Where Are We Going: Academic Finance 101 and the Changing Business of Law Schools

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Author: ***Michael Madison, University of Pittsburgh School of Law***

[1] What this is

This document attempts to demystify the opaque financial and cultural systems that drive US law schools today. It takes as a given that many (but not all) law schools are under enormous financial pressures, for reasons that relate to financial pressures on the legal profession as a whole (external factors, in other words) but that also relate to the evolution of structures of higher education and legal education through history (internal factors). Among practicing lawyers and even many law professors, law schools are, proverbially, rolling in dough. For reasons that will be explained below, that isn't true. Law schools are awash in red ink. The questions are why, and what might be done about that?

Who need answers to those questions? Who might care? The answer is: anyone who wants to stabilize and animate a sustainable sector of "US legal education" going forward. I don't write "law schools"; the phrase "law schools" is useful for historical reference but may turn out to be too limiting looking ahead. The future of legal education, and by extension the future of "lawyers" and "law" itself, depend in significant respects on understanding and addressing the economic infrastructures of its key institutions – education, practice, planning, dispute and conflict resolution.

To many present and former law deans and other legal leaders, much of what follows is likely to be uninteresting, simply because this is the world that they have been living in. It may be – should be – illuminating to many law professors, who are often understandably comfortable ignoring the marketplace logic of their places of employment. It may be – should be – illuminating to provosts and other senior academic leaders whose domains include law but also cover larger, and sometimes very large, universities. And it should be informative for present and future law school donors, law school alumni, philanthropists, and members of the profession generally.

[2] The big takeaway

Financial stresses in legal education today are systemic and longstanding, not merely local and recent. Local fixes can't solve the system's problems; it's not possible for a particular law school to map a pathway to sustainability simply by figuring out how to balance its budget. Both individual institutions and the educational sector as a whole confront questions about priorities and resource allocation that they have deferred for a very long time.

Why? We are witnessing structural change, not only incremental evolution, and not only a financial crisis of the moment. Law schools are at the end of what I call "peak legal education" and "peak legal profession," both in terms of professional opportunity for law graduates and for law faculty and also in terms of the supply of financial resources for universities and law schools.

I learned as a law student that understanding the financial logic of an organization is key to understanding the character of one's own professional opportunity within it. I spent nearly 10 years in private law firms, have served as a full-time academic lawyer for 25 years, participated in a half-dozen searches as a finalist for law school deanships (unsuccessfully in all cases – fortunately, it turns out), and spent a dozen years in senior volunteer leadership at my Ivy League alma mater. Much of what follows is based on my own observations as well as on years' worth of conversations with present and former law deans, other academic leaders, senior practitioners, entrepreneurs, philanthropists, and other professionals. None is based on inside or confidential information. There is a research-based foundation for all of it; sources are listed at the end of the document.

Professional worlds for lawyers and legal institutions (law firms, law departments, NGOs, courts and other dispute resolution systems) are changing rapidly and dramatically in some ways and slowly and tectonically in other ways, and those changes are feeding back into the demand for legal training. Elite schools mostly continue to thrive. Schools in the mid-range and below mostly are being challenged to justify their existence, including both curricular and research programs.

Conceptually and operationally, we may be in the early stages of a foundational re-set for law schools and universities, both.

Should we be worried about what that portends? Legal futurists are guardedly optimistic about the future of law, lawyers, lawyering, and justice, looking at a (roughly) 10-year time horizon and looking mostly at big moves by private legal services providers (firms and LegalTech providers). But they are also relentlessly pessimistic about the adaptive capacity of current educational, judicial, and regulatory (lawyer licensing and certification) systems. Building a new set of law-themed institutions, fit for 21st century purposes, will be difficult and, in all likelihood, painful – if it can be done.

[3] What follows

The first part of the document consists of an abbreviated history of US law schools, focusing primarily on programmatic considerations and on supply and demand questions. How did we get here, institutionally speaking, and how does history constrain the path forward? Much of this story foregrounds the role of prestige and status in building the modern edifice of legal education.

The second part is predominantly forward-looking and consists of a brief summary of the economics of US law schools, with an eye to the economics of universities generally. This focuses

narrowly but critically on the second of the two pillars of institutional formation and change: after prestige, there is money.

All of it is simplistic and unnuanced. Undoubtedly many readers will be tempted to think, "but that doesn't describe *my* [or our] law school." That's a justified reaction in almost all cases; local conditions vary a lot, and below I've addressed some of their key dimensions. But the point here is to describe the core of the basic model that defines essentially all law schools today, the framework from which all local variations depart – often, only modestly. That's the reason for the lack of nuance. My central and simple observation is that regardless of idiosyncratic details for specific schools, the current and future state of any US law school – and thus, all of US legal education – is determined to a large extent, though never entirely, in the context of these two, intersecting narratives.

Because of the contemporary relevance of historical conditions, on the whole the summaries below are composed in the present tense, rather than in the past tense.

[4] Part 1: A history of US legal education

[a] The takeaways

1. Systems change. Models change. They always have. There is no longstanding institutional tradition of what legal education "is" or "should be." There is no true "traditional" model of legal education that any current law school might aspire to, and no true "balanced" or "secure" program that assures that incoming students are always properly trained to begin professional careers.

2. Systems both drive and anchor change. Whatever ails law schools today, it is not the product of errors and omissions during the last 5 years, or 10 years, or 15 years. There are only history and systems to go with individual actors. Law schools are parts of systems. In those systems, there are internal drivers of legal education supply (faculty, universities) and outside drivers of legal education demand (employers in markets).

3. In evaluating and designing systems, distinguish goals and outputs (lawyers with positive effects in society) from methods and inputs (curricula, pedagogy, bar preparation and passage, accreditation and licensure). For both, there are choices: choices to persist in the status quo, to adapt in evolutionary ways, or to make larger, structural changes. There are choices as to means (admitting students, building a curriculum and a faculty, paying for the program) and as to ends (graduates beginning careers, successfully helping clients and communities, building stable careers, advancing interests in justice or the rule of law).

[b] A beginning: the economic and institutional settlement of US legal education from 1870 to the 1970s

It begins with Harvard. Christopher Columbus Langdell and Harvard Law School (HLS) innovate the model for what becomes the universal mode of US legal education: law as a graduate degree taught in an organizationally separate law school, staffed by full-time "permanent" (that

is, tenured and tenure-stream) faculty. An undergraduate degree is required for incoming students, and "the case" is established as the core unit of teaching and scholarly analysis, the key input into "the case method" as an epistemological model for "law." Between 1870 and the early 1920s, contests over competing models of legal education are fought locally, in the American Bar Association (ABA), and the Association of American Law Schools (AALS); the Harvard model wins out. Partly, the reasons are exclusionary; the bar prioritizes a white, male, Protestant demographic. Partly, the reasons are inclusionary; Harvard is perceived to be the highest status, most elite university in the US, if not the world. To operate a law school on the Harvard model is to partake of some of Harvard's ambition and intellectual distinction. Essentially all US law schools now follow the HLS template. To adapt and repeat a well-worn scholarly phrase, we are all Langdellians now.

Most analysis and criticism of the Langdellian model has focused, for decades, on its conceptual content. Its intellectual and pedagogical "infrastructures" are simultaneously fixed (unchanging) and fluid, in that they have been married, over time, to various intellectual fashions: Legal Realism. Law and Economics. Critical Legal Studies. And more.

Here, I focus instead on its original organizational and financial logics, which survive well into the 20th century.

1. The fixed costs of the Harvard model are high; its variable costs are low. The model settles its fixed costs premise based mostly on compensation for full-time faculty, who are recruited largely from the ranks of would-be (and presumptively highly compensated) private lawyers; faculty compensation (and compensation of all types) dominates the budget of the Harvard model law school. ABA accreditation requirements and AALS membership rules lock in those fixed costs. During the 1910s and 1920s, they squeeze out non-HLS-style schools that operate using lower fixed costs and that serve women and minorities. Those older YMCA / Downtown / night / distance / non-HLS-style schools shrink substantially in number and size or disappear entirely.

2. Despite the modern reputation of law schools among many practitioners and judges as havens for theory and scholarship detached from day-to-day law practice, from an economic standpoint the Harvard model anchors legal education in a teaching-first, "trade school" posture. Even at Harvard itself, substantive expectations as to faculty scholarship are modest, in terms of quality, quantity, and faculty time.

3. The explanation for the teaching-first posture lies simply in the fact that Harvard-style education operates as a "mass production" or "mass education" system supplying initiated but unfinished "raw" product to the practicing bar. The "mass education" LLB/JD production model has a handful of key, common elements: single professors teaching large classes, an emphasis on analytic training to the exclusion of all else, and few exams or other assessments. Private law firms, as the primary market for Harvard-style graduates, build training systems inside the emerging Cravath model of law practice to "finish" HLS-style graduates.

4. Faculty "research" and "scholarship" in the Harvard model is heavily doctrinal and narrow, to the extent that research and scholarly expectations exist at all. This does not

differentiate the law faculty substantially from other faculties; faculty research and scholarly expectations across the university are still in formation.

5. Licensure of practitioners follows the Harvard model. The mass education model gets baked into bar exams administered by state authorities led by members of the private bar, which adopt HLS-style assessments.

6. The university pays; the law school is not self-supporting. The HLS model is financially fragile, in that it depends on tuition and sustained student enrollment. Harvard itself initiated the Langdellian system long before Harvard University started to grow a substantial university-wide endowment, and even when Harvard's endowment swelled, the university rarely directed fundraising into its law school at the same rate that it supported other Harvard units. Well into the 1950s, even HLS didn't cover its costs. And Harvard's endowment dramatically outpaced that of all other universities well into the 1980s, both in size and growth rate. Universities emulate HLS at the cost of significant financial precarity.

[c] The "golden age": 1970s to late 1990s – the supply side

The Harvard model for law schools matures and is institutionalized, organizationally and economically, amid the construction of the post-war research university. Research and teaching in the higher education environment develop in parallel with and feed into the growth of the administrative state from the early 20th century onward and its counterpart in managerialism in the private sector. Through the middle of the 20th century, law schools, law faculties, and law graduates actively participate in and benefit from increasingly elaborate, hierarchical government and market institutions and systems.

After World War II, the federal government dramatically steps up the scale and pace of its funding for scientific research in both natural and social sciences, leading to what is often referred to as a "golden age" of research universities that lasts until the early 1980s and the first Reagan administration. In that context, as a discipline not anchored in modern "empirical" research, law largely is on the institutional outside, looking in. To central administrators, law schools and their low scholarly expectations suffer by comparison with both humanities and social science peers. Law schools and law faculties themselves envy their colleagues elsewhere on campus, who are increasingly flush with research cash. Motivated by both concerns, meaning competitions for budgets and for status, law schools and their faculties lean away from their "trade school" origins and lean into new identities as research-based social science institutions. University support for law school expands via larger budgets. Implications for the supply of legal education include:

1. New races for faculty talent. Like all professionals, law professors had long (but only occasionally) relocated from job to job, from school to school. Full-time faculties now expand in multiple ways, with new understandings of who should be hired, and how: law faculties appoint growing numbers of members with "national" and doctoral credentials; priority and resources are allocated to more and different forms of legal scholarship; schools compete in an expanded market for lateral hiring. Research centers in law schools emerge, partly as a talent recruitment and retention strategy.

2. New races for student talent. Law schools expand opportunities for women and non-white students. Post-Watergate (1972-1974), and post-"The Paper Chase" (1973), law gets sexy.

3. Program development accelerates (and with it, faculty rent-seeking). Legal writing programs and expanded law clinics arise from social justice movements (via both pressure from outsiders and pressure from below, searching for ways to improve the legal system) and also out of the bar (via pressure from insiders and pressure from above (e.g., the MacCrate Report (1994)), wanting to maintain the system and delegate training functions from law firms to law schools). Pressures from the bar dominate. Law faculties start to develop silo-specific identities: classroom, legal writing, clinical.

4. Monument building takes off. Expanded budgets are institutionalized via new "modern" law buildings, faculty chairs, and dedicated line items for specialized programs, including centers and clinics.

[d] The "golden age": 1970s to late 1990s – the demand side

The dramatic expansion of the administrative state and of the hierarchical, managerial corporation beginning after the turn of the 20th century produce the need for larger and larger numbers of new lawyers and differently skilled lawyers, particularly in the private sector. The apotheosis of those developments is observed during the last decades of the 20th century, overlapping in part with the end of the Cold War, the emergence of new patterns of economic globalization, and the emergence of the internet as a dominant communications and commercial medium. This is "peak legal profession"; lawyers' status and power in the US may never have been higher. Implications for the demand for legal education included:

1. The world and the market need lots and lots of lawyers. The legal profession balloons, both absorbing growing numbers of new graduates and encouraging large numbers of college graduates to go to law school. The GI Bill (1944-1956) and education deferments during the Vietnam War accelerate student enrollment. Tuition revenue for law schools goes way up as law school enrollments expand.

2. Regional and elite/non-elite segmentation. National law schools dominate labor markets for US government lawyers and for large law firms in major cities. Regional and local law schools dominate labor markets in their own sub-major geographies. Labor markets for new lawyers are relatively stable but also relatively static.

3. Private law firms grow dramatically. The private law firm market expands rapidly during the 1970s via leverage, both accelerating demand for junior lawyers to feed the Cravath model and stretching lawyer incomes at the high level in ways that make elite lawyer status economically competitive with – and thus attractive relative to – senior status in business.

4. Comfortable careers for lawyers even outside of large firms. Lawyers in large law firms who are not promoted spill over into smaller firms, solo practices, government service, and other parts of legal life.

[e] The "golden age": 1970s to late 1990s – the evolution of new equilibria

Netting out supply-side and demand-side implications, the economic and status-related equilibria defined by the "golden age" of the legal profession and law schools include a number of key elements that set the stage for what happens next.

1. Some things change: student numbers go way up. Expanding professional opportunities for lawyers are baked into student expectations, sustaining student demand, via media and via pre-law advising. This is "peak legal education," derived from the post-WWII economic boom and the golden age of higher education.

2. Some things remain the same: the cost of running a mass education law school remain comparatively stable. The high fixed costs of operating law schools increase as faculties increase in size (i.e., compensation for permanent faculty), but those costs are distributed across larger student bodies, via large-enrollment classes and lecture-based or light "Socratic" teaching. and amortized over extremely long periods (via tenure, and via capital investments in facilities). Operations continue to carry modest variable costs (staff costs, library operations, and relatively low amounts of financial aid).

3. The bovine metaphor appears. HLS-style law schools are "standardized" on what is termed the "cash cow" model: a reliable and plentiful supply of students comes in, are taught a few things by a comfortable faculty subjected to modest teaching expectations, and reliably graduate in large numbers to private law firm jobs.

4. Margins are high. Law schools now generate more revenue than they need to sustain and "grow" their operations in a competitive market.

[f] Hierarchy and fragility: Late 1990s to 2010, more or less

USNews introduced its ranking system in the late 1990s, formalizing what had previously been a word-of-mouth system among prospective students and faculty for determining which schools, particularly at the elite level, were "better" than others. The USNews system creates the perception of status as a scarce resource for lawyers, law students, law professors, and law schools, precisely when money, student demographics, large law firm hiring, and novel law practice technologies (particularly computerization at speed, scale, and relatively low expense) are preparing to create conditions of actual scarcity of opportunity in the legal education and legal profession markets. Computerization and computer networks and their uses in law mean that law (like other professions) starts to become explicitly an information business. Lawyers are becoming gatekeepers for public goods rather a business about human bodies, books, and buildings.

The rankings formula evolves, first over years and then from year to year, but the effects of the shift to abundant legal information and scarce status and opportunity are consistent. Those include:

1. A race to prestige for everyone. This is correlated (like all of higher education) with history, money, and power. Faculty compensation and student tuition are signals of quality, exclusivity, and opportunity to access high levels of professional status. Students

pay to play; tuition (the nominal price of access to legal education) goes way up. And the race for faculty talent gets expensive, too.

2. Offsetting (but only partial) cost reductions for students, as tuition discounting follows competition for student talent. Students at different LSAT levels learn to play law schools for money. The race for student talent gets expensive for law schools, as financial aid budgets swell.

3. Soaring student debt. The race for student talent gets expensive for students, too, despite tuition discounting and other financial aid, as they chase prestige and the opportunities that prestige seems to provide.

4. New and deeper creaks and cracks in the fragile law school budget. The "cash cow" metaphor starts to break down as student enrollment numbers stay high but student revenue drops relative to those numbers. Variable (operating) costs go up, with added staff and more specialized faculty. Fortunately, opportunities for law firm jobs for new graduates remain largely stable, now organized rhetorically in the new term "Big Law" (or "BigLaw").

[g] Beyond a tipping point: 2010 or so to the present

The Great Recession of 2008 exposes significant underlying flaws in the basic HLS-prompted law school model, motivating a renewed round of hand-wringing by law professors and deans about the perceived mismatch between what law schools teach students and what the market for new law graduates demands. On the ground, evidence of institutional fragility includes:

1. Legal profession market conditions deteriorate, a trend that starts before the Great Recession and that accelerates considerably during 2008-2010. Large private law firms stop hiring large numbers of JDs, largely in response to large corporate clients pushing back on the high margins implied by outside counsel billing models and pushing forward with their own technology-based substitutes for junior lawyer labor. That drives large numbers of Big Law-eligible students out of larger cities and into mid-sized and smaller cities, where they compete with local law graduates. The deterioration cascades downward, slowly. The heterogeneity of the labor market grows; regional and local law schools start to lose their traditionally dominant place in supplying new lawyers to nearby communities. "Standard" legal education based on the Harvard "mass education" model starts to appear less obviously useful across the entire profession.

2. Pre-law advising starts to catch on. Pre-law advising learns that the legal industry is not the safe, secure bet for students that it previously appeared to be. Also, alternative career paths in LegalTech and other alternative legal services providers (eventually consolidated under the acronym "ALSPs") suggest the idea that they offer fewer opportunity costs and greater career upsides than classic Big Law pathways. As pre-law advising absorbs the changing economics of legal careers, "justice-oriented" law students (goal: to make the world better) start to dominate "business-oriented" law students (goal: to build stable status-based careers) among incoming first-year students.

3. Total law school student enrollment declines significantly. The total JD graduating population peaks at 46k in 2013 (traditionally, enrollment climbs in a recession); today (2023 and 2024) the total graduating population is roughly 35k students per year.

4. As student numbers go down, the legacy equilibrium that defines economic sustainability for law schools under "peak legal education" takes a hard hit. Law schools still rely on a high fixed cost, low variable cost model carried over from the Harvard origins of "mass education" and the "cash cow" golden age of plentiful students. But there are fewer students, and there is aggressive tuition discounting. The Great Recession (predictably) delayed retirements of senior faculty; the COVID pandemic coincides with a start of a wave of turnover among that tier of expensive labor. Still, the law school budget is strained to the breaking point.

5. Law schools shrink. The forecast circa 2010, as part of the Great Recession, was: law schools will close! Some accredited law schools do close; some accredited law schools lose their accreditation. Also, for profit schools come and go, and some law schools split up, merge, and even do both. A handful of new law schools open. But on the whole, instead of closing, many law schools contract. The COVID pandemic allows many schools the relative luxury of deferring questions about replacing retiring faculty; virtually all hard questions about budgets are paused. As of 2024, it appears that many law schools are returning to 2019 financial patterns, meaning replacing teaching staff based on the premise that the school should preserve the institution's (smaller) size and its legacy economic model. No one now forecasts widespread (voluntary) law school closures.

6. The effects of institutional contraction are unevenly felt. Because shifts in labor markets for new JDs are unevenly distributed both geographically and demographically within the profession, most law school contraction is below the elite level. In multiple urban areas (especially in the eastern US) and in multiple regions (especially in the middle and western US), markets that previously offered an enrollment/new graduate employment equilibrium that supported two or even three economically sustainable law schools (or in a few cases, more), that same number of law schools operating with reduced enrollments are looking at substantial financial difficulty even as placement percentages remain relatively high. Cities or regions where two or three law schools operate today may be looking at a future with one or two law schools.

7. The future hits harder. Big changes in demand for lawyers in the legal industry, the legal profession, and other legal institutions suggest the need to imagine different teaching/training modalities. The HLS mass education model is no longer functional for all lawyers in training, either because not all new lawyers need to be initiated via extensive HLS-style analytic training or because not all lawyers need to be initiated in analytic skills by human instructors, or both.

[5] Part 2: A summary of law school and higher education economics

Part I of this document is largely a historical review, one that leans heavily on patterns of status and prestige as explanations for the institutional shape of law schools and US legal

education. This Part II focuses more attention on the future, laying out opportunities and limitations associated with legal education in the context of its higher education environment.

[a] The takeaways

1. Student quality is a variable, not a given, which means that growing the pool of tuition revenue by increasing student numbers or reducing financial aid (including discounting) likely means diluting the quality of the student body, leading to reduced rates of employability, bar passage, and possible reputational consequences and worse. There are few practical ways to increase tuition revenue associated with traditional JD students without compromising other aspects of the existing program. Likewise, it is impossible to maintain consistent student quality while increasing the population of students – without spending lots of money. "Balancing the budget" for "ordinary" law school operations is fighting the tide of structural deficits. The challenge is to secure sustainable alternative sources of funding, either internally (via state or university subsidies, and/or via net revenue from new law school programs at scale) or externally (cultivating massive gifts and grants).

2. Because the amount of "standard" tuition may be limited by the need to maintain student quality, alternative revenue sources and captive revenue sources matter a lot to the sustainability of a 21st century law school. BYU Law is not suffering; it has a functionally captive prospective student population. Texas A&M Law has thrived in recent years because it has committed to a massive expansion of online certificate education at the law school, especially in business law subjects.

3. There are hard questions ahead about reconciling competing goals and priorities and about who is making decisions about priorities and how. Priorities that came to the fore during the "golden age" of legal education are now on the table as possible question marks. What becomes of clinical education, which is vastly more expensive to support than Harvard-style "mass education"? What happens to faculty research and scholarship?

4. What about the future of law, of lawyers, and the legal profession, and should changes on those fronts influence what legal education looks like? Law schools need to significantly modernize their curriculum and their faculties. Other forms of legal education may turn out to be useful and effective. Without adaptation, and perhaps even substantial revision, law schools may face irrelevance, an exodus of prospective students, or both. Even bar examiners are re-examining some the premises of lawyer licensing, although in mostly trivial ways – so far.

[b] The university budget environment: where the money comes from

A handful of US law schools operate on a stand-alone basis, but the vast majority exist in the context of larger organizational and budget imperatives and concerns. No discussion of the future of legal education can overlook their shadows. Important considerations begin with the following:

1. Where does the university get its own money? University revenue sources fall into three broad categories: (i) tuition and student fees; (ii) endowment income; (iii) federal sponsorship (research grants) and state subsidies (allocations).

2. Tuition and fees are universities' primary sources of discretionary revenue, yet they are fragile sources for reasons akin to reasons that challenge law school's tuition income: a declining pool of prospective students, given demographic trends, and concerns over affordability and student debt relative to economic payoffs of the college experience.

3. Endowments offer universities financial stability over time, but only a handful of private colleges and universities, and an even smaller number of public universities, rely on substantial endowment income. Endowments are difficult and time-consuming to build and take many years to throw off an amount of income that offers meaningful support to operations.

4. State support is eroding. Flagship public universities may receive 5%-10% of their annual operating budgets via state appropriation or allocation, down from 15%-20% as recently as 20 years ago. The optics of that small financial piece remain important; public universities may be reluctant to take the step of forgoing what may be a modest amount of money and go fully "private," because they worry about sacrificing years of accumulated community goodwill that brings, among other things, a steady supply of new students. Yet the politics of getting that slice of public support are increasingly fraught.

5. Universities have enormous fixed costs (physical plant, faculty compensation), face practical limits on their ability to raise tuition, and cultural/historical limits on modernizing their programs. Tenure-stream faculty are expensive and inflexible; contingent faculty are much less so.

6. How does this matter to law schools? The effects vary. At "law is a small fish in a big pond" universities, law schools tend to be the first to suffer and the last to feed. Why? They contribute little to the university in economic terms (they are money sinks; the "cash cow" model is mostly at an end), and little to the university in terms of intellectual engagement or scholarship metrics. At "law is a big fish in a smaller pond" universities, law schools may be higher fiscal and programmatic priorities. Law faculty often hold on to the hope that central university administrators will continue to underwrite the law school's budget (including possible) operating losses on the assumption that the administrators share the faculty's belief that the law school offers "prestige value" to the university. In the current economic climate for higher education, there is little data to support that assumption.

[c] Structural deficits and operating deficits explained, with attention to law schools

Drilling into some accounting details helps to paint a slightly richer portrait. The following terms and concepts relate to how money comes in to a law school and how a law school spends money over a typical budget year.

1. *Fixed costs* are things that the law school has relatively little control over but that constitute by far the larger part of its budget (faculty compensation; debt associated with construction; money transferred from the law school to the university). Faculty compensation is the largest element of the school's fixed costs and often as much as ~70% of the school's total budget.

2. *Variable costs* are things that the law school usually has relatively more control over but that constitute by far the smaller part of the law school budget (staff compensation; library books/materials; water/electricity). Student financial aid is often budgeted separately.

3. *Revenue sources* are tuition (either paid directly to the school or indirectly as an input into a university allocation to the law school); other fees, such as application fees; grants and gifts; endowment income (often restricted).

4. *Structural deficit* is a budget deficit that cannot be closed *even if* the organization maximizes all of its potential revenue and minimizes all of its costs, both fixed and variable.

5. *Operating deficit* is a budget deficit that can be closed by the organization's raising "ordinary" revenues and/or minimizing "ordinary" costs (both fixed and variable).

6. *Questions to be asked, because the answers influence interpretation of the relative significance of each of these categories*. What time frame matters, meaning should a law school's budget experience be evaluated based on annual performance? Actual or expected performance over some number of years? What programs, operations can be controlled, improved, or affected in other ways, and again, over what time frame and based on what decision making mechanism? With what impact(s), budgetary or otherwise, within the law school, within the university, and within the broader community social and economic systems that the law school identifies with?

[d] Law school budget basics: operations

Taking the above terminology into account, the elements of a law school budget come together as a financial model in different ways.

1. *Model 1:* Student tuition is paid to the central administration of the university. Central allocates a sum to the law school to fund operations. This implies that Central takes a haircut (a stipulated percentage) from the tuition pool, but that implication or assumption may be mistaken; the allocation may not be related to the ways in which tuition is calculated or paid, or to other ways in which the law school receives revenue.

2. *Model 2:* Student tuition is paid to the law school, which is "taxed" by Central (i.e., Central takes a given percentage of the law school's revenue, partly to cover imputed costs of services that the university provides to the law school, and partly for other reasons).

3. RCM budgeting ("Responsibility Center Management") or other budget systems don't matter to measuring substantive differences between Model 1 and Model 2 in terms

of their impacts on a law school's operations. Some universities have operated on RCM budgeting or the equivalent for decades (Harvard and its "every tub on its own bottom" system); others have not (Yale). RCM systems try to expose unit-specific surpluses and deficits (transparency is never a neutral value) but do not specify the direction of financial flows. (In practice, contemporary RCM use is often associated with central administration efforts to trim or even eliminate "unprofitable" academic units.) Even Harvard (Central) long wrote big checks to HLS to keep the law school afloat.

4. Tuition rules. All law schools are tuition-dependent, but with tuition discounting – even at elite private universities – tuition revenues increasingly fall far short of covering the school's operating costs. Subsidies – from Central, and/or directly from the state (for some public universities) – have made up much of the difference. State subsidies have been decreasing. Central is getting wise to law schools' structural deficits and putting pressure on law school deans to close them. (Closing them is often not a realistic goal, but realism often does not constrain central university administrators.) Endowments often have fixed uses (donor-specified) and often throw off only modest amounts of income.

5. Compensation costs. The expectation that law school faculty will consist of full-time professors, most of whom are eligible for tenure and most of whom conduct research and publish scholarship, comes from the Harvard model, has been baked into the structure of university and law school operations for decades, and costs law schools an enormous amount of money. In concept, law schools could cut back on the number of full-time faculty or change the balance of expectations between teaching and research in order to justify a reduction in faculty compensation. Doing that would also significantly change the character of the faculty, because the opportunity to conduct research and publish scholarship is a key factor in attracting multiple kinds of talent out of law practice and onto law faculties. It would also significantly change the character of students' educational experiences. And the politics of institutional change in higher education make it both conceptually and practically difficult to do much on this front, even assuming that doing something on this front is wise.

[e] The problem – discounting – in a simple illustration

Some additional essential terminology follows, relevant to the role that tuition discounting now plays in the finances of law schools.

1. The *discount rate* is the difference between a law school's expected total tuition income if all students pay full freight and a law school's actual total tuition income.

2. Assume 150 students per JD class and a published tuition rate of $30k per year. 450 students x $30k = $13.5mm. Assume that the law school actually receives all of that money.

3. Assume endowment, gifts, and university and state subsidies of $5mm total. The school's total budget is $18.5mm.

4. The law school uses a 25% overall discount rate in distributing financial aid, so that the net revenue to the school is $10,125,000. The school's budget (the revenue that it has

the power to spend) is just over $15mm, if everything else remains constant. Discounting costs the law school roughly $3mm.

5. If the school reduces its discounting (reduces the rate; distributes aid over a larger student body; or both), it loses students who meet its academic expectations (meaning a possible decline in rankings, a possible decline in bar passage (leading to more decline in USNews rankings), a possible decline in placement at graduation (still more decline in rankings); and/or pressure on faculty to engage in more academic support, including teaching more or different "basic" skills (leading to possible loss of faculty and/or difficulty in recruiting – leading to even more decline in rankings). The emphasis on "rankings" as a consequence is meant only to make the impacts on school and student quality specific and concrete, rather than to elevate the USNews rankings to a position of strategic priority in and of themselves.

6. Virtually every dean in the US today will report – if they're honest – that tuition discounting and competing for incoming students is their number one strategic and operational challenge. In an era of reduced enrollments, discounting costs law schools a lot of money.

[f] Fundraising

1. Good deans like to raise money; great deans positively enjoy it. Raising money goes hand in glove with institution-building and manifesting a vision of impact on the world. Good, great, or otherwise, however, deans are expected to raise money, and in meeting their goals deans almost always prefer "annual giving" or "unrestricted giving," especially modest unrestricted gifts, rather than endowment-building gifts. Endowment-building helps to secure the school's future, but (i) annual giving helps the school's near-term bottom line; deans are usually evaluated based on short-term metrics, and (ii) both large unrestricted gifts and endowment-building require long-term donor cultivation. Most law deans don't have the expertise, support, or time to engage in long-term donor cultivation. That's why universities – with, in principle, teams of professional fundraisers – organize capital campaigns; deans – without teams – usually don't.

2. "Fundraising" isn't what it seems to be. Higher education fundraising is all about having a compelling vision to share. Donors want to invest in a bright future, and the brighter the better. There is no such thing as a "fundraising personality" for a dean (or a president, or any other non-profit or higher education leader). There is only the power to communicate underlying quality, and "game knows game" in development as in sports. For a donor or prospective donor, there is no substitute for a law school's demonstrating effective record of success and impact. Even with a great vision, law school fundraising has a limited upside. Large law firms rarely have discretionary income to spend. Law firm partners and other law school alumni are notoriously stingy when it comes to supporting their law school alma maters vs supporting their colleges. Law schools with significant recent gifts, particularly in the so-called "lower tiers" of regional law schools – such as Thomas Kline's gifts to law schools at both Drexel University and Duquesne University – are rare.

[g] Forecast – thriving or death spiral?

What does this account add up to?

1. Over the longer term, vision matters, because only vision will attract the resources that will help legal education find its path forward.

That statement assumes that legal education as a sector has the power to strategize over the longer term. If so, the sector should be asking whether legal education has a future, in its current form; if it doesn't, what does a new form (or forms) look like? That's where vision matters, and only vision matters. There are constraints of several sorts:

- On the revenue side of the ledger, discounting and diminished student demand impose structural deficits. Aggregate student demand is unlikely to rebound.
- The cost side of the ledger (especially faculty compensation) has little flexibility.
- In terms of demand for legal education's products, law firm hiring is unlikely to rebound.
- Economics and technology (now including Generative AI, which is rapidly changing law practice in Big Law and corporate law settings already) will continue to press legal educators to change their training modalities (meaning both technology as an educational tool and technology as part of a lawyer's skill set).
- Legal employment will grow in competitiveness between graduates of different law schools and also between graduates of law schools and graduates of other, non-law programs (undergraduate, other professional schools, nothing).

The considerations push in multiple directions at once. Simply staying the course will not resolve them and may exacerbate them.

Vision is a matter for single law school as well as for the sector. At the school level, the question is: does the law school have a vision for thriving other than "we are a law school"? Can a law school shrink without hollowing itself out? Can a death spiral be avoided? But the range of answers is limited by the sector's vision of what defines "law" and "legal education." That's where a sector-defining vision is key.

2. In the shorter, nearer term, competition matters. This is largely a matter for specific schools. Thriving, even surviving, means competing; competing requires choosing. Choosing requires thoughtful expression of what criteria for choice matter, and when, and how. A school can compete with its peers – for students, for faculty, and for reputation/prestige – via money (some law schools have been stockpiling faculty: Virginia, Michigan, Penn, UCLA). It can compete via its reputation (Harvard's reputation for eliteness is long-standing and global; Chicago's reputation for quality is newer but particularly distinctive). It can compete via strategic focus (Duquesne is becoming more practice-focused and more Pittsburgh-focused; Santa Clara has invested deeply in "high tech law" for student training and faculty scholarship, dovetailing with its Silicon Valley location). The questions remain. What should any particular law school do? What can any particular law school do? Is the future bleak, or bright?

Sources

On the state of legal education and the legal profession

- Robert Gordon, "The American Legal Profession, 1870–2000," in The Cambridge History of Law in America, Vol. 3 (Michael Grossberg and Christopher Tomlins eds., Cambridge University Press 2008)

- Paul Samuelson, "The Convergence of the Law School and the University," American Scholar 44:2, pp. 256-271 (1975)

- Report of the American Bar Association Commission on the Future of Legal Education, "Principles for Legal Education and Licensure in the 21st Century" [summarized here]

- The Center on Ethics and the Legal Profession at Georgetown Law, "2023 Report on the State of the Legal Market" and the "2024 Report on the State of the Legal Market"

On universities and fundraising

- Philanthropy in Action: Inge Reichenbach (YouTube video)

- Michael Hunter Schwartz, Advancement Metrics 101 for Law School Deans Post #1: Fundraising Metrics

On what law deans do, and what they do not (or cannot) do

- Timothy Fisher, "Lessons Learned: The Experiences of Non-Traditional Law Deans and the Law Schools That Hire Them," 72 Journal of Legal Education No. 4 (forthcoming 2024)