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## Legal Education as a Private Good

Steven L. Willborn\*

In the spring of 2004, Stewart Schwab and I were preparing for upcoming meetings of our alumni advisory boards. As something to discuss, we decided to calculate the long-term financial returns from an education at our two law schools. (It is not always easy to come up with topics for alumni boards.) We did this in a reasonable and efficient way—it was not econometrics nor was it quite back-of-the-envelope. We used conservative numbers for lost wages and expected future income, we put in our current tuition levels,<sup>1</sup> and we factored in a couple other things, like inflation. When we ran the numbers, we found that at both schools the investment in a legal education was a wonderful one. At Nebraska, students came out more than \$1.5 million ahead in lifetime earnings. My recollection was that the benefit was even greater at Cornell.<sup>2</sup>

Stewart and I had different reactions to these delightful results, and it is those different reactions that I want to discuss briefly. Stewart saw the result and said “Shouldn’t we be charging a lot more?” The analogy here would be to the stock market or the pricing of any asset. An efficient market would price the asset (here a legal education) at the present value of the extra future earnings one would

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1. At the time, tuition and fees at Nebraska were about \$7,000 annually for residents and about double that for non-residents. This year tuition and fees at Nebraska for first-year law students are \$14,363 for residents and \$31,045 for non-residents. *Financing Your Education*, UNIV. OF NEB. COLL. OF LAW, <http://law.unl.edu/prospective/financing.shtml> (last visited Jan. 8, 2013). These are fairly typical increases. From 2004 to 2011, average public resident, public non-resident, and private law school tuition increased by 86 percent, 59 percent, and 45 percent, respectively. Jerome M. Organ, *Reflections on the Decreasing Affordability of Legal Education*, 41 WASH. U. J.L. & POL’Y 33, 34–35 (2013).

2. I could not find records of that half of the analysis in my files.

expect from that asset.<sup>3</sup> Our little study showed that both our law schools were charging much less than efficient market rates. In effect, we were giving each student a gift worth more than \$1 million.<sup>4</sup>

My initial reaction was subtly different. My reaction was “Why are we charging so little?,” not with the implication that we should be charging more, but instead to ask why schools (and governments) provided the support needed to maintain such a low price. The analogy here would be to our nation’s general approach to education where the notion has traditionally been that it provides public benefits as well as private ones and, as a result, should be subsidized.

There is no doubt that the Schwab perspective<sup>5</sup> is the current, modern approach to legal education. One of the factors leading to our current crisis (and this conference) is the broad shift from a world in which education, including legal education, was viewed as a quasi-public good to a world in which it is viewed primarily as a private good. The traditional public-goods view of education was especially pronounced at the elementary and secondary levels, where education was thought to contribute to democracy and an informed electorate, as well as to a more productive nation.<sup>6</sup> But it was also true for higher education. Many well-known higher education programs were based, implicitly or explicitly, on a public-goods rationale, such as the land grant movement after the Civil War, the G.I. bill and expansion of community colleges after World War II, and the large public investments in science and technology education after Sputnik. Even the organizational structure of higher education—through public and nonprofit entities—signaled its public-goods nature. The general

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3. Somewhat more precisely, the price would be set at the present discounted value of the future increase in expected earnings, where the expected earnings are adjusted by the undiversifiable risk associated with a law degree. See, e.g., Ian Ayres, *Back to Basics: Regulating How Corporations Speak to the Market*, 77 VA. L. REV. 945, 968–75 (1991) (describing fundamental market efficiency in pricing stocks). See generally JOHN H. COCHRANE, *ASSET PRICING* (rev. ed. 2005).

4. Again, somewhat more precisely, *on average*, we were giving each of our students a large gift. The results for individual students, of course, varied considerably, but with the size of the gift, all but a few were likely to come out well ahead of the cost of their investment.

5. I should be clear that the “Schwab perspective” is my shorthand for describing a private-goods, market-based approach to legal education based on an off-hand comment Stewart Schwab made years ago. I am not purporting to describe Stewart’s actual views.

6. For an early and influential exploration of this, see JOHN DEWEY, *DEMOCRACY AND EDUCATION: AN INTRODUCTION TO THE PHILOSOPHY OF EDUCATION* (1916).

view was that there were huge public benefits from an educated populace, so the public should provide subsidies to ensure wide access and affordability.<sup>7</sup>

But in the past few decades, a number of factors have converged to shift that general conception.<sup>8</sup> The movement was fed by academic studies that focused on education as an investment in individual human capital,<sup>9</sup> that measured increasingly large returns to individuals from higher education,<sup>10</sup> and that criticized public subsidies on various grounds.<sup>11</sup> These kinds of ideas resulted in real changes on the ground. State appropriations for public universities declined.<sup>12</sup> Tuition costs went up dramatically.<sup>13</sup> Private for-profit companies began to be major players in higher education.<sup>14</sup> Traditional universities increasingly moved to market-based tuition rates, for example, charging more for engineering and business majors than for majors in the humanities.<sup>15</sup> Law schools were among

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7. For a good, brief review of this history, see Brian Pusser, *Higher Education, the Emerging Market, and the Public Good*, in *THE KNOWLEDGE ECONOMY AND POSTSECONDARY EDUCATION* (Patricia Albjerg Graham & Nevzer G. Stacey eds., 2002).

8. It is hard to know how big to draw the circle. I describe the shift in education generally and in higher education, but it could also be viewed as one part of an even broader shift towards privatization in society generally. For one description of this phenomenon, see Gillian E. Metzger, *Privatization as Delegation*, 103 COLUM. L. REV. 1367, 1377–94 (2003).

9. See, e.g., GARY S. BECKER, *HUMAN CAPITAL* 17–21 (3d ed. 1993); MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 85–107 (1962).

10. For good recent reviews, see Michael Hout, *Social & Economic Returns to College Education in the United States*, 38 ANN. REV. SOC. 379 (2012); see also CLAUDIA GOLDIN & LAWRENCE F. KATZ, *THE RACE BETWEEN EDUCATION AND TECHNOLOGY* (2008).

11. For example, public subsidies for education have been criticized because many of the benefits flow to those who do not need them, HOWARD BOWEN, *INVESTMENTS IN LEARNING: THE INDIVIDUAL AND SOCIAL VALUE OF AMERICAN HIGHER EDUCATION* (1977), and because they inhibit market-based reform in higher education. See Pusser, *supra* note 7, at 109–10.

12. See STATE HIGHER EDUC. EXEC. OFFICERS, *STATE HIGHER EDUCATION FINANCE FY 2010*, at 33, tbl 7 (2011) (showing a one-year decline in state revenues per FTE of 3.2 percent between 2009 and 2010 and a five-year increase of only 3.3 percent between 2005 and 2010).

13. See Hout, *supra* note 10, at 386 (reporting that the average cost of attending a public four-year college or university increased 125 percent between 1981 and 2009).

14. See Scott Jaschik, *The Growth of For-Profits*, INSIDEHIGHERED.COM (Jan. 18, 2011), [http://www.insidehighered.com/news/2011/01/18/carnegie\\_releases\\_revised\\_classifications\\_of\\_colleges\\_and\\_universities](http://www.insidehighered.com/news/2011/01/18/carnegie_releases_revised_classifications_of_colleges_and_universities) (reporting that for-profit colleges increased their student population by one million students between 2005 and 2010 and increased their share of all college students from 5.1 percent to 9.1 percent).

15. See Scott Jaschik, *The Rise of Differential Tuition*, INSIDEHIGHERED.COM (Feb. 21, 2012), <http://www.insidehighered.com/news/2012/02/21/study-finds-increasing-numbers-public>

the most active in pushing this trend in the academy. Increasingly, they began to give up state funding in return for the ability to charge market rates and keep the proceeds.<sup>16</sup> More specifically for our topic, viewing education as a private good carries with it the notion that the product should be priced appropriately. No more big gifts to students; instead “fair” pricing given the expected returns; hence, higher tuition, lower contributions from public coffers, and no more sure bets that the investment will pay off.

I expect I am like many of you in thinking that the public-goods view is closer to the correct view. I view much that has been written about our current situation as a yearning to return to that old world. But I am also a realist. I am quite sure we will never return to that world. When one accepts the new world with a legal education viewed as a private good, the current state of affairs can begin to look pretty normal. A new normal, to be sure, and one we may wish we were not in. But, frankly, in this new world, the current prices look about right, and the market seems to be working to force adjustments about as one would expect.<sup>17</sup> This view of the world reveals no major villains in the story, not the ABA, not greedy law professors, not dishonest career-services officers, no one.<sup>18</sup> Nor does it promise great prospects for the grand solutions that are being offered.<sup>19</sup>

This short Article is intended to be positive, not normative; it is an exploration of the current situation viewed through a particular lens.<sup>20</sup> Through that lens, the Article is intended to be a clear-eyed description of where we are. The current situation presents serious problems of affordability and accessibility. In the long run, society will suffer from these problems; it will suffer doubly because certain

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-colleges-differential-tuition (reporting that a majority of flagship universities now have differential tuition rates).

16. See Denis Binder, *The Changing Paradigm in Public Legal Education*, 8 LOY. J. PUB. INT. L. 1 (2006).

17. See *infra* notes 22–43 and accompanying text.

18. See *infra* notes 37–39 and accompanying text.

19. See *infra* notes 41–43 and accompanying text.

20. I should be clear that I am not sure that this lens is the best one for viewing our current situation. There are certainly other lenses that provide insight into our current situation, such as the evolving market for lawyers. See, e.g., Deborah Jones Merritt, *The Job Gap, the Money Gap, and the Responsibility of Legal Educators*, 41 WASH. U. J.L. & POL'Y 1 (2013). But I do believe that an exploration of this particular lens contributes to the current debate.

demographic groups will lose access disproportionately. Again, I would prefer the old world where it was recognized that education generally and legal education in particular provided important public goods and where society acted to ensure that those public goods continued to be provided. But I do not see a path back to that world. Thus, this Article is not about that world, but about the world in which we find ourselves.

Let us begin by considering law school pricing in a world where a legal education is purely a private good. First, as I mentioned above, when viewed as a capital asset, the most a law student should be willing to pay for a legal education would be the present discounted value of the increase in expected earnings from a law degree.<sup>21</sup> There have been several studies along these lines, and the evidence is mixed about whether the current cost of a legal education is “worth it” in this sense. Professor Schlunk, who has probably done the most careful analysis, concludes that a legal education pays off for about 31 percent of average students, 21 percent of good students, and 31 percent of exceptional students.<sup>22</sup> But he skews the analysis against profitability in a number of ways, such as considering only private school tuition, assuming no scholarships, and assigning a discount rate of 12 percent. With more generous (or realistic?) assumptions, his analysis may well have resulted in a net financial surplus from a legal education for the average student. Professor Organ’s analysis in this volume accounts for some of these shortcomings, for example, by taking scholarships into account.<sup>23</sup> He finds 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. This analysis takes scholarships into account, so Professor Organ’s estimates are

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21. As those who jump into these waters always caution, this is an extremely difficult calculus and is highly particular to each individual student’s circumstances. *See, e.g.*, Herwig Schlunk, *Mamas 2011: Is a Law Degree a Good Investment Today?*, 36 J. LEGAL PROF. 301, 327 (2012) (it is “worth repeating again and again that each potential student’s calculus will be based on a host of factors unique to him or her”).

22. *Id.* at 323. Professor Schlunk refers to these three categories as “also ran,” “solid performer,” and “hot prospect.”

23. *See* Organ, *supra* note 1, at 47–49.

probably closer to the mark than Professor Schlunk's.<sup>24</sup> Nevertheless, his analysis also contains elements that may skew it against profitability, so the actual numbers may be somewhat better than this.<sup>25</sup>

This evidence seems to support the idea 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. Or, at least, the evidence is not inconsistent with this view; it does not provide conclusive evidence that current pricing is out-of-step with the expected returns from a legal education.<sup>26</sup> Certainly, it's not the world Stewart and I were exploring several years ago where *every* student was almost guaranteed a good return on her investment. But that is not the modern, private-goods world. Today, the evidence seems consistent with the *average* student coming out ahead on her investment. Students, of course, experience a wide range of returns on investments created by differences on both sides of the equation, that is, both because some students incur relatively low law school

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24. To be clear, Professor Organ is not engaging in the same type of analysis as Professor Schlunk. Borrowing from Professor Chen, Professor Organ is basically examining whether student debt levels would preclude them from qualifying for a home loan. See Jim Chen, *A Degree of Practical Wisdom: The Ratio of Educational Debt to Income as a Basic Measurement of Law School Graduates' Economic Viability*, 38 WM. MITCHELL L. REV. 1185, 1201 (2012) (“[p]erhaps the best way of assessing law school affordability is to gauge the ease (or difficulty) with which a young lawyer can simultaneously defray educational debt and buy a house”).

25. For example, Professor Organ uses 2010–11 tuition to estimate tuition for 2011 graduates even though that would be higher than the average tuition paid by those graduates. Because tuition has been increasing so rapidly, if he had used 2009 resident tuition levels instead, as he discussed doing, the tuition would have been 20 percent lower at public schools and 10 percent lower at private schools. Organ, *supra* note 1, at 45 n.21. Similarly, his analysis incorporates Professor Chen's estimate of total law school debt as three times tuition. Chen, *supra* note 24, at 1203. Professor Chen provides no support for that estimate. My own comparison of debt levels of 2011 graduates at a random sample of one-third of all law schools indicates that Professor Chen's estimate was 16 percent too high. The ratio of debt to tuition was 2.58, not 3.00. To be fair, there are also elements of Professor Organ's analysis that might skew his number in favor of profitability. For example, his analysis uses resident tuition rates for public schools and does not include undergraduate debts. It is impossible to know how these cross-cutting elements balance off against each other. I think Professor Organ makes defensible choices and commend him for his efforts. But at the same time, he embarked on a difficult task and his estimates must be treated with caution.

26. This is especially true given the additional evidence that law school pricing is in the process of adjusting to changing market conditions. See *infra* notes 33–36 and accompanying text.

costs and debts and because, given the weird bimodal distribution of salaries,<sup>27</sup> some students do much better than average in future returns. Sometimes, students benefit from both sides of the equation; sometimes they get hurt on both sides. But that is also true in other capital markets. Some investors do very well in the stock market, others not so much. It is well known, for example, that individual investors tend to underperform, in part, because of optimism bias.<sup>28</sup> In the law school market, one would expect optimism bias to support higher than strictly optimum tuition levels. That is, students overly optimistic about their prospects of doing very well in law school would be willing to pay more than a strict clear-eyed accounting of discounted future returns would justify. This would imply that the percentage of students for whom the investment actually pays off would be less than 50 percent. This would align law school costs and returns with the experience in other capital markets where most investors do not succeed. Viewed in this way, the success rate we might expect on a law school investment after accounting for optimism bias would be about at or a bit lower than the reported success rate of 46 percent at all law schools and quite a bit lower than the reported 70 percent success rate at about one-quarter of all law schools.<sup>29</sup> Again, this implies that the current cost of law school is not too high; indeed, there may yet be room for increases at some places.

But, of course, law school tuition need not be set to absorb all of the increase in discounted earnings expected from a legal education. The discounted future earnings are the maximum one would expect law students to be willing to pay, but competition between schools may reduce the level. If Law Schools A and B can both produce \$50,000 in discounted expected future earnings at a cost of \$40,000, Law School A might decide to charge only \$45,000. School A could steal all the students away from School B that way and still come out

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27. *Salary Distribution Curve (2012)*, NATIONAL ASSOCIATION FOR LAW PLACEMENT, available at [www.nalp.org/salarydisrib](http://www.nalp.org/salarydisrib) (last visited Jan. 8, 2013) (showing that few 2011 law graduates received the adjusted mean starting salary of \$73,984; instead, graduates clustered at points above and below the average with about 52 percent receiving between \$40,000 and \$65,000 and 14 percent receiving \$160,000).

28. BURTON G. MALKIEL, *A RANDOM WALK DOWN WALL STREET* 219–22, 238–40 (2007).

29. See Organ, *supra* note 1, at 49.



ahead.<sup>30</sup> But, of course, School A cannot steal *all* the students away from School B. School A has limited capacity and, even today after a 20 percent decline in applicants from a decade ago, the number of applicants to ABA law schools exceeds the number of seats by 30,000.<sup>31</sup> School B will be able to fill its seats. But there's another important competition between the two schools thanks in part to *US News* (yes, thanks). School A and School B are both interested in attracting the best students—based especially on LSAT scores and undergraduate GPAs, but more broadly than that. If School A offers lower tuition, it may be able to steal all the *best* students away from School B.<sup>32</sup> Thus, if the private-goods market is working properly, competition like this between schools may be holding law school costs below the maximum that students might be willing to pay. This would help to explain why there's still a long queue of students who want to attend law school.

So far, then, if we view the new world of law schools as a market for a private good, we seem to have a fairly well-functioning market.<sup>33</sup> The price for a legal education seems rationally related to the expected discounted future returns. Competition between law schools may be reducing that amount below the maximum that students might be willing to pay, which produces excess demand and better-than-expected odds of a positive return on the investment.

Other, more recent evidence also seems consistent with a decently functioning market. When the number of law student applications started to decline, law schools began to reduce their class sizes. First-year law school enrollment dropped more than 7 percent from 2010 to 2011 to its lowest level since 2005,<sup>34</sup> even though the number of

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30. Thanks to Stewart Schwab for reminding me of this point.

31. *LSAC Volume Summary*, LAW SCHOOL ADMISSION COUNCIL, <http://www.lsac.org/lsacresources/data/lsac-volume-summary.asp> (last visited Jan. 8, 2013).

32. Tuition pricing, of course, is a very complicated topic. Schools are not and should not be viewed as perfect substitutes for one another; different tuition levels may merely reflect differences in actual or perceived school quality. Similarly, the tuition level itself may be one way in which a school signals quality. For a seminal article on this topic, see Paul Milgrom & John Roberts, *Price and Advertising Signals of Product Quality*, 94 J. POL. ECON. 796 (1986).

33. Or again, more modestly, we do not have strong evidence that the market is wildly out of kilter.

34. See *LSAC Volume Summary*, *supra* note 31. These are the latest figures publically available. An informal survey of Midwestern law schools for the 2011 entering class confirms these reductions in matriculants. In this survey of eighteen schools, only one reported an

law schools has increased.<sup>35</sup> This evidence is consistent with normal market adjustments. Similarly, although tuition levels have gone up in recent years, grants and scholarships are going up even faster as schools compete more vigorously for students.<sup>36</sup> Again, this moderation in net price increases is what one would expect in a market adjusting to reduced demand.

The broad argument here is that a major contributing factor to the current turmoil in legal education is the broad social shift in the conception of education generally, including legal education. The shift is from viewing education as a public good justifying subsidies to viewing it as a private good paid for by the consumer without subsidies. This shift alone would have created tensions and problems with affordability and accessibility, but these problems were exacerbated in recent years by the economic downturn.<sup>37</sup>

If true, this perspective has implications for claims that have been made about who is responsible for the current state of affairs. The perspective tends to diffuse blame and point away from a strong role for those most often accused of responsibility (or even perfidy). The current state of legal education is part of a broader societal trend.

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increase in matriculants between the entering classes of 2010 and 2011 (an increase of 2.7 percent); all the rest reported decreases ranging from 2.4 percent to 19.3 percent. Professor Organ told me that the number of seats declined another 8 percent from 2011 to 2012.

35. One new law school was provisionally approved in 2011 and two more were provisionally approved in 2012. Ten new law schools have been approved since 2006. *ABA-Approved Law Schools by Year*, AM. BAR ASS'N, [http://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_schools/by\\_year\\_approved.html](http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/by_year_approved.html) (last visited Jan. 8, 2013).

36. In 2011, tuition and fees for public school resident students increased by an average of 9 percent, while grants and scholarships increased by 15 percent. In the five-year period ending in 2011, tuition and fees increased by an average of 55 percent; grants and scholarships increased by 76 percent. *Law School Tuition 1985–2011*, AM. BAR ASS'N 1, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/ls\\_tuition.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf) (last visited Jan. 8, 2013); *Internal Grants and Scholarships 1991–2011*, AM. BAR ASS'N 1, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/internal\\_grants\\_scholarships\\_awarded.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/internal_grants_scholarships_awarded.authcheckdam.pdf) (last visited Jan. 8, 2013). See also Chelsea Phipps, *More Law Schools Haggle on Scholarships*, WALL ST. J., July 29, 2012 (reporting on increased willingness of law schools to grant generous scholarships).

37. I do not mean to imply here that shifts in the legal market documented by Bill Henderson and others have not also played a major role in the disruptions we are seeing. But I do claim that those shifts would be less disruptive if they were not occurring at the same time as the more basic shift in perspective that I describe here.

Thus, the ABA's rules and regulations are mere bit players in the drama. They may increase costs some, and they may even increase costs by more than the benefits they produce in ensuring well-prepared lawyers. But the costs would have gone up anyway given the broad societal shifts affecting education generally; the marginal effect of ABA rules was probably very small.<sup>38</sup> Law professors may be "greedy," but the main reason their compensation has gone up has probably not been because there was room to charge law students more, but because the compensation in the markets they tend to come from has gone up even more dramatically.<sup>39</sup> To compete in that market (and in the competitive market between law schools), law professor compensation was destined to go up. If legal education was still viewed as a public good rather than a private one, those extra costs would have been distributed in a different way. But in a private-goods world, law students are the ones who *should* pay for that high-quality labor. Intentionally misleading placement data may have fooled law students into paying "too much" for their legal educations. No doubt there were bad actors here, but claiming they have had an important effect on the whole legal education market is a much broader allegation. With all the information in the blogosphere today about the job prospects facing law school graduates, it would be hard now to claim that prospective law students are unknowing consumers. And yet, even with this better information, there were 49,000 first-year seats in ABA law schools last year, and 79,000 people who wanted to fill them.<sup>40</sup>

I cannot repeat too often that this is intended to be a clear-eyed view, not a dry-eyed one. There is much to mourn about where we

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38. See U.S. GOVERNMENT ACCOUNTABILITY OFFICE, HIGHER EDUCATION: ISSUES RELATED TO LAW SCHOOL COST AND ACCESS (2007) (finding that ABA requirements play only a minor role in increasing law school costs).

39. Law professors tend to be people who would be competitive for the best law jobs. Between 1997 and 2007, first-year salaries at the nation's best firms doubled from \$80,000 to \$160,000. Elizabeth G. Olson, *Dewey's Decline and the Rise of High-Risk Big Law*, FORTUNE, May 15, 2012, available at <http://management.fortune.cnn.com/2012/05/15/deweys-decline-and-the-rise-of-high-risk-big-law/> (last visited Jan. 8, 2013). Prospective faculty members would also pay attention to longer-term earning prospects. Profits per partner at the nation's 100 largest firms nearly doubled between 2000 and 2010, from \$741,000 to \$1,360,000. *Id.* Although both of these trends have moderated recently, so too have law faculty salary levels.

40. See LSAC Volume Summary, *supra* note 31.

find ourselves. We have always had problems with accessibility and affordability, especially for certain demographic groups. The shift from a public-goods to a private-goods perspective has aggravated those problems, and some of the “solutions” offered would aggravate them even more.<sup>41</sup> In the past, because of the subsidies that resulted from a public-goods perspective, the vast majority of students came out ahead on their investment in a legal education. Now, many more will come out behind. Providing adequate legal services for the poor proved very difficult even when new lawyers had much lower debt levels; now it will be even more difficult. A few law schools appear to be continuing to operate under a public-goods model.<sup>42</sup> In theory, it would be possible either for other schools to join them or for them to move to the private-goods model. I have my own sad prediction on which way that is likely to go.

This perspective casts doubt on the solutions that have been proposed to address our current situation. Because of that, it may be even more pessimistic than the other perspectives offered in this volume and elsewhere. First, this perspective suggests that we should be skeptical about whether we will or can return to a world in which various types of subsidies will permit almost all of our students to come out ahead. On that issue, law schools are subject to a broad societal shift in how education is viewed generally. That ship has left port for us and for the whole educational establishment, and it is not coming back. Second, many of the changes that have been suggested to address our current situation seem to me to be very good things to consider—changes to curricula, to ABA standards, to the rules for taking bar exams, etc.<sup>43</sup> But this perspective predicts that these

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41. See *infra* note 43.

42. Professor Tamanaha lists them near the end of his book and describes them as flagship state schools with protected markets. BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 184–85 (2012).

43. I am more skeptical of proposals to change the federal loan guarantee program. This program presents a complicated set of issues. (And, of course, it is inconsistent with the broad thesis of this Article that we have moved to a private-goods model; this program is an example of continued public investment in a legal education. But it is minor in the big scheme of things.) Proposals to reduce the program are intended primarily as a mechanism to encourage schools to ameliorate tuition increases. But at the same time, limiting the program might aggravate our current problems in a couple ways. For example, the proposals in practice might increase student debt by requiring students to pay more for their legal education through alternative (and

changes will not have a large effect on current trends. Those trends are driven by changing conceptions about the value of public investment in legal education and, again, that ship has sailed. Finally, the perspective indicates that 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. Heavy pressure is being placed on marginal law schools with high tuition. There are fewer law faculty positions now, and salaries are relatively stagnant. I certainly believe that we can and should do what we can to soften the blows and make the world better. But, for better or worse, this perspective tells us that while all our efforts can make some small course corrections, the tide is very strong.

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more expensive) financing options. Even if the suggested changes would not do that, they would be likely to decrease access disproportionately for certain obvious demographic groups.