

High Costs and Misdemeanors

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In 1981, when my eldest daughter entered the University of Texas School of Law, tuition was essentially free, which was, after all, the purpose of a state school and why she did not go to, say, Stanford. There was some sort of registration fee that set me back, as I recall, \$200 a semester. Incidentally, the same was true (\$400 a year) when my second daughter entered Baylor Medical School (private, but with tuition for residents as if it were a state school) in Houston. Today, tuition at UT Law is \$29,640 for residents and \$45,720 for nonresidents. Tuition at the Berkeley (Boalt Hall) and UCLA law schools, other state schools that were meant to be and once were essentially free, is even higher. Even private law schools were much less expensive years ago. When I entered Columbia Law School in 1951, first-year tuition was \$600—\$5082.07 in today's money (according to the U.S. Department of Labor's CPI inflation calculator). Today (with some additional compulsory payments) it is over \$50,000.

How could this have happened? Law schools were once noted for providing inexpensive education, what with large classes and no need for labs or equipment. At Columbia, hard as it is to believe today, the entire entering class of about 290 students was taught in an auditorium by five professors, one for each of the five subjects (torts, contracts, civil procedure, etc.). It is only a minor point, but that class had twelve women and today's classes are half women,

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which furthers a movement for smaller classes.¹ At any rate, where UT Law once had five classes of one hundred students each for each subject in an entering class of five hundred, today it has four classes of about ninety students and four of twenty-five, employing eight professors instead of five.

A major reason for the rise in the cost of the state schools is that they are essentially no longer state, but private, and act accordingly. To compete with Harvard and Yale, UT Law asks its wealthy alumni—of which it fortunately has many—to supplement its state allowance. As the alumni gave more, the legislature gave less, with the result that today UT Law (like Michigan, Berkeley, Virginia) is virtually private. As such, the school has been allowed by the legislature to act more independently of the university and make decisions on matters like tuition. A classic case of inmates in charge of the asylum, with the expected result that the professors have prospered. In addition, what was once a socialistic system—which was also and may still be largely true of lawyers in the government—with everyone being paid roughly the same modest salary (I began here in 1966 at \$14,000), has become a star system. Would-be up and coming schools bid for name professors from higher ranked schools. The effect has been similar to the end of the reserve clause in baseball. A major justification offered by the schools is that salaries at the biggest firms have increased from \$4,000 in 1954 to \$160,000 today, and top schools claim they must match them almost exactly.

Law professors used to labor (with very little public sympathy—none from my third daughter, a high school teacher) under an annual load of twelve credits. Harvard came to realize a decade or two ago that this served only to limit their true social contribution, the production of mostly unread articles for what are now hundreds of student-run law reviews. Harvard reduced the standard load to ten hours, and other aspiring “national” schools, of course, had to follow. “Do you mean to tell me that you guys only teach four or five hours a week?” an incredulous physician once asked a colleague of mine at a social gathering, “Yes,” he responded, “but remember it’s twenty-eight damn weeks of the year.” The result is a lot more law professors, many of whom are at any time further pushing back the boundaries of jurisprudential ignorance on non-teaching paid “research leaves.”

¹Caitlin Howell summarizes various feminist recommendations for making law schools more amenable to women, among them, smaller class size. See, “Combating Gender Inequities in Law School: Time for a New Feminist Rhetoric that Encourages Practical Change,” *The Modern American* 4, no. 2 (Fall 2008), 37, <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1046&context=tma>.

A major reason for the increasing cost of law schools, according to a 2006 article in *Columbia Law School* magazine by former editor James Vescovi,² is the institution and rapid growth of “clinics”—medical schools have them, don’t they? Columbia has nine (none, as I recall, in my day) plus several “Centers” and “Institutes,” each of which requires administrators, staff, and facilities, according to Vescovi.³ Professors also love colloquia, symposia, and visiting lecturers—all usually involving transportation costs, lunches, dinners, and sometimes honoraria—and other such knowledge-advancing activities, and a good school must have lots of them.

Of course, the ready availability of huge amounts of federal loan money made possible the tuition increases that in turn helped pay for all these ameliorations and amenities.

Most of the other reasons Vescovi gives for the increased cost of law school are questionable. I don’t know that “the practice of law...has been dramatically transformed in the last two decades” by the “rise of globalization which has injected an international component into a large swath of law study,” or why, even if so, it has greatly increased costs. I doubt that the “advent of computer technology” is a major factor; in some ways it reduces costs.⁴ True, Vescovi points out that Columbia had at the time of his writing recently “hired more than one professor in each of the following areas: business law, international law, law and sexuality, intellectual property, and legal history.”⁵ But with the exception of law and sexuality, Columbia has always taught these subjects, and adding professors (a plus for the *U.S. News & World Report* law school rankings) may only mean, for example, offering two classes of twenty-five students instead of one with fifty.

A recent *New York Times* article asks, “Is Law School a Losing Game?”⁶ Because the primary objective of institutions of higher education today is to rise in the *U.S. News* rankings, a law school dean cannot report a decline in the percentage of graduates with jobs. The school’s ranking would plummet and he would soon be out of a job. Many schools today simply hire or

²James S. Vescovi, “Why Does Law School Cost So Much?” *Columbia Law School* (Summer 2006), http://www.law.columbia.edu/law_school/communications/reports/summer06/lawschoolcost.

³Among Columbia’s clinics are those on child advocacy, environmental law, human rights, prisoners and families, challenging the consequences of mass incarceration, and sexuality and gender law.

⁴Vescovi, “Why Does Law School Cost So Much?”

⁵*Ibid.*

⁶David Segal, “Is Law School a Losing Game?” *New York Times*, January 8, 2011, <http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=1&ref=homepage&src=mc>.

subsidize their unemployed graduates, which in hard times gets costly. It is not the case, however, that schools can and will always simply admit more students to make more money. On the contrary, schools eager to rise in the rankings are often giving up money (necessitating increases in tuition) by cutting admissions in order to raise their median or average LSAT score, factors crucial to their ranking.

Some suggest that the onerous standards of accreditation from the American Bar Association (ABA) have driven up costs. For example, the ABA mandates a certain number of square feet for a faculty office as well as the size and shape of classrooms. For many years, the ABA's (and the American Association of Law School's) most urgent demand has been to increase student and faculty "diversity," which may involve exceptional cost increases. But in my view, the ABA's accreditation requirements mainly keep new schools from competing with established ones on a low-cost basis. Top schools (e.g., UT Law) typically exceed their requirements.

The paradox is that if law school is a losing game, why is the number of law schools still increasing? Law is for many a very attractive profession—it apparently involves mostly talking and might lead to a big salary, with no math, petri dishes, artistic talent, or eye-hand coordination required. Another factor, as I once pointed out to the American Dental Association, is that lawyers do not, like dentists, take steps (more fluoride, fewer cavities) to reduce business. In fact, a major defect of our system of government is that we let lawyers make our law, and for them the more and the more confusing the law, the better. In some cases, law students have no intention of practicing law, but believe the education and degree would be useful in business. Some think law study is useful training in how to think and argue more precisely.

The result is that a new law school can open, even unaccredited, and fill an entering class. I have visited low-ranked schools, and have found that most students there seem happy enough, and surprisingly, usually credibly claim to have a law job or prospect. My faith in free markets means that I have to assume that these schools perform a function. They will probably continue to exist until and unless the failure of their graduates in the job market is so massive and obvious as to be beyond the powers of even the most imaginative dean.

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