. Pedagogical Pressures in the Development of American Legal Writing Courses

The economic pressures that encouraged the development of legal writing courses in the United States were concurrent with significant changes in the way both legal writing and writing in general were taught in American universities.118 Writing began to be recognized as central to the learning process and, thus, more important to student learning in all disciplines.119 This pedagogical shift also contributed to the development of legal writing courses.
When legal writing was first offered, particularly prior to the 1980s, it was taught in a very formalistic and formulaic way. The focus of instruction was on the written product and not the process of writing. But, in American universities in the 1980s, influential theories posited that writing was not a reflection of thought but rather a part of thought. These theories argued that language constitutes thought and creates thought and meaning. Under these theories, writing instruction thus focused on intervening during writing or drafting a document rather than after. By breaking down and analyzing writing as a process of thinking, profound changes were instituted in the teaching of writing in American universities. Writing changed from being taught through lecture and example—which emphasized the final written product—to smaller individualized instruction that focused on the writing process of each student. This teaching method was labeled the “process method” of teaching writing.

The changes in composition and rhetoric theory were mirrored in legal writing pedagogy. Most legal writing teachers instituted the process method, also called “new rhetoric,” to teach legal writing. This pedagogy, however, also required a focus on a student’s learning and thinking process, thereby necessitating lower student-to-faculty ratios to allow for individualized instructions. This instruction also proved popular with students and employers, thereby prompting a boom in the hiring of writing faculty. These new members of the academy undertook research, wrote articles, exchanged ideas in conferences, and developed a significant discipline within the American legal academy not found in other countries.

It is surprising that this revolution in the academic study of composition

120. Margolis & DeJamatt, supra note 118, at 98.
122. Rideout & Ramsfield, supra note 118, at 51–52.
124. Lynch, supra note 121, at 240 (citing Margolis & DeJamatt, supra note 118, at 99).
126. Durako et al., supra note 118, at 719–20; Margolis & DeJamatt, supra note 118, at 98–99; Rideout & Ramsfield, supra note 118, at 50.
128. Id. at 98; Rideout & Ramsfield, supra note 118, at 59.
was not emulated in the post-secondary education systems in other countries considering its popularity and importance in American university education. The reticence of foreign universities to embrace composition studies in general also helps explain the resistance to the more specialized field of legal writing.

IV. LEGAL WRITING INSTRUCTION IN CIVIL LAW LEGAL EDUCATION SYSTEMS: THE TROUBLE WITH TRANSPLANTING AMERICAN LEGAL WRITING PEDAGOGY

The unique development of legal writing in the United States and the structural differences between U.S. and foreign legal education systems, as outlined above, make the task of transplanting American-style legal writing pedagogy into other legal educational systems quite problematic. Although specific components of the American legal educational system spurred the rise of legal writing in the United States, the structure and history of legal education systems in other countries also helps explain why legal writing plays a small or nonexistent role in university instruction outside of the United States.

Most countries have students begin their formal legal education at the undergraduate level. The initial years of such undergraduate work consist of studying foundational courses in law, political science, economics, history, and philosophy, much like American pre-law programs. But most American students entering law school do not have degrees in law, nor have they necessarily taken courses to prepare for law school. In contrast, the undergraduate law school curriculum in civil law countries is focused on


134. See supra Part III.

135. The survey undertaken by the Congress on Comparative Law shows Switzerland as the only civil law country in its (limited) survey requiring legal writing instruction in the university, but there are some notable exceptions. A number of Latin American countries have legal writing requirements in their law school curricula. Wilson, supra note 5, at 27. In the 2000s, South Korea revamped its legal education system to require legal writing in the university curriculum. Matthew J. Wilson, U.S. Legal Education Methods and Ideals: Application to the Japanese and Korean Systems, 18 CARDOZO J. INT’L & COMP. L. 295, 341 (2010). There are also American-style law schools that have recently been started in China (Peking University School of Transnational Law) and India (Jindal Global Law School). See Sabina Schiller, A New Global Legal Order, with or Without America: The Case for Accrediting Foreign Law Schools, 26 EMORY INT’L L. REV. 411, 448 (2012).

136. Hugg, supra note 71, at 67; Wilson, supra note 5, at 27.


training students for legal careers. Indeed, it is difficult in many countries for a student studying as an undergraduate in some other field, such as chemistry, to switch to law studies. In their undergraduate studies, particularly at the latter stages, students in civil law nations delve much deeper into legal topics than American undergraduates who plan to enter law school.

For example, in Germany and a number of other civil law countries, legal education is broken down into two stages. Students typically begin an initial four years of law study at around age nineteen followed by an additional two years of practical training or apprenticeship. The initial four years of study requires students to take the following subjects: the “civil law, criminal law, public law, procedural law, and the law of the European Union; legal methodology; and the philosophical, historical, and social foundations of the law.” Students also must complete a practical stage of at least three months during breaks in this four-year period. The first stage ends with an examination that must be passed in order to advance to the apprenticeship stage. Thus, at the end of a student’s “undergraduate” law studies in Germany, he has completed a course of study significantly more steeped in law than his counterpart in the United States.

The second instructional period in the German legal education system, the apprenticeship or practical instruction period, takes place in several compulsory stages covering courts, government and private law offices, and government agencies. Legal writing is done during these stages with the apprentice drafting legal documents in a professional setting. In addition, the apprentice receives some practical training on skills such as negotiation,
client counseling, and litigation.\textsuperscript{149} Finally, apprentices are required to participate in “special study groups,” which focus on practical aspects of the legal profession.\textsuperscript{150} Thus, in the German legal educational system, much of the topics covered in legal writing courses and clinics are provided during this apprentice stage.

At the end of legal education in the American and German system, the matriculating student enters the legal profession at approximately the same age (or number of years of education) but with quite different levels of instruction.\textsuperscript{151} Under the American system, it is possible for a student to enter the legal profession with only three years of legal instruction and no formal practical instruction outside of any required skills classes.\textsuperscript{152} In contrast, a German law student can only enter the profession after six years of legal training, with two of those years devoted to practical skills training in a professional setting.\textsuperscript{153}

The 1998 Sorbonne Declaration, the 1999 Bologna Declaration, and subsequent European Union agreements (commonly known as the “Bologna Process”) encouraged many European Union member countries to adopt a two-tiered legal education system similar to the German model.\textsuperscript{154} Under the Bologna Process, legal study is recommended to begin with an initial undergraduate period of three years followed by a focused master’s program of one to two years.\textsuperscript{155} The apprentice period in European Union member countries varies, with most having an apprentice requirement from one to three years.\textsuperscript{156}

In the legal education system of a country like Germany, American legal writing pedagogy could potentially be borrowed or transplanted in the initial undergraduate stage of legal instruction and, to a greater degree, in the secondary practical training period. Incorporating American legal writing pedagogy in the initial stages is complicated, however, by a number of other differences found in the legal instruction used in many civil law countries. The division of the more theoretical university instruction and the practical skills training during the apprentice period causes the pedagogy found in civil law schools to have quite a different bent compared to its American counterparts.

Besides the structure of the apprentice training, the fact that many civil

\textsuperscript{149} Id. at 92; see also Leith, supra note 69.
\textsuperscript{150} Korioth, supra note 144, at 98.
\textsuperscript{151} Hugg, supra note 71, at 86.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
\textsuperscript{155} For university study in general, the Bologna Process calls for comparable degrees in three cycle structures: bachelor, master, and doctorate. See generally BOLOGNA PROCESS—EUROPEAN HIGHER EDUC. AREA, http://www.ehea.info/ (last visited Feb. 12, 2014); see also Terry, supra note 154, at 116.
\textsuperscript{156} Hugg, supra note 71, at 83–84; Wilson, supra note 5, at 28–29.
law legal education systems are mired in tradition and are not receptive to pedagogical change, particularly from outside sources, also militates against the adoption of American legal writing pedagogy.\textsuperscript{157} University legal education in many civil law countries has a deep history going back to the Middle Ages and, as a result, it is ‘‘‘embedded’ in a ‘tradition and culture with rather little contact to legal practice.’”\textsuperscript{158}

The difference in legal culture affects the way that law students are taught in the university\textsuperscript{159} and makes American-style legal writing pedagogy—with its emphasis on smaller classes and more individualized instruction—particularly difficult to transplant. Some scholars attribute the “magisterial” style of the civil law professor to the code-based system because it emphasizes determinative foundational rules that stress certainty and scientific deductive forms of analysis.\textsuperscript{160} In civil law countries, professors primarily lecture to students who are expected to transcribe much of what is said.\textsuperscript{161} Students are not expected to interact in class but rather take notes and memorize the content.\textsuperscript{162} In the United States, professors focus on cases and, through interaction with students, explore a variety of interpretations.\textsuperscript{163} The teaching in American legal writing classes, with one-on-one instruction and multiple written assessments, is incompatible with the more magisterial civil legal education tradition.

The emphasis of substance over process in many of the civil law educational systems is consistent with the ontological differences between the common and civil law systems.\textsuperscript{164} Other scholars note that common-law inductive reasoning requires a different approach than the deductive rule-based reasoning found in the civil law system.\textsuperscript{165} The essence of the common law system is that the law is created, interpreted, and changed by precedent.\textsuperscript{166} In contrast, the civil law system, in which precedent plays a significantly lesser role in the determination of law, emphasizes

\begin{footnotesize}
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\item Hugg, supra note 71, at 69; Wilson, supra note 5, at 32; see also Alain Lempereur, Negotiation and Mediation in France: The Challenge of Skill-Based Learning and Interdisciplinary Research in Legal Education, 3 Harv. Negot. L. Rev. 151, 164 (1998).
\item Hugg, supra note 71, at 69; Wilson, supra note 5, at 32.
\item Genty, supra note 3, at 139.
\item Id. at 137 (citing Gary F. Bell, The U.S. Legal Tradition Among the Legal Traditions of the World, in Jane C. Ginsburg, Legal Methods: Cases and Materials 66 (rev. 2d ed. 2004)).
\item Lempereur, supra note 157, at 164; Lisa Rieder & Hanjo Hamann, Student Participation in Legal Education in Germany and Europe, 10 German L.J. 1095, 1104 (2009).
\item Genty, supra note 3, at 137–40.
\item Genty, supra note 3, at 137–38.
\end{enumerate}
\end{footnotesize}
determinacy. Common law focuses on the changing nature of the law and places a primacy on judicial decisions, compared to civil law’s emphasis on legislation and the primacy of the legislature. The case-by-case decision making process of the common law requires American law students to focus on incremental problem solving; a legislative-focused civil law system that emphasizes fundamental principles emanating from the Roman legal codes requires broader, larger scale solutions. The American legal writing class plays a key role in introducing law students to the particular form of the common law method. This type of class is inconsistent with the more unitary deductive analysis demanded by the civil law system.

Another significant difference that makes American legal writing pedagogy unsuited to the civil law tradition is that American legal education is one-size-fits-all, compared to more specialized and deliberately-fragmented legal skills instruction found in civil law systems. In the United States, one does not formally train to have a career as a judge. Judges, prosecutors, and lawyers move in and out of their professions and, thus, “legal writing” in these professionals’ education has a different emphasis. In contrast, civil law legal education channels students into training for the specialized work of notaries, barristers, prosecutors, judges, and even bailiffs. For example, in France, the National School for Magistrates only trains judges and magistrates. “The course of study lasts for thirty-one months, covers both theoretical and practical elements of judging, and culminates with an exit examination. ‘Initial appointments are made on the basis of examination scores, those receiving the highest scores getting first pick of the

167. James R. Maxeiner, Legal Certainty: A European Alternative to American Legal Indeterminacy?, 15 TUL. INT’L & COMP. L. 541, 549 (2007); see also Genty, supra note 3, at 132–33. Genty notes these five differences between broadly defined civil law and common law legal cultures: (1) importance in civil law cultures of substance over process; (2) importance in civil law cultures of mastering, rather than creatively interpreting, legal doctrine; (3) limited importance in civil law cultures of attorney-client relationship; (4) importance in civil law cultures of an informed authority figure; and (5) the lack of a concept in civil law cultures of cause lawyering. Id. at 149.


173. Wilson, supra note 5, at 14. For example, being a judge or magistrate in many other countries is a life-long profession and a form of civil service. And there is, as a result, greater specialization within law school. Volcansek, supra note 172, at 810–12.
The American legal writing classroom provides a more standardized, unitary format for legal writing and its instruction. Many American legal writing classes emphasize the skills needed in large law firm practice. This rather broad, law firm practice emphasis of American legal writing programs may not be as useful in the context of the specialized professional education provided in other countries.

The transplanting process is also hampered by cultural bias and suspicion. A significant number of legal professionals in the United States are openly resistant to the use of foreign law and hostile to the value of comparative law. Similarly, some countries may be resistant to American law school pedagogy due to cultural suspicion of American hegemony and neo-colonialism. Thus, a minister of education or other officials responsible for curricular reform may associate the adoption of any program emanating from the United States as suspect and subject to resistance. Indeed, pedagogy related to the common law method has been identified as carrying “baggage” even in foreign countries with common law traditions when there has been a history of colonial occupation.

175. See AM. BAR ASS’N SOURCEBOOK, supra note 12, at 5–47; see also Beverly Petersen Jennison, Saving the Law Professor: Using Rubrics in the Teaching of Legal Writing to Assist in Grading Writing Assignments by Section and Provide More Effective Assessment in Less Time, 80 UMKC L. REV. 353, 359 (2011).
180. Karen J. Alter et al., Transplanting the European Court of Justice: The Experience of the Andean Tribunal of Justice, 60 AM. J. COMP. L. 629, 634 (2012); Daniel Berkowitz et al., The Transplant Effect, 51 AM. J. COMP. L. 163, 189 (2003) (“Perhaps the rejection of the earlier transplants can be attributed to the fact that they were for the most part imposed under colonialism.”); see also Mattei, supra note 4, at 319; David Pimentel, Rule of Law Reform without Cultural Imperialism: Reinforcing Customary Justice through Collateral Review in Southern Sudan, 2 HAGUE J. ON RULE L. 1, 5 (2010).
181. Dina Francesca Haynes, Client-Centered Human Rights Advocacy, 13 CLINICAL L. REV. 379, 386 (2006); Kathleen Kelly Janus & Dee Smythe, Navigating Culture in the Field: Cultural Competency Training
to transplanting American legal education pedagogy to other countries’ legal systems is this history of Western colonialism and the concern that neo-colonialism or neo-imperialism might accompany it.182

V. CONVERGENCE TOWARD STRONGER LEGAL WRITING INSTRUCTION

Although the differences in the legal systems make the project of transferring foreign forms of pedagogy and foreign institutions of legal education seem impractical, if not futile, the adoption of aspects of foreign legal educational systems holds promise for improving legal writing training in both the United States and in foreign legal systems. Convergence could benefit legal education worldwide.

John H. Merryman, in his excellent article on comparative legal education, stated that the objectives of legal education in civil law countries are “vastly different” from those in the United States.183 He noted the differences in the structure of the two educational and legal systems, the differences in pedagogical approaches, and the differences in the role of lawyers in the two systems.184

But Merryman’s observations may now be outdated. Since the time he wrote his article, the legal educational systems have converged in certain respects.185 There are shared or universal expectations about the goal of a legal education in both civil and common law systems. For example, Richard Wilson writes in his report prepared for the 18th International Congress on Comparative Law: “[t]he European distinctions between law practice and other legal roles, however, do not appreciably differ from the functions carried out by U.S. jurists and advocates, and legal education still has, as its primary function, ‘the formation of skilled lawyers.’”186 And thus, though the exact criteria of a “skilled lawyer” may vary from country to country,187 and this training or instruction is delivered in different stages of the students’ education, skills training such as the development of competent legal writing is a universally important component in the training of lawyers.188

183. Merryman, supra note 10, at 865.
184. Id. at 865–66.
185. Most significantly, since Professor Merryman wrote this article, the European Union has entered into the Bologna Process, which explicitly seeks to converge or harmonize with American educational methods. See Ana Cecilia MacLean, Rethinking Legal Education in Latin America, 12 L. & BUS. REV. AM. 503, 506 (2006).
187. Lawyers in different countries hold varying positions that are not necessarily considered “the traditional practice of law. These include, most typically, notaries, prosecutors, judges or magistrates, and sometimes bailiffs.” Id. at 14.
188. Id.; see also Rainer Grote, Comparative Law and Teaching Law Through the Case Method in the Civil Law Tradition—A German Perspective, 82 U. DET. MERCY L. REV. 163, 170 (2005) (“The German system of legal education remains committed to the aim of producing jurists qualified for all legal professions.
systems of law could profitably borrow from one another to advance this shared goal.

A. Civil Law Legal Educational Systems Could Profitably Borrow from the American Legal Writing Academy

Although the structural and historical differences between American and civil law countries’ legal systems make transplantation or borrowing aspects of the legal education systems seem futile, there are places where civil law legal education systems could profit directly from American legal writing pedagogy. In particular, the firm separation in the instruction of the theory and practice of law found in many civil law legal education systems is lamentable because theory and practice inform each other.189 Studies on the best practices for legal education stress the need for the integration of theory and practice. Indeed, the Carnegie and MacCrate reports set the integration of theory and practice as a key goal for the American legal education system.190

Although law schools in the United States do not have complete integration in the instruction of theory and practice, they tend to aspire to and do achieve a relatively high level of integration191 compared to their civil law counterparts.192 For example, most American law schools offer an array of practical classes on topics such as client counseling, alternative dispute resolution, and contract drafting, which integrate the substantive doctrine of the law with its application to simulated or actual client cases.193 The civil law legal education system would profit from a greater integration of theory and practice during the university stages of legal instruction.194 Relegating such instruction to the apprentice period is detrimental to a complete understanding of the theory and practice of law because it divides the theory taught in the university from the practice taught during the apprentice period.195


190. MacCrate Report, supra note 63, 128; Sullivan et al., supra note 63, at 12; Victoria L. VanZandt, Creating Assessment Plans for Introductory Legal Research and Writing Courses, 16 J. LEGAL WRITING INST. 313, 313–14 n.3 (2010).

191. Siegel, supra note 3, at 819; see also Margaret Martin Barry, Practice Ready: Are We There Yet?, 32 B.C.J.L. & SOC. JUST. 247, 268 (2012); Byron D. Cooper, The Integration of Theory, Doctrine, and Practice in Legal Education, 1 J. ASS’N LEGAL WRITING DIRECTORS 51, 61 (2002); M. H. Hoefflich, Plus Ça Change, Plus C’Est La Même Chose: The Integration of Theory & Practice in Legal Education, 66 TEMPLE L. REV. 123, 134 (1993); Ostertag, supra note 11, at 334; Robbins-Tiscione, supra note 51, at 324.

192. Ostertag, supra note 11, at 334; Robbins-Tiscione, supra note 51, at 324.


194. Hugg, supra note 71, at 83; Wilson, supra note 3, at 827; see also Davies, supra note 24, at 29.

195. Wilson, supra note 3, at 828; see also Clark, West Germany, supra note 189, at 1805.
More specifically, the study of both theory and practice can be enhanced in the civil law legal education curriculum by offering specialized legal writing and rhetoric courses like those found in American law schools. Such courses address the drafting of contracts, wills, judicial opinions, and legislation.196 A by-product of the growth of these courses and the legal writing faculty teaching and writing about them is a robust catalogue of teaching materials on legal skills.197 In the past few years, excellent new textbooks have been released on transactional drafting that provide instruction to a level unavailable in the past and rivaling that available through bespoken instruction provided in a specialized law firm to its own associates.198

The legal education system in many civil law nations would also benefit if it followed its American counterparts by giving the study and instruction of legal writing and discourse greater prominence in the academy in general. Although in some countries instruction during the apprentice period includes a classroom component,199 this instruction usually takes place outside of the university.200 Because it is physically removed from the university, such instruction maintains the rigid divide between practical instruction outside of the university and the academic and theoretical teaching found inside. As a result, theory gets disconnected from practice and concomitantly practice gets removed and provides less guidance for theory.201

Legal writing is central to the work of the legal profession and it deserves study and prominence in the legal academy as a discipline of its own right.202 The separation of the teaching of academic and practice skills, as found in many civil law legal education systems, harms students because academic writing becomes separate and divorced from practical writing and vice versa. Bringing the teaching of legal writing into the academic


197. Teitcher, supra note 196, at 134.


200. See Mauer, supra note 199, at 45 (illustrating German and Japanese models). In some civil law countries, such as Belgium and Italy, university faculty design and teach courses offered during the apprentice period. WILSON, supra note 5, at 15 n.35.

201. Davies, supra note 24, at 29 (citing Japan as an example of where there is a disconnect between theory and practice in legal scholarship).

202. Berger et al., supra note 58, at 527; see also Mary S. Lawrence, The Legal Writing Institute the Beginning: Extraordinary Vision, Extraordinary Accomplishment Based on Interviews with Laurel Carrie Oates and J. Christopher Rideout, and Documents from the Archives of the Legal Writing, 11 LEGAL WRITING: J. LEGAL WRITING INST. 213, 214 (2005).
curriculum is a way to bridge theory and practice. In addition, practical writing, which is connected to the academic subjects being studied, enhances a “deeper” learning of those subjects. Furthermore, the academic study of writing shows that writing is not the end product of thinking and academic exploration, but an integral part of the process of thinking and articulating academic theory.

In addition, American legal writing pedagogy could be valuable to the later stages of the civil law legal education system. Legal writing is taught during the final stage of legal education in most civil systems—specifically during the apprentice period. The mandatory training or apprentice period in civil law countries, however, has been criticized for its uneven quality of instruction. American legal writing pedagogy holds out the promise of improving the training and apprentice periods in countries that require such service. Because legal writing pedagogy has matured as a formal discipline in the United States, the apprentice instruction in other countries could profit from its advances. The apprenticeships could be made more efficient, effective, and connected to the universities if American legal writing pedagogy is borrowed during these final stages of the formal legal education process. Indeed, this could be an area of growth for universities in civil law countries consistent with the Bologna principles and an inroad for greater life-long learning opportunities.

Furthermore, legal writing pedagogy can play a role in harmonizing the legal education in the European Union with principles found in the Sorbonne-Bologna Declaration. The Bologna Declaration, adopted by European Ministers of Education in 1999, sought to bring about convergence in higher education in Europe, including legal education. The Declaration

203. See supra Part III.C.
206. WILSON, supra note 5, at 15, 28.
208. See Bernadette T. Feeley, Training Field Supervisors to Be Efficient and Effective Critics of Student Writing, 15 CLINICAL L. REV. 211, 213 (2009); J. Christopher Rideout, Discipline-Building and Disciplinary Values: Thoughts on Legal Writing at Year Twenty-Five of the Legal Writing Institute, 16 LEGAL WRITING: J. LEGAL WRITING INST. 477, 480 (2010); see also Dauphinais, supra note 13, at 92.
209. Wilson, supra note 3, at 832–33.
212. The Bologna Process refers to the procedures for implementing the Bologna Declaration, which was signed on June 19, 1999 by twenty-nine countries. It is also referred to as the “Sorbonne-Bologna”
established three main goals: international competiveness, mobility, and employability. 213 It also specifically sought to make European universities “more competitive internationally so as to rival American universities” and to increase the connection between education and employment. 214 Borrowing American legal writing pedagogy would advance these goals because it is intimately connected to employment 215 and is a prominent component of American universities teaching law. 216 Furthermore, the norming effect of American legal writing courses would also promote the norming goals underlying the Bologna Process, which seek consistency and student mobility between European Union members’ educational systems. 217

Finally, civil law students appear to want more skills instruction, such as legal writing, in their university education. 218 For example, in one poll taken at a Hungarian University, students identified the lack of instruction in practical skills as a “serious defect” in their legal education. 219 Transplanting American legal writing-type courses into the civil law curriculum would remedy this deficiency.

B. American Law Schools Can Benefit From Borrowing Aspects of Other Countries’ Legal Education Systems as it Relates to the Teaching of Legal Skills

With a similar dose of skepticism about the efficacy of borrowing from foreign legal educational systems, American law schools—and the way they approach the teaching of legal skills such as writing—may benefit by borrowing from foreign legal educational systems.

American legal education would benefit from more robust pupilage or apprentice periods for students entering legal practice. 220 Currently, legal practice opportunities are available to most law students through clinics, externships, and internships. 221 But such opportunities are usually not

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214. Id.
215. See supra Part III.B.
216. Carol McCrehan Parker, The Signature Pedagogy of Legal Writing, 16 LEGAL WRITING J. LEGAL WRITING INST. 463, 471–72 (2010); Berger et al., supra note 58, at 527.
217. See generally BOLOGNA PROCESS—EUROPEAN HIGHER EDUC. AREA, supra note 155; see also Terry, supra note 154, at 116.
218. Wilson, supra note 5, at 32 (citing to a 2002 empirical study taken among students at the University of Szeged Faculty of Law who “identified problems with teaching methods among the three most serious defects of legal education . . . 54% of the students said that ‘the lack of practical legal education’ was a serious defect in their education”).
219. Id.
220. Hugg, supra note 71, at 86; Monahan, supra note 171, at 56.
221. See Santacroce & Robert R. Kuehn, supra note 193; Basu & Ogilvy, supra note 193, at 4; Hoffman, supra note 193, at 204.
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required for graduation and the law school accrediting agencies, such as the American Bar Association and the Association of American Law Schools, limit the number of hours of practical training students may take. The quality of legal skills instruction, including the skill of practical legal writing, in the United States would be enhanced if apprenticeships were required to the extent found in many civil law educational systems.

More rigorous and extensive apprentice training for American lawyers is a topic that receives regular attention from members of the profession. Such an idea is not new and not inconsistent with a number of state bar admission regulations that permit apprentice training in lieu of law school. Substituting an apprentice period for the third year of law school is one suggestion that has recently gained attention and would have significant benefits for students. Indeed, in 1973 U.S. Supreme Court Chief Justice Warren Burger made such a recommendation, and this same suggestion was raised in 2012 by Judge Jose Cabranes of the U.S. Court of Appeals for the Second Circuit. Certainly, instituting apprenticeships would make American law schools more like their civil law counterparts as well as more in line with the education provided by medical schools in the United States.


227. Cunniffe, supra note 225, at 133-34. Several states have bar admission requirements involving apprentice training: In four states, Washington, Vermont, California, and Virginia, an individual can be admitted to the bar despite never having spent any time in law school. In New York, Wyoming, and Alaska, at least one year of law school is required prior to completion of a law-office study program. In Maine, a student may gain admission to the bar by completing two years of law school followed by one year of law-office study. Delaware and Vermont require apprentice training for all applicants even if they complete three years of law school training. Several states have replaced post-law school apprentice training with so-called “bridge the gap” programs.

228. Id. (footnotes omitted).


231. See supra Part IV.
Apprentice programs, if administered appropriately, hold the promise of more cost-effective legal training by shifting the burden to employers, who have the means and motivation to train newly-hired employees. In addition, the training would be more specialized and focused on the needs of the market in a particular practice area and thus more effective in teaching. As an extreme example, imagine three students attending a law school in Boston, Massachusetts. One intends to move to a small town in Alaska to work in a small general legal practice firm specializing in family law, another intends to join a law firm in Louisiana specializing in oil and gas law with an emphasis in transactional consulting, and the last intends to work as a prosecutor in New York. The types of specialized legal skills training needed to succeed in each of these jobs are significantly different and, thus, most efficiently delivered by each individual employer instead of instructors in a classroom in Boston. Although certainly some general skills, like good writing, research, and oral advocacy, can be taught on a broad basis and are transferable to more specialized employment, it is more efficient and effective to perform such training in the employment rather than academic setting.

Another aspect of foreign legal education that could be borrowed by the United States to potentially improve the legal writing instruction is providing legal education at the undergraduate level. Allowing students to shorten the length of their post-secondary instruction through undergraduate legal education—like most civil law and some common law countries—permits students to complete the formal instruction in legal doctrine at an earlier stage

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233. See John Furlong, The Return of the Apprentice: New Lawyer Training Models for the 21st Century, CTR. FOR THE L. PROF. 1, 7–8 (2010), available at http://dotank.nyls.edu/futureed/Furlong%20The%20Return%20of%20the%20Apprentice.pdf; see also David Finegold & Karin Wagner, Are Apprenticeships Still Relevant in the 21st Century? A Case Study of Changing Youth Training Arrangements in German Banks, 55 INDUS. & LAB. REL. REV. 667, 683 (2002), available at http://milestoneplanning.net/whitepapers/Apprenticeship%20Article%20Final.pdf. Employment-based or in-house training of legal skills also promotes distributive fairness. Under the current law-school-based teaching of specialized legal skills, the student (particularly the students not receiving scholarships) indirectly subsidize the law firms with which they ultimately work because the student pays for the training from which the employer benefits. Such distributive justice concerns are less urgent in civil legal education systems where students receive significant state support for education. See supra note 110 and accompanying text.


235. Id.; see also Irish, supra note 204, at 11 (“At the University of Wisconsin Law School, for example, we devote enormous resources to trial and appellate advocacy courses even though many of our graduates never engage in either trial or appellate practices.”).

236. See supra notes 139–141 and accompanying text.
and advance to the more specialized legal skills training proposed above.\textsuperscript{238} Although some scholars advocate allowing undergraduates to major in law and sit for the bar exam,\textsuperscript{239} such proposals would improve legal writing and other legal skills instruction only if they were paired with rigorous apprentice or pupilage requirements.\textsuperscript{240}

A less extreme alternative for expanding undergraduate legal training is the more routine use of joint degree programs, which allow students to begin their law studies as an undergraduate and apply credits for law school classes toward both the undergraduate and law degrees.\textsuperscript{241} A combined degree program can currently be found in some schools but is rather rare.\textsuperscript{242} Such programs could lower the cost of a lawyer’s overall education and, if legal instruction begins at the undergraduate level, provide for a more robust legal training.

Another aspect of civil law legal education that might indirectly effect legal writing instruction is increased public subsidies of legal education.\textsuperscript{243} Reducing the cost of legal education in the United States would allow recent law school graduates the flexibility to take lower paying jobs that provide more practical training or to pursue additional practical training.\textsuperscript{244} Such an initiative can be found in student loan forgiveness programs that subsidize lawyers’ law school debts in exchange for working in certain public interest positions.\textsuperscript{245} Unfortunately, the trend in the United States in recent years has been away from public subsidies for higher education.\textsuperscript{246} This policy has made a law school education difficult for people with limited financial resources, and it places greater urgency on finding high paying jobs after


\textsuperscript{240} McGinnis & Mangas, supra note 238.


\textsuperscript{243} Wilson, supra note 5, at 26; see supra note 110 and accompanying text.

\textsuperscript{244} Public subsidies for legal education would demonstrate that society values people with legal training for society, justice, and the greater good. When a legal education is self-funded and students enter the profession with high levels of debt, their personal interest is likely to outweigh their professional commitment to working for the interests of others. See generally Lewis A. Kornhauser & Richard L. Revesz, \textit{Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt}, 70 N.Y.U. L. REV. 829, 832 (1995); Lisa G. Lerman, \textit{The Slippery Slope from Ambition to Greed to Dishonesty: Lawyers, Money, and Professional Integrity}, 50 Hofstra L. Rev. 879, 886 (2002).

\textsuperscript{245} Bourne, supra note 92, at 676.

\textsuperscript{246} Id.; John Quintero, \textit{The Great Cost Shift: How Higher Education Cuts Undermine the Future Middle Class} 32 (2012).
A final area of civil law legal education that would improve American legal writing instruction is the prominence of comparative and international law in its law school curriculums, including the study of foreign languages. Many law schools in civil law countries require the study of international and comparative law, while few American law schools do. In an increasingly globalized legal practice, such an omission by U.S. law schools underprepares their students for the practice of law. Similarly, most other countries require the study of a foreign language by their law students, unlike American law schools. Recent studies have documented the benefits of second language learning not only on students’ linguistic abilities but also on their cognitive and creative abilities. The lack of foreign language pedagogy in American law schools detracts from their otherwise comprehensive and rigorous curriculum of legal skills instruction.

VI. CONCLUSION

Due to historical and structural differences between the legal education systems of the United States and other countries, the American model of teaching legal writing has limited appeal for most other countries, particularly in civil law countries. Despite the barriers to its adoption, American legal writing pedagogy can be useful for foreign legal educators.

As a general matter, civil law legal education systems would profit from the more robust and developed pedagogy of legal writing found in the United States. On the most basic level, the civil law legal education curriculum can be enhanced with specialized legal writing courses addressing the drafting of contracts, wills, judicial opinions, and legislation. Additionally, legal writing pedagogy can play a greater role at the stage in which most legal writing is

247. Quinterno, supra note 246, at 33; Bourne, supra note 92, at 676; see also supra note 111 and accompanying text.


249. Clark, Globalization, supra note 21, at 1076; Curran, supra note 22, at 660; Mills et al., supra note 21, at 143.

250. William E. Butler, Mezhdunarodnoe Pravo, 101 Am. J. Int’l L. 917, 918 (2007) (reviewing INTERNATIONAL LAW (V. I. Kuznetsov & B. R. Tuzmukhamedov eds., 2d ed. 2007) (“all Russian law students are required to study at least one foreign language during their first degree in law, with emphasis on legal terminology and texts”); Chang-Ia Lo, Driving an Ox Cart to Catch Up with the Space Shuttle: The Need for and Prospects of Legal Education Reform in Taiwan, 24 Wis. Int’l L.J. 41, 58 (2006) (“To take the College of Law of National Taiwan University as an example, mandatory courses required by the university are Chinese, foreign language, and history.”).


taught in civil law legal education systems: the apprentice period. Legal writing pedagogy can enhance the apprentice period, broaden the mission of civil law universities, and provide an inroad for greater life-long learning opportunities. Such changes would harmonize the legal education in the European Union with the principles in the Sorbonne-Bologna Declarations.254 Lastly, these changes are likely to be popular with students and enhance their overall learning.

By the same token, the United States can profitably borrow from its civil law counterparts to enhance the instruction of legal writing. By providing more opportunities for apprenticeships in its legal education system, legal skills can be taught more efficiently and effectively. Increasing undergraduate legal instruction presents the opportunity to lower the costs of legal education in the United States and to improve the effectiveness of legal training, particularly during the third year of law school. Lastly, American law students’ writing and general legal skills would benefit from borrowing the civil law system’s more robust foreign language and comparative and international law instruction. Borrowing these aspects of foreign legal education systems would strengthen the teaching of legal writing and other legal skills in American law schools.

254. See generally Bologna Declaration, supra note 211.