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LAW SCHOOL LEVIATHAN EXPLAINING ADMINISTRATIVE GROWTH

*Ronald A. Cass and John H. Garvey***

INTRODUCING LEVIATHAN

THE administrative apparatus of American law schools—indeed, the entire infrastructure of American law schools—seems to be expanding without end. Soon, one would think, administrators must outnumber all other participants in the educational process. Or so it has been said.

Is this a fair characterization of the facts of legal education? If so, what explains this trend? Does it describe a problem or an inevitable, even desirable, state of affairs? We endeavor to answer these questions, looking at the evidence at our disposal and the kinds of speculation that deans can do on short notice.

Let us start with the premise that law school administrations are in continuous growth mode. The assertion is that the economy and the legal profession have their ups and downs, that other businesses contract as well as expand, but law schools grow in all seasons. One reaction is that this may be a matter of mere perspective. The late comedian Pat Paulsen, when asked what he would do about the “population explosion,” said that he could not understand why people thought the population was expanding, much less exploding. After all, he said, there is only one of *you*; but you have two parents; and four grandparents; and eight great-grandparents; and so on. So, you see, what we really have is a population *implosion*. It’s just a matter of how you look at it.

However endearing, Paulsen’s explanation of population change does not work well when applied to law schools. The fact is that law schools do seem to be growing in strong and weak economies, in good times and bad. Take our two schools as examples. In 1950 the full-time administrative staff of Boston University School of Law was 6 (excluding secretarial and clerical employees). In 1960 it was 9. In 1970 there were 22 administrators. By 1980 that number was 30. It rose to 60 by 1990, doubling in just a decade. Between 1990 and 2000, the school experienced its slowest growth in administration in the past half-century adding a mere twenty percent to the administrative staff for a total of 72. At Boston College the administrative staff has grown over the same period to almost exactly the same size from 8 in 1950 to 71 in 2000. It may be that there is some natural pattern to

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growth (something like Moore's Law in the realm of computers).¹ If there is, we'd like to know what it is, and what its causes are.

The growth in staff at both of our schools far outpaced the growth in full-time faculty over the same period, which in turn grew faster than the student body. The entering J.D. class at Boston University School of Law in 2001 (240 students) was approximately the same size as the entering class forty years before that, though there were substantial fluctuations in class size over that period. The full-time faculty numbered 7 in 1950, 16 in 1960, 34 in 1970, 58 in 1980, 58 in 1990, and 54 in 2000. Part-time faculty grew from 27 in 1950 to 68 in 2000. The same pattern holds for Boston College. In 1950 there were 130 day and 137 evening students—a total of 267. In 2000 the entering class was 270. The full-time faculty, on the other hand, more than quadrupled in size—11 in 1950, 17 in 1960, 21 in 1970, 34 in 1980, 39 in 1990, and 48 in 2000.

The one arena in which growth exceeded the increase in administrators is the admission price to law school. Tuition at Boston University was only \$450 in 1950. It was \$1,000 in 1960, \$1,750 in 1970, \$5,515 in 1980, \$14,950 in 1990, and \$24,700 in 2000. At Boston College the 1950 tuition for a day student was \$400. Over the next five decades the price of one year in law school grew thus: \$975 (1960), \$2000 (1970), \$6900 (1980), \$12,510 (1990), \$23,480 (2000). In real terms the change between 1950 and 2000 reflected an increase of 182% for tuition at Boston University and 170% for tuition at Boston College. Tuition, of course, was a great deal—and Boston College and Boston University a wonderful educational value—at every point. Still, tuition rose more sharply than the increase in administrative staff.

EXPLAINING ADMINISTRATIVE GROWTH: FIVE EASY THESES

Now comes the hard part: explaining why. In this part, we explore seven possible explanations. That number did not lend itself to a good pun, so we must discard two of them quickly in order to justify the heading. We can do that. Or you can. Being both friendly and, as deans, accustomed to accommodation, we'll let you pick the two to be rejected. In truth, any of the offerings could be chosen, though we probably would jettison the first two first. The theses examined in this part really are more in the nature of conjectures than real hypotheses. Each points to a plausible source of pressure for growth in law school administration. After describing the various theses and exposing what is and is not explained by them, the succeeding sections will elaborate slightly more robust explanations that cut across the paths marked out by the explanations described in this part.

Two possibilities that might be easiest to dispatch quickly are that the growth in law school administrations responds to demands imposed by legal "red tape" or by accreditation authorities. These explanations appeal to our biases against some expansions of legal obligations and against excessively intrusive accreditation

1. In 1965 Gordon E. Moore, co-founder of Intel, predicted that the number of transistors on a microprocessor would double approximately every 18 months. See Gordon E. Moore, *Cramming More Components Onto Integrated Circuits*, ELECTRONICS, Apr. 19, 1965, at 114, 115. Thus far his prediction has proved remarkably accurate.

regimes. We regret that they are not better explanations for the growth pattern we observe.

Legal regulation undoubtedly has changed very considerably over the past several decades, a matter we discuss at some length below. Although law has expanded in many areas that do not have any direct effect on the scope of law school administration, some areas of growth do affect school administration. Law respecting equal employment opportunities and other aspects of employment—labor relations law, employment discrimination law, the law respecting process rights of public employees—affects the operation of schools as well as other businesses, imposing added duties in record-keeping, in reporting, and in a host of less obvious aspects of dealing with the folks who work for and in our institutions. So, too, the Americans with Disabilities Act affects hiring, student accommodations, layout of buildings, and other facets of law school operation. Expanded government financing of students' legal education, primarily through loan underwriting, also carries with it added legal obligations for schools.

Each of these expansions of law has implications for the cost, complexity, and nature of law schools as businesses. Each is a source of additional work for lawyers, on the schools' payrolls and off. But none of them directly affects the size of law school administrative staffs terribly much. There is some direct effect, and as we explain later, considerable indirect effect. By and large, however, this does not seem a good explanation for the bulk of law school administrative expansion.

What about the accreditation process? Plainly, the accreditation process today is more intrusive than it was twenty or thirty or forty years ago. Accrediting authorities are more focused on inputs, gather vastly greater amounts of information about ever-growing numbers of matters, rely on law schools to provide the information, and have been increasingly insistent in peppering schools with questions about their compliance with the accreditors' wishes. Accreditation has gone from being a threshold for allowing students to sit for the bar exam to being a long-playing game for extorting money from other parts of universities to benefit law schools and from one part of the school to another.² The game pushes schools to spend more—on faculty, library, buildings, and administration—in part to satisfy accreditation requirements and in part to provide the information sought by accreditors. This is unlikely to account for more than two or three positions at any school. Administrative services have never been more than a peripheral focus for the accreditation process, and intrusive as the process can be, it does not require that many administrators to accommodate the information needs of the system.

There is another reason that accreditation is a poor explanation for growth in law school administration. Once a school is accredited, no matter how much the ABA pushes for changes in a school's operation, the end result of the accreditation process virtually never is a revocation of accreditation. During a representative seven-year accreditation cycle the ABA would grant full, unequivocal renewals to a handful of schools and continue the accreditation for the rest of the 180 or so ABA-approved schools on the condition that they address issues of concern to the accreditors. Over the next seven years the responding schools will either satisfy the

2. See, e.g., George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091 (1998).

accreditors and gain a full accreditation or will not—in which case the schools still retain their accredited status and start over the process of addressing accreditors' concerns. The threat of losing accreditation, in other words, is a hollow threat. Those who play the game for any time—or talk to others who have—come to realize that fact. From that point on, any effect of accreditation on the growth of administration is hard to explain.

Another potential explanation for the growth of law school administration is the effect of rankings, especially *U.S. News & World Report*. Rankings have become a major influence on students' choice of law schools. There is at least anecdotal evidence that rankings also affect both employers' hiring decisions and alumni support. In response, schools endeavor to improve their rankings by attending to the factors the rankings take into account. Unfortunately the most influential rankings also are the ones that use peculiarly questionable factors. Thus, for example, *U.S. News* gives significant weight to the amount of money spent per student, to student-teacher ratios, and to other inputs that correlate with spending, regardless of their effect on educational quality.

Again, this is a plausible source of some pressure to expand staff, but not a good bet to explain much. The cost-plus approach to rankings encourages schools to spend money but there is little incentive to do this through expanded administration. There is greater incentive to add administrators to accomplish results that affect rankings. Additional staff can help promote the school, which could influence perceptions of those who fill out the *U.S. News* or similar surveys. More staff can help, too, with placement, which affects the rankings, or with garnering more alumni support, which also will affect rankings. But adding staff to enhance these functions has little direct impact on the rankings and is much more likely to be a response to pressures other than rankings.

A fourth explanation looks to the faculty. The faculty especially full-time faculty has grown considerably over the past four decades. This is partly a response to pressure from accrediting authorities, but more of the growth has been a response to competitive pressures and changes in the nature of the education deemed best for students in a world of rapidly growing bodies of law. Growth of the law has increased demand for faculty who can provide broad theoretical overviews, for faculty who can integrate tools of social science, for faculty who can integrate insights from specialized backgrounds in health law or intellectual property law, for example, with understanding of the legal texts. As the faculty has grown and its interests have expanded, there is greater demand for additional library resources, more technology and better support services. All of these demands have implications for expansion of the school's administrative staff.

Fifth, fundraising increasingly appears as both cause and cure in the rise of the administration. The realization that there are opportunities for enhancing law school budgets through raising funds from sources other than student tuition transforms the school's activities in several ways. Obviously these revenues can support expanded staff, but raising funds also calls for additional staff. And many different sorts of activity link to fundraising. Less obviously perhaps, the role of the dean changes with increased attention to fundraising. As the dean takes on duties respecting external fundraising, duties he or she previously performed

devolve to others in the administration. And the delegation will generally require more people to do the work and to keep the dean informed.

Sixth, staff increases in response to new programs. The increased specialization of the law and the globalization of law and business together have prompted growth in the programs offered by schools. New graduate and foreign programs, new concentrated specialties within the J.D. curriculum, additional dual degree programs—all of these require additional staff. Further, almost every activity cognate to the study of law has created a need for more staff. Not so long ago the typical law school had one moot court program, one law journal, and one clinic. Now it is common to have five to ten moot court programs, several law journals (sometimes many more), and anywhere from two to ten clinical programs, plus internship programs, externship programs, and an ever-growing list of similar offerings. Legal writing programs similarly have multiplied and expanded. While staff need not grow at the same rate as the programs, all of these changes have called for increases in administrative staff.

Our final hypothesis looks to students. Students are of obvious importance to law schools. For most law schools, the issue is not one of quantity. For the past three decades, there have been roughly 42,000 places in the entering class of ABA-approved law schools in America. Applicants for those places have ranged from a low of over 60,000 to a high of about 99,000. For schools that are ranked anywhere in the upper half of the draw by conventional rankings services, and for many others as well, there are plenty of students to fill our classes. At Boston College and Boston University this year, for example, we will each be selecting a class of approximately 260 from a pool of between 7,000 and 8,000 applicants. We truly have no concern about there being enough demand for our products. But we compete aggressively with one another (in our case literally, but we mean the point to be more generally applicable to competition among all good schools) for students perceived as having higher quality. The most obvious, though by no means the only criteria are the standard statistical measures (LSAT scores and undergraduate grade point averages).

Law schools compete on several parameters: on quality, on service, and on price. The quality of the product each school delivers is a matter of fierce debate, but perceived quality is critical to student decisions among law schools. Price, too, plays a role, though price competition is muted by various factors. Price differences in higher education, including law school education, are far smaller than might be expected in other markets. Service as well is important, and the services expected by—and at times demanded by—law students are critical to the competition between schools. Virtually every aspect of law school operation has a service component and today's students look for better services than their predecessors. Students want better placement services, better financial aid counseling, better library services, better technology and technology support, better food services, better buildings that are better maintained, better assistance with each program and each opportunity at the school—pretty much better everything. And schools compete to offer these services.

Each of these hypotheses has some explanatory power. The power probably grows as we move from the first thesis to the last. Student service—as a component of schools' competition for students—is a strong reason for the expansion of law

school administrative staff. And its correlation with the expansion of staff can be seen in the fact that the additional staff positions at law schools are spread widely across the entire array of services that constitute student support.

EXPLAINING ADMINISTRATIVE GROWTH: THREE THEORIES

The hypotheses above identify factors that contribute to the growth of law school administration. They do not, however, answer the deeper questions behind law school growth, the *why* questions: why do these factors permit schools to spend more money on administration? Why do other businesses that must compete with one another show less tendency toward staff growth? We believe that there are three theoretical explanations for the observed changes in law schools. These explanations focus on the increased value of law school to our students, the even greater increase in demand for the “best” law schools, and the reliance on personnel as the answer to service demands at law schools.

First, law schools are more valuable to students because lawyers make higher salaries and the lawyers at the biggest, best known firms in particular make higher salaries than in the past. As the world becomes more competitive, returns to education, skill, and training increase. That has been the experience in the United States and in other nations as well, witness the spread of incomes in virtually all western, market-oriented democracies over the past three decades.³ The change is visible in the salaries earned by lawyers at major Wall Street firms, for example. Look at the starting salaries at ten-year intervals: in 1960, the salary was around \$5,000; in 1970, it was about \$18,000; in 1980, the figure was \$38,000; by 1990, salaries had increased to \$85,000; and in 2000, starting salaries rose to \$140,000. In nominal dollars, that’s almost a thirty-fold increase in forty years. Even in constant dollars, the increase is striking, roughly a five-fold increase from 1960 to 2000. The more valuable law school is to students, the more students will spend for their schooling; the more students spend, the more schools can afford to invest in their operations. The federal support for law students that has underwritten loans is no doubt part of the equation, but students and their families still take on staggering debts to finance their educations. They would not do that if they did not believe that the returns from that education—largely economic returns—justified the investment.

Second, as the number of law schools and the number of lawyers increase, returns to the top schools and the top lawyers will increase; this is a function of the economics of information. The more entries there are in a given category the harder (more costly) it is to get good information about all the choices. As that happens, the best-known choices command a higher premium. That is the reason for the growing dispersion in returns to “stars” in so many fields, from sports to entertainment to business. The same theory applies to law schools and lawyers as to first-growth Bordeaux wines. The legal profession has grown sharply, adding roughly 40,000 new lawyers each year, or more than one million over the past three decades. That alone would prompt increased competition among lawyers to be at

3. See, e.g., TRADE AND WAGES: LEVELING WAGES DOWN? (Jagdish Bhagwati & Marvin H. Koster eds., 1994).

the top of the profession and increased returns to the folks deemed most likely to be at the top. This movement inevitably leads to increased benefit to schools that are seen as producing the top lawyers and increased investment by the schools in being seen as such by lawyers and law students.

Finally the economics of non-profit businesses, which is what most law schools are, drives schools to spend whatever they can and to spend disproportionately on personnel. Here is the theory Unlike for-profit businesses, non-profits have no residual owner, no one to claim the money left over at the end of the day That—no surprise—induces non-profits not to leave money over at the end of the day Whatever money is brought in is spent. And because the people who are likely to have the strongest short-term interest in how the money is spent are employees, the pressure is to spend on staff. Some of the pressure is to spend more on each current member of the staff. But some of the pressure also is to hire more staff, not only because that can reduce the effective work load on current staff, but also because it can allow staff to do more of what they want. The cynical explanation is that bureaucrats get satisfaction from being more important and importance is measured by the number of folks working for you or for your part of the bureaucracy The more probable explanation is that if you care about what you are doing—if you choose to work for a non-profit because you believe in its mission—you are rewarded in part by the success of the mission. So, for example, placement directors derive satisfaction from succeeding in finding good jobs for the students at their school; financial aid directors feel better when they succeed in getting better financial aid packages to more students; alumni relations folks are happier when they put on functions that more alumni attend and enjoy

These theories fit together to offer a coherent story No one of them may be complete, but together they describe demand-side and supply-side stories that both support the growth of law school administration. Indeed, it is possible, looking at the changes in the profession, that law school administrations are not too large but too small.

THE END OF THE STORY: GROWTH OF THE LAW

The explanations we offer above touch on a change that is both related to and separate from the other changes: the growth of *law* itself. This phenomenon accounts for the rapid faculty growth we have seen in the last four decades. It also helps explain the even more rapid salary growth at large firms over the same period. As legal regulations grow in number and complexity the value of good advice increases. A company making a public offering of securities or contemplating a merger cannot afford to make a mistake about disclosure requirements or tax consequences. A university contemplating an investment in its football team has to know what effect that will have on its obligations under Title IX.

We don't focus on this point often enough, but it is one that has great explanatory power We are not the same United States, with the same legal system, as we were when Eisenhower was president. Our legal system is infinitely more complex than it was when Wilson was president. It is not just that we have more lawyers and lawsuits. We have more law Consider the case of Napster, a program that lets PC users share MP3 files. It proved so popular that millions of people used it. And

soon after that it led to the creation of new law—the Digital Millennium Copyright Act⁴—to protect artists and the recording industry. This is just one of a hundred examples of how changes in technology lead to growth in the law.

Here are two more examples. When Eisenhower was president there was no Clean Air Act, Clean Water Act, or Environmental Protection Agency. Steel companies blew smoke into the air (remember those old pictures of Pittsburgh?), paper mills dumped effluents into the water. There was a common law of nuisance—a set of cases decided by state courts in the days when a clean air problem meant having a pig farm next door. The Clean Air Act was passed by Congress in 1970; the Clean Water Act in 1972. The EPA—a federal agency that makes regulations to implement Congress's statutes about radiation, ocean dumping, noise abatement, pesticides, sewage sludge, toxic substances—was created in 1970. All these laws and rules are solutions to new problems that came into being because the world changed or they are new solutions that reflect changes in wealth, tastes, or technology.

And when Eisenhower was president there was no Equal Employment Opportunity Commission. *Brown v. Board of Education* was decided in 1954.⁵ Ten years later we got the 1964 Civil Rights Act. Then came the Voting Rights Act of 1965, the Fair Housing Act in 1968, and Title IX in 1972. (27 years later our women's soccer team were world champions.) Discrimination is not a new thing. But our social commitment to ending it is, and in the last 40 years we have made numerous laws, created agencies, and made regulations to deliver on that commitment. It's not that we are more morally upright than our grandparents. There are social changes behind this too. America is no longer a country of mostly white people whose ancestors came from western Europe. A more diverse society calls for a more inclusive legal regime.

You get the point. There is more law because the world is more complicated than it was 30, 40, and 50 years ago. It's not that people are more quarrelsome or that lawyers file too many lawsuits. The law is a good thing—it's the set of rules that makes it possible to publish music, make steel, end discrimination, and so on. We have more laws now, but *we* have done that, not the lawyers. The growth of law schools and the increasing value of legal advice are responses to, not causes of, the growth in law.

4. 17 U.S.C. § 512 (2003).

5. 347 U.S. 483 (1954).