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What it Means to Be a Lawyer in These Uncertain Times: Some Thoughts on Ethical Participation in the Legal Education Industry

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WHAT IT MEANS TO BE A LAWYER IN THESE UNCERTAIN TIMES: SOME THOUGHTS ON ETHICAL PARTICIPATION IN THE LEGAL EDUCATION INDUSTRY

*Susan Carle**

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I. INTRODUCTION

A great deal of ink has been spilled over the past several years,

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much of it in the *New York Times*, about the current crisis in American legal education.¹ If one were to believe these many articles in the popular media, one would think that all law schools across the country are on the verge of collapse; that many are engaged in unethical, even false, reporting of employment statistics, average debt burdens, and other key information needed for prospective students to make informed choices about whether to attend; and that many law students graduate to dismal lives of legal unemployment, rendering their educational expense outlays a terrible mistake. Those of us who work in law schools know that this sensationalist image is far from correct. Law school application numbers, while down significantly from the heyday of the legal education bubble of the early 2000s, are still robust for many law schools. And even in an era of slowing economic growth and significant restructuring of the elite end of the legal employment market, many law students go on to pursue rewarding professional careers.²

In some respects, legal education is functioning better than it was during the heyday of the rush to law schools. In my experience, students entering law schools today tend to be more focused and serious, having thought through their educational choice far more carefully than students in the boom years of legal employment. Virtually gone from my classes are students who planned to spend a few years in law school, learning little and applying themselves even less while thinking through what they might do with their lives afterward. Law students today know that making good use of their degree after graduating will take hard work, focus, and a strong sense of direction. They work hard and learn a great deal, not only substantively but also by improving their critical thinking skills and problem-solving abilities. I still feel that my professional

1. See David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011, <http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=all>.

2. See *id.* (noting new scarcity of big law firm jobs and discussing effects on new lawyer employment); see also Joe Palazzolo, *Law Grades Face Brutal Job Market*, WALL ST. J. (June 25, 2012, 10:18 AM), <http://online.wsj.com/article/SB10001424052702304458604577486623469958142.html> (reporting on declining new lawyer employment statistics); Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES, July 14, 2012, <http://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law-schools.html?ref=lawschools> (criticizing current law school education model in light of shrinking lawyer employment market); Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 30, 2013, <http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html> (reporting that as of January 2013, there was a twenty percent decrease in law school applications nationwide as compared with applications at the same time in 2012 and a thirty-eight percent decrease from 2010, and that this trend is seen as directly connected to the declining legal job market). Many law schools, however, report greater or lower statistics. For example, my law school experienced a seven percent decrease in applications in 2013.

work as a law school teacher has integrity and worth, maybe even more so than in the periods in which the legal education industry appeared to be enjoying boom conditions.

To be sure, the legal employment market has changed dramatically due to global and macroeconomic trends that will not reverse themselves.³ Traditional law associate jobs in big law firms are far scarcer than they used to be.⁴ This dislocation has affected all sectors of the legal employment market, as law graduates who used to occupy big firm associate jobs now compete with students whose career goals always focused on smaller law firms, government positions, and public interest jobs. It is frustrating to watch my students compete for jobs for which they are well qualified and which I feel they “deserve” to get in a market where finding that first job is a lot harder than it used to be. Despite these challenges, excellent law students continue to walk through the doors of law schools nationwide. Well-trained students leave law schools and get first jobs that launch them on careers they report to find satisfying, both intellectually and in terms of financial reward.⁵ Many prospective law school applicants, after assessing their options and the high cost of legal education, still decide that law school is a better bet than other possibilities, including other professions that require long apprenticeship periods and are also often coupled with high

3. See Andrew Ross Sorkin, *Big Law Steps into Uncertain Times*, N.Y. TIMES, Sept. 25, 2012, <http://dealbook.nytimes.com/2012/09/24/big-law-steps-into-uncertain-times/> (discussing challenges big law firm model currently faces); see also Mark Harris, *Why More Law Firms Will Go the Way of Dewey & LeBoeuf*, FORBES (May 8, 2012, 10:32 AM), <http://www.forbes.com/sites/forbesleadershipforum/2012/05/08/why-more-law-firms-will-go-the-way-of-dewey-leboeuf/> (suggesting that the current law firm model suffers from many problems); *A Less Gilded Future*, ECONOMIST, May 5, 2011, <http://www.economist.com/node/18651114> (listing several factors that have permanently affected the current legal market in America, including clients' desire to reduce costs by demanding that routine tasks be done more cheaply by off-shoring this work to less expensive contractors in countries such as India, or by using automated e-discovery systems rather than more expensive attorneys who bill by the hour).

4. See Jordan Weissmann, *How the Job Market for Law School Grads Crumbled (and How it Could Come Back to Life)*, THE ATLANTIC (Feb. 5, 2013, 9:30 AM), <http://www.theatlantic.com/business/archive/2013/02/how-the-job-market-for-law-school-grads-crumbled-and-how-it-could-come-back-to-life/272852/> (explaining the current crisis in post-law school employment as deriving from the financial collapse in 2008 that severely affected corporate law firms, which responded by scaling back hiring, thereby pushing many law school graduates who would have taken those jobs to instead find jobs in government, smaller firms, and in public interest that would have otherwise gone to other graduates).

5. See Bryant Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 LAW & SOC'Y REV. 1, 3-4 (2007) (explaining that career satisfaction for lawyers hinges on a combination of personal background, career expectations, career prospects, and goals for the future, and that a legal career is especially satisfying for individuals for whom joining the legal profession is a step up into the professional class).

educational debt burdens, such as clinical psychology, veterinary science, and medicine.⁶

In short, the picture is mixed. Those of us involved in the legal education industry face a complex situation in which some aspects of what we do are still working and achieve laudable goals, while other aspects are legitimately falling under critical scrutiny and need to be reexamined and overhauled. In this short article, I would like to raise some questions as to which features of legal education belong in which of these two categories. In other words, what is broken and what is working?

To answer these questions, I will first take a quick look in Part II at the basic data regarding employment statistics for recent law school graduates. This is the primary source of concern cited by those who argue that legal education is in profound crisis. What those statistics show, in a nutshell, is that large law firm hiring is down, but that small firm hiring is up by even more significant amounts, and that salaries for employed graduates continue to rise. What also continues to rise is the new law graduate unemployment rate, though not by the exaggerated dimensions some reports imply. New lawyers entering the employment market thus face significant challenges, but ones that law schools can respond to by following the directions the data indicate. I thus start my discussion of the current state of the legal education industry by analyzing the data on new graduate employment.

In Part III, I focus on elements of legal education that are working well. I discuss the way in which law schools continue to provide a path to upward class mobility while at the same time generating trained advocates who can respond to the unmet legal needs of moderate income individuals and small businesses. Legal education also creates pathways to employment in the new jobs the global legal employment market is generating that exist at the intersections between law and other disciplines. And law schools continue to attract committed, hard-working faculties and administrators and to offer high quality educational programs admired around the world.

In Part IV, I canvass areas in which reform is necessary. First, rigid hierarchies in legal education should be dismantled. Second, schools that engage in false reporting of statistics should be severely penalized.

6. See, e.g., David Segal, *High Debt and Falling Demand Trap New Vets*, N.Y. TIMES, Feb. 23, 2013, http://www.nytimes.com/2013/02/24/business/high-debt-and-falling-demand-trap-new-veterinarians.html?pagewanted=all&_r=0 (reporting that while the median price of tuition at vet schools has risen by thirty-five percent over the course of the past decade, starting salaries have decreased by thirteen percent over the same ten-year span).

Third, I recognize the continuing need for law schools to assess their core missions and to adapt their curriculums to the changing professional landscape their graduates will face. In this discussion, I note some clear themes that have emerged in current curricular reform initiatives at many law schools. These include promoting clinics and other experiential and values-focused learning programs, revamping law schools' third-year programs, increasing opportunities for students to practice the skills required for multidisciplinary collaboration, and returning to excellent core teaching with a focus on relevance to future professional practice. I conclude that legal education is not in profound crisis but in a period of challenge, offering possibilities for change that can lead to improvements, not decline.

II. LOOKING AT THE DATA

Any assessment of where law schools should go in the future requires a data-based assessment of where they are today: What is working and what is not? This is a huge question, which encompasses many variables, only one of which involves post-employment prospects. But good possibilities for future employment are *part* of what law school education should provide. In light of the many sensationalist claims being made about that issue, it makes sense to start here in assessing the state of U.S. law schools today. How are students faring, quantitatively speaking, in the post-graduation job market? So much of the discussion of these questions takes place without reference to the data, or with reference to data that has been interpreted in distorted ways, that it makes sense to start with a review of the basic empirical facts. Thus, in this Part, I compare data for students graduating from law schools in 2005 to data for students who graduated in 2011 and 2012.⁷ I will use the figures of the National Association for Law Placement (NALP), which is the authoritative source for this information every year. These figures on students graduating from law schools reveal some trends that are disturbing but some that are reassuring.

On the side of the balance that gives cause for concern, the data shows that about 2,000 more students graduated from law school in 2011 than in 2005. At the same time, the number classified as "unemployed seeking" employment nine months after graduation also

7. I use both 2011 and 2012 data to help identify trends that may be unstable or reversing themselves over time. What a comparison over these two years shows is that most trends appear to be holding fairly steady, though there may have been a slight rebound last year in the large law firm post-graduation employment market. Whether this rebound will continue is not yet clear.

rose, by an even higher number, to a total of 3,900, or approximately 9.6 percent of the total pool of new graduates. In 2012, this figure went up to 10.7 percent. This would indicate an alarming trend, except that this graduating class represents the class admitted in 2009, and since then many law schools have shrunk their class sizes. Thus, according to the American Bar Association (“ABA”), these changing enrollment figures look like this:⁸

Year	Total Law School First Year Enrollment	Change
2009	51,646	
2011	48,697	↓ ≈ 3,000

With this new data projecting a decline in future numbers of graduates in mind, let us turn to the NALP data concerning new graduate employment.

NALP Data on New Law Graduates (Most recent available report at time of article submission as compared to 2005 figures)
Number of new law school graduates: <ul style="list-style-type: none">• 2005 = 42,672• 2011 = 44,495 ↑≈2,000• 2012 = 46,364 ↑≈2,000
Number unemployed “seeking”: <ul style="list-style-type: none">• 2005 = 1,197• 2011 = 3,900 ↑≈2,700• 2012 = 4,747 ↑≈950

Table One.⁹

8. See *First Year and Total J.D. Enrollment by Gender 1947 – 2011*, AMERICAN BAR ASSOCIATION, available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf; *ABA Section on Legal Education, Statistics*, AMERICAN BAR ASSOCIATION, available at http://www.americanbar.org/groups/legal_education/resources/statistics.html; Karen Sloan, *Law School Enrollment Continues Its Decline*, NATIONAL LAW J. (Nov. 28, 2012) (reporting that enrollment numbers represent a 15% decline since two years ago and a 9 percent decline since 2011).

9. All figures in this and subsequent tables are drawn from the publicly available statistics published by the National Association of Law Placement on its web site, <http://www.nalp.org/>.

A. *Type of Employment*

Many commentators approaching these figures arrive quickly at the thought that law schools should simply reduce their numbers of new graduates. Such proposals do not promise to automatically reduce post-graduation unemployment, however, because they do not consider the match between available employment opportunities and the skills of new law graduates. The statistics show that some legal employment markets and types of employment are in fact growing while others are shrinking, suggesting that what is needed is careful tailoring of law school education to fit changing employment trends. To understand more about which post-law school employment markets are absorbing current law school graduates, one must probe more deeply. Further analysis shows, for example, that it is private-sector legal employment that is shrinking, while public-sector employment is absorbing more new law graduates than in the past. Thus the figures reveal:

Employment by Sector (where employment status known)		
2005	2011	2012
Private: 69.1% (24,266)	Private: 67.6% (24,108)	Private: 68.6% (25,743)
Public: 28.9% (10,135)	Public: 31.47% (11,309) ↑≈2.4% or 1,000	Public: 31% (11,642)

Table Two.

Moreover, while private practice jobs are on the wane, jobs in the business and public interest sectors are also absorbing a greater percentage of new law graduates, as follows:

Types of Employment: Employment Categories		
2005	2011	2012
Academic = 1.8%	Academic = 3%	Academic = 2.7%
Business = 13.3%	Business = 18% (↑≈5%)	Business = 17.9%
Judicial Clerkship = 10.6%	Judicial Clerkship = 9% (↓)	Judicial Clerkship = 8.9%
Unknown = 2%	Unknown = 0.7%	Unknown = 0.4%
Private Practice = 55%	Private Practice = 49.5% (↓5.5%)	Private Practice = 50.7%
Government = 11.7%	Government = 11.9%	Government = 12.9%
Public Interest = 4.8%	Public Interest = 7.5% (↑≈3%)	Public Interest = 7.2%

Finally, many more new graduates are today going into “J.D. preferred” jobs rather than jobs for which bar passage is required, as follows:

Types of New Graduates		
2005	2011	2012
Bar Passage Required = 74%	Bar Passage Required = 65% (↓9%)	Bar Passage Required = 64.4%
J.D. Preferred = 7%	J.D. Preferred = 12% (↑5%)	J.D. Preferred = 13% (↑1%)
Other Professional = 5%	Other Professional = 5.3%	Other Professional = 4.9%
Nonprofessional = 1.4%	Nonprofessional = 1.9%	Nonprofessional = 1.8%
Pursuing Degree Full-time = 2.2%	Pursuing Degree Full-time = 2.2%	Pursuing Degree Full-time = 2.1%
Unemployed – Seeking = 3.1%	Unemployed – Seeking = 9.6% (↑6.5%)	Unemployed – Seeking = 10.7% (↑1%)
Unemployed – Not Seeking = 2.1%	Unemployed – Not Seeking = 2.5%	Unemployed – Not Seeking = 2.1%

Table Three.

These figures are often interpreted by reporters and others who are new to analyzing the changing nature of legal employment as a sign of legal education’s demise, based on assumptions that J.D.-preferred jobs are not as appealing or desirable as ones requiring bar passage.¹⁰ But

10. See Elizabeth Lesly Stevens, *Will Law School Students Have Jobs After They Graduate?*, WASH. POST (Oct. 31, 2012), http://articles.washingtonpost.com/2012-10-31/lifestyle/35498320_1_law-schools-law-jobs-legal-career-professionals (suggesting that law

this assumption does not take into account the fact that, just as the structure of legal practice is changing, so too is the nature of good legal jobs undergoing transformation. As disciplinary boundaries blur and shift in a period of rapid change worldwide, many interesting new kinds of “law jobs” have emerged. Many of these new opportunities reside at the borders between law and other disciplines, including information technology, policy, lobbying, criminology and crime interdiction, and like fields. Defining “good” legal employment as old-fashioned legal employment thus ignores what is happening in the world of law today, where what it means to practice law is in flux. I will come back to the implications for legal education of these changes in Part IV.C.2.

Let us look further at the data regarding traditional law firm practice. As already noted, the statistics show that this area has the greatest decline in job opportunities for new graduates. Interestingly, however, this decline is not taking place across the board, in law firms of all sizes. Instead, it is the largest law firms that are exhibiting the greatest decline in new graduate hiring. Moreover, the number of new law graduates being hired by very small law firms of two to ten lawyers has in fact increased, so that this sector employed a total of approximately one thousand more new law graduates in 2011 than it did in 2005. Put another way, law firms are employing fewer new graduates overall, but small law firms of two to ten members are employing 9.4 percent more of the new graduates that enter law firm jobs than in 2005. Although law firm hiring was up somewhat in 2012, as was large law firm hiring, hiring for small firms also continued to go up as a percentage of total hiring. As I will argue later in this essay, these statistics suggest that law schools should be giving more attention to educating lawyers who are likely to enter the small law firm sector. These firms typically service individuals and small businesses, and students should accordingly graduate equipped to service these kinds of clients. Here are these trends illustrated graphically:

school graduates are expecting jobs that require bar passage and low J.D. required employment numbers show lack of jobs for graduates).

Placements of New Law Graduates by Law Firm Sizes		
2005	2011	2012
Total = 19,600	Total = 17,666 (↓2,000)	Total = 19,042
2-10 lawyers = 6,565 (33.5%)	2-10 lawyers = 7,570 (42.9%) (↑≈1,000)	(↑1,500) 2-10 lawyers = 8,193
11-25 lawyers = 1,952 (10%)	11-25 lawyers = 1,847 (10.5%) (↓100)	(43%) ↑ 11-25 lawyers = 1,886
501+ lawyers = 3,305 (16.9%)	501+ lawyers = 2,856 (16.2%) (↓≈500)	(9%) 501+ lawyers = 3,636
		(19%) (↑2%)

Table Four.

The statistics further show that the larger the law firm size, the greater the decline in new law graduate hiring. Firms in the 26-to-100-lawyer range are basically holding steady in their new graduate hiring, but new law graduate hiring is shifting away from large firms and toward small firms of two to ten lawyers, as the following data reveals:

Law Firm Sizes – More Data		
2005	2011	2012
Solos = 595 (3%)	Solos = 1,059 (6%) (↑3%)	Solos = 964 (5.1%) (↓)
26-50 = 1,248 (6.4%)	26-50 = 1,085 (6.1%)	26-50 = 1,086 (5.7%)
51-100 = 1,087 (5.5%)	51-100 = 888 (5%)	51-100 = 861 (4.5%)
101-250 = 1,605 (8.2%)	101-250 = 1,010 (5.7%)	101-250 = 1,054 (5.5%)
251-500 = 1,894 (9.7%)	(↓2.5%) 251-500 = 891 (5%)	251-500 = 1,001 (5.3%)
	(↓4.7%)	

Table Five.

One concern voiced by those espousing the view that the legal employment job market is in crisis is a fear that new law graduates are ending up in dead end nonlawyer jobs as paralegals. The statistics do not at this point seem to bear out this concern. This is data that NALP has only recently begun collecting, so it is not possible to draw a comparison to 2005, but the latest available figures are set forth below:

Type of Law Firm Jobs of New Graduates		
2005	2011	2012
Not reported	Attorney = 89.7% Law Clerk = 8.7% Paralegal = 1.2% Administrative = 0.4%	Attorney = 89% Law Clerk = 9.1% Paralegal = 1.2% Administrative = 0.7%

Table Six.

B. *Salaries for New Lawyers*

Another related fear of those concerned about legal employment involves whether law graduates are continuing to earn salaries that will allow them to pay off their often hefty educational debt. Here the facts are in some respects heartening: Salaries for new law graduates who gain full-time (FT) legal employment are continuing to rise in a fairly robust manner. But these statistics are heartening only in part, of course, because these income levels can only still climb *for those who secure employment*. There is still great reason to be concerned about students who go to law school and incur educational debt but end up not employed in law-related fields. Moreover, the conditions of the current legal employment market also appear to be fostering an alarming rise in gender discrimination in overall mean salaries — a finding that should be cause for great concern for obvious reasons. The figures thus look like this:

Salaries (for those reported)								
2005			2011			2012		
Overall Mean Full-time Salaries			Overall Mean Full-time Salaries			Overall Mean Full-time Salaries		
Men = \$71,212			Men = \$80,547 (↑)			Men = \$83,133 (↑)		
Women = \$68,839			Women = \$76,674 (↑)			Women = \$78,097 (↑)		
Gender Differential =			Gender Differential =			Gender Differential =		
≈\$2,400			≈\$3,800 (↑)			≈\$5,036 (↑)		
75 th Percentile Salaries			75 th Percentile Salaries			75 th Percentile Salaries		
Men = \$90,000			Men = \$105,000 (↑\$15,000)			Men = \$114,000 (↑\$9,000)		
Women = \$90,000			Women = \$98,000 (↑\$8,000)			Women = \$100,000 (↑\$2,000)		
Gender Differential =			Gender Differential =			Gender Differential =		
≈\$0			≈\$7,000 (↑)			≈\$14,000 (↑)		

Table Seven.

In summary, the picture as to legal employment for new law graduates is a mixed one, but it is far from cause for panic. Many tens of thousands of students who go to law school still go on to careers that are rewarding professionally and financially. At the same time, too many new graduates remain unemployed, still seeking work nine months after graduation. Nevertheless, that unemployment rate, which was 10 percent last year, remains several percentage points below that for college graduates overall, suggesting that going to law school may still present a better bet, at a general level, than not doing so.¹¹ But high new graduate unemployment presents a serious problem that law schools should view as a grave concern. It must be addressed by a combination of strategies, which undoubtedly must involve both increasing demand for the skills and talents of new law graduates — such as by creating new kinds of fulfilling work for them in a society plagued by huge unmet needs for legal services — and possibly shrinking the supply of new law graduates and/or rechanneling it into areas of employment demand. Precisely how and in what combinations these several strategies can and should be used remains far from clear. I will turn to those questions in the parts below.

11. See *The Job Market for Recent College Graduates in the United States*, U.S. BUREAU OF LAB. STAT, http://www.bls.gov/opub/tcd/2013/tcd_20130405.htm (last visited Apr. 5, 2013).

III. SOME FEATURES OF LEGAL EDUCATION THAT ARE STILL WORKING

In this section of my essay, I argue that much of the noise currently being made about the crisis in legal education comes from those sitting at the top of the legal education hierarchy and describes, not a general crisis in legal education, but instead the current crisis besetting “top” law schools that have seen their easy post-employment market in big law firm associate jobs radically shrink. They perceive a general crisis in legal education because their schools are facing one. So-called “lower-tier” law schools always sent most of their new graduates into law jobs that paid less than the six-figure salaries upon which big law firm associates could once count.¹² These law schools always experienced a job market in which their students had to be resourceful and flexible in landing a first law job. New lawyers without the most elite credentials always realized they would have to work hard to prove their mettle; fancy educational backgrounds would not provide symbolic capital to launch their post-graduation career advancement. Of course many lawyers with non-elite educational backgrounds win coveted promotions and plumb jobs in the course of their careers, just as lawyers with elite credentials may go on to careers that are not particularly impressive. Thus, as expert sociologists studying the legal profession have long observed, the demographic landscape of highly successful lawyers is diverse with respect to educational background; educational credentials alone do not determine future career prospects.¹³

A. *A Path to Class Mobility*

This brings me to my first argument about how law schools are still working, which echoes a point made most forcefully by legal sociologist and former ABA Foundation Director Bryant Garth: Legal education continues to provide a powerful avenue to class mobility in a society in which such avenues are becoming ever scarcer.¹⁴ Moreover, advancing in socio-economic class by obtaining a law degree followed by legal employment remains an important predictor of high career satisfaction for lawyers.¹⁵ Garth and others’ analysis of the data collected in the

12. *Salary Distribution Curves*, NALP, <http://www.nalp.org/salarydistrib> (reporting that the adjusted mean starting salaries for new law graduates for the years 2011, 2010, and 2009 were \$73,984, \$77,333, and \$85,198, respectively) (last visited Aug. 18, 2013).

13. See Garth, *supra* note 5, at 12 (suggesting that “this relationship between law school tier and job satisfaction has more to do with the practice settings in which these lawyers work, rather than being a direct consequence of the law schools they attended”).

14. *Id.* at 8.

15. *Id.* at 46.

important “After the J.D.” study undertaken by the American Bar Foundation provides the pithiest statement of these findings: The farther legal education propels law students in terms of socio-economic class status advancement, the more satisfied they tend to report they are about their legal careers.¹⁶ Moreover, Garth notes, law schools lower on the educational elitism totem pole tend to admit many more students of lower socio-economic class origin than do law schools higher in the educational elitism hierarchy.¹⁷

These findings produce interesting and provocative conclusions: If we want to produce a legal profession full of happier lawyers, then we should produce more lawyers who use legal education and their subsequent careers to achieve aspirations to socio-economic class advancement. Those lawyers are most often educated in the so called “lower-tier” law schools, leading to the conclusion that the sectors of legal education that most deserve to be fostered in harsh economic times are the lower-tier law schools, rather than the elite bastions of inherited socio-economic privilege.¹⁸

Another set of data tells us much about the kinds of jobs graduates of different tiers of law schools obtain. We know, based on Heinz and Laumann’s different hemispheres research, that graduates of elite law schools tend to go into law jobs providing services to larger corporations and institutional interests, while graduates of lower-tier law schools tend to go into jobs in legal services sectors that provide representation to moderate-income individuals and smaller businesses.¹⁹ We also know that a huge problem of unmet legal services needs exists in the moderate- and lower-income individual legal services sector, as my co-panelist, Professor Ben Cooper, has discussed.²⁰ Thus, taking steps to

16. See *id.*, *supra* note 5, at 12, 29-40 (reporting that graduates from fourth-tier schools tend to come from the most disadvantaged backgrounds, yet despite coming from circumstances that seem objectively worse than those of graduates from other law school tiers, graduates of fourth-tier schools report higher levels of satisfaction in their careers and in their decision to go to law school than graduates of higher-ranked law schools).

17. *Id.*

18. *Id.* at 38-40.

19. See JOHN P. HEINZ ET AL., URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR (2005) (synthesizing data collected from a 1995 survey of lawyers in Chicago, which was a follow-up to a 1975 survey of Chicago lawyers by John P. Heinz and Edward O. Laumann, and finding some loosening of the two-spheres structure of the profession); JOHN P. HEINZ ET AL., CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1982) (finding that the legal profession is comprised of two distinct practice areas, with graduates of elite law schools tending to serve corporate clients and graduates of lower-tier law schools tending to serve smaller organizational and personal clients).

20. Benjamin J. Cooper, *Access to Justice Without Lawyers*, 47 Akron L. Rev. 205, 205-07 (2014).

solve the problem of unmet legal services seems related in important respects to preserving the role of less elite law schools in producing the lawyers who will help individuals of modest means solve their legal problems.²¹ Moreover, if the United States is to solve its acute problem of unmet legal service needs, law schools will have to train well-rounded, well-prepared lawyers who are able to handle a wide variety of legal problems with competence and integrity — operating with good independent judgment and without heavy-handed supervision in the more leanly staffed, smaller-size practice arrangements that are typical of this legal services sector. These considerations, too, would suggest that less elite law school training programs are the ones most important to preserve in these challenging times. On a related point, these considerations suggest that lower-tier law schools should aspire to provide *more* challenging and well-rounded training, rather than specializing in the kind of glorified paralegal work or dual-tier legal training that some commentators are suggesting as the path for the future for such law schools.²²

B. Filling Unmet Legal Service Needs

If legal educators are interested in expanding the legal employment market to create more jobs for their graduating students, it would make sense to seek ways of bringing about such expansion where needs for more legal services exist but resources remain scarce. On this reasoning, we should find creative new ways to fund the development of law practices serving moderate-income individuals and related interests, such as small businesses. Law schools should contribute to funding and supporting graduates entering into such practices. The Law School Consortium Project previously undertook this goal, and some law schools are currently sponsoring new “incubator” projects to the same end.²³ More law schools could and should join these experimental

21. For an argument about the public interest aspect of addressing the unmet legal needs of moderate-income individuals, see Susan Carle, *Re-valuing Lawyering for Middle Income Clients*, 70 *FORDHAM L. REV.* 719 (2001).

22. See Stevens, *supra* note 10 (suggesting that the law school education model might benefit from an alternative track in which students spend a year studying specializing in practical legal skills, such as discovery or litigation support, and obtain intermediate degrees which, while not as prestigious as traditional law school degrees, would efficiently and inexpensively train less-elite students for legal jobs available in this market).

23. See Deborah Howard, *The Law School Consortium Project: Law Schools Supporting Graduates to Increase Access to Justice for Law and Moderate Income Individuals and Communities*, 29 *FORDHAM URB. L.J.* 1245, 1245-48 (2001) (discussing the Law School Consortium Project’s models for supporting solo and small-firm practitioners who have newly

initiatives, assessing successes and failures and developing best practices expertise along the way.

As already noted, however, many proponents of the “crisis in legal education” thesis reach a very different conclusion. They argue that the shrinking supply of traditional law jobs should produce a contraction in the number of students going through law schools, and that this contraction should come from legal education’s lower tiers. No inherent logic or empirical data mandates this conclusion, however. If the huge loss of jobs has occurred in the elite big law firm sector, then perhaps it is elite law schools that should shrink their class sizes. Moreover, as Garth has persuasively argued, looking empirically at how economic changes have affected the legal profession in periods of economic downturn, disaster comes to some institutions based on business calculations that turn out to have been wrong — regardless of whether such institutions previously enjoyed elite reputations.²⁴ Thus, as Garth recently pointed out at an Association of American Law Schools panel in January 2013, the major law practice implosions that have occurred in the wake of the Great Recession involved the most elite firms.²⁵ The implosion of Dewey & LeBeouf, Coudert Brothers, Howrey, and Brobeck Phieger & Harrison are cases in point.²⁶ In contrast, the small-firm sector has basically continued to exist much like it has for a long time, with smaller fluctuations in size and numbers of firms as practice areas expand and decline in response to changes in the legal

graduated from law schools, so that these individuals could have economically sustainable careers while still addressing the needs of low- and moderate-income communities and individuals); *The Law School Consortium Project*, UNIV. OF MD. FRANCIS KING CAREY SCHOOL OF LAW, <http://www.law.umaryland.edu/programs/clinic/initiatives/lscp/> (last visited Aug. 18, 2013) (reporting on termination of activities in 2009 after establishing practitioner networks to help solo and small-firm lawyers focused on low- and moderate-income clients, and reporting that local and regional consortium initiatives continue working on an ad-hoc basis).

For a report on new incubator projects being undertaken today by law schools including Arizona State, City University of New York, and Thomas Jefferson School in San Diego, see Ethan Bronner, *To Place Graduates, Law Schools Are Opening Firms*, N.Y. TIMES, March 8, 2013, http://www.nytimes.com/2013/03/08/education/law-schools-look-to-medical-education-model.html?pagewanted=all&_r=0.

24. AALS Presidential Program, “Law Schools and Their Critics,” Jan. 6, 2013, comments of Bryant G. Garth.

25. *Id.*

26. See Daniel Fisher, *Dewey and LeBoeuf Bankruptcy Tells Lawyers: Change or Die*, FORBES (May 29, 2012, 2:35 PM), <http://www.forbes.com/sites/danielfisher/2012/05/29/dewey-and-leboeuf-bankruptcy-tells-lawyers-change-or-die/> (arguing that the recent Dewey and LeBocuf bankruptcy should serve as a warning to other big law firms to develop more cost-effective ways of operating, such as adopting a consulting business model where experienced lawyers are hired on a freelance basis and work for a fixed price rather than by the billable hour).

environment.²⁷ These observations suggest that the legal education institutions that will have to adapt the most to changing economic conditions are the elite institutions that once fed the big law firms with droves of their new law graduates.

To be sure, these elite and powerful educational institutions, armed with huge endowments and large professional staffs, are aggressively struggling to adapt to the changes that have hit their post-graduate job market. Most will certainly endure. To do so, however, they must find their graduates jobs. They are doing so primarily by seeking to invade the sectors of the post-graduate job market that were once the province of graduates from lower-tier law schools. Law students once more want work in the government and the smaller firm jobs that were a less fashionable career aspiration in a different economic and political climate.²⁸ But here elite law schools find themselves competing with the law schools that have traditionally fed these alternative legal employers. Competition for jobs is fiercer than it once was. This in turn leads to regrouping and rethinking the terrain and the construction of new arguments and justifications for why elite law schools should retain their

27. Cf. *2013 Report on the State of the Legal Market*, GEO. L. CENTER FOR THE STUDY OF THE LEGAL PROFESSION 14 (2013), <https://www.law.georgetown.edu/continuing-legal-education/executive-education/upload/2013-report.pdf> (identifying the increasing tendency of clients to separate matters into discrete tasks that they assign to different firms based on expertise and cost-effectiveness, which has led small- and medium-sized firms to absorb more of the workload that large firms used to do because the former are less expensive). But see William D. Henderson & Rachel M. Zahorsky, *Law Job Stagnation May Have Started Before the Recession – and It May Be a Sign of Lasting Change*, ABA JOURNAL (July 1, 2011 3:40 AM), http://www.abajournal.com/magazine/article/paradigm_shift (reporting that small- and mid-size firms have also been feeling some of the pressure that has hit large law firms, as clients have sought ways to permanently reduce costs by relying on advances in technology to represent themselves in legal matters). Nevertheless, new graduates of law schools continue to enter small- and mid-size firms at steady rates. See NALP, National Summary Reports from 2005 to 2011, available at <http://www.nalp.org/recentgraduates>. For example, in 2005, the national percent of that year's graduating class that went into private practice was 55.8 percent. Of those, the percent who entered firms of two to ten lawyers was 33.5 percent, and the percent who entered firms of eleven to twenty-five lawyers was ten. By 2011, the national percent of that year's graduating class that went into private practice was lower — 49.5 percent. Of that group, the percent entering firms of two to ten lawyers had risen to 42.9 percent, and the percent entering firms of eleven to twenty-five lawyers was about the same, or 10.5 percent. These figures reflected a trend over time of a gradually declining percent of graduating students nationally going into private practice but an increasing percentage going into very small firms, and a more or less steady percentage going into small firms of twenty-five lawyers or less. This segment of the private practice market now employs a greater percentage of new law graduates than does the big-firm employment sector.

28. See Victor Fleischer, *The Shift Toward Law School Specialization*, N.Y. TIMES, Oct. 25, 2012, <http://dealbook.nytimes.com/2012/10/25/the-shift-toward-law-school-specialization/> (reporting that law school graduates who are unable to attain big law firm positions are now looking for positions in smaller firms or for positions in business-focused jobs).

turf as the producers of the “best” new lawyers and why lower ranked institutions should shrink their class sizes or just shut down. I have yet to be convinced that there are good arguments for that conclusion, other than elite law schools’ — and their academic spokespersons’ or theoreticians’ — “jurisdiction-protecting” instincts.

Those familiar with the history of the U.S. legal profession may notice history once more repeating itself. Around the turn of the twentieth century and again in the 1920s and 1930s, elite lawyers and regulators began to insist on the importance of a certain type of law school education — *i.e.*, full-time study, in a university setting, and concentrated on classroom coursework rather than “reading” for the bar in a law office under the tutelage of a practitioner.²⁹ These prescriptions served as barriers to entering the legal profession for those lacking the economic resources to afford such education.³⁰ Similar trends are emerging today. At the turn of the twenty-first century, spokespersons for elite legal education institutions again want to insist upon the importance of the most elite legal educations, as they choose to define them, as a qualification for practicing law at the highest levels, once again in an environment where competition for traditional law jobs has become extremely fierce.³¹ In point of fact, however, what constitutes the “best” legal educations for this new practice environment remains in contention; it is in no way the prerogative of traditional bastions to declare what should be considered the best ways to educate students in a new, very different practice era.

In sum, one thing legal education is still doing right is providing pathways for socio-economic advancement for law students. And the sectors of legal education that are doing the most right in this regard are those that admit the most students of lower socio-economic class origins — most often law schools outside the highest law school rankings.³² To

29. See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983).

30. See JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 14-39 (1976) (arguing that elite white “Anglo-Saxons” maintained their dominant social position and law practice monopoly against the influx of immigrants at the turn of the twentieth century by seeking to make law school graduation a requirement for bar practice and encouraging a law school curriculum more focused on business practice, and recruiting for lucrative law firm jobs through a system in which the corporate elite communicated directly with law school professors to hand select law school graduates with similar elite social pedigrees).

31. See generally Rebecca Roiphe, “Stratification: Two Tiers of Law Schools in Historical Context” (June 2013) (unpublished manuscript) (on file with author).

32. Indeed, in higher education more generally, there is an astounding correlation between elite ranking and students’ socioeconomic status. See, *e.g.*, Garth, *supra* note 5, at 11, 34 (observing that students who graduate from the top ten law schools tend to come from privileged

make this point is not to say that all lower tier law schools will or should survive these current challenging times, of course, but merely that all law schools, regardless of ranking, must make the right choices about future directions and priorities. Law schools will and should make those decisions for themselves, and the best paths forward will emerge only with the passage of time, after successes and failures can be assessed more clearly in retrospect.

C. New Post-Graduate Career Markets

The employment statistics reviewed above about where post-Great Recession law graduates are finding employment offer still other interesting information about what law schools are and can still be doing right. As already noted, those statistics show that, in almost all law schools, more students are going into “J.D.-preferred” jobs than have in the past.³³ These statistics emerge from the way the National Association for Law Placement tracks employment data, which separates jobs into “J.D.-required” and “J.D.-preferred” positions. Unfortunately, this information does not transparently distinguish between types of J.D.-preferred jobs, so it is not possible to tell for sure if these law graduates have what new law graduates would probably regard as terrific J.D.-preferred jobs, such as serving as policymaking staff on Capitol Hill, or jobs many would regard as less terrific outcomes after law school, such as permanent administrative positions. Of course, law school has always been a path into a wide range of jobs, and many law graduates in all generations attended law school with no aspiration or expectation of practicing law after graduating. But as the legal services industry diversifies with the development of many new ways to deliver services, so too are law-related jobs increasingly diversifying. It seems to me mostly to the good that law school graduates are similarly diversifying in the types of “law jobs” they are obtaining after law school.

The crisis talk about the future of legal education frequently points to the gap between the declining number of traditional lawyer jobs projected to be opening in the future and the — much higher — number of law students projected to graduate from law schools in this same time

socioeconomic backgrounds).

33. See *Class of 2011 Has Lowest Employment Rate since Class of 1994*, NALP, <http://www.nalp.org/0712rcsearch> (last visited Feb. 18, 2013) (showing that from 2001 to 2011, the percentage of law school graduates that accept JD-preferred jobs has increased from 6.0 percent to 12.5 percent).

scenario. These figures certainly present information to which law schools should be paying very close attention. But they do not necessarily predict a horrible impending crisis. The very forces that are causing the shrinkage in traditional law jobs — such as trends towards more commodification and disaggregation of legal services; the decline in bespoke legal services; and the introduction of ever greater information technology, efficiencies of scale, and quasi-legal practice such as electronic legal information services — are at the same time giving birth to a host of new jobs that are law-related but something other than traditional practice.³⁴ Entrepreneurial law school graduates can, and are, seizing on these opportunities. These include many obvious new employment opportunities in law-related information technology management, e-discovery, project management, legal information “app” development and associated programmer jobs. Law students are entering jobs that involve forecasting at the intersection between business and law, as well as other work at the intersections between law and other services, such as finance, accounting, psychology, criminology, alternative dispute resolution, policy formulation, and medicine.³⁵

At the same time — at the very moment when what law students do after law school is undergoing such tremendous change — irresponsible, sensationalist reporters have decided that the best way to measure legal employment after law school is to look at employment statistics for “J.D.-required” jobs only.³⁶ Unsurprisingly, fewer law graduates are now entering J.D.-required jobs, while at the same time more are entering J.D.-preferred jobs. Some news reporters have chosen to take these facts as evidence that law students are not getting the jobs they want after law school.³⁷ But the evidence they rely on does not necessarily support this assumption. *Of course* law students are entering new kinds of law-related jobs, just as one would expect as the kinds of

34. See Henderson & Zahorsky, *supra* note 27 (arguing that lawyers are now having to adapt the nature of their legal work to more informed clients that have improved access to information and a greater ability to control their legal costs, a globalized economy that has made legal work more complex and put US lawyers in greater competition with the international legal market, and advanced forms of technology that have replaced much of the traditionally billable work that lawyers used to do).

35. *Id.*

36. See Stevens, *supra* note 10 (relying solely on data about the number of law graduates employed in full-time, JD-required jobs nine months after graduating to suggest that the legal job market has sharply and, perhaps permanently, shrunk since the financial crisis in 2008).

37. *Id.* (suggesting that law students should begin shifting their post-law school employment expectations based on statistics showing a decrease in post-graduate full-time employment as attorneys).

jobs that exist in legal services markets change along with the rapid reinvention of law practice in the twenty-first century.³⁸ Many of those jobs are good jobs — maybe even better jobs than traditional law associate jobs, in which junior lawyers toiled away on document production in musty warehouses. To be sure, some law students are not getting the kinds of jobs for which they were hoping an expensive legal education would qualify them. But those jobs, as Starbucks baristas, for example, are not encompassed in the J.D.-preferred category. Instead, J.D.-preferred jobs by definition relate to law, and much more study needs to be done to better understand the skills needed and quality of such jobs.³⁹ To give but one recent example from my own personal knowledge, a top graduate at my law school interested in international human rights and trafficking work recently turned down other job offers to take a “J.D. preferred” job as an FBI analyst working on interdicting international trafficking of children. Another is currently applying for his dream job at the Department of Homeland Security working at the intersection of cybercrime and law. These students are not taking J.D.-preferred jobs because they lack “better” options; they are taking the jobs they find the most meaningful and relevant in a world much changed by new global and domestic challenges.

In other words, as the borders between law and other disciplines are renegotiated, so too should we expect the kinds of jobs students seek after law school to be changing too. Does this signal a failure in legal education? Hardly — though I do believe, as I will argue in Part IV of this essay, that these changes do require responses from law schools in striving to adapt their curriculums to encompass the diverse interdisciplinary practice arrangements and exchanges our graduates are increasingly likely to encounter in their professional careers.

D. Committed Academic Faculties and Administrators

Another way in which I believe law schools are not in crisis — again contrary to some sensationalist press reporting — is in the quality and hard work of their faculties and staff. Based on some news accounts and professorial criticisms, one would think that law professors are fat cats getting rich on high tuitions while writing the occasional obscure

38. See generally RICHARD SUSSKIND, *THE END OF LAWYERS: RETHINKING THE NATURE OF LEGAL SERVICES* (2012).

39. For more on what is known about these positions, which NALP recently began calling “J.D. Advantage” jobs, see *Detailed Analysis of J.D. Advantage Jobs*, NALP, http://www.nalp.org/jd_advantage_jobs_dctail_may2013.

article, carrying easy teaching loads and doing little else for their students.⁴⁰ This is far from the committed, hardworking cadre of law professors I have encountered, at all tiers of the legal education hierarchy. According to a 2011 report, the median salary for a tenured law professor ranges from \$100,000 to \$175,000 depending on seniority — hardly life in fat cat city.⁴¹ The average teaching load is twelve credits per year, and before anyone teaching in another discipline protests that this is not a heavy teaching obligation, bear in mind that each law course credit taught requires hours of preparation in light of the complexity and detail of legal materials. Law professors typically teach very large classes of up to one hundred students or so, and, unlike undergraduate and many graduate programs, law professors personally grade all their law school exams, which typically involve long, complicated, essay-style answers. Unlike many other types of higher education teaching, law professors do not rely on teaching assistants for either teaching or grading. Law professors are under heavy publication requirements, just as other faculties are. In short, the image of fat cats lying around living off inflated student tuitions bears no resemblance to the driven, even neurotically hard working colleagues I know. To be sure, there have been some outrageous scandals, such as the recent University of Texas debacle in which a dean gave several faculty members no-payback loans in order to further inflate their already more than ample pay.⁴² But with the exception of the overly entitled few who perceive themselves as superstars — a problem that has arisen throughout academia, often to a far greater degree in disciplines other than law⁴³ — law professors work hard for salaries that are reasonable in

40. See William D. Henderson, *Review of Failing Law Schools*, by Brian Tamanaha (Part I), THE LEGAL WHITEBOARD (May 14, 2012), <http://lawprofessors.typepad.com/legalwhiteboard/2012/05/review-of-failing-law-schools-by-brian-tamanaha.html> (asserting that law professors should not dismiss Tamanaha's criticism of legal academics as underworked and overpaid).

41. See AM. B. FOUND., *After Tenure: Post-Tenure Law Professors in the United States* (2011), http://www.americanbarfoundation.org/uploads/cms/documents/after_tenure_report_final_abf_4.1.pdf (reporting that tenured law professors report median salaries of \$100,000 to \$175,000 depending on seniority).

42. See Recvc Hamilton & Morgan Smith, *UT President Asks Law School Dean to Resign Immediately*, TEX. TRIB., Dec 8, 2011, <http://www.texastribunc.org/texas-education/university-of-texas-system/dean-ut-law-signs-letter-resignation/> (reporting on this scandal and its fallout).

43. See Joanna Walters, *Fame Academies*, Guardian, Aug. 11, 2003, <http://www.guardian.co.uk/education/2003/aug/12/careers.highereducation> (discussing the phenomenon of universities using inflated compensation packages to lure celebrity professors to their institutions, which raise tuition costs and leads to feelings of resentment among other faculty members); see also Karen W. Arenson, *Boldface Professors*, N.Y. TIMES, Apr. 25, 2004, <http://www.nytimes.com/2004/04/25/education/boldface-professors.html?pagewanted=all&src=pm>

relation to the complex skill and high production demands these jobs require.

My final point about ways in which law schools are still working well is more controversial: I suggest resisting proposals to slash law school tuitions. These proposals may be misguided. To be sure, there are some strong arguments in their favor. Law school tuitions are shockingly high, last year averaging \$40,585 for private schools and \$23,590 for public schools.⁴⁴ And certainly no *further* increases in law school tuitions seem supported by the economic formulas under which one can calculate how much educational debt is an acceptable investment given future salary projections. Those formulas vary widely, but under any formula regarding prudent borrowing to fund higher education, many law students incur far more debt than their expected future salaries support. Moreover, law jobs exhibit enormous variation between public interest and small firm jobs that pay much less, and the fewer remaining big law firm jobs that still start at salaries of more than \$100,000 per year.⁴⁵ Granted too, the prospect of taking on significant education debt looks very different to prospective students facing uncertain job prospects after graduation. Moreover, research shows that prospective students without an economic safety net to fall back on are more likely to be wary of taking on high educational debt.⁴⁶ But the fact remains that law school can still look like a decent bet, as evaluated in an environment of slow economic growth in which most career paths look more risky and more arduous than before. In prospective applicants' final analysis, law school can still seem the most attractive professional alternative for students with a certain set of skills and interests — and a far better idea in an era of steep post-college unemployment than pursuing no further professional education at all.

(reporting that universities use the lure of higher salaries to attract celebrity professors).

44. Debra Cassens Weiss, *Tuition and Fees at Private Law Schools Break \$40K Mark, on Average*, ABA JOURNAL (Aug. 20, 2012, 4:30 AM), http://www.abajournal.com/news/article/average_tuition_at_private_law_schools_breaks_40k_mark/.

45. See *Median First-Year Big-Law Associate Salary Slumps to \$145,000 in 2012, a Median Last Seen in 2007*, NALP (Sept. 20, 2012), http://www.nalp.org/2012_associate_salaries (announcing that in 2012, first-year big-law associate starting salaries decreased to a median of \$145,000).

46. See, e.g., Mark Kantrowitz, *Who Graduates College with Six-Figure Student Loan Debt?*, FINAID.ORG 11 (Aug. 1, 2012), <http://www.finaid.org/educators/20120801sixfiguredebt.pdf> (reporting that undergraduate students who are dependents are about three times more likely to take on six-figure student loan debt than independent students are, and that about half of the undergraduate students who incur six-figure debts plan to have assistance repaying their student loans, while only one-fifth of students who take on less debt expect such help).

To be sure, law schools should not abuse this state of affairs, which is requiring young people to make career choices among a set of far less than ideal options. It would be shameful, for example, for law schools to continue to raise tuitions beyond a level supportable by predicted post-graduate salaries.

But, to get to the controversial part of my argument, I think it is far from clear that law schools should drastically lower tuitions across the board, as some have argued, especially if doing so would require lowering the quality of instruction or the caliber of fine programs that schools have taken decades to build. Instead, law schools may need to more carefully hone financial aid policies, especially by offering much more need rather than merit-based scholarship assistance.⁴⁷ They should also put more funding into post-graduation public interest and low-income loan repayment support programs, and should ensure that students take full advantage of federally funded loan income repayment programs for which they may be eligible. In other words, law schools should offer retroactive need-based financial assistance to reduce student loan burdens where it proves most necessary to do so.⁴⁸ Put most simply, the current challenges facing legal education in an increasingly complex world do not to my mind counsel in favor of reducing the quality of legal education by cutting tuitions and then slashing program budgets. Instead, as I will argue below, what may be needed is smarter and better legal education — as well as, certainly, legal education that does not become *any more* expensive than it is now.

Here is further evidence that legal education is still working in some major, important ways: Some aspects of the American legal education system — especially its techniques of teaching critical thinking skills — remain much admired to this day, both by other academic disciplines and by other countries' legal educators.⁴⁹ The

47. See David Segal, *Law Students Lose the Grant Game as Schools Win*, N.Y. TIMES, Apr. 30, 2011, http://www.nytimes.com/2011/05/01/business/law-school-grants.html?pagewanted=all&_r=0 (observing that merit-based scholarships rose in popularity in the late 1980s in response to the U.S. News and World Report initiating a law school ranking system that heavily emphasizes college GPAs and LSAT scores, and that such an emphasis on merit-based scholarships has come at the expense of need-based scholarships).

48. See Philip G. Schrag & Charles Pruetz, *Coordinating Loan Repayment Assistance Programs with New Federal Legislation*, 50 J. OF LEGAL ED. 583 (2011), <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1483&context=facpub> (providing information on how law school loan repayment assistance programs work and how they can work together with federal legislation passed between 2005 and 2010 to reduce debt payment burdens, particularly for students working in the public sector).

49. See, e.g., Matthew S. Eric, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 59 J. LEGAL EDUC. 60 (2009) (examining the J.M. program in China, which China's

market for U.S. legal education among foreign students is strong and growing stronger. This is in part, of course, because the U.S. legal system is so dominant, but it is also because U.S. pedagogical methods, focused on teaching critical thinking skills rather than rote memorization and regurgitation, are respected. There is much room for improvement and innovation, as I will discuss below, but there is also much worth keeping as legal educators take on the challenges of changing times.

IV. WHAT IS *NOT* WORKING OR NEEDS REFORM

In arguing that many aspects of U.S. legal education are still working, I do not mean to present an apologist argument in favor of the legal education industry; my point is simply that we risk “throwing out the baby with the bath water” to the extent that the current pressing problems facing law schools have led some commentators to suggest dismantling their many traditions without carefully sorting through what is worth keeping and what merits discard. In this Part, I offer thoughts about a few salient aspects of U.S. traditions of legal education that do require reform.

A. *Invidious Elitism Hierarchies*

First on my list of features of legal education that belong in the discard bin are those that reinforce rather than contravene entrenched status hierarchies. As I have already argued, legal education deserves to be strongly faulted for its rigid construction of hierarchy and accompanying elitism, especially given the close relation of these tendencies to the exclusion of persons on the basis of socio-economic class background and other indices of inherited privilege or lack thereof.⁵⁰ The rampant prevalence of these values in legal education deserves censure and dismantling, just as caste systems organized around other illegitimate indicia, such as race, religion, and gender, have required attack and dismantling in the legal profession and its training grounds in past eras.⁵¹ Note also that many of the alleged abuses I

Ministry of Justice introduced in the late 1990s to become the primary professional degree for lawyers; it is modeled after the American J.D. program and American-style law school teaching methods that develop critical thinking skills).

50. For one prominent commentator who has long been making similar points, see Lani Guinier, *Admissions Rituals as Political Acts: Guardians at the Gates of Our Democratic Ideals*, 117 HARVARD L. REV. 113 (2003).

51. See Auerbach, *supra* note 30, at 1-13 (observing the tendency of corporate lawyers and law professors at the turn of the twentieth century to structure the legal profession and law school admissions to benefit upper-class, white males in response to increasing numbers of immigrant

defend against as a general proposition above — such as inflated faculty compensation and calls for reform that address “other people’s” institutions but not one’s own — are connected to the endemic elitism of legal academia, which should be criticized and rooted out wherever possible.

B. False Reporting of Statistics

Still other abuses are spread across the spectrum of elite to less elite schools and irrefutably require immediate action. Chief among these are the allegations that some law schools manipulate their post-employment statistics and other relevant data, such as information regarding the ongoing availability of financial assistance after the first year, post-graduation debt burdens, salary statistics, bar passage rates, and similar facts⁵² — all involving information crucial to prospective applicants’ decision-making about law school attendance. Given the news media’s lack of reliability in its reporting on other aspects of the legal education crisis, it may be that some of these claims of law school misrepresentation are untrue or grossly distorted. I, therefore, will not repeat any specific allegations here. If true, they reflect practices that are abhorrent. Officers of educational institutions that engage in misrepresentation deserve to be sued or prosecuted just as the officers of any organization similarly abusing public trust would; if anything, law school administrators should be held to even higher standards, since they are supposed to be teaching students principles underlying legal compliance.

Moreover, the institutions responsible for maintaining the integrity of the legal education industry — especially the American Bar Association and its Council on Legal Education — and the institutions responsible for fueling law schools’ bitter ranking wars for their own profit-making motives — namely, the *U.S. News & World Report* — also bear responsibility. Both groups should continue their efforts to develop auditing mechanisms to verify law schools’ data and ensure uniformity across counting and reporting practices. Some of this is already happening and more is being proposed.⁵³

lawyers).

52. Cf. Nick Anderson, *Five Colleges Misreported Data to U.S. News, Raising Concerns about Rankings, Reputation*, WASH. POST, Feb. 6, 2013, http://articles.washingtonpost.com/2013-02-06/local/36940782_1_scott-jaschik-admissions-data-rankings (discussing recent examples of college and university misreporting of figures related to the selectivity of their admissions).

53. See *ABA and LSAC Announce Program for Reporting of Entering-Class Data*, ABA (June 15, 2012), <http://www.abanow.org/2012/06/aba-and-lsac-announc-program-for-reporting-of>

In short, solving the problem of greater transparency involves addressing issues endemic to institutions generally, not legal education institutions specifically, and thus probably does not require a great deal of special reflection by legal educators. Its solution can be summed up instead with the basic principle: “We should not cheat or lie.”

C. Curricular Development

The final topic I want to explore in these short remarks does require special attention from experienced legal educators. It involves what I see as the locus of both the perils and the opportunities of the current dramatic changes the legal profession is undergoing — namely, focusing on law schools’ core mission of student education. It clearly is no longer sufficient to rely exclusively on traditional pedagogy and curricular offerings to produce law students prepared for practice in the vast array of diverse practice locations they may find themselves entering. As law practice becomes more complex and diverse, so too does it become more difficult to define and carry out the education mission of law schools. Again, much ink, and a far greater amount of law school faculties’ time and effort in institutions across the nation, has been spent debating pedagogical best practices and curricular reform, focused on both content and methods of legal teaching. Should we expand core faculty-supervised clinical legal education offerings? Clearly, this is the gold standard in legal education, but it is also very expensive. Should we encourage more for-credit internships and off-site experiential learning? Clearly, also important, but quality control and pedagogical justifications must be carefully thought out. Should we do more simulations and skills training in law school? Clearly, the answer is yes, but at the expense of what? Should we try to teach students something about the history and policy debates important to the profession they are entering? I would say yes, but students and intellectual trends point ever more strongly against these directions.

Despite all the noise and confusion on questions of future pedagogy, curricular reform, and achieving the right balance of competing goals in educating law students for their future careers, I believe several clear themes are emerging. My thoughts are based primarily on my involvement in proposing and planning a recent Association of American Law Schools’ (“AALS”) workshop on the interrelated futures of a changing U.S. legal profession and legal

entering-class-data/ (announcing a voluntary program for law schools to “certify the accuracy of their reporting of entering-class academic credentials”).

education, in which capacity I and others reviewed a large outpouring of statements from law professors across the country in response to a request for proposals about innovations in law school teaching and work at the intersections among teaching, scholarship, and service.⁵⁴ Although the responses were far too numerous and diverse to categorize systemically, several clear themes emerged from them that bear mention here. These themes are as follows:

1. Third-Year Curriculum Innovation

Law teachers currently see a need to add more value and content at the end of students' law school training by developing new courses that push students into advanced levels of understanding and practice in specializations. These courses are sometimes called capstone courses, and some schools, such as Washington and Lee University, have experimented with systemically overhauling the third year of law school training with such goals in mind. Some courses involve a classroom focus, while others seek to get students involved in legal work in surrounding communities. Some focus exclusively on traditional lawyering problems, while others have a strong interdisciplinary bent and seek to get law students working with other professional disciplines in tackling problems from a multidisciplinary perspective. Some are for a few credits and some compose the bulk of a student's credits in their last year or semester. All seek to push students to get more out of their legal education than taking a straight diet of traditional law school courses in the final year.

2. Multidisciplinary Collaboration

A second frequent theme in the experimentation going on in law schools today, already touched on above,⁵⁵ involves increasing emphasis on interdisciplinary work, such as co-teaching courses with professors and students from other university departments, including medicine, nursing, psychiatry and psychology, social work, accounting, anthropology, urban planning, and the like. We received statements of

54. See *AALS Workshop on the Future of the Legal Profession and Legal Education: Changes in Law Practice: Implications for Legal Education* (held on Jan. 5, 2012, at the AALS Annual Meeting), *Innovations in Legal Education Proposals*, available at https://memberaccess.aals.org/ewcb//DynamicPage.aspx?Site=AALS&WebKey=d4c619d2-cfcc-44df-99fd-83203c70f5f0&RcgPath=EventRegFcCs&REg_cvt_key=d4a06b1f-994c-4ffc-b5ca-548f57898594 (last visited Aug. 18, 2013).

55. See *id.*

such ongoing projects involving collaborations with all of the disciplines mentioned, and I am aware of many others as well, including joint courses involving students and experts in the fields of military planning, intelligence, and counterinsurgency. At first blush, these trends might seem somewhat surprising: In a time of retrenchment, shouldn't law schools return to their core basics? But other forces push the other way, especially the increasing interconnectedness of our global environment, which points to collaboration not only across geographic gaps, but also across narrowing gaps between professional disciplines. Just as the world's problems have become more complex and intertwined, so too have best practices developed to figure out how to unravel complex problems by employing the tools various disciplines have available for such work. Moreover, in many parts of the world — although, alas, not yet the United States — multidisciplinary practice arrangements, in which professionals of various disciplines may work together as practice co-owners and peers — have been embraced, increasing the chances that our law students today will work in such arrangements, or at least be working with professionals from foreign jurisdictions who are practicing in such arrangements. My sense is that different law schools are at very different places in revamping their curriculums to encourage multidisciplinary inquiry and collaboration, but this too seems to me a key way in which law schools need to change and develop to keep on top of emerging best practices trends.

3. Core Legal Training with Relevance to Practice

Some other trends have been obvious for longer, and so much high-quality literature exists about them that I will not belabor them here. These include the increasing focus on clinical legal education in all its dimensions, involving not only skills training but also reflective learning on matters of values, ethics, and professional identity; and education that increases practitioners' sensitivity to lawyering challenges across various axes of human difference.⁵⁶ Instead, I will use my remaining space to return to a somewhat paradoxical observation regarding promoting more multidisciplinary focus in law school teaching. The observation is this: At the same time that law schools are becoming more focused on exposure to multidisciplinary approaches, it seems to me that law students are demanding more of a focus from their core law

56. See Deborah L. Rhode, *Legal Education: Rethinking the Problem, Reimagining the Reforms*, 40 PEPP. L. REV. 437, 457-58 (2013) (explaining the particular value of clinical legal education in teaching legal ethics).

professors on the peculiarly *legal* aspects of their training. They want to learn how to work with professionals who are experts in their different respective fields, but they are less and less tolerant of the kind of law teaching in which law professors with Ph.Ds. in other subjects spin their latest academic theories rather than teaching law students the material they are likely to use after entering law practice rather than an academic career. Ten years ago Ph.D. candidates for law teaching jobs were all the rage, and the “top” law schools were professing an interest in hiring only this type of entry-level law teacher candidate.⁵⁷ My sense is that this trend is fading as economic conditions influence law schools’ return to a focus on fundamentals. Law students are demanding value for their high law school tuitions. They want to learn in ways that will help them compete for jobs in practice and then will help them with the intellectual challenges they will face as practicing attorneys. Put otherwise, they want to develop the particular insights, skills and capacities for judgment that distinguish truly great legal practitioners, and they want to learn those skills from teachers who have that particular package of skills and intelligence. To say this is not to say that students demand to be taught solely by practitioners — in my experience they do not, recognizing that practitioners do not necessarily have the set of skills required to be particularly outstanding law teachers. But they do want to be taught by professors who are deeply immersed in the practice and policy questions of their times. They want to think about practice questions, not unduly esoteric academic ones. In this, I think law students are right, and should continue to vote with their feet (and their course evaluations) for professors who are focused on them and on their future worlds rather than on the rarified environment in which some (certainly not all) Ph.D. academic discourse takes place. If that kind of highly academic talk was the legal education fad of the 1990s and 2000s, a new kind of “engaged

57. See Brian Leiter, *Why Do Almost All American Law Schools Weigh Research/Scholarly Potential so Heavily in Hiring Faculty?*, BRIAN LEITER’S L. SCH. REP. (Oct. 25, 2011), <http://leiterlawschool.typepad.com/leiter/2011/10/why-do-all-american-law-schools-weigh-research-scholarly-potential-so-heavily-in-hiring-faculty.html> (lamenting the fact that law schools have followed the research university path in weighing scholarly potential heavily in faculty hiring decisions rather than the liberal arts college model that privileges teaching ability over scholarship potential, and attributing this skewed emphasis to the US News law school rankings factor based on academic reputation, which “is overwhelmingly a [faculty] scholarly reputation” index); see also Stephen Bainbridge, *How Do We Teach Them to Think Like Lawyers When We’re Only Hiring PhDs?*, PROFESSORBAINBRIDGE.COM (Feb. 21, 2011), <http://www.professorbainbridge.com/professorbainbridgecom/2011/02/how-do-we-think-them-to-teach-like-lawyers-when-were-only-hiring-phds.html> (suggesting that hiring law school faculty based on practice credentials rather than Ph.D. credentials might result in more effective law professors).

relevance” seems to be the catchword of the 2010s.

To be sure, that talk has its dangers too, and can end up demanding such immediate relevance that big picture reflective questions drop out of the discourse — much to legal academia’s harm, in my opinion. But an insistence on relevance and evaluating payoff to contemporary debates is a decided trend, one that quite clearly arises from the calls for reform to ensure a continued fit between legal education and the economic forces and policy challenges of the times.

4. Undue Pressure Toward Outcome Quantification

With talk of greater relevance also has come talk about quantification and the measurement of outcomes, both in teaching and in faculty scholarship.⁵⁸ These are trends many of us have fought, for a range of reasons. On this issue, I again move closer to the traditionalists’ than to the innovators’ camp, regarding with suspicion the bean counting many main university administrations seem to be pushing on law schools and other departments. The social sciences teach that quantitative measurement can be only as good as what it is measuring; in other words, “garbage in produces garbage out.” Thus, while caring about whether we are delivering high value teaching to our students and high value scholarship to public discourse are extremely important considerations, jumping to any readily quantifiable measure in an attempt to short circuit more careful assessment on these questions seems to me to be as dangerous a means of achieving this goal as the goal itself is laudable.

V. CONCLUSION

In short, my parting thoughts: As ethical participants in the legal education industry, we need to (1) engage in a great deal of more thoughtful reflection about what we are doing, where we should be heading, and how best to get there, coupled with a healthy skepticism about whether the best paths forward are obvious or easy; (2) focus more on one’s own institution, and less on other, differently situated institutions that are carefully assessing their own best paths forward; and

58. See, e.g., Ronald A. Berk, *Survey of 12 Strategies to Measure Teaching Effectiveness*, 17 INT’L J. TEACHING & LEARNING HIGHER EDUC. 48 (2005) <http://www.physics.emory.edu/~weeks/journal/berk-ijtlhe05.pdf> (describing twelve potential sources of evidence from which to assess professors’ effectiveness based on a rating scale that quantifies subjective considerations, which is then aggregated to form assessments of teaching effectiveness).

(3) emphasize the justice-promoting aspects of the legal education enterprise by offering legal training toward this end, expanding venues for graduates to deliver legal services to underrepresented populations, and keeping open routes of professional success for prospective students who do not come from backgrounds of high social and economic privilege. A legal education system that works to promote these values will not become obsolete or fall into profound crisis.