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## Legal Educators Defending the Status Quo

Brian Z. Tamanaha\*

These are trying times for legal educators.<sup>1</sup> In 2011, the *New York Times* ran a year-long series of embarrassing articles exposing problems within legal academia. It revealed that law schools charge extremely high tuition and produce an oversupply of graduates, many of whom end up with large debt loads and no jobs.<sup>2</sup> To entice students to enroll, many law schools advertise misleading employment data—claiming 90 percent or more of graduates obtain employment when the underlying truth is much worse<sup>3</sup>—and lure students with scholarship offers that carry a significant risk of forfeiture, which unwary students fail to fully appreciate.<sup>4</sup> Adding credence to the criticisms, two law schools, Villanova and Illinois, revealed that they had supplied falsely inflated LSAT/GPA scores to the ABA for multiple years.

The initial reaction of leading legal educators was to downplay the seriousness of the problems. Legal educators criticized the *Times* series as tendentious and ill-informed.<sup>5</sup> The Chair of the ABA

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1. See generally BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 71–78 (2012).

2. See David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011, available at <http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=all>; David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES, July 16, 2011, available at [http://www.nytimes.com/2011/07/17/business/law-school-economics-job-market-weakens-tuition-rises.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/07/17/business/law-school-economics-job-market-weakens-tuition-rises.html?pagewanted=all&_r=0).

3. This was written about earlier, although the *Times* series brought it to public attention. Brian Z. Tamanaha, *Wake Up Fellow Law Professors to the Casualties of our Enterprise*, BALKINIZATION (June 13, 2010), <http://balkin.blogspot.com/2010/06/wake-up-fellow-law-professors-to.html>.

4. David Segal, *Law Students Lose the Grant Game as Schools Win*, N.Y. TIMES, Apr. 30, 2011, available at <http://www.nytimes.com/2011/05/01/business/law-school-grants.html?ref=business>.

5. See, e.g., Brian Leiter, *David Segal's Hatchet Job on Law Schools . . .*, BRIAN LEITER'S LAW SCHOOL REPORTS (Nov. 20, 2011, 5:14 PM), <http://leiterlawschool.typepad.com/leiter/2011/11/another-hatchet-job-on-law-schools.html>.

Section on Legal Education and Admissions to the Bar, Dean John O'Brien, asserted that "the number of institutions that fail to report employment data accurately is small," and "[l]egal education itself has never been in better shape in terms of the preparation that we provide future lawyers."<sup>6</sup> Responding to information that many heavily indebted law graduates are not landing jobs as lawyers, the President of the Association of American Law Schools (AALS), Michael Olivas, asserted that this is not an appropriate gauge of success: "I do not believe that working in a law firm or going to court is the sole measure of lawyers or the only appropriate metric for job placement. . . . people who graduate from law school can do many things, and do them better than can non-law-trained employees."<sup>7</sup>

After this initial period of denial, legal educators increasingly began to acknowledge that reforms lie ahead for legal academia. The motivation for this shift was partly a newfound awareness of poor job results suffered by recent law graduates. But what really got the attention of legal educators was two consecutive years of substantial declines in the number of applicants. This has put severe stress on the financial resources and standing of many law schools. Legal academics are now feeling the squeeze and worrying about the future.

The motivation for reform matters. A person worried about the economics of legal education from the standpoint of students and society will come up with a different set of reforms than a person worried about the survival of law schools and the working conditions of legal educators. The critics of legal education believe dramatic changes to every aspect of our operation are necessary, whereas

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6. John O'Brien, *With Much to Celebrate, Room to Improve in Legal Education*, NATIONAL LAW JOURNAL'S LAW SCHOOL REVIEW (Nov. 1, 2011, 4:23 PM), <http://legaltimes.typepad.com/lawschoolreview/2011/11/with-much-to-celebrate-room-to-improve-in-legal-education.html>.

7. Michael Olivas, *Gauging the Value of a Law Degree*, NATIONAL LAW JOURNAL'S LAW SCHOOL REVIEW (Nov. 8, 2011, 9:40 AM), <http://legaltimes.typepad.com/lawschoolreview/2011/11/gauging-the-value-of-a-law-degree.html>. Legal educators who make this statement fail to acknowledge that most people who attend law school hope to find a job as a lawyer, especially since legal jobs typically pay more than non-legal positions. As Deborah Jones Merritt points out, graduates who do not land lawyer jobs indicate a high rate of dissatisfaction with their outcome, reflected in a desire to find a different position. Deborah Jones Merritt, *JD Other*, INSIDE THE LAW SCHOOL SCAM (Nov. 6, 2012, 11:43 AM), <http://insidethelawschoolscam.blogspot.com/2012/11/jd-other.html>.

defenders are fighting to preserve as much of the status quo as possible. The critics claim that the current system is a disaster—the defenders counter that significant reform to legal education will bring disaster.

Two pieces in this symposium epitomize the stance of the defenders of the status quo. They acknowledge that there are problems and condemn misleading employment statistics, but they argue against the necessity for fundamental change. The Chair of Law School Admissions Council, Professor Steve Willborn, argues that, contrary to complaints of critics, “current prices look about right, and the market seems to be working to force adjustments about as one would expect.”<sup>8</sup> Professor Olivas argues against reforms designed to reduce the cost of instruction, objecting: “making law faculties more contingent and part-time, leaving them more subject to top-down decanal governance, and loosening further the minimal accreditation standards and federal government loan program requirements will do great harm to law schools and law school graduates.”<sup>9</sup> In their accounts, the problems in legal education that can be addressed are being addressed.

My book *Failing Law Schools* makes a case that the economics of legal education are badly broken. For thousands of law students today, the cost of a law degree exceeds the economic return they obtain. In this Essay, I will recite a few core statistics about tuition, debt, jobs, and salaries that demonstrate the magnitude of the problem; I will briefly respond to Willborn’s and Olivas’s arguments; and I will close with a few words about moving past denial and defense of the status quo.

#### TUITION, DEBT, JOBS, AND SALARIES

Annual tuition now exceeds \$50,000 at a number of law schools, with additional schools poised to cross this mark in coming years.

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8. Steven L. Willborn, *Legal Education as a Private Good*, 41 WASH. U. J.L. & POL’Y 89, 92 (2013).

9. Michael A. Olivas, *Ask Not For Whom the Law School Bell Tolls: Professor Tamanaha, Failing Law Schools, and (Mis)Diagnosing the Problem*, 41 WASH. U. J.L. & POL’Y 101, 130 (2013).

Considering the full cost of attendance, Columbia Law School is the most expensive law school in the country in 2012, with an estimated out-of-pocket cost totaling \$81,950, including tuition (\$53,636), living expenses (\$19,894), health insurance (\$2,981), books, computer and supplies (\$3,520), and miscellaneous fees (\$1,133).<sup>10</sup> About half of the students in the entering class at Columbia receive scholarships.<sup>11</sup> The unlucky half will spend around \$245,000 over three years to obtain their Columbia law degree. New York Law School (NYLS) was the tenth most expensive law school, at an annual cost of \$74,986. A NYLS student without a scholarship will pay over \$220,000. Although most Columbia law graduates will land corporate law jobs that allow them to handily recoup the cost of their degree, most NYLS law students will not.

The cost of attendance at dozens of private (and a few public) law schools approaches or exceeds \$200,000.<sup>12</sup> Most public law schools cost less than private ones, but their tuition levels are also increasing rapidly. Law students have already paid for their undergraduate education, so the full cost of becoming a lawyer for many is much higher than this total. This has profound class implications: high tuition is an economic barrier that disproportionately inhibits people from the middle class and below. Entering the legal profession has long served as an avenue of upward mobility and access to power in American society, but high tuition is making this path much harder.

The price of a law degree leapt to breathtaking heights in a relatively brief period of time, although law school tuition has risen steadily for decades. Average tuition at private law schools in 2001 was \$22,961—a decade later, in 2011, it had reached \$39,184.<sup>13</sup>

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10. See Jennifer Polland, *The 10 Most Expensive Law Schools in America*, BUSINESS INSIDER (Oct. 5, 2012, 9:18 AM), <http://www.businessinsider.com/the-10-most-expensive-law-schools-in-america-2012-9?op=1>.

11. The 2012 *Official Guide to Law Schools*, the most recent information available, indicates that in the academic year 2010–11, 49.1 percent of students received scholarships. See *Columbia University School of Law*, ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS 224, 25 (2012), available at <http://www.lsac.org/lscresources/publications/2012og/aba2163.pdf>. The median grant amount was \$15,000. *Id.*

12. See *Basic Scores*, LAW SCHOOL TRANSPARENCY, <http://www.lstscorereports.com/?r=other> (last visited Jan. 1, 2013).

13. See *Law School Tuition 1985–2011*, AM. BAR ASS'N, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/lstuition](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/lstuition)

Public law school prices rose from \$8,419 in 2001 to \$22,115 in 2011.

Rising tuition immediately results in rising debt for law students, about 90 percent of whom borrow to finance their legal education. The average debt of private law school graduates went from \$70,147 in 2001 to \$124,950 in 2011; at public law schools over the same period, average debt increased from \$46,499 to \$75,728.<sup>14</sup> Debt levels have been increasing by alarming amounts on a yearly basis, at private law schools leaping from \$91,506 (2009), to \$106,249 (2010), to \$124,950 (2011). These figures understate actual levels of indebtedness because they exclude undergraduate debt, which averages about \$25,000,<sup>15</sup> and they do not count the interest accrued on debt while in law school.

Tuition and debt have increased at the same time that graduates have struggled through an abysmal legal job market. According to NALP, an organization that compiles data supplied by law schools, only 56.7 percent of law graduates in 2011 (within nine months of graduation) had obtained full-time lawyer jobs with at least a year's duration, including judicial clerkships.<sup>16</sup> Many graduates fail to land lawyer jobs, unprecedented numbers of graduates take part-time jobs and temporary jobs, and many earn relatively low salaries.<sup>17</sup>

A few numbers will illustrate the severity of the situation. A list of the highest average student debt for the graduating class of 2011 is

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.pdf (last visited Feb. 28, 2013).

14. *Average Amount Borrowed for Law School 2001–2010*, AM. BAR ASS'N, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/avg\\_amnt\\_brwd.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/avg_amnt_brwd.pdf).

15. See Tamar Lewin, *Student-Loan Borrowers Average \$26,500 in Debt*, N.Y. TIMES, Oct. 18, 2012, available at <http://www.nytimes.com/2012/10/18/education/report-says-average-student-loan-debt-is-up-to-26500.html?hpw>.

16. See Press Release, National Association for Law Placement, *Median Private Practice Starting Salaries for the Class of 2011 Plunge as Private Practice Jobs Continue to Erode* (July 12, 2012), available at [http://www.nalp.org/classof2011\\_salpressrel](http://www.nalp.org/classof2011_salpressrel); Joe Palazzolo, *Law Grads Face Brutal Job Market*, WALL ST. J., June 25, 2012, available at [http://online.wsj.com/article/SB10001424052702304458604577486623469958142.html?mod=rss\\_economy](http://online.wsj.com/article/SB10001424052702304458604577486623469958142.html?mod=rss_economy).

17. See James G. Leipold, *Truth or Dare: The New Employment Market*, NAT'L ASS'N FOR LAW PLACEMENT (Oct. 2012), <http://www.nalp.org/uploads/1012NALPBulletinExecDir.pdf>.

presented below, followed by the percentage of the class in debt.<sup>18</sup> After the dash, highlighted in bold, is the percentage of the graduates at each law school who obtained permanent full-time jobs as lawyers (excluding those entering solo practice) nine months after graduation.<sup>19</sup>

California Western School of Law	\$153,145 (89%)	— <b>39.3%</b>
Thomas Jefferson School of Law	\$153,006 (94%)	— <b>26.7%</b>
American University (Washington)	\$151,318 (80%)	— <b>35.8%</b>
New York Law School	\$146,230 (82%)	— <b>35.5%</b>
Phoenix School of Law	\$145,357 (92%)	— <b>37.4%</b>
Southwestern Law School	\$142,606 (80%)	— <b>34.6%</b>
Catholic University of America (Columbus)	\$142,222 (92%)	— <b>43.7%</b>
Northwestern	\$139,101 (73%)	— <b>77%</b>
Pace University	\$139,007 (87%)	— <b>36%</b>
Whittier College	\$138,961 (89%)	— <b>17.1%</b>
Atlanta's John Marshall Law School	\$138,819 (91%)	— <b>40.9%</b>
University of Pacific (McGeorge)	\$138,267 (93%)	— <b>43.6%</b>
St. Thomas University (Miami)	\$137,721 (81%)	— <b>49.3%</b>
Barry University	\$137,680 (90%)	— <b>39.2%</b>
University of San Francisco	\$137,234 (79%)	— <b>34.2%</b>
Vermont Law School	\$136,089 (86%)	— <b>48.9%</b>
Golden Gate University	\$135,645 (82%)	— <b>22%</b>
Florida Coastal School of Law	\$134,355 (92%)	— <b>36.6%</b>
Stetson University	\$133,082 (88%)	— <b>57.1%</b>
Syracuse University	\$132,993 (80%)	— <b>50.3%</b>
Loyola Marymount University (LA)	\$132,875 (86%)	— <b>42.7%</b>
Columbia University	\$132,743 (77%)	— <b>94.1%</b>
Georgetown University	\$132,722 (81%)	— <b>62.6%</b>
Touro College (Fuschsberg)	\$132,302 (87%)	— <b>59.3%</b>
Roger Williams University	\$131,754 (87%)	— <b>50%</b>

18. The debt and percentage in debt numbers are at *Whose Graduates Have the Most Debt?*, U.S. NEWS & WORLD REPORT, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings> (last visited Jan. 4, 2013). I have excluded John Marshall from the list because of an evident error in the numbers reported for the school.

19. *Job Characteristics*, LAW SCHOOL TRANSPARENCY, <http://www.lstscorereports.com/?r=other&show=jobs> (last visited Jan. 4, 2013). These numbers are from the chart produced by Law School Transparency (LST), which obtained the underlying numbers from ABA data on employment results for the class of 2011. "Permanent employment" includes all jobs with a duration of at least one year, which includes judicial clerkships. When calculating the percentage of these jobs, LST subtracts new graduates who enter "solo practice," because this is a tenuous economic path for new graduates to take.

Factoring in undergraduate debt and interest accrued would add \$30,000 or more to the above totals.

These numbers, combined with available salary data, paint a devastating picture. At most of the law schools on the list, many of which are low-ranked, less than half the class had obtained permanent full-time jobs as lawyers. The median starting salary of 2011 graduates in private law jobs was \$60,000.<sup>20</sup> The true median is likely lower than this because only two-thirds of law graduates report their salaries, and graduates who earn the highest salaries report at a much higher rate than those who earn the lowest salaries. At low-ranked law schools, the majority of graduates who obtain legal jobs work in small firms, which typically pay salaries between \$45,000 and \$60,000. The standard monthly payment on \$150,000 debt is over \$1,700; on \$125,000 debt (the average among private law school graduates), the monthly payment is over \$1,400.<sup>21</sup> To manage monthly payments this large (after taxes, rent, and other basic expenses) requires a salary in excess of \$100,000, which not more than 15 percent of graduates nationwide obtained.<sup>22</sup> Based upon these numbers, it is likely that many thousands of recent law graduates will

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20. See *Class of 2011 Law School Grads Face Worst Job Market Yet—Less Than Half Find Jobs in Private Practice: Employment for the Class of 2011—Selected Findings*, NAT'L ASS'N FOR LAW PLACEMENT (2012), <http://www.nalp.org/uploads/Classof2011SelectedFindings.pdf>.

21. These figures are derived from the loan calculator on *Finaid.org*. See *Loan Calculator*, FINAID, <http://www.finaid.org/calculators/loanpayments.phtml>. To come up with the monthly payment, I use a conservative blended interest rate of 7.25 percent, which combines Stafford loans (6.8 percent) and Graduate Plus loans (7.9 percent). The monthly payment on the standard ten-year plan at this rate is \$1,761; on \$125,000 it is \$1,468.

22. The earnings for the class of 2011 can be estimated based on the information provided by NALP. See *Class of 2011 National Summary Report*, NAT'L ASS'N OF LAW PLACEMENT (July 2012), [http://www.nalp.org/uploads/NatlSummChart\\_Classof2011.pdf](http://www.nalp.org/uploads/NatlSummChart_Classof2011.pdf). There were 44,495 JD graduates that year, about 40 percent of whom obtained jobs in private law firms (17,666). The larger law firms pay the highest salaries. Firms with 500 or more lawyers hired 2,856 grads; firms with 25–500 lawyers hired 891; firms with 101–250 lawyers hired 1,010—for a total of 4,757 lawyers. In addition, 888 grads were hired in firms with 51–100 lawyers, for a median salary of \$88,000. Adding half of this number to the above total is 5,201 lawyers, or 11.7 percent. This is an estimate because it is possible that a number of grads in smaller law firms also earned above \$100,000, although this is unusual, and will not show up in the salary data. To account for this, I have generously rounded up the percentage to 15 percent; in a phone conversation with a person on the NALP research staff, I was told that this is a safe upper estimate of the percentage of the graduating class who earned in excess of \$100,000.



enter a government-sponsored program, Income Based Repayment, available to graduates in “partial financial hardship.”<sup>23</sup>

This is the worst job market for lawyers in decades, declining every year since 2009.<sup>24</sup> For the past decade, at least, about a third of law graduates nationwide have not obtained jobs as lawyers, and the situation is unlikely to improve.<sup>25</sup> The U.S. Bureau of Labor Statistics estimates about 22,000 lawyer openings annually through 2020 (counting departures and newly created jobs), at a time when law schools yearly put out over 40,000 new graduates.<sup>26</sup> The legal market appears to be undergoing a significant structural contraction—involving greater use of temporary and contract workers, more outsourcing, more e-discovery, more low-cost legal services available online, and more legal work taken over by paralegals—which portends tough employment prospects for law graduates in years ahead.<sup>27</sup>

In the quest to get students to enroll, legal educators downplay the bleak job situation and future outlook. James Leipold, the Executive Director of NALP, expressed consternation at this attitude:

I have been surprised recently that a number of law schools, through their dean and office of career services, have called on NALP generally and on me specifically to develop a more positive message about the entry-level job market. One request went so far as to urge me to describe the entry-level legal market as good. Ah, if wishing would only make it so.<sup>28</sup>

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23. See *Income-Based Plan*, FED. STUDENT AID, <http://studentaid.ed.gov/repay-loans/understand/plans/income-based> (last visited Jan. 4, 2013).

24. See Leipold, *supra* note 17.

25. See TAMANAHA, *supra* note 1, at 114–18.

26. See Deborah Jones Merritt, *Labor Day*, INSIDE THE LAW SCHOOL SCAM (Sept. 1, 2012, 9:00 PM), <http://insidethelawschoolscam.blogspot.com/2012/09/labor-day.html>; Deborah Jones Merritt, *More Bad News from the BLS*, INSIDE THE LAW SCHOOL SCAM (Sept. 5, 2012, 9:48 PM), <http://insidethelawschoolscam.blogspot.com/2012/09/more-bad-news-from-bls.html>; *Employment Projections*, US BUREAU OF LABOR STATISTICS, Table 1.7, [http://bls.gov/emp/ep\\_table\\_107.htm](http://bls.gov/emp/ep_table_107.htm) (projecting 21,880 openings annually through 2020) (last modified Feb. 1, 2012).

27. See TAMANAHA, *supra* note 1, at 167–71; Leipold, *supra* note 17.

28. Leipold, *supra* note 17.

Leipold emphasized that this is “the weakest entry-level job market that NALP has measured in nearly 40 years of doing this work . . . the law firm hiring model is different than it was before the recession, and is not likely ever going to look like it did in the last years before the economic collapse.”<sup>29</sup>

#### THE PRICE IS RIGHT AND THE MARKET IS WORKING

Despite the gloomy data on debt and jobs, Professor Willborn asserts that “the current price of a legal education is about right when viewed as a private good that produces an expected increase in future earnings.”<sup>30</sup> Remarkably, he contends that “the current cost of law school is not too high; indeed, there may yet be room for increases at some places.”<sup>31</sup> If Willborn had made the more limited claim that for the subset of students who land corporate law jobs the cost of law school is not too high, he would be correct. But his position is that the price of a legal education is “about right” in general.

His vague and summarily sketched argument is not easy to follow. To back his conclusion, Willborn cites Professor Jerome Organ’s finding “that law school is worth it (results in at least marginal financial viability) for about 46 percent of all Class of 2011 graduates and for at least 70 percent of 2011 graduates at about one-quarter of all law schools.”<sup>32</sup> Current prices are about right, according to Willborn, because “the evidence seems consistent with the *average* student coming out ahead on her investment.”<sup>33</sup> His reasoning appears to go as follows: legal education is now seen as a private good like any other investment; there are winners and losers in all markets (“Some investors do very well in the stock market; others not so much.”); the price of a law degree is about right as long as about half (or the average) of law students come out ahead.<sup>34</sup> Willborn presents his analysis as a realistic, clear-eyed (“not normative”)

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29. *Id.*

30. Willborn, *supra* note 8, at 94.

31. *Id.* at 95.

32. *Id.* at 93.

33. *Id.* at 94.

34. *Id.* at 95.

description of the facts and even expresses regret for his own findings, unable to deny hard truths.<sup>35</sup>

This string of highly questionable assertions merits no more than a quick response.<sup>36</sup> The notion that the price of a legal education is “about right” if half of the students come out positive and half come out negative is strange, to put it mildly, and sounds callous. A more obvious standard is that the “right” price would allow a substantial majority (not average or half) of students to obtain a decent return. Moreover, the right price must be calculated on a per school basis, not in general, because return varies greatly. (Presumably, the “right” price for Harvard Law School is different from that for NYLS, yet they charge roughly the same, indicating that something is very wrong with the pricing system.) Willborn’s argument begs many questions, notably: can the right price be determined without taking into account the magnitude and distribution of the losses and gains? Is the price still “right” if, for example, students in the loser half suffer large negative returns, while many in the winner half come out only marginally ahead (and a smaller group does very well)?

Setting aside the objection that the determination of “right” price must involve normative considerations, his analysis fails even on its own terms, as a purely market-based determination, because far fewer students would pay the price charged by many law schools if they were fully aware of the significant likelihood of a negative return. Legal educators know that prospective students would turn away in droves if they understood the actual odds. That is why so many law schools post inflated employment and salary figures, including hiring their own graduates to give the impression of robust employment.<sup>37</sup> A fifty-fifty chance of a positive return would strike

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35. *Id.* at 92–93.

36. See TAMANAHA, *supra* note 1, at 135–44. A detailed fact-based analysis of the return on a law degree is provided in FAILING LAW SCHOOLS, Chapter 11.

37. Even top law schools provide temporary jobs for high percentages of their unemployed graduates; for example, Virginia (17 percent), Vanderbilt (15.7 percent), George Washington (15.6 percent), Notre Dame (22.4 percent), UCLA (18.6 percent), and Boston University (22 percent). See *Job Characteristics*, LAW SCHOOL TRANSPARENCY, <http://www.lstscoreports.com/?r=other&show=jobs> (last visited Jan. 5, 2013). Schools that do this are able to bolster their employment rate by comparison to schools that do not. Washington University, for example, provided a position for only 0.6% of its graduates, and reported a much lower employment rate as a consequence. *Id.*

many prospective students as a foolish gamble to take with three years of their lives and \$150,000 to \$200,000 at stake. If this were a market with full information, the price of legal education would fall dramatically at many law schools across the country. Until the information distortion is eliminated (notwithstanding ABA reforms, law schools are far from transparency<sup>38</sup>), Willborn has no basis to assert that the price of a law degree is about “right.”<sup>39</sup>

Indeed, Willborn closes the piece with a series of assertions that directly contradict his earlier analysis. The number of applicants has fallen in the past two years as more information has reached the public about the risky economic return on a law degree.<sup>40</sup> Willborn describes this as a market correction: “the market seems to be working roughly but inexorably to address these problems. The market is in the process right now of telling prospective students loudly and clearly that law school is not a sure bet anymore.”<sup>41</sup> Willborn is right about this. But the ongoing correction is a powerful indication that, contrary to the thrust of his piece, the price of a law degree is *not* right but rather has been artificially propped up through a combination of misleading advertising by law schools and a lack of knowledge (and optimism bias) on the part of law students.

Even with this correction, the market for law degrees remains badly distorted owing to a major factor Willborn ignores. Public information about likely economic return affects the *willingness* of students to attend law school, but another factor that influences price is the *ability* of students to pay. If many otherwise willing students

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38. New ABA rules for greater transparency are in place, but law schools continue to post misleading employment rates. Dean Sylvester of Arizona State admitted that his advertised 98.2 percent employment rate does not give an accurate picture of the job results for graduates. See Brian Z. Tamanaha, *When True Numbers Mislead*, BALKINIZATION (Apr. 2, 2012, 12:13 AM), <http://balkin.blogspot.com/2012/04/when-true-numbers-mislead-98-employment.html>.

39. Although his sketchy analysis is not entirely clear, Willborn appears to suggest that the price of a law degree can increase until students no longer expect a positive economic return. See Willborn, *supra* note 8, at 92–93. In economic terms, the positive economic return on a degree in isolation is not the basis for setting the market price, but just one consideration for potential consumers of legal education when deciding what and whether they are willing to pay. Consumers do not make this investment decision in isolation; they evaluate the potential return on a law degree compared to other potential returns they could obtain with their time and money.

40. *Id.* at 96–97.

41. *Id.* at 100.

could not come up with sufficient money to pay for a law degree, schools would set a lower price that students could afford (or go out of existence). The federal loan program supplies students virtually unlimited funding to attend law school with no questions asked. Consequently, students who attend Thomas Jefferson Law School, for example, can borrow \$150,000 to finance their degree, although many are unlikely to fully repay the loan (only 33 percent of the class of 2011 passed the bar). A private lender would not make these economically irrational loans because it would quickly go broke.

When unlimited financing is provided by the government with no prior evaluation of expected economic return, it is dubious for Willborn to assert that the market is “working” and the price is “right.” By distributing federal loans in this fashion, tuition pricing is insulated from normal economic signals, which warps what schools are able to charge. The Income Based Repayment (IBR) program exacerbates this lack of signaling by making the total size of the loan irrelevant; the monthly loan payments of graduates who enroll in the program are determined by their income, not by how much they owe, so the size of the debt does not matter. Law schools can continue to raise prices by telling students who are likely to enter IBR that they need not worry about the resulting debt because whatever is left over after twenty years will be forgiven.

The fact that the federal loan system provides nearly all of the funding for legal education, cumulatively sending law schools almost \$4 billion dollars each year, is yet another reason to reject Willborn’s assertion that the correct price of a law degree can be evaluated like any other market investment. Getting a law degree cannot be analogized to investing in stocks because people purchase stock with their own money or with money that lenders provide because they are creditworthy. That is not the case here. The government supplies student loans to allow people access to the legal profession. As a condition of these loans, it can (and should) require far better results than half of the students coming out ahead.

When the federal government attaches outcome measures to loan eligibility, tuition will fall at many law schools. That day will come, one hopes, because law schools have abused their pricing power, harming thousands of their graduates.

## REFORM EVERYTHING ELSE BUT THE FACULTY

Professor Olivas's anger at my book seethes through his essay. He has a personal reason to be upset: I criticize Olivas for assertions he made in his role as the President of the Association for American Law Schools.<sup>42</sup> I point out that his claims that law professors are "selfless" and engage in "public service" do not ring true at a time when we are very well compensated for what we do. Of course, it is not pleasant to be on the receiving end of critical commentary in a widely read book, and Olivas is understandably peeved. Since there is limited value in responding point-by-point to an essay written by him in a pique, I will focus my remarks on our fundamental area of disagreement.

To put it concisely: although Olivas agrees with me that there are problems with the economics of legal education, he vigorously disagrees that any reforms should be made to diminish the current work situation and protections for law faculty. I propose to remove from the accreditation standards the provisions that mandate tenure, that require support for faculty research, and that limit the use of adjuncts, and I suggest that law faculty be asked to teach an additional course (going back up to the former norm).<sup>43</sup> With these changes, greater differentiation will come into existence among law schools. Two dozen or so law schools will retain their current high-tuition research institution model (tenured faculty with low teaching loads and heavy scholarship); other law schools will focus on providing nuts and bolts lawyer training at an affordable cost (adjuncts and untenured faculty with heavier teaching loads and limited scholarship); other law schools will be a hybrid. This differentiation will open up a low-cost avenue to the legal profession and will allow students to pick the type of education they want at a price they can afford.

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42. See TAMANAHA, *supra* note 1, at 29–31.

43. *Id.* at 171–81.

Olivas is against all of this, claiming it will destroy legal education:

In many countries, law faculties are entirely part-time and contingent, and widespread student access is limited by a filter of counterproductive and inefficient attrition. In schools such as these across the world, thousands of law students enter the chute, sit in desultory fashion in large classes for years of instruction, and never graduate or move into the legal profession. This is not the path we have chosen, and it is our glory. At the least, suggestions for improvement should demonstrably improve the situation before us.<sup>44</sup>

That is a worrisome scenario, to be sure. But it is far-fetched to assert that removing tenure, cutting back on the amount of time and money allocated to research, and hiring more lawyers and judges as adjuncts, would lead to his nightmare.

Olivas leaves out why significant reforms are necessary: the tuition/debt/jobs numbers elaborated earlier indicate that the current system is not sustainable. We could create the best legal education system that unlimited money can buy but still conclude that it is undesirable because it costs too much relative to the economic opportunities obtained by our graduates.

Olivas's heaviest charge against me is that my proposed reforms "violate the code that remedial actions should, at the least, do no harm."<sup>45</sup> What this statement fails to take into account is that we are *already* inflicting massive harm. The pivotal questions, in my view, are *who* suffers harm and how and whether it can be lessened. Olivas did not see the bitter irony in his assertion that my reforms would make our schools resemble those across the world that take in "thousands of law students" who "never graduate or move into the legal profession."<sup>46</sup> That is exactly the current situation for our students! (Class of 2011: only 56.7 percent of graduates landed full-time lawyer jobs at least one year in duration.) The main difference is that our thousands of unemployed law graduates are burdened by

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44. See Olivas, *supra* note 9, at 130.

45. *Id.* at 102.

46. *Id.* at 130.

huge debt, which students from most countries around the world are not forced to bear.

Above all else, Olivas is offended by my critical focus on the law professoriate, which he steadfastly champions. He is bothered that I cite dean and professor salaries in the book and complains that I unfairly castigate law professors for being “greedy.”<sup>47</sup> This mischaracterizes my position. My argument is that law professors are like most people: we pursue the best deal we can get. One example I provide is Texas. Nineteen Texas law professors earned above \$300,000 in compensation in 2010 (the highest at \$351,000).<sup>48</sup> On top of their salaries, over the past five years, twenty members of the law faculty received one-time bonus payments from an alumni foundation ranging from \$75,000 to \$350,000.<sup>49</sup> Dean Sager received a bonus of \$500,000. Meanwhile, in Sager’s five-year tenure as dean, resident tuition at Texas rose from \$18,208 to \$28,669. Texas law students received neither a better education nor improved employment opportunities from this rapid rise in the cost of their degree.

Professor Olivas holds up Dean Richard Matasar as a reformist, saying that “we all owe him a debt of gratitude” for his diagnosis of what ails legal education.<sup>50</sup> While I agree with much of what Dean Masatar has written about our problems, and I recognize that deans are in tough positions, I cannot celebrate him.<sup>51</sup> During his decade as dean of NYLS, a low-ranked law school, Matasar raised tuition at a rate that placed it among the most expensive law schools in the country, and he expanded enrollment as well. In 2009, after the market for legal employment imploded, NYLS enrolled over 700

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47. *Id.* at 118, 120–21, 129.

48. See Reeve Hamilton & Morgan Smith, *UT President Asks Law School Dean to Resign Immediately*, TEX. TRIB., Dec. 8, 2011, available at <http://www.texastribune.org/texas-education/university-of-texas-system/dean-ut-law-signs-letter-resignation/>.

49. See Ralph K.M. Haurwitz, *Chancellor Orders Review of UT Law School Foundation Funds*, STATESMAN.COM (Dec. 9, 2011), <http://www.statesman.com/news/local/chancellor-orders-review-of-ut-law-school-foundation-2023572.html>.

50. Olivas, *supra* note 9, at 123.

51. See Brian Z. Tamanaha, *An Unlikely Champion of Reform in Legal Academia—Dean Matasar*, BALKINIZATION (Oct. 27, 2010, 5:07 PM), <http://balkin.blogspot.com/2010/10/unlikely-champion-of-reform-in-legal.html> (pointing out the inconsistency between his statements about reform as his own actions as dean of NYLS).



first-year students, an increase of 171 above the year before, thereby promising to make an already tough job challenge much harder.<sup>52</sup> Graduates of the class of 2011 had an average debt of \$146,230, and only about a third landed full-time jobs as lawyers, with most of the class likely at salaries below \$65,000. Meanwhile, Dean Matasar earned \$572,784, and four professors received compensation above \$300,000<sup>53</sup>—handsome salaries at a low-ranked law school where many students experience unenviable outcomes.

Or consider the immediate past Chair of the ABA Section of Legal Education, John O'Brien, dean of New England School of Law (NESL), who offered this objection to critics of legal education: "Nobody feels good that tuitions have gone up. But the claim that a law degree is a bad investment doesn't hold water." NESL graduates in 2011 had an average debt of \$120,480, and only about a third obtained full-time jobs as lawyers, most of them likely at salaries below \$65,000.<sup>54</sup> For many NESL graduates, this appeared to be a poor investment; on his part, Dean O'Brien earned \$821,221 in taxable compensation in 2010.<sup>55</sup>

Another example is Dean Rudy Hasl of Thomas Jefferson Law School (TJLS), a long-time leader in legal education whose dean career spanned three decades at four law schools. Critics are wrong, he says:

There's been a great deal of coverage in the national press that has underestimated the value of a law degree and caused potential applicants to question whether they should make the investment in a legal education. I remind students that what law schools are providing is a set of skills that are valued in our society and that will ultimately lead to a meaningful employment opportunity. To try to measure that by what job

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52. See Segal, *Law School Economics*, *supra* note 2.

53. See New York Law School, *2010 Form 990, Schedule J*, DEP'T OF THE TREASURY INTERNAL REVENUE SERVICE, at 34 (Apr. 23, 2012), available at <http://www.guidestar.org/FinDocuments/2011/135/645/2011-135645885-083e58a6-9.pdf>.

54. See Brian Z. Tamanaha, *Failing Law Schools*, BALKINIZATION (June 18, 2012, 11:29 AM), <http://balkin.blogspot.com/2012/06/failing-law-schools.html>.

55. See New England School of Law, *2010 Form 990, Schedule J*, DEP'T OF THE TREASURY INTERNAL REVENUE SERVICE, at 34 (May 9, 2012), available at <http://www.guidestar.org/FinDocuments/2011/042/152/2011-042152671-0843d86b-9.pdf>.

you have on graduation, or even nine months later, doesn't make sense.<sup>56</sup>

The employment statistics on the job results of graduates are taken nine months after graduation, with little information about what happens to them thereafter. Defenders of the status quo exploit this information gap to suggest that things are better for grads than these numbers indicate. What Hasl omits to mention is that it gets harder to land a job the longer one has been out of school, all the worse in a few months when a flood of new law graduates hit the market. The average debt of the TJLS class of 2011 was \$153,006 (second highest in the country), and just over a quarter of the class landed full-time jobs as lawyers. Dean Hasl earned \$395,614 in 2010.<sup>57</sup>

To lay out salary numbers in this fashion is not to say that legal educators are “greedy” but to confirm that, contrary to Olivas’s assertions, legal educators are not “selfless” people engaged in “public service.” We are not sinners, in my view, but it is fatuous to present us as saints. The juxtaposition of law graduates’ high debt and unfortunate job results with our generous salaries makes plain that legal educators have been doing well even as our students have been struggling. Responses by leading legal educators to the situation have consisted of empty talk, unsupported assurances that graduates will do well despite the bad numbers, or platitudes about the wondrous intangible value of legal education.

As I state in the book: “I must emphasize that many law professors at law schools across the country are conscientious and work hard.”<sup>58</sup> Nothing would please me more than to leave our working conditions precisely as they are—iron clad lifetime job security, five-to-six hours of weekly classroom teaching for twenty-eight weeks per year, lots of time to engage in research, generous pay (ranging from \$150,000 to \$300,000-plus for full professors), no boss

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56. Katherine Mangan, *America’s Longest Serving Law Dean Defends the Value of a Law Degree*, CHRON. HIGHER EDUC., Nov. 5, 2012, available at <https://chronicle.com/article/Americas-Longest-Serving-Law/135512/>.

57. See Thomas Jefferson School of Law, *2010 Form 990, Schedule J*, DEP’T OF THE TREASURY INTERNAL REVENUE SERVICE, at 31 (Apr. 9, 2010), available at <http://www.guidestar.org/FinDocuments/2011/330/696/2011-330696561-083f8794-9.pdf>.

58. TAMANAHA, *supra* note 1, at 8.

to answer to, and complete freedom to come and go as we desire. If there was a way to substantially reduce the cost of a degree while leaving law faculty to continue in our current condition, I would propose it. But it simply cannot be done because faculty expenses typically constitute about half or more of the law school budget. To achieve genuine reform in the economics of legal education, faculty costs *must* come down significantly, particularly at the dozens of low-ranked law schools where graduates suffer from high debt and poor employment results.

His most concrete proposal on how to reduce costs, which Olivas repeats for emphasis while criticizing me for omitting to mention it, is this: “the need for law students to live more frugal lives while in law school, so that they do not live like law students when they are lawyers”<sup>59</sup>; “*many* law students live beyond their means while in law school, by failing to economize and to live more modestly and frugally than is *often the case*.”<sup>60</sup> I agree: law students should strive to live as modestly as possible, and any who do not are behaving imprudently, although I have never had the sense that “many” students are living richly (Olivas offers no evidence for his confident assertion of its frequency). Needless to say, however, this in itself will not significantly reduce the cost of a law degree, the substantial bulk of which is comprised of tuition. It is telling that, while robustly defending faculty privileges, Olivas would wag his finger twice at students—as if it is their fault that they suffer under large debt. This almost smacks of blaming the victim.

#### THE IRRELEVANCE OF THIS DEBATE

Following denial and defense of the status quo, the next stage is accepting that legal education must and will change. The new leadership—ABA Section of Legal Education Chair Kent Syverud and AALS President Lauren Roebel—are already at the next stage. Many law deans and professors across the country recognize that serious reform is inevitable; many are concerned not just about the preservation of their livelihoods but also about the well-being of their

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59. Olivas, *supra* note 9, at 106.

60. *Id.* at 111 (emphasis added).

students and graduates. They know that, if more of our students are to have a fair chance at achieving a positive return, we cannot maintain all the things we desire—we must find ways to do more with less. As more legal educators come around to this view, the current debate, the arguments of the defenders of the status quo, will quickly fade into irrelevance. The status quo in legal education cannot be preserved because it is economically unsustainable and therefore fated to crumble. The only unknowns are how long it will take and how drastic it will be.