

HAS THE INCREASED COST OF LAW SCHOOL IMPROVED LEGAL EDUCATION?

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Over the past several decades, the cost of legal education has increased at a dizzying rate, far outpacing even the rapid rise in the cost of higher education in general.¹ Average resident tuition at public ABA law schools grew from \$716 per year in 1974 to \$24,946 per year in 2014.² For private law schools, the comparable numbers are \$2,305 in 1974 and \$43,338 in 2014.³ Adjusted for inflation, this represents, in constant dollars, a 626% increase in resident public law school tuition, and a 292% increase in private law school tuition.⁴

Tuition discounting in the form of “scholarships” ameliorated a fairly small portion of this rise: between 1991 and 2012 the difference between sticker tuition and the average effective tuition paid by students declined from 89.8% to 79.8%.⁵ In addition, nearly half of all law students pay the advertised sticker price, in effect subsidizing the lower effective tuition paid by their classmates (this has been dubbed the “reverse Robin Hood” structure of law school financing).⁶

Over this same time frame, government subsidies for higher education have, on a real-dollar per-student basis, increased

1. For the growth in undergraduate tuition since the mid-1970s, see generally *Tuition and Fees and Room and Board over Time, 1974-75 to 2015-15, Selected Years*, COLLEGEBOARD, <http://trends.collegeboard.org/college-pricing/figures-tables/tuition-fees-room-board-time-1974-75-2014-15-selected-years> (last visited Oct. 14, 2015).

2. John R. Kramer, *Will Legal Education Remain Affordable, By Whom, and How?*, 1987 DUKE L.J. 240, 242 (1987); Matt Leichter, *Law School Cost Data (1996-)*, THE LAST GEN X AM., <https://lawschooltuitionbubble.wordpress.com/original-research-updated/the-lstb-data/> (last visited Oct. 14, 2015).

3. Kramer, *supra* note 2, at 243; Leichter, *supra* note 2.

4. These calculations were made by the author based on the CPI Inflation Calculator found on the Bureau of Labor Statistics website. *CPI Inflation Calculator*, U.S. DEP'T OF LAB., http://www.bls.gov/data/inflation_calculator.htm (last visited Oct. 14, 2015).

5. Paul Campos, *How Much Has Law School Tuition Really Gone Up?*, LAWYERS, GUNS & MONEY (June 25, 2014), <http://www.lawyersgunsmoneyblog.com/2014/06/much-law-school-tuition-really-gone>.

6. BRIAN TAMAHANA, FAILING LAW SCHOOLS 99, 133 (2012).

significantly.⁷ The common claim that higher tuition is, to some extent, substituting for purported cuts in government subsidization is not supported by the facts. In addition, while systematic data on law school endowments are not publicly available, college and university endowments in general have grown enormously in real terms since the 1990s.⁸ This suggests that, on average, law schools are receiving significantly more support in gift income than they were a generation ago.

By a conservative estimate, the average law school is receiving around four times as much revenue per student, in real dollars, as it was forty years ago. This remarkable development raises at least two obvious questions:

What are law schools doing with all this money?

What sort of educational benefits are students receiving in return for the vastly increased cost of a legal education?

I. WHAT ARE LAW SCHOOLS DOING WITH THE MONEY?

Answering the first question is relatively easy. Law schools have spent the last forty years vastly increasing the sizes of their faculties relative to their student bodies, creating expensive clinical programs, hiring much larger administrative staffs, and building lavish facilities.⁹

ABA data on faculty-student ratios indicate that the number of law faculty relative to JD students almost exactly doubled between 1980 and 2013, as ratios declined from 27 to 1 to 13.6 to 1.¹⁰ (Per capita faculty compensation also increased, although not nearly as dramatically).¹¹ Over the past 40 years, clinical programs, which by their nature are much more expensive to operate than traditional law school lecture-style classes, have also proliferated.¹² For

7. Paul Campos, *The Real Cost of College*, THE ATLANTIC (May 13, 2015), <http://www.theatlantic.com/education/archive/2015/05/the-real-cost-of-college/393086/>.

8. *See Endowment Market Values and Investment Rates of Return*, NAT'L ASS'N OF COLL. AND UNIV. BUS. OFFICERS, http://www.nacubo.org/Research/NACUBO-Commonfund_Study_of_Endowments/Public_NCSE_Tables/Total_Market_Value_of_Endowments.html (last visited Oct. 14, 2015).

9. *See generally* Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177 (2012).

10. *See Statistics*, AM. BAR ASS'N, http://www.americanbar.org/groups/legal_education/resources/statistics.html (click on the "Student-Faculty Ratio" link) (last visited Oct. 14, 2015).

11. *See* Campos, *supra* note 9, at 187–91 (discussing the increase in law school faculty compensation).

12. Todd A. Berger, *Three Generations and Two Tiers: How Participation in Law School Clinics and the Demand for "Practice-Ready" Graduates Will Impact the Faculty Status of Clinical Law Professors*, 43 Wash. U. J.L. & Pol'y 129, 133 (2013); Campos,

example, the University of Colorado Law School, where I teach, had one clinic in 1975: today it is home to nine.

If anything, law school administrative staffs have grown even faster than faculties. The number of full-time law school administrators who also teach more than tripled in a single decade, going from 528 to 1,659.¹³ Comprehensive statistics on non-teaching administrative staff are not available, but anyone who compares the employment roster at an American law school in the 1970s or even the 1990s to one today will be struck by the number of positions that have been created to handle tasks that in the past were either performed by a much smaller group of employees, or were not done at all.¹⁴

Operating as they do in a field that is obsessed with hierarchical status markers, it is no surprise that law schools seem particularly prone to what has been called “the edifice complex.”¹⁵ In recent years a host of law schools have built lavish new buildings, or spent enormous sums on upgrading already luxurious facilities.¹⁶

Doubling the size of a law school’s faculty, starting various new legal clinics, creating lots of new administrative positions to cater to real or perceived needs, and building much fancier facilities is all very expensive. Indeed, it is so expensive that, over the last few years, when law schools began to deal with a downturn in applications—and, eventually, matriculants—many schools rapidly found themselves enduring budget crises of various degrees of severity.¹⁷

This has led to various forms of belt-tightening, from hiring freezes, to buy-out plans for senior faculty, to actual layoffs of both faculty and staff.¹⁸ (As of this writing no ABA-approved law school

supra note 9, at 191–92 (discussing the expense of operating legal aid clinics at law schools); Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 77 (2009) (noting the growth of legal aid clinics at law schools over the last forty years).

13. Campos, *supra* note 9, at 193; Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U. L. REV. 1, 10 (2014).

14. Campos, *supra* note 9, at 193; *see also* Steven R. Smith, *Financing the Future of Legal Education: “Not What It Used to Be”*, 2012 MICH. ST. L. REV. 579, 582–83 (2012) (noting the development of career services, academic development, and diversity offices).

15. *See* Andrew Martin, *Building a Showcase Campus, Using an I.O.U.*, N.Y. TIMES (Dec. 13, 2012), http://www.nytimes.com/2012/12/14/business/colleges-debt-falls-on-students-after-construction-binges.html?pagewanted=all&_r=0.

16. Mark Cohen, *Law School Building Boom—Really?*, BLOOMBERG BNA (Sept. 23, 2015), <https://bol.bna.com/law-school-building-boom-really/>.

17. *See generally* David Barnhizer, *‘Drumbeats of Doom’ and the Downsizing of Law Faculties*, LAWNEXT (Oct. 30, 2014), <http://lawnext.org/drumbeats-of-doom-and-the-downsizing-of-law-faculties/>.

18. *Id.*

has formally shut down during the current crisis, although Hamline University's law school is in effect disappearing, by merging with the free-standing William Mitchell College of Law).¹⁹

Naturally, cutbacks in spending have led some legal academics to worry that educational quality will be compromised as a result:

The critics [of the law school status quo] do not seem to realize that it is expensive to create an effective modern law school. The actual cost of doing it right is vastly underestimated. At HYS [Harvard, Yale, Stanford] for example sticker tuition is now north of 50K per year but that is, as far as I can tell from publicly available information, about one third of the actual cost spent per student each year. Other lower ranked schools have to try to get the job done with far less, of course, and most are effective in doing so.²⁰

II. WHAT EDUCATIONAL BENEFITS ARE STUDENTS RECEIVING FOR INCREASED COST?

A. *What Law Schools Say They Are Doing*

Given the mind-boggling costs involved, these critics might well wonder what evidence there is for the claim that it's necessary to spend approximately four times as much in real dollars per law student as law schools were spending forty years ago in order for the "effective modern law school" to "do it right."

To answer this question, we might begin by asking what exactly law schools are supposed to be doing. According to some law professors, law schools are engaged in a genuinely grandiose exercise, one that involves transforming law students into national leaders, whose combination of sharpened analytical skills and improved ethical character will allow them to play key roles in upholding and strengthening the social contract:

[Law school applicants] want to learn the sharp, analytical cast of mind law school teaches. They recognize that an ethical practice of law is central to the functioning of a system of ordered justice and how that ordered justice upholds the rule of law. They are returning to first principles. They seek values, not just immediate value; they seek the necessary qualities of leadership, not just leading roles at the top of an increasingly unreliable ladder of success.

19. *Hamline School of Law and William Mitchell College of Law to Combine*, HAMLINE UNIVERSITY, <https://www.hamline.edu/news/2015/hamline-law-william-mitchell-combine/> (last visited Oct. 14, 2015).

20. Paul Campos, *Why Does Law School Cost So Much?*, LAWYERS, GUNS & MONEY (May 19, 2014), <http://www.lawyersgunsmoneyblog.com/2014/05/law-school-cost-much> (quoting Steven Diamond).

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The measure of a law school then must not be based solely on the value of its initial return on investment upon graduation, but on how well it instills values such as ethics, respect for the rule of law and deep understanding of the jurisprudential thought that roots our conceptions of liberty and freedom to the rules regarding an ordered administration of justice.

The value of law school is in how well it teaches the policies and principles that undergird the social compacts we agree to as a society and which lawyers are uniquely charged with understanding and protecting while advocating for successful, just outcomes for their clients' disputes.²¹

Here again we must separate out the question of whether and to what extent law school actually transforms law students into smarter and better people, who are now properly prepared to be running society, from the question of how much money is necessary to spend to achieve these impressive-sounding results.

As to the first question, it is extremely difficult to demonstrate that law school achieves these admittedly lofty goals. The routine nature of the claim that law school uniquely enhances the analytical skills of law students should not obscure the fact that there is no evidence that it does.²² If possible, claims that law school improves the ethical character and leadership skills of law students are even less supported by any evidence, which is all the more remarkable if one considers the facial improbability of such assertions. (How, exactly, does legal pedagogy turn these adults who come to us after at least 17 years of formal education—not to mention more than 20 years of parenting—into better people than they were before?)

B. A More Practical Measure of Success

Let me suggest that it makes more sense for law schools to have far less grandiose ambitions. For example, law schools could focus on the question of to what extent they are successfully preparing their students to acquire licenses to practice law. Fortunately (or unfortunately, depending on one's perspective) this more modest question is much more amenable to empirical testing than the

21. James Lupo, Opinion, *Measure of Legal Education's Value Extends Far Beyond Big Law*, NAT'L L.J. (Sept. 28, 2015), <http://www.nationallawjournal.com/id=1202738246046/OpEd-Measure-of-Legal-Educations-Value-Extends-Far-Beyond-Big-Law?slreturn=20150908094846>.

22. If anything, the evidence suggests that the analytical skills developed by a law school education may not be any different than those developed by students in other disciplines. See generally Larry O. Natt Gantt, II, *Deconstructing Thinking Like A Lawyer: Analyzing the Cognitive Components of the Analytical Mind*, 29 CAMPBELL L. REV. 413 (2007).

question of whether law schools are transforming their students into smarter and more ethical social leaders.

Law graduates who wish to acquire a law license in any state other than Louisiana must take the Multi-State Bar Examination.²³ The MBE is a six-hour multiple choice standardized test. The test is equated and scaled, which means that the raw scores on any particular version of the test are normalized so as to take into account variations in difficulty between different versions.²⁴ This in turn means that a change in the average score achieved on the test should represent a change in the abilities of the test-takers.²⁵

The MBE thus provides a wealth of data regarding the extent to which law graduates emerge from law school with the ability to acquire law licenses, and, in particular, how this ability has changed over time. This allows us to formulate a straightforward hypothesis: if the ability of law graduates to acquire a law license is a good proxy for the quality of the legal education those graduates received, and if the increasing cost of law school is a function of the increasing quality of legal education, then, all other things being equal, MBE scores should have risen dramatically over the past few decades.

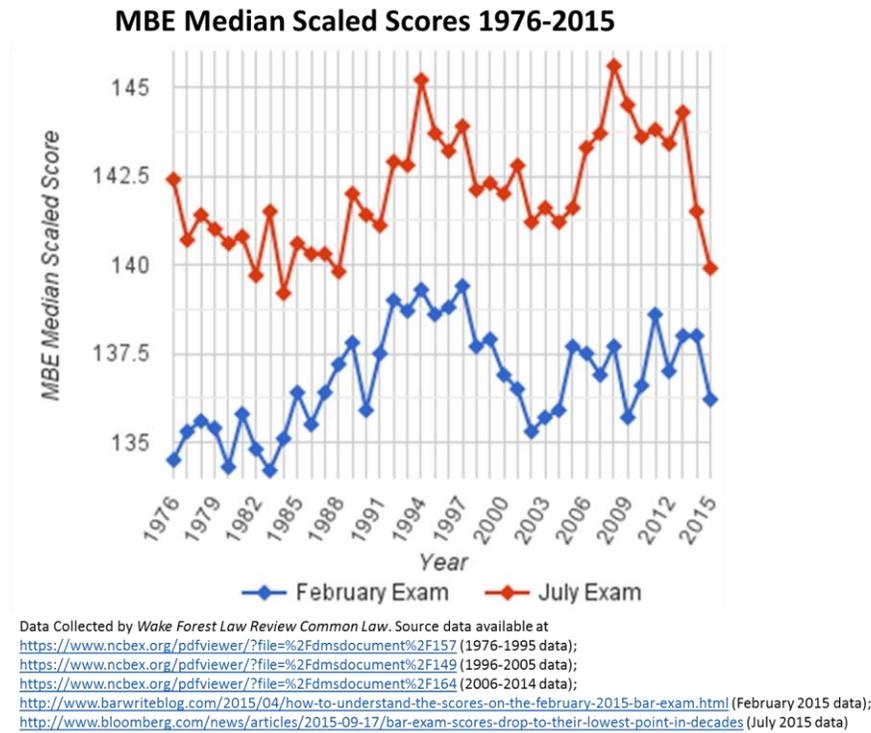
This has not happened. To the contrary, the two-year running average score for the July 2014 and July 2015 administrations of the test was lower than the average score on any single-year July administration since 1988.²⁶ Despite the extraordinary increase in the cost of legal education, bar exam scores are not going up: indeed, they have recently declined sharply:

23. See NAT'L CONF. OF BAR EXAMINERS & AM. BAR ASS'N SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2015 29–30 (Erica Moeser & Claire Huismann eds.), <https://www.ncbex.org/pubs/bar-admissions-guide/2015/index.html#p=40>.

24. *MBE: General*, NAT'L CONF. OF BAR EXAMINERS HELP & SUPPORT, <http://help.ncbex.org/mbe#general-2669> (last visited Oct. 14, 2015).

25. For a good explanation of equating and scaling in the context of the MBE, see Derek T. Muller, *No, the MBE Was Not "Harder" Than Usual*, EXCESS OF DEMOCRACY (Sept. 28, 2015), <http://excessofdemocracy.com/blog/2015/9/no-the-mbe-was-not-harder-than-usual>.

26. Derek T. Muller, *Bar Exam Scores Hit 27-Year Low*, EXCESS OF DEMOCRACY (Sept. 17, 2015), <http://excessofdemocracy.com/blog/2015/9/bar-exam-scores-hit-27-year-low>.



What could explain this result? Is it possible that, despite an approximate quadrupling of real per capita expenditures over the past four decades, legal education is actually getting worse rather than better?

The primary defenses available to legal academia in regard to this charge are not very inspiring. Let us consider them.

“We don’t teach to the test, so bar exam results are not a valid measure of educational quality.” This response is based on the (plausible) claim that doing well on the bar exam might not be a good proxy for being a good lawyer. The problem with the response is twofold. First, if we assume that the bar exam is not a good proxy for lawyerly ability, why should we assume that law school itself, which, unlike the bar exam, requires the investment of three years and six figures of cash or debt, is a better proxy? Second, it is difficult to come up with a plausible justification for the cost of law school that does not put enabling people to acquire bar licenses at the core of any practical definition of educational quality.

“The quality of the human capital with which law schools must work is getting worse, so improved educational quality is failing to produce improved outputs.” Translated from economic jargon this means: making law school vastly more expensive has made it better, but the people going to law

school now are dumber than the people who went when it cost a quarter as much, so the improvement in educational quality is obscured. For obvious reasons this isn't an argument that legal academics are willing to make straightforwardly, although, given that over the past few years a number of low-ranked law schools have moved toward de facto open admissions policies, it isn't completely without merit.²⁷

In fact, there are two far more probable explanations for why massive spending increases by law schools haven't resulted in improved bar performance by their graduates. First, relatively little of this money has ended up being spent on anything that has much relevance to improving that performance.²⁸ Second, spending more money on improving the educational quality, however defined, of an American law school is, given the basic structure of the enterprise, something that is subject to severe diminishing returns on investment.²⁹ (There is nothing mysterious about maintaining an acceptable bar passage rate: Law schools that wish to do so merely have to maintain some fairly modest entrance requirements).³⁰

In sum, to the extent that the quality of the education provided by American law schools is measured by the extent to which they successfully prepare their students to have the legal right to enter their profession of choice, there is no evidence that several decades of massive spending increases have resulted in any improvement in American legal education whatsoever.

27. See Jerry Organ, *The Composition of Graduating Classes of Law Students – 2013-2016 – Part One*, LAW PROFESSOR BLOGS NETWORK (Dec. 29, 2014), <http://lawprofessors.typepad.com/legalwhiteboard/2014/12/the-composition-of-graduating-classes-of-law-students-2013-2016-part-one-.html>.

28. See generally Campos, *supra* note 9.

29. Despite the massive increase in per student spending, the basic structure of American legal education remains largely unchanged from what it was 40 years ago. Most required courses take place in large, lecture-style formats, and the majority of students take no clinical courses. See *id.*

30. See generally *2015 State of Legal Education: An In-Depth Look Into Law School Admissions Choices*, LAW SCHOOL TRANSPARENCY, <http://lawschooltransparency.com/reform/projects/investigations/2015/> (last visited Oct. 14, 2015).