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The Crisis of the American Law School

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SELECTEDWORKS™

THE CRISIS OF THE AMERICAN LAW SCHOOL

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 JD with honors, an LLM 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.

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 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, while resident tuition at public law schools

[1] Herb Stein's Unfamiliar Quotations, Slate Magazine, May 16, 1997. Quoted in a slightly different form in William D. Henderson and Rachel M. Zahorsky, "The Law School Bubble: How Long Will It Last If Law Grads Can't Pay the Bills?" ABA Journal, January 1, 2012.

has nearly quadrupled in real terms over just the past two decades.[2] Meanwhile for more than 30 years now the percentage of the American economy devoted to legal services has been shrinking. In 1978 the legal sector accounted for 2.01% of the nation's GDP: by 2009 that figure had shrunk to 1.37% -- a 32% decrease.[3]

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 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.

This article has four parts. Part I 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 what consequences this increased cost has had for recent law graduates and current law students, in the context of the changing employment market for law school graduates. Part IV summarizes the situation, as well as 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

When I enrolled in the University of Michigan Law School in the fall of 1986, first-year tuition for Michigan residents was $4,420. Adjusting for inflation, this was the equivalent of just over $9,000 in 2011 dollars. If I had enrolled at the law school 15 years earlier I would have paid only $800 – the equivalent of $4,443 in 2011 dollars.[4] From the present perspective that seems like quite a bargain: in 2011-2012 first-year law students who were Michigan residents paid $46,800 in tuition and fees.[5] Remarkably, over the past four decades the real, inflation-adjusted cost of resident

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[2] Figures for private and public law school tuition are taken from American Bar Association reports. See http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_5.authcheckdam.pdf. 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

[3] Matt Leichter, "A Profession in Decline, BEA Legal Sector Data (1977-)" http://lawschooltuitionbubble.wordpress.com/original-research-updated/a-profession-in-decline/. Leichter is citing BEA data. See http://bea.gov/iTable/index_industry.cfm

[4] Michigan Law School tuition figures since 1950 are available here: http://www.law.umich.edu/historyandtraditions/students/Documents/Law_School_Tuition_History.pdf

[5] http://www.law.umich.edu/currentstudents/financialaid/Pages/tuition.aspx

tuition at Michigan's law school has increased more than ten-fold. Over the same period, non-resident tuition has increased in real terms by a factor of "only" 4.4.

In this regard, Michigan's law school is far from unique. The school at which 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.[6] 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.[7] As disturbing as the rise in private law school tuition has been, the gradual elimination of any apparent political commitment to legal education as a public good is perhaps even more troubling,

In what follows, I am going to present historical tuition data in terms of inflation-adjusted, 2011 dollars. This will allow readers to get a sense of the extent to which the cost of going to law school has changed in real economic terms. Here, for example, is the change in the tuition and fees charged by Harvard Law School, in 2011 dollars, over the course of the past four decades:

HARVARD LAW SCHOOL TUITION (in 2011 dollars):

1971: $12,386

1981: $15,862

1991: $27,207

2001: $35,817

2012: $50,880

Over the last four decades, Harvard's tuition has more than quadrupled in real, inflation-adjusted terms, and has nearly doubled in just the past 20 years.[8]

Here are the figures, again in 2011 dollars, for median resident tuition at ABA-accredited public law schools:

1985: $3,746

1995: $7,201

2005: $13,944

2011: $20,076

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[6] Historical tuition figures for the University of Colorado are based on the school's catalogue.
[7] See footnote __ supra and accompanying text.
[8] Harvard tuition numbers are taken from the Harvard Law School annual catalogue, available on line here: http://pds.lib.harvard.edu/pds/view/8508871

Now here are the numbers for private law schools, again in 2011 dollars:

1985: $15,438

1995: $24,988

2005: $33,021

2011: $39,915[9]

Since the mid-1980s private law school tuition has increased by 161.5% in real inflation-adjusted terms, while public law school resident tuition has increased by an astounding 396.8% over inflation.[10] The growth of resident tuition at individual public law schools over just the past 15 years is breathtaking (again, all figures are in constant 2011 dollars): Minnesota has gone from $11,890 to $35,000; Ohio State from $5,860 to $27,800; Texas from $5,340 to $27,748; Illinois from $7,225 to $40,600.[11] Recently the University of California-Berkeley became the first public law school to charge a resident tuition of more than $50,000, but several more seem sure to follow.[12] Meanwhile, according to one projection, tuition at nearly a dozen law schools will be over $70,000 (that's per year) by the end of the decade. [13]

To get a better sense of what these numbers mean in regard to how expensive American legal education has become for the average American family, let us return for a moment to the University of Michigan Law School. Recall that in 1971 annual resident tuition was $4,443 in 2011 dollars. In that year, median household income in America was $49,709 in 2011 dollars.[14] One year's resident tuition at what was then and remains now one of the nation's pre-eminent law schools cost almost exactly a month's (pre-tax) income for the average American household.

In 2011, median household income in America was $49,909, i.e., almost exactly what it was 40 years earlier.[15] 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.

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[9] (I calculated these figures from an ABA web page of historical data that has apparently been deleted. Will try to find it elsewhere)

[10] See footnote __ supra.

[11] 1995 nominal tuition figures for these schools can be found here: http://www.ilrg.com/schools/tuition/. Again I have adjusted the nominal figures for inflation.

[12] http://www.law.berkeley.edu/47.htm#Q5

[13] Matt Leichter, "Private Law School Tuition Projections," http://lawschooltuitionbubble.wordpress.com/original-research-updated/tuition-projections/

[14] See United States Census, Historical Income Tables, http://www.census.gov/hhes/www/income/data/historical/household/index.html

[15] "Recession Officially Over, U.S. Incomes Kept Falling," New York Times, October 9, 2011.

Here 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%

1980: 11.3%

1990: 22.8%

2000: 49.3%

2011: 93.8%[16]

Note that 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. [17] To put it another way America is, overall, three times richer than it was 40 years ago, while 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 the nation's most elite public law school. Estimated total cost of attendance for most law schools is now more than $150,000, and has topped $200,000 at many.[18] Meanwhile, the average American family enjoys $17 more per month in income than it did four decades ago.

All of this has taken place within the larger context of higher education in America. While it has not risen nearly as fast as the cost of law school, undergraduate tuition has increased far faster than inflation over the past generation, and almost all law schools require applicants to have completed a four-year undergraduate degree before enrolling.[19] Since family incomes have stagnated for most Americans over the course of the last generation, this has required many families to debt-finance their children's college educations. The inevitable result is that many students enter law school already carrying significant educational debt. According one four-year-old estimate, the average amount of educational debt carried by graduates of four-year colleges who had such debt at the time of their graduation was nearly $25,000.[20]

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[16] I calculated these percentages by comparing tuition figures to the median household income in the relevant year, as reported by the Census. See footnote 15 supra.

[17] "What Was the U.S. GDP Then?" Measuring Worth, http://measuringworth.com/usgdp/

[18] For example George Washington Law School estimates the annual cost of attendance for the 2011-12 academic year, in the form of tuition, fees and nine months of cost of living expenses, as $74,400. http://www.law.gwu.edu/Admissions/tuition/Pages/default.aspx. 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.

[19] "Law School Tuition Soars," New York Times, July 17, 2011. http://www.nytimes.com/imagepages/2011/07/17/business/17legalGraphic.html?ref=business

[20] This figure is based on graduates of four-year colleges who graduated in 2007-2008. With tuition increases continuing to outrun inflation, the most current figures are undoubtedly higher in real dollar as well as nominal terms. See http://nces.ed.gov/surveys/npsas/undergraduate.asp. Approximately two thirds of college gradutes incur undergraduate debt.

A legal education, which a generation ago was easily within the financial reach of the American middle class, and was to some extent a realistic career option even for people of more modest socio-economic backgrounds, has now become an enormously expensive investment. And, given how the employment market for people with law degrees has changed over this same time, that investment has become (except for the unambiguously wealthy) a remarkably risky gamble. How did this happen?

PART II

Why has legal education become so expensive? This section discusses several key factors: 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 have all played a significant role. A generation ago the typical American law school featured large classes (clinical classes were rare to non-existent), a high tenure-track faculty to student ratio, significant numbers of inexpensive adjunct instructors, no laboratory equipment, and a generally unprepossessing physical plant.[21] Even at many elite universities, the law faculty had, in comparison to their colleagues in other departments, relatively little in the way of academic ambition or pretension. The typical law school faculty who published scholarship regularly after the completion of an often-cursory tenure process was very much the exception rather than the rule.[22]

Given these conditions and expectations, law school faculty often had relatively heavy teaching loads: five to six classes a year was a normal load at most schools, while the four classes taught per year by the faculties of a few elite schools was considered a luxury of such privileged positions.[23] At almost all schools, administrative support for both the tenure-track faculty and the student body was minimal: faculty were expected to handle tasks such as admissions and financial aid, while students looking for job opportunities were more likely expected to consult a bulletin board than to have access to anything like a contemporary career services office.[24]

A. Student-Faculty Ratios

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[21] See generally Brian Tamanaha, Failing Law Schools (University of Chicago Press, forthcoming 2012).
[22] See Richard A. Posner, "Legal Scholarship Today," 115 Harv. L. Rev. 1314 (2002).
[23] See Tamanaha, Failing Law Schools, cited in note __ supra.
[24] 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.

Over the past thirty years, and especially over the past fifteen, this situation has altered dramatically. Consider what has happened to faculty-student ratios. Currently, for the purposes of accreditation, an ABA-accredited law school's faculty to student 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 and legal research and writing professors) each count as .7 of a position. Adjunct professors count as .2 of a position. Non-tenure track faculty may not account for more than 20% of a school's faculty-student ratio for the purposes of accreditation. Under the current accreditation standards, "a ratio of 20:1 or less presumptively indicates that a school complies with the standards," while "a ratio of 30:1 presumptively indicates that the school does not" (ratios between 20:1 and 30:1 create no presumption one way or the other).[25]

The putative purpose of these standards is to maintain educational standards; their functional purpose is to maintain barriers to entry to low-cost competitors, and to protect the privileges of current tenure-track faculty at ABA-accredited schools. The idea that a law school with a faculty-to-student 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. After all, as recently as 1978 the average faculty to student ratio at ABA-accredited law schools was 29:1, meaning that nearly half of all such schools would have been out of compliance with the current accreditation standards. [26]

In fact, faculty-to-student ratios have dropped dramatically at law schools, not merely since 1978, but over just the past decade. For example, Harvard's ratio fell from 21.6 to 1 in 1998 (which is to say Harvard Law School's faculty-student ratio 14 years ago wasn't even presumptively adequate under the ABA's current standards) to 10.3 to 1 in 2008. Stanford's ratio fell even more drastically, from 18.3 to 1 to 8.3 to 1, while Chicago's went from 19.1 to 1 to 10.3 to 1. This pattern was not confined to elite schools, in part because schools farther down the law school hierarchy tend to copy whatever elite schools are doing. Thus in the course of the same decade Emory went from 19.1 to 1 to 10.8 to 1, Seton Hall went from 26 to 1 to 15.5 to 1, and Widener went from 24.8 to 1 to 13.7 to 1.[27] 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%.[28] Overall,

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[25] See 2011-2012 Standards and Rules of Procedure for Approval of Law Schools, http://www.americanbar.org/content/dam/aba/migrated/legaled/standards/20072008StandardsWebContent/Chapter_4.authcheckdam.pdf

[26] The National Jurist, "Law School Faculties 40% Larger Than Ten Years Ago," March 9, 2010. http://www.nationaljurist.com/content/law-school-faculties-40-larger-10-years-ago

[27] Id.

[28] Kramer made these remarks to members of the Stanford Law School student body at a "town hall" meeting in February, 2012.

faculty-to-student ratios at ABA-accredited schools were cut in half between the late 1970s and the early years of the 21st century, going from 29:1 to 14.7 to 1.[29]

What consequences has this enormous increase in the number of law school faculty had for legal education? One thing that has not followed is anything like a corresponding 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. At present, it appears that almost all "top tier" (ranked in the top 50 by U.S. News) have moved to a formal three-course teaching load for tenure-track faculty, while at elite schools generous research leave and sabbatical policies make the functional teaching load closer to two classes per academic year.[30] Meanwhile a number of lower-ranked schools are also adopting three-course teaching loads, at least for more "productive" faculty (this means people who publish higher numbers of law review articles).[31]

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 generally taught five or six, to a system in which those numbers have been reduced by nearly 50% at elite schools, and by nearly as much at many non-elite schools as well.[32] As we are about to see, this change has played a considerable role in driving up the cost of legal education. But before turning to the specific financial consequences of this change, we should not overlook the fact that the enormous increase in spending on faculty compensation at law schools in recent years has been dedicated largely to goals other than improving the classroom experience of law students.

B. Faculty Compensation

Law schools have greatly increased the size of their faculties in order to ensure that individual faculty could teach less. And they have done this in order to ensure that faculty would publish more law review articles. In regard to this goal, at least, American law schools have enjoyed spectacular success. A survey of the legal academic literature reveals that professors at American

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[29] National Jurist, footnote ___ supra.

[30] Gordon Smith, "Law Professor Teaching Loads," Conglomerate Blog, April 12, 2005. As for the functional teaching loads at elite law schools, I was informed by the 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. Conversations with members of similarly ranked law schools confirm this has become a common de facto teaching schedule, at least as a matter of informal practice.

[31] 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 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.

[32] Historical teaching loads for law school faculty are catalogued in Tamanaha, Failing Law Schools. See footnote ___ supra.

law schools published approximately 1650 law review articles in 1970 and nearly 10,000 in 2010.[33] 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.[34]

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 review, and some did not publish even one. In 2010 the Current Index to Legal Periodicals catalogued 616 law reviews, while omitting to track a number of venues in which legal academic publications appear, such as purely on-line journals, of which there are now dozens.[35]

How much has all this cost? Cutting faculty-to student ratios by 50% 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, and even at public schools overall compensation packages, which now can include a number of features beyond base salary, such as so-called summer research money (at most schools this has become a de facto salary supplement), subsidized housing, low-interest loans, and retention bonuses, 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 30 years. At non-elite schools the increase in compensation levels has varied more, but given that almost all increased spending at law schools is set by the rules of a positional game 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' observation that salaries for federal judges are now "about half" of salaries for senior faculty at elite law schools (It's unclear if the Chief Justice is including all sources of faculty compensation in his analysis of faculty salaries, which is based on his access to confidential documents).[36] Since at the time Roberts' made his

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[33] 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 30 randomly selected pages from the Index in both 1970 and 2010 and noted the total number of law review articles they catalogued. I then extrapolated this number to the Index as a whole. I double-checked this estimate by examining the annual volumes of 12 representative law reviews in each year, noting how many articles these reviews published, and extrapolating on the basis of that figure.

[34] The number of tenure-track law faculty is based on surveys of the 1970-1971, 1990-991, and 2010-2011 volumes of the annual Association of American Law Schools Directory of Law Teachers.

[35] See Current Index to Legal Periodicals, electronic version available at http://lib.law.washington.edu/cilp/cilp.html

[36] See "Chief Justice Advocates Higher Pay For Judiciary," New York Times, January 1, 2007, http://www.nytimes.com/2007/01/01/us/01scotus.html

comments in a report to Congress, pleading for higher pay for the federal judiciary, federal district and circuit court judges were paid $169,000 and $179,000 respectively, this suggests senior faculty at elite schools earn around $350,000.

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 how deceptive the available public records regarding faculty salaries can be.[37]

According to a searchable internet data base of University of Texas employee salaries, the salaries of Texas's law school faculty (excluding administrative salaries) in 2010-11 ran from $135,000 to $272,404.[38] The actual numbers, as revealed by the lawsuit, were in many cases nearly 50% higher. The public records don't include summer research money, which for most faculty was equivalent to one third of their base salaries. Nor did it include retention bonus money, structured in the form of "forgivable loans," given by the dean to 25 faculty members (and, more problematically, to himself – a fact that when made public forced his resignation).[39] 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' estimate regarding senior faculty compensation at top schools.

Data from other top public law schools reveals 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 turned by litigation. Nor does the total listed compensation, at Texas or elsewhere, include deferred benefits, such as employer contributions to pension plans, which at many schools are equivalent to 10% of a faculty member's salary. Still, a search of an online database reveals that in 2010 15 law professors in the University of California system had base salaries and summer research support that equaled at least $308,000 (with a high of $360,000).[40] And keep in mind that the half-dozen highest-ranked law schools, including those with the largest private endowments, are all private institutions, so it seems likely these schools are

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[37] The relevant documents can be viewed here: http://d2o6nd3dubbyr6.cloudfront.net/media/documents/ut_law_school_open_records.pdf

[38] http://www.texastribune.org/library/data/government-employee-salaries/the-university-of-texas-at-austin/departments/school-of-law/17771/?page=1

[39] http://taxprof.typepad.com/taxprof_blog/2012/02/national-jurist-.html

[40] http://ucpay.globl.org/index.php?campus=&name=&title=!PROFESSOR-LAW+SCHOOL+SCALE&base=&overtime=&extra=&gross=&year=2010&s=gross. This index lists only compensation from 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.

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.[41]

While in general the higher a school is ranked the higher its salary scale will be for its faculty, the $300,000+ compensation packages paid to professors at elite and sub-elite institutions has a ripple effect throughout legal academia, as lower-ranked schools fight to hold onto their most productive[42] faculty. 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 base salary alone (not counting summer research money).[43] 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 unheard-of even at second and third-tier schools.[44] In his forthcoming book Failing Law Schools, Brian Tamanaha, a law professor at Washington University St. Louis (and a former law school dean), estimates that faculty compensation packages (not counting benefits) of over $200,000 are now commonplace for full professors at a wide variety of schools.[45]

Historical data regarding law professor salaries is harder to come by. Returning to Chief Justice Roberts' complaint regarding judicial salaries, the Chief Justice reveals that senior professors at Harvard Law School were paid $28,000 in 1969, which is $171,000 in 2011 dollars. [46]This suggests, in light of the data presented above, that Harvard Law School faculty salaries have more than doubled since then. In order to analyze this question in a more systematic fashion, I compared the salaries of the University of Michigan law 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, that

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41 "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." Brian Tamanaha, Failing Law Schools, footnote __ supra.

42 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 footnote __ supra and accompanying text.

43 http://www.collegiatetimes.com/databases/salaries/university-of-illinois-2009?dept=Law. Summer research stipends vary enormously between schools, so their absence from public data bases which 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 $8000 to $93,000.

44 Form 990 disclosures can be searched here: http://foundationcenter.org/findfunders/990finder/

45 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).

46 See Roberts footnote 37 supra

is, from $77,000 to $165,000 in 2011 dollars.[47] The base salary of the tenure-track faculty in 2011 ranged from $162,000 to $294,000. [48]In 2011, faculty summer research support was 15% of base salary, meaning that the functional base salary of the faculty actually ranged from $186,000 to $338,000.[49] Remarkably, a brand new assistant professor at Michigan makes nearly as much, in real dollars, as the highest-paid member of the faculty made 30 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.

This data reinforces Chief Justice Roberts' data, suggesting that direct faculty compensation at top law schools has roughly doubled over the course of the last generation. Of course pecuniary compensation is only part of the story: as we have seen, teaching loads have shrunk significantly over this same time frame.[50] Nor have we yet touched on 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 comparatively central and 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 get; it has allowed traditional tenure-track faculty to rationalize paying relatively little attention to actual legal practice r 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 new.[51]

Legal aid clinics were, among other things, originally a response to those complaints. In this regard they have had some effect; but whether that effect has been to make law school graduates more

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[47] 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 them summer stipends equivalent to approximately one-sixth of their base salaries, i.e., slightly more in percentage terms than the 15% of base salary current faculty members receive (although from a far smaller base). I am indebted to Professor Edward Cooper for this information.

[48] See http://www.umsalary.info/deptsearch.php?Dept=Law%20School&Year=0&Campus=1

[49] Current salary information for the Michigan Law School faculty can be found here: http://www.umsalary.info/deptsearch.php?Dept=Law%20School&Year=0&Campus=1.

[50] It's 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.

[51] See for example Duncan Kennedy's celebrated essay, Legal Education and the Reproduction of Hierarchy, 32 J. Legal Educ. 591 (1982), which treats the claim that law students "learn nothing about practice" as completely self-evident.

practice-ready than they would have been otherwise is debatable. Theclinical legal experience no doubt helps those students who participate in it to have a better sense of what at least some forms of legal practice involve; however, the majority of law students complete their legal educations without having participated in a clinic.[52] 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 that 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 how expensive by its nature clinical legal education must be. Since instructor to participant ratios must be very low, and clinics require significant administrative support, clinics cost a lot of money.[53] 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.[54]

D. New Buildings Full of People

The birth of the clinic is just one example of how many of what were once understood to be the job responsibilities of the 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 taught at almost all schools by the tenure-track faculty, rather than by full-time faculty members hired for that specific purpose.[55] 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, generally expected to do the heavy lifting in the admissions office, or in distributing financial aid, or in regard to all the functions now outsourced, as it were, to career services personnel, fundraising officers, public relations specialists, alumni liaisons, etc. As noted above, all these changes in regard to the nature of a legal academic's work load have taken place

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52 "Papers From AALS Conference Workshop on Clinical Legal Education at a Generational Crossroads: Shades of Gray," 17 Clinical L. Rev. 223 (2010).
53 See Chemerinksy, Rethinking Legal Education, 595 Harv. Civ. R Civ. L. L. R. 2008
54 See, for example, the Carnegie Foundation's Educating Lawyers: Preparation for the Profession of Law (2008), and its 1992 predecessor, the American Bar Association's MacCrate Report. 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, note __ supra.
55 As recently as 25 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 LRW faculty.

for the primary purpose of allowing law faculty to publish far more law review articles than they did a generation ago -- and publish they have.[56]

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 ABA-accredited schools. The number of full-time administrators who also teach – deans, librarians, and other law school personnel – more than tripled in the ten years from 1998 to 2008, from 528 to 1,659.[57] And while there are no national statistics on how much administrative staffs in general have grown, a comparison of a typical law school catalogue from even ten or fifteen years ago to the current version of the same document will reveal something approaching exponential 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 capital construction projects which has gripped higher education in general and law schools in particular over the past generation. In recent years dozens of law schools have built new main buildings, or expanded existing facilities, even when they already possessed impressive and even magnificent physical plants.[58] Law school building campaigns are often classic examples of conspicuous consumption at the social-institutional, rather than 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 Jones's.).[59]

Now it is true that building campaigns are generally funded via some combination of private money, the university's general fund, and, at public schools, tax dollars. But when such efforts fall short, part of the direct cost can end up being 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 for example holding down tuition increases. (The law school at which I teach began constructing a new

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[56] 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.
[57] "Law School Faculties 40% Larger Than Ten Years Ago," National Jurist, March 9, 2010. 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.
[58] Michigan Law School is in the process of completing a $102 million addition to the superb Oxbridge-style quadrangle that houses the institution. See http://www.law.umich.edu/buildingproject/Pages/home.aspx
[59] One can see this same process taking place all over the university, as schools build posh dorms, recreation centers, etc., to compete for students, who generally don't realize that they and/or their families are purchasing such amenities at far too high a price. This phenomenon has been referred to as an "amenities race." See http://stateimpact.npr.org/indiana/2011/08/18/in-college-dorms-and-dining-how-nice-is-too-nice/

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). In addition it seems quite odd to be pumping ever-greater sums into bricks and mortar, given changes in information technology that should be making it much cheaper to deliver education outside of contexts that require hundreds of people to all gather together in a $100 million structure at the same time.[60] This point applies with special force to law libraries, which grow ever-more pharaonic even as the practice of law becomes ever-less book-based, and law students find it less and less necessary or desirable to use these literary labyrinths, even as opulent study spaces.

A more insidious complication should be obvious to anyone who has ever bought a house that was somewhat bigger and fancier than the purchaser's previous residence. What happens in such circumstances is that people feel impelled by something almost akin to a kind of 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.[61]

E. Other Drivers of Increased Costs

Decreasing faculty to student ratios, increasing faculty compensation, legal aid clinics and legal writing programs, greatly expanded administrative staffs, and newer more expensive facilities are not the only reasons why the cost of law school has increased several times over in real terms over the course of the past generation. There is some evidence that higher starting salaries at large law

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[60] Consider for example the remarkably successful initiative undertaken recently by faculty at Stanford to offer free on line courses in Computer Science. See http://www.npr.org/blogs/alltechconsidered/2012/01/23/145645472/stanford-takes-online-schooling-to-the-next-academic-level

[61] Now of course it is not as if all these additions do not have some real 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 21 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 in which 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.

firms increased demand for legal education in the first half of the previous decade.[62] At public law schools, reductions in state subsidies for higher education have played a significant role. Law schools spend more on self-promotion and advertising than ever before.[63] 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 to refuse 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 rise, or at least not fall too far, in the U.S. News rankings. (Indeed the rankings actually reward inefficiency quite directly, as expenditures per student are treated in the ranking formula as a proxy for educational quality.)[64] This rationale has created a negative-sum positional game where one school's gain is always some other school's loss, as well as a classic collective action problem: 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. 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 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.

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[62] Law school applications rose from about 75,000 in 2000 to nearly 100,000 in 2004. See http://www.lsac.org/LSACResources/Data/LSAC-volume-summary.asp. 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.

[63] This has given birth to the ubiquitous phenomenon of so-called "law porn:" glossy publications which 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 http://volokh.com/2010/09/27/ineffective-law-porn/.

[64] The methodology employed in the rankings is explained here: http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/03/12/methodology-law-school-rankings . Expenditures per student account for just under 10% of a school's overall ranking. Faculty-student ratio accounts for another three per cent, while the total number of books in the law library accounts for three-quarters of one per cent. In other words if School A and School B are identical in all other respects but School A spends more money to achieve exactly the same results, School A will be ranked higher than School B.

Part III

Law school now costs too much for two reasons: because there aren't enough jobs for lawyers, especially new lawyers, and because too many of the legal jobs that do exist do not pay enough to justify incurring that cost. This combination of circumstances is a product of long-term changes in the market for the providers of legal services, and in the way law students finance their legal education. The result has been the creation of class of deeply indebted, underemployed law school graduates.[65] To this point, the most common response of law schools to this situation has been denial.[66] 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.[67]

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 Association. 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.[68] 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 data can be analyzed in useful ways.

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[65] For a stark glimpse into the world of marginalized lawyers and law graduates see http://www.jdunderground.com/all/

[66] For instance, a literature search 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.

[67] 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.

[68] 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 in half between 1985 and 2009, and that 23% of attorneys with active licenses were making less than $25,000 in 2009. See http://www.alabar.org/media/news/images/04042012_Economic-SurveyofLawyersinAlabama2010Report.pdf

My analysis is based on the following heuristic: a real legal job consists of full-time long-term 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. While it is true that some law graduates will acquire jobs for which a law degree is not required, but which still added marginal value to the applicant's resume, it is also true that this category appears to include a small percentage of all law graduates, and, furthermore, that for many job seekers a law degree turns out to be an impediment to acquiring non-legal jobs. Indeed, it is unclear whether, for those graduates who do not acquire legal jobs, a law degree is on average beneficial to them, even without taking the costs of acquiring the degree into account. 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 definitions allow us to make 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 2010 (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.

According to NALP, ABA-accredited schools produced 44,258 J.D. degree graduates in 2010. As of February 15, 2011, 25,654, or 58.0%, were known to be holding full-time jobs for which bar passage was required or expected (the employment status of seven per cent of the class was not known).[69] The fact that less than three of every five law school graduates had secured a full-time legal job of any kind nine months after graduation ought to be a very alarming figure under any circumstances, but it is especially alarming given how costly acquiring a law degree has become.

Yet this figure only begins to tell the story of the extent to which recent law school graduates are struggling. Consider the kinds of jobs that the NALP survey counts as full-time employment requiring a law degree:

(1) Temporary positions. Graduates whose post-graduation employment consisted of a six-week-long contract position to review documents, or a six-month engagement with a government agency, or a three-month "fellowship" funded by their alma mater, were, as long as these positions were full-time and required a law degree, counted in the 58% figure cited above. How many graduates were in temporary positions, which for the purpose of the jgm survey were defined positions of a definite term of less than one year? (Note that under this definition a graduate who had a one-year post-graduation employment contract would not count as temporarily employed). NALP reports that

[69] The 2010 NALP statistics can be found here: http://www.nalp.org/uploads/NationalSummaryChartforSchools2010.pdf

26.9% of all employed graduates were in short-term positions. Slightly more than one third of these positions were judicial clerkships of all types.[70]

A particularly notable subcategory of short-term positions were those funded by law schools themselves, to provide their otherwise unemployed graduates with employment, at least during the NALP reporting period. In April 2012 the ABA for the first time published school by school data regarding this practice, which revealed that nearly 5% of all 2010 law school graduates who were employed nine months after graduation were in such positions. The percentages at some schools, including at some high ranked institutions, were considerably greater. For example, 10.9% of Virginia graduates, 11.76% of Georgetown graduates, 11.89% of Vanderbilt graduates, 12.73% of UCLA graduates, 15.87% of Fordham graduates, and 15.92% of Notre Dame graduates employed nine months after graduation were employed by their alma maters.[71]

While such programs can be defended as attempts to deal with the genuine employment crisis facing schools' graduates, they can also be criticized as attempts to game a school's overall graduate employment rate (this of course applies especially to programs whose existence was not revealed prior to the release of the ABA data), and even as something like the educational equivalent of a Ponzi scheme, in which current students pay for the cost of temporary jobs for recent graduates.

(2) 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

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[70] Judicial clerkships make up an ambiguous category of post-graduation outcomes. Traditionally, Article III clerkships (which make up perhaps a third of the clerkships taken by 2010 graduates) have been considered a prestigious way station on the road to more permanent employment. On the other end of the spectrum, state district court clerkships are for most people who take them truly temporary positions, which leave those in them scrambling to find legal work afterwards. In any event, the sorts of judicial clerkships that have traditionally been sought after by graduates made up a small percentage of the more than 10,000 class of 2010 graduates who were in temporary positions nine months after graduation.

[71] See http://placementsummary.abaquestionnaire.org/home.aspx. Preliminary data indicate that this practice became more widespread in regard to the class of 2011. For example, Virginia's program funded 40 2010 graduates nine months after graduation, and 64 2011 graduates in February 2012. Cornell Law School employed six of its 2010 graduates nine months after graduation, and 26 of its 2011 graduates in February 2012. The University of Chicago employed two of its 2010 graduates nine months after graduation, and 25 of its 2011 graduates at the same juncture. Columbia Law School employed ten of its 2010 graduates, and 38 of its 2011 graduates (All 38 were still employed by the school nine months after graduation, and were counted as employed full-time by Columbia, although this information did not become public until May, 2012. See http://lsatblog.blogspot.com/2012/05/columbia-law-school-employment-troubles.html.)

required applicants to have at the very least a law degree and bar membership, were completely unpaid.[72]

(3)

This is merely a particularly striking example of a practice that has arisen among government and non-profit organizations, who 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) Possibly unsustainable forms of self-employment. Nearly one third of 2010 law graduates who listed themselves as employed full-time in a position requiring a law degree were either in solo practices or with firms of 2-10 employees.[73] Some of the latter positions 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 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. [74]

If we eliminate temporary positions from the core employment rate, made up of those holding full-time jobs requiring bar passage, then the percentage of graduates of the class of 2010 who can be said to have held real legal jobs nine months after graduation probably falls below 40%, even if we

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[72] See for example http://www.justice.gov/careers/legal/jobs/unconpensausa-vcnvac.htm. Remarkably, one such position required at least three and preferably five years of practice experience. See http://abovethelaw.com/tag/special-assistant-united-states-attorney/.

[73] See http://www.nalp.org/uploads/NationalSummaryChartforSchools2010.pdf

[74] What 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.

count federal and state supreme court judicial clerkships as real legal jobs.[75] 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, but it seems doubtful that, when all is said and done, even one third of the graduates of ABA-accredited law schools in 2010 had what we are defining – and more to the point what they would have considered from an ex ante perspective – real legal jobs.[76]

We have not yet touched on what must be a crucial consideration in any analysis of this type, which is the matter of what the jobs that law graduates get that pay them actual salaries actually pay. Here, the NALP data are incomplete, but in a way that still allows certain conclusions to be drawn. NALP reported salary data for only 41.5% of the class of 2010.[77] The significance of this can be gleaned by looking at the breakdown of various categories of jobs in regard to reporting rates. For example, salaries were reported for 92.8% of graduates who reported employment with firms of more than 500 attorneys.[78] Meanwhile salaries were reported for just 36.9% of graduates who reported employment with firms of two to ten attorneys. And of course no salaries were reported for the 12.4% 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.[79]

Given this pattern, certain fairly reliable conclusions can be drawn about what salaries graduates of the class of 2010 were receiving nine months into their nascent legal careers. NALP reported a median salary of $63,000 for graduates of the class. This means that 20.75% of the class was reported to be making a salary of $63,000 or more. The true figure is probably higher, but how much higher?[80] 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 2010 was making

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[75] Only 58% of 2010 ABA law school graduates had a full-time position requiring a law degree nine months after graduation. But 26% of all jobs taken by these graduates (including non-legal jobs) were temporary positions. See footnote 74 supra.

[76] 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.

[77] See footnote 74 supra.

[78] Id.

[79] 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 publically-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.

[80] "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.

$63,000 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 has made clear, there are actually very few entry-level legal jobs that pay more, but not much more, than the median salary.[81] A very large number of entry-level legal jobs pay between $35,000 and $60,000 per year, 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, yet having their salaries go unreported.[82]

Roughly speaking, we can estimate that at present perhaps 15% of law graduates are securing high-paying entry-level jobs, and another 25% are getting legal jobs that pay in the mid five figures, while the majority of graduates are unable to secure full-time 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.[83] 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% for the first $20,500 borrowed per year, and 7.9% for any amount beyond that.[84] Unlike almost any other form of debt, educational loans are not dischargeable in bankruptcy. What this means, in practice, is that American taxpayers are now the direct guarantors of the approximately $4.375 billion per year of high interest federal debt that law students borrow to attend law school.[85]

How much is this per graduate? The median debt at the 191 law schools who reported data for the class of 2011 (four schools did not report) was $105,028, up 5.84% from 2010's figure of $99,236.[86] This happens to be just about exactly the percentage by which tuition went up for the

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[81] See http://www.elsblog.org/the_empirical_legal_studi/2007/09/distribution-of.html.
[82] 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 in regard to discovering and reporting low salaries.
[83] Per a Center For American Progress Report, the percentage of 2008 law school graduates who took out educational loans to pay law school expenses was 88.6%. See http://www.americanprogress.org/issues/2011/12/pdf/legal_education.pdf
[84] Details for the current programs can be found here: http://www.gradloans.com/graduate-plus-loan/; http://www.gradloans.com/stafford_loan/.
[85] Approximately 125,000 law students are currently borrowing an average of about $35,000 per year to attend ABA-accredited law schools.
[86] Debt figures can be found here: http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings

national class of 2011 relative to the class of 2010. This indicates the extent to which law school tuition is now so high that tuition increases will be close to 100% debt-financed by the nearly 90% of graduates who take on law school debt.[87]

Keep in mind that these figures omit other educational debt. As far as I have been able to discover law schools do not collect any data on how much educational debt the students they admit have already incurred, but given that average undergraduate debt among college graduates with debt was estimated at $24,000 four years ago, that undergraduate tuition continues to outstrip inflation by a healthy margin, and that this figure omits the much higher debt loads of graduates of (increasingly common) for-profit colleges it is likely that around 150 law schools featured median educational debt for 2011 graduates of more than $100,000.[88] This group includes more than three-quarters of ABA-accredited schools. Furthermore, given ongoing law school tuition increases, current law students are certain to incur significantly more debt than the graduating class of 2011 (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).[89] Indeed, we can estimate conservatively that the average current first-year law student who graduates with educational debt will have approximately $150,000 of such debt – almost all of it at interest rates between 6.8% and 7.9%.

Servicing this sort of debt requires a fairly high income. A ten-year repayment plan 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% of current law graduates who will be earning below the (essentially fictitious) "median" NALP-reported salary of $63,000 pre-tax dollars, except for those who are getting significant financial help from a spouse or other family members.[90] 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 25-year terms, which is becoming a common practice among law graduates. Even so, they will still be dealing with a monthly payment of $1100 – and total payments, with interest, of $330,000, which many of them will not have completed when their own children are in college.[91] And of course even a 25-year repayment plan will be of no use to the

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[87] Tuition rates between 2005 and 2011 for all ABA-accredited schools have been compiled by Matt Leichter, author of The Law School Tuition Bubble blog. See 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/

[88] See footnote ___ supra and accompanying text.

[89] This number can be derived by comparing tuition levels in 2011-12 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.

[90] Recall that the median salary as reported by NALP is drawn from a group that includes only 41.5% of all law graduates, meaning that barely one in five law graduates were reported to have salaries at or above the median.

[91] Georgetown University Law Center's web site provides a useful tool for calculating the consequences of various debt levels: http://141.161.16.100/finaid/GeorgetownLawFinancialPlanningCalculatorforProspectiveStudents

large number of recent graduates making considerably less than mid-five figure salaries, or who are completely unemployed, or for those graduates who are making the "median" (in reality the 75th to 80th 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% of law students who acquire jobs upon graduation that pay six-figure starting salaries--that game remains fraught with financial peril. The large majority of associates who join big law firms leave those firms rather than becoming partners.[92] 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.[93]

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, and/or having a good enough exit option, to make the initial acquisition ultimately worthwhile.[94] Indeed, a pair of recent papers by law professors – one of whom is currently a law school dean -- each come to the conclusion 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.[95]

Those law school graduates – under present circumstances quite possibly an actual majority – who cannot pay their debts in a timely manner even if those debts are refinanced to traditional

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V2.htm. This calculator illustrates how fully debt-financing a legal education will result in debt loads, six months after graduation, nearly 20% 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.

[92] According to NALP, 77% of associates leave the firm they joined after graduation within five years. See Law Practice: Up, Out or Over, American Bar Association Law Practice Archive, #160 (2006-2010).

[93] 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 Vanderbilt L. Rev. 871 (1999).

[94] 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.

[95] See Herwig Schlunk "Mamas 2011: Is a Law Degree a Good Investment Today?" Vanderbilt Law and Economics Research Paper No. 11-42, and Jim Chen, "A Degree of Practical Wisdom: The Ratio of Debt to Income as a Basic Measurement of Law School Graduates' Economic Viability," (forthcoming 38 William Mitchell L. Rev. ___(2012).

mortgage-length terms are faced with few options. Except under extraordinary circumstances, their debts cannot be discharged in bankruptcy, which means either 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% of whatever portion of their adjusted gross income is 150% above the federal poverty line.[96] Whatever interest due that is not paid by the debtor accrues, but is not capitalized, onto the principal debt. After 25 years – 20 years for loans originating after 2012 – any remaining principal is forgiven, although under present IRS rules the forgiven debt is treated as income to the debtor.[97] For certain government loans the Public Service Loan Forgiveness Program allows the 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.[98]

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, meaning the debtor has a large unsecured debt on his or her credit report, which will make it difficult to secure 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 in return for paying the $200,000 or more in direct costs, as well as the significant opportunity costs, they paid in order to obtain law degrees from prestigious institutions.

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?[99]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

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96 See http://studentaid.ed.gov/PORTALSWebApp/students/english/IBRPlan.jsp
97 This further debt can be discharged in bankruptcy after three more years.
98 See footnote 97 supra.
99 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.

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 small law firm.

(6) A state or local clerkship

(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 LLM program – is for law school graduates usually 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. Positions with small law firms generally feature the most of the major disadvantages of entry-level associate big firm work without the compensation of a large paycheck. State and local clerkships are rarely considered desirable positions by elite law school graduates, and on NALP surveys "business and industry" usually signifies low-paying non-legal employment.

Of course all these generalizations are subject to individual exceptions. For example occasionally a graduate is unemployed by choice. A few small law firm jobs are with high-paying boutiques. A state supreme court clerkship can be a desirable position. A position in "business and industry" might feature a six-figure salary with an international consulting firm. And so on. On the other hand, the proposed method of analysis assumes that all large-firm jobs, 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 various highly-ranked law schools had, as of February 15, 2012, undesirable employment outcomes:[100]

Columbia: 22.8%

Penn: 24.5%

Berkeley: 27.4%

Northwestern: 30.7%

Duke: 33.3%

Chicago: 34.0%

Michigan: 34.3%

Virginia: 36.1%

Cornell: 37.3%

Georgetown: 38.2%

Vanderbilt: 46%

Texas: 53.1%

USC: 54.1%

If these statistics reflect the situation at the nation's highest-ranked laws schools, then

at how many law schools are a large majority, or even a simple majority, of graduates, currently obtaining career prospects that make the cost of attendance, in terms of both direct expenses and forgone opportunity, worthwhile for them relative to their other options? Any systematic investigation of this question will reach conclusions which at the very least suggest strongly 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.

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[100] For the purposes of this analysis small law firms are defined as firms of less than 51 attorneys. As of this writing 2011 employment statistics were not available for Yale, Stanford, Harvard, and New York University. All statistics are taken from the respective law schools' web sites. Example: Columbia lists 456 graduates in its 2011 class. 11 were unemployed or in graduate school. 38 were in law school-funded jobs. Three were listed as being in academia, 22 were with small law firms, 24 were in business or industry, and six had state or local clerkships.

Part IV

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 even at elite institutions.[101] In other words, the net present value of most law degrees being earned today is negative.

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 long-term structural changes in the market for the providers of legal services have been eroding the expected return on law degrees for more than two decades now. As a percentage of gross domestic product the legal services sector in America has contracted by nearly one third since the late 1970s.[102] 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 (prior to 2001 NALP used a different method which makes the figures not directly comparable):

2001: 68.3 percent

2002: 67.0 percent

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[101] 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% 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 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.

[102] See footnote __ supra and accompanying text.

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[103]

Note that these percentages include temporary positions, including temporary positions created by law schools for their otherwise unemployed graduates.[104] They also exclude from the denominator the roughly two percent of 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 such jobs prior to 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% functional unemployment rate among graduates of ABA law schools even prior to the recent downturn.[105] In addition, it is important to keep in mind that the attention that both the legal media and elite law schools give to the question of the extent to which large law firms will return to something like the hiring patterns of five years ago is out of all proportion to the relevance that particular question has to the graduates of the 90% of law schools who historically speaking have sent less than 20% of their graduates to such firms (indeed 80% of law schools have a history of sending less than 10% of their graduates to large firms).[106]

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[103] NALP statistics are here: http://www.nalp.org/july10trendsgradempl. 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.

[104] See footnote __ supra and accompanying text.

[105] For a perceptive analysis of these long-term trends, see Richard Susskind, The End of Lawyers? Rethinking the Nature of Legal Services (2009).

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

Further evidence for the view that law degrees are unlikely to become more valuable going forward can be found in the projections of the Bureau for Labor Statistics: 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.[107] The BLS sees the American economy adding 73,800 more legal jobs over the course of the present decade from 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. That is, the BLS projects that 212,000 people who did not have jobs as attorneys in 2010 will have such jobs in 2020.[108]

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 which 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 (that is, approximately 44,000 per year) then we will project that 48% of graduates of ABA-accredited law schools over the course of this decade will get legal jobs.[109] 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.[110] 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 a time period roughly equivalent to the length of a successful professional career – by 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 per BLS estimates, the comparable ratio for law degrees and practicing attorneys is almost two to one.[111]

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[107] 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

[108] See http://bls.gov/emp/ for the latest ten-year projections (updated March 29, 2012).

[109] This of course does not mean that 48% 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%, since both got legal jobs after not previously being employed as attorneys at the beginning of the decade.

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

[111] This method projects that by the end of the decade the 35-year degree conferral total for ABA law schools will be slightly more than 1.6 million, i.e., exactly twice the BLS projection

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.[112] Expecting that value to grow seems highly 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. In other words, 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. Put simply, it is not going to be possible to continue to maintain a social system in which another 45,000 people are every year convinced individually 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 21,000 legal jobs, the majority of which will not pay enough to allow graduates to fully service that debt even over a long time horizon. Whether that system collapses as a consequence of reduced demand for law school admissions as the economics of legal education and the legal profession become better understood by potential law students, or because the political system refuses to continue to provide unlimited funding for the debt-financing of educational credentials that cost far more than they are worth, or (most likely) because of a combination of these factors, the status quo cannot be maintained.[113] Of course there are also various alternatives to attempting to reform and preserve what can be salvaged of the current status quo. In what follows I will first consider reforms that could lead to the preservation of the basic structure of much of the system as it now exists. Then I will consider some alternatives that involve more radical changes.

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regarding the total number of attorneys expected to be employed America at that time. See 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 the United States practice within American jurisdictions.

[112] 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.

[113] 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. http://swampland.time.com/2012/01/30/obama-wants-to-force-colleges-to-reduce-tuition-but-at-what-cost/

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.[114] 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 no way a mysterious process: average law school tuition must be slashed at least to the levels that obtained two to 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 to all but the most self-interested actors that a good number of the law schools that now exist in America will need to close in the coming years, while a large number of 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 the majority of attorneys practicing in America today was unacceptably inadequate, there is no reason why student to faculty ratios at law schools cannot be returned to the levels they were at 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 year rather than three.[115] 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 dual role of holding educational costs down, while conveying useful information to law students regarding the actual practice of law.[116]

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 proportionately much faster rate than faculties over the course of the last generation.[117] Again, there is no reason why faculty cannot resume most if not all of the administrative duties that have been outsourced in recent years

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[114] 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.

[115] 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.

[116] 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.

[117] See footnote ___ supra and accompanying text.

to staff, in the name of increasing faculty "productivity," i.e., 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 that would require little or no sacrifice of educational quality will present themselves in a world in which law schools face a choice between reducing their expenditures or 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 the typical law school expends on maintaining a comprehensive law library can be reduced to a more rational level of expenditure. Indeed, avoiding further wasteful expenditures on luxurious physical plant upgrades, that have had little function beyond allowing legal academia to indulge in conspicuous consumption in the context of a sharply negative sum reputational ratings game, will itself save law schools vast sums of money going forward.[118] Similarly, as it becomes evident that the current cost structure of legal education is unsustainable, the central administrations of universities will of necessity reduce the extent to which they treat law school tuition as a source of revenue that cross-subsidizes other university programs.[119]

It is even possible that drastic cuts in the cost of legal education will lend effective strength to arguments that such education is a public good, which at least at public institutions ought to receive a higher measure of direct tax subsidization. Certainly such arguments are far more likely to succeed in the wake of genuine reform efforts on the part of legal academia 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.[120] This would be a crucial step toward making the economic benefit obtained by the average law graduate from a license to practice law once again come into some reasonable relation with the cost of obtaining that license.

Another crucial step depends on cultivating a widespread realization that, in regard to the long-term crisis now facing the American legal profession, the cost of legal education is only part of the

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[118] 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.

[119] 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 run from as high as 45%, to situations in which the central university actually subsidizes the law school.

[120] 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: "Depend upon it, sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully."

equation. An equally key element of that equation is that for years now ABA-accredited law schools have been graduating at least twice as many law graduates as there are legal jobs. 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, at most, 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 are at present the ultimate guarantors of the cost of large numbers of law degrees which have negative economic value, some law schools seem certain to close, while others will become smaller.[121]

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, about 20,000 to 25,000 law graduates annually who will not be able to service their educational debts from the income streams generated by the legal careers they will never have. This system exists in its present form only as a result of the combined effects of social inertia and market distortions 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 in turn enable the current structure of legal education in this country to be in some significant part maintained. If law schools slash their operating costs and produce far fewer graduates, it may be the case that a generation from now a license to practice law will still require three years of postgraduate attendance at institutions that in many respects may continue to resemble the institutions that exist today. Whether this will in fact happen, or whether this outcome represents the best road toward reform, are different questions.

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, until through the combined efforts of the American Bar Association and the Association of American Law Schools three years of postgraduate legal education became a

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[121] 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 acquiring it. 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: many former paralegals have discovered they can no longer work in their former field after they have graduated from law school.

mandatory feature of state legal licensing requirements. Until then many law schools offered two-year programs. The ABA and the AALS waged a successful campaign to make the three-year postgraduate model of legal education not merely one option, but a legal prerequisite in almost all jurisdictions for bar admission. This campaign was waged, naturally, in the name of quality control, but also included significant elements of class, ethnic and religious bias.[122]

In the subsequent decades, the three-year law school model seems to have remained in place, like so many other aspects of legal education in American, largely as a function of inertia, rather than from any demonstration that the benefits of a third year of law school justified its cost. Indeed, complaints from both law students and legal educators that the third year is unnecessary have been commonplace since the earliest days of the requirement.[123] At a recent conference that drew law professors interested in legal reform from across the nation, no one among a group of more than 100 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.[124]

Given its dubious origins and its questionable cost-benefit ratio, getting rid of the third year of law school would represent a not very radical alteration of the legal academic status quo. Some schools are already making de facto moves in this direction, by for example replacing or supplementing the third year classroom experience with a 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. Any meaningful reform in this direction must eliminate the tuition requirement, not merely the third classroom year.

Of course while 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 marginal 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

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[122] See generally Chapter Two in Brian Tamanaha, Failing Law Schools (forthcoming, University of Chicago Press).

[123] See Mitu Gulati, Richard Sander, and Robert Sockloskie, The Happy Charade: An Empirical Examination of the Third Year of Law School, 51 J. Leg. Ed 235 (2001).

[124] 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.

vocational training ground for future 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.[125] This idea represents the structure of legal education in just about every other country in the world[126].

So where does this leave the various law schools that in recent years have self-consciously adopted a graduate school model of education with greater and lesser 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 academics (except almost all these people 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), 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.[127] 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 something that is likely to happen any time in the immediate future. On the other hand, the longer law schools continue to refuse to face up to the fact that, given the contemporary economics of legal practice,

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[125] 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 http://online.wsj.com/article/SB10001424052970204632204577128443306853890.html.

[126] Garoupa & Ulen, The Market for Legal Innovation: Law and Economics in Europe and the United States, 59 Ala. L. Rev. 1555, 1593(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.")

[127] 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.

they are producing far too many graduates at far too high a cost, the more likely some sort of radical reform becomes.[128]

CONCLUSION

The thesis of this article has been that 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 spring of 2012, there were numerous signs that the inevitable economic and social crisis that the simultaneous continuation of these two trends had to cause was finally at legal academia's doorstep. These included a wave of prominent stories in the nation's print and electronic media questioning the value of law degrees, several class action law suits 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.[129] Indeed, in the fall of 2012 the tuition charged by private law schools will be for the first time in memory only slightly higher in real dollar terms than it was the year before.[130] In America today, the idea that law school is a safe and sensible investment in a person's future seems to be moving rapidly 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 continue to exist in anything like its present form, then law schools must become much less expensive while producing far fewer graduates than they do at present. If law schools fail to undertake significant reforms in these directions, then more radical reforms will be thrust upon them by economic, political, and social forces that in the long run they will not be able to withstand. 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 the

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[128] 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.

[129] Between 2010 and 2012 the number of applicants to ABA-accredited schools fell from 87,900 to approximately 66,500 (the latter number is an estimate of the final total based on the number of applicants through March 30 – a date at which historically more than 90% of applicants within a particular admissions cycle had applied). See http://www.lsac.org/Members/Data/current-volume.asp. In response, one "top tier" law school announced that it planned to reduce the size of its entering class by 20%, and to make this reduction permanent. See http://www.uchastings.edu/faculty-administration/chancellor-dean/letters/3-19-12a.html. For prominent examples of media coverage regarding the declining value of law degrees see "Is Law School a Losing Game?" New York Times, January 8, 2011," Law School Loses its Allure as Jobs at Firms are Scarce," Wall Street Journal, March 17, 2011, "Even Lawyers Struggle To Find Jobs These Days," CBS Evening News, March 8, 2012. For the law suits see "Law Schools Sued for Lying About Lawyering," New York Magazine, February 1, 2012.

[130] "jU.S. News Data Show 2011 May Be the Beginning of the End For Law School Tuition Bubble." The Am Law Daily, March 19, 2012.

matter of which of these outcomes would be of most benefit to both 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.