Reflections on the Decreasing Affordability of Legal Education

Jerome M. Organ*

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This Article offers two different lenses for thinking about the "affordability" of legal education. Part I discusses a historical perspective focused on aggregated data over time: average tuition in relation to average salaries of law school graduates. Part II discusses a present day perspective, estimating the percentage of Class of 2011 graduates for whom legal education might be considered affordable using a formula drawing on debt-to-income ratios associated with mortgages. Part III discusses the extent to which affordability may vary among public and private law schools, law schools in different states or regions, and for students with different LSAT and GPA profiles. Part IV concludes with a discussion of some of the challenges legal education will face as a result of legal education's decreasing affordability.

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* Jerome M. Organ, a Professor of Law at the University of St. Thomas School of Law in Minneapolis, Minnesota, is honored to have the opportunity to participate in this symposium and is particularly grateful to research assistants Elisabeth Kirchner (Class of 2013) and Nick Matchen (Class of 2014) for their tremendous assistance in gathering and processing data for this Article.

I. CHANGES IN THE HISTORICAL RATIO BETWEEN AVERAGE TUITION AND AVERAGE SALARIES OF GRADUATES

One way of thinking about the affordability of legal education is to look at trends over time. Several people have noted that tuition levels have increased dramatically since the 1980s and that student loan debt also has increased dramatically.[1] The following table shows the average tuition and the annual growth in average tuition for public law schools (both resident and non-resident tuition), and private law schools from 1985 to 2011.[2]

TABLE 1: AVERAGE TUITION AT LAW SCHOOLS FROM 1985–2011

	Public Law Schools					Private Law Schools		
		Resident		Non-Resident				
Year	#	Avg. Tuition	% Chg.	Avg. Tuition	% Chg.	#	Avg. Tuition	% Chg.
1985	74	$2,006		$4,724		101	$7,526	
1986	74	$2,206	10%	$5,160	9%	100	$8,225	9%
1987	74	$2,398	9%	$5,616	9%	99	$8,911	8%
1988	74	$2,608	9%	$6,017	7%	100	$9,652	8%
1989	74	$2,916	12%	$6,759	12%	101	$10,620	10%
1990	74	$3,236	11%	$7,365	9%	101	$11,728	10%
1991	75	$3,591	11%	$8,250	11%	101	$12,738	11%

1. *See* BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS 107–14 (2012) (discussing significant increases in debt among law graduates); Jim Chen, *A Degree of Practical Wisdom: The Ratio of Educational Debt to Income as a Basic Measurement of Law School Graduates' Economic Viability*, 38 WM. MITCHELL L. REV. 1185, 1200–03 (2012); Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C. J. L. & SOC. JUST. 309, 312–17 (2012) (noting that many factors are driving up tuition costs including more hands-on learning); William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will it Last if Law Grads Can't Pay Bills?*, A.B.A. J. (Jan. 1, 2012, 5:20 AM CST), http://www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills/; LAW SCHOOL TUITION BUBBLE, http://lawschooltuitionbubble.wordpress.com (last visited July 30, 2012).

2. *Legal Education Statistics: Law School Tuition 1985–2011*, A.B.A. LEGAL EDUC. & ADMISSIONS TO THE BAR SECTION, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf (last visited Oct. 2, 2012).

	Public Law Schools					Private Law Schools		
		Resident		Non-Resident				
Year	#	Avg. Tuition	% Chg.	Avg. Tuition	% Chg.	#	Avg. Tuition	% Chg.
1992	75	$4,015	12%	$9,070	10%	101	$13,730	8%
1993	75	$4,418	10%	$9,763	8%	99	$14,828	8%
1994	76	$5,016	14%	$10,667	9%	102	$15,835	7%
1995	76	$5,530	10%	$11,683	10%	103	$16,798	6%
1996	74	$5,955	8%	$12,419	6%	103	$17,785	6%
1997	76	$6,521	10%	$13,234	7%	102	$18,726	5%
1998	77	$6,943	6%	$14,056	6%	104	$19,693	5%
1999	77	$7,367	6%	$14,754	5%	105	$20,709	5%
2000	78	$7,790	6%	$15,683	6%	105	$21,790	5%
2001	78	$8,419	8%	$16,643	6%	106	$22,961	5%
2002	78	$9,392	12%	$18,146	9%	108	$24,193	5%
2003	78	$10,819	15%	$20,171	11%	109	$25,574	6%
2004	80	$11,860	10%	$21,905	9%	108	$26,952	5%
2005	80	$13,145	11%	$22,987	5%	111	$28,900	7%
2006	80	$14,245	8%	$25,227	10%	115	$30,520	7%
2007	80	$15,455	9%	$26,691	6%	117	$32,367	6%
2008	80	$16,836	9%	$28,442	7%	118	$34,298	6%
2009	80	$18,472	10%	$30,413	7%	117	$35,743	4%
2010	80	$20,238	10%	$32,754	8%	119	$37,447	5%
2011	81	$22,116	9%	$34,865	6%	119	$39,184	5%

Notably, average tuition for residents at public law schools has grown by the greatest percentage—slightly more than 1,000 percent between 1985 and 2011, averaging 10 percent per year. Average tuition for non-residents at public law schools has grown by more than 600 percent, an average of 8 percent per year. Growth in average tuition at private law schools is lower but still significant—more than 400 percent, an average of 7 percent per year.

While one might infer that legal education must be less affordable as a result of these tuition increases, a better understanding of affordability can be garnered from some comparative data. Using the "investment" lens as a way of thinking about affordability, the average salaries of law graduates over the same period—offering some idea of return on investment—can serve as a meaningful comparison.

Table 2 shows the average salary of all employed graduates, the average salary of graduates employed in private practice, and the average salary of graduates employed in "big firms"—firms with 101 or more attorneys—for each year in the period from 1985 to 2011.[3]

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3. The data in this average salary chart was prepared by Judy Collins, Research Director for the National Association of Legal Professionals (NALP). I am tremendously grateful to Judy Collins, and to Jim Leipold, the Executive Director of NALP, for their assistance in compiling and sharing this data. The only two data points on the chart that do not reflect average salaries are the "big firm" listings for 1989 and 1990: while NALP had overall averages and private practice averages for those two years, it did not have separate "average salary" data for graduates employed in "big firms" with 101 or more lawyers. NALP did have median salary data for graduates employed in "big firms" for 1989 and 1990, and medians for those two data points were used in this analysis rather than omitting data for those years altogether. The anomalous data points are italicized in the chart.

Notably, the average salary data is based on fairly robust samples. During the twenty-seven years reflected in the chart, NALP generally had no fewer than 15,000 reported salaries on which to base the overall averages and in some years had as many as 22,000 reported salaries. In general, NALP included salaries reported by somewhere between 59 percent and 72 percent of full-time employed graduates in any given year. Nonetheless, due to disproportionate salary reporting by "big firm" attorneys, particularly in recent years, the overall "average" salary shown may be higher than would be reflected if all employed graduates across all employment categories reported salaries. Beginning with its *Jobs & JDs Class of 2009* report, NALP began calculating an adjusted overall mean salary in an effort to account for the impact of disproportionate "big firm" salary reporting on the overall mean salary. *See* NAT'L ASS'N FOR LAW PLACEMENT, JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES—CLASS OF 2009 16 (2010). The average salaries shown in the chart do not reflect any adjustment to account for the fact that disproportionate reporting of "big firm" salaries might result in higher overall and private practice average salaries than would be the case if all employed graduates reported salaries.

TABLE 2: AVERAGE SALARIES OF EMPLOYED LAW SCHOOL GRADUATES FROM 1985–2011

	OVERALL		PRIVATE PRACTICE		BIG FIRM (101+)	
Year	Avg. Salary	% Chg.	Avg. Salary	% Chg	Avg. Salary	% Chg.
1985	$29,225		$31,661		$41,256	
1986	$32,757	12%	$36,050	14%	$48,058	16%
1987	$35,597	9%	$39,847	11%	$53,259	11%
1988	$39,159	10%	$44,545	12%	$58,936	11%
1989	$42,100	8%	$44,690	0%	*$55,000*	-7%
1990	$44,290	5%	$50,960	14%	*$65,000*	18%
1991	$44,300	0%	$51,000	0%	$66,020	2%
1992	$42,600	-4%	$48,400	-5%	$65,660	-1%
1993	$43,200	1%	$49,000	1%	$66,048	1%
1994	$44,149	2%	$50,075	2%	$67,338	2%
1995	$45,590	3%	$51,612	3%	$68,430	2%
1996	$46,499	2%	$52,844	2%	$69,797	2%
1997	$48,986	5%	$56,085	6%	$73,010	5%
1998	$53,250	9%	$61,887	10%	$80,645	10%
1999	$59,125	11%	$69,863	13%	$91,105	13%
2000	$67,048	13%	$82,114	18%	$108,562	19%
2001	$71,201	6%	$86,837	6%	$112,937	4%
2002	$72,308	2%	$87,174	0%	$112,884	0%
2003	$69,974	-3%	$83,913	-4%	$112,020	-1%
2004	$70,105	0%	$84,092	0%	$112,205	0%
2005	$72,730	4%	$87,250	4%	$114,209	2%
2006	$77,990	7%	$95,098	9%	$124,480	9%
2007	$86,396	11%	$107,300	13%	$140,044	13%
2008	$92,009	6%	$114,099	6%	$146,408	5%
2009	$93,454	2%	$115,254	1%	$146,792	0%
2010	$84,111	-10%	$106,444	-8%	$144,306	-2%
2011	$78,653	-6%	$97,821	-8%	$141,454	-2%

Notably, the average salary of all big firm attorneys grew by the largest percentage—nearly 250 percent or an average of 5 percent per year. At the same time, the average salary of all private practice attorneys grew nearly 210 percent or an average of nearly 5 percent per year, and the average salary overall grew roughly 170 percent, an average of 4 percent per year.

One might use this tuition and salary data in a variety of ways to illuminate the affordability question. Simply comparing the average increase in tuition with the average increase in income, one sees that tuition increased roughly twice as fast as income. Another approach to comparing affordability changes over time is to calculate a ratio indicating average tuition as a percentage of average salary. The table below illustrates that approach.

TABLE 3: RATIO OF RESIDENT TUITION AT PUBLIC LAW SCHOOLS IN COMPARISON TO EMPLOYED GRADUATES' SALARIES FROM 1985–2011[4]

	RATIO OF TUITION TO AVERAGE SALARY		
YEAR	TO OVERALL AVERAGE SALARY	TO PRIVATE PRACTICE AVERAGE SALARY	TO BIG FIRM (101+) AVERAGE SALARY
1985	.07	.06	.05
1987	.07	.06	.05
1989	.07	.07	.05
1991	.08	.07	.05
1993	.10	.09	.07
1995	.12	.11	.08
1997	.13	.12	.09
1999	.12	.11	.08
2001	.12	.10	.07
2003	.15	.13	.10
2005	.18	.15	.12
2007	.18	.14	.11

4. The ratios in the second column of Table 3 reflect average resident tuition at public law schools (third column of Table 1) in a given year divided by the overall average salary for employed graduates for that year (second column of Table 2). The ratios in the third column of Table 3 reflect average resident tuition at public law schools (third column of Table 1) in a given year divided by average private practice salary for that year (fourth column of Table 2). Ratios in the fourth column of Table 3 reflect average resident tuition at public law schools (third column of Table 1) in a given year divided by average big firm salary for that year (sixth column of Table 2).

	Ratio of Tuition to Average Salary		
Year	To Overall Average Salary	To Private Practice Average Salary	To Big Firm (101+) Average Salary
2009	.20	.16	.13
2010	.24	.19	.14
2011	.28	.23	.16

Table 3 reports the average resident tuition for public law schools in relation to the average salaries of employed graduates over time. Looking at this data carefully, one sees that the ratio of tuition to salary grew in all three salary categories, but grew the least in relation to big firm salaries (slightly more than tripling), grew more in relation to private practice salaries (nearly quadrupling), and grew the most in relation to the overall average salary (quadrupling). This demonstrates that for the average state resident attending a public law school in her state and securing a law job reflecting the average salary for all employed law graduates, law school is now four times as expensive as it was in 1985; for that same average state resident who gets a law job in private practice with the average private practice salary, law school is now nearly four times as expensive as it was in 1985; and for the same average state resident who gets a job in a big firm with the average big firm salary, law school is now more than three times as expensive as it was in 1985. Most significantly, perhaps, the ratio of tuition to salary grew significantly—40 percent for the overall average salary (from .20 to .28) and more than 43 percent for the average private practice salary (from .16 to .23) —in just the last three years. In those years, resident tuition at public law schools has continued to increase on average while average salaries have declined.

TABLE 4: RATIO OF NON-RESIDENT TUITION AT PUBLIC LAW SCHOOLS IN COMPARISON TO EMPLOYED GRADUATES' SALARIES FROM 1985–2011

	Ratio of Tuition to Average Salary		
Year	To Overall Average Salary	To Private Practice Average Salary	To Big Firm (101+) Average Salary
1985	.16	.15	.11
1987	.16	.14	.11
1989	.16	.15	.12

Year	Ratio of Tuition to Average Salary		
	To Overall Average Salary	To Private Practice Average Salary	To Big Firm (101+) Average Salary
1991	.19	.16	.12
1993	.23	.20	.15
1995	.26	.23	.17
1997	.27	.24	.18
1999	.25	.21	.16
2001	.23	.19	.15
2003	.29	.24	.18
2005	.32	.26	.20
2007	.31	.25	.19
2009	.33	.26	.21
2010	.39	.31	.23
2011	.44	.36	.25

Table 4 reports the average non-resident tuition for public law schools in relation to the average salaries of employed graduates over time.[5] Looking at this data carefully, one sees that the ratio of average non-resident tuition to average salary grew in all three salary categories, but grew the least in relation to average big firm salary (127 percent), grew slightly more in relation to average private practice salary (140 percent) and grew the most in relation to the overall average salary (175 percent). This demonstrates that for the average law student going to a public law school in a different state who gets a law job reflecting the average salary for employed graduates, law school is now nearly three times as expensive as it was in 1985; for that same average law student who gets a law job in private practice with the average private practice salary, law school is now nearly two and a half times as expensive as it was in 1985; and for the same average law student who gets a job in a big firm with the average big firm salary, law school is now more than twice as

5. The ratios in the second column of Table 4 reflect average non-resident tuition at public law schools (fifth column of Table 1) in a given year divided by overall average salary for employed graduates for that year (second column of Table 2). The ratios in the third column of Table 4 reflect average non-resident tuition at public law schools (fifth column of Table 1) in a given year divided by average private practice salary for graduates for that year (fourth column of Table 2). The ratios in the fourth column of Table 4 reflect average non-resident tuition at public law schools (fifth column of Table 1) in a given year divided by average big firm salary for that year (sixth column of Table 2).

expensive as it was in 1985. Most significantly, perhaps, the ratio of tuition to salary grew significantly—33 percent for the overall average salary (from .33 to .44) and nearly 40 percent for the average private practice salary (from .26 to .36) in just the last three years, when non-resident tuition continued to increase and average salaries declined. It is also worth noting that when one compares the data in Table 3 with the data in Table 4, residents at public law schools faced greater increases in relative cost (or greater decreases in affordability) than non-residents.[6]

TABLE 5: RATIO OF TUITION AT PRIVATE LAW SCHOOLS IN COMPARISON TO EMPLOYED GRADUATES' SALARIES FROM 1985–2011

	RATIO OF TUITION TO AVERAGE SALARY		
YEAR	TO OVERALL AVERAGE SALARY	TO PRIVATE PRACTICE AVERAGE SALARY	TO BIG FIRM (101+) AVERAGE SALARY
1985	.26	.24	.18
1987	.25	.22	.17
1989	.25	.24	.19
1991	.29	.25	.19
1993	.34	.30	.22
1995	.37	.33	.25
1997	.38	.33	.26
1999	.35	.30	.23
2001	.32	.26	.20
2003	.37	.30	.23
2005	.40	.33	.25
2007	.37	.30	.23
2009	.38	.31	.24
2010	.45	.35	.26
2011	.50	.40	.28

Table 5 reports the average tuition for private law schools in relation to the average salaries of employed graduates over time.[7] The

6. The relationship between ratios changed from more than double for non-residents compared to residents (.16, .15, .11 in 2011 compared to .07, .06, .05 in 1985) to approximately one and a half times for non-residents compared to residents (.44, .36, .25 in 2011 compared to .28, .23, .16 in 1985).

7. The ratios in the second column of Table 5 reflect average tuition at private law schools (eighth column of Table 1) in a given year divided by overall average salary for

data show that the ratio of tuition to salary grew in all three salary categories, but grew the least in relation to average big firm salary (56 percent), grew slightly more in relation to average private practice salary (67 percent), and grew the most in relation to the overall average salary (92 percent). This demonstrates that for the average law student graduating from a private law school who secures a law job reflecting the average salary for employed graduates, law school is now nearly twice as expensive as it was in 1985; for that same average law student who gets a private practice law job with the average private practice salary, law school is now one and two-thirds times as expensive as it was in 1985; and for the same average law student who gets a big firm job with the average big firm salary, law school is now roughly one and a half times as expensive as it was in 1985. Perhaps most significantly, the ratio of tuition to salary grew nearly 30 percent for overall average salary and average private practice salary in just the last three years—from .38 to .50 for the overall average salary and from .31 to .40 for the average private practice salary—during a period in which average tuition continued to increase while average salaries declined.

It is also worth noting that when one compares the data in Table 5 with the data in Tables 3 and 4, students at public law schools faced greater percentage increases in relative cost (or greater percentage decreases in affordability) than students at private law schools between 1985 and 2011. That said, students at private law schools still face greater relative costs (they have higher average tuition to average salary ratios) than do non-residents at public law schools, who face greater relative costs than do residents at public law schools. Phrased differently, in 1985, the ratio of average resident tuition at public law schools relative to the overall average salary of employed graduates was one-quarter the ratio of the average private law school tuition relative to the overall average salary of employed graduates (.07 compared to .28). By 2011, however, the ratio of

employed graduates for that year (second column of Table 2). The ratios in the third column of Table 5 reflect average tuition at private law schools (eighth column of Table 1) in a given year divided by average private practice salary for that year (fourth column of Table 2). The ratios in the fourth column of Table 5 reflect average tuition at private law schools (eighth column of Table 1) in a given year divided by the average big firm salary for that year (sixth column of Table 2).

average resident tuition at public law schools relative to the overall average salary of graduates was more than one-half of the ratio of private law school tuition relative to the overall average salary of graduates (.28 compared to .50).

In other words, the affordability gap between public law schools and private law schools has been closing as average tuition has increased faster at public law schools than at private law schools.[8]

II. LOOKING AT LAW SCHOOL AFFORDABILITY TODAY USING PROFESSOR CHEN'S FORMULA

In his recent article—*A Degree of Practical Wisdom: The Ratio of Educational Debt to Income as a Basic Measurement of Law School Graduates' Economic Viability*—Professor Jim Chen uses the framework of debt-to-income ratios used in mortgage lending as a lens for viewing the economic well-being of law school graduates based on the relationship between their incomes and levels of debt.[9] Professor Chen posits that "[t]he spread between the front-end and back-end ratios in mortgage lending provides a basis for extrapolating the maximum amount of educational debt that a student should incur."[10] Most real estate lenders cap the front-end ratio at 28 percent and the back-end ratio at 36 percent, although the Federal Housing Administration (FHA) will in some circumstances allow a

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8. Note, however, that the disproportionate reporting of big firm salaries means that NALP's overall average salary data and average private practice salary data in recent years are higher than they would be if all employed graduates reported their salaries. *See supra* note 3. Therefore, the tuition/salary ratios shown in the above tables probably reflect more salary growth than would be the case if lower adjusted mean salaries were used for the last few years in which NALP has been calculating adjusted mean salaries. If the lower adjusted mean salaries had been used in calculating the ratios, the ratios of tuition to salary would be higher, indicating an even greater decrease in affordability than the tables above suggest. *See* JOBS & JDS, *supra* note 3, and accompanying text.

9. Chen, *supra* note 1, at 1187.

10. *Id.* at 1189. The front-end ratio represents the percentage of a borrower's gross monthly income used to pay the monthly mortgage payment (consisting of principal, interest, taxes, and insurance). *Front-End Ratio*, INVESTOPEDIA, http://www.investopedia.com/terms/f/front-endratio.asp#axzz28BSaEAHc (last visited Oct. 3, 2012). By contrast, the back-end ratio represents the percentage of a borrower's gross monthly income used to pay all debt obligation payments—mortgage, auto loans, educational loans, credit cards, etc., combined. *Back-End Ratio*, INVESTOPEDIA, http://www.investopedia.com/terms/b/back-endratio.asp#axzz28Ig9COAJ (last visited Oct. 3, 2012).

front-end ratio of 31 percent and a back-end ratio of 43 percent.[11] This results in a "spread" of between 8 percent and 12 percent. Professor Chen's premise, in its simplest form, is that if a law school graduate wants to be able to purchase a modest home, her educational debt should not exceed that 8 or 12 percent spread and ideally should be closer to 4 percent to allow for additional debt in the form of automobile loans and credit cards.[12] Professor Chen provides formulas for calculating the "educational back-end ratio" (EBER), assuming a 25-year amortization at 6 percent for educational loans, and for converting the EBER to an "educational debt to annual income ratio" (EDAI), which compares overall educational indebtedness to annual income.[13] Based on the spreads set forth above and his formulae for calculating EBER and converting EBER to EDAI, Professor Chen offers the following chart to describe the financial viability of law graduates in relation to EBER and EDAI.[14]

TABLE 6: FINANCIAL VIABILITY OF LAW GRADUATES AS REFLECTED IN EDUCATIONAL BACK-END RATIO (EBER) AND EDUCATIONAL DEBT TO ANNUAL INCOME (EDAI)

FINANCIAL VIABILITY OF LAW SCHOOL GRADUATES	EBER (EDUCATIONAL BACK-END RATIO OR RATIO OF MONTHLY EDUCATIONAL DEBT SERVICE TO MONTHLY GROSS INCOME)	EDAI (EDUCATIONAL DEBT TO ANNUAL INCOME)
Good	0.04	.5
Adequate	0.08	1.0
Marginal	0.12	1.5

Using this delineation of financial viability, Professor Chen develops another simpler, more generalized formula for considering the financial viability of law school graduates, assuming that for most law school graduates law school debt will equal three times annual tuition.[15] For good financial viability—an EDAI of .5— a graduate's

11. Chen, *supra* note 1, at 1188–89.
12. *Id.* at 1197–99.
13. *Id.* at 1194–97.
14. *Id.* at 1198–99.
15. Note that this assumption may not reflect reality as it assumes BOTH no

salary should be twice the total law school debt (or six times annual tuition).[16] For adequate financial viability—an EDAI of 1.0—the graduate's salary should equal the total law school debt (or three times annual tuition).[17] For marginal financial viability—an EDAI of 1.5—the graduate's salary should be two-thirds of that graduate's law school debt or two times her annual tuition.[18]

With this framework in mind and with the new employment outcome data published on a per school basis by the ABA Section of Legal Education and Admissions to the Bar[19] and NALP's summary of salary data by employment category,[20] one can begin to reasonably estimate the percentage of law graduates who manifest marginal or better financial viability and the percentage of law graduates who manifest less than marginal financial viability.

To develop these estimates, I worked with a student research assistant to build a database using the following process. First, we entered each law school's full-time annual tuition for the 2010–11 academic year from the *2012 ABA-LSAC Official Guide*—starting with resident tuition for public law schools.[21] Second, we doubled

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undergraduate educational debt AND no law school debt associated with the cost of living while in law school. *Id.* at 1203. With respect to undergraduate educational debt, Professor Chen noted in a previous publication that the average undergraduate debt for 2010 graduates of colleges and universities was $25,520. *Id.* at 1200; *see also* Press Release, The Project on Student Debt, Average Student Debt Tops $25,000 for Class of 2010 in Tough Job Market (Nov. 3, 2011), *available at* http://projectonstudentdebt.org/files/pub/Student_Debt_and_the_Class_of_2010_NR.pdf. Professor Chen also assumes law students can cover their costs of living through some combination of savings, earnings while in law school, and family support. Chen, *supra* note 1, at 1203.

16. Chen, *supra* note 1, at 1203.

17. *Id.*

18. *Id.*

19. *See Legal Education Statistics: Law School Graduate Employment Data—Employment Summary Report*, A.B.A., LEGAL EDUC. & ADMISSION TO THE BAR SECTION, http://employmentsummary.abaquestionnaire.org/ (last visited Oct. 3, 2012) [hereinafter *ABA Employment Summary Report*].

20. *Class of 2011 National Summary Report*, NAT'L ASS'N OF LEGAL PROFESSIONALS (July, 2012), http://www.nalp.org/uploads/NatlSummChart_Classof2011.pdf [hereinafter *NALP 2011 Employment Summary*].

21. *ABA-LSAC Official Guide to ABA-Approved Law Schools, 2012 Edition*, LSAC, http://www.lsac.org/lsacresources/publications/official-guide-archives.asp (last visited Jan. 22, 2013) [hereinafter *2012 ABA-LSAC Guide*]. One could argue that the more representative tuition would be the 2009–10 tuition that likely reflects the "average" tuition a graduate of law school in 2011 paid during her three years of law school. Given that Professor Chen's formula arguably understates educational indebtedness by assuming no undergraduate debt for law

those tuition amounts to reflect two times annual tuition (the minimum threshold for marginal financial ability as described above).[22] Third, we examined each law school's employment outcome profile for the Class of 2011 as presented on the ABA's website[23] and, for each employment category listed on the employment outcome profile, attributed to each full-time employed graduate the median salary assigned to that employment category in the NALP 2011 Employment Summary.[24] Fourth, we determined the number of full-time employed graduates for whom the imputed median salary exceeded two times the law school's annual tuition and the number of full-time employed graduates for whom the imputed median salary was less than two times the law school's annual tuition. Fifth, we added all graduates who were listed as unemployed seeking, unemployed not seeking, unknown, or employed part-time to the number of full-time employed graduates for whom the imputed median salary was less than two times the law school's annual tuition, as it seemed appropriate to assume that none of the graduates in these categories could be expected to have a salary in excess of two times the school's annual tuition.[25]

Through this process, we are able to make a rough estimate of the percentage of graduates from the Class of 2011 who have at least marginal financial viability and the percentage of graduates from the Class of 2011 who do not have at least marginal financial viability using Professor Chen's formula. Using this methodology across all law schools, the estimated percentage of graduates from the Class of 2011 with at least marginal financial viability was roughly 33 percent, while the estimated percentage of graduates from the Class

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school graduates, it seemed appropriate to "balance" the scales a bit by using 2010–11 tuition for those graduating in 2011—the highest tuition amount for a 2012 graduate's three years in law school.

22. *See* Chen, *supra* note 1, and accompanying text and table.

23. *See ABA Employment Summary Report*, *supra* note 19.

24. *See NALP 2011 Employment Summary*, *supra* note 20.

25. Note that we excluded from each school's total number of graduates those who were pursuing an advanced degree and those who had obtained deferred employment, as it seemed less appropriate to make assumptions (positively or negatively) about the income levels of those groups.

of 2011 with less than marginal financial viability was roughly 67 percent.[26]

Of course, the analysis reflected in the preceding paragraph speaks to the "marginal" law student's economic situation but not to every law student's economic situation: the analysis assumes that all law students pay full tuition, which is likely true for the "marginal" law student—the last law student admitted into the entering class for a law school—but not for every law student. For the 2011–12 academic year, nearly 50 percent of all law students received some type of grant or scholarship to defray a portion of tuition costs.[27] The average of the median scholarship amounts awarded across all law schools during the 2010–11 academic year was $11,043.[28] When one recognizes that nearly 50 percent of law school graduates were not paying full tuition but received some type of scholarship assistance, it is apparent that the analysis described in the preceding paragraph "overstates" the estimated number of graduates who have less than marginal financial viability.[29] With that in mind, we attempted to adjust the financial viability analysis to account for scholarships. There is no perfect way to do this, as most schools offer a range of scholarships and the available data is not very discriminating.[30] But believing that the full picture of law school affordability cannot be fully understood without some accounting for scholarships, we made simple scholarship-related adjustments to our data using the following process.

First, we took the information in the *2012 ABA-LSAC Guide* describing the median scholarship awarded by each law school, subtracted this from the tuition, and then doubled the resulting "net tuition" to reflect the "two times net tuition" cutoff point for marginal

26. Chart on file with author compiling affordability analysis across all law schools [hereinafter Affordability Analysis Chart].

27. Chart on file with author compiling scholarship/grant data from the *2012 ABA-LSAC Guide*, *supra* note 21 [hereinafter Scholarship/Grant Chart].

28. *Id.*

29. While the analysis overstates the number of actual graduates with less than marginal financial viability, it does provide a meaningful macro-level estimate of the "likelihood"—roughly two-thirds—that a marginal student (one paying full tuition) will graduate with less than marginal financial viability.

30. *2012 ABA-LSAC Guide*, *supra* note 21.

financial viability.[31] We then used the same process described above to determine the number of full-time employed graduates for whom the imputed median salary from NALP exceeded two times the law school's net tuition and the number of full-time employed graduates for whom the imputed median salary was less than two times the law school's net tuition. As indicated above, we then added to the number of full-time employed graduates whose imputed median salary was less than two times the law school's net tuition the graduates who were listed as unemployed seeking, unemployed not seeking, unknown, or employed part-time.

Of course, the problem with this scholarship-adjusted analysis so far is that it overstates the number of graduates estimated to have at least marginal financial viability because the calculations so far assume all graduates paid "net tuition" (just as the analysis above overstated the number of graduates with less than marginal financial viability because the analysis assumed all graduates were paying full tuition). In fact, the *2012 ABA-LSAC Guide* lists for each law school the percentage of students who received scholarship assistance. In calculating the number of graduates with at least marginal financial viability taking into account net tuition, only the number of students receiving scholarships should be included in the "net tuition" calculations. To account for the reality that a subset of students are paying greater or lesser amounts of "net tuition" while a subset of students are paying "full tuition," we first multiplied the number of graduates with less than marginal financial viability based on two times "net tuition" (accounting for scholarships) by the percentage of scholarship recipients. We then multiplied the number of graduates with less than marginal financial viability based on full tuition by the percentage of students who did not have scholarships. Then we added these two "subset" totals together to represent the best estimate of

31. This simple analysis likely understates the financial viability of those who received more than the median scholarship and for whom two times net tuition would be a smaller amount than reflected by the median scholarship, but it also likely overstates the financial viability of those who received less than the median scholarship and for whom two times net tuition would be a larger amount than reflected by the median scholarship. For purposes of this estimation, we are assuming these differences balance out, although the actual distribution of scholarships at any given law school might mean more or fewer graduates realizing at least marginal financial viability.

those with less than marginal financial viability, taking into account that some percentage of graduates were paying net tuition while the balance were paying full tuition.[32] Based on this process and using Chen's formula, we are able to make a rough estimate of the percentage of graduates from the Class of 2011 who have at least marginal financial viability after accounting for scholarship assistance and the percentage of such graduates who do not have at least marginal financial viability after accounting for scholarship assistance. Across all law schools and after accounting for scholarships in the manner described above, the estimated percentage of graduates from the Class of 2011 who have marginal financial viability increased from roughly 33 percent to roughly 46.5 percent, while the estimated percentage of such graduates who have less than marginal financial viability declined from roughly 67 percent to roughly 53.5 percent.[33] Notably, using this more finely adjusted data, 54 law schools would be estimated to have at least 70 percent of their 2011 graduates demonstrating marginal financial viability,[34] while 105 law schools would be estimated to have less than 50 percent of their 2011 graduates demonstrating marginal financial viability.[35]

Taking scholarships into account thus presents a slightly less discouraging picture of financial viability for law school graduates, but certainly not a rosy picture, particularly when one remembers that

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32. An example may help illuminate this process. Assume a law school charging $35,000 full tuition with 100 graduates. Assume that 40 percent of those graduates had scholarships and the median scholarship was $10,000, such that "net tuition" would be $25,000 for those scholarship students. Based on two times the full tuition and the employment outcomes for the law school's 100 graduates, 72 graduates were estimated to have less than marginal financial viability. Based on two times "net tuition" and the employment outcomes for the law school's graduates, 48 graduates were estimated to have less than marginal financial viability. This means that accounting for net tuition, there were 24 additional graduates with marginal financial viability—e.g., making more than $50,000, but less than $70,000. Recognizing that 60 of the graduates should have had their financial viability calculated based on full tuition while 40 of the graduates should have had their financial viability calculated using "net tuition," we take 72 times .60 (60%) (a result of 43.2) and 48 times .40 (40%) (a result of 19.2) and then add those results (43.2 + 19.2 = 62.4 or 62) to get 62 graduates with less than marginal financial viability taking into account the subset of students who were paying net tuition.

33. Affordability Analysis Chart, *supra* note 26.

34. Nearly all of these law schools are public law schools with relatively modest tuition.

35. Affordability Analysis Chart, *supra* note 26.

these results presume no undergraduate educational debt and no borrowing to cover costs of living while in law school.[36]

Of course, the simplistic accounting for scholarships used in the above calculations fails to capture the much more nuanced reality of law school pricing. The *2012 ABA-LSAC Guide* provides slightly more detailed scholarship information, including the percentage of scholarship recipients with full scholarships or more, the percentage with half-to-full scholarships, and the percentage with less than half scholarships.[37] While one could perhaps make reasonable estimations concerning the financial viability of those receiving half-to-full or full scholarships because their net tuition generally would be even less than the net tuition calculated using the median scholarship, reasonable estimations regarding the financial viability of those receiving less than half scholarships are not feasible because it is impossible to know how much less than half tuition such scholarships were.

Nonetheless, from the standpoint of a prospective law student or a pre-law advisor discussing law school options with a prospective law student, one can use this framework to make a reasonable assessment of that student's likelihood of having at least marginal financial viability after graduation.

- First, if a prospective law student's law school options all involve paying full tuition, then the prospective student generally has only a one in three chance of graduating with marginal financial viability. But if the prospective law student's law school options are a private law school or a public law school (for which the student is paying non-resident tuition), the student is even less likely to graduate with marginal financial viability. On the other hand, if the prospective law student's options include a public law school for which the student qualifies for resident tuition, the student is more likely to graduate with marginal financial viability.

36. *See supra* note 15.
37. *See 2012 ABA-LSAC Guide*, *supra* note 21.

- Second, if a prospective law student has a full-tuition law school scholarship (and assuming that retaining the scholarship is not contingent on maintaining a difficult-to-achieve law school GPA),[38] then obviously the student is likely to graduate with at least marginal financial viability (unless the student comes to law school with a tremendous amount of undergraduate educational debt and proceeds to borrow significantly to cover the cost of living while in law school).

- Third, if a prospective law student receives scholarship offers for less than full tuition, the student and her advisor should carefully assess what her "net tuition cost" will be at each of the law schools from which she receives a scholarship offer, taking into account the likelihood of retaining or not retaining the scholarship if the school has a competitive scholarship retention program.[39] Once a determination is made regarding the student's specific anticipated "net tuition cost" at each school, the student should multiply that net tuition cost by two and then look at each school's employment outcomes,[40] integrate the median salaries for each job category from NALP's annual summary,[41] and calculate an estimated percentage of recent graduates from that school who had at least marginal

38. *See* Jerome M. Organ, *How Scholarship Programs Impact Students and the Culture of Law School*, 61 J. LEGAL EDUC. 173, 183–89 (2011) (discussing the challenges presented for students at law schools with "competitive" scholarship retention programs).

39. *See* Affordability Analysis Chart, *supra* note 26. In addition to considering scholarship retention issues, non-resident students considering public law schools should evaluate the likelihood of qualifying for resident tuition during their second and third law school years. *See, e.g.*, *Tuition and Residency: Colorado Law is Affordable*, UNIV. OF COL. LAW SCH., http://www.colorado.edu/law/admissions/tuition.htm (last visited Nov. 9, 2012) (noting that non-resident students may establish residency after one year and providing a link to residency requirements). Qualifying for resident tuition can function as the equivalent of a "scholarship," saving a student several thousand dollars each year. Resident 2012–13 tuition at the University of Colorado Law School is $31,154, while non-resident tuition is $37,940. By qualifying as a resident after the first year, a student can save $6,786 or 18 percent per year for her second and third years and achieve average savings of nearly 12 percent over the three tuition years required for graduation. *Id.*

40. *See ABA Employment Summary Report*, *supra* note 19.

41. *See NALP 2011 Employment Summary*, *supra* note 20.

> financial viability (incomes greater than two times the "net tuition cost").

The unfortunate reality, however, is that the lives and financial fortunes of the "marginal" law student and the "average" law student are intertwined at many law schools. At many law schools the scholarships offered to students are based on tuition-discounting, which means marginal law students pay more in tuition to reduce tuition for those receiving scholarships.[42] The very scholarship system that reduces "net tuition cost" and makes it more likely that scholarship recipients will graduate with at least marginal financial viability also increases "net tuition cost" for students without scholarships and makes it more likely that such students will graduate with less than marginal financial viability.[43] If law schools significantly pared back their scholarship programs, they could lower

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42. *See* Organ, *supra* note 38, at 186 n.22 ("[T]hose with lower objective criteria (LSAT and UGPA) effectively subsidize the legal education of those with higher scores, as most scholarship programs are not funded by endowments but are funded by tuition discounting—by tuition-paying students." Daniel J. Morrissey, *Saving Legal Education*, 56 J. LEGAL EDUC. 254, 269 (2006).); *see also* TAMANAHA, *supra* note 1, at 99 (discussing "reverse Robin Hood" scholarship dynamic).

43. An example might help. Assume a law school with 100 students and a budget of $3 million. To cover the budget, the law school would need to charge tuition of $30,000, assuming no scholarship program. If the school uses tuition-discounting to provide scholarship assistance for some students, the school would need to charge higher tuition to cover the cost of the scholarship program in addition to its $3 million budget. For example, if the school wants to provide 20 students with scholarships of $20,000 and 20 students with scholarships of $10,000, it would have a "scholarship budget" of $600,000. To cover the $600,000 scholarship program and its original $3 million budget, the school would need to reset its tuition at $36,000 ($3.6 million/100). Net of the scholarships, 20 students would actually pay $16,000 ($320,000 total), 20 students would actually pay $26,000 ($520,000 total), and 60 students would pay the full $36,000 in upwardly adjusted tuition ($2,160,000 total), resulting in total tuition revenue of $3 million net of scholarships—its original budget. Thus, to generate scholarship assistance and reduce the net tuition cost for the 40 scholarship recipients, the law school needs to increase tuition for those not receiving any scholarships by $6,000, or 20 percent.

This example is close to macro-level reality. If all students in all law schools paid full tuition in 2011, law schools would have received roughly $5 billion in tuition revenue. But nearly 50 percent of law school students received an average median scholarship award of nearly $12,000 resulting in an aggregate of nearly $1 billion in total scholarship assistance. This means "net tuition" received by law schools was roughly $4 billion. Assuming all of this scholarship money were derived through tuition discounting (not a completely realistic assumption as many schools have endowed scholarships), law schools could conceivably reduce tuition by nearly 20 percent if they had no scholarship programs at all. Obviously, a 20 percent tuition reduction would significantly help the financial viability equation for the marginal student.

the "face cost" of tuition, significantly helping the financial viability equation for the marginal student while only marginally impairing the financial viability equation for scholarship students as they also would benefit from lower actual tuition.

Interestingly, the results described here in Part II should not be surprising in light of the shift in the tuition/salary ratios reflected in Part I.[44] Indeed, looking at the 2011 ratios of resident, non-resident, and private school tuitions to average overall income, one sees ratios of .28, .44, and .5, respectively.[45] If these ratios are flipped to reflect income over tuition, the resulting ratios are roughly 3.5 to 1, 2.25 to 1, and 2 to 1, respectively. For non-resident graduates of public law schools and for graduates of private law schools, these ratios of average overall income to average tuition are barely in the marginal financial viability category using Professor Chen's analysis. Only resident graduates of public law schools, with an average overall income to overall average tuition ratio of 3.5 to 1, manifest adequate financial viability in this aggregated analysis.

III. Affordability Differences within Types of Law Schools and Across States and Regions and Profiles

Of course, the above "macro" discussion fails to highlight differences in affordability factors at a "micro" level—different tuitions, scholarship funding, and employment outcomes in particular types of law schools, differences in tuition rates across states and regions, and differences in LSAT and GPA profiles.

Some private schools with relatively modest tuition or with relatively generous scholarship programs and fairly strong employment profiles may have a significantly higher percentage of graduates with at least marginal financial viability than other private schools with higher tuition or relatively less generous scholarship programs and less robust employment profiles. Similarly, some public schools still benefit from a greater state subsidy than other public schools. As a result, annual resident tuition at some public schools is less than $20,000, while annual resident tuition at others

44. *See supra* notes 1–7 and accompanying text.
45. *See supra* Tables 3, 4, and 5 for year 2011 in "Tuition to Average Salary" columns.

exceeds $40,000. The significantly lower tuition at some schools makes it much more likely that a higher percentage of their graduates will have at least marginal financial viability, even if the jobs those graduates obtain pay more modest salaries than jobs typically obtained by graduates of some schools with higher tuition.

Similarly, the "macro" discussion fails to highlight the extent to which differences exist across geographic regions of the country. Legal education in California, Illinois, Massachusetts, and New York is very expensive, relatively speaking, with annual tuition at forty-seven law schools exceeding $37,000 and tuition less than $21,000 at only four schools.[46] Notably, nearly one-third of the entering class of law students in 2011 attended one of these fifty-one schools.[47] In contrast, legal education is fairly affordable in Arkansas, Kansas, Kentucky, Missouri, North Dakota, South Dakota, and Tennessee, home to sixteen law schools, of which thirteen public schools offer annual resident tuition of less than $18,000, while annual tuition at the remaining three private schools exceeds $36,000.[48]

When one looks at the entering class profiles of law schools in conjunction with variations in tuition and scholarship opportunities, one can begin to see that within and across geographic regions the affordability issues become even more pronounced when variations in LSAT and GPA profiles are taken into account. For example, in Arizona, the two public law schools offer relatively affordable annual resident tuition at roughly $26,000,[49] but their entering classes in fall

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46. The fifty-one law schools in the states of California, Illinois, Massachusetts, and New York referenced here are those that have received full accreditation from the ABA Section of Legal Education and Admissions to the Bar. The four "affordable" law schools based on 2010–11 in-state tuition are Northern Illinois ($18,688) and Southern Illinois ($15,994) in Illinois, and City University of New York ($12,207) and State University of New York-Buffalo ($20,818) in New York. Scholarship/Grant Chart, *supra* note 27.

47. Scholarship/Grant Chart, *supra* note 27. Total fall 2011 first-year enrollment at these fifty-one law schools was just less than 14,602; 549 students, less than 4 percent of the total, were enrolled in the four "affordable" law schools. Chart on file with author compiling 2011 first-year enrollment and profile data from the *2013 ABA-LSAC Guide* [hereinafter 2011 Enrollment Profile Chart].

48. Scholarship/Grant Chart, *supra* note 27. The sixteen law schools referenced here are those that have received full accreditation from the ABA Section of Legal Education and Admissions to the Bar. Total fall 2011 first-year enrollment at these sixteen law schools was 2,463, of which 731, just under 30 percent, were enrolled in one of the three more expensive private law schools. 2011 Enrollment Profile Chart, *supra* note 47.

49. Scholarship/Grant Chart, *supra* note 27.

2011 had no more than seventy-five total spots for students with LSAT scores at or below 157.[50] Those with lower scores who want to stay in Arizona for law school must attend Phoenix Law School with tuition of more than $37,000 per year.[51] While many Phoenix Law School first-year students may benefit from scholarship assistance that lowers net tuition, it is likely that more than two hundred Phoenix first-year students—likely those with lower LSAT/GPA profiles—pay full tuition.[52]

Thus, while the "macro" analysis highlights the extent to which law students are facing significant affordability issues in the aggregate, the "micro" reality suggests that lack of affordability is particularly pronounced in some geographic regions (specifically California, Illinois, Massachusetts, and New York), and most acutely for "marginal" students with lower LSAT/GPA profiles who will not often have the benefit of significant scholarship assistance.

IV. CONCLUSION

This analysis demonstrates that generally speaking, legal education is significantly less affordable than it was in the mid-1980s for students across all types of law schools. But more specifically, the affordability of legal education depends significantly on where one chooses to go to law school and whether one has a scholarship. In some geographic regions, legal education remains particularly affordable for resident students at public law schools. Across the country, whether at public law schools or private law schools, legal education generally is relatively affordable for those students receiving scholarships at or above the average median scholarship across law schools. Unfortunately, for students with the least robust LSAT/GPA profiles, for whom scholarship opportunities are much

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50. 2011 Enrollment Profile Chart, *supra* note 47. Arizona and Arizona State had 305 total first-year students enrolled in fall 2011, but with twenty-fifth percentile LSATs of 158 and 160, respectively; fewer than seventy-five students had LSATs of 157 or below.

51. Scholarship/Grant Chart, *supra* note 27.

52. Scholarship/Grant Chart, *supra* note 27. Roughly 56 percent of all Phoenix students received scholarships in 2010–11, with a median scholarship award of $7,000. With 450 first-year students, if 44 percent did not have scholarships, that would total 200 first-year students paying more than $37,000 tuition. *Id.*

less likely to be available and for which it might not even be possible to gain admission to the public law school in the state in which they reside, law school is an expensive proposition for which the return on investment is questionable. These students are most likely to find themselves among the graduates experiencing less than marginal financial viability.

In a recent critique of Brian Tamanaha's book, *Failing Law Schools*, Philip Schrag suggests that regardless of where one goes to school and whether one has a scholarship, affordability is no longer an issue due to income-based repayment (IBR) of federal loans and particularly the Pay As You Earn (PAYE) program.[53] In 2007, Congress passed the College Cost Reduction and Access Act, which, among other things, resulted in an income-based repayment program for eligible graduates with federal loans.[54] Congress amended this approach to IBR when it passed the Health Care and Education Reconciliation Act of 2010, making the IBR even more generous, but with a delayed implementation, applicable to loans issued on or after July 1, 2014.[55] In October 2011, President Obama announced the PAYE program, making the more generous IBR provisions from the Health Care and Education Reconciliation Act of 2010 available as soon as 2012.[56] The final regulations for the PAYE program were issued on November 1, 2012.[57] Under the PAYE program, the amount of debt does not matter, as payment obligations are based

53. Philip G. Schrag, Failing Law Schools: *Brian Tamanaha's Misguided Missile*, GEO. J. LEGAL ETHICS (forthcoming), *available at* http://ssrn.com/abstract=2179625.

54. Pub. L. No. 110-84 (Sept. 27, 2007), 20 U.S.C. § 1098(e). IBR limited payments to 15 percent of a borrower's adjusted gross income less 150 percent of the poverty line applicable to the borrower's family size, extended the payment period from the standard ten-year period to twenty-five years, and provided for the forgiveness of any balance remaining at the end of twenty-five years. *Id.*

55. H.R. 4872, 111th Cong. § 2213 (2010) (enacted) (amending 20 U.S.C. § 1098e(e)). For borrowers whose first loan was issued on or after July 1, 2014, this amendment limited payments to 10 percent of a borrower's adjusted gross income less 150 percent of the poverty line applicable to the borrower's family size and limited the payment period to twenty years. *Id.*

56. *See Fact Sheet: Help Americans Manage Student Loan Debt*, WHITE HOUSE (Oct. 25, 2011), http://www.whitehouse.gov/the-press-office/2011/10/25/fact-sheet-help-americans-manage-student-loan-debt.

57. Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program, 77 Fed. Reg. 66088 (Nov. 1, 2012). PAYE is available to any borrower who had undergraduate federal loans or federally guaranteed loans before October 2007.

completely upon the income of the borrower.[58] Thus, according to Schrag, Tamanaha's concerns (and my concerns) about the affordability of legal education given the high cost and generally modest incomes for those lucky enough to find jobs are overblown because the repayment obligations of law graduates eligible for PAYE will be very manageable given that the repayment obligations are based on income levels not debt levels.[59]

In a recent blog posting, Tamanaha concedes the accuracy of Schrag's description of the reality of how PAYE will function to make legal education "affordable" regardless of the tuition charged by law schools or the amount borrowed by law graduates, but notes that the need for this type of program to make legal education affordable highlights how unaffordable legal education has become.[60] Tamanaha also expresses three concerns regarding PAYE. First, he highlights that the end result of the loan forgiveness aspect of PAYE at the end of twenty years will be a significant tax obligation for borrowers whose payments were inadequate to reduce significantly the amount of indebtedness over time.[61] Second, he notes that the fiscal consequences of the PAYE program may make it a prime focus of budget cutters looking to do something about the federal budget deficit.[62] Third, he notes the profound moral hazard involved in a program that creates no incentive for law schools to limit tuition increases and no incentive for students to limit borrowing.[63] I agree with all of these concerns.

Perhaps more significantly, however, the market has not been persuaded by PAYE as the panacea for making legal education affordable. Legal education is built on a financial model that works only if a significant number of students are willing to pay full tuition. To the extent that limited employment opportunities and modest income for graduates make the law school investment equation seem

58. *See* Brian Tamanaha, *What's Wrong with Income-Based Repayment in Legal Academia: A Response to Schrag*, BALKINIZATION (Nov. 29, 2012) http://balkin.blogspot.com/2012/11/whats-wrong-with-income-based-repayment.html.

59. *See supra* note 53.

60. *See supra* note 58.

61. *Id.*

62. *Id.*

63. *Id.*

less viable for the student with a modest to low LSAT/GPA profile who will be expected to pay full tuition—law schools are going to find themselves with fewer and fewer students to fill their seats even with the availability of PAYE.[64]

This reality has been reflected in the declining applications to law school in the 2011 and 2012 admissions cycles (declining from 87,500 to 68,000 in that two-year period).[65] It also has been reflected in declining first-year enrollment across law schools in 2011 and again in 2012.[66] The early returns for fall 2013 also are discouraging as the number of LSATs administered in June and October 2012 was down 12.5 percent from the number of LSATs administered in June and October 2011.[67] Indeed, the recently announced LSAC Current Volume Three-Year Summary indicates that applicants are down over 20 percent compared to last year at this time.[68] Nonetheless, law schools continued to increase tuition for fall 2012,[69] even as employment outcomes continued to deteriorate,[70] making the value proposition even less tenable for prospective law students, who are increasingly well-informed about both the costs of legal education

64. *See* Bernie Burke, *What Matters Most (in legal ed these days)*, FACULTY LOUNGE (Nov. 14, 2012), http://www.thefacultylounge.org/2012/11/what-matters-most-in-legal-ed-these-days.html?cid=6a00e54f871a9c8833017c338880a8970b (noting that the biggest problem for legal education these days is that there are too many graduates and not enough jobs).

65. *See LSAC Volume Summary*, LSAC, http://www.lsac.org/lsacresources/data/lsac-volume-summary.asp (last visited Jan. 25, 2013).

66. *See* Jerome M. Organ, *UPDATED Comparison of 2010 and 2011 Enrollment and Profile Data Among Law Schools*, LEGAL WHITEBOARD (Aug. 16, 2012), http://lawprofessors.typepad.com/legalwhiteboard/2012/08/updated-comparison-of-2010-and-2011-enrollment-and-profile-data-among-law-schools.html#comments (for the 2010–11 comparisons); Jerome M. Organ, *Unofficial Comparison of 2010 and 2012 Enrollment and Profile Data and Thoughts on 2013*, LEGAL WHITEBOARD (Nov. 28, 2012), http://lawprofessors.typepad.com/legalwhiteboard/2012/11/unofficial-comparison-of-2010-and-2012-enrollment-and-profile-data-and-thoughts-on-2013.html (for the 2010–12 comparisons).

67. *See LSATs Administered*, LSAC, http://www.lsac.org/lsacresources/data/lsats-administered.asp (last visited Jan. 25, 2013).

68. *See LSAC Current Volume—Three-Year Summary*, LSAC, http://www.lsac.org/lsacresources/data/three-year-volume.asp (last visited Jan. 25, 2013).

69. *See* Karen Sloan, *Tuition is Still Growing*, NAT'L L.J. (Aug. 20, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202567898209&Tuition_is_still_growing&slreturn=20121029135537.

70. *See Class of 2011 Has Lowest Employment Rate Since Class of 1994*, NALP Bulletin (July 2012), http://www.nalp.org/0712research.

and the realistic employment outcomes given increasing transparency regarding employment data for law school graduates.

What does this mean for legal education? Until more law schools "rebalance" the value proposition for law students, particularly for the students with the lower LSAT/GPA profiles who are expected to pay full tuition, or until the employment market begins to improve significantly, the enrollment numbers likely will continue to slide. This will be painful for many law schools that already are experiencing significant budget challenges from the declines in enrollment in 2011 and 2012.[71] Just as law firms down-sized through 2009 and into 2010 in response to declining revenues, law schools likely will be down-sizing in 2013 and beyond. Law schools also will have to explore ways to continue to provide a high quality legal education more cost-effectively, just as law firms have been exploring ways to provide high quality legal services more cost-effectively over the last few years. While this will be a tumultuous time for legal education, it also may prove to be a time in which necessity breeds meaningful innovation and reform. As with any time of significant market disruption, there likely will be winners and losers, but only time will tell us which law schools are the winners and which are the losers.

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71. *See* Organ, *Unofficial Comparison of 2010 and 2012 Enrollment and Profile Data and Thoughts on 2013*, *supra* note 66. There are at least fifty-nine law schools that have seen a decline in first-year enrollment of at least 20 percent between 2010 and 2012. For some of these law schools, that is a decline of one hundred or more students, and a likely loss of $2 million or more in annual tuition revenue (assuming a net tuition of only $20,000 per student after accounting for scholarships), possibly a loss of $6 million or more in annual tuition revenue if the decline in enrollment continues for three years. *See, e.g.*, Karen Sloan, *New Vermont Law School Dean Taking on $3.3M Budget Shortfall*, NAT'L L.J. (Nov. 26, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202579363738&New_Vermont_Law_School_dean_taking_on_33M_budget_shortfall_. Interestingly, while dozens of schools will be dealing with these types of budget challenges this year and in the coming years, the only two recent news stories regarding these types of restructuring at law schools were this Vermont story and a story in May 2012 regarding downsizing at the University of California Hastings College of Law. *See UC-Hastings Reduces Incoming Class by 20%, Cuts 27 Staff Positions*, TAXPROF BLOG (Apr. 27, 2012), http://taxprof.typepad.com/taxprof_blog/2012/04/uc-hastings.html.