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R. Lawrence Dessem

University of Missouri School of Law, DessemRL@missouri.edu

Gregory M. Stein

University of Tennessee College of Law

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VOIR DIRE



THE TRUE VALUE OF A LAW DEGREE,
or,
WHY DID THURGOOD MARSHALL GO TO
LAW SCHOOL?

R. LAWRENCE DESSEM*

GREGORY M. STEIN**

There has been vigorous debate in recent months over whether a law degree is a worthwhile investment. Much of this discussion has focused on whether the economic costs of obtaining a degree pay off during a lawyer's career. This conversation has largely overlooked the many non-economic

*TIMOTHY J. HEINSZ PROFESSOR OF LAW, UNIVERSITY OF MISSOURI SCHOOL OF LAW

** ASSOCIATE DEAN FOR FACULTY DEVELOPMENT AND WOOLF, McCLANE, BRIGHT, ALLEN & CARPENTER DISTINGUISHED PROFESSOR OF LAW, UNIVERSITY OF TENNESSEE COLLEGE OF LAW

benefits of a law degree. In this essay, we seek to re-introduce several non-economic factors back into this important dialogue. We suggest that prospective law school applicants would be wise to consider these non-economic factors in addition to economic ones.

THE VALUE OF A LAW DEGREE IN AN EVOLVING LEGAL MARKET

For the past several decades, law school has been the default option for countless college graduates who could not figure out what else to do. Some applicants truly wanted to be lawyers, but many viewed a legal career as a safe, reasonably well-paying choice that would command the respect of others and provide numerous exit options. With the recent recession, the market for new lawyers has contracted substantially. As prospective law students have come to realize that legal job opportunities are more limited than in the past, law school applications have dropped precipitously.¹

These dramatic changes have led to a spirited discussion among legal academics about the future of the legal profession and legal academy. Some critics of the status quo, such as Brian Tamanaha, have argued that “law schools are failing abjectly in multiple ways” and that there is a “disconnect between the cost of a legal education and the economic return it brings” as law school tuition rises and legal employment opportunities fall.² Others, such as Paul Campos, go further, suggesting that “if law schools fail to undertake significant reforms [by becoming “much less expensive” and producing “far fewer graduates”] . . . then more radical reforms will be thrust upon them by irresistible economic, political, and social forces.”³ These observers argue that prospective law students have awakened to the fact that the financial benefits of a law degree no longer merit the cost. As a result, some students who might have applied to law school a decade ago instead will decide to focus on other, potentially more lucrative, disciplines. In the view of these critics, the legal world has changed irreversibly. There are too many law schools, and many schools that do not adapt quickly enough will not survive.

In response, law professor Michael Simkovic and business professor Frank McIntyre have demonstrated that a law degree still has a significantly positive net value over the life of the graduate who obtains it. Their work shows that the mean annual earnings premium for a law school graduate is \$53,300 and the mean pre-tax lifetime value of the degree is almost

1. From a high of 87,900 applicants to ABA-accredited law schools for Fall 2010, the numbers of applicants dropped to 78,500 for Fall 2011 and 67,900 for Fall 2012. Law School Admission Council, *LSAC Volume Summary* (2013) (Retrieved October 1, 2013, from <http://www.lsac.org/members/data/lisac-volume-summary>). For Fall 2013, preliminary numbers for law school applicants dropped to 59,426. Law School Admission Council, *Current Volume Summary* (2013) (Retrieved October 1, 2013, from <http://www.lsac.org/members/data/current-volume>).

2. Brian Tamanaha, *Failing Law Schools* ix, xi (2012).

3. Paul Campos, *The Crisis of the American Law School*, 46 Mich. J.L. Ref. 177, 223 (2012).

\$1,000,000.⁴ In their opinion, a law degree still produces a large economic benefit for many applicants.⁵

The debate between those who see change in legal academia as indispensable and those who believe that the sky is not yet falling has been vigorous, with numerous lively exchanges in the legal blogs.⁶ Our goal here is not to take sides in this debate, though we each have strong feelings on this topic. Rather, we wish to highlight important issues that this discussion has overlooked.

ECONOMIC VALUE IS ONLY ONE FACTOR

The true value of a law degree is a composite of many factors, only one of which is economic value. Those considering law school primarily for the financial benefits can decide for themselves whether recent drops in demand for lawyers and tuition increases have made legal careers sufficiently unappealing that they should pursue another vocation. However, there have always been many law school applicants for whom the law holds an inherent appeal for non-economic reasons, and these non-economic factors have been overlooked in the recent conversation. Our purpose here is to re-introduce these non-economic factors into the discussion and, we hope, enrich the dialogue. We do not mean to suggest that the financial costs and benefits of a legal education are trivial matters.⁷ Rather, our point is that net monetary benefits are only one consideration. For many potential law school applicants, non-monetary considerations often are – and should be – the decisive factors.

4. Michael Simkovic & Frank McIntyre, *The Economic Value of a Law Degree* 16-17, 41 (Aug. 15, 2013 draft), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2250585; see also Steven R. Smith, *Financing the Future of Legal Education: 'Not What It Used to Be,'* 2012 Mich. St. L. Rev. 579, 596 (finding that, after subtracting cost of legal education, “[t]his would still leave, at the median, the lawyer more than \$2 million ahead of the baccalaureate degree holder”).

5. Simkovic & McIntyre, *supra* note 4, at 50; see also Ben Barros, *Reconsidering the Conventional Wisdom on the Legal Job Market* (Widener Law School Legal Studies Research Paper Series no. 13-60), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2258806 (arguing that ultimate number and quality of post-J.D. jobs are understated by reliance on graduates’ job status nine months after graduation).

6. The Simkovic and McIntyre paper has been referred to as “Another Garbage Study” by one online commentator. Elie Mystal, “Another Garbage Study Offering Misleading Statistics On The Value Of A Law Degree,” <http://abovethelaw.com/2013/07/another-garbage-study-offering-misleading-statistics-on-the-value-of-a-law-degree/>. Other commentators disagree just as strenuously. See, e.g., Brian Leiter, “Reflections on ‘The Economic Value of a Law Degree’ and the Response to It” July 30, 2013), <http://leiterlawschool.typepad.com/leiter/2013/07/the-economic-value-of-a-law-degree-redux-1-1.html> (referring to some of the online critics of the study as “know-nothings,” “bottom-feeders of cyberspace,” and “charlatans”); Bernie Burk, “On Being Misinterpreted (Or, Elie Mystal Thinks I’m An Idiot On Account Of Things I Didn’t Say; Now What?), Aug. 15, 2013, <http://www.thefacultyloounge.org/2013/08/on-being-misinterpreted-or-elie-mystal-thinks-im-an-idiot-on-account-of-things-i-didnt-say-now-what.html> (referring to commentary by an on-line legal commentator as “breathless, spittle-on-the-corner-of-his-mouth rants”).

7. Nor do we wish to suggest that law schools should focus their recruitment efforts on those prospective students whose affluence makes cost less of a concern.

THE NON-ECONOMIC BENEFITS OF A LAW DEGREE

What are the non-economic considerations that law school candidates should consider? First, prospective applicants must think on a grand scale about what they want to accomplish with their careers. Thurgood Marshall probably did not think he had outstanding income potential when he applied to law school, and he may have earned less over the course of his career than many of his contemporaries. That is not why he attended law school. When his principal at Baltimore's Colored High and Training School required Marshall to memorize the U.S. Constitution as a punishment, "Thurgood's study of the Constitution gave him an interesting perspective on the conflict between American ideals and the reality of how the law was twisted when it came to black people."⁸ The future Justice later noted, in his final year at Howard Law School, that "[t]he lawyer was there to bear the brunt of getting rid of segregation . . . [Charles Hamilton] Houston made public statements that black lawyers he trained at Howard would become social engineers rather than lawyers. That was our purpose in life."⁹ Not every lawyer wants to or needs to become a social engineer. But many enroll in law schools similarly directed to achieve an end other than earning an additional one million dollars over the course of their careers.

Second, prospective law school applicants should ascertain, *before* they enter law school, what lawyers actually do. Every generation watches its *Perry Mason* or *L.A. Law* or *The Good Wife*. Each of these popular shows leaves its viewers with the impression that every lawyer is a litigator and every litigator spends most of her time successfully arguing cases in court. In fact, many lawyers focus their careers on other types of practice, such as transactional work or regulatory compliance. The typical American lawyer today is more solicitor than barrister, and even trial lawyers spend most of their time outside of the courtroom. The would-be juris doctor candidate should educate herself about legal practice and the different career paths open to those holding a law degree, rather than assuming that popular culture accurately represents the types of work lawyers perform. Potential applicants who learn that they will not be the next Alicia Florrick or Alan Shore may save themselves three years of ill-fitting education. Or they may be thrilled to discover the wealth of other options, some of which may be far more attractive to them than cross-examining hostile witnesses.

Third, and following from the second point, those considering law school should learn more about the specific tasks that lawyers in different types of practice perform regularly and determine for themselves whether they will enjoy performing these tasks. Perhaps fewer lawyers would be dissatisfied with their occupational choices if they undertook this assessment before applying to

8. Juan Williams, *Thurgood Marshall: American Revolutionary* 35 (1998).

9. *Id.* at 59; *see also id.* at 60 (noting, shortly after Marshall's law school graduation, "Now his eyes were open to racial injustice. And his mind was open to the thought that a lawyer could reshape society.").

law school, or in consultation with their law school's career services office, rather than ten years into their professional careers. Lawyers wear different hats at different times, functioning alternately as counselors, intermediaries, agents, negotiators, interviewers, drafters, investigators, editors, and advocates.¹⁰ Different legal paths offer different recipes for combining these distinctive roles: Writing appellate briefs, drafting asset-sale agreements, preparing Congressional testimony, and appearing before zoning boards all require different ratios of these diverse skills. Lawyers who live for the courtroom victory still spend the remaining 259 work days in a typical year doing other things, and they had better be thinking beforehand about how much they will enjoy the work on those far more numerous ordinary days.¹¹ The applicant whose sole exposure to the legal world comes from *Ally McBeal* may not realize just how much time a lawyer spends each day negotiating contracts, or reviewing leases, or drafting interrogatories. No television show depicting the daily lives of these ordinary lawyers would survive its first season.

Fourth, anyone contemplating training for such a complex profession must frankly assess his own skills and aptitudes. Just as he needs to decide whether he will enjoy the daily tasks lawyers perform, he also needs to determine whether he will be good at the work that lawyers do. While the answers to these questions are often related, these are two different questions. Undergraduate grade-point averages and LSAT scores might offer some insight into whether a prospective applicant might become a skilled law student, although legal academics have long debated about how accurately these two factors predict success in law school and legal practice. Students must look beyond these numbers, though, forthrightly examining their own talents and trying to estimate how they match up with those needed for a successful legal career. A poor public speaker may make a poor courtroom lawyer, though perhaps a skilled drafter of environmental regulations. Prospective applicants who undertake this searching self-examination before enrolling in law school do themselves a huge favor, possibly saving money and time that would be unwisely spent pursuing a juris doctor.

Fifth, those considering law school should determine their overall life goals and whether a legal career will help them accomplish these goals. This point overlaps with the career satisfaction point noted above, but goes far

10. In one study of practicing lawyers, the authors identified 26 separate lawyer "effectiveness factors," including analysis and reasoning, researching the law, influencing and advocating, strategic planning, negotiation skills, networking and business development, developing relationships within the legal profession, and character traits such as passion and engagement. Marjorie Shultz & Sheldon Zedeck, *Identification, Development, and Validation of Predictors for Successful Lawyering* 25-27 (2008), available at <http://ssrn.com/abstract=1442118>.

11. See, e.g., Xenia Kobylarz, *The 500 Lawyer Limelight: Roberta Kaplan*, Lawdragon, Sept. 9, 2013, available at <http://www.lawdragon.com/lawyer-limelights/roberta-kaplan/> (interviewing prevailing lawyer in Supreme Court marriage equality case, who notes that "you have to be a little crazy to enjoy reviewing documents or drafting discovery requests, but that is the only way that I know of to do this job and succeed").

beyond it. For this question demands that potential lawyers try to decide whether they will find a career in the law to be gratifying and rewarding and whether it will help them meet their personal aspirations. It also demands that they compare the challenges and satisfactions of a legal career with alternative career options. Thurgood Marshall presumably derived career satisfaction from his decision to attend law school, but he also accomplished life goals beyond becoming a skilled lawyer and beyond what he might have accomplished in other careers.

ECONOMIC VALUE AS ONE FACTOR OF MANY

In addition to these non-economic factors, the net economic benefit of a law degree is unquestionably an important consideration. Each future law student needs to ascertain the overall costs of law school, including tuition and fees, increased expenses for room and board, books, foregone income during law school, relocation and travel costs, and incidental expenses, offset by available financial aid. The student needs to balance these costs against the lifetime financial gains of earning a law degree, primarily increases in future income resulting from the J.D. This cost-benefit analysis will require considerable guesswork. The prospective law student has little idea how well she will perform in law school, what valuable contacts she will make, and what the local and national economy will look like in three—or thirty-three—years.¹²

These economic factors are anything but trivial. Recent graduates have to support themselves and their families and repay their educational debts, and there is nothing wrong with hoping to earn a comfortable living. But if prospective students focused solely on these factors, many liberal arts departments would have to close their doors. If a university's philosophy department produces ten successful Ph.D. candidates per year, many of those graduates probably do not benefit financially from that degree and will end up obtaining a job in some other field. And the others may discover that their diplomas cost more in tuition and time than they produced in increased income over a career. That is not why most people study philosophy. Rather, they make a decision that appears economically irrational. They decide that their career and life goals make this an appropriate choice, that they have an aptitude for the discipline, and that they will enjoy the day-to-day life of a philosopher, notwithstanding the financial sacrifice they may be making.

12. In addition, it is virtually impossible to quantify some of the intangible costs and benefits of pursuing a legal education. Law school entails a significant amount of effort, frustration, tension, confusion, lack of control, and anxiety about large loans that need to be repaid. These emotional expenditures should be compared to emotional benefits, such as new friendships, knowledge, and analytic skills, as well as the satisfaction and pride the graduate will experience from knowing that she has successfully mastered a new and difficult field of study.

WOULD YOU ATTEND LAW SCHOOL IF THE ECONOMIC VALUE OF A DEGREE WERE EXACTLY ZERO?

Perhaps each prospective law student should ask herself the following question: If the added financial value of a law degree were precisely zero, meaning that, over the course of her career, she will exactly earn back her tuition and three years of lost wages, would she still enroll in law school? The student who believes a legal career will be inherently enjoyable and rewarding is probably the student who will respond positively. Conversely, the student who would *not* pursue a law degree under these assumptions probably should not reverse course and apply anyway when expected income exceeds expected costs. Economic value should be one factor in the decision, but not the only factor.

Again, we are not suggesting that applicants ignore economic factors. In a thoughtful recent article, Ray Brescia states, “[T]housands of [public interest] lawyers across the United States are not in it for the money and never have been.”¹³ But it is just as short-sighted to focus only on the non-remunerative benefits of a job as it is to focus only on the salary.

Our guess is that most public interest lawyers have decided that the current non-pecuniary benefits of their jobs outweigh the low compensation, that they revisit this decision at various points during their careers, and that some leave their jobs for higher paying positions they may enjoy less. Some may be independently wealthy, may be subsidized by parents or working spouses, or may be willing to accept a lower living standard than their classmates. Others may have received considerable financial aid or loan forgiveness or may have attended less costly public institutions. Money is one of several factors in every public interest lawyer’s career decision, and at different times during that lawyer’s career his low salary will or will not outweigh competing factors.

Moreover, the number of full-time public interest lawyers is relatively small, as, for that matter, is the number of partners at highly regarded international law firms. Most lawyers fall in the vast middle, struggling to manage busy careers and personal lives, doing their best to be charitable and to take on pro bono representation, doing what they can and wishing they could do more. Prospective law students should be made aware of this reality before they make the major career commitment to enroll in law school. If, armed with full information, they choose to proceed, then more power to them.

In short, economic factors are an important consideration when deciding whether to attend law school, but they are not the only consideration.

13. Ray Brescia, *Amid the Debate, J.D.’s True Value Gets Lost*, Nat’l L. J., Aug. 5, 2013, available at http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202613584845&Amid_The_Debate_JDs_True_Value_Gets_Lost&slreturn=20130827101910.

Prospective students would be wise to consider the factors we discuss above, and probably others, as the more prudent applicants already do. Economic rewards may tip the scales one way or the other as the economy improves and retracts cyclically. But other factors will often be decisive as applicants contemplate the three or four decades of their post-law school careers.