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The Crisis of the American Law School

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THE CRISIS OF THE AMERICAN LAW SCHOOL

Paul Campos*

The economist Herbert Stein once remarked that if something cannot go on forever, it will stop. Over the past four decades, the cost of legal education in America has seemed to belie this aphorism: it has gone up relentlessly. Private law school tuition increased by a factor of four in real, inflation-adjusted terms between 1971 and 2011, while resident tuition at public law schools has nearly quadrupled in real terms over just the past two decades. Meanwhile, for more than thirty years, the percentage of the American economy devoted to legal services has been shrinking. In 1978 the legal sector accounted for 2.01 percent of the nation's GDP: by 2009 that figure had shrunk to 1.37 percent—a 32 percent decrease. These two trends are not mutually sustainable. If the cost of becoming a lawyer continues to rise while the economic advantage conferred by a law degree continues to fall, then eventually both the market for new lawyers and for admission to law school will crash. In the early years of the 21st century, this abstract theoretical observation has begun to be confirmed by concrete events. The ongoing contraction in the employment market for new lawyers has combined with the continuing increase in the cost of legal education to produce what has begun to be recognized as a genuine crisis for both law schools and the legal profession

INTRODUCTION

I generally did well in law school—I was one of the students who “got it.” I graduated with honors, honor society, journal etc., and I managed to land an associate position at a large regional firm in the same city. Though I had fully intended to work for a non-profit or a legal services-type organization, my debt load prevented it, and I felt I had to take a job at a firm. I worked for just over a year and was laid off in late 2009. Since losing my job it has been a downward spiral.

Though I am incredibly grateful for what I have, I cannot help but wish for more: I have a J.D. with honors, an LL.M. from the top tax school in the country, and meaningful work experience. Yet, I cannot land a full-time, permanent job. I am lucky to have health insurance, but I have no time off. No sick time. My work situation is flexible (I can come in late/leave early for an appointment, etc.), but I only get paid for the hours I work. I am extremely grateful that it is unlikely I will default on my loans—thus far, I have been able to manage my nearly \$250,000 debt with Income-Based Repayment and unemployment forbearance.

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I know that I am better off than a lot of these younger lawyers. That I qualified for unemployment is huge. I get job interviews. I can afford the apartment I share with my friend. I have a great resume. I am an excellent researcher and writer. I rarely go to bed hungry anymore. I just have to be patient. As soon as the economy picks up I'll get a permanent job. Right . . . ?

I am discouraged. I'm humiliated and demoralized. Worse yet, I am not challenged on a daily basis. I've resigned myself to the fact that I will never have a career. I won't have retirement savings. I will be living paycheck-to-paycheck for the next few years. I will continue to be immune to the rejection letters I receive in response to the litany of resumes and cover letters I send out daily (if I even receive indication that my resume was received). I will be just another number in this generation of lawyers who will fall by the wayside.

—Excerpted from a letter from a 2007 law school graduate to the author, dated August 23, 2011.

The economist Herbert Stein once remarked that if something cannot go on forever, it will stop.¹ Over the past four decades, the cost of legal education in America has seemed to belie this aphorism: it has gone up relentlessly. Private law school tuition increased by a factor of four in real (inflation-adjusted) terms between 1971 and 2011,² while resident tuition at public law schools has nearly quadrupled in real terms over the past two decades.³ Meanwhile, for more than thirty years, the percentage of the American economy devoted to legal services has been shrinking. In 1978 the legal sector accounted for 2.01 percent of the nation's GDP. By 2009, that figure had shrunk to 1.37 percent—a 32 percent decrease.⁴

These two trends are not mutually sustainable. If the cost of becoming a lawyer continues to rise while the economic advantage

1. Herbert Stein, *Herb Stein's Unfamiliar Quotations*, SLATE (May 16, 1997, 3:30 AM), http://www.slate.com/articles/business/it_seems_to_me/1997/05/herb_steins_unfamiliar_quotes.html; see also William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can't Pay the Bills?*, 98 A.B.A. J. 30 (2012).

2. Data extrapolated from Harvard and Columbia Law School tuition data. See *infra* Part I. Many law schools appear to have historically set tuition based on the practices of other law schools. See Brian Tamanaha, *The Responsibility of Yale Law School for the Rise of Law School Tuition Nationwide—and What It Can Do to Help*, BALKINIZATION (Nov. 21, 2011), <http://balkin.blogspot.com/2011/11/responsibility-of-yale-law-school-for.html>.

3. Figures for private and public law school tuition are taken from American Bar Association reports. See generally AM. BAR ASS'N, *LAW SCHOOL TUITION 1985–2011*, available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/law_school_tuition.authcheckdam.pdf (last visited Aug. 29, 2012). Throughout this Article, I adjust nominal dollar figures for inflation based on a standard CPI calculator, found here: <http://146.142.4.24/cgi-bin/cpicalc.pl>.

4. Matt Leichter, *A Profession in Decline: BEA Legal Sector Data (1977–)*, THE L. SCH. TUITION BUBBLE, <http://lawschooltuitionbubble.wordpress.com/original-research-updated/>

conferred by a law degree continues to fall, then eventually both the markets for new lawyers and for admission to law school will crash. In the early years of the 21st century, this abstract theoretical observation has been confirmed by concrete events. The ongoing contraction in the employment market for new lawyers has combined with the continuing increase in the cost of legal education to produce what many now recognize as a genuine crisis for both law schools and the legal profession.

Part I of this Article describes the increase in the cost of American legal education over the past four decades. Part II explains some of the most important factors that have driven that increase. Part III explores the consequences of the increased cost for recent law graduates and current law students in the context of the changing employment market for lawyers. Part IV summarizes the situation and considers what sorts of immediate and long-term changes are likely to take place in the structure of what I argue has become a fundamentally unsustainable institution: the contemporary American law school.

PART I: THE RISE OF AN UNSUSTAINABLE MODEL OF LEGAL EDUCATION

When I enrolled in the University of Michigan Law School in the fall of 1986, first-year tuition for Michigan residents was \$4,420.⁵ Adjusting for inflation, this was the equivalent of just over \$9,000 in 2011. I would have paid only \$800 if I had enrolled at the law school fifteen years earlier⁶—the equivalent of \$4,443 in 2011 dollars. From the present perspective, that seems like quite a bargain: in 2012–2013 resident tuition for first-year law students at Michigan was \$48,012.⁷ Remarkably, over the past four decades the real, inflation-adjusted cost of resident tuition at Michigan's law school has increased more than ten-fold.⁸ Over the same period, non-resident tuition has increased in real terms by a factor of "only" 4.4 to \$49,740.

a-profession-in-decline/ (last visited Aug. 29, 2012). Leichter cites Bureau of Economic Analysis (BEA) data in the article. See *Industry Data*, U.S. DEP'T OF COMMERCE, http://bea.gov/iTable/index_industry.cfm (last visited Aug. 29, 2012).

5. See *University of Michigan Law School Tuition 1950–2009*, THE UNIV. OF MICH. L. SCH., http://www.law.umich.edu/historyandtraditions/students/Documents/Law_School_Tuition_History.pdf (last visited Aug. 29, 2012).

6. See *id.*

7. See *2012–2013 Law School Tuition Rates*, L. SCH. TUITION RATES, <http://www.law.umich.edu/currentstudents/financialaid/Pages/tuition.aspx> (last visited Aug. 29, 2012).

8. See *supra* note 5 (calculation based on tuition increases since the 1970s).

In this regard, Michigan's law school is far from unique. The University of Colorado Law School, where I teach, charged \$975 in tuition to state residents thirty years ago (the equivalent of \$2,413 in 2011 dollars) and charges more than \$31,000 today.⁹ As a matter of economic reality, public legal education in America is ceasing to exist. Many public law schools now charge more in resident tuition than even the most expensive private schools charged just a few years ago—this despite the fact that private law school tuition has also skyrocketed over the course of the last generation.¹⁰ Although the rise in private law school tuition is disturbing, the gradual elimination of any apparent political commitment to legal education as a public good is perhaps even more troubling.

I will present historical tuition data in 2011 dollars so that readers may see the extent to which the cost of going to law school has changed in real economic terms. Below is the change in the tuition and fees charged by Harvard Law School over the course of the past four decades:

- 1971: \$12,386
- 1981: \$15,862
- 1991: \$27,207
- 2001: \$35,817
- 2012: \$50,880

Over the past four decades, Harvard's tuition has more than quadrupled in inflation-adjusted terms and has nearly doubled in the past two decades.¹¹

Below is the median resident tuition at ABA-accredited public law schools, again in 2011 dollars:¹²

- 1985: \$3,746
- 1995: \$7,201
- 2005: \$13,944
- 2011: \$19,788

9. Historical tuition figures for the University of Colorado are based on the school's catalogue (on file with author).

10. See *infra* note 12 and accompanying text.

11. For tuition data from 1971 to 2001, see HARVARD UNIV., HARVARD LAW SCHOOL CATALOGUE 1970–1971, available at <http://pds.lib.harvard.edu/pds/view/8508871>. Tuition data for 2012 is taken from the Law School website. See *Student Financial Services: Student Budget*, HARVARD L. SCH., <http://www.law.harvard.edu/current/sfs/basics/cost/budget.html> (last visited Aug. 29, 2012).

12. See AM. BAR ASS'N, *supra* note 3. I have adjusted the nominal dollar figures cited in the table for inflation. See also John A. Sebert, *The Cost and Financing of Legal Education*, 52 J. LEGAL EDUC. 516 (2002) (nominal dollar figures have been adjusted for inflation).

Finally, here are the median tuition rates over time for private law schools:¹³

- 1985: \$15,438
- 1995: \$24,988
- 2005: \$33,021
- 2011: \$39,496

Since the mid-1980s, private law school tuition has increased by 155.8 percent in real, inflation-adjusted terms, while public law school resident tuition has increased by an astounding 428.2 percent over inflation.¹⁴ The growth of resident tuition at individual public law schools over just the past fifteen years is breathtaking (again, all figures are in constant 2011 dollars): Minnesota Law School's tuition has increased from \$11,890 to \$35,000, Ohio State Law School's from \$5,860 to \$27,800, Texas Law School's from \$5,340 to \$27,748, and Illinois Law School's from \$7,225 to \$40,600.¹⁵ Recently, the University of California-Berkeley Boalt School of Law became the first public law school to charge a resident tuition of more than \$50,000,¹⁶ but several more seem sure to follow.¹⁷ According to one projection, tuition at nearly a dozen law schools will be over \$70,000 per year by the end of the decade.¹⁸

To understand what these numbers mean for the cost of the American legal education for the average American family, consider the University of Michigan Law School, by some measures the nation's most elite public law school. Recall that in 1971, annual resident tuition was \$4,443 in 2011 dollars.¹⁹ In that year, median household income in America was \$49,709 in 2011 dollars.²⁰ One year's resident tuition at what was then, and remains now, one of

13. See AM. BAR ASS'N, *supra* note 3.

14. See *id.*

15. *Law School Rankings by Tuition*, INTERNET LEGAL RES. GRP., <http://www.ilrg.com/schools/tuition/> (last visited Aug. 29, 2012). Again, I have adjusted the nominal figures for inflation. 2011–2012 data is taken from each law school's website.

16. *Fees & Cost of Attendance*, BERKELEY L., UNIV. OF CAL., <http://www.law.berkeley.edu/6943.htm> (last visited Aug. 29, 2012).

17. See Karen Sloan, *Tuition Is Still Growing*, NAT'L L.J. (Aug. 20, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202567898209&Tuition_is_still_growing&slreturn=20120728213533 (stating that average resident tuition at public law schools rose by 6 percent).

18. Matt Leichter, *Private Law School Tuition Projections*, THE L. SCH. TUITION BUBBLE, <http://lawschooltuitionbubble.wordpress.com/original-research-updated/tuition-projections/> (last visited Aug. 29, 2012).

19. See *supra* text accompanying note 6.

20. See *Historical Income Tables: Households*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/www/income/data/historical/household/index.html> (last visited Aug. 9, 2012).

the nation's pre-eminent law schools cost about one month's pre-tax income for the average American household.

In 2011, median household income in America was \$49,909, almost exactly what it was forty years ago after adjusting for inflation.²¹ But now the average American household would need to spend slightly less than an entire year's worth of pre-tax income to pay for a year's resident tuition at Michigan Law School. Below is the change over time in the percentage of pre-tax annual income that the median American household would have to pay for resident tuition at Michigan:

- 1970: 7.9 percent
- 1980: 11.3 percent
- 1990: 22.8 percent
- 2000: 49.3 percent
- 2011: 93.8 percent²²

Over this time span, during which median household income saw essentially no net growth, the nation's real, inflation-adjusted gross domestic product more than tripled, and more than doubled in per capita terms.²³ America is, overall, three times richer than it was forty years ago. But the cost of attending law school has increased by a factor of four at elite private law schools and by a factor of more than ten for resident students at one of the nation's most elite public law schools. The estimated total cost of attendance for most law schools is now more than \$150,000 and has topped \$200,000 at many of them.²⁴ Meanwhile, the average American family enjoys only about \$17 more per month in income in real terms than it did four decades ago.

Law school tuition increases have occurred within the larger context of the rising cost of a college education in America. Although undergraduate tuition has not risen nearly as fast as the cost of law

21. Robert Pear, *Recession Officially Over, U.S. Incomes Kept Falling*, N.Y. TIMES, Oct. 9, 2011, <http://www.nytimes.com/2011/10/10/us/recession-officially-over-us-incomes-kept-falling.html>.

22. I calculated these percentages by comparing tuition figures to the median household income in the relevant year, as reported by the Census. See INTERNET LEGAL RES. GRP., *supra* note 15.

23. *What Was the U.S. GDP Then?*, MEASURING WORTH, <http://measuringworth.com/usgdp/> (last visited Aug. 29, 2012).

24. For example, George Washington Law School estimates that the annual cost of attendance for the 2011–12 academic year—including tuition, fees, and nine months of cost of living expenses—is \$74,400. See *Tuition & Estimated Costs*, THE GEORGE WASHINGTON UNIV., <http://www.law.gwu.edu/Admissions/tuition/Pages/default.aspx> (last visited Aug. 29, 2012). The total cost of a law degree at many public law schools now exceeds what an average private law school education cost just a few years ago.

school, undergraduate tuition has increased far faster than inflation over the past generation,²⁵ and almost all law schools require that applicants complete a four-year undergraduate degree before enrolling.²⁶ Family incomes have stagnated for most Americans over the course of the last generation, and many families have had to debt-finance their children's college educations.²⁷ Many students thus enter law school already carrying significant educational debt. According to one estimate, the average amount of educational debt carried by indebted graduates of four-year colleges was nearly \$25,000.²⁸

A legal education was easily within the financial reach of the American middle class a generation ago and was a realistic career option for people of more modest socio-economic backgrounds. It is now an enormously expensive investment. Given how the employment market for people with law degrees has changed over the same period, that investment has become a remarkably risky gamble. How did this happen?

PART II: CENTRAL FEATURES OF A FAILING MODEL

This section discusses several factors that have contributed to the increasing cost of legal education: drastic declines in student-faculty ratios, large increases in faculty compensation, the creation and development of clinical legal education, the expansion of administrative staffs, and expensive capital construction projects. A generation ago, the typical American law school featured large classes, rare to non-existent clinical programs, a high tenure-track faculty-to-student ratio, significant numbers of inexpensive adjunct instructors, no laboratory equipment, and a generally unprepossessing physical plant.²⁹ Even at many elite universities, the law faculty had

25. *Law School Tuition Soars*, N.Y. TIMES (July 17, 2011), <http://www.nytimes.com/imagepages/2011/07/17/business/17legalGraphic.html?ref=business>.

26. *What Education or Type of Degree is Needed to Be a Lawyer?*, EDUC. PORTAL, http://education-portal.com/education_needed_to_be_a_lawyer.html (last visited Aug. 29, 2012).

27. See *supra* notes 20–23 and accompanying text.

28. This figure is based on graduates of four-year colleges who graduated in the 2007–2008 academic year. With tuition increases continuing to outrun inflation, the most current figures are undoubtedly higher in real dollar as well as nominal terms. See *National Postsecondary Student Aid Study*, NAT'L CTR. FOR EDUC. STATISTICS, <http://nces.ed.gov/surveys/npsas/undergraduate.asp> (last visited Aug. 29, 2012). Approximately two-thirds of college graduates incur undergraduate debt. See Andrew Martin & Andrew W. Lehren, *A Generation Hobbled by the Soaring Cost of College*, N.Y. TIMES, May 12, 2012, <http://www.nytimes.com/2012/05/13/business/student-loans-weighing-down-a-generation-with-heavy-debt.html?page=wanted=all>.

29. See generally BRIAN TAMANAH, *FAILING LAW SCHOOLS* (forthcoming 2012).

comparatively little academic ambition or pretension: at most law schools, faculty members who regularly published scholarship after completing an often-cursory tenure process were very much the exception rather than the rule.³⁰

Given this environment, law school faculty often had relatively heavy teaching loads: five to six classes a year was normal at most schools, while teaching four classes per year at a few elite schools was a luxury of such privileged positions.³¹ At almost all schools, administrative support for both the tenure-track faculty and the student body was minimal. Faculty were expected to contribute significantly to tasks such as admissions and financial aid, while students looking for job opportunities were expected to consult a bulletin board rather than the contemporary career services office.³²

A. *Student-Faculty Ratios*

Over the past thirty years, and particularly over the past fifteen, this situation has altered dramatically. Consider what has happened to student-faculty ratios. Currently, an ABA-accredited law school's student-faculty ratio is calculated as follows: each full-time tenure-track member counts as one faculty position, while faculty members who teach full-time but are not on the tenure track (as is often the case with clinical professors and legal research and writing professors) each count as seven-tenths of a position. Adjunct professors count as one-fifth of a position.³³ Non-tenure track faculty may not account for more than 20 percent of a school's student-faculty ratio for the purposes of accreditation. Under the current accreditation standards, "[a] ratio of 20:1 or less presumptively indicates that a law school complies with the Standards," while "[a] ratio of 30:1 or more presumptively indicates that a law school does not." Ratios

30. See Richard A. Posner, *Legal Scholarship Today*, 115 HARV. L. REV. 1314, 1320 (2002).

31. See TAMANAHA, *supra* note 29 at 39–53.

32. I can attest to much of this change first-hand, even though I have been a legal academic "only" since 1990. A glance at the personnel listings in law school catalogues and in the AALS Directory of Law Teachers will confirm the enormous growth in the number of administrative personnel at American law schools over the course of the last generation. See *AALS Directory of Law Teachers*, ASS'N OF AM. LAW SCHS., http://www.aals.org/services_directory.php (last visited Aug. 29, 2012).

33. See AM. BAR ASS'N, A.B.A. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2012–2013 30 (2012), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.auth_checkdam.pdf.

between 20:1 and 30:1 create no presumption one way or the other.³⁴

The stated purpose of these ratios is to maintain educational standards. In practice, they maintain barriers to entry to low-cost competitor law schools and protect the privileges of current tenure-track faculty at ABA-accredited schools, by insulating them from potential lower-cost competition. The idea that a law school with a student-faculty ratio of 30:1 presumptively fails to provide a minimally adequate legal education to its students is, within even the narrowest of historical contexts, problematic. As recently as 1978, the average student-faculty ratio at ABA-accredited law schools was 29:1; nearly half of all such schools would have been out of compliance with the current accreditation standards.³⁵

In fact, faculty-to-student ratios have dropped dramatically at law schools, not merely since 1978 but over the past decade. For example, Harvard's ratio fell from 21.6:1 in 1998 (i.e., Harvard Law School's student-faculty ratio fourteen years ago was not even presumptively adequate under the ABA's current standards) to 10.3:1 in 2008. Stanford Law School's ratio fell even more drastically, from 18.3:1 to 8.3:1, while the University of Chicago Law School's went from 19.1:1 to 10.3:1.³⁶ This pattern was not confined to elite schools, in part because schools further down the law school hierarchy tend to imitate elite schools. During this same period, for example, Emory Law School's student-faculty ratio declined from 19.1:1 to 10.8:1, Seton Hall Law School's declined from 26:1 to 15.5:1, and Widener Law School's declined from 24.8:1 to 13.7:1.³⁷ And ratios are continuing to drop. In the spring of 2012, Dean Larry Kramer announced that as part of Stanford's ongoing efforts to protect and improve its ranking (Stanford moved from third to second in the U.S. News and World Report Law School Rankings in 2012), the school was going to expand its tenure-track faculty by 25 percent.³⁸ Overall, average student-faculty ratios at ABA-accredited schools

34. See AM. BAR ASS'N, A.B.A. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2012-2013 31 (2012), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.auth_checkdam.pdf.

35. *Law School Faculties 40% Larger Than Ten Years Ago*, THE NAT'L JURIST (Mar. 9, 2010, 10:00 PM), <http://www.nationaljurist.com/content/law-school-faculties-40-larger-10-years-ago>.

36. By 2011 Stanford's student-faculty ratio had declined to 7.8 to 1, and Chicago's had fallen to 8.1 to 1. Harvard's had risen to 12.2 to 1. See *Law School Admission Council Official Guide to Law Schools*, LAW SCH. ADMISSION COUNCIL, <http://www.lsac.org/jd/default.asp> (last visited Aug. 29, 2012).

37. *Id.*

38. Larry Kramer, Dean, Stanford Law School, Address at Stanford Town Hall Meeting (Feb. 2012) (information provided by attendees).

were cut in half between the late 1970s and the early years of the 21st century, going from 29:1 to 14.7:1.³⁹

What consequences has this enormous increase in the number of law school faculty had for legal education? First, there has been no proportional decline in the size of law school classes. Large lecture sections are still the staple of American legal education. Instead, the primary effect of this change has been to reduce the teaching loads of faculty, particularly tenure-track faculty. Almost all “top tier” schools, meaning the top fifty law schools as ranked by *U.S. News & World Report*, have moved to a formal three-course teaching load for tenure-track faculty, while at the most elite schools, generous research leave and sabbatical policies make the functional teaching load closer to two classes per academic year.⁴⁰ Meanwhile a number of lower-ranked schools are also adopting three-course teaching loads, at least for more “productive” faculty, i.e., those who publish more law review articles.⁴¹

Thus over the course of the last four decades, American law schools have moved from a system in which faculty at a few elite law schools taught four classes per year, while faculty at other schools taught five or six, to a system in which those numbers have been reduced by nearly 50 percent at elite schools and by nearly as much at many non-elite schools as well.⁴² As detailed below, this change has played a considerable role in driving up the cost of legal education. Before turning to the specific financial consequences of this change, we should not overlook the enormous increase in spending on faculty compensation at law schools, which has been dedicated to goals other than improving the classroom experience of law students.

39. See *supra* note 35.

40. Gordon Smith, *Law Professor Teaching Loads*, CONGLOMERATE BLOG (Apr. 12, 2005), http://www.theconglomerate.org/2005/04/law_professor_t.html. As for the functional teaching loads at elite law schools, I was informed by David Van Zandt, Dean of Northwestern Law School, in the fall of 1996 that the average teaching load at the school over a multi-year period was seven credit hours per year, i.e., two classes. Other conversations in November of 1996 with members of similarly ranked law schools confirm that this has become a common *de facto* teaching schedule, at least as a matter of informal practice.

41. In the fall of 2011, a faculty member at a law school ranked close to number 100 (that is the midpoint) in the *U.S. News and World Report* rankings told me that the dean had announced that the school was moving to a standard three-course teaching load. The faculty member noted that, despite the combination of skyrocketing tuition costs and dire job prospects for the school's most recent graduates, this announcement encountered no objections.

42. See TAMANAHA, *supra* note 29.

B. Faculty Compensation

Law schools have greatly increased the size of their faculties to ensure that individual faculty could teach less. And they have likely made this change so that their faculties could publish more law review articles. With regard to this goal, American law schools have enjoyed spectacular success. A survey of the legal academic literature reveals that professors at American law schools published approximately 1,650 law review articles in 1970 and nearly 10,000 in 2010.⁴³ Over that time, the total number of tenure-track law professors has roughly doubled, while the per capita publication rate of law review articles per professor has nearly tripled, resulting in this approximately six-fold increase in the size of the annual law review literature.⁴⁴

This explosion in publication rates has naturally required a huge increase in the venues for legal academic writing. Forty years ago, very few law schools published more than one law journal, and some did not publish any at all. In 2010 the Current Index to Legal Periodicals catalogued 616 law journals, while omitting a number of venues in which legal academic publications appear.⁴⁵

How much has all this cost? Cutting student-faculty ratios by 50 percent would, holding everything else constant, double the portion of law school budgets dedicated to faculty compensation. But everything else has not remained constant. Individual law school faculty compensation has increased dramatically over the course of the past generation. Precise numbers on this question are difficult to obtain for a variety of reasons. At private law schools, salary figures are confidential. Even at public schools, overall compensation packages now can include a number of features beyond base salary—such as so-called summer research money (it is generally known in legal academia that this has become a *de facto* salary supplement at most schools), subsidized housing, low-interest loans,

43. See *Current Index to Legal Periodicals*, UNIV. OF WASH. SCH. OF LAW, <http://lib.law.washington.edu/cilp/cilp.html> (last visited Aug. 29, 2012). I derived these figures by examining statistically representative samples of both the Current Index to Legal Periodicals and individual volumes of particular law reviews. Specifically, I examined thirty randomly selected pages from the Index in both 1970 and 2010 and noted the total number of law review articles that they catalogued. I then extrapolated this number to the Index as a whole. I double-checked this estimate by examining the annual volumes of twelve representative law reviews in each year, noting how many articles these reviews published, and extrapolated on the basis of that figure.

44. See ASS'N OF AM. LAW SCHS., *supra* note 32. The number of tenure-track law faculty is based on surveys of the 1970–71, 1990–91, and 2010–11 volumes of the annual Association of American Law Schools Directory of Law Teachers.

45. See *supra* note 43.

and retention bonuses—that can be hard to calculate. Still, the general pattern is clear: At elite law schools, compensation for tenure-track faculty has roughly doubled in real terms over the course of the past thirty years. At non-elite schools, the increase in compensation levels has varied, but given that almost all increased spending at law schools is set by the rules of a positional game created by law school rankings, in which non-elites attempt to imitate elite schools to the extent possible, it is probable that faculty compensation all across legal academia has increased sharply over the past three decades.

As for specific numbers, we can begin with Chief Justice John Roberts's observation that salaries for federal judges are now "about half" the salaries for senior faculty at elite law schools.⁴⁶ At the time Roberts made his comments in a report to Congress, in which he was pleading for higher pay for the federal judiciary, federal district and circuit court judges were paid \$169,000 and \$179,000 respectively, while senior faculty at elite schools likely earned around \$350,000.⁴⁷

A survey of faculty compensation at high-ranked public law schools confirms that the Chief Justice's estimate is not an exaggeration and may even be an understatement. For instance, at the University of Texas Law School, a lawsuit brought by a faculty member revealed not only the compensation packages of the law school's faculty but also how deceptive the available public records regarding faculty salaries can be.⁴⁸

According to a searchable Internet database of University of Texas employee salaries, the salaries of Texas's law school faculty (excluding administrative salaries) in 2010-2011 ranged from \$135,000 to \$272,404.⁴⁹ The actual numbers, as revealed by the lawsuit, were in many cases nearly 50 percent higher. The public records do not include summer research money, which for most faculty was equivalent to one-third of their base salaries.⁵⁰ Nor do they include retention bonus money, structured in the form of "forgivable loans," given by the dean to twenty-five faculty members (and, more problematically, to himself—a fact that when made

46. See Linda Greenhouse, *Chief Justice Advocates Higher Pay for Judiciary*, N.Y. TIMES, Jan. 1, 2007, <http://www.nytimes.com/2007/01/01/us/01scotus.html>.

47. See *id.*

48. The relevant documents can be viewed at http://d2o6nd3dubbyr6.cloudfront.net/media/documents/ut_law_school_open_records.pdf (last visited Aug. 29, 2012).

49. See *School of Law Salaries at the University of Texas at Austin*, THE TEX. TRIB., <http://www.texastribune.org/library/data/government-employee-salaries/the-university-of-texas-at-austin/departments/school-of-law/17771/?page=1> (last visited Aug. 29, 2012).

50. See *supra* notes 48–49.

public forced his resignation).⁵¹ The result was that much of the law school's senior faculty was making between \$320,000 and \$410,000 in 2010—with the top half of that range being higher than Chief Justice Roberts's estimate for top schools.

Data from other top public law schools reveal somewhat lower compensation packages than those given to faculty at Texas, although this might be in part because the financial data is less comprehensive than that which would be uncovered by litigation. Nor does the total listed compensation, at Texas or elsewhere, include deferred benefits, such as employer contributions to pension plans, which, based on my knowledge of several representative schools, is likely equivalent at many schools to one-tenth of a faculty member's salary. Still, searching an online University of California database reveals that in 2010, fifteen law professors in the University of California system had base salaries and summer research support amounting to at least \$308,000, with a high of \$360,000.⁵² Bearing in mind that the half-dozen highest-ranked law schools, including those with the largest private endowments, are all private institutions, these schools may be paying their faculty at least as much as Texas is paying its professors, especially considering how much higher the cost of living is in Cambridge, Chicago, and New York than in Austin.⁵³

Though, in general, the higher a school is ranked the higher the salary scale for its faculty, the \$300,000+ compensation packages paid to professors at elite and sub-elite institutions have a ripple effect throughout legal academia, as lower-ranked schools fight to hold onto their most productive faculty.⁵⁴ For instance, three years ago the fifteen highest-paid faculty members of the University of Illinois College of Law made between \$203,000 and \$293,000 in

51. See *National Jurist: Dean Sager's \$4.65 Million in Forgivable Loans to Law Profs 'Ripped Apart' Texas Faculty*, TAX PROF. BLOG (Feb. 21, 2012), http://taxprof.typepad.com/taxprof_blog/2012/02/national-jurist.html.

52. See *University of California Data Analysis—Browse UC Salary Data*, UNIV. OF CAL. DATA ANALYSIS, <http://ucpay.globl.org/index.php?campus=&name=&title=!PROFESSOR-LAW+SCHOOL+SCALE&base=&overtime=&extra=&gross=&year=2010&s=gross> (last visited Aug. 30, 2012). This index lists only compensation from the university system and not from private endowments, so it may represent a significant understatement of the total number of professors receiving compensation packages of at least \$300,000.

53. TAMANAHA, *supra* note 29 at 49 ("If Texas professors are compensated at this level, given the nature of the market it is likely many professors at top five law schools are in the \$300,000–\$400,000 range, with some earning more.").

54. Again, despite the variety of tasks legal academics perform in the course of their professional duties, "productivity" in legal academia is measured almost exclusively by how many law review articles a faculty member publishes, especially in what are considered prominent venues. See *supra* note 41 and accompanying text.

base salary alone, not counting summer research money.⁵⁵ And a perusal of IRS Form 990, which requires non-profit organizations to list the compensation packages of their highest paid officers and employees, reveals that professorial salaries in the \$300,000 range are far from rare, even at second- and third-tier schools.⁵⁶ In his forthcoming book, *Failing Law Schools*, Brian Tamanaha, a law professor at Washington University in St. Louis and former dean of St. John's Law School, estimates that faculty compensation packages of over \$200,000, excluding benefits, are now commonplace for full-time professors at a wide variety of schools.⁵⁷

Historical data regarding law professor salaries are harder to come by. Returning to Chief Justice Roberts's complaint regarding judicial salaries, the Chief Justice revealed that senior professors at Harvard Law School were paid \$28,000 in 1969, which is \$171,000 in 2011 dollars.⁵⁸ This suggests, in light of the data presented above, that Harvard Law School faculty salaries have more than doubled in real terms since then. In order to analyze this question in a more systematic fashion, I compared the salaries of the University of Michigan Law School faculty in 1981 to those of the same faculty in 2011. The base salary of the tenure-track faculty in 1981 ranged from \$31,000 to \$67,000, i.e., from \$77,000 to \$165,000 in 2011 dollars.⁵⁹ The base salary of the tenure-track faculty in 2011 ranged

55. See *University of Illinois Public Salaries*, COLLEGIATE TIMES, <http://www.collegiatetimes.com/databases/salaries/university-of-illinois-2009?dept=Law> (last visited Aug. 29, 2012). Summer research stipend amounts are available at the SALT salary survey. See Society of American Law Teachers, *2011–12 SALT Salary Survey*, SALT EQUALIZER (2012), available at <http://www.saltlaw.org/userfiles/SALT%20salary%20survey%202012.pdf>. Summer research stipends vary enormously between schools, so their absence from public data bases that record official faculty compensation poses a serious barrier to comparing salaries even between public law schools. These stipends are usually either a percentage of a faculty member's base salary, or a flat figure for all faculty members who receive them. I have found current summer research stipends ranging from \$8,000 to \$93,000.

56. Form 990 disclosures can be found by searching for a particular school at 990 FINDER, FOUND. CTR., <http://foundationcenter.org/findfunders/990finder/> (last visited Aug. 29, 2012).

57. See TAMANAH, *supra* note 29, at 48 *passim*. At my school, approximately half of the tenured faculty receives annual compensation packages, in base salary and summer support, exceeding \$200,000. According to a recent report submitted by the Law School to the University of Colorado's central administration, the Law School's compensation structure lags behind that of many of our "peer schools" (defined as law schools at "flagship" state universities) (data from an internal Law School document on file with author).

58. See Linda Greenhouse, *Chief Justice Advocates Higher Pay for Judiciary*, N.Y. TIMES, Jan. 1, 2007, <http://www.nytimes.com/2007/01/01/us/01scotus.html>.

59. Base salary data is available in the archives of the Bentley Historical Library at the University of Michigan. In 1981, the law school paid faculty members who received summer stipends equivalent to approximately one-sixth of their base salaries, i.e., slightly more in

from \$162,000 to \$294,000.⁶⁰ In 2011, faculty summer research support was 15 percent of base salary, meaning that the functional base salary of the faculty actually ranged from \$186,000 to \$338,000.⁶¹ Remarkably, a brand-new tenure-track assistant professor at Michigan makes nearly as much, in real dollars, as what the highest-paid member of the faculty made thirty years earlier. Even more remarkably, this brand new professor makes more than the dean of the law school made in 1981. The law school's dean was paid \$164,510, in 2011 dollars, in 1981. In 2011, the dean was paid \$457,964.⁶²

These figures reinforce Chief Justice Roberts's estimate that direct faculty compensation at top law schools has roughly doubled over the course of the last generation. But pecuniary compensation is only part of the story. As we have seen, teaching loads have shrunk significantly over this same time frame.⁶³ Nor have we explored one of the most important changes to the structure of law school teaching over the course of the last generation: the transformation of clinical legal education from a marginal feature of a few legal academic institutions into a central, well-funded enterprise at most law schools.

C. The Birth of the Clinic

The birth and expansion of legal aid clinics in law schools has had three effects on American legal education: it has increased the amount of practically-oriented legal education some students receive; it has allowed traditional tenure-track faculty to rationalize paying relatively little attention to actual legal practice; and it has played a role in driving up the cost of legal education. Complaints that law school teaches students nothing about practice are hardly

percentage terms than the 15 percent of base salary current faculty members receive (although from a far smaller base). I am indebted to Professor Edward Cooper for the information on how summer money was calculated in 1981, which was provided to me in a conversation on March 25, 2012.

60. See *Department Results for 2012*, UMSALARY.INFO, <http://www.umsalary.info/deptsearch.php?Dept=Law%20School&Year=0&Campus=1> (last visited Aug. 10, 2012).

61. See *id.*

62. See *id.*

63. See *supra* note 40 and accompanying text. It is worth noting that grading exams—perhaps the most unpleasant task that those who perform this remarkably pleasant job are required to do—has also become far easier over the course of the last ten to fifteen years. Gone are the days when the leisure of the theory class was interrupted by the burden of having to decipher the panicked scrawls of hundreds of students, spread across thousands of pages of blue books. Indeed today some professors employ computer technology to grade multiple choice exams, thus eliminating a few dozen of the most painful of the few hundred hours per year a legal academic is formally required to dedicate to his or her job.

new.⁶⁴ Legal aid clinics were, among other things, originally a response to those complaints.⁶⁵ In this regard, they have had some effect, but whether that effect has been to make law school graduates more practice-ready than they would have been otherwise is debatable.

The clinical legal experience no doubt helps participating students have a better understanding of some forms of legal practice. Most law students, however, complete their legal educations without having participated in a clinic.⁶⁶ This fact raises a question: what effect does the availability of clinical legal education have on what goes on in the traditional, “doctrinal” classroom? If the effect is to make doctrinal legal education even less practical than it would otherwise be—because the doctrinal faculty believes, either consciously or otherwise, that students learn the nuts and bolts of legal practice in clinical classes (which, in fact, most law students never take)—then, paradoxically, clinical legal education may have a net effect of making legal education as a whole less practical than ever for the average student.

This becomes a particularly pressing issue when one considers the expense of clinical legal education. Since instructor-participant ratios must be very low, and clinics require significant administrative support, they cost a lot of money.⁶⁷ Yet, in response to regular complaints from the legal profession that law school is too “theoretical,” law schools continue to expand their clinical programs, without much in the way of evidence regarding whether the costs they incur are justified by the results they produce in regard to producing “practice-ready” graduates.⁶⁸

64. See, e.g., Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 595–96 (1982). Kennedy treats the claim that law students “learn[] nothing about practice” as completely self-evident. See *id.*

65. See David Barnhizer, *The University Ideal and Clinical Legal Education*, 35 N.Y.L. SCH. L. REV. 87, 88 (1990).

66. See Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 78 (2009) (“[T]he 2007 C.S.A.L.E. Report found that 32% of law students participated in live client law school clinics.”).

67. See Erwin Chemerinsky, *Rethinking Legal Education*, 43 HARV. C.R.-C.L. L. REV. 595, 595 (2008).

68. See, e.g., AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM (MACCRATE REPORT) (1992); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007). Note that by “too theoretical” critics generally mean “too doctrinal,” which is certainly a contestable characterization of how genuinely theoretical—or edifying—the traditional doctrinal law school classroom actually is. See Kennedy, *supra* note 64.

D. New Buildings Full of People

The birth of the clinic is just one example of how many of what used to be the job responsibilities of tenure-track faculty have been off-loaded to new classes of law school employees. A generation ago, classes in legal research and writing, to the extent that they were taught at all, were typically taught by the tenure-track faculty, rather than by full-time faculty members hired for that specific purpose.⁶⁹ Outside of the classroom, the administrative duties of law professors have declined considerably. No longer are professors, whether at elite or non-elite law schools, expected to do the heavy lifting in the admissions office or in distributing financial aid or in regard to all the functions now outsourced to career services personnel, fundraising officers, public relations specialists, alumni liaisons, and the like. As noted above, all these changes in regard to the nature of a legal academic's workload have likely taken place for the primary purpose of allowing law faculty to publish far more law journal articles than they did a generation ago—and publish they have.⁷⁰

Of course, this outsourcing has itself incurred considerable extra expense: law school administrative staffs have grown at a far faster pace than even the rapidly expanding tenure-track faculties of schools accredited by the ABA.⁷¹ The number of full-time administrators who also teach—deans, librarians, and other law school personnel—more than tripled from 1998 to 2008, increasing from 528 to 1,659.⁷² And although there are no national statistics on how much administrative staffs in general have grown, comparing a typical law school catalogue from even ten or fifteen years ago to the current version will likely reveal massive growth in the institution's administrative apparatus.

The explosion in the number of law school faculty and administrative staff, both in absolute terms and relative to student enrollment, is both a cause and a consequence of the veritable mania for

69. As recently as twenty-five years ago, when I was a first-year law student at a resource-rich institution, legal research and writing classes at Michigan Law School were taught by third-year law students to first year students, rather than by legal research and writing faculty.

70. A law professor who read a law review article every day of the year would spend 28 years reading the law review literature published by professors at American law schools in 2010 alone.

71. See TAMAHANA, *supra* note 29, at 126–28.

72. See THE NAT'L JURIST, *supra* note 35. Keep in mind that the “deans” referred to in this statistic do not include the dean of the law school. While a generation ago it was not unusual for a law school's dean to teach at least one class per year, such double duty would be considered wholly unreasonable in an age when a law school dean's job has come to be dominated by constant fundraising and the attendant frequent flyer miles.

capital construction projects that has gripped higher education in general, and law schools in particular, over the past generation.⁷³ In recent years, numerous law schools have built new main buildings or expanded existing facilities, even when they already possessed impressive, even magnificent physical plants.⁷⁴ Law school building campaigns are often classic examples of conspicuous consumption at the social-institutional, rather than at the individual, level: School A builds a fancy new building, and as a result School B discovers that it “needs” a new building too, in order to keep up with the academic Joneses.⁷⁵

Admittedly, building campaigns are generally funded via some combination of private money, a university’s general fund, and, at public schools, tax dollars. But when such efforts fall short, part of the direct cost could potentially be transferred to law students. Another complicating factor is that to some extent, money is, as law students learn to say, fungible: a dollar spent on the physical plant is, to a degree, a dollar that isn’t going to be spent on something else, such as holding down tuition increases.⁷⁶ In addition it seems quite odd to be pumping ever-greater sums into bricks and mortar, given changes in information technology that enable education to take place outside of a \$100 million structure.⁷⁷ This point applies with special force to law libraries, which grow ever-more pharaonic even as the practice of law becomes less book-based, and as, if my

73. See, e.g., *Law School Dedicates New Building*, HARV. GAZETTE, Apr. 23, 2012, <http://news.harvard.edu/gazette/story/2012/04/law-school-dedicates-new-building/>. Michigan Law School is in the process of completing a \$102 million building to supplement the superb Oxbridge-style quadrangle that houses the institution. See *Law School Building Project: A New Legal Landscape*, UNIV. OF MICH. LAW SCH., <http://www.law.umich.edu/buildingproject/Pages/home.aspx> (last visited Aug. 30, 2012). Harvard recently added a 250,000-square-foot structure to its law school campus. See HARV. GAZETTE, *supra*.

74. See, e.g., sources cited at note 72, *supra*.

75. One can see this same process taking place all over the university, as schools build posh dorms and amenities like recreation centers, to compete for students who generally don’t realize that they, their families, or both are purchasing such amenities at far too high a price. This phenomenon has been referred to as an “amenities race.” See Kyle Stokes, *In College Dorms and Dining, How Nice Is Too Nice?*, ST. IMPACT (Aug. 18, 2011, 2:54 PM), <http://stateimpact.npr.org/indiana/2011/08/18/in-college-dorms-and-dining-how-nice-is-too-nice/>.

76. The law school at which I teach began constructing a new building at a time when the same sum of money necessary to build it could have generated an income stream that would have provided full-tuition scholarships for half the student body.

77. Consider, for example, the remarkably successful initiative undertaken recently by faculty at Stanford to offer free online courses in Computer Science. See Steve Henn, *Stanford Takes Online Schooling to the Next Academic Level*, NAT’L PUB. RADIO (Jan. 23, 2012, 5:14 PM), <http://www.npr.org/blogs/alltechconsidered/2012/01/23/145645472/stanford-takes-online-schooling-to-the-next-academic-level>.

own observations are accurate, law students find it less and less necessary or desirable to use these literary labyrinths even as opulent study spaces.

A more insidious complication is likely obvious to anyone who has ever bought a house that was somewhat bigger and fancier than one's previous residence. Such purchasers feel impelled by something akin to a social gravitational force to fill their new houses up with things they would not have bought if they did not have all that new space to fill. The same thing happens in academia: an institution sinks enormous capital, both literally and metaphorically, into getting an impressive new building with much more space than was available in what *in retrospect* becomes its intolerably inadequate prior facilities, and as if by magic all sorts of new "centers" and "groups" and, most of all, administrative personnel appear almost overnight.⁷⁸

E. Other Drivers of Increased Costs

Decreased student to faculty ratios, increased faculty compensation, legal aid clinics, legal writing programs, greatly expanded administrative staffs, and newer, more expensive facilities are not the only reasons why the cost of law school has skyrocketed over the course of the past generation. Higher starting salaries at large law firms were correlated with increased demand for legal education in the first half of the previous decade.⁷⁹ At public law schools, reductions in state subsidies have played a role (Note, however, that if, for example a law school doubles its operating budget, while state

78. It is not as if none of these additions have educational value. For example, all other things being equal, it is no doubt desirable to have six career services persons housed in a suite of nice new offices, doing what they can to help students and graduates get jobs. The problem, of course, is that all other things are never equal. When I started teaching twenty-one years ago, my law school's career services department consisted of one part-time employee who had a desk in the admissions office. Coming as I did from the resplendent environs of the elite law school where I had so recently been a student, this seemed on one level rather absurd. On quite another level, resident tuition was literally one-tenth of what it is today. The point is that, as always, the question needs to be not "does this expenditure improve the quality of what the law school is doing" (whatever that may be), but rather, "does it do so at a reasonable cost?" Because of the dysfunctional way that legal education is priced and paid for, this question is rarely asked as often or as insistently as it ought to be by those who are in the best position to affect the answer.

79. Law school applications rose from about seventy-five thousand in 2000 to nearly one hundred thousand in 2004. See *LSAC Volume Summary*, LAW SCH. ADMISSION COUNCIL, <http://www.lsac.org/LSACResources/Data/LSAC-volume-summary.asp> (last visited Aug. 30, 2012). Between 1997 and 2006, the "going rate" (the salary paid to new associates by the top New York law firms) went from \$116,000 to \$160,000 in constant dollars.

subsidies to the school increase at a lower rate, this may be characterized by the school as a “cut” in state support.) Law schools spend more on self-promotion and advertising than ever before.⁸⁰ And at some universities, the central administration continues to treat the law school as a revenue source for cross-subsidization (a so-called “cash cow”), although there is little indication that this percentage has increased in recent years.

Underlying this financial arms race is the ever-present rationale that refusing to spend yet more money on faculty, administration, physical plant, self-promotional efforts, and so forth is not an option in the constant struggle to enhance, or at least sustain, a school’s *U.S. News* ranking. Indeed, the rankings directly reward inefficiency, as the ranking formula treats expenditures per student as proxies for educational quality.⁸¹ This rationale has created a negative-sum positional game, where one school’s gain is always some other school’s loss. It has also exacerbated the classic collective action problem that describes the economics of today’s law schools: no school wants to pay the short-term price for bucking a system that in the long term is not sustainable for the enterprise as a whole.

Nevertheless, while in the long term law schools will pay the price for being unable to break free from the vicious cycle of having to constantly increase revenue merely to stay in the same place relative to their competitors, at present that price is being borne most directly by law school graduates, who year after year pay more and more for an educational credential whose real value has been declining for some time now.⁸² What are the practical consequences of creating a system of legal education in which most students must now pay somewhere between \$150,000 to \$250,000 in direct costs, as well as incurring significant opportunity costs, to become eligible

80. This has given birth to the ubiquitous phenomenon of so-called “law porn”: glossy publications that law schools mail out by the thousands to other law faculties, law firms, and the media, in an attempt to bolster their reputations and thereby positively affect their ranking in the *U.S. News* formula. For a skeptical look at the effectiveness of these efforts, see David Bernstein, *Ineffective “Law Porn,”* THE VOLOKH CONSPIRACY (Sept. 27, 2012, 8:04 PM), <http://volokh.com/2010/09/27/ineffective-law-porn/>.

81. See Robert Morse & Sam Flanigan, *Methodology: Law School Rankings*, U.S. NEWS & WORLD REP. (Mar. 12, 2012), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/03/12/methodology-law-school-rankings> (explaining the methodology employed in the rankings). Expenditures per student account for just under 10 percent of a school’s overall ranking. Student-faculty ratio accounts for another 3 percent, while the total number of books in the law library accounts for three-quarters of 1 percent. In other words if School A and School B are identical in all respects except that School A spends more money to achieve exactly the same results, School A will be ranked higher than School B.

82. See *infra* Part III.

to sit for the bar exam in the jurisdiction in which they wish to practice? The answer to that question reveals the scope of the crisis that is now overtaking American legal education.

PART III: CONSEQUENCES FOR RECENT GRADUATES

Law school now costs too much for two reasons: there aren't enough jobs for lawyers, especially new lawyers, and too many of the legal jobs that do exist do not pay enough to justify incurring the cost of a legal education. This combination of circumstances is a product of both long-term changes in the market for the providers of legal services and the way law students finance their legal education. The result has been the creation of a class of deeply indebted, underemployed law school graduates.⁸³ A common response of law schools to this situation has been denial.⁸⁴ But, as the extent of the collapse in the market for new law graduates becomes apparent, denial is slowly giving way to recognition. This section will first outline the employment and salary situation for recent law graduates. It will then review some of the economic and social consequences for those graduates of entering a hyper-saturated legal market while carrying unprecedented levels of educational loan debt. Finally, it will touch on the employment and under-employment situation for recent graduates of the nation's elite law schools.⁸⁵

A. Employment and Salary Outcomes for Recent Law School Graduates

How many recent graduates of American law schools manage to obtain real legal jobs? Of this group, how many are able to make enough money from the practice of law to justify the cost of obtaining a law degree? Answering these questions requires looking critically at the statistics reported by law schools to the National Association for Law Placement (NALP) and the American Bar

83. For a stark glimpse into the world of marginalized lawyers and law graduates, see *Law Forum*, JD UNDERGROUND, <http://www.jdunderground.com/all/> (last visited Aug. 30, 2012).

84. For instance, a literature search through LexisNexis reveals that the phrase "law graduate debt" occurs in exactly one law review article published in the last five years, and that the relationship between student debt and the cost of law school has gotten almost no attention in the legal academic literature to this point.

85. The situation for elite law school graduates is particularly telling, because if significant numbers of such graduates are having trouble securing acceptable employment outcomes, this has dire implications for law school graduates as a whole—the vast majority of whom, of course, do not attend elite schools.

Association (ABA). These statistics have many limitations, perhaps the most glaring of which is that they provide no information on what law school graduates are doing even two years after graduation, let alone further down the line.⁸⁶ Instead, they provide a snapshot of what the members of a national graduating class are doing nine months after completing law school. To answer the question of how good of a return graduates are getting on their investment, we would need much better data than we have regarding medium- and long-term career outcomes. Still, even with their limitations, the NALP and ABA data can be analyzed in useful ways.

My analysis is based on the following heuristic: a real legal job consists of full-time, non-temporary employment that requires a law degree. The economic value of a law degree is largely a product of the fact that a law degree from an ABA-accredited law school is a prerequisite for admission to the bar in the vast majority of American jurisdictions. Although some law graduates will acquire jobs for which a law degree was not required, but which still added marginal value to the applicant's resume, this category appears to include a small percentage of all law graduates.⁸⁷ A law degree can impede acquiring non-legal jobs.⁸⁸ Indeed, even aside from the cost of acquiring a law degree, it is unclear whether the degree benefits, on average, those graduates who do not acquire legal jobs. Similarly, it is safe to assume that very few people spend \$150,000 to \$250,000 in order to qualify for part-time or temporary work.

These principles permit a basic estimate of the core employment rate—that is, the percentage of law graduates who had real legal jobs nine months after graduation—for the national law school class of 2011 (the most recent year for which national statistics are available). We can then compare those numbers to those of national classes over the previous decade, before taking a generation-long perspective, in an attempt to discern what changes are happening in the market for the providers of legal services.

In June 2012, NALP reported that 60 percent of 2011 graduates whose employment status was known nine months after graduation

86. A glimpse of what is happening to the long-term earning potential of attorneys is provided by a survey conducted by the Alabama Bar Association, which reveals that the percentage of attorneys in the state making at least \$200,000 and \$100,000 per year (in 2009 dollars) fell by half between 1985 and 2009, and that 23 percent of attorneys with active licenses were making less than \$25,000 in 2009. See ALA. STATE BAR, ECONOMIC SURVEY OF LAWYERS IN ALABAMA (2010), available at http://www.alabar.org/media/news/images/04042012_Economic-SurveyofLawyersinAlabama2010Report.pdf.

87. See generally NALP *Class of 2010 Graduate Salary Data*, ABA SECTION ON LEGAL EDUC., <http://employmentsummary.abaquestionnaire.org/nalp.aspx> (last visited Nov. 8, 2012).

88. See, e.g., Elie Mystal, *What 'Can't' You Do with a Law Degree?*, ABOVEthELAW (Jan. 19, 2012), <http://abovethelaw.com/2012/01/what-cant-you-do-with-a-law-degree/>.

were working in full-time positions requiring bar admission.⁸⁹ (The employment status of approximately 7 percent of graduates remained unknown.)⁹⁰ Shortly thereafter, the ABA, bowing to pressure to make more data on employment outcomes public, released detailed data for the class of 2011.⁹¹ These data revealed that nine months after graduation, only 55.2 percent of graduates whose employment status was known were employed in full-time, long-term positions requiring bar admission.⁹²

Yet these figures only begin to tell the story of the extent to which recent law school graduates are struggling. Consider some of the types of jobs that the NALP and ABA surveys count as part of the core employment rate, that is, full-time, long-term employment requiring a law degree:

- (1) *Clerkships*. Judicial clerkships make up an ambiguous category of post-graduation outcomes. Traditionally, Article III clerkships have been considered a prestigious waystation on the road to more permanent employment. On the other end of the spectrum, state district court clerkships tend to be truly temporary positions, which leave those in them scrambling to find legal work afterwards. At all but a few schools, the large majority of judicial clerkships are state and local rather than federal, and the majority of state clerkships are with district courts.⁹³ Categorizing the latter as long-term positions is both unrealistic and misleading.
- (2) *Positions funded by law schools*. Another particularly notable subcategory of dubious “long-term” positions comprises those funded by law schools themselves, which provided some of their otherwise unemployed graduates with “full-time, long-term employment requiring bar admission during the NALP nine-month, post-graduation reporting period.” The June 2012 ABA data reveals that this practice is becoming quite common, particularly at many of the

89. See NAT'L ASS'N FOR LAW PLACEMENT, EMPLOYMENT FOR THE CLASS OF 2011—SELECTED FINDINGS 3 (2012), available at <http://www.nalp.org/uploads/Classof2011SelectedFindings.pdf>.

90. *Id.*

91. See *Employment Summary Report*, A.B.A. SEC. OF LEGAL EDUC., <http://employmentsummary.abaquestionnaire.org/> (last visited Aug. 30, 2012).

92. “Long-term” employment in this data set is defined as all employment that does not have a definite term of employment of less than one year.

93. For example, 22 of the 29 graduates of the University of Colorado's 2011 class who obtained judicial clerkships were in state and local positions, and 15 of the latter were in district rather than appellate court positions (data on file with the author).

highest-ranked schools. In addition, many schools funded short-term jobs—positions lasting less than one year—for their graduates.

The following high-ranked schools funded a significant number of what the schools reported as long-term, full-time, bar-admission-required jobs held by their 2011 graduates nine months after graduation:

- Yale: 22 of 205 graduates
- Harvard: 33 of 583 graduates
- Columbia: 38 of 456 graduates
- Chicago: 24 of 203 graduates
- NYU: 56 of 466 graduates
- Virginia: 64 of 377 graduates
- George Washington: 80 of 518 graduates⁹⁴

Several other high-ranked schools, by contrast, funded large numbers of what the schools reported as short-term, full-time; short-term, part-time; or long-term, part-time positions requiring bar admission for graduates, which those graduates held as of February 15, 2012. These jobs thus improved the schools' overall nine-month after-graduation employment rate but not the schools' core employment rate, which includes only full-time, "long-term," bar-required positions. Schools with these sorts of positions include:

- Cornell: 26 of 201 graduates held short-term, full-time, law school-funded jobs;
- Georgetown: 58 of 644 graduates were in short-term, full-time, law school-funded jobs, while 19 were in long-term, full-time, law school-funded positions;
- UCLA: 55 short-term, part-time positions, eight short-term, full-time positions, and one long-term, full-time position out of 344 graduates;
- Vanderbilt: 31 long-term, part-time positions out of 198 graduates;
- Notre Dame: 41 short-term, full-time positions and two long-term, full-time positions out of 190 graduates;
- Boston University: 50 short-term, part-time and 10 short-term, full-time positions out of 273 graduates;

94. See *supra* note 91.

- Fordham: 41 part-time, short-term, 12 full-time, short-term, and 4 full-time, long-term law school-funded positions out of 428 graduates.⁹⁵

While such programs can be defended as attempts to deal with the genuine employment crisis facing graduates, they can also be criticized as attempts to game a school's overall graduate employment rate. This applies especially to programs whose existence was not revealed before the release of the ABA data.

- (3) *Jobs that feature nominal or non-existent salaries.* Recently several U.S. Attorney offices around the country made news in the legal press by offering the opportunity to work in year-long Special Assistant U.S. Attorney positions. It turned out that the word "Special" in the job title referred to the fact that these full-time positions, which required applicants to have at the very least a law degree and bar membership, were completely unpaid.⁹⁶

This is merely a particularly striking example of a practice that has arisen among government and non-profit organizations, employers that can avoid the legal requirement to pay employees at least what would otherwise be the legal minimum wage. With law schools churning out tens of thousands of un- or under-employed graduates every year, employers are discovering that it is becoming possible to hire employees to perform full-time legal work without actually paying them for it. How widespread this practice is remains unknown, but the large number of graduates who report they are doing "internships" and "clerkships" for employers suggests that this innovation in legal employer-employee relations may not be rare.

- (4) *Unsustainable self-employment.* The fourth category comprises possibly unsustainable forms of self-employment. 42.9 percent of 2011 graduates who listed themselves as employed by firms were with firms of two to ten attorneys, while another 6 percent described themselves as in solo

95. See *id.*

96. See *Special Assistant United States Attorney*, U.S. DEP'T OF JUSTICE, <http://www.justice.gov/oarm/jobs/11wdvasausa-01an.htm> (last visited Aug. 30, 2012). Remarkably, one such position required at least three and preferably five years of practice experience. See also Christopher Danzig, *The DOJ Wants You, Experienced Attorneys—to Work for Free*, ABOVE THE L. (Jan. 26, 2012, 12:20 PM), <http://abovethelaw.com/tag/special-assistant-united-states-attorney/>.

practice.⁹⁷ Some of the former jobs were genuine, if generally low-paying, associate positions with stable law firms. Others consisted of nominally paid “clerkships” or so-called eat-what-you-kill arrangements, in which a firm offers office space to a graduate in return for a percentage of whatever business the graduate manages to drum up. Yet others consisted of a couple of new grads opening a law office and trying to make a go of it, in a hyper-saturated market in which they likely have almost no idea what they are doing, because neither the most basic mechanics of practicing law nor any of the aspects of running one’s own small business were covered during the course of their legal education.⁹⁸ (These disadvantages apply with special force to the approximately 1,059 members of the class of 2011 who attempted to start solo practices.)

If we eliminate state district court clerkships and law school-funded positions from the core employment rate made up of those holding full-time long-term jobs requiring bar passage, then the percentage of graduates of the class of 2011 who can be said to have held real legal jobs nine months after graduation falls well below 50 percent.⁹⁹ We can only speculate regarding how many full-time, putatively long-term positions feature either nominal or non-existent salaries or otherwise consist of forms of unsustainable self-employment. It seems doubtful, though, that when all is said and done, much more than one-third of the graduates of ABA-accredited law schools in 2011 had what we are defining—and, more to the point, what they would have considered from an *ex ante* perspective—as real legal jobs.¹⁰⁰

We have not yet touched on what must be a crucial consideration in any analysis of this type, which is how much the salaried law jobs that do exist after law school actually pay. Here, the NALP data are seriously incomplete, but in a way that nevertheless allows us to draw certain conclusions regarding the data NALP reported, which

97. See NAT’L ASS’N FOR LAW PLACEMENT, *supra* note 89.

98. The percentage of very small firm jobs listed by recent graduates fall into each of these categories remains unknown. That some graduates fall into each is clear from my extensive correspondence with recent graduates regarding their employment situations.

99. Only 58 percent of 2010 ABA law school graduates had a full-time position requiring a law degree nine months after graduation. But 26 percent of all jobs taken by these graduates (including non-legal jobs) were temporary positions. See *supra* note 89.

100. To put it another way, a real legal job can be defined as a job that a typical prospective law student would have considered a minimally satisfactory employment outcome as a consequence of the decision to enroll in law school.

covers only 41.9 percent of the class of 2011.¹⁰¹ The significance of the missing data can be gleaned by examining the widely varying reporting rates for different job categories. For example, salaries were reported for 93.2 percent of graduates who reported employment with firms of more than 500 attorneys.¹⁰² Meanwhile salaries were reported for just 40.7 percent of graduates who reported employment with firms of two to ten attorneys. And naturally no salaries were reported for the 14.3 percent of the class that was not employed at all. In short, reporting rates tended to be very high for graduates with high-paying work and low for graduates with low-paying jobs.¹⁰³

Given this pattern, one can draw certain fairly reliable conclusions about the salaries graduates of the class of 2011 received nine months into their nascent legal careers. NALP reported a median salary of \$60,000 for the 41.9 percent of graduates of the class for whom it had salary data. This means that 20.95 percent of the class was reported to be making a salary of \$60,000 or more. The true figure is probably higher, but how much higher?¹⁰⁴ Because salary reporting rates are so much higher among graduates with well-paying jobs, it seems improbable that more than one quarter of the class of 2011 was making \$60,000 or more nine months after graduation. This conclusion can also be extrapolated from the so-called bimodal salary distribution in salaries paid to recent law graduates. As Professor William Henderson's analysis of the data indicates, there are actually very few entry-level legal jobs that pay moderately more than the median reported salary.¹⁰⁵ A very large number of entry-level legal jobs pay between \$35,000 and \$60,000 per year,

101. See NAT'L ASS'N FOR LAW PLACEMENT, *supra* note 89.

102. See *id.*

103. When reporting salaries, schools do not rely solely on self-reporting by graduates. NALP encourages schools to use a variety of sources of information, such as publicly known starting salaries at law firms and other employers, to determine graduates' salaries when these are not reported by the graduates themselves. One consequence of this is that a graduate with a high-paying job is far more likely to have his or her salary recorded even without the graduate's cooperation.

104. "Probably," because it isn't completely clear that the number of unreported salaries of \$63,000 or more outnumbers the number of misreported salaries that were reported as being this high but in fact were not. When I audited the employment and salary data for the University of Colorado's class of 2010, I found several inaccuracies in regard to employment status that all tended to overstate the graduate's employment situation. That is, I found graduates who were working part-time described as working full-time, and graduates in short-term positions described as being in long-term positions. I was unable to check the accuracy of reported salary data.

105. See William Henderson, *Distribution of 2006 Starting Salaries: Best Graphic Chart of the Year*, EMPIRICAL LEGAL STUD. (Sept. 4, 2007, 3:29 PM), http://www.elsblog.org/the_empirical_legal_studi/2007/09/distribution-of.html.

while a smaller number pay the six-figure salaries that big firms offer to starting associates. We know the reporting rates for six-figure salaries are very high, and that there are comparatively few jobs that pay in the high five figures. In short, it seems unlikely that many graduates are making more than the reported median but having their salaries go unreported.¹⁰⁶

Roughly speaking, we can estimate that perhaps 15 percent of contemporary law graduates are securing high-paying, entry-level legal jobs, and another 25 percent are getting legal jobs that pay in the mid five figures, while a solid majority of graduates are unable to secure full-time, genuinely long-term legal employment within a year of graduation. The consequences for recent graduates of this overall employment and salary situation, given the skyrocketing cost of obtaining a law degree, are dire.

B. Debts that No Honest Man Can Pay

Nearly nine out of ten current law students borrow money to attend law school.¹⁰⁷ Two years ago, the federal government revamped federal support for educational lending by removing government guarantees for private educational loans and replacing such loans with a system of expanded direct lending from the federal government. Federal loans to attend law school currently carry interest rates of 6.8 percent for the first \$20,500 borrowed per year, and 7.9 percent for any amount beyond that.¹⁰⁸ Unlike almost any other form of debt, educational loans are nearly impossible to discharge in bankruptcy.¹⁰⁹ What this means, in practice, is that American taxpayers are now the direct guarantors of the approximately

106. This is all the more true given the very strong practical incentives law schools have to discover and report all the high-salaried jobs their graduates have acquired. Of course the incentives run very much the other way with regard to discovering and reporting low salaries.

107. The percentage of 2008 law school graduates who took out educational loans to pay law school expenses was 88.6 percent. See JULIE MARGETTA MORGAN, CENTER FOR AM. PROGRESS, *What Can We Learn from Law School?* 8 (2011), available at http://www.americanprogress.org/issues/2011/12/pdf/legal_education.pdf.

108. See *GradPlus Loan for Grad Students*, GRADLOANS.COM, <http://www.gradloans.com/graduate-plus-loan/> (last visited Aug. 11, 2012); *Graduate Stafford Student Loans*, GRADLOANS.COM, http://www.gradloans.com/stafford_loan/ (last visited Aug. 11, 2012).

109. See Madeleine Patton & Brandon Howard, Student Gallery, *Reducing the Life Sentence of Student Loans*, 31 AM. BANKR. INST. J. 48, 48 (2012) (noting that over the past two decades, student loans have become “nearly impossible to discharge in bankruptcy,” subject to a narrowly construed hardship exception).

\$4.375 billion per year of relatively high-interest federal debt that law students borrow to attend law school.¹¹⁰

How much is this per graduate? The median law school-related debt for indebted graduates of the 191 law schools who reported data for the class of 2011 (four schools did not report) was \$105,028, a 5.84 percent increase from 2010's figure of \$99,236.¹¹¹ This happens to be almost exactly the percentage by which tuition went up for the national class of 2011 relative to the class of 2010, and indicates the extent to which law school tuition is now so high that tuition increases will be close to 100 percent debt-financed by the nearly 90 percent of graduates who take on law school debt.¹¹²

Note that these figures *do not include interest accrued on these loans*. Interest accrues on educational loans from the date of issue, and this has a significant effect on the borrower's loan balance. Indeed, if a student does not pay down interest accrued on law school loans over the course of law school, then a student who borrows \$125,000 in principal (this was the average borrowed by 2011 graduates of private law schools) will have a \$142,500 loan balance six months after graduation, when the first loan payment comes due. This in turn suggests that the published data on law school debt understate the true levels by close to 15 percent.

Keep in mind that these figures omit other educational debt. As far as I have been able to discover, most law schools do not collect any data on how much educational debt the students they admit have already incurred, but average undergraduate debt among college graduates with debt is estimated to have been nearly \$25,000 in 2011.¹¹³ Although this figure omits the typically higher debt loads of graduates of increasingly common for-profit colleges, it is likely that the vast majority of law schools featured median educational debt for 2011 graduates well into six figures.¹¹⁴ Furthermore, given ongoing law school tuition increases, current law students are certain to incur significantly more debt than the graduating class of 2011.

110. Approximately 125,000 law students are currently borrowing an average of about \$35,000 per year to attend ABA-accredited law schools. The average amount borrowed and the total number of students are extrapolated from the 2011 ABA graduate debt data published by *U.S. News & World Report*. See *infra* note 111.

111. See *Whose Graduates Have the Most Debt?*, U.S. NEWS & WORLD REP., <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings> (last visited Aug. 30, 2012).

112. See Matt Leichter, *The Law School Tuition Bubble: Tuition Increases Law School-by-Law School from 2005 to 2011, Part 1*, THE L. SCH. TUITION BUBBLE (Jan. 24, 2011), <http://lawschooltuitionbubble.wordpress.com/2011/01/24/the-law-school-tuition-bubble-tuition-increases-law-school-by-law-school-from-2005-to-2011-part-1/>.

113. See *supra* note 28 and accompanying text.

114. See *supra* note 89 and accompanying text.

Even if tuition were frozen at all law schools in 2012 and 2013, current 1Ls would still pay on average about \$22,000 more in total tuition than did the class of 2011.¹¹⁵ Indeed, we can estimate conservatively that the average law student in the graduating class of 2014 who graduates with educational debt will have approximately \$165,000 of such debt—almost all of it at interest rates between 6.8 and 7.9 percent.

Servicing this sort of debt requires a fairly high income. A ten-year repayment plan on a \$150,000 loan balance will require payments of \$1774 per month, i.e., more than \$21,000 per year. This will almost surely be an impossible debt burden for the 75 to 80 percent of current law graduates who will be earning below the “median” NALP-reported salary of \$60,000 pre-tax dollars, except for those who are getting significant financial help from a spouse or other family members.¹¹⁶ Those who are earning near the high end of this range may be able to pay off their educational debt in a legally timely manner by refinancing their loans to twenty-five-year terms, which is becoming a common practice among law graduates. Even so, they will still be dealing with a monthly payment of \$1,100—and total payments, with interest, of \$330,000, which many will not have completed when their own children are in college.¹¹⁷ And even a twenty-five-year repayment plan will be of no use to the large number of recent graduates making considerably less than mid-five figure salaries, or who are completely unemployed. Nor will it be useful to those making the “median” (in reality the seventy-fifth to eightieth percentile) salary but who have \$200,000, \$250,000, or even \$300,000 in educational debt, as thousands do now, and even more will in the near future.

Even for the “winners” in the law school investment game—the approximately 15 percent of law students who acquire jobs upon graduation that pay six-figure starting salaries—that game remains fraught with financial peril. Few graduates who join big law firms

115. This number can be derived by comparing tuition levels in 2011–2012 to those over the previous three years and assuming that tuition remains the same for the class of 2014 for the duration of its members’ law school attendance.

116. Recall that the median salary as reported by NALP is drawn from a group that includes only 41.9 percent of all law graduates, meaning that barely one in five law graduates were reported to have salaries at or above the median.

117. See *Beta Georgetown Law Prospective Student Financial Planning Calculator*, GEORGETOWN LAW, <http://www.law.georgetown.edu/admissions-financial-aid/office-of-financial-aid/loader.cfm?csModule=security/getfile&pageid=61621> (last visited Oct. 1, 2012) (providing a useful tool for calculating the consequences of various debt levels). This calculator illustrates how fully debt-financing a legal education will result in debt loads, six months after graduation, nearly 20 percent higher than the principal debt incurred over the course of law school. For example a student who borrows \$200,000 over the course of law school will have, at present interest rates, around \$234,000 in debt in the fall following graduation.

become partners.¹¹⁸ If they acquire reasonably high-paying positions upon departure, or if they live very frugally during their years with the firm and manage to pay down a large portion of their debt, then their gamble will have paid off, at least in pecuniary terms.¹¹⁹

Yet changes in the market for such high-paying big firm positions appear to be making this an increasingly risky wager—not merely in terms of acquiring such a job in the first place but also in terms of holding onto it long enough or having a good enough exit option, or both, to make the initial acquisition ultimately worthwhile.¹²⁰ Indeed, a pair of recent papers by law professors—one of whom is currently a law school dean—conclude that a law degree is, under present circumstances, likely to be a significantly negative net investment for a large majority of those who acquire one.¹²¹

Those law school graduates—quite possibly an actual majority—who cannot pay their debts in a timely manner, even if those debts were refinanced to traditional mortgage-length terms, are faced with few options. Except under extraordinary circumstances, their debts cannot be discharged in bankruptcy, which means they will either eventually default on them or, if they are eligible, enter the federal government's Income-Based Repayment program (IBR). IBR allows debtors to make reduced payments equal to 15 percent of whatever portion of their adjusted gross income is 150 percent above the federal poverty line.¹²² Interest due that is not paid by the debtor accrues but is not capitalized. After twenty-five years¹²³—

118. According to NALP, 77 percent of associates leave the firm they joined after graduation within five years. See *Law Practice: Up, Out or Over*, A.B.A. L. PRAC. ARCHIVE, #160 (2006–2010).

119. The non-pecuniary (i.e., psychic) benefits and costs of legal education comprise a subject beyond the scope of this Article. Suffice it to say that this is a complex topic, as it seems clear that such benefits and costs are both considerable. On the one hand a legal career has significant status value for many people beyond its monetary rewards; on the other, both the monetary rewards and status value must be weighed against the body of evidence suggesting that lawyers are unusually unhappy, depressed, and prone to substance abuse and suicide when compared to other professionals. On the latter set of issues, see Patrick Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 874–81 (1999).

120. Some observers believe that the recent downturn in big-firm hiring is a sign of a structural rather than a cyclical change in the employment market for lawyers, and that both law firms and law schools need to accommodate themselves to a world in which technology and outsourcing will continue to transfer work that was formerly done by junior associates at large American law firms to other, more economical entities.

121. See Jim Chen, *A Degree of Practical Wisdom: The Ratio of Educational Debt to Income as a Basic Measurement of Law School Graduates' Economic Viability*, 38 WM. MITCHELL L. REV. 1185 (2012); Herwig J. Schlunk, *Mamas 2011: Is a Law Degree a Good Investment Today?* (Vand. Law & Econ., Working Paper No. 11-42, 2011).

122. See *Federal Student Aid*, U.S. DEP'T OF EDUC., <http://studentaid.ed.gov/PORTALSWebApp/students/english/IBRPlan.jsp> (last visited Aug. 30, 2012).

123. See *id.*

twenty years for loans originating after 2012¹²⁴—any remaining principal is forgiven, although under present IRS rules the forgiven debt is treated as income to the debtor.¹²⁵ For certain government loans, the Public Service Loan Forgiveness Program (PSLF) allows a debtor's debt to be discharged after 120 on-time reduced rate payments if the debtor is working for a government or non-profit employer.¹²⁶

While preferable to default, the disadvantages of IBR and PSLF are significant. The debtor's debt grows for as long as the debtor remains eligible. This means that the debtor has a large unsecured debt on his or her credit report, which will make it difficult to obtain consumer credit. If the debtor secures a high enough-paying job to no longer be eligible for IBR, the debtor must start making payments on the whole amount. Most problematic of all, the IBR program creates no contractual rights for those who take advantage of it: as a legal matter the program could be eliminated at any time, leaving those dependent on it with enormous amounts of non-dischargeable debt.

In sum, the present cost of legal education creates debt loads for law students that bear no reasonable relation to the employment prospects many of those students will have upon graduation. And this is no longer merely a problem at lower-ranked law schools. The combination of increasing educational costs and flat or actually decreasing numbers of high-paying legal jobs, in an economy where the cost of legal services is coming under more and more pressure from the forces of economic rationalization, has created a situation in which many graduates of even very highly ranked schools find themselves struggling to secure the kinds of jobs they would have considered minimally acceptable when they enrolled. (Keep in mind that such people often paid \$200,000 or more in direct costs, as well as incurring significant opportunity costs, to obtain law degrees from prestigious institutions).

124. See *We Can't Wait: Obama Administration to Lower Student Loan Payments for Millions of Borrowers*, THE WHITE HOUSE, <http://www.whitehouse.gov/the-press-office/2011/10/25/we-cant-wait-obama-administration-lower-student-loan-payments-millions-b> (last visited Nov. 18, 2012).

125. See, e.g., INTERNAL REVENUE SERV., 2008 REPORT TO CONGRESS 391 (2009), available at http://www.irs.gov/pub/irs-utl/08_tas_arc_lr_6.pdf.

126. See Public Service Loan Forgiveness, FEDERAL STUDENT AID, <http://www.studentaid.ed.gov/repay-loans/forgiveness-cancellation/charts/public-service> (last visited Nov. 18, 2012).

C. Current Employment Outcomes for Graduates of Elite Law Schools

How many current students at highly-ranked law schools are likely to secure what they would have considered a good, or at least acceptable, first legal job upon graduation before they enrolled?¹²⁷ One way to answer this question is to determine outcomes that prospective elite law school students would likely consider unacceptable from an *ex ante* perspective. Although, of course, these will vary by individual, it is possible to make general estimates about the sorts of post-graduate outcomes that would lead to buyer's remorse on the part of people who are considering investing several hundred thousand dollars in direct and opportunity costs in order to attend a top law school.

For the purpose of analysis, let us assume the following post-graduate outcomes, as recorded by the annual NALP survey, would be considered unacceptable by most prospective elite law school students:

- (1) Unemployment (or employment status not known);
- (2) A law school-funded position;
- (3) Further graduate study;
- (4) Academia;
- (5) A position with a very small law firm (ten or fewer attorneys) or as a solo practitioner;
- (6) A state or local clerkship; and
- (7) A position in "business and industry."

That (1) and (2) are generally bad outcomes requires no explanation. Further graduate study—which most often means enrollment in an LL.M. program—is, for law school graduates, often a consequence of being unable to obtain suitable employment. On NALP forms, "academia" tends to mean a low-paying and generally temporary position within an academic institution, rather than a tenure-track job, or a so-called visiting assistant professorship, which can serve as a prelude to the former.¹²⁸ Positions with very small law firms generally feature most of the major disadvantages of entry-level associate big firm work, such as long hours and boring

127. For many graduates, the first job they acquire after graduation plays a particularly significant role in their overall career path, since certain types of prestigious legal work (for example, employment with a national law firm or a federal judicial clerkship) tend to have a strong effect on a graduate's subsequent career prospects.

128. To minimize the possibility of double-counting undesirable outcomes, I am assuming all jobs listed under "academia" are law school-funded positions.

tasks, without the compensation of a large paycheck.¹²⁹ State and local clerkships are rarely considered desirable positions by elite law school graduates, who appear to have only begun taking such positions recently. On NALP surveys, “business and industry” usually signifies, with occasional exceptions, low-paying non-legal employment.¹³⁰

Of course all these generalizations are subject to individual exceptions. For example, a graduate is occasionally unemployed by choice. Some small law firm jobs are with high-paying boutiques. A state appellate court clerkship can be a desirable position. A position in “business and industry” might feature a six-figure salary with an international consulting firm. On the other hand, the proposed method of analysis assumes that all jobs with firms of more than ten attorneys, all federal clerkships, all government jobs, and all public interest positions are without exception desirable outcomes for graduates, which will also not be true in some individual cases. The point of the method is not to make individual judgments but to provide a basic estimate in the aggregate regarding the present likelihood of desirable and undesirable outcomes for graduates of these schools.

Based on the above definitions, here are estimates of what percentage of the graduating classes of 2011 at the nation’s twenty highest-ranked law schools had undesirable employment outcomes as of February 15, 2012:¹³¹

- Yale: 18.4 percent

129. The median salary for 2011 graduates who joined such firms and reported their salaries was \$50,000 (among firms with two to ten attorneys). The true median was probably quite a bit lower, as only 40 percent of such graduates reported a salary. See *Class of 2011 National Summary Report*, NAT’L ASSOC. OF L. PLACEMENT (July 2012), http://www.nalp.org/uploads/natlsummchart_classof2011.pdf.

130. Because in a typical year approximately 3 percent of graduates of Yale, Stanford, and Harvard Law Schools take high-paying “business and industry” positions with consulting firms and the like, I am assuming that a similar proportion of the graduates of the other schools listed here enjoyed desirable outcomes when they were listed as taking jobs in “business and industry.” For schools outside the very top tier, this is almost certainly an overly optimistic estimate. (This 3 percent figure is an estimate based on the individual job placements for people in business and industry reported by Harvard, Yale and Stanford law schools.)

131. For the purposes of this analysis, very small law firms are defined as firms of ten or fewer attorneys. For example, Columbia lists 456 graduates in its 2011 class. Nine months after graduation, eleven were unemployed or in graduate school. Thirty-eight were in law school-funded jobs. Three were listed as being in academia, which I assume for the purpose of analysis are law school-funded positions, and which I therefore did not add to the numerator. Eight were with very small law firms, twenty-four were in business or industry (I am assuming fourteen of these positions—3 percent of 456—represented desirable outcomes), and six had state or local clerkships. See *Employment Statistics*, COLUM. L. SCH., <http://www.law.columbia.edu/careers/employment-statistics> (last visited Nov. 8, 2012).

- Stanford: 7.9 percent
- Harvard: 17.9 percent
- Columbia: 16.0 percent
- Chicago: 23.6 percent
- NYU: 23.6 percent
- Penn: 17.0 percent
- Berkeley: 19.2 percent
- Duke: 22.5 percent
- Michigan: 26.5 percent
- Virginia: 28.1 percent
- Northwestern: 22.8 percent
- Cornell: 28.8 percent
- Georgetown: 31.3 percent
- Vanderbilt: 34.9 percent
- Texas: 42.0 percent
- UCLA: 47.0 percent
- USC: 42.9 percent
- George Washington: 44.3 percent
- Minnesota: 66.3 percent

These statistics reflect the current situation for graduates of the nation's highest-ranked law schools. They in turn suggest that, at the ninety percent of ABA law schools ranked lower than those listed above, a large majority of graduates are failing to obtain outcomes that justify the direct and opportunity costs that graduates incurred in the course of getting their law degrees. If this is indeed the case, it follows that the current model of legal education in the United States is on an unsustainable path, and that maintaining the status quo is not a long-term option for legal academia.

PART IV: THE VALUE OF LAW DEGREES AND PROSPECTS FOR REFORM

Legal education in America now features costs that are not justified by the return on investment that law graduates can reasonably expect from their degrees. This appears to be the case for a significant majority of graduates at most law schools and large minorities of graduates at even very elite institutions.¹³² In other words, the net present value of most law degrees being earned today is negative.

132. A common rule of thumb used by analysts of educational debt is that a degree that requires the graduate to take on no more debt than the annual salary of the graduate's first postgraduate job is a good investment, while a degree that requires 50 percent more debt is problematic, and one which requires twice as much debt as the graduate's initial salary is likely to be a poor investment. With average educational debt among law graduates now well

What can be done to alter an equation that cannot be sustained in the long run? This section examines the prospects for a significant increase in the value of law degrees. It then considers some short-term and longer-term reforms for dealing with the crisis of the American law school.

A. *Will Law Degrees Become More Valuable?*

One possibility is that the return on investment graduates can expect from law degrees will improve significantly. This seems unlikely for a number of reasons. First, contrary to claims that what appears to be the unsustainable cost structure of legal education is only a temporary anomaly, produced by the downturn in large firm entry-level hiring in the wake of the recession of 2007–2008, there is a great deal of evidence that, for more than two decades now, long-term structural changes in the market for the providers of legal services have been eroding the expected return on law degrees. As a percentage of gross domestic product, the legal services sector in America has contracted by nearly one-third since the late 1970s.¹³³ These long-term changes were reflected in hiring statistics for new law graduates well before the recent recession.

Here are the percentages of graduates of ABA-accredited law schools who, according to the annual NALP survey, were employed in full-time positions requiring a law degree nine months after graduation in each year since 2001:

- 2001: 68.3 percent
- 2002: 67.0 percent
- 2003: 65.5 percent
- 2004: 65.1 percent
- 2005: 66.7 percent
- 2006: 68.3 percent
- 2007: 70.7 percent
- 2008: 67.2 percent
- 2009: 62.5 percent
- 2010: 59.9 percent
- 2011: 57.9 percent¹³⁴

into six figures, and no more than one in seven law graduates obtaining six-figure starting salary jobs, very few law schools are currently producing even marginally acceptable outcomes for their graduates.

133. See *supra* note 4 and accompanying text.

134. See *Employment Market for Law School Graduates Wavers*, NAT'L ASS'N FOR LAW PLACEMENT (July 2010), <http://www.nalp.org/july10trendsgradempl>. Prior to 2001, NALP used a

Note that these percentages include temporary positions, including those positions created by law schools for their otherwise unemployed graduates.¹³⁵ They also exclude from the denominator the roughly 2 percent of students from each national class whose status was unknown. In other words, even using an extremely generous definition of what constitutes obtaining a legal job, fully one-third of ABA law school graduates were not obtaining the jobs they had hoped to receive on entering law school before the recent recession.

Almost every long-term trend in the employment market for graduates of American law schools points toward the elimination of jobs, especially entry-level jobs for lawyers. Technology and outsourcing are the two most obvious structural factors that help explain a 33 percent functional unemployment rate among graduates of ABA law schools, even before the recent downturn.¹³⁶ In addition, the question of the extent to which large law firms will return to something like the hiring patterns of five years ago, though much discussed by the media and elite law schools, is largely irrelevant to the vast majority of law school graduates. Historically speaking, 90 percent of law schools send less than 20 percent of their graduates to such firms (and 80 percent of law schools have a history of sending less than 10 percent of their graduates to large firms).¹³⁷

Further evidence that law degrees are unlikely to become more valuable going forward can be found in the projections of the Bureau for Labor Statistics (BLS), the federal agency charged with the task of predicting likely demand in various industries in the coming years. In its latest projections, the BLS predicts that there will be approximately 801,800 jobs for lawyers in America in 2020, up from 728,200 in 2010.¹³⁸ The BLS sees the American economy adding 73,800 more legal jobs over the course of the present decade from

different method of calculation, which makes earlier figures not directly comparable. Note that these are “nested” statistics, in that the percentage given for graduates employed in full-time positions requiring a law degree is actually the percentage of the subset of graduates who are employed nine months after graduation, not of all graduates. I have recalculated the percentages to reflect the larger cohort.

135. See *supra* note 85 and accompanying text.

136. For a perceptive analysis of these long-term trends, see RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* (2009).

137. It is true that the question of whether, for example, 73 percent (as in 2007) or 51.5 percent (as in 2011) of Columbia Law graduates are getting big firm jobs is of some relevance to graduates of non-elite law schools, in that the lower number means such graduates will be competing with many more graduates of elite law schools for non-elite positions.

138. These projections are based on what economists technically call “a full employment economy” in the target year of 2020, which is to say an economy unaffected by any possible recessionary effects at that point.

the effects of economic growth, while the agency projects 138,400 currently existing jobs will be occupied not by the attorneys who occupy them now but by people who are either not yet attorneys or attorneys who at the beginning of the decade were not employed in legal positions.¹³⁹ Overall, the BLS projects that 212,000 people who did not have jobs as attorneys in 2010 will have such jobs in 2020.¹⁴⁰

Consider what these numbers mean for law graduates. If we assume that every legal job that becomes available per the BLS projections between 2011 and 2020 that is not filled by an already-employed lawyer is filled by people who graduate from ABA-accredited law schools during those years, and if we further stipulate that the total number of graduates of such schools remains the same on average over the course of the decade (approximately 44,500 per year), then we can project that 47.6 percent of graduates of ABA-accredited law schools over the course of this decade will get legal jobs.¹⁴¹ This estimate is certainly too high, since some portion of the 212,000 legal jobs that become available over the course of the decade per the BLS projection will be filled by people who graduated from law school prior to 2010 but were unemployed as attorneys in 2010.¹⁴² An even more daunting projection is provided by Matt Leichter, who has calculated the thirty-five-year degree rate—that is, the total number of degrees conferred over the approximate length of a successful professional career—of ABA-accredited law schools and compared it to the comparable rate for accredited medical and dental schools. The results are startling: Leichter finds that while the total number of degrees conferred over the past thirty-five years by medical and dental schools closely tracks the number of doctors and dentists currently working in the United States according to Bureau of Labor Statistics (BLS) estimates, the comparable ratio for law degrees and practicing attorneys is almost two to one.¹⁴³

139. See *Employment Projections*, U.S. DEP'T OF LABOR (Mar. 29, 2012), <http://bls.gov/emp/>.

140. See *id.*

141. This of course does not mean that 48 percent of law graduates will be employed continuously as lawyers over this period. Assume that Associate A graduates in 2012, is hired by a firm, is laid off in 2015, and is then replaced by Associate B, who graduated in 2015. Assume further that Associate A does not get another legal job. Per the calculation method we are employing here the "legal employment rate" for these two graduates over the course of the decade was 100 percent, since both got legal jobs after not previously being employed as attorneys at the beginning of the decade.

142. The assumption that ABA-accredited law schools will not expand over the course of the decade may also be optimistic, given historical trends.

143. This method projects that by the end of the decade, the thirty-five-year degree conferral total for ABA-accredited law schools will be slightly more than 1.6 million—exactly twice the BLS projection regarding the total number of attorneys expected to be employed in

In short, it would seem quite optimistic to predict that, assuming anything like the status quo in American legal education is maintained, the expected economic value of law degrees will remain relatively stable over the foreseeable future, as opposed to deteriorating further.¹⁴⁴ Expecting that value to grow seems unrealistic.

B. Possible Responses to the Crisis of the American Law School

If the long-term value of a law degree can at best be expected to remain stable, then the actual return on future law degrees can only be improved by reducing the cost of obtaining such degrees. If anything resembling the current system of legal education in America is going to be sustainable as a long-term enterprise, then as a matter of basic economics, the cost of becoming a lawyer within that system must be reduced significantly. It is not going to be possible to continue to maintain a social system in which forty-five thousand people are convinced every year to take on, and then allowed by the American taxpayer to incur, an average of \$150,000 of high-interest, non-dischargeable educational debt in the pursuit of approximately twenty-one thousand legal jobs,¹⁴⁵ the majority of which will not pay enough to allow graduates to fully service that debt even over a long time horizon. The system might collapse because of reduced demand for law school admissions as potential law students better understand the economics of legal education and the legal profession, because the political system refuses to continue to provide unlimited debt-financing of educational credentials that cost far more than they are worth, or, most likely, because

America at that time. See Matt Leichter, *BLS Updates Its 2020 Employment Projections: For Law Students, It's Very Bad*, THE LAW SCH. TUITION BUBBLE (Mar. 3, 2012), <http://lawschooltuitionbubble.wordpress.com/2012/03/12/bls-updates-its-2020-employment-projections-for-law-students-its-very-bad/>. And it is worth noting that not all attorneys working in the United States are graduates of ABA-accredited schools: unaccredited law schools produce several thousand graduates every year, some of whom obtain legal jobs in those jurisdictions, most notably California, that do not require a degree from an ABA-accredited school as a prerequisite for taking the jurisdiction's bar examination. In addition, an unknown number of lawyers trained outside of the United States practice within American jurisdictions.

144. It is sometimes argued that in an extremely complex, globalized economy, the demand for legal services will rise. The difficulty with this line of argument is that it conflates increasing demand for legal services with increasing demand for the services of new graduates of accredited American law schools. In sum, this is equivalent to someone in 1975 arguing that the sharply increasing global demand for automobiles over the next generation would increase the demand for—and the wages of—members of the United Autoworkers Union.

145. See *supra* note 140 and accompanying text.

of a combination of these factors. Ultimately the status quo cannot be maintained.¹⁴⁶ I will first consider reforms that could lead to the preservation of the basic structure of much of the current system. Then I will consider some more radical alternatives.

The most fundamental structural feature of the status quo in American legal education is that aspiring lawyers must generally invest in seven years of higher education in order to obtain a law license.¹⁴⁷ If that structure is to be maintained going forward, the educational debt graduates incur must be reduced significantly, while the long-term deterioration in the value of possessing a law license must be at least be slowed, if not stopped or reversed. Advancing toward these goals is in no way a mysterious process: average law school tuition must be slashed at least to the levels of two or three decades ago, while the number of graduates produced by American law schools must be reduced significantly. Cutting tuition does not require any sort of intellectual or technological breakthrough; the factors that have driven tuition up so drastically are both well understood and in no way unalterable. Reducing the number of law school graduates is even less complex. It is becoming obvious that a good number of the law schools that now exist in America will need to close in the coming years, while quite a few others will need to become a good deal smaller.

Tuition can be reduced drastically through the simple expedient of returning to the cost structures that existed at law schools until quite recently. Unless one wishes to defend the improbable proposition that the legal education received by the majority of attorneys practicing in America today was unacceptably inadequate, there is no reason why student/faculty ratios at law schools cannot be returned to the levels of thirty years ago. Nor is there any reason to believe that legal academics must be paid twice as much in real terms as they were a generation ago or that some dire consequence would arise from expecting law professors to teach five classes per

146. In this regard, it is perhaps noteworthy that in his 2012 State of the Union address, President Obama "put colleges and universities on notice" that they risked losing access to federal loan money if they continued to raise tuition rates. See Kayla Webley, *Obama Wants to Force Colleges to Reduce Tuition, But at What Cost?*, TIME SWAMPLAND (Jan. 30, 2012), <http://swampland.time.com/2012/01/30/obama-wants-to-force-colleges-to-reduce-tuition-but-at-what-cost/>.

147. From a comparative legal perspective, this is a highly unusual requirement. In the vast majority of legal systems, including the vast majority of legal systems in the developed world, becoming eligible to practice law requires far less formal education. See *infra* note 161.

year rather than three.¹⁴⁸ In addition, the ABA's accreditation regime needs to be relaxed to allow schools to employ larger numbers of adjunct faculty, given that competent adjunct faculty serve the valuable role of holding educational costs down, while conveying useful information to law students regarding the actual practice of law.¹⁴⁹

Significant reductions in the size of tenure-track faculties should be accompanied by similar reductions in the size of administrative staffs, which have grown at a much faster rate than faculties over the course of the last generation.¹⁵⁰ Again, there is no reason why faculty cannot resume most if not all of the administrative duties that have been outsourced in recent years to staff, in the name of increasing the number of law review articles published every year. The expenses associated with clinical legal education can be reduced through greater use of well-designed externship programs, which allow students to obtain many of the same benefits at a radically reduced cost.

Many other opportunities for cost savings with little or no sacrifice of educational quality will likely present themselves in a world in which law schools face a choice between reducing their expenditures and ceasing to exist. As legal practice continues to move away from requiring lawyers to consult books of any sort, the millions of dollars per year that the typical law school expends on maintaining a comprehensive law library could be reduced to a more rational level of expenditure. Indeed, avoiding further wasteful expenditures on luxurious physical plant upgrades, which have had little function beyond allowing legal academia to consume conspicuously in the context of a negative-sum reputational ratings game, would itself save law schools vast sums of money.¹⁵¹ Similarly, as it becomes evident that the current cost structure of legal education is unsustainable, the central administrations of universities will necessarily

148. It is true this might lead to a reduction of the rate of legal academic publication to that which existed a generation ago. Whether a radical reduction in the cost of legal education ought to be purchased at the cost of seeing only five thousand law review articles published per year, rather than the ten thousand being published at present, is a question that does not, under the circumstances, seem too difficult to answer.

149. Under the current ABA rules, there is nothing barring a school from employing a tenure track faculty made up exclusively of people who have never practiced law, or indeed even obtained law degrees (several dozen current faculty at elite law schools do not have law degrees of any kind), but there are strict limits regarding the number of practicing lawyers who will be allowed to teach law school classes.

150. See *supra* notes 21–66 and accompanying text.

151. Many of these reforms are applicable to undergraduate education as well. Reducing the cost of obtaining an undergraduate degree is a larger social reform that will, among many other things, help rationalize the cost of postgraduate education.

reduce the extent to which they treat law school tuition as a source of revenue that cross-subsidizes other university programs.¹⁵²

It is even possible that drastic cuts in the cost of legal education will lend strength to arguments that this education is a public good, which at least at public institutions ought to receive a higher measure of direct tax subsidization. Such arguments are far more likely to succeed in the wake of genuine reform efforts than they are in the current context of out-of-control expenditures, which have been dedicated in no small part to making the lives of law professors and legal administrators more pleasant.

In sum, a series of straightforward reforms, undertaken over the course of the next decade, could reduce the operational costs of law school drastically to levels that would allow tuition to return to where it was, in real terms, in the 1970s and 1980s.¹⁵³ This would be a crucial step toward making the economic benefit of a legal education once again reasonably relate to its cost.

Another crucial step depends on cultivating a widespread realization that the cost of legal education is only part of the long-term crisis facing the American legal profession. An equally key element of that equation is that ABA-accredited law schools have for years been graduating at least twice as many law students as there are legal jobs for them. Returning American legal education to a sustainable long-term model requires reducing that ratio. Given the enormous surplus of graduates produced by ABA-accredited law schools over the course of the last generation and the growth prospects—or rather the lack of such prospects—for the legal profession over the course of the foreseeable future, it hardly seems hyperbolic to suggest that such schools ought to be producing half as many graduates as they currently do. As transparency increases regarding the actual career outcomes obtained by law graduates in recent years, and as the political system becomes increasingly aware that taxpayers guarantee the cost of law degrees (which have negative economic value), some law schools seem certain to close while others will become smaller.¹⁵⁴

152. The extent to which universities use law school revenues to cross-subsidize other programs appears to vary radically between institutions. My own research indicates the proportions range from as high as 45 percent to situations in which the central university actually subsidizes the law school.

153. It is true some of these reforms would be more difficult to implement quickly than others. On the other hand, the pace of reform can be remarkably brisk under the right sort of pressure. Cf. SAMUEL JOHNSON, *THE CONVICT'S ADDRESS TO HIS UNHAPPY BRETHREN* (1777) ("Depend upon it, sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully.").

154. Many law graduates have discovered that, if they are unable to obtain jobs as attorneys, a law degree can have negative value even without regard to the direct costs involved in

As painful as this outcome will be for many of the current employees of such schools, there can be little doubt that the net social effect from the reduction of American law schools will be positive. The current system produces, conservatively speaking, twenty thousand to twenty-five thousand law graduates annually who will not be able to service their educational debts. This system exists because of the combined effects of social inertia and market distortions that are produced by the continuing availability of loans that have no reasonable prospect of being repaid in anything like a timely or complete manner.

For those who wish to preserve something of the status quo in legal education, a combination of greatly reduced operating costs and significantly fewer law graduates offers the best hope for such an outcome. No one can predict the extent to which the ongoing crisis of the American legal profession will allow for a pace of reform that will maintain the current structure of legal education in some significant part. If law schools slash their operating costs and produce far fewer graduates, it might be the case that in a generation from now, a license to practice law will still require three years of postgraduate attendance at institutions that resemble existing schools. But the question whether this will happen differs from whether this outcome represents the best road to reform.

The two main alternatives to a less expensive, smaller version of the status quo are to either reduce the postgraduate component of legal education in America or to eliminate it altogether. The first approach would involve going back to a law school model that predominated in much of America a century ago, when many law schools offered two-year programs.¹⁵⁵ This changed when the ABA and the AALS waged a successful campaign to make the three-year postgraduate model of legal education a legal prerequisite in almost all jurisdictions for bar admission.¹⁵⁶ This campaign was waged in the name of quality control but included significant elements of class, ethnic, and religious bias.¹⁵⁷

In the subsequent decades, the three-year law school model seems to have remained in place—like so many other aspects of

acquiring it. See, e.g., *supra* note 88. This is a product of the fact that a law degree can disqualify applicants from jobs they could obtain prior to getting a law degree, as for a variety of reasons, many non-legal employers are hesitant to hire law graduates. Indeed, this effect applies not only to non-legal employers: former paralegals have discovered they can no longer work in their former field after they have graduated from law school. See, e.g., *J.D. to Paralegal?*, JD UNDERGROUND, <http://www.jdunderground.com/paralegal/thread.php?threadId=28082> (last visited Nov. 17, 2012).

155. See generally TAMANAH, *supra* note 29.

156. See generally *id.*

157. See generally *id.*

legal education in America—largely as a function of inertia, rather than from any demonstration that the benefits of a third year of law school justify its cost. Complaints from both law students and legal educators that the third year is unnecessary have been commonplace since the earliest days of the requirement.¹⁵⁸ At a recent national conference on legal reform, no one among a group of more than one hundred legal academics was willing to defend the proposition that the third year of law school represented a justifiable investment of time and money for contemporary law students.¹⁵⁹

Given its dubious origins and its questionable cost/benefit ratio, getting rid of the third year of law school would be a sensible alteration of the legal academic status quo. Some schools are already making *de facto* moves in this direction, such as replacing or supplementing the third year classroom experience with one- or two-semester externship programs that partially or completely transform the third year into a quasi-apprenticeship experience. The great advantage of such programs from the economic perspective of law schools is that they maintain a three-year tuition requirement even as they move toward eliminating the third year classroom component entirely. Naturally, any meaningful reform in this direction must eliminate the tuition requirement, not merely the third classroom year.

Though such a reform would, holding everything else constant, reduce both the direct cost and opportunity cost of law school by one-third, it would also increase the rate at which law graduates were being produced by a similar proportion. Thus, while reducing law school by one year would be beneficial to new graduates in regard to the upfront cost of becoming a lawyer, it would, all other things being equal, have a marginally negative effect on the long-term economic value of a law degree for both those graduates and, more problematically, for lawyers who graduated under the old three-year system.

A more radical reform would involve eliminating the postgraduate education prerequisite for the practice of law altogether. There is no inherent reason why a single institutional entity called “law school” needs to be both a three-year extension of a college graduate’s liberal education and a vocational training ground for future

158. See, e.g., Mitu Gulati, Richard Sander & Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235, 242 (2001).

159. This question was posed to the audience at the opening session of the Future Ed conference hosted jointly by Harvard Law School and New York Law School over three sessions between the fall of 2010 and the fall of 2011.

attorneys. This more comprehensive approach to reform assumes that learning to think deeply about law is a skill and habit that future lawyers should be given every chance to acquire as undergraduate students studying law as a subject of concentration in a general liberal arts degree program. It further assumes that postgraduate legal education *for future lawyers* should consist of vocational training that takes place in explicitly vocational contexts such as supervised apprenticeship and externship programs.¹⁶⁰ This resembles the structure of legal education in just about every other country in the world.¹⁶¹

So where does this leave the various law schools that in recent years have self-consciously adopted a graduate school model of education with varying success? In the context of such a comprehensive reform of American legal education, there would be room in both the academic and legal hierarchy for a certain number of such graduate schools of law. They would have two ongoing purposes: training the next generation of legal academics¹⁶² and providing a mechanism for further social sorting, which could be employed by those high-status legal institutions that wished to focus their hiring efforts on people who had enough time and money to spend a great deal of both pursuing formal education beyond their undergraduate years.¹⁶³ What such programs would not do is provide anything that would be a *prerequisite for acquiring a license to practice law*.

Such a fundamental change in the structure of American legal education is not likely to happen soon. On the other hand, the

160. For a recent proposal along these lines, co-authored by a Northwestern University law professor and an attorney at the prominent firm of Kirkland & Ellis, see John O. McGinnis & Russell Mangas, *First Thing We Do, Let's Kill All the Law Schools*, WALL ST. J. (Jan. 17, 2012), <http://online.wsj.com/article/SB10001424052970204632204577128443306853890.html>.

161. See Nuno Garoupa & Thomas S. Ulen, *The Market for Legal Innovation: Law and Economics in Europe and the United States*, 59 ALA. L. REV. 1555, 1592 (2008) ("Except for a few countries (Japan and the Republic of Korea) that are currently revising their legal education systems to look more like that in the United States, most lawyers in the world receive their legal education by taking law as their undergraduate major.").

162. Almost all these graduate students will go on to teach in undergraduate programs rather than in what we now think of as "law schools," which under this model would mostly cease to exist.

163. An obvious objection to this kind of reform is that it would produce a two-track system of legal education: one for ordinary lawyers, consisting of an undergraduate education with an emphasis on law followed by a vocational apprenticeship, and one for "elite" lawyers, featuring several more years of post-graduate education. The reply to this objection is that as a functional matter, we already have a profoundly hierarchical system of legal education, with just a handful of schools producing the large majority of elite lawyers. The main difference between the new system and the status quo is that, under the status quo, a non-elite legal education is on average nearly as expensive to obtain as its elite cousin.

longer that law schools refuse to acknowledge that they are producing far too many graduates at far too high a cost, the more likely some sort of radical reform will become.¹⁶⁴

CONCLUSION

The status quo in American legal education has become unsustainable. For many years now, the cost of law school has climbed relentlessly, while the long-term value of a law degree has deteriorated. By the summer of 2012, there were numerous signs that the inevitable economic and social crisis caused by the simultaneous continuation of these two trends was finally at legal academia's doorstep. These signs included a wave of prominent stories in the nation's print and electronic media questioning the value of law degrees, several class action lawsuits filed against law schools for allegedly fraudulent recruitment practices aimed at prospective students, and, most tellingly, a drastic plunge in the number of people applying to law school.¹⁶⁵ Indeed, in the 2012-2013 academic year, American law schools are likely to collect—possibly for the first time—less tuition revenue than they did in the previous academic year.¹⁶⁶ In America today, the idea that law school is a safe and sensible investment in a person's future seems to be moving rapidly

164. Radical reform would come very quickly if law students were suddenly limited to being able to borrow no more money to attend law school than they could be reasonably expected to pay back given their future employment prospects.

165. Between 2010 and 2012, the number of applicants to ABA-accredited schools fell from 87,900 to approximately 67,700 (the latter number is an estimate of the final total based on the number of applicants through June 1st—a date at which historically more than 97 percent of applicants within a particular admissions cycle had applied). See *Easing Law School Admission*, LSAC, <http://www.lsac.org/Members/Data/current-volume.asp> (last visited Nov. 15, 2012). In response, one “top tier” law school announced that it planned to reduce the size of its entering class by 20 percent and to make this reduction permanent. See *Staff Reorganization: Overview*, UNIV. OF CAL. HASTINGS COLL. OF THE LAW (Mar. 19, 2012), <http://www.uchastings.edu/faculty-administration/chancellor-dean/letters/3-19-12a.html>. Many other schools are apparently preparing to bring in smaller classes as well, even while maintaining previous levels of “scholarships”—that is, tuition discounts—for incoming students. For prominent examples of media coverage regarding the declining value of law degrees, see Nathan Koppel, *Law School Loses Its Allure as Jobs at Firms Are Scarce*, WALL ST. J., Mar. 17, 2011, <http://online.wsj.com/article/SB10001424052748704396504576204692878631986.html>; David Segal, *Is Law School a Losing Game?* N.Y. TIMES, Jan. 8, 2011, <http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=all>; *CBS Evening News: Even Lawyers Struggle to Find Jobs These Days* (CBS television broadcast Mar. 8, 2012). For information about the lawsuits, see Matthew Shaer, *Law Schools Sued for Lying About Lawyering*, N.Y. MAG. (Feb. 1, 2012, 12:53 PM), <http://nymag.com/daily/intel/2012/02/law-schools-sued-for-lying-about-lawyering.html>.

166. See Matt Leichter, *U.S. News Data Show 2011 May Be Beginning of End for Law School Tuition Bubble*, THE AM. L. DAILY (Mar. 19, 2012, 4:31 PM), <http://amlawdaily.typepad.com/>

from the status of conventional wisdom to yet another debunked myth regarding how spending money on higher education is almost axiomatically a wise thing to do.

If American legal education is to exist in anything like its present form, then law schools must become much less expensive and produce far fewer graduates than they do now. If law schools fail to undertake significant reforms in these directions, then more radical reforms will be thrust upon them by irresistible economic, political, and social forces. Whether the future of legal education will be determined by serious internally driven reforms or radical externally imposed changes is an open question, as is which outcome would most benefit the legal system and society as a whole. What is not in question is that major changes are coming to American legal education. After all, if something cannot go on forever, it will stop.

