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Embracing New (and Old) Ideas

James E. Daily*

I. INTRODUCTION

The basic form of legal education has remained unchanged for almost the entire existence of Washington University School of Law. Three years after our Law School's founding in 1867, Christopher Langdell first introduced case studies and the Socratic method to Harvard Law School, replacing lectures and textbook recitation.¹ By the end of the nineteenth century, the combination of the two—sometimes called Langdell's Method—began to be rapidly adopted by other law schools.² Washington University had partially adopted the method by 1910, and by the 1920s it had become the standard pedagogical method in American law schools, and it remains so almost a century later.³

Along with Langdell's Method of classroom education came many features of modern legal education: the three-year course of study, the requirement of a bachelor's degree for admission, written examinations, and education by full-time professors rather than practicing attorneys.⁴ But although Langdell introduced many of these ideas, they were not all adopted immediately.⁵

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1. Bruce A. Kimball, *The Proliferation of Case Method Teaching in American Law Schools: Mr. Langdell's Emblematic "Abomination," 1890–1915*, 46 HIST. EDUC. Q. 192, 194–95 (2006).

2. *Id.* at 192–93.

3. WASHINGTON UNIVERSITY, CATALOG OF THE LAW DEPARTMENT (ST. LOUIS LAW SCHOOL) 15 (1910); Kimball, *supra* note 1, at 192.

4. Kimball, *supra* note 1, at 195.

5. ROBERT B. STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 39 (2001).

Even after Langdell's innovations, law degrees were generally bachelor's degrees for another century.⁶ It was not until the early 1970s that American law schools completed the move from granting a bachelor's-level degree, the LL.B, to the J.D., with a concurrent rise in the expectation or requirement that applicants complete a bachelor's degree prior to entering law school.⁷ In the early twentieth century, many law schools—including Washington University—experimented with a four year course of study.⁸ And although the number of American Bar Association (ABA) accredited law schools has increased from 40 to 203 since 1923, a few states still allow bar admission via apprenticeship.⁹

These changes occurred in response to real or perceived market forces, often beginning with a few innovative law schools before widespread adoption. Historically, the forces in question were ones of increased demand for legal services and increased demand for training and credentialing of attorneys.¹⁰ The marketplaces for legal education and legal services are now facing two crises of *decreasing* demand. This has created a new Langdellian moment: an opportunity for innovative law schools to determine the future of American legal education. This Essay suggests looking to the past for one possible path forward: law schools should return to offering the LL.B, now as

6. Robert B. Stevens, *Law Schools and Legal Education, 1879-1979: Lectures in Honor of 100 Years of the Valparaiso Law School*, 14 VAL. U. L. REV. 179, 191-92 (1980).

7. David Perry, *How Did Lawyers Become "Doctors"? From the LL.B. to the J.D.*, PRECEDENT 26, 27-29 (Winter 2013).

8. Alfred Harsch, *The Four-Year Law Course in American Universities*, 17 N.C. L. REV. 242, 244 n.15 (1939).

9. *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 (last visited Jan. 29, 2017); NAT'L CONFERENCE OF BAR EXAMINERS & AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2016 8-9 (2016), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/ComprehensiveGuidetoBarAdmissions/2016_comp_guide.authcheckdam.pdf. It is notable that there were already 143 law schools by 1920, far more than would be accredited by the ABA in 1923. Stevens, *supra* note 6, at 194. The necessity of ABA accreditation is a modern idea, further bolstering Brian Z. Tamanaha's suggestion of allowing non-ABA accredited schools equal access to the bar. BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 176 (2012).

10. Stevens, *supra* note 6, at 193 ("everyone could agree that there was a need for better law schools to improve the wholly inadequate clerkship").

a four-year undergraduate degree, while making the J.D. the research-focused graduate degree it always should have been.

II. THE FIRST CRISIS: DECREASED DEMAND FOR LEGAL EDUCATION

The first crisis facing law schools is that enrollment is likely still significantly too high despite steady declines in recent years. In short, despite an approximately 30% decline in the number of admitted applicants from 2010 to 2015, more than a fifth of American law school graduates still do not find employment in a job for which a law degree is required or advantageous.¹¹ This problem has been discussed in detail elsewhere, especially by Washington University professor Brian Tamanaha in *Failing Law Schools*.¹² The trends that Tamanaha identified have held steady since the book's publication in 2012, as discussed below, yet law school classes remain sized for a market that no longer exists, has not existed for some years, and will likely never return.¹³

In 2015, the most recent year for which the ABA has published data, approximately 39,984 students graduated from American law schools.¹⁴ According to National Association for Legal Placement (NALP) statistics for the same year, of the 33,412 graduates reporting their job status to NALP, only 29,659 graduates reported finding full-time employment in a position classified as “bar passage required” or “J.D. advantaged.”¹⁵ Depending on the effect of reporting bias, between 11.3 and 25.9% of 2015 graduates are not finding full-time employment in a field for which having a law degree is required or

11. *Admitted Applicants by Ethnic & Gender Group*, LSAC, <http://www.lsac.org/lsacresources/data/ethnic-gender-admits> (last visited Jan. 29, 2017); NAT'L ASS'N FOR LEGAL PLACEMENT, *CLASS OF 2015 NATIONAL SUMMARY REPORT* (Aug. 2016), <http://www.nalp.org/uploads/NatlSummaryClassof2015.pdf>.

12. See STEVEN J. HARPER, *THE LAWYER BUBBLE: A PROFESSION IN CRISIS* (2013); Paul F. Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177 (2012); TAMANAHA, *supra* note 9.

13. William Henderson & Evan Parker, *The Diamond Law Firm: A New Model or the Pyramid Unraveling?*, <http://www.lawyermetrics.org/2013/12/03/the-diamond-law-firm-a-new-model-or-the-pyramid-unraveling/> (last visited Jan. 30, 2017).

14. *Class of 2015 Law Graduate Data*, AM. BAR ASS'N (Apr. 26, 2016), http://www.americanbar.org/groups/legal_education/resources/statistics.html.

15. NAT'L ASS'N FOR LEGAL PLACEMENT, *supra* note 11.

even advantageous.¹⁶ With 18.5% of employed 2015 graduates reporting that they are seeking a different job, this suggests that many graduates who did not find a full-time bar passage required or J.D. advantaged job would prefer to have found one.¹⁷ Even for those finding employment, with a median salary of \$64,800 per year and an average debt of over \$140,000 (and three years of opportunity cost), many of those graduates will not see a net economic benefit from attending law school.¹⁸

These poor employment results come despite five consecutive years of declining law school admissions, amounting to a 30% decline from 2010 to 2015.¹⁹ Over that same period, the percentage of graduates finding full-time J.D.-required or J.D.-advantaged employment rose steadily, from 82.6% in 2010 to 88.7% in 2015.²⁰ Although most of the improvement has been among those finding J.D. advantaged work (as opposed to work requiring bar passage), this suggests that steadily decreasing numbers of admitted applicants—and consequently decreased production of new law graduates—is indeed bringing supply closer to demand. The oversupply is still substantial, but at least the near-term solution is clear.

Although some may hope for an economic turnaround leading to a return to the boom years, there are few reasons to think that there will be a substantial improvement in the market for legal services soon. The Bureau of Labor Statistics predicts only a 6% increase in the job market for lawyers between 2014 and 2024.²¹ This likely reflects

16. *Id.* Employment status was not reported for 6,535 (or 16.3%) members of the class of 2015. The exact number depends on how many of the non-reporting graduates are employed full-time in bar passage required or J.D. advantaged jobs.

17. *Id.*

18. NAT'L ASS'N FOR LEGAL PLACEMENT, JOBS & JDS: EMPLOYMENT FOR THE CLASS OF 2015—SELECTED FINDINGS 3, <http://www.nalp.org/uploads/Membership/EmploymentfortheClassof2015SelectedFindings.pdf> (last visited Feb. 2, 2017) (reporting overall median salary of \$64,800 per year); Josh Mitchell, *Grad-School Loan Binge Fans Debt Worries*, WALL STREET J. (Aug. 18, 2015), <http://www.wsj.com/articles/loan-binge-by-graduate-students-fans-debt-worries-1439951900> (reporting average law school graduate indebtedness of \$140,616).

19. *Admitted Applicants by Ethnic & Gender Group*, LSAC, <http://www.lsac.org/lsacresources/data/ethnic-gender-admits> (last visited Jan. 29, 2017).

20. *Recent Graduates*, NALP, <http://www.nalp.org/recentgraduates>.

21. *Occupational Outlook Handbook: Lawyers*, BUREAU LAB. & STAT., <https://www.bls.gov/ooh/legal/lawyers.htm#tab-6> (last visited Jan. 30, 2017).

structural changes in the legal market: beginning in 2008, National Law Journal 250 firms have employed more partners than associates, marking an end to the decades-old pyramid structure common to law firms.²² For reasons discussed in Section III, the forces that have led to this point are likely only strengthening.

Addressing the realities of the market will likely require reducing the overall number of law students by another 15 to 25%. Accomplishing this without closing 30 to 50 of the 203 ABA accredited law schools is a significant challenge, but the history of legal education provides a possible solution, discussed in Section IV.

III. THE SECOND CRISIS: A SHRINKING JOB MARKET

The second crisis is the rapidly accelerating disruption of the market for legal services by consolidation, competition from non-lawyer providers, and automation. These forces were summarized by Richard Susskind as “the ‘more-for-less’ challenge, liberalization, and information technology.”²³

One of the quickest and most significant changes in legal practice has occurred in electronic discovery. In just two years, automated electronic discovery software (also called predictive coding) went from initial U.S. judicial acceptance in 2012 to being used by almost half of U.S. law firms and a third of U.S. corporations by 2014.²⁴ The FTI Consulting *Advice From Counsel* surveys of in-house counsel found that use of predictive coding rose from 27% in 2013 to 58% in 2015.²⁵ According to one model of discovery costs, assisted review saves approximately three-fourths of the time and 30% of the cost

22. Henderson & Parker, *supra* note 13.

23. RICHARD SUSSKIND, TOMORROW’S LAWYERS: AN INTRODUCTION TO YOUR FUTURE 3 (2013).

24. Moore v. Publicis Groupe, 287 F.R.D. 182, 182, 187, 192–93 (S.D.N.Y. 2012), *sub nom.* Moore v. Publicis Groupe SA, No. 11 Civ. 1279(ALC)(AJP), 2012 WL 1446534 (S.D.N.Y. Apr. 26, 2012) (first case allowing the use of technology assisted review); KROLL ONTRACK, 2014 EDISCOVERY TRENDS: INDUSTRY SURVEY RESULTS 4 (Oct. 2014), <http://www.ediscovery.com/2014-ediscovery-trends>.

25. KATE HOLMES, ARI KAPLAN & MIKE KINNAMAN, THE EMERGING E-DISCOVERY PLAYBOOK 9 (Feb. 2014), http://static.ftitechnology.com/docs/white-papers/advice-from-counsel_emerging-e-discovery-playbook.pdf.

compared to traditional manual review.²⁶ As assisted review becomes the standard approach, the small armies of contract attorneys that currently do the bulk of document review are facing steady declines in compensation.²⁷ Their jobs may soon be automated out of existence altogether: from 2014 to 2015, the market leader in electronic discovery reported a 21% increase in the use of assisted review.²⁸

A similar process is unfolding at virtually every level and type of legal work: mergers and acquisitions, contracts, bankruptcy, litigation, legal research, and traffic tickets, just to name a few.²⁹ Over 613 legal technology startups are already working to take their piece of the approximately \$275 billion that America spends on legal services every year, but few of these innovations are originating in law schools.³⁰ As a particularly telling example, a chatbot service called DoNotPay has assisted users in appealing \$4 million in parking fines in 160,000 out of 250,000 cases over twenty-one months in

26. CHRISTOPHER H. PASKACH, F. ELI NELSON & MATTHEW SCHWAB, *THE CASE FOR TECHNOLOGY ASSISTED REVIEW AND STATISTICAL SAMPLING IN DISCOVERY* (June 8, 2015), <http://www.umiacs.umd.edu/~oard/desi6/papers/paskach.pdf>.

27. Gabe Friedman, *As Data Streams Grow, Lawyers Look for New Ways to Find Facts*, BLOOMBERG LAW: BIG LAW BUS. (June 30, 2015), <https://bol.bna.com/as-data-streams-grow-lawyers-look-for-new-ways-to-find-facts/>.

28. *Id.*

29. Eric Rosenbaum, *Can Elite Law Firms Survive the Rise of Artificial Intelligence? The Jury Is Still Out*, CNBC (Nov. 17, 2016), <http://www.cnbc.com/2016/11/17/can-cash-cow-of-elite-legal-firms-survive-ai-the-jury-is-still-out.html> (automated review of documents in mergers & acquisitions threatens to upend the business model of large law firms); Karen Turner, *Meet 'Ross,' the Newly Hired Legal Robot*, WASH. POST (May 16, 2016), <https://www.washingtonpost.com/news/innovations/wp/2016/05/16/meet-ross-the-newly-hired-legal-robot/>; Sam Glover, *Casetext's CARA Takes the Search Out of Legal Research*, LAWYERIST (July 18, 2016), <https://lawyerist.com/121578/casetexts-cara-legal-research-shortcut/>; Bernard Marr, *How Big Data Is Disrupting Law Firms and the Legal Profession*, FORBES (Jan. 20, 2016), <http://www.forbes.com/sites/bernardmarr/2016/01/20/how-big-data-is-disrupting-law-firms-and-the-legal-profession/>; Samuel Gibbs, *Chatbot Lawyer Overturns 160,000 Parking Tickets in London and New York*, GUARDIAN (June 28, 2016), <https://www.theguardian.com/technology/2016/jun/28/chatbot-ai-lawyer-donotpay-parking-tickets-london-new-york>.

30. Richard Granat & Marc Lauritsen, *Teaching the Technology of Practice: The Top 10 Schools*, 40 L. PRAC. 44 (2014); Robert J. Ambrogi, *Legal Tech Startups*, L. SITES, <http://www.lawsitesblog.com/legal-tech-startups> (last visited Feb. 1, 2017); William Henderson, *Size of the US Legal Market by Type of Client*, LAW PROFESSOR BLOGS NETWORK: THE LEGAL WHITEBOARD, <http://lawprofessors.typepad.com/legalwhiteboard/2015/01/size-of-the-us-legal-market-by-type-of-client.html> (last visited Feb. 11, 2017).

London and New York.³¹ The application was not created by a lawyer, law student, or law professor, but rather a nineteen-year-old undergraduate engineering student at Stanford University.³² Law schools must adapt quickly or they will continue to be left on the outside looking in as the legal profession and marketplace change around them.

The legal market has fundamentally changed, and the disruptive forces already at work will ensure that the demand for traditional law school graduates will continue to stagnate or shrink.³³ There will be some areas of future growth—someone must write the software and design new business models—but the question is whether those jobs will be filled by law school graduates or graduates of engineering and business programs. The writing has been on the wall long enough that a majority of state bars have begun to take note, with twenty-seven states having adopted an ethical duty of technological competence and one state (Florida) now requiring continuing legal education for technology.³⁴ Law schools continue to ignore it at their peril.

IV. A WAY FORWARD

The historical fluidity of the larger structure of American legal education shows that law schools are capable of substantial change in short order. However, most of the changes today are happening in the professional legal field. Law schools will need to adapt to address

31. Gibbs, *supra* note 29; *The World's First Robot Lawyer*, DONOTPAY, <http://www.donotpay.co.uk/signup.php> (last visited Feb. 1, 2017).

32. Gibbs, *supra* note 29.

33. William Henderson, *Sea Change in the Legal Market*, NALP BULLETIN (Aug. 1, 2013), <http://www.jdsupra.com/legalnews/sea-change-90478/> (observing a 50% decline in associate hiring from 2002 to 2008); GEORGETOWN LAW CTR. FOR THE STUDY OF THE LEGAL PROF. & THOMSON REUTERS, 2017 REPORT ON THE STATE OF THE LEGAL MARKET 3–4, <http://static.legalsolutions.thomsonreuters.com/static/pdf/peer-monitor/S042201-Final.pdf> (last visited Feb. 13, 2017) (observing that “the past decade has been a period of stagnation in demand growth for law firm services[,]” with litigation demand in particular declining consistently since 2008).

34. Robert Ambrogio, *Another State Adopts Duty of Technology Competence — and Canada May Also*, LAW SITES (Mar. 8, 2017), <http://www.lawsitesblog.com/2017/03/another-state-adopts-duty-technology-competence-canada-may-also.html>; Victor Li, *Florida Supreme Court Approves Mandatory Tech CLE Classes for Lawyers*, ABA J. (Sept. 30, 2016), http://www.abajournal.com/news/article/florida_supreme_court_approves_mandatory_tech_cle_s_for_lawyers.

these changes and become active participants in the future of the profession.

For those schools willing to invest in adapting to an unavoidable future, there is an opportunity to become the model for twenty-first century legal education. There are at least three distinct levels of adaptation. The first is simply teaching students to use the tools of modern legal practice, as a few schools have begun to do.³⁵ This includes courses in foundational and emerging legal technologies, taught in an experiential, competency-based style.³⁶ For its part, Washington University is already at this level, with its Technology and Legal Practice course.³⁷ This is the new minimum, although many other schools are not yet meeting it, despite law students being in desperate need of technical training.³⁸ To be fair, many law firms are not yet meeting this standard, either.³⁹ But both new graduates and employers recognize a strong need for new law graduates to understand legal technology. A 2012 National Conference of Bar Examiners survey of newly licensed lawyers found that they ranked office technology, computer skills, and electronic researching very highly, above advocacy and all categories of substantive legal knowledge.⁴⁰ A 2015 survey by the Institute for the Advancement of

35. Gabrielle Orum Hernández, *Preparing Lawyers to be Practice-Ready in a Tech-Driven World*, LAW.COM, <http://www.law.com/sites/almstaff/2017/01/26/preparing-lawyers-to-be-practice-ready-in-a-tech-driven-world/> (last visited Feb. 12, 2017).

36. Kate Walter, *Six Ways Law Schools Can Make Students More Practice Ready*, THOMSON REUTERS (Jan. 3, 2017), <http://legalexecutiveinstitute.com/six-ways-law-schools-students/> (analysis of thirty in-depth interviews with third-year law students, law firm hiring managers, and new attorneys recommends more experiential learning and requiring proficiency with legal technologies in order to make law students 'practice ready').

37. Technology and Legal Practice is an experiential learning course (currently taught by the author) covering fundamental and emerging legal technologies such as electronic discovery, legal analytics, and practice management software.

38. Granat & Lauritsen, *supra* note 30, at 44 ("only a small number of schools have made a sustained commitment to [update their law practice management and legal technology courses]"); Casey Flaherty, *The Myth of the Digital Native*, 3 GEEKS & L. BLOG (Oct. 5, 2015), <http://www.geeklawblog.com/2015/10/the-myths-of-digital-native-part-1.html> (law students routinely fail a test of basic office technology skills).

39. Catherine Ho, *Lawyers, Could You Pass This Test?*, WASH. POST (Feb. 23, 2015), <https://www.washingtonpost.com/news/capital-business/wp/2015/02/23/lawyers-could-you-pass-this-test/> (of the first nine firms to take the Legal Technology Audit, all of them failed).

40. *The Bar Examiner*, Vol. 83, No. 3, Sept. 2014, NAT'L CONF. BAR EXAMINERS, http://ncbex.org/assets/media_files/Bar-Examiner/articles/2014/830314-abridged.pdf; NCBE

the American Legal System of over 24,000 lawyers found that 58.1% of respondents considered the ability to “learn and use relevant technologies effectively” to be immediately necessary for new attorneys, with 33.5% responding that it is still necessary, just in a somewhat longer time-frame.⁴¹ A 2016 Deloitte survey of in-house counsel found that “using technology appropriately” is the fourth biggest challenge in legal departments today.⁴² There is a clear ethical and economic mandate for students to be better equipped in this area, which is still underserved by both law schools and law firms.

The second level of adaptation requires moving from teaching the tools of modern legal practice to creating them. A few law schools are working at this level already. For example, Stanford has created a Center for Legal Informatics, called CodeX, which is a partnership between the Law School and the Department of Computer Science.⁴³ Illinois Tech Chicago-Kent has its Law Lab, directed by Daniel Martin Katz.⁴⁴ In addition to offering courses in law and technology, CodeX and the Law Lab also produce commercializable research. The legal search and analytics companies Ravel and Casetext both grew out of CodeX, while Katz and Michael Bommarito co-founded LexPredict, a legal technology consultancy.⁴⁵ Vanderbilt Law School’s Program on Law and Innovation has recently expanded into this more innovative and entrepreneurial space with its first legal

Job Analysis, NAT’L CONF. BAR EXAMINERS, <http://www.ncbex.org/publications/ncbe-job-analysis/> (last visited Feb. 1, 2017) (raw data).

41. ALLI GERKMAN & LOGAN CORNETT, FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT (July 2016), http://iaals.du.edu/sites/default/files/reports/foundations_for_practice_whole_lawyer_character_quotient.pdf.

42. DELOITTE, FUTURE TRENDS FOR LEGAL SERVICES 5 (June 2016), <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Legal/dttl-legal-future-trends-for-legal-services.pdf>.

43. CODEX, STAN. CENT. FOR LEGAL INFORMATICS, <https://law.stanford.edu/codex-the-stanford-center-for-legal-informatics/> (last visited Feb. 1, 2017).

44. L. LAB, <http://www.thelawlab.com/> (last visited Feb. 12, 2017).

45. *Who We Are*, RAVEL L., <http://ravellaw.com/who-we-are/> (last visited Feb. 1, 2017); *About Us*, CASETEXT, <https://casetext.com/about> (last visited Feb. 1, 2017); *Current CodeX Affiliate Projects*, CODEX, <https://law.stanford.edu/codex-the-stanford-center-for-legal-informatics/codex-projects/#sidenav-current-codex-projects> (last visited Feb. 12, 2017); *Our Team*, LEXPREDICT, <https://lexpredict.com/> (last visited Feb. 12, 2017).

hackathon scheduled for later this year.⁴⁶ These programs remain the exception, however.⁴⁷

The third level requires going further, fundamentally reshaping legal education to adapt to the demands of the market: faster, cheaper, more accessible, connected, interdisciplinary, and international. In *Failing Law Schools*, Brian Z. Tamanaha makes several recommendations, including shortening law school from three years to two and relaxing the expectation that law school applicants first complete an undergraduate degree.⁴⁸ Together with the observation that law is an undergraduate degree in most countries, Tamanaha comes close but does not go far enough: American law schools—at least those associated with universities—should return to offering the LL.B, now as a four-year undergraduate degree, while making the J.D. the research-focused graduate degree it always should have been.

There is historical precedent for this approach, there are relatively few administrative barriers, and the benefits to both students and law schools are numerous and substantial while the costs are negligible.

Historically, the LL.B was the standard law degree until the 1960s, typically received as a first degree, albeit after some post-secondary education in other subjects.⁴⁹ But as a result of this history—and the thousands of practicing attorneys who graduated from law school before the J.D. became common—an LL.B meets the requirements of the bar in many jurisdictions in the United States.⁵⁰ In many jurisdictions, there is no requirement that applicants to take the bar have received a separate undergraduate degree.⁵¹

46. MUSIC CITY LEGAL HACKATHON, <http://www.mclegalthackathon.org/> (last visited Feb. 12, 2017).

47. Hernández, *supra* note 35.

48. TAMANAHA, *supra* note 9, at 173.

49. Perry, *supra* note 7, at 26–28.

50. COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2016, *supra* note 9, at 8–9; see, e.g., NY Rules of the Court § 520.3(a)(1) (requiring only that the applicant graduated with “a first degree in law from an approved law school”); California Bar Rule 4.26(A) (July 2007) (applicant must have received a JD or LL.B from an approved law school); Missouri Rules Governing Admission to the Bar 8.09(b) (allowing LL.B holders admission to the Missouri bar by taking the Uniform Bar Examination in another state).

51. COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2016, *supra* note 9, at 1.

There are substantial benefits to students as well, particularly as compared to other reform proposals. Switching to a four-year undergraduate program gives students three “bites at the apple” to find summer employment in the legal field, while cutting the J.D. program to two years—as Tamanaha recommends—would leave students with only one shot at building their resume and gaining all-important practical experience and training. And perhaps of paramount importance to students, completing their professional education as an undergraduate would save the average student hundreds of thousands of dollars in loan debt and three years in opportunity costs.

The two-year, 747-hour J.D. program that Tamanaha recommends could easily be subsumed into a four-year undergraduate program, leaving ample time for the foundational liberal arts courses that are typically part of an undergraduate degree. For example, the College of Arts & Sciences at Washington University requires undergraduates to complete a total of 120 units, of which only 48 are given over to liberal arts requirements.⁵²

The connection to the wider university setting enables a broad range of interdisciplinary courses and programs, including second majors. Students would be free to switch to and from the law program as with any other course of study rather than succumbing to the sunk cost fallacy or escalation of commitment, leading to significant levels of regret.⁵³ An undergraduate law degree could be more flexibly combined with other graduate degrees: an MBA for the future legal consultant, an M.S. in accounting for a tax specialist, or a J.D. for a future law professor or judge.

For the law schools themselves, returning to offering an undergraduate degree would mean that the J.D. could become what it should always have been: a research or theory-focused advanced

52. *Degree Requirements*, WASH. U. ST. LOUIS, <http://bulletin.wustl.edu/undergrad/artsci/requirements/> (last visited Feb. 1, 2017) (Washington University’s liberal arts requirements are made up of the “basic skills” and “area requirements”).

53. GALLUP, INC., *LIFE AFTER LAW SCHOOL* 24–25 (2016), http://www.accessgroup.org/sites/default/files/life_after_law_school_2016.pdf (among those graduating from law school between 2000 and 2015, 24% disagreed or strongly disagreed with the statement “if I could go back and do it all over again, I would still get a law degree”; 19% disagreed or strongly disagreed with the statement “my law degree was worth the cost”).

degree, not a practical professional program. As Tamanaha notes, efforts to ‘patch’ the J.D. by adding more clinical education are a fundamentally inadequate solution.⁵⁴ The better solution is to move away from having a one-size-fits-all degree for future lawyers, judges, and law professors. These fundamentally different careers require different training.

Reorganizing the J.D. program as a more conventional research-focused degree would spur law schools to be centers of innovation, producing the new technologies that will drive the future of legal practice rather than following in others’ footsteps. As a potential practical side-benefit, the commercialization of such technologies can often be financially rewarding for the schools in question.⁵⁵

Having a more conventional graduate program would also supply law schools with teaching assistants for undergraduate law courses, enabling schools to realize the cost-savings that other schools and departments have enjoyed for many years. Finally—and this should be reason enough, if we may dispense with the notion of American exceptionalism—a four-year undergraduate law degree is the standard practice in most countries.⁵⁶

The law school bubble has long-since burst, and law schools must adapt to a market that has and will continue to change. The question is which schools will take the lead, which will be swept up by inertia, and which will be swept away entirely. In this case, law schools may best lead the way forward by first looking to the past.

54. TAMANAHA, *supra* note 9, at 173.

55. Tom Rodgers, *University Technology Earned \$16 Million in 2016*, SOURCE (Jan. 9, 2017), <https://source.wustl.edu/2017/01/washington-university-technology-earned-16-million-2016/>.

56. See, e.g., TAMANAHA, *supra* note 9, at 173; Kenneth G. Dau-Schmidt & Carmen L. Brun, *Lost in Translation: The Economic Analysis of Law in the United States and Europe*, 44 COLUM. J. TRANSNAT’L L. 602, 614 (2006) (law diploma is an undergraduate degree in France and Germany).